

**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 II of III)**

February 12, 2024

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Lawyers for the Applicants

TO: THE SERVICE LIST

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THE TORONTO-DOMINION BANK Mississauga Centre, 20 Milverton Dr Mississauga, ON L5R 3G2	MONTANA ELECTRICAL CONTRACTORS LTD. 67 Racine Rd Etobicoke, ON M9W 2Z4
NORAM GLASS CORPORATION 1325 Aimco Blvd. Mississauga, ON L4W 1B4	BLACK & MCDONALD LTD. 2 Bloor St E #2100 Toronto ON M4W 1A8
CLARK FARB FIKSEL LLP 188 Avenue Road Toronto, ON M5R 2J1 Attention: Mary Ann David <i>Lawyers for Noram Glass Corporation, a Construction Lien Claimant</i>	SPEIGEL NICHOLS FOX LLP 1 Robert Speck Parkway, Suite 200 Mississauga, ON L4Z 3M3 Attention: Erica Nadin Rochette <i>Lawyers for Black & McDonald Limited, a Construction Lien Claimant</i>

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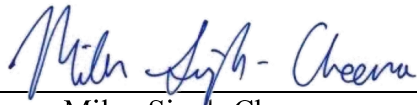
T

A

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M

THIS IS **EXHIBIT "M"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



Milan Singh-Cheema

A Commissioner for taking Affidavits
(or as may be)

SPECIFIC ASSIGNMENT OF CONSTRUCTION MANAGEMENT AGREEMENT

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, estate and interest in and to the CCDC 5B construction management contract for services and construction dated May 4, 2020 between the Assignor, as owner, and Kenaidan Contracting Ltd. (the "**Counterparty**"), as construction manager (the "**Construction Management Agreement**"), together with, without limitation:

- (a) the benefit of all representations, warranties, conditions, terms and covenants made or contained or implied or expressed by law therein;
- (b) all moneys due or accruing due or at any time hereafter to become due under the Construction Management Agreement, as applicable; and
- (c) all rights, benefits and advantages derived from the Construction Management Agreement and any and all present and future guarantees or indemnities of all or any of the obligations under it, as applicable, together with the full benefit of all security in support of such guarantees or indemnities,

all as amended, restated, extended, renewed, supplemented, replaced or otherwise modified from time to time, the "**Assigned Agreement**");

AND WHEREAS a complete copy of the Assigned Agreement is attached hereto as Schedule "A";

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 4.3(b);
- (b) "**Enforcement Notice**" has the meaning ascribed to it in Section 4.3(b);
- (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; and
- (e) "**Loan Obligations**" means the obligations of the Assignor or any of the other Covenantors arising under the Loan Documents.

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, estate and interest and benefit, both at law and in equity, in and to the Assigned Agreement and, subject to Section 4.1, with full power and authority to enforce all the rights, claims or causes of action the Assignor may have under the Assigned Agreement, including the right to bring action to recover moneys under the Assigned Agreement. Notwithstanding the assignment of the Assigned Agreement, the Assignee shall not be responsible or liable for any obligations of the Assignor respecting it, which remain the sole obligation of the Assignor.

2.2 Value and Attachment

The Assignor acknowledges that value has been given and that the Assignor has rights in the Assigned Agreement. The Assignee and the Assignor have not agreed to postpone the time for attachment of the security interest created by this Agreement and the Assignor and the Assignee intend that the security interest shall attach to the Assigned Agreement upon execution of this Agreement.

2.3 Perfection

The Assignor shall from time to time as may be required by the Assignee with respect to the Assigned Agreement take all actions as may be requested by the Assignee to perfect the security interest at the expense of the Assignor

ARTICLE 3
REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations, Warranties and Covenants

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 Assigned Agreement to the Assignee, 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) the copy of the Assigned Agreement delivered to the Assignee is a true and complete copy of the Assigned Agreement;
- (c) the Assigned Agreement is in existence, is unamended (except to the extent set out in Schedule "A"), and is in full force and effect, and there is no existing dispute thereunder;

- (d) to the best of the Assignor's knowledge there is currently no default by any party to the Assigned Agreement under any term, condition or covenant required to be performed by it under the Assigned Agreement 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 the Assigned Agreement; and
- (e) the Assignor has observed and performed all of its obligations under the Assigned Agreement and will, in all material respects, continue hereafter to observe and perform all of its obligations under the Assigned Agreement.

3.2 Survival

All representations and warranties of the Assignor made in this Agreement or in any of the other Loan Documents are material, shall survive and shall not merge upon the execution and delivery of this Agreement and shall continue in full force and effect. The Assignee shall be deemed to have relied upon the representations and warranties notwithstanding any investigation made by or on behalf of the Assignee at any time.

ARTICLE 4 **RIGHT TO DEAL**

4.1 Right to Deal

Until the occurrence of an Event of Default which is continuing and subject to Section 4.2, the Assignor is permitted to enjoy the benefits of and deal with the Assigned Agreement and to enforce all the rights, claims or causes of action the Assignor may have under the Assigned Agreement, and the Assignor shall retain all the benefits, rights, advantages and powers accruing to it under the Assigned Agreement, and the Counterparty 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 and the notice shall be good and sufficient authority for so doing;

4.2 No Dealings with Assigned Agreement

That the Assignor shall not, without the prior written consent of the Assignee:

- (a) assign, encumber, pledge or hypothecate the Assigned Agreement other than to the Assignee or pursuant to a 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) do any act or thing or omit to do any act or thing that would have the effect of terminating, cancelling, or accepting a surrender of the Assigned Agreement, modifying, amending, or varying the Assigned Agreement, or waiving, releasing or reducing or discounting the Counterparty's obligations under the Assigned Agreement, which would materially adversely change the obligations of the Assignor thereunder, other than as permitted under the Loan Documents.

4.3 Acceleration and Enforcement

Upon the occurrence of an Event of Default which is continuing

- (a) all of the Loan Indebtedness shall, at the Assignee's option and without notice to the Assignor, become immediately due and payable, the security hereby constituted will, at the option of the Assignee, immediately become enforceable, and the Assignee may, in its sole, absolute and unfettered discretion, exercise its rights in respect of the Assignment Agreement in addition to all other rights and remedies afforded by applicable law, in equity or otherwise. The Assignee's remedies are cumulative and the Assignee shall have the right to enforce one or more remedies successively or concurrently in accordance with the Mortgage and applicable law and the Assignee expressly retains all rights and remedies not inconsistent with the provisions in this Agreement. The Assignee's exercise of one right or remedy does not preclude its exercise of any others. 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;
- (b) if the Assignee elects 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 Counterparty advising that the Assignee has elected to: (i) terminate the Assigned Agreement 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 require the Counterparty to deal directly with the Assignee (subject to the provisions of Section 4.7), 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.

4.4 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 the Counterparty upon the happening of any Event of Default but any such waiver shall not extend to any subsequent Event of Default.

4.5 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 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 (hereinafter called a "**Receiver**", which term when used herein shall include a receiver or a manager or a receiver and manager), 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 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;

- (b) if any action is brought by the Assignee or any Receiver to enforce any rights under the Assigned Agreement, 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 party upon written notice to it by the Assignee to make all payments due under or arising under the Assigned Agreement 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 the Assigned Agreement, 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.

4.6 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 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.

4.7 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 Assigned Agreement 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 Assigned Agreement;

- (b) nothing herein contained shall oblige the Assignee to assume or perform any obligation of the Assignor to the Counterparty in respect of or arising out of the Assigned Agreement. 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 Agreement, 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) 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 moneys as contemplated herein;
- (d) 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 4.7(a) or Section 4.7(b) shall not constitute or have the effect of making the Assignee a mortgagee in possession; and
- (e) 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 the Assigned Agreement.

4.8 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 Agreement 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, interest and estate in and benefit of the Assigned Agreement 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 Agreement or anything related thereto. 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 Agreement 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 as may be necessary or effective, in

registrable form, to evidence the termination of this Agreement and the reassignment to the Assignor of the Assigned Agreement.

ARTICLE 5 **MISCELLANEOUS**

5.1 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 5.9 (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, counterclaim or deduction.

5.2 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 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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 assignment, transfer or sale of that portion 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.

5.9 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
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
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
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 (3rd) 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.

5.10 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.

5.11 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.

5.12 Time of the Essence

Time is of the essence of this Agreement.

5.13 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.

5.14 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.

5.15 Further Assurances

The Assignor will promptly do all further acts and execute and deliver such further documents the Assignee considers necessary or advisable to carry out the terms or intent of this Agreement.

5.16 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 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.

5.17 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:

Title:

M. MOLDENHAUSE
A.F.O.

Per: _____

Name:


Title:

ACKNOWLEDGEMENT OF COUNTERPARTY

The undersigned hereby acknowledges that the Assignor's interest in and to the Assigned Agreement has been assigned to the Assignee pursuant to this Assignment and the undersigned agrees that, notwithstanding language to the contrary in the Assigned Agreement, upon the occurrence of and during the continuance of an Event of Default (as defined in the Mortgage), the Assigned Agreement may be terminated upon receipt by the Counterparty of an Enforcement Notice in accordance with Section 4.3(b) delivered by the Assignee a Receiver, without cost, penalty, payment, obligation or liability to the Assignee and such termination shall be effective as and from the Effective Date.

Dated this 03 day of February, 2022.

KENAIDAN CONTRACTING LTD.

Per: 
Name: John Goffredo
Title: President

Per: _____
Name:
Title:

SCHEDULE "A"
ASSIGNED AGREEMENT

Please see attached.

CCDC 5B

Construction Management Contract – for Services and Construction

2010

759 Winston Churchill Industrial Development
Building 3 -
Goodfood Market Corp.

Apply a CCDC 5B copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 5B - 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

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**AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER
– FOR SERVICES AND CONSTRUCTION**

This agreement made on the 4th day of May in the year 2020
by and between

759 Winston Churchill GP Inc. for and on behalf of 759 Winston Churchill L. P.
Attention: Michael Moldenhauer

hereinafter called the “*Owner*”
and

Kenaidan Contracting Ltd.
Attention: Gian Fortuna

hereinafter called the “*Construction Manager*”

The *Owner* and *Construction Manager* agree as follows:

ARTICLE A-1 THE SERVICES AND THE WORK

The *Construction Manager* shall

- 1.1 perform the *Services* and the *Work* for
759 Winston Churchill Industrial Development
Building 3 -
Goodfood Market Corp.

insert above the title of the Project

located at

759 Winston Churchill Blvd.
Mississauga ON, L5M 0L7

insert above the Place of the Work

and as further described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed by the parties, and for which

Ware Malcomb Architecture ULC

insert above the name of the Consultant

is acting as and is hereinafter called the “*Consultant*”, and

- 1.2 do and fulfill everything indicated by the *Contract Documents*, and
- 1.3 commence the *Services* and the *Work* by the 04 day of May in the year 2020 and continue in accordance with any schedule provided in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT. The *Construction Manager*’s obligation to provide *Services* shall end no later than one year after the date of *Substantial Performance of the Work*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Project*.
- 2.2 This *Contract* may be amended only as provided in the *Contract Documents*.

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ARTICLE A-3 DESCRIPTION OF THE PROJECT

3.1 The following is a description of the *Project* including intended use, scope, budget, schedule, phases if applicable, and the anticipated date of *Substantial Performance of the Work*), and any other information which further generally describes the nature of the *Project* and the *Work*:

Development of the 759 Winston Churchill Blvd site,
-design development to achieve Site Plan Approval and Building Permit Application
-secure site,
-cut fill site for Building 1, 2 and 3
-below grade services for Building 1, 2 and 3
-construction Building 3 shell, below grade structure and above grade superstructure
-exterior surfaces, asphalt pavement, curbs and sidewalks, landscaping for occupancy of Building 3

Project Schedule

Commence work on Site by May 19, 2020

Complete Building 3 sufficient for Tenant to comence Tenant Improvements by March 08, 2021

Substantially Perform the Building 3 Shell by April 30, 2021

ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES AND THE WORK:

- the Agreement Between *Owner* and *Construction Manager* (including the Schedules to the Agreement)
- the Appendix – STIPULATED PRICE OPTION
- the Definitions
- the General Conditions
- the *Construction Documents*

*

-the Supplementary Conditions

-Appendix 1, Project Support Services referred to in 5.2.1

-Appendix 2, Cost of the Works referred to in 5.3.1

Draft Site Plan Application - Issued May 22, 2020

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

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ARTICLE A-5 CONSTRUCTION MANAGER'S FEE

5.1 The *Construction Manager's Fee* shall be equal to the sum of the fee for the *Services* as specified in paragraph 5.2 and the fee for the *Work* as described in paragraph 5.3.

5.2 The *Construction Manager's Fee* for the *Services* is comprised of one or more of the following:

- .1~~☒~~ A fixed amount of \$1,009,289 to provide the Project Support Services as outlined in Appendix 1 _____; and
- .2~~☒~~ A percentage amount of _____ percent (____%) of the *Construction Cost Estimate*. Final reconciliation payments shall be adjusted based on *Class A Construction Cost Estimate*; and
- .3~~☒~~ An amount based on the time-based rates for personnel employed by the *Construction Manager* as described in Schedule B to the Agreement and engaged in performing the *Services* to the level of effort agreed prior to the commencement of the *Services*. The *Owner* may by written request require the *Construction Manager* to provide prior to commencement of the *Services* an estimate of the total fee for *Services* to be performed based on the time-based rates for evaluation and verification purposes.

* *Strike out inapplicable paragraph(s).*

5.3 The *Construction Manager's Fee* for the *Work* is comprised of one or more of the following:

- .1~~☒~~ A percentage fee of TWO AND A HALF percent (2.5 %) of the *Cost of the Work* earned as the *Cost of the Work* accrues. In the event the *Owner* furnishes labour or material below market cost or materials are re-used beyond that anticipated in the original scope of the *Work*, the *Cost of the Work* for purposes of establishing the *Construction Manager's Fee* for the *Work* is the cost of all materials and labour necessary to complete the *Project* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction; and
- .2~~☒~~ A fixed fee of _____ earned as follows: _____,

~~☒~~ *Delete inapplicable paragraph.*

5.4 The *Construction Manager's Fee* shall be subject to adjustment as may be required in accordance with the provisions of the *Contract Documents* listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS.

5.5 All amounts are in Canadian funds.

ARTICLE A-6 REIMBURSABLE EXPENSES FOR THE SERVICES

6.1 The reimbursable expenses are the actual expenses, supported by receipts or invoices, that the *Construction Manager* incurred in performing the *Services*, and as identified in Schedule A2 to the Agreement plus the administrative charge of FIVE percent (5 %). If there are no receipts or invoices, the expenses shall be at rates prevailing in the area of the *Place of the Work* and supported with suitable documentation.

6.2 The *Owner* may by written request require the *Construction Manager* to:

- .1 provide prior to commencement of the *Services* an estimate of the total reimbursable expenses incurred by the *Construction Manager* in performing the *Services* for evaluation and verification purposes; and
- .2 inform the *Owner* in writing prior to incurring reimbursable expenses relating to the *Services*.

ARTICLE A-7 COST OF THE WORK

- 7.1 The *Cost of the Work* is the actual cost incurred by the *Construction Manager* in performing the *Work* and is limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel
 - (1) stationed at the *Place of the Work*, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings; or
 - (4) engaged in the processing of changes in the *Work*.
 - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Construction Manager* and included in the cost of the *Work* as provided in paragraph 7.1.1;
 - .3 travel and subsistence expenses of the *Construction Manager's* personnel described in paragraph 7.1.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 the *Construction Manager's* field office;
 - .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*;
 - .9 the amounts of all contracts or written agreements with *Subcontractors* and *Suppliers* and the unrecoverable costs to the *Construction Manager* that result from any *Subcontractor's* or *Supplier's* default, insolvency or abandonment; termination of any *Subcontractor's* or *Supplier's* right to perform due to default by the *Subcontractor* or *Supplier*; or termination of any *Subcontractor's* or *Supplier's* contract due to default by the *Subcontractor* or *Supplier*;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Construction Manager's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .13 premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract Documents*, to purchase and maintain;
 - .14 taxes, other than *Value Added Taxes*, and duties relating to the *Work* for which the *Construction Manager* is liable;
 - .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
 - .16 removal and disposal of waste products and debris;
 - .17 the cost of safety measures and requirements;
 - .18 legal costs, incurred by the *Construction Manager* in relation to the performance of the *Work* provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Work* is performed in accordance with this *Contract*;
 - .19 the cost of financing the *Work* in accordance with the method determined by the parties and identified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT;

- .20 the cost of auditing when requested by the *Owner*;
- .21 the cost of project-specific information technology and usage in accordance with the method determined by the parties in writing;
- .22 the cost of removal or containment of toxic or hazardous substances pursuant to GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES;
- .23 other costs incurred in the performance of the *Work* as listed below:

- 7.2 The *Cost of the Work* excludes *Value Added Taxes* and shall be at rates prevailing in the locality of the *Place of the Work*, except with the prior consent of the *Owner*.
- 7.3 Any costs incurred by the *Construction Manager* due to failure on the part of the *Construction Manager* to exercise reasonable care and diligence in the *Construction Manager's* attention to the *Work* shall be borne by the *Construction Manager*.
- 7.4 All cash discounts shall accrue to the *Construction Manager* unless the *Owner* deposits funds with the *Construction Manager* with which to make payments, or where the *Owner* pays the costs of financing the *Work*, in which case the cash discounts shall accrue to the *Owner*.
- 7.5 All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the *Work* shall accrue to the *Owner*, and the *Construction Manager* shall make provisions so that they can be secured.
- 7.6 The *Owner* may by written request require the *Construction Manager* to:
 - .1 provide prior to commencement of the *Work* an estimate of the total *Cost of the Work* for evaluation and verification purposes; and
 - .2 inform the *Owner* in writing prior to incurring reimbursable expenses relating to the *Cost of the Work*.

ARTICLE A-8 OPTIONS

8.1 The *Owner* and the *Construction Manager* may agree to exercise the options described in paragraph 8.2, 8.3 or 8.4 at the time of signing of this *Contract* or any time during the term of the *Contract*. Any agreement to exercise any of the following options after the signing of this *Contract* shall be recorded by a *Change Order*.

8.2 GUARANTEED MAXIMUM PRICE (GMP) OPTION

The sum of the *Price of the Services* and the *Price of the Work* are guaranteed by the *Construction Manager* not to exceed _____ /100 dollars (\$ _____),

subject to the adjustment as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE. Any amount, consisting of the sum of the *Price of the Services* and the *Price of the Work*, in excess of this *Guaranteed Maximum Price* will be paid by the *Construction Manager* without reimbursement by the *Owner*.

8.3 GUARANTEED MAXIMUM PRICE PLUS % COST SAVINGS OPTION

The *Price of the Services* and the *Price of the Work* are guaranteed by the *Construction Manager* not to exceed

_____ /100 dollars (\$ _____),

subject to the adjustment as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

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At the conclusion of the *Project*,

- .1 any amount, consisting of the sum of the *Price of the Services* and the *Price of the Work*, in excess of this *Guaranteed Maximum Price* will be paid by the *Construction Manager* without reimbursement by the *Owner*.
- .2 if the sum of the *Price of the Services* and the *Price of the Work* is less than this *Guaranteed Maximum Price*, the difference will be disbursed as follows:
 - (1) retained by the *Owner*: _____ %
 - (2) paid to the *Construction Manager*: _____ %

8.4 STIPULATED PRICE OPTION

The *Owner* and the *Construction Manager* may agree to change this *Contract* to a stipulated price contract, in accordance with the amendments as provided in the Appendix – STIPULATED PRICE OPTION.

ARTICLE A-9 PAYMENT

9.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Work*. The *Owner* shall pay the *Construction Manager*:

- .1 payments on account of the *Construction Manager's Fee* for the *Services* earned as described in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE together with such *Value Added Taxes* as may be applicable to such payments, and
- .2 payments on account of the reimbursable expenses for the *Services* earned as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES together with such *Value Added Taxes* as may be applicable to such payments,
- .3 payments on account of the *Price of the Work* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments,
- .4 upon *Substantial Performance of the Work*, the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .5 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services*, the reimbursable expenses for the *Services*, and the *Price of the Work* when due together with such *Value Added Taxes* as may be applicable to such payment.

9.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Construction Manager* in accordance with the provisions of GC 11.1 – INSURANCE.

9.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of this *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.
 Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

The Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)
for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 9.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-10 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 10.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 10.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 10.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received 5 calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 10.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 10.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

759 Winston Churchill GP Inc. for and on behalf of 759 Winston Churchill L. P.
Attention: Michael Moldenhauer

name of Owner*

7080 Derrycrest Drive,
Mississauga, ON L5W 0G5

address

facsimile number

mm@moldenhauer.ca

email address

Construction Manager

Kenaidan Contracting Ltd.
Attention: Gian Fortuna

name of Construction Manager*

7080 Derrycrest Drive,
Mississauga, ON L5W 0G5

address

facsimile number

gfortuna@kenaidan.com

email address

Consultant

Ware Malcomb Architecture ULC

name of Consultant*

180 Bass Pro Mills Dr. #103,
Vaughan, ON L4K 0G9

address

facsimile number

fdiroma@waremalcomb.com

email address

* If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.

Note: This contract is protected by copyright. Use of a CCDC 5B document not containing a CCDC 5B copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5B copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5B – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

ARTICLE A-11 LANGUAGE OF THE CONTRACT

11.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French# language shall prevail.

#Complete this statement by striking out inapplicable term.

11.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-12 SUCCESSION

12.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by their respective hands or the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS



signature

Peter Diab

name of person signing

signature

name of person signing

WITNESS

signature

name of person signing

signature

name of person signing

N.B. Where legal jurisdiction, local practice or Owner or Construction Manager requirement calls for:
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

CCDC 5B – 2010

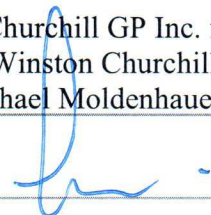
Note: This contract is protected by copyright. Use of a CCDC 5B document not containing a CCDC 5B copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5B copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5B – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

OWNER

759 Winston Churchill GP Inc. for and on behalf of 759 Winston Churchill L. P.

Attention: Michael Moldenhauer

name of Owner



signature

Michael Moldenhauer

name and title of person signing

A.S.O.

signature

name and title of person signing

CONSTRUCTION MANAGER

Kenaidan Contracting Ltd.

Attention: Gian Fortuna

name of Construction Manager

DocuSigned by:
Gian Fortuna
Senior Vice President
Kenaidan Contracting Ltd.
T: 905.870.2660 x2302
gfortuna@kenaidan.com
2459AA572DB7438...



signature

Senior Vice President

name and title of person signing

signature

name and title of person signing

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

1. PRECONSTRUCTION	Performed by the Owner or someone other than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER’S FEE.)			
1.1 General Services			
.1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> .		F1	
.2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.		F1	
1.2 Predesign			
.1 Estimating:		F1	
(1) Confirm or prepare a <i>Class D Construction Cost Estimate</i> .			
(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.		F1	
.2 Scheduling: Prepare a preliminary overall <i>Project</i> schedule.		F1	
1.3 Schematic Design Phase			
.1 Constructability: Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies.		F1	
.2 Estimating:		F1	
(1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase.			
(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.		F1	
.3 Scheduling: Prepare, in consultation with the <i>Consultant</i> and the <i>Owner</i> , a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the anticipated date of <i>Substantial Performance of the Work</i> .		F1	
.4 Other Services: Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Work</i> .		F1	
1.4 Design Development Phase			
.1 Constructability:		F1	
(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.			
(2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages and <i>Work</i> to be performed by the <i>Construction Manager's</i> own forces to help facilitate the subsequent bidding and awarding of <i>Subcontractor</i> and <i>Supplier</i> contracts.			
(3) Review the <i>Specifications</i> and <i>Drawings</i> and, at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Subcontractors</i> .		F1	
.2 Estimating and Cost Control:		F1	
(1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase.			
(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.			
(3) Establish a cost control program and prepare a cash flow forecast for the <i>Project</i> .			

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER’S FEE.)	Performed by the Owner or someone other than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
2.1 General Service .1 Chair and minute regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> .		F1	
2.2 Cost Control and Accounting .1 Prepare and update the <i>Construction Cost</i> and cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> . .2 Develop, implement and maintain a system of <i>Project</i> cost control and accounting. .3 Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i> . .4 Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. .5 Provide recommendations to the <i>Owner</i> for necessary changes to maintain the <i>Project</i> budget and <i>Project</i> schedule.		F1 F1 F1 F1	
3. POST-CONSTRUCTION			
3.1 General Service .1 Prepare final <i>Construction Cost</i> report.		F1	
3.2 Occupancy Review .1 Assist the <i>Owner</i> in conducting post-construction occupancy review.		F1	

SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager's Fee* for the *Services* as described in paragraph 5.2 of Article of the Agreement A-5 – CONSTRUCTION MANAGER'S FEE.

	Costs Included in the Construction Manager's Fee (A-5.2)	Reimbursable Expenses (A-6)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Work</i> .	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of <i>Contract Documents</i> incurred in relation to the performance of this Contract.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
5. The costs to the <i>Construction Manager</i> that result from any <i>Subcontractor's</i> insolvency or failure to perform.		<input checked="" type="checkbox"/>
6. Charges levied by authorities having jurisdiction at the <i>Place of the Work</i> .		<input checked="" type="checkbox"/>
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		<input checked="" type="checkbox"/>
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		<input checked="" type="checkbox"/>
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 11.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		<input checked="" type="checkbox"/>
10. The costs incurred due to emergencies affecting the safety of persons or property.		<input checked="" type="checkbox"/>
11. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows: <div style="border: 1px solid black; height: 150px; width: 100%; margin-top: 5px;"></div>		<input checked="" type="checkbox"/>

SCHEDULE B – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER

Personnel employed by the <i>Construction Manager</i> in the performance of the <i>Services and Work</i>.	Unit	Rate
Project Director	Hour	\$175.00
Project Manager	Hour	\$123.60
Assistant Project Manager	Hour	\$93.30
Site Supervisor	Hour	\$123.60
Assistant Site Supervisor	Hour	\$93.30
Preconstruction Manager	Hour	\$114.60
Project Engineer	Hour	\$64.50
Field Surveyor, with instruments	Hour	\$110.00
Scheduler	Hour	\$94.20
3 D Technician, Auto Cadd	Hour	\$102.00
Estimator	Hour	\$106.20
Project Administrator	Hour	\$68.10
Site Foreman	Hour	\$74.50
Carpenter	Hour	\$69.30
Labourer	Hour	\$66.92
Safety Officer	Hour	\$92.10

DEFINITIONS

The following Definitions apply to this *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Contract Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Contract Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Change Directive

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Construction Manager* to proceed with a change in the *Work* within the general scope of this *Contract* prior to the *Owner* and the *Construction Manager* agreeing upon an adjustment in any or all of the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*.

Change Order

A *Change Order* is a written amendment to this *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Construction Manager* stating their agreement upon:

- a change in the *Services*;
- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Construction Manager's Fee*, if any;
- the method of adjustment or the amount of the adjustment in the *Guaranteed Maximum Price*, if any;
- the extent of the adjustment in the *Contract Time*, if any; and
- the options described in Article A-8 of the Agreement – OPTIONS.

Construction Cost

Construction Cost means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the *Construction Manager's Fee*, the reimbursable expenses for the *Services* as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES and the compensation of the *Consultant*.

Construction Cost Estimate

Construction Cost Estimate is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

Construction Documents

The *Construction Documents* consist of the *Specifications* and *Drawings* that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

Construction Equipment

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Construction Manager

The *Construction Manager* is the person or entity identified as such in the Agreement.

Construction Manager's Fee

The *Construction Manager's Fee* is the *Construction Manager's* fee for performing the *Services* and the *Work* and the amount is as stipulated in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE.

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES AND THE WORK.

Cost of the Work

The *Cost of the Work* is the amount stipulated in Article A-7 of the Agreement – COST OF THE WORK which excludes *Value Added Taxes*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Guaranteed Maximum Price

The *Guaranteed Maximum Price* is the amount, if any, stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS which excludes *Value Added Taxes*. In the event that no amount is stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS, the provisions pertinent to the *Guaranteed Maximum Price*, wherever they appear in this *Contract*, shall be individually inoperative and considered as deleted from this agreement.

Notice in Writing

A *Notice in Writing*, where identified in this *Contract*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-10 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the Agreement.

Price of the Services

The *Price of the Services*, which excludes *Value Added Taxes*, is the sum of the *Construction Manager's Fee* for the *Services* as stipulated in paragraph 5.2 of Article A-5 – CONSTRUCTION MANAGER'S FEE and the reimbursable expenses for the *Services* as stipulated in paragraph 6.1 of Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES.

Price of the Work

The *Price of the Work*, which excludes *Value Added Taxes*, is the sum of the *Construction Manager's Fee* for the *Work* as stipulated in paragraph 5.3 of Article A-5 – CONSTRUCTION MANAGER'S FEE and the *Cost of the Work*.

Product

Product means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner* of which the *Work* may be the whole or a part.

Services

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Construction Manager* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

Subcontractor

A *Subcontractor* is a person or entity having a direct contract with the *Construction Manager* to perform a part or parts of the *Work* at the *Place of the Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Price of the Work* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents*, as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Construction Manager* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

Value Added Taxes

Value Added Taxes means such sums as shall be levied upon the *Owner*'s payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by the tax legislation.

Work

The *Work* means the total construction and related services to be performed by the *Construction Manager* as required by the *Contract Documents* but does not include *Services*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products* and services necessary for the performance of the *Work* by the *Construction Manager* in accordance with these documents. It is not intended, however, that the *Construction Manager* shall supply products or perform services or work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
 - .2 the *Consultant* and the *Construction Manager*, a *Subcontractor*, a *Supplier*, or their agent, employee or other person performing any of the *Work*.
- 1.1.3 The components of the *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Construction Manager* in dividing the work among *Subcontractors* and *Suppliers*.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be:
 - the Agreement between the *Owner* and the *Construction Manager* (including the Schedules to the Agreement),
 - the Definitions,
 - Supplementary Conditions, if any
 - the General Conditions,
 - the *Construction Documents*
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
 - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.7 The *Owner* shall provide the *Construction Manager*, without charge, sufficient copies of the *Construction Documents* to perform the *Work*.
- 1.1.8 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to this *Contract*. All *Specifications*, *Drawings*, and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.9 Models furnished by the *Construction Manager* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

- 1.3.2 No action or failure to act by the *Owner*, *Consultant* or *Construction Manager* shall constitute a waiver of any right or duty afforded either of the parties to this *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 PERFORMANCE OF THE SERVICES

- 1.5.1 Architectural or engineering aspects of the *Project* shall not be the responsibility of the *Construction Manager*. In providing *Services*, the *Construction Manager* assumes no responsibility for the performance of the *Consultant* nor offers any professional design advice.
- 1.5.2 Notwithstanding any other provisions of this *Contract*, the *Construction Manager* shall be deemed not to assume any duties nor responsibilities as agent of the *Owner*.

GC 1.6 PROJECT REPRESENTATIVES

- 1.6.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 OWNER'S RESPONSIBILITIES

- 2.1.1 The *Owner* shall:
- .1 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services* and the *Work*;
 - .2 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services* and the *Work*;
 - .3 furnish promptly to the *Construction Manager* all information that is available or requested by the *Construction Manager* regarding the *Place of the Work* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. Subject to paragraph 9.1.2 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, the *Construction Manager* shall be entitled to rely on such information;
 - .4 designate in writing a representative who shall be fully acquainted with the *Work*; and shall have the authority to act on the *Owner's* behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*;
 - .5 retain the *Consultant* who shall be responsible for the design and design related services required for the *Work*;
 - .6 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;
 - .7 inform the *Consultant* of the scope and terms of the *Services* and the *Work*;
 - .8 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Project* or any non-conformity with the requirements of the *Contract*; and
 - .9 coordinate and facilitate the *Services* of the *Construction Manager* and the *Consultant's* services.

GC 2.2 AUTHORITY OF THE CONSULTANT

- 2.2.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.2.2.
- 2.2.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* may be modified or extended only with the written consent of the *Construction Manager* following consultation with the *Consultant*.
- 2.2.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Construction Manager* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Consultant*.

GC 2.3 CONSULTANT'S RESPONSIBILITIES

- 2.3.1 The *Consultant* will provide administration of the *Work* as described in the *Contract Documents*.
- 2.3.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.3.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Construction Manager*.
- 2.3.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* applications for payment for the *Work* performed as provided in paragraph 5.4.7.1 of GC 5.4 – PROGRESS PAYMENT FOR THE WORK.
- 2.3.5 Based on the *Consultant's* observations and evaluation of the *Construction Manager's* applications for payment for the *Work* performed, the *Consultant* will determine the amounts owing to the *Construction Manager* for the *Price of the Work* and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.
- 2.3.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Construction Manager's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Construction Manager, Subcontractors, Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.3.7 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*.
- 2.3.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except with respect to the scope, fee and reimbursable expenses of the *Services*, shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.3.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Construction Manager*.
- 2.3.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.3.11 With respect to claims for a change in *Price of the Work*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER'S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE.
- 2.3.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Construction Manager, Subcontractor, Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.3.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Construction Manager* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Construction Manager*.
- 2.3.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Construction Manager's* submittals which are provided in accordance with the *Construction Documents*.
- 2.3.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.3.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK.

- 2.3.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.3.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Construction Manager* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

GC 2.4 REVIEW AND INSPECTION OF THE WORK

- 2.4.1 The *Construction Manager* shall provide the *Owner* and the *Consultant* access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.4.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Construction Manager* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.4.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.4.4 If the *Construction Manager* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.
- 2.4.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Construction Manager* shall correct the work and pay the cost of examination and correction at the *Construction Manager's* expense. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.

GC 2.5 DEFECTIVE WORK

- 2.5.1 The *Construction Manager* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Construction Manager*. Subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, the correction of defective work shall be at the *Construction Manager's* expense.
- 2.5.2 The *Construction Manager* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements. Subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, the correction of destroyed or damaged work shall be at the *Construction Manager's* expense.
- 2.5.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Construction Manager* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Construction Manager* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a finding.

PART 3 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Construction Manager* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Construction Manager* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Construction Manager* as it affects the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Construction Manager* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Consultant* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.
- 3.2.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Construction Manager* shall co-ordinate and schedule the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 3.2.5 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the *Construction Manager* and other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Construction Manager* shall be deemed to have consented to arbitration of any dispute with any contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

GC 3.3 TEMPORARY WORK

- 3.3.1 The *Construction Manager* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work*.
- 3.3.2 The *Construction Manager* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of GC 3.1 – CONTROL OF THE WORK, paragraph 3.3.1 and paragraph 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Construction Manager* shall not be held responsible for that part of the design or the specified method of construction. The *Construction Manager* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

GC 3.4 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES

- 3.4.1 The *Construction Manager* shall review the *Drawings, Specifications* and material and finish schedules and shall report promptly to the *Consultant* any error, inconsistency or omission the *Construction Manager* may discover. If the *Construction Manager* does discover any error, inconsistency or omission in the *Drawings, Specifications* and material and finish schedules, the *Construction Manager* shall not proceed with the work affected until the *Construction Manager* has received corrected or missing information from the *Consultant*.
- 3.4.2 The review of *Drawings, Specifications* and material and finish schedules under paragraph 3.4.1 shall be to the best of the *Construction Manager's* knowledge, information and belief. In making such review the *Construction Manager* assumes no responsibility for the accuracy of the review. The *Construction Manager* shall not be liable for any damage or costs resulting from errors, inconsistencies or omissions, which the *Construction Manager* did not discover.

GC 3.5 CONSTRUCTION SCHEDULE

- 3.5.1 The *Construction Manager* shall:
- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract Time*;
 - .2 monitor the progress of the *Work* relative to the construction schedule and update the construction schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Consultant* of any revisions required to the construction schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES.

GC 3.6 SUPERVISION

- 3.6.1 The *Construction Manager* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The *Construction Manager* may appoint a new representative for a valid reason and to whom the *Owner* makes no reasonable objection.
- 3.6.2 The appointed representative shall represent the *Construction Manager* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Construction Manager's* appointed representative shall be deemed to have been received by the *Construction Manager*, except with respect to Article A-10 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

- 3.7.1 The *Construction Manager* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 - .3 subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, be as fully responsible to the *Owner* for acts and omissions of *Subcontractors, Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Construction Manager*.
- 3.7.2 The *Construction Manager* shall, before entering into contracts or written agreements with *Subcontractors* and *Suppliers*, submit to the *Owner* all bids received for the various parts of the *Work* to be subcontracted and obtain the *Owner's* acceptance of the *Subcontractors* and *Suppliers* selected.
- 3.7.3 The *Construction Manager* shall cause to be obtained contract security from *Subcontractors* to the extent and for the amounts approved by the *Owner*.
- 3.7.4 The *Construction Manager* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Construction Manager* may reasonably object.
- 3.7.5 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Construction Manager* shall maintain good order and discipline among the *Construction Manager's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Construction Manager* shall keep one copy of current *Construction Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Construction Manager* shall provide *Shop Drawings* as required in the *Construction Documents*.
- 3.10.2 The *Construction Manager* shall provide *Shop Drawings* to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.
- 3.10.3 Upon request of the *Construction Manager* or the *Consultant*, they shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings*.
- 3.10.4 The *Construction Manager* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Consultant*.
- 3.10.5 *Shop Drawings* provided by the *Construction Manager* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Construction Manager* has reviewed each one of them.
- 3.10.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.10.7 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Construction Manager* for approval.
- 3.10.8 The *Construction Manager* shall review all *Shop Drawings* before providing them to the *Consultant*. The *Construction Manager* represents by this review that:
- .1 the *Construction Manager* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 the *Construction Manager* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Construction Documents*.
- 3.10.9 At the time of providing *Shop Drawings*, the *Construction Manager* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* from the requirements of the *Construction Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The *Consultant's* review shall not relieve the *Construction Manager* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Construction Documents*.
- 3.10.11 The *Construction Manager* shall provide revised *Shop Drawings* to correct those which the *Consultant* rejects as inconsistent with the *Construction Documents*, unless otherwise directed by the *Consultant*. The *Construction Manager* shall notify the *Consultant* in writing of any revisions to the *Shop Drawings* other than those requested by the *Consultant*.
- 3.10.12 The *Consultant* will review and return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

GC 3.11 USE OF THE WORK

- 3.11.1 The *Construction Manager* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.
- 3.11.2 The *Construction Manager* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Construction Manager* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Construction Manager* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for poorly timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 3.13 CLEANUP

- 3.13.1 The *Construction Manager* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Construction Manager* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Construction Manager* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final payment, the *Construction Manager* shall remove any remaining products, tools, *Construction Equipment*, and *Temporary Work*, and waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees.

PART 4 ALLOWANCE**GC 4.1 CASH ALLOWANCES**

- 4.1.1 Cash allowances may be stated in this *Contract* if the *Guaranteed Maximum Price* is stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS.
- 4.1.2 The *Price of the Work* includes the cash allowances, if any, stated in this *Contract*. The scope of work or costs included in such cash allowances shall be as described in this *Contract*.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where costs under any cash allowance exceed the amount of the allowance specified in this *Contract*, the *Construction Manager’s Fee* for the *Work* and the *Guaranteed Maximum Price* shall be adjusted by *Change Order* to compensate the *Construction Manager* for any excess incurred and substantiated. Where costs under any cash allowance are less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Construction Manager’s* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Construction Manager’s* overhead and profit in connection with such cash allowances is eligible to be included in progress payments on account of the *Construction Manager’s Fee* for the *Work*.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments on account of the *Cost of the Work*.
- 4.1.7 The *Construction Manager* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Construction Manager*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Construction Manager* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Construction Manager Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 ACCOUNTING AND AUDIT

- 5.2.1 The *Construction Manager* shall keep full and detailed accounts and records necessary for the documentation of the *Cost of the Work*.
- 5.2.2 For 60 calendar days after the application for final payment or for such other period specified in the *Contract*, the *Owner* shall be afforded reasonable access to all of the *Construction Manager's* books, records, correspondence, instructions, drawings, receipt vouchers, *Subcontractor* and *Supplier* invoices, and memoranda relating to the *Cost of the Work*, and for this purpose the *Construction Manager* shall preserve all such records.

GC 5.3 PROGRESS PAYMENT FOR THE SERVICES

- 5.3.1 The *Owner* shall make payment for the *Construction Manager's Fee* for the *Services* as described in paragraph of 5.2 of Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE and on account of the reimbursable expenses for the *Services* as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES no later than 20 calendar days after receipt of an application for payment for the *Services* submitted by the *Construction Manager*.
- 5.3.2 The application for payment for the reimbursable expenses for the *Services* shall include items of cost as defined in Schedule A2 to the Agreement – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1 and other support documents required by the *Owner* in accordance with the *Contract Documents*.

GC 5.4 PROGRESS PAYMENT FOR THE WORK

- 5.4.1 Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.4.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.4.3 The amount applied for shall be the cost of the *Work* performed and *Products* delivered to the *Place of the Work* or other locations designated by the *Owner* in accordance with the provisions of Article A-7 of the Agreement – COST OF THE WORK, as of the last day of the month or an alternative day of the month agreed in writing by the parties plus the *Construction Manager's Fee* for the *Work* earned in accordance with the provisions of Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE.
- 5.4.4 The application for payment for the *Work* shall include items of cost as defined in Article A-7 of the Agreement – COST OF THE WORK and other support documents required by the *Owner* as in accordance with the *Contract Documents*.
- 5.4.5 When submitting the second and succeeding applications for payment, the *Construction Manager* shall furnish receipted vouchers or other satisfactory evidence of payment for all items included in the preceding applications. If the *Owner* has reasonable grounds for believing that any amount included in preceding applications has not been paid the *Owner* may withhold payment in respect of such amount from the current application until satisfactory evidence of payment is given by the *Construction Manager*.
- 5.4.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

- 5.4.7 After receipt by the *Consultant* of an application for payment for the *Work* submitted by the *Construction Manager* in accordance with paragraphs 5.4.1 to 5.4.6:
- .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* application for payment;
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Construction Manager*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Construction Manager* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Construction Manager* on account as provided in Article A-9 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 When the *Construction Manager* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Construction Manager* shall, within 1 *Working Day*, deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Construction Manager* to complete the *Contract*.
- 5.5.2 The *Consultant* will review the *Work* to verify the validity of the application and shall promptly, and in any event, no later than 20 calendar days after receipt of the *Construction Manager's* list and application:
- .1 advise the *Construction Manager* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
 - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Construction Manager*.
- 5.5.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work* or a designated portion of the *Work*, the *Construction Manager*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.

GC 5.6 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.6.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Construction Manager* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Construction Manager* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.6.2 After the receipt of an application for payment from the *Construction Manager* and the statement as provided in paragraph 5.6.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.6.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Construction Manager*.
- 5.6.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.6.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.

GC 5.7 PROGRESSIVE RELEASE OF HOLDBACK FOR THE WORK

- 5.7.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Construction Manager*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Construction Manager* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.7.2 In the Province of Quebec, where, upon application by the *Construction Manager*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Construction Manager* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Consultant*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.7.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Construction Manager* shall ensure that such subcontract work or *Products* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.8 FINAL PAYMENT FOR THE WORK

- 5.8.1 When the *Construction Manager* considers that the *Work* is completed, the *Construction Manager* shall submit an application for final payment.
- 5.8.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Construction Manager* for final payment, review the *Work* to verify the validity of the application and advise the *Construction Manager* in writing that the application is valid or give reasons why it is not valid.
- 5.8.3 When the *Consultant* finds the *Construction Manager's* application for final payment valid, the *Consultant* will promptly issue a final certificate for payment.
- 5.8.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Construction Manager* as provided in Article A-9 of the Agreement – PAYMENT.

GC 5.9 WITHHOLDING OF PAYMENT FOR THE WORK

- 5.9.1 If because of climatic or other conditions reasonably beyond the control of the *Construction Manager*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.10 NON-CONFORMING WORK

- 5.10.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES**GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions, or other revisions to the *Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.

- 6.1.2 The *Construction Manager* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.
- 6.1.3 The *Owner* and the *Construction Manager*, without invalidating the *Contract*, may agree to make changes to the *Services*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide the *Construction Manager* with a written description of the proposed change in the *Work*. The *Construction Manager* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Construction Manager's Fee*, a method of adjustment or an amount of adjustment for the *Guaranteed Maximum Price*, and the adjustment in the *Contract Time*, as applicable, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Construction Manager* agree to the adjustments in the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 When the *Owner* and *Construction Manager* agree to exercise the stipulated price option at any time during the term of the *Contract*, such agreement shall be recorded in a *Change Order*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Construction Manager* to proceed with a change in the *Work* prior to the *Owner* and the *Construction Manager* agreeing upon any corresponding adjustment in the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Construction Manager* shall proceed promptly with the change in the *Work*.
- 6.3.5 If no method of adjustment is agreed:
- .1 the adjustment in the *Construction Manager's Fee* for a change carried out by way of a *Change Directive* shall be determined on the basis of the changes in costs of the *Construction Manager*; and
 - .2 the *Guaranteed Maximum Price* shall be adjusted by the changes in the *Cost of Work* and in the *Construction Manager's Fee* for the *Work* resulting from a *Change Directive*.
- 6.3.6 Pending determination of the adjustment to the *Construction Manager's Fee* required as a result of a *Change Directive*, the *Cost of the Work* incurred and the undisputed amount of the *Construction Manager's Fee* as the result of a *Change Directive* is eligible to be included in progress payments, notwithstanding the limit imposed by the *Guaranteed Maximum Price*.
- 6.3.7 If the *Owner* and the *Construction Manager* do not agree on the proposed adjustment in the *Construction Manager's Fee*, the *Guaranteed Maximum Price*, the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.8 When the *Owner* and the *Construction Manager* reach agreement on the adjustment to the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Construction Manager* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.

- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would justify an increase or decrease in the *Construction Manager's Fee* for the *Work*, the *Guaranteed Maximum Price* or the *Contract Time*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Construction Manager's Fee* for the *Work*, the *Guaranteed Maximum Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Construction Manager* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Construction Manager* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.2 If the *Construction Manager* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or any person employed or engaged by the *Construction Manager* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.3 If the *Construction Manager* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Construction Manager* is a member or to which the *Construction Manager* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Construction Manager's* control other than one resulting from a default or breach of *Contract* by the *Construction Manager*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Construction Manager* agrees to a shorter extension. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for overhead costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of the delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.3.13 of GC 2.3 – CONSULTANT'S RESPONSIBILITIES or paragraph 3.5.1 of GC 3.5 – CONSTRUCTION SCHEDULE, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

GC 6.6 CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER'S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE

- 6.6.1 If the *Construction Manager* intends to make a claim for an increase to the *Construction Manager's Fee* for the *Services*, the *Price of the Work* or the *Guaranteed Maximum Price*, or if the *Owner* intends to make a claim against the *Construction Manager* for a credit to the *Construction Manager's Fee* for the *Services*, the *Price of the Work* or the *Guaranteed Maximum Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and, if the claim relates to the *Price of the Work* or the *Guaranteed Maximum Price*, with a copy to the *Consultant*.

- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the party receiving the claim may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the claim is not acceptable to the other party, it shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Construction Manager* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Construction Manager's* insolvency, or if a receiver is appointed because of the *Construction Manager's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Construction Manager's* right to continue with the *Work* by giving the *Construction Manager* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Construction Manager* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract Documents* to a substantial degree, and if the *Consultant* has given a written statement to the *Owner* and *Construction Manager* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Construction Manager* provided the *Consultant* has certified such cost to the *Owner* and the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall:
- .1 be entitled to take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 pay the *Construction Manager* upon the *Consultant's* certificate and in accordance with Part 5 of the General Conditions – PAYMENT for the costs properly incurred by the *Construction Manager* to that time plus the proportionate amount of the fee as provided in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE, and
 - .3 pay to the *Construction Manager* fair compensation, either by purchase or rental, at the option of the *Owner*, for any *Construction Equipment* retained for use in the *Work*, and
 - .4 assume and become liable for all obligations, commitments and unliquidated claims as certified by the *Consultant* that the *Construction Manager* may have heretofore, in good faith, undertaken or incurred in connection with the *Work*, other than such as are properly payable by the *Construction Manager* because of neglect or default.

- 7.1.6 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Construction Manager* shall, as a condition of receiving the payments, execute and deliver such papers and take such action, including the legal assignment in the *Construction Manager's* contractual rights, as the *Owner* may require for the purpose of fully vesting in the *Construction Manager* the rights and benefits of the *Construction Manager* under the obligations or commitments to be assumed by the *Owner*.
- 7.1.7 The *Construction Manager's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Construction Manager* up to the time of termination shall continue in force after such termination of the *Contract*.

GC 7.2 CONSTRUCTION MANAGER'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or of anyone directly or indirectly employed or engaged by the *Construction Manager*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Construction Manager* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Construction Manager*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Consultant* fails to issue a certificate as provided in GC 5.4 – PROGRESS PAYMENT FOR THE WORK, or
 - .3 the *Owner* fails to pay the *Construction Manager*, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Construction Manager* that sufficient cause exists.
- 7.2.4 The *Construction Manager's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following receipt of the *Notice in Writing*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Construction Manager* terminates the *Contract* under the conditions set out above, the *Construction Manager* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Construction Manager* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.3 – CONSULTANT'S RESPONSIBILITIES, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

- 8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Construction Manager* costs incurred by the *Construction Manager* in carrying out such instructions which the *Construction Manager* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a *Project Mediator*
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the *Project Mediator* be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.3 – CONSULTANT'S RESPONSIBILITIES and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the *Project Mediator* to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the *Project Mediator* was requested under paragraph 8.2.4 or within such further period agreed by the parties, the *Project Mediator* shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Construction Manager* and the *Consultant*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing* given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) Substantial Performance of the *Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Construction Manager* has abandoned the *Work*,
 whichever is earlier, and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY**GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Construction Manager* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Construction Manager's* operations under this *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, or their respective agents and employees.
- 9.1.2 Before commencing any work, the *Construction Manager* shall locate on site all underground utilities and structures that are indicated in the *Contract Documents* or information provided by the *Owner*, or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Construction Manager* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Construction Manager* shall be responsible for making good such damage at the *Construction Manager's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Construction Manager* is not responsible, as provided in paragraph 9.1.1, the *Construction Manager* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Construction Manager* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Construction Manager* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.

- 9.2.5 If the *Construction Manager*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Construction Manager* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Construction Manager* do not agree on the existence or significance of toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Construction Manager*.
- 9.2.7 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for overhead costs incurred by the *Construction Manager* in taking the steps pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.2.6 and adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for costs incurred by the *Construction Manager* as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Construction Manager* shall promptly at the *Construction Manager's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substance;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Construction Manager*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Construction Manager* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would change the *Construction Manager's Fee*, the *Guaranteed Maximum Price* or the *Construction Manager's* time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Subject to paragraph 3.2.2.2 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Construction Manager* shall be responsible for
- .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 establishing, initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

- 9.5.1 If the *Construction Manager* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing;
 - .2 the *Construction Manager* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and
 - .3 if the *Owner* and *Construction Manager* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Construction Manager*.
- 9.5.2 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Construction Manager*'s operations under the *Contract*, the *Construction Manager* shall promptly, at the *Construction Manager*'s own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner*'s property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Construction Manager*'s operations under the *Contract*, the *Owner* shall promptly, at the *Owner*'s own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould;
 - .2 adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for overhead costs incurred by the *Construction Manager* in taking the steps pursuant to paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.5.1.3 and adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for costs incurred by the *Construction Manager* as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

10.1.1 The *Construction Manager* shall pay all customs, taxes and duties in effect during the performance of the *Work*. The amount incurred shall be included in the *Cost of the Work* as in accordance with paragraph 7.1.14 of the Agreement A-7 – COST OF THE WORK.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Construction Manager*.
- 10.2.3 The *Construction Manager* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Cost of the Work* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Construction Manager* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Construction Manager* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Construction Manager* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Construction Manager* fails to advise the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes; the *Construction Manager* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.

GC 10.3 PATENT FEES

- 10.3.1 The *Construction Manager* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The amount incurred shall be included in the *Cost of the Work* in accordance with paragraph 7.1.12 of the Agreement A-7 – COST OF THE WORK. The *Construction Manager* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Construction Manager*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Construction Manager* or anyone for whose acts the *Construction Manager* may be liable.
- 10.3.2 The *Owner* shall hold the *Construction Manager* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Construction Manager*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Construction Manager* as part of the *Contract*.

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, again with the *Construction Manager*’s application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Construction Manager*’s application for final payment, the *Construction Manager* shall provide evidence of compliance with workers’ compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Construction Manager* shall provide such evidence of compliance by the *Construction Manager* and *Subcontractors*.

PART 11 INSURANCE — CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Construction Manager* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- .1 General liability insurance in the name of the *Construction Manager* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Construction Manager* with regard to the *Work*. General liability insurance shall be maintained from the date of commencement of the *Services* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
 - .2 Automobile Liability Insurance from the date of commencement of the *Services* until one year after the date of *Substantial Performance of the Work*.
 - .3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*.
 - .4 "Broad form" property insurance in the joint names of the *Construction Manager*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The "broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .5 Boiler and machinery insurance in the joint names of the *Construction Manager*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .6 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Construction Manager* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Construction Manager* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Construction Manager* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Construction Manager* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Construction Manager*;
 - (2) the *Construction Manager* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Construction Manager* shall be entitled to receive from the payments made by the insurer the amount of the *Construction Manager's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, pay the *Construction Manager* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
 - .7 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Services* and upon the placement, renewal, amendment or extension of all or any part of the insurance, the *Construction Manager* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to this *Contract*.

- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.4 If the *Construction Manager* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Construction Manager* and the *Consultant*. The *Construction Manager* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Construction Manager*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Construction Manager's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Construction Manager* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Construction Manager* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract* as in accordance with paragraph 7.1.13 of the Agreement A-7 – COST OF THE WORK.
- 11.2.2 If this *Contract* requires surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfilment of this *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.5.2.2 of GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit in effect at the time of bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Price of the Work* or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Construction Manager* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Construction Manager's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Construction Manager* waives and releases the *Owner* from all claims which the *Construction Manager* has or reasonably ought to have knowledge of that could be advanced by the *Construction Manager* against the *Owner* arising from the *Construction Manager's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Construction Manager* by third parties for which a right of indemnification may be asserted by the *Construction Manager* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Construction Manager* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Construction Manager* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Construction Manager* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Construction Manager* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;

- .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of this *Contract*;
- .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 – INDEMNIFICATION;
- .4 damages arising from the *Construction Manager*'s actions which result in substantial defects or deficiencies in the *Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
- .5 claims arising pursuant to GC 12.3 – WARRANTY; and
- .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.

12.2.4 The *Owner* waives and releases the *Construction Manager* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:

- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
- .2 the Civil Code of Quebec, if the *Place of the Work* is the Province of Quebec.

12.2.5 The *Owner* waives and releases the *Construction Manager* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Construction Manager* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.

12.2.6 "Notice in Writing of claim" as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following

- .1 a clear and unequivocal statement of the intention to claim;
- .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
- .3 a statement of the estimated quantum of the claim.

12.2.7 The party giving "Notice in Writing of claim" as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.

12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.

12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.3 WARRANTY

12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under this *Contract* is one year from the date of *Substantial Performance of the Work*.

12.3.2 The *Construction Manager* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.

12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager* *Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.

12.3.4 Subject to paragraph 12.3.2, the *Construction Manager* shall correct promptly, at the *Construction Manager's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.

- 12.3.5 The *Construction Manager* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 The *Construction Manager* shall enforce the warranty obligations of the *Subcontractors* and *Suppliers* which shall include the following provisions:
- .1 the *Subcontractor* or the *Supplier* shall correct promptly at its expense defects or deficiencies in the work which appear prior to and during the warranty periods specified in the *Contract Documents*; and
 - .2 the *Subcontractor* or the *Supplier* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.7 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1 shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Construction Manager's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

APPENDIX – STIPULATED PRICE OPTION

The *Owner* and the *Construction Manager* may agree to exercise the stipulated price option at any time during the term of the *Contract* as in accordance with Article A-8 of the Agreement – OPTIONS. Upon the issuance of the *Change Order* exercising the stipulated price option, the following Articles of the Agreement, Definitions and General Conditions shall be deemed deleted, amended or added, as the case may be, and the *Contract* so revised shall be deemed to govern the rights and obligations of the parties with respect to the *Services* and *Work* to be provided from and after the date of the *Change Order*, unless stipulated otherwise in the *Change Order*.

ARTICLES OF THE AGREEMENT

1. **Article A-1**

New paragraph 1.4

insert new paragraph as follows:

1.4 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the _____ day of _____ in the year _____.

2. **Article A-5**

Delete this Article in its entirety.

3. **Article A-6**

Delete this Article in its entirety.

4. **Article A-7**

Delete this Article and replace with the following:

ARTICLE A-7 COST OF WORK

7.1 The cost of performing the work attributable to any *Change Directive* shall include:

- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel
 - (1) stationed at the *Place of the Work*, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings;
 - or
 - (4) engaged in the processing of changes in the *Work*.
- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Construction Manager* and included in the cost of the *Work* as provided in paragraph 7.1.1;
- .3 travel and subsistence expenses of the *Construction Manager's* personnel described in paragraph 7.1.1;
- .4 all *Products* including cost of transportation thereof;
- .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;
- .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
- .7 the *Construction Manager's* field office;

- .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*;
- .9 the amount of all subcontracts;
- .10 quality assurance such as independent inspection and testing services;
- .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
- .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Construction Manager's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
- .13 any adjustment in premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract Documents*, to purchase and maintain;
- .14 any adjustment in taxes, other than *Value Added Taxes*, and duties relating to the *Work* for which the *Construction Manager* is liable;
- .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
- .16 removal and disposal of waste products and debris;
- .17 the cost of safety measures and requirements;
- .18 other costs incurred in the performance of the *Work* as listed below:

6. **Article A-8**

Delete this Article and replace with the following:

ARTICLE A-8 CONTRACT PRICE

8.1 The *Contract Price*, which excludes *Value Added Taxes*, is:
_____ /100 dollars \$ _____

8.2 *Value Added Taxes* (of _____ %) payable by the *Owner* to the *Construction Manager* are:
_____ /100 dollars \$ _____

8.3 Total amount payable by the *Owner* to the *Construction Manager* for the construction of the *Work* is:
_____ /100 dollars \$ _____

8.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

8.5 All amounts are in Canadian funds.

7. **Article A-9**

paragraph 9.1

Delete and replace with the following:

9.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Work*. The *Owner* shall pay the *Construction Manager*:

- .1 payments on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments,
- .2 upon *Substantial Performance of the Work*, the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services* and the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

8. **Schedule, A1**

Delete this Schedule in its entirety.

9. **Schedule A2**
Delete this Schedule in its entirety.
10. **Schedule B**
Delete this Schedule in its entirety.

DEFINITIONS

11. **Definition 5 – CHANGE DIRECTIVE**
Delete and replace with the following:
5. Change Directive
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Construction Manager* to proceed with a change in the *Work* within the general scope of this *Contract* prior to the *Owner* and the *Construction Manager* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.
12. **Definition 6 – CHANGE ORDER**
Delete and replace with the following:
6. Change Order
A *Change Order* is a written amendment to this *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Construction Manager* stating their agreement upon:
- a change in the *Services*;
- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.
13. **Definition 32 – SUPPLEMENTAL INSTRUCTION**
Delete and replace with the following:
Supplemental Instruction
A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents*, as required for the performance of the *Work*.
14. **New Definition 38 – CONTRACT PRICE**
Insert new Definition as follows:
Contract Price
The *Contract Price*, which excludes *Value Added Taxes*, is the amount specified in Article A-8 – CONTRACT PRICE to complete the *Services* and the *Work*.

GENERAL CONDITIONS

15. GC 2.3
Delete and replace with the following:
2.3.1 The *Consultant* will provide administration of the *Work* as described in the *Contract Documents*.
2.3.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
2.3.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Construction Manager*.
2.3.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* applications for payment for the *Work* performed as provided in paragraph 5.4.7.1 of GC 5.4 – PROGRESS PAYMENT FOR THE WORK.

- 2.3.5 Based on the *Consultant's* observations and evaluation of the *Construction Manager's* applications for payment for the *Work* performed, the *Consultant* will determine the amounts owing to the *Construction Manager* for the *Contract Price* and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.
- 2.3.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Construction Manager's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Construction Manager, Subcontractors, Suppliers,* or their agents, employees, or any other persons performing portions of the *Work*.
- 2.3.7 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*.
- 2.3.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except with respect to the scope, fee and reimbursable expenses of the *Services*, shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.3.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Construction Manager*.
- 2.3.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.3.11 With respect to claims for a change in the *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE
- 2.3.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Construction Manager, Subcontractor, Suppliers,* or their agents, employees, or other persons performing any of the *Work*.
- 2.3.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Construction Manager* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Construction Manager*.
- 2.3.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Construction Manager's* submittals which are provided in accordance with the *Construction Documents*.
- 2.3.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.3.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.3.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.3.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Construction Manager* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

16. **GC 2.4**

Delete and replace with the following:

- 2.4.1 The *Construction Manager* shall provide the *Owner* and the *Consultant* access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.

- 2.4.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Construction Manager* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.4.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.4.4 If the *Construction Manager* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.
- 2.4.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Construction Manager* shall correct the work and pay the cost of examination and correction at the *Construction Manager's* expense. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.4.6 The *Construction Manager* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Construction Manager* or is designated by the laws or ordinances applicable to the *Place of the Work*.
- 2.4.7 The *Construction Manager* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant* or the *Owner* if such test or inspection is designated in the *Contract Documents*.

17. GC 2.5

Delete and replace with the following:

- 2.5.1 The *Construction Manager* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Construction Manager*. The correction of defective work shall be at the *Construction Manager's* expense.
- 2.5.2 The *Construction Manager* shall make good promptly other contractors' work destroyed or damaged by such removals or replacements. The correction of destroyed or damaged work shall be at the *Construction Manager's* expense.
- 2.5.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Construction Manager* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Construction Manager* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a finding.

18. GC 3.7

Delete and replace with the following:

- 3.7.1 The *Construction Manager* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 - .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Construction Manager*.
- 3.7.2 The *Construction Manager* shall, before entering into contracts or written agreements with *Subcontractors* and *Suppliers*, submit to the *Owner* all bids received for the various parts of the *Work* to be subcontracted and obtain the *Owner's* acceptance of the *Subcontractors* and *Suppliers* selected.

- 3.7.3 The *Construction Manager* shall cause to be obtained contract security from *Subcontractors* to the extent and for the amounts approved by the *Owner*.
- 3.7.4 The *Construction Manager* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Construction Manager* may reasonably object.
- 3.7.5 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

19. **GC 3.8**

Delete and replace with the following:

- 3.8.1 The *Construction Manager* shall maintain good order and discipline among the *Construction Manager's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.
- 3.8.3 The *Construction Manager* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.

20. **New GC 3.14 – SERVICES**

Insert new General Condition as follows:

GC 3.14 SERVICES

3.14.1 The *Construction Manager* shall:

- .1 chair and minute regular *Project* meetings with the *Owner* and the *Consultant*,
- .2 prepare and update the cash flow forecasts in accordance with the *Project* budget that are specified in the *Contract* or otherwise agreed with the *Owner*;
- .3 provide reasonable assistance and information to permit recovery of all tax rebates where applicable, and
- .4 assist the *Owner* in conducting post-construction occupancy review.

21. **GC 4.1**

Delete and replace with the following:

- 4.1.1 The *Contract Price*, and not the cash allowances, includes the *Construction Manager's* overhead and profit in connection with such cash allowances.
- 4.1.2 The *Contract Price* includes the cash allowances, if any, stated in this *Contract*. The scope of work or costs included in such cash allowances shall be as described in this *Contract*.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where costs under any cash allowance exceed the amount of the allowance, the *Construction Manager* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where costs under any cash allowance are less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Construction Manager's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and its actual cost.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Construction Manager* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

22. **GC 5.2**

Delete and replace with the following:

- 5.2.1 The *Construction Manager* shall keep full and detailed accounts and records necessary for the documentation of and the cost of performing the work attributable to the *Change Directive*.

5.2.2 For 60 calendar days after the application for final payment or for such other period specified in the *Contract*, the *Owner* shall be afforded reasonable access to all of the *Construction Manager's* books, records, correspondence, instructions, drawings, receipt vouchers, *Subcontractor* and *Supplier* invoices, and memoranda relating to the cost of performing the work attributable to the *Change Directive*, and for this purpose the *Construction Manager* shall preserve all such records..

23. **GC 5.3**

Delete this General Condition in its entirety.

24. **GC 5.4**

Delete and replace with the following:

- 5.4.1 Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.4.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.4.3 The amount claimed shall be for the value, proportionate to the *Contract Price*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period
- 5.4.4 The *Construction Manager* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment after exercising the stipulated price option, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.4.5 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.4.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.
- 5.4.7 After receipt by the *Consultant* of an application for payment for the *Work* submitted by the *Construction Manager* in accordance with paragraphs 5.4.1 to 5.4.6:
- .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* application for payment;
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Construction Manager*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Construction Manager* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Construction Manager* on account as provided in Article A-9 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.
- 5.4.8 The *Construction Manager* shall include a statement based on the schedule of values with each application for payment.

25. **GC 6.2**

Delete and replace with the following:

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide the *Construction Manager* with a written description of the proposed change in the *Work*. The *Construction Manager* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price* and the adjustment in the *Contract Time*, as applicable, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Construction Manager* agree to the adjustments in the *Contract Price* and the *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment

26. **GC 6.3**

Delete and replace with the following:

- 6.3.1 If the *Owner* requires the *Construction Manager* to proceed with a change in the *Work* prior to the *Owner* and the *Construction Manager* agreeing upon any corresponding adjustment in the *Contract Price* and the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Construction Manager* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Construction Manager's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with Article A-7 of the Agreement – COST OF WORK and as follows:
- .1 If the change results in a net increase in the *Construction Manager's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Construction Manager's* cost, plus the *Construction Manager's* percentage fee on such net increase.
 - .2 If the change results in a net decrease in the *Construction Manager's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Construction Manager's* cost, without adjustment for the *Construction Manager's* percentage fee.
 - 3 The *Construction Manager's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 If the *Owner* and the *Construction Manager* do not agree on the proposed adjustment in the *Contract Price*, the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.8 When the *Owner* and the *Construction Manager* reach agreement on the adjustment to the *Contract Price* and the *Contract Time*, this agreement shall be recorded in a *Change Order*.
- 6.3.9 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.

27. **GC 6.4**

Delete and replace with the following:

- 6.4.1 If the *Owner* or the *Construction Manager* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would justify an increase or decrease in the *Contract Price* or the *Contract Time*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Construction Manager* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

28. **GC 6.5**

Delete and replace with the following:

- 6.5.1 If the *Construction Manager* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Contract Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.2 If the *Construction Manager* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or any person employed or engaged by the *Construction Manager* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Contract Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.3 If the *Construction Manager* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Construction Manager* is a member or to which the *Construction Manager* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Construction Manager's* control other than one resulting from a default or breach of *Contract* by the *Construction Manager*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Construction Manager* agrees to a shorter extension. The *Construction Manager* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of the delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.3.13 of GC 2.3 – CONSULTANT'S RESPONSIBILITIES or paragraph 3.5.1 of GC 3.5 – CONSTRUCTION SCHEDULE, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

29. **GC 6.6**

Delete and replace with the following:

GC 6.6. CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Construction Manager* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Construction Manager* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party with a copy to the *Consultant*.

30. **GC 7.1**

Delete and replace with the following:

- 7.1.1 If the *Construction Manager* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Construction Manager's* insolvency, or if a receiver is appointed because of the *Construction Manager's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Construction Manager's* right to continue with the *Work*, by giving the *Construction Manager* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

- 7.1.2 If the *Construction Manager* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract Documents* to a substantial degree, and if the *Consultant* has given a written statement to the *Owner* and *Construction Manager* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Construction Manager* provided the *Consultant* has certified such cost to the *Owner* and the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 withhold further payment to the *Construction Manager* until a final certificate for payment is issued, and
 - .3 charge the *Construction Manager* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Construction Manager* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Price of the Work*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Price of the Work*, the *Owner* shall pay the *Construction Manager* the difference, and
 - .4 on expiry of the warranty period, charge the *Construction Manager* the amount by which the cost of corrections to the *Construction Manager's* work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Construction Manager* the difference.
- 7.1.6 The *Construction Manager's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Construction Manager* up to the time of termination shall continue in force after such termination of the *Contract*.

31. GC 9.1

Delete and replace with the following:

- 9.1.1 The *Construction Manager* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Construction Manager's* operations under this *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, or their respective agents and employees.
- 9.1.2 Before commencing any work, the *Construction Manager* shall locate on site all underground utilities and structures that are indicated in the *Contract Documents* or information provided by the *Owner*, or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Construction Manager* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Construction Manager* shall be responsible for making good such damage at the *Construction Manager's* expense.

- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Construction Manager* is not responsible, as provided in paragraph 9.1.1, the *Construction Manager* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and the *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

32. **GC 9.2**

Delete and replace with the following:

- 9.2.1 For the purposes of applicable legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Construction Manager* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Construction Manager* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.5 If the *Construction Manager*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Construction Manager* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Construction Manager* do not agree on the existence or significance of toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Construction Manager*.
- 9.2.7 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Construction Manager* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.2.6 and reimburse the *Construction Manager* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Construction Manager* shall promptly at the *Construction Manager's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substance;

- .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the place of the *Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

33. **GC 9.3**

Delete and replace with the following:

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Construction Manager*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Construction Manager* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Construction Manager's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

34. **GC 9.5**

Delete and replace with the following:

- 9.5.1 If the *Construction Manager* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing;
 - .2 the *Construction Manager* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and
 - .3 if the *Owner* and *Construction Manager* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Construction Manager*.
- 9.5.2 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Construction Manager's* operations under the *Contract*, the *Construction Manager* shall promptly, at the *Construction Manager's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Construction Manager's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould;
 - .2 reimburse the *Construction Manager* for the cost of taking the steps under 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Construction Manager* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.

9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

35. **GC 10.1**

Delete and replace with the following:

10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Construction Manager* as stipulated in Article A-8 of the Agreement – CONTRACT PRICE.

10.1.2 Any increase or decrease in costs to the *Construction Manager* due to changes in such included taxes and duties after exercising the stipulated price option shall increase or decrease the *Contract Price* accordingly.

36. **GC 10.2**

Delete and replace with the following:

10.2.1 The laws of the *Place of the Work* shall govern the *Work*.

10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or which the *Contract Documents* specify as the responsibility of the *Construction Manager*.

10.2.3 The *Construction Manager* shall be responsible for the procurement of permits, licences, inspections and certificates which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections and certificates, and their procurement.

10.2.4 The *Construction Manager* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.

10.2.5 The *Construction Manager* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations or codes which require modification to the *Contract Documents*, the *Construction Manager* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

10.2.6 If the *Construction Manager* fails to advise the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes; the *Construction Manager* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations or codes.

37. **GC 10.3**

Delete and replace with the following:

10.3.1 The *Construction Manager* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Construction Manager* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Construction Manager's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Construction Manager* or anyone for whose acts the *Construction Manager* may be liable.

10.3.2 The *Owner* shall hold the *Construction Manager* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Construction Manager's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Construction Manager* as part of the *Contract*.

38. **GC 11.2**

Delete and replace with the following:

- 11.2.1 The *Construction Manager* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract*.
- 11.2.2 If this *Contract* requires surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfilment of this *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

39. **GC 12.1**

Delete and replace with the following:

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:

- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.5.2.2 of GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 11.1 – INSURANCE.
- .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

- 12.1.4 The *Owner* and the *Construction Manager* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

- 12.1.5 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:

- .1 as described in GC 10.3 – PATENT FEES, and
- .2 arising out of the *Construction Manager's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
- .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

40. **GC 12.3**

Delete and replace with the following:

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under this *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Construction Manager* shall be responsible for the proper performance of the *Work* to the extent that the design and the *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Construction Manager* shall correct promptly, at the *Construction Manager's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Construction Manager* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Construction Manager's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

**SUPPLEMENTARY CONDITIONS
TO THE
CONSTRUCTION MANAGEMENT CONTRACT
FOR SERVICES AND CONSTRUCTION
CCDC 5B**

GENERAL

These Supplementary General Conditions amend Standard Construction Document CCDC 5B 2010 Construction Management Contract for Services and Construction Manager and Owner for the 759 Winston Churchill Development

A. BACKGROUND

KENAI DAN CONTRACTING LTD. (**Kenaidan**) has been selected by 759 Winston Churchill L.P. the Owner (the "**Owner**") of the Project, to enter into a Construction Management Contract (the "**Agreement**" or "**Prime Contract**") with the Owner for the development of 759 Winston Churchill (the "**Project**").

ARTICLE A-5 CONSTRUCTION MANAGER'S FEE

1. Delete 5.2.2
2. Delete 5.3.2

ARTICLE A-7 COST OF THE WORK

1. With reference to 7.1, after the words in performing the *Work*, and before and is limited to insert "specifically excluding only the Project Support Services"

ARTICLE A-9 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

1. With reference to 9.3.1 (1) revise "2%" to "1%"
2. With reference to 9.3.1 (2) Revised "4%" to "1%"

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1. Insert new GC 1.1.10 as follows:

“This Contract may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same instrument.”

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 OWNER’S RESPONSIBILITY

1. With reference to GC 2.1.1, delete 2.1.1.5

GC 2.3 COUNSULTANT’S RESPOSIBILITY

1. Delete GC 2.3.15,

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

1. With reference to GC 8.1.1. after the words, CONSULTANT’S RESPONSIBILITIES, shall and prior to be settled in accordance, insert “subject to mutual agreement of the parties”

PART 10 GOVERNING REGULATIONS

GC 10.2 LAWS, NOTICES, PERMITS and FEES

1. With reference to GC 10.2.2, Replace *Owner* with *Construction Manager*.

PART 11 INSURANCE – CONTRACT SECURITY

GC 11.1 INSURANCE

1. Add GC 11.1.1.8:

“11.1.1.8 The Construction Manager shall procure project specific professional liability insurance

APPENDIX 1

PROJECT SUPPORT SERVICES

Site Supervision and Co-ordination
Site Survey Equipment - Site Staff Use
Preconstruction Surveys
Progress Photographs
Shop Drawing Review and Management
O & M Manuals, Warranty Manuals
Publish Substantial Performance
KCL Site Office Mobilization
KCL Site Office - Monthly Rental
Photocopier & Mainten.
Temporary Sanitary Facilities
Internet Service for Site Office
Site Office Coffee / Bottled Water
Office Cleaning (once per week)
Printing Services
Office Supplies
Courier Services
First Aid Equipment & Supplies
Safety & Environmental Auditor
Safety Signage,
Fall Arrest Equipment
Fire Extinguishers
Rent / Purchase - Small Tools & Consumables
Deliveries from KCL Shop (Shop Labour)
KCL Project Signage
Lunchroom and Office Waste Disposal

APPENDIX 2**COST of the WORKS**

Mobile Construction Surveyor - Site Work	\$51,600
Registered Land Surveyor	\$6,000
As-Built Drawing Record	\$10,000
Design Lead - Permits	\$72,250
Architectural Designer Bldg 1	\$102,150
Architectural Designer Bldg 2	\$103,000
Architectural Designer Bldg 3	\$158,000
Structural Designer Bldg 1	\$33,000
Structural Designer Bldg 2	\$35,000
Structural Designer Bldg 3	\$35,000
M & E Designer Bldg 1	\$46,000
M & E Designer Bldg 2	\$45,000
M & E Designer Bldg 3	\$45,000
Civil Engineer	\$28,700
Geotechnical Engineer	\$12,500
Environmental Consultant	\$0
Commissioning Agent	\$0
Site Plan Application - total bldg footprint	\$97,665
Building Permit - Bldg 1	\$263,946
Building Permit - Bldg 2	\$315,791
Building Permit - Bldg 3	\$341,568
Miscellaneous Permits	\$51,674
Tenant Fit Out Permit	\$0
Permit Expeditor	\$20,000
Deposits	\$0
Traffic Study	\$11,500
Hydrant Flow Test	\$1,425
Wrap Up - CGL Insurance Project Specific	\$22,400
Builders Risk Insurance	\$19,350
Professional Liability Project Specific	\$55,000
Insurance deductibles	\$0
Security and Bonds	\$0
Subcontractor Bonds	\$108,000
General Labour Allowance	\$86,770
Temp protection materials / tarps to excavation	\$0
Wheel Wash Station	\$5,000
Snow Clearing to Structures	\$7,500
Testing Laboratory Services	\$30,000
Site Inspection Services	\$20,000
Cut Fill Monitoring Services	\$36,000
Mock-Ups & Field Samples	\$0
Install / Set-Up Electrical Utility	\$35,000
Electrical Service/Monthly Usage	\$10,500
Water Service / Monthly Usage	\$2,100
Site Perimeter Enclosures, Gates	\$37,820
Site Security and Alarm Systems	\$0

Temporary Erosion Control Fence Maintenance	\$1,000
Winter Protections / Temp. Heating	\$35,000
Fuel for Winter Heating during Construction	\$10,000
Locate Existing Underground Services and Utilities	\$5,000
Access Roads & Parking (construction)	\$25,000
Access Roads & Parking (maintenance)	\$10,000
Snow Removal for Access Roads	\$2,500
Street Cleaning	\$3,000
Erosion Control - Silt Fencing on Snow Fence	\$125,000
Temporary Dewatering Equipment	\$3,000
Generators, Portable Lights	\$1,500
Material Handling Equipment	\$2,000
Fuel for Site Equipment	\$600
Traffic Regulation	\$0
Use of Permanent Utilities	\$2,500
Final Clean-Up - New Structures	\$25,000
Final Clean-Up - New Pavement/Sidewalks	\$25,000
Any items not specifically listed in Appendix 1	\$0
SUBTOTAL: DIVISION 2	\$12,657,605
SUBTOTAL: DIVISION 3	\$6,245,303
SUBTOTAL: DIVISION 4	\$374,250
SUBTOTAL: DIVISION 5	\$3,882,950
SUBTOTAL: DIVISION 6	\$92,015
SUBTOTAL: DIVISION 7	\$3,107,903
SUBTOTAL: DIVISION 8	\$1,373,231
SUBTOTAL: DIVISION 9	\$548,000
SUBTOTAL: DIVISION 10	\$71,250
SUBTOTAL: DIVISION 11	\$0
SUBTOTAL: DIVISION 12	\$0
SUBTOTAL: DIVISION 13	\$0
SUBTOTAL: DIVISION 14	\$0
SUBTOTAL: DIVISION 15	\$1,167,400
SUBTOTAL: DIVISION 16	\$633,877
Total	\$32,792,092

**T
A
B
N**

THIS IS **EXHIBIT "N"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH 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)

SPECIFIC ASSIGNMENT OF DEVELOPMENT MANAGEMENT AGREEMENT

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, estate and interest in and to the development management agreement dated September 1, 2019 between the Assignor, as owner, and 2668945 Ontario Corp. (the "**Counterparty**"), as development manager (the "**Development Management Agreement**"), together with, without limitation:

- (a) the benefit of all representations, warranties, conditions, terms and covenants made or contained or implied or expressed by law therein;
- (b) all moneys due or accruing due or at any time hereafter to become due under the Development Management Agreement, as applicable; and
- (c) all rights, benefits and advantages derived from the Development Management Agreement and any and all present and future guarantees or indemnities of all or any of the obligations under it, as applicable, together with the full benefit of all security in support of such guarantees or indemnities,

all as amended, restated, extended, renewed, supplemented, replaced or otherwise modified from time to time, the "**Assigned Agreement**");

AND WHEREAS a complete copy of the Assigned Agreement is attached hereto as Schedule "A";

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 4.3(b);
- (b) **"Enforcement Notice"** has the meaning ascribed to it in Section 4.3(b);
- (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; and
- (e) **"Loan Obligations"** means the obligations of the Assignor or any of the other Covenantors arising under the Loan Documents.

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, estate and interest and benefit, both at law and in equity, in and to the Assigned Agreement and, subject to Section 4.1, with full power and authority to enforce all the rights, claims or causes of action the Assignor may have under the Assigned Agreement, including the right to bring action to recover moneys under the Assigned Agreement. Notwithstanding the assignment of the Assigned Agreement, the Assignee shall not be responsible or liable for any obligations of the Assignor respecting it, which remain the sole obligation of the Assignor.

2.2 Value and Attachment

The Assignor acknowledges that value has been given and that the Assignor has rights in the Assigned Agreement. The Assignee and the Assignor have not agreed to postpone the time for attachment of the security interest created by this Agreement and the Assignor and the Assignee intend that the security interest shall attach to the Assigned Agreement upon execution of this Agreement.

2.3 Perfection

The Assignor shall from time to time as may be required by the Assignee with respect to the Assigned Agreement take all actions as may be requested by the Assignee to perfect the security interest at the expense of the Assignor

ARTICLE 3
REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations, Warranties and Covenants

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 Assigned Agreement to the Assignee, 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) the copy of the Assigned Agreement delivered to the Assignee is a true and complete copy of the Assigned Agreement;
- (c) the Assigned Agreement is in existence, is unamended (except to the extent set out in Schedule "A"), and is in full force and effect, and there is no existing dispute thereunder;

- (d) to the best of the Assignor's knowledge there is currently no default by any party to the Assigned Agreement under any term, condition or covenant required to be performed by it under the Assigned Agreement 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 the Assigned Agreement; and
- (e) the Assignor has observed and performed all of its obligations under the Assigned Agreement and will, in all material respects, continue hereafter to observe and perform all of its obligations under the Assigned Agreement.

3.2 Survival

All representations and warranties of the Assignor made in this Agreement or in any of the other Loan Documents are material, shall survive and shall not merge upon the execution and delivery of this Agreement and shall continue in full force and effect. The Assignee shall be deemed to have relied upon the representations and warranties notwithstanding any investigation made by or on behalf of the Assignee at any time.

ARTICLE 4 RIGHT TO DEAL

4.1 Right to Deal

Until the occurrence of an Event of Default which is continuing and subject to Section 4.2, the Assignor is permitted to enjoy the benefits of and deal with the Assigned Agreement and to enforce all the rights, claims or causes of action the Assignor may have under the Assigned Agreement, and the Assignor shall retain all the benefits, rights, advantages and powers accruing to it under the Assigned Agreement, and the Counterparty 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 and the notice shall be good and sufficient authority for so doing;

4.2 No Dealings with Assigned Agreement

That the Assignor shall not, without the prior written consent of the Assignee:

- (a) assign, encumber, pledge or hypothecate the Assigned Agreement other than to the Assignee or pursuant to a 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) do any act or thing or omit to do any act or thing that would have the effect of terminating, cancelling, or accepting a surrender of the Assigned Agreement, modifying, amending, or varying the Assigned Agreement, or waiving, releasing or reducing or discounting the Counterparty's obligations under the Assigned Agreement, which would materially adversely change the obligations of the Assignor thereunder, other than as permitted under the Loan Documents.

4.3 Acceleration and Enforcement

Upon the occurrence of an Event of Default which is continuing

- (a) all of the Loan Indebtedness shall, at the Assignee's option and without notice to the Assignor, become immediately due and payable, the security hereby constituted will, at the option of the Assignee, immediately become enforceable, and the Assignee may, in its sole, absolute and unfettered discretion, exercise its rights in respect of the Assignment Agreement in addition to all other rights and remedies afforded by applicable law, in equity or otherwise. The Assignee's remedies are cumulative and the Assignee shall have the right to enforce one or more remedies successively or concurrently in accordance with the Mortgage and applicable law and the Assignee expressly retains all rights and remedies not inconsistent with the provisions in this Agreement. The Assignee's exercise of one right or remedy does not preclude its exercise of any others. 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;
- (b) if the Assignee elects 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 Counterparty advising that the Assignee has elected to: (i) terminate the Assigned Agreement 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 require the Counterparty to deal directly with the Assignee (subject to the provisions of Section 4.7), 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.

4.4 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 the Counterparty upon the happening of any Event of Default but any such waiver shall not extend to any subsequent Event of Default.

4.5 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 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 (hereinafter called a "**Receiver**", which term when used herein shall include a receiver or a manager or a receiver and manager), 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 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;

- (b) if any action is brought by the Assignee or any Receiver to enforce any rights under the Assigned Agreement, 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 party upon written notice to it by the Assignee to make all payments due under or arising under the Assigned Agreement 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 the Assigned Agreement, 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.

4.6 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 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.

4.7 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 Assigned Agreement 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 Assigned Agreement;

- (b) nothing herein contained shall oblige the Assignee to assume or perform any obligation of the Assignor to the Counterparty in respect of or arising out of the Assigned Agreement. 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 Agreement, 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) 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 moneys as contemplated herein;
- (d) 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 4.7(a) or Section 4.7(b) shall not constitute or have the effect of making the Assignee a mortgagee in possession; and
- (e) 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 the Assigned Agreement.

4.8 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 Agreement 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, interest and estate in and benefit of the Assigned Agreement 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 Agreement or anything related thereto. 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 Agreement 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 as may be necessary or effective, in

registrable form, to evidence the termination of this Agreement and the reassignment to the Assignor of the Assigned Agreement.

ARTICLE 5 **MISCELLANEOUS**

5.1 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 5.9 (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, counterclaim or deduction.

5.2 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 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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 assignment, transfer or sale of that portion 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.

5.9 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
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
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
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 (3rd) 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.

5.10 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.

5.11 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.

5.12 Time of the Essence

Time is of the essence of this Agreement.

5.13 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.

5.14 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.

5.15 Further Assurances

The Assignor will promptly do all further acts and execute and deliver such further documents the Assignee considers necessary or advisable to carry out the terms or intent of this Agreement.

5.16 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 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.

5.17 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:

Title:


M. MOLDENHAUER
A.S.O.

Per: _____

Name:

Title:

ACKNOWLEDGEMENT OF COUNTERPARTY

The undersigned hereby acknowledges that the Assignor's interest in and to the Assigned Agreement has been assigned to the Assignee pursuant to this Assignment and the undersigned agrees that, notwithstanding language to the contrary in the Assigned Agreement, upon the occurrence of and during the continuance of an Event of Default (as defined in the Mortgage), the Assigned Agreement may be terminated upon receipt by the Counterparty of an Enforcement Notice in accordance with Section 4.3(b) delivered by the Assignee a Receiver, without cost, penalty, payment, obligation or liability to the Assignee and such termination shall be effective as and from the Effective Date.

Dated this ___ day of February, 2022.

2668945 ONTARIO CORP.

Per: _____

Name: M. MOLDENHAUER

Title: A.S.O.

Per: _____

Name:

Title:

SCHEDULE "A"
ASSIGNED AGREEMENT

Please see attached.

DEVELOPMENT MANAGEMENT AGREEMENT

759 WINSTON CHURCHILL LP

(the "Owner")

- and -

2668945 ONTARIO CORP.

(the "Development Manager")

September 1, 2019

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INTENTIONALLY DELETED

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DEVELOPMENT MANAGEMENT AGREEMENT

THIS AGREEMENT dated as of and made with effect as of the 1st day of September, 2019.

BETWEEN:

759 WINSTON CHURCHILL LP

(hereinafter collectively referred to as the "**Owner**")

- and -

2668945 ONTARIO CORP.

(hereinafter referred to as the "**Development Manager**")

WHEREAS:

- A. The Owner is the owner of the lands and the property municipally known as 759 Winston Churchill Drive, Mississauga, Ontario and legally described in further detail in Schedule A hereto (the "**Property**").
- B. The Owner has agreed to retain the Development Manager as development manager of each Project upon the terms and conditions hereinafter set forth.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained, the sum of \$2.00 paid by each party hereto to each of the other parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions**

For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, the following terms shall have the meanings set forth below:

"**Agreement**" means this development management and consulting services agreement, as the same may be amended, supplemented, restated, extended, modified or replaced from time to time by the parties hereto.

"Applicable Laws" means, with respect to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law, all codes, directives, policies or guidelines of any Governmental Authority and all common law relating to or applicable to such Person, property, transaction or event.

"Approved by the Owner", "Approval by the Owner", "Approved" and "Approval" means approval or approved by the Owner in accordance with the terms of the Limited Partnership Agreement pursuant to a Unanimous Resolution (as such term is defined in the Limited Partnership Agreement) or in accordance with the Shareholders Agreement pursuant to a Unanimous Approval (as such term is defined in the Shareholders Agreement), as applicable.

"Approved Construction Budget" means, in respect of each Project, the budget for Construction for such Project as has been Approved by the Owner.

"Auditor" means the auditor appointed by the Owner.

"Business Day" means any day on which banks are generally open for business in Toronto, Ontario other than Saturday, Sunday or any statutory or civic holiday observed in the City of Toronto.

"Construction" means, in respect of each Development, all construction matters relating in any way to such Development on the Property, including without limiting the generality of the foregoing, the maintenance of adequate insurance in respect of the same, construction and related agreements to be entered into with any Governmental Authority and any contractors and suppliers, payment of all construction charges, and compliance with all Applicable Laws during the course of construction activities on the Property including, without limitation, the *Construction Lien Act* (Ontario), and all Environmental Laws.

"Construction Budget" means, in respect of each Development, the budget in respect of the Construction Costs for such Development that has been Approved by the Owner. An initial draft of the Construction Budget for the Initial Development is attached here as Schedule D-1.

"Construction Costs" means, in respect of each Development, the Construction Hard and Soft Costs for such Development, and includes the Construction Costs Budget Contingency for such Development.

"Construction Costs Budget Contingency" means, in respect of each Development, the contingency allowance in respect of Construction Hard and Soft Costs for such Development, as set out in the Construction Budget for such Development.

"Construction Hard and Soft Costs" means, in respect of each Development, all hard and soft construction costs set out in the 16 divisions of construction, as defined by the Construction Specifications Institute's MasterFormat, to be incurred in connection with the Construction of such Development and, for greater certainty, includes the Development

Management Fee in respect of such Development but for greater clarity shall exclude all employment costs related to employees of the Development Manager which are the costs of the Development Manager.

"Construction Manager" means the Construction Manager appointed by the Owner.

"Construction Plan" means, in respect of each Development, collectively, the finalized Construction Budget, the Construction Schedule and the Site Plan for such Development.

"Construction Schedule" means, in respect of each Development, the schedule for the commencement and completion of the Construction for such Development that has been Approved by the Owner.

"Control" or **"control"** for the purposes of this Agreement is determined based on the following:

- (a) to control a corporation, a Person must: (i) directly or indirectly beneficially hold (other than by way of security only) securities of such corporation or the right to vote or direct the voting of securities of such corporation to which, in the aggregate, are attached more than 50% of the votes that may be cast to elect directors of the corporation, provided that in all circumstances the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation; and (ii) also have the power to control and direct in all circumstances the management and policies of such corporation, directly or indirectly, whether through the ownership or control of voting securities, voting rights, contract or otherwise;
- (b) to control a partnership other than a limited partnership, a Person must: (i) directly or indirectly beneficially hold (other than by way of security only) more than 50% of the partnership interests in such partnership; and (ii) also have the power to control and direct in all circumstances the management and policies of such partnership, directly or indirectly, whether through the ownership or control of voting interests of the partnership or otherwise;
- (c) to control a limited partnership, a Person must: (i) directly or indirectly beneficially hold (other than by way of security only) securities of the general partner of such limited partnership or the right to vote or direct the voting of securities of such general partner to which, in the aggregate, are attached more than 50% of the votes that may be cast to elect directors of the general partner, provided that in all circumstances the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of such general partner; and (ii) also have the power to control and direct in all circumstances the management and policies of such general partner, directly or indirectly, whether through the ownership and control of voting securities, voting rights, contract or otherwise;
- (d) to control a trust where the trustees have discretionary powers in respect of the trust assets, a Person must: (i) directly or indirectly have the right to elect or appoint a

majority of the trustees of such trust; and (ii) be, directly or indirectly, the sole beneficiary of such trust;

- (e) to control a Person other than a corporation, partnership or trust referred to in any of clauses (a) to (d) above (the "**Subject Entity**"), a Person must: (i) directly or indirectly beneficially own more than 50% of the ownership interests in the Subject Entity; and (ii) also have the power to control and to direct in all circumstances the management and policies of the Subject Entity, directly or indirectly, whether through the ownership or control of voting securities, voting rights, contract or otherwise; and
- (f) a Person who controls another Person is deemed to control any Person which is controlled, or deemed to be controlled, by such other Person,

and the words "**Controlled**", "**controlled**", "**Controlling**" and "**controlling**" have corresponding meanings.

"**Development**" means (i) the Initial Development and (ii) each other development, capital expenditure or construction on, related to or in connection with, the Property agreed to by the Owner, the Development Manager.

"**Development Management Fee**" has the meaning set out in Section 8.1.

"**Development Management Services**" means the services to be provided by the Development Manager pursuant hereto in respect of each Development, including those services described in Schedule B.

"**Development Manager**" means 2668945 ONTARIO CORP., a corporation existing under the laws of the Province of Ontario.

"**Effective Date**" means the date of this Agreement.

"**Environmental Laws**" means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by laws and regulations and all orders, directives and decisions rendered by, and policies, guidelines and similar guidance of, any ministry, department or administrative or regulatory agency or court relating to the protection of the environment, human health and safety or the manufacture, processing, distribution, use, treatment, storage, presence, disposal, packaging, labelling, recycling, transport, handling, containment, clean-up or other remediation or corrective action of or in respect of any Hazardous Substances.

"**Event of Default**" means, when used in relation to either the Development Manager means the occurrence of any one of the following:

- (a) there occurs or exists an Event of Insolvency in respect of the Development Manager;

- (b) the Development Manager shall have defaulted, for any reason other than Unavoidable Delay, in the observance or performance of any of its other covenants and obligations under or by virtue of this Agreement not otherwise referred to in this definition; and:
 - (i) if such default can be cured within 30 days, the Development Manager does not cure such default within 30 days after receipt by the Development Manager of a written notice from the Owner asking it to cure such default; or
 - (ii) if such default cannot be cured within 30 days, the Development Manager does not promptly commence and proceed to cure such default as soon as is reasonably possible and, in any event, within 30 days after the earlier of the occurrence of such default or receipt by the Development Manager of a written notice from the Owner asking it to cure such default.

"Event of Insolvency" means, when used in relation to the Development Manager, that:

- (a) a resolution is passed or an order is made for the winding-up, liquidation, revocation or cancellation of incorporation of the Development Manager, as the case may be, except as part of a *bona fide* reorganization which is not otherwise prohibited under this Agreement or a petition is filed for the winding-up, liquidation, revocation or cancellation of incorporation of the Development Manager, unless such petition is being disputed in good faith by appropriate proceedings and such proceedings effectively postpone enforcement of such petition;
- (b) the Development Manager is adjudged or declared bankrupt or insolvent or makes an assignment for the benefit of its creditors, or petitions or applies to any tribunal for the appointment of a receiver or trustee for it or for any substantial part of its property, or commences any proceedings relating to it under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereinafter in effect relating to or governing debtors or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any substantial part of its property, or suffers the appointment of any receiver or trustee and any such appointment continues undischarged and in effect for a period of 30 days;
- (c) a trustee in bankruptcy, liquidator, receiver or other officer with like powers is appointed for the Development Manager for all or a substantial part of the assets of the Development Manager as the case may be, unless the appointment of such trustee in bankruptcy, liquidator, receiver or other officer with like powers is being disputed in good faith and such proceedings effectively postpone enforcement of such appointment; or
- (d) if a writ, execution or attachment or similar process is issued or levied against all or a substantial portion of the property of the Development Manager and such writ,

execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within 30 days after its entry, commencement or levy.

"Fiscal Year" means each fiscal year of the Owner ending on December 31 of each year or such other date as Approved and notified to the Development Manager in writing.

"Funding Request" has the meaning set out in Section 7.3(a).

"General Partner" means 759 Winston Churchill GP Inc., as general partner of the Owner.

"GAAP" means generally accepted accounting principles and practices applicable to the Canadian real estate development industry, such principles to be those set out in the CICA Handbook and such practices to be determined by following the guidance in the Accounting Practices Handbook of the Canadian Institute of Public Real Estate Companies.

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commissioner, board, tribunal or court or other law, rule or regulation-making entity having jurisdiction on behalf of any nation, province or other subdivision thereof or any municipality, district or subdivision thereof.

"Hazardous Substance" means any pollutant, contaminant, hazardous substance, waste, hazardous waste, toxic substance, deleterious substance or other substance or dangerous good which in each case is defined or identified in any Environmental Laws or which is present in the environment in such quantity or state that it contravenes any Environmental Laws.

"Initial Development" means the development and construction of a condominium office complex on the Property.

"Initial Project" means the Initial Development and the Construction in respect of the Initial Development.

"Major Decision" means, in respect of each Project, any decision, determination or opinion which has or could have a material effect on such Project, which shall include, but is not limited to, any significant, substantial or major capital improvements to such Project or any expenditure which in the aggregate exceeds \$75,000, all of which shall be Approved by the Owner in the sole discretion of the Owner.

"Owner" means 759 WINSTON CHURCHILL LP, a limited partnership established under the laws of Province of Ontario.

"Partnership Agreement" means the amended and restated limited partnership agreement between the General Partner, as general partner and the limited partners, as the same may be further amended, restated, supplemented or otherwise modified from time to time.

"Permissible Cost Overruns" means, in respect of each Project, a cost overrun for such Project that relates to its Construction Costs (excluding for this purpose the Development

Management Fee otherwise included in such Construction Costs) and that is an upwards deviation from the Construction Budget for such Project of not more than 4% of the initial Construction Budget Approved by the Owner in respect of such Project.

"Person" means a natural person, firm, trust, partnership, association, corporation, government or governmental board, agency or authority.

"Project" means, as the context requires, (i) the Initial Project and (ii) in respect of any future Development (other than the Initial Development), the Development and the Construction in respect of such future Development, and **"Projects"** shall mean all of them,

"Project Financing" means, in respect of a Project, financing from a financial institution for the purpose of obtaining funds for such Project, the terms and conditions of which shall be as Approved by the Owner.

"Property" means the lands and premises municipally known as 759 Winston Churchill Drive, Mississauga, Ontario and legally described in Schedule A attached hereto.

"Shareholders Agreement" means the amended and restated unanimous shareholders agreement of 759 Winston Churchill LP, as the same may be further amended, restated, supplemented or otherwise modified from time to time.

"Site Plan" means, in respect of each Project, the site plan for such Project that has been Approved by the Owner. An initial draft of the Site Plan for the Initial Development is attached here as Schedule D-2.

"Term" means the period of time commencing on the Effective Date and ending on the date upon which this Agreement is terminated in accordance with Article 11.

"Unavoidable Delay" means a delay in the performance of an act or compliance with a covenant caused by an act of God, fire, strike, lockout, inability to obtain or delay in obtaining (which is not reasonably within the control of the party obliged to perform or comply) material, equipment or transport, inability to obtain or delay in obtaining (which is not reasonably within the control of the party obliged to perform or comply) governmental approvals, permits, licences or allocations, restrictive laws or governmental regulations or any other cause, whether of the kind specifically enumerated above or not, which is not reasonably within the control of the party obliged to comply or perform, but does not mean a delay caused by lack of funds or other financial reasons of a party.

1.2 Currency

All payments contemplated herein shall be made in Canadian funds.

1.3 Gender and Number

Words importing the singular number only shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine gender and neuter gender and words importing Persons shall include firms and corporations, and *vice versa*.

1.4 Headings

The division of this Agreement into Articles and Sections and the Article and Section headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

1.5 Calculation of Time Periods

When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next following Business Day.

1.6 Applicable Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

1.7 Severable

If any covenant, obligation, agreement and provision contained in this Agreement or the application thereto to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation, agreement and provision to Persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law. The parties agree that they would have signed this Agreement without such invalid or unenforceable part included herein.

1.8 Amendments

No amendment or modification of this Agreement shall be binding unless made in writing and signed by the parties hereto.

1.9 Waiver

No waiver by any party of any breach of any of the provisions of this Agreement by any other party shall take effect or be binding upon the party unless in writing and signed by such party. Unless otherwise provided therein, such waiver shall not limit or affect the rights of any party with respect to any other breach.

1.10 Time of Essence

Time shall be of the essence of this Agreement.

1.11 Statutes

Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding such statute or such regulations.

1.12 Successors and Assigns

Subject to the provisions of Article 13, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All other references to a Person herein, shall be interpreted to include such Person's permitted successors and permitted assigns.

1.13 Interpretation of Terms

For greater certainty, capitalized terms used herein and defined herein shall have the meanings given to such terms in this Agreement notwithstanding similar terms, concepts and terminology are used in the construction industry in documents developed by CCDC (Canadian Construction Documents Committee).

ARTICLE 2
APPOINTMENT AND TERM OF THE DEVELOPMENT MANAGER

2.1 Appointment of the Development Manager

- (a) The Owner hereby appoints the Development Manager as the development manager of each Project, to perform, on the Owner's behalf, the Development Management Services, subject to reasonable and lawful instructions which the Development Manager may from time to time be given by the Owner pursuant to this Agreement, and subject to the other terms and conditions herein contained. The Development Manager hereby accepts such appointment and covenants and agrees to perform all of the services to be performed by it hereunder, including the Development Management Services.
- (b) The Owner acknowledges and agrees that it shall not appoint any other development manager to provide development management services (including the Development Management Services) in respect of any Development of the Owner other than the Development Manager in accordance with the terms of this Agreement.

2.2 Term of Appointment of the Development Manager

This Agreement and the appointment of the Development Manager hereunder: (i) shall be in full force and effect during the Term, unless otherwise terminated in accordance with the provisions of this Agreement; and (ii) shall automatically terminate upon the expiry of the Term.

ARTICLE 3
INTENTIONALLY DELETED

ARTICLE 4
DUTIES AND POWERS OF THE DEVELOPMENT MANAGER

4.1 **General Duties and Powers of the Development Manager**

During the Term, the Development Manager will be exclusively responsible for providing the Development Management Services and implementing the Construction Plan for each Development, subject to Major Decisions to be made by the Owner and any other matters otherwise requiring the Approval of the Owner provided for in this Agreement (collectively, the "**Limitations**"). Subject to the Limitations, Section 6.1(e) of this Agreement, any other provisions of this Agreement and compliance with the Construction Plan applicable to each Development, including the related Construction Budget, the Owner hereby delegates to the Development Manager, authority to make all decisions and take all actions within the scope of the Development Management Services as shall be required to perform its obligations under this Agreement. Notwithstanding any other provisions of this Agreement, the Development Manager shall not in any event execute and deliver (or be deemed to be so authorized) any agreements or other instruments on behalf of the Owner, it being agreed that all such agreements and other instruments shall be entered into by the Owner in accordance with the terms of this Agreement, including the provisions of Sections 4.9 and 4.10.

4.2 **Development Manager as Independent Contractor**

Except as otherwise specifically provided in this Agreement, the obligations of the Development Manager under this Agreement shall be performed by it as an independent contractor and not as an agent of the Owner. Nothing in this Agreement should be construed so as to, or shall, constitute a partnership between the Owner and the Development Manager. The Development Manager shall not hold itself out to any other Person as having authority to act on behalf of, or to otherwise bind, the Owner except to the extent that the Development Manager has been granted such authority pursuant to this Agreement.

4.3 **Limitations on Development Manager's Authority**

(a) Nothing in this Agreement shall be construed to authorize the Development Manager to make any decision or take any action which contravenes or is inconsistent with the Construction Plan of any Development or any provision of this Agreement. The Development Manager shall not make any decision or take any action which contravenes or is inconsistent with the Construction Plan of any Development. In addition, the Development Manager shall comply with any written policies, instructions or procedures issued in writing at any time and from time to time to the Development Manager by the Owner.

(b) Notwithstanding any other provision of this Agreement, in no event shall the Development Manager have the authority or right to make any Major Decision, it being agreed that each Major Decision must specifically be Approved. The Development Manager shall not take any action to implement a Major Decision unless such Major Decision has been Approved. The sole exception to the foregoing is that if an emergency occurs and the Owner cannot, after reasonable effort in the circumstances by the Development Manager, be reached and cannot deal with such emergency quickly enough in the circumstances, the Development Manager shall have the obligation and authority to take such actions as are necessary for the protection and preservation of the applicable Project or other property, to protect the Owner from penalty or other liability or the prevention of injury, or death to persons, including in respect of a Development, the expenditure of Construction Costs for such Development that are not set out in the Construction Budget for such Development, but are necessary for the foregoing, provided that the Development Manager will as soon as possible give oral and written notice thereof to the Owner, with an explanation for why such decision was necessary. The Development Manager shall use reasonable diligence and foresight to ensure that such emergency arises only as a result of circumstances not avoidable by reasonable foresight and planning.

4.4 Performance Standards

The Development Manager shall:

- (a) perform its obligations under this Agreement with the diligence, skill, and care that a development manager of similar real estate projects in Canada would exercise if managing the development and construction of a project for its own account;
- (b) make all decisions and take all actions honestly, in the utmost good faith, and in the best interests of the Owner; and
- (c) at all times expeditiously keep the Owner fully informed on all matters which may properly be considered material to a Project.

All recommendations, advice, information and schedules to be provided by the Development Manager pursuant to this Agreement will be based upon data and other information believed by it to be accurate and, to the extent applicable, assumptions that it considers reasonable in the circumstances.

4.5 Compliance with Laws

In performing its obligations under this Agreement, the Development Manager shall at all times comply, in all material respects, with all Applicable Laws, including Environmental Laws, and shall ensure that the Construction of each Development is undertaken, implemented and completed in compliance with, in all material respects, all Applicable Laws, including Environmental Laws.

4.6 Ownership of Plans

The Development Manager shall cause all plans and specifications for each Project (including the Construction Plan applicable thereto) and all copies thereof, and all three-dimensional, pictorial or architectural models, including any computer simulations, with respect to such Project, to be the property of the Owner.

4.7 Compliance with Financing

In implementing the Construction Plan of a Development and otherwise performing its obligations hereunder, the Development Manager shall ensure that the related Project and such performance complies with the requirements of any Project Financing (including all security which secures the obligations of the Owner thereunder) in respect of such Project.

4.8 Compliance with Instructions

The Development Manager will implement and carry out all Major Decisions and other decisions from time to time which are Approved by the Owner in respect of each Project. Should any decision required to be made by the Development Manager in respect of a Project not be specifically provided for in this Agreement, the Development Manager will obtain the prior Approval of the Owner in respect of such decision, except in the case of an emergency situation, including a life threatening situation or a situation where the Property or any adjoining property is in imminent danger of suffering material damage, in which case the Development Manager, acting reasonably, will take whatever minimum action is required to protect the applicable Project from damage or the Owner from liability. Immediately thereafter, the Development Manager will provide written notice to each of the Owner of the emergency and the Development Manager's response.

4.9 Contractors

To the extent that the Development Manager requires the services of engineers, design consultants, contractors, subcontractors, construction manager, project managers, quantity surveyors, municipal lawyers or other similar agents in order to fulfill its duties hereunder, the Development Manager shall recommend the appointment of such parties on terms that it considers fair and reasonable provided that in each case, such appointment is on market terms.

4.10 Agreements with Architects, Contractors and Consultants

Without limiting the provisions of Section 4.9 above, but subject to the Limitations, the Development Manager will negotiate, on behalf of and in the best interests of the Owner and for its Approval all construction and consulting contracts and other contracts and agreements within the scope of the Development Management Services as are necessary in order to fulfill its Development Management Services hereunder (and only to the extent so necessary). All such contracts shall be entered into by the Owner (or other nominee of the Owner, as designated) and not the Development Manager shall have any authority to enter into any such contracts for or on behalf of the Owner. Following the execution of such contracts, the Development Manager will be responsible for the supervision and administration of all such contracts relating to Development

Management Services including, without limitation, the checking, inspection and approval for payment of progress estimates and accounting.

ARTICLE 5
INTENTIONALLY DELETED

ARTICLE 6
CONSTRUCTION PLAN

6.1 **Construction Plan**

(a) The Development Manager hereto agrees to work diligently and in good faith to prepare the Construction Plan for each Project as approved by the Owner. As soon as reasonably possible following the execution of this Agreement, the parties agree to replace the initial draft Construction Plan for the Initial Development attached as a Schedule to this Agreement with a finalized and completed Construction Plan for the Initial Development as a Schedule to this Agreement.

(b) The Development Manager shall continuously review each Construction Plan applicable to a Development and each component thereof, including the related Construction Budget, to determine whether there are any amendments or supplements required in respect thereof (or any such component thereof).

(c) The Development Manager shall report to the Owner the status of the Construction for each Development, in relation to the Construction Plan for such Development, and the Construction Budget for such Development, on a regular basis, and in any event, not less frequently than quarterly. In addition, the Development Manager shall prepare, deliver and present to the Owner for Approval, any proposed amendment to the Construction Plan for a Development, the Construction Budget for such Development, requiring the Approval of the Owner and, at least annually, no later than 120 days after completion of each Fiscal Year, an updated Construction Plan for each Development, and proposed amended Construction Budget for such Development, if required.

(d) In determining expenditures permitted within the Construction Budget applicable to a Development:

- (i) the Construction Costs Budget Contingency for such Development may be utilized in the discretion of the Development Manager provided that at all times there shall be maintained a reasonable contingency for the Construction Hard and Soft Costs related to such Development given the then current stage of completion of the Construction of such Development; and
- (ii) the Development Manager may re-allocate amounts within one or more of the line items for Construction Hard and Soft Costs applicable to a Development within the Construction Budget for such Development (before

or after the Construction Costs Budget Contingency for such Development has been utilized).

(e) If at any time the Development Manager or the Owner determines that any amendment or supplement to the Construction Plan applicable to a Development, including, if applicable, to the related Construction Budget, is required, it shall inform the Owner or the Development Manager, as the case may be, thereof and the Development Manager shall prepare the draft amendment and/or supplement to such Construction Plan (or any such component thereof). Any such amendment and/or supplement that is material in nature (including all changes to the Construction Budget of such Development which result in variances to the initial Construction Budget of such Development in excess of 5% in aggregate) shall require Approval of the Owner and the provisions of Section **Error! Reference source not found.** shall apply to such amendments or supplements, *mutatis mutandis*. Subject to the requirement to deliver for Approval an updated Construction Plan for each Development annually, the Development Manager shall not be required to obtain the Approval or any other consent or approval for amendments and/or supplements to the Construction Plan for such Development (or any such components thereof) that are not material in nature, including if applicable the Construction Budget for such Development (or any such component thereof) (the "**Proposed Amendment**"). Any Proposed Amendment that is more than the total amount of the initial Construction Budget of the applicable Development or any subsequent Construction Budget of the applicable Development shall, in each case, require Approval of the Owner. The Owner shall in writing either Approve (or elect not to Approve) the Proposed Amendment or provide the Development Manager with its comments on the Proposed Amendment, in either case, not later than 5 Business Days after the Proposed Amendment is received by the Owner, provided that (without relieving the Owner of the obligation to provide a response within such period) if the Owner has not provided the Development Manager with its Approval of such Proposed Amendment, or its comments thereon in lieu of such Approval, within such period of 5 Business Days, it shall be deemed that the Owner has withheld its Approval of such Proposed Amendment.

(f) If the Proposed Amendment is not Approved, then after receiving the comments of the Owner thereon, the Development Manager shall work diligently to amend the Proposed Amendment and to respond fully to the comments of the Owner and deliver to the Owner forthwith thereafter (and in any event within 5 Business Days after receiving the Owner's comments) a revised Proposed Amendment. Upon receipt of such revised Proposed Amendment, the Owner shall in writing either Approve such revised Proposed Amendment or provide the Development Manager with its comments thereon which comments shall, if reasonably possible, be provided within 3 Business Days after it is received by the Owner.

(g) The foregoing procedures relating to the review by, and comments of, the Owner shall be applicable to all amendments to the Construction Plan of a Development, including the Construction Budget applicable to such Development.

ARTICLE 7
FINANCIAL MATTERS

7.1 Liability for Construction Costs

(a) The Owner will not have any responsibility or liability for any Construction Costs in relation to a Development unless such Construction Costs have been provided for in the Construction Budget applicable to such Development. In this Agreement, Construction Costs of a Development, or any other costs or expenses, shall be "provided for in the Construction Budget applicable to such Development" only if: (i) such Construction Costs (or such other costs or expenses, as the case may be) are specifically identified in the Construction Budget applicable to such Development as permitted expenditures; and (ii) except as provided in Section 6.1(d) in respect of Construction Costs, they do not exceed the stipulated or maximum amount for the relevant costs or expenses set out in the Construction Budget applicable to such Development.

(b) In the event that, the Development Manager determines that there will be an increase in the Construction Costs applicable to a Development as provided for in the Construction Budget for such Development or that there will be Construction Costs that are not provided for in the Construction Budget for such Development, within a reasonable period of time following such determination it shall notify the Owner of this in writing and submit an application to the Owner to amend the Construction Budget for such Development so as to provide for such increased or new Construction Costs in the Construction Budget applicable to such Development. Such notification and application shall contain such information as the Owner requires about the increased or new Construction Costs and the reasons for them. The Owner shall act reasonably in approving any such application to amend any Construction Budget.

7.2 Expenditure of Construction Costs

(a) The Development Manager shall be permitted to expend an amount in excess of the Construction Budget applicable to a Development if (and only if) such deviations relate to Construction Costs for such Development (excluding for this purpose the Development Management Fee otherwise included in Construction Costs for such Development) and such increases from the initial Construction Budget for such Development do not exceed the initial Construction Budget applicable to such Development in an aggregate amount of not more than 5%.

(b) The Development Manager shall notify the Owner in writing within a reasonable period of time after the Development Manager becomes aware that there will or may be any cost overruns in respect of any Construction Budget and shall take all steps possible to avoid or minimize such cost overruns, including such measures as may be required by the to deal with such cost overruns. The Development Manager shall provide a detailed breakdown of any cost overruns and a detailed explanation of the causes of such overruns, together with such other information relating thereto as the Owner may require.

(c) The Development Manager shall, in its own discretion, be entitled to engage the services of a project manager and an on-site construction manager on terms and conditions satisfactory to the Development Manager acting reasonably, and the amounts payable with respect

thereto shall be payable by the Development Manager except for on-site overhead costs (including site superintendent, all on-site site, costs of site office and on-site labour).

7.3 Payment and Funding of Construction Costs

(a) The Development Manager shall be entitled to apply to the Owner at any time and from time to time for payment and/or reimbursement of the Construction Costs applicable to a Development, provided that such costs have been properly incurred in accordance with this Agreement, have been provided for in the relevant Construction Budget and have not previously been paid by the Owner, by delivering to the Owner a written request (a "**Funding Request**") for payment thereof. Each Funding Request shall:

- (ii) state the aggregate of the amounts set forth in the Construction Budget applicable to such Development previously paid by the Owner pursuant to prior Funding Requests;
- (iii) set out the Construction Costs for such Development paid or payable by the Development Manager on behalf of the Owner at the date of the Funding Request which have not been the subject of prior Funding Requests indicating which costs have been paid and those which are immediately payable but not yet paid; and also identify the authorization in the Construction Budget for such Construction Costs for such Development, and provide an up-to-date report on the unspent budgeted amount for each item included in the Construction Budget for such Development which will remain after such payment is made;
- (iv) state that all costs included in such Funding Request are costs provided for in the Construction Budget for such Development or are Permissible Cost Overruns for such Development that are then due and payable;
- (v) provide all information and documentation required by the lender of any Project Financing in accordance with the loan documentation therefor and otherwise comply with the requirements for obtaining draws under such Project Financing; in the event of any conflict between the foregoing provisions of this Section and this paragraph (v), the provisions of this paragraph (v) shall prevail.

(b) Each Funding Request shall be delivered to the Owner shall be signed by an officer of the Development Manager. Each Funding Request must also be accompanied by all of the documentation necessary to obtain the progress draw under the applicable Project Financing which will pay the amount set out in the Funding Request. Within seven Business Days after the receipt by the Owner of a Funding Request that complies with Section 7.3(a) and the requirements of the relevant Project Financing, together with all necessary supporting documentation, the Owner shall approve such drawdown request and execute the documents required to be signed by them in connection with such drawdown request.

ARTICLE 8
DEVELOPMENT MANAGEMENT FEE

8.1 Development Management Fee

For the services to be provided by the Development Manager pursuant to this Agreement, the Owner shall pay to the Development Manager, in respect of each Project, a development management fee that is equal to 4% of the aggregate amount of all Construction Hard and Soft Costs applicable to such Project (excluding, for clarity, the Development Management Fee) (each, a "**Development Management Fee**"). The Development Management Fee for each Project shall be payable as set out in Section 8.2.

8.2 Payment of Development Management Fee

(a) For each Project, the Development Manager shall be entitled to be paid a monthly draw from the Owner, as partial payment of the Development Management Fee owing to it for such Project, which monthly draw shall be agreed to by the Owner and the Development Manager prior to the commencement of each Project (each, a "**Development Management Fee Draw**"). It is acknowledged and agreed that the Development Management Fee Draw to be paid to the Development Manager in respect of the Initial Project shall be set at \$90,000 per month. Each Development Management Fee Draw shall be paid by the Owner in equal monthly instalments on the first day of each month in advance over the estimated Term or as otherwise set out in the Construction Budget for the applicable Project.

(b) Within forty five (45) days following the expiration of each Fiscal Year during the Term, the Development Manager shall, in respect of each Project, compute and deliver to the Owner a statement providing in reasonable detail the calculation of the Construction Hard and Soft Costs and the applicable Development Management Fee for such Fiscal Year using GAAP consistently applied, in each case applicable to such Project (each, a "**Development Management Fee Statement**").

(c) Following the completion of each Project (as certified by the Development Manager to the Owner), if the aggregate amount of all Development Management Fee Draws for such Project that have been actually paid by the Owner to the Development Manager at such time pursuant to Section 8.2(a) differs from the aggregate amount of Development Management Fees for such Project that the Development Manager is otherwise entitled to (as calculated pursuant to the Development Management Fee Statements applicable to the Project), either the Owner shall pay such difference to the Development Manager or the Development Manager shall credit (or refund) such difference to the Owner, without interest, in each case within thirty (30) days after the date of delivery of the final Development Management Fee Statement for such Project.

(d) Upon providing the Owner with a Development Management Fee Statement, and upon request by the Owner, the Development Manager shall also provide the Owner with all records relating to any cost or expenditure used to determine the calculation of the Construction Hard and Soft Costs applicable to a Project. The Owner shall have the right, at its own cost and expense, to audit or inspect the Development Manager's detailed records each year with respect to the calculation of the Development Management Fee applicable to a Project. The Development

Manager shall utilize and cause to be utilized, accounting records and procedures for each Fiscal Year conforming to GAAP consistently applied with respect to all of the Construction Hard and Soft Costs applicable to a Project and the determination of the Development Management Fee for such Project for such Fiscal Year. The results of such audit, as reasonably determined by both parties, shall be binding upon the Owner and the Development Manager.

ARTICLE 9
INTENTIONALLY DELETED

ARTICLE 10
ACCESS AND REPORTING

10.1 **Rights of Examination**

The Development Manager shall permit the Owner, the Auditor and any other accountants appointed by the Owner, lawyers and other representatives and consultants appointed by the Owner, at any time and from time to time to examine and/or audit all books of account, documents, records, files, reports and other information in the possession or control of the Development Manager relating to any Project and/or the Property and the Development Management Services and to make copies thereof or extracts therefrom. Unless otherwise Approved by the Owner, all such books, documents, files, reports and other information shall be kept and maintained at all times at the head offices of the Development Manager.

10.2 **Furnish Information**

At any time and from time to time, upon reasonable written request of the Owner of the Development Manager shall promptly provide to the Owner all information in the possession or control of the Development Manager reasonably requested by the Owner regarding a Project and the assets, liabilities and contracts relating thereto. The obligations set out in this Section 10.2 shall survive termination of this Agreement for a period of seven years following such termination, and shall also apply to all information maintained by the Development Manager pursuant to Section 11.3.

10.3 **Accounting**

All financial statements and accounts shall be prepared in accordance with GAAP unless otherwise specified in writing by the Owner. The Development Manager covenants and agrees to prepare and submit to each of the Owner:

- (a) on a monthly basis, within 15 days of the end of each month, reports on Construction Costs for the preceding month which reports shall include a statement, showing separately the computation of amounts payable to the Development Manager, a statement of Construction Costs for such month, to date totals compared to the Construction Budget and such other information as the Owner may require, acting reasonably; and

- (b) at such times as shall be required by the lender of any Project Financing, such financial information as shall be required by the lender with respect to such Project Financing.

10.4 Regular Meetings

The Development Manager shall meet with the Owner at least once every quarter (or at such other times as the Owner and the Development Manager may determine, both acting reasonably) to discuss the status of each Project and any other matter relevant to the Owner which is within the knowledge of the Development Manager or relates to its services under this Agreement.

10.5 Inspection

The Owner and anyone else authorized by the Owner will have the right to inspect each Project at all reasonable times and intervals and upon notice to the Development Manager.

ARTICLE 11
TERM OF AGREEMENT AND DEFAULT

11.1 Termination for Cause

If any Event of Default occurs with respect to either of the Development Manager, the Owner may terminate this Agreement by written notice to the Development Manager stating that this Agreement is terminated with respect to such Person. Such termination shall be effective upon the date specified in such notice, provided that such date shall not be later than 60 days after the date such notice is given.

11.2 Termination Other Than for Cause

(a) If the Owner sells all Projects, this Agreement shall automatically terminate without further action or documentation upon the completion of such sale.

(b) If the Winston Churchill Limited Partnership cease to be a Limited Partnership, this Agreement shall automatically terminate without further action or documentation upon the completion of such event.

(c) This Agreement may be terminated at any time by written agreement of all the parties hereto.

11.3 Maintenance of Records

Following the effective termination of this Agreement:

- (a) for a period of seven years from the date of such termination of the Development Manager shall continue to retain and store the records and documents in their possession pertaining to each Project (including, without limitation, all books of

account) in the same manner as maintained in accordance with the provisions of this Agreement; and

- (b) the Development Manager will forthwith deliver to the Owner all materials and supplies paid for by the Owner and which are in the possession or control of the Development Manager and relate directly or indirectly to a Project, the Property or to the Owner, or to the supervision of a Project.

11.4 Unavoidable Delay

Notwithstanding anything to the contrary herein contained, if either the Development Manager is delayed or hindered in or prevented from the performance of any term, covenant or act hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act will be excused for the period of the delay, and the Development Manager will not be in default hereunder due to such delay.

11.5 Default by the Owner

Upon failure by the Owner to advance funds to the Development Manager, in accordance with this Agreement, the Development Manager may, upon 60 days prior written notice to the Owner and the other parties to this Agreement, terminate this Agreement effective as of the date such notice is given, provided that the Owner shall have not, within such period, cured the default. Notwithstanding any such termination, the Development Manager retains all rights and remedies it may have in law or in equity as a result of such default.

11.6 Delivery of Records

In the event that the Term expires or this Agreement is terminated the Development Manager shall immediately prior to, or upon, such expiry or termination deliver to Owner, or as the Owner may direct, all records, documents and books of account maintained under the terms of this Agreement and all materials and supplies which have been paid for by the Owner including all computer records.

11.7 Duties Flowing from Termination

(a) If this Agreement is terminated for any reason, the Owner shall pay for and indemnify the Development Manager, subject to any set-off rights the Owner may have against the Development Manager, against all unpaid Construction Costs in respect of all Projects, if any, which have been ordered by the Development Manager in accordance with this Agreement which at the time of termination would otherwise be payable by the Owner in accordance with the provisions of this Agreement.

(b) Upon the termination of this Agreement for any reason, the Development Manager shall cease to have any further rights or obligations with respect to any Project and, without limiting the generality of the foregoing, the Development Manager shall not be entitled to any Development Management Fee except that which was payable prior to such termination (including any accrued but unpaid fees) except that which was payable prior to such termination (including any accrued but unpaid fees). The Development Manager shall not be entitled to any other

compensation or payment of any nature whatsoever as a result of termination of this Agreement pursuant to either Section 11.1 or 11.2 hereof or upon the expiry or other termination of this Agreement.

ARTICLE 12
LIABILITY OF OWNER AND INDEMNITY

12.1 Liability of the Owner

Notwithstanding any provision of this Agreement, only the Owner's interest in a Project shall be bound, secured, charged or available for recovery in the event of a breach thereunder and the obligations thereunder are not otherwise personally binding upon, nor shall resort be had to, any other property of, the Owner. The provisions of this Section 12.1 shall survive the expiration or early termination of this Agreement and the expiration or early termination of the appointment of the Development Manager hereunder.

12.2 Indemnity by Owner of Development Manager

The Owner agrees to indemnify and save the Development Manager harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity, resulting from any breach of this Agreement by the Owner including, any damage or injury whatsoever to any employee or other Person or property arising out of such breach, but the indemnity provided under this Section 12.2 shall not extend to any willful misconduct or bad faith on the part of the Development Manager or any of its directors, officers, employees, agents, subcontractors or any other Person for whom the Development Manager is legally responsible, and shall not extend to any breach by the Development Manager or any such Persons of its obligations under this Agreement. The provisions of this Section 12.2 shall survive the expiration or early termination of this Agreement and the expiration or early termination of the appointment of the Development Manager hereunder.

12.3 Indemnity by Development Manager of Owner

The Development Manager agrees to indemnify and save the Owner harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, attributable to any breach of this Agreement by the Development Manager or its directors, officers, employees, agents, subcontractors or any other Person for whom the Development Manager is responsible or by reason of any willful misconduct or bad faith of the Development Manager or any such Persons, but the indemnity provided under this Section 12.3 shall not extend to any willful misconduct or bad faith on the part of the Owner or any of its directors, officers, employees, agents, subcontractors or any other Person for whom the Owner is legally responsible. The provisions of this Section 12.3 shall survive the expiration or early termination of this Agreement and the expiration or early termination of the appointment of the Development Manager hereunder.

12.4 Intentionally Deleted

12.5 **Intentionally Deleted**

ARTICLE 13
GENERAL

13.1 **Notices**

Any notice, request, demand or other communication by the terms hereof required or permitted to be given by one party to another shall be given in writing by fax, email or by personal delivery during normal business hours on normal Business Days delivered to such other parties as follows:

(a) If to the Owner:

759 WINSTON CHURCHILL LP
7080 Derrycrest Drive
Mississauga, Ontario L5W-0G5

Attention: Michael Moldenhauer
mm@moldenhauer.ca

with copies to:

Attention: Patrick Flatley
pflatley@lincolnlandservices.com

(b) If to the Development Manager:

2668945 ONTARIO CORP.
1125 Clarkson Road North
Mississauga, Ontario L5J 2W1

Attention: Peter Diab
pdiab@moldenhauer.ca

or at such other address as may be given by any of them to the others in writing from time to time and such notices, requests, demands, acceptances and other communication shall be deemed to have been received when delivered.

13.2 **Dispute Resolution**

In the event of a dispute under this Agreement, the parties will attempt, in good faith, to settle the dispute. In the event that the parties cannot settle such dispute, either party may refer the dispute to arbitration. Where a party has referred a dispute to arbitration, such dispute will be determined by a single arbitrator, in accordance with the Arbitrations Act (Ontario). There will be a single arbitrator who will have qualifications relevant and suitable to the issue in dispute, and will be disinterested in the dispute and will be impartial with respect to all parties thereto. The parties will select the arbitrator by mutual agreement, failing which either may apply to court to

have an arbitrator appointed. The determination of the arbitrator will be final and binding upon the parties. Each party will bear its own costs in connection with the arbitration, provided that, if the arbitrator finds that any party has acted unreasonably, the arbitrator may, in his or her discretion, award costs against such party. Any order of an arbitrator may be entered with a court of competent jurisdiction for the purposes of enforcement. The place of arbitration will be Toronto, Ontario. All aspects of the arbitration will be kept confidential. During the conduct of the dispute resolution procedure under this Section 13.2, the parties shall continue to perform their respective obligations under this Agreement.

13.3 Not a Partnership

Nothing in this Agreement will be construed as, or will constitute, a partnership between the parties hereto. The duties to be performed and assumed by the Development Manager will be performed and assumed by the Development Manager as independent contractors and not as agent or in any way as representative of the Owner, or the other, as the case may be, except as otherwise herein provided.

13.4 Further Assurances

Each of the parties shall from time to time and at all times, do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

13.5 Assignment

This Agreement may not be assigned by the Development Manager, as the case may be, without the prior written approval of the Owner, which approval may be arbitrarily withheld, provided that each party may assign this Agreement to a Person Controlled by it without the prior written approval of the other parties.

13.6 Successors and Assigns

This Agreement shall be binding upon the successors and assigns of the Owner and the successors and permitted assigns of the Development Manager and shall enure to the benefit of the successors and assigns of the Owner and the successors and permitted assigns of the Development Manager.

13.7 Entire Agreement

This Agreement, together with the agreements referred to or contemplated herein, and any written modifications or amendments hereto or hereinafter agreed upon by the parties, will constitute the entire agreement between the parties relative to the subject matter hereof and will supersede other agreements and undertakings, if any, whether written or oral, which any party may have had relating to the subject matter hereof.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF the parties herein have executed this Agreement.

759 WINSTON CHURCHILL LP, by its
general partner, **759 WINSTON
CHURCHILL GP INC.**

By: 

Name: Michael Moldenhauer
Title: Authorized Signatory

By: _____

Name: Patrick Flatley
Title: Authorized Signatory

2668945 ONTARIO CORP.

By: 

Name: Peter Diab
Title: A.S.O.

SCHEDULE A

LEGAL DESCRIPTION OF THE PROPERTY

Municipal Address: 701-759 Winston Churchill Blvd, Mississauga, Ontario and legally described in PINs 13493-0203 (LT) and 13493-0204 (LT)

PIN 13493-0203 (LT):

PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET DESIGNATED AS PART 1, PLAN 43R-38482; CITY OF MISSISSAUGA

13493-0204 (LT):

PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET DESIGNATED AS PART 2 PLAN 43R38482; T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 3 PLAN 43R38482 AS IN PR782354. T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 4 PLAN 43R38482 AS IN PR1663804. T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 5 PLAN 43R38482 AS IN PR1662397. T/W EASEMENT OVER PART OF LOT 35, CONCESSION 2, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 6 PLAN 43R38482 AS IN PR782354. T/W EASEMENT OVER PART OF LOT 35, CONCESSION 2, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 7 PLAN 43R38482 AS IN PR823503. T/W EASEMENT OVER PART OF LOT 34, CONCESSION 3, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 8 PLAN 43R38482 AS IN PR896377 AND PR1021917; CITY OF MISSISSAUGA

SCHEDULE B

DEVELOPMENT MANAGEMENT SERVICES

In addition to, and without duplication of, its obligations pursuant to the Agreement, the Development Manager shall work with the Construction Manager for each Project to coordinate the following services as part of the Development Management Services in relation to such Project:

1. Pre-Construction Duties

- (a) development of overall construction phasing, including a construction budget and a pre and post construction schedule showing starts and occupancies;
- (b) establish and implement appropriate administrative, financial and cost controls for the construction of the Project and make suggestions or requests for specific design improvements, cost savings and efficiencies;
- (c) co-operate in the development of the overall concept of the Project with the Owner, the Construction Manager and the architect retained in respect of the Project;
- (d) co-ordinate and review the preparation of construction drawings and ensure that they comply with the schedule of building features as annexed to the sales agreements in respect of the Project;
- (e) as the design proceeds, evaluate possible alternatives in order to permit the selection of the most suitable and economical material and methods;
- (f) establish the construction cost breakdown for control purposes;
- (g) apply for and obtain all necessary building permits, occupancy permits in connection with the construction of the Project and, if required, assist the Construction Manager in obtaining necessary permits and approvals required in connection with the development of the Project during the pre-construction period; and
- (h) arrange for construction insurance together with the Construction Manager.

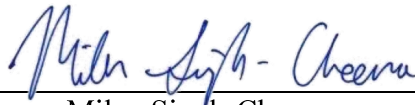
2. Duties During Construction

- (a) oversee and manage the preparation of design drawings and documentation for Approval by the Owner;
- (b) assist the Construction Manager with the management of neighbourhood issues and area design guidelines;
- (c) expedite building permits required for the construction of the Project and ensure that, together with the Construction Manager, occupancy permits are released;

- (d) supervise and direct consultants, contractors and subcontractors so as to accomplish completion of the Construction of the Project;
- (e) forward all change order requests to the Owner for approval in accordance with the terms of this Agreement;
- (f) provide on-going planning, scheduling, expediting, technical coordination, and supervision necessary for the proper execution of the work of all contractors / subcontractors;
- (g) update the Owner on an ongoing basis on matters arising during construction that may require the budget to be adjusted subject to the 5% Permissible Cost Overruns;
- (h) provide technical and financial administration with respect to progress payments, updating cash flow requirements and holdback releases;
- (i) evaluate and process all changes;
- (j) examine claims by the subcontractors to ensure that they are reasonable and in accordance with the contract documents;
- (k) ensure that "as-built" drawings, maintenance manuals, operating instructions, etc. are properly completed and handed over to the Owner;
- (l) assume all closing responsibilities including move in and customer service;
- (m) ensure compliance with the requirements of the *Construction Lien Act* (Ontario) and the release of holdback monies in compliance with same;
- (n) if applicable, compile Project documentation required for, and supervise, turnover meeting and delivery of such documentation pursuant to the *Condominium Act* (Ontario);
- (o) manage post-construction activities of on-site staff, including arranging for all necessary municipal inspections related to the provision of the Development Management Services; clearing all building permits; and expeditiously discharging all liens on title to the Project from time to time during the Development phase; and
- (p) such other duties as are normally carried out by a development manager in connection with the management of construction of projects of a size, type and location similar to the Project, to the intent that the Development Manager shall use its reasonable commercial efforts to cause the Project to be developed and constructed in conformity with the requirements of all Applicable Laws and material agreements in respect of the Project in all material respects.

**T
A
B
O**

THIS IS **EXHIBIT "O"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



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

PLEDGE AGREEMENT

THIS AGREEMENT is made as of the 16th day of February, 2022.

B E T W E E N:

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

(collectively, the "**Pledgor**")

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 the Mortgage has been granted by the Mortgagor in favour of the Lender pursuant to the terms and conditions of a commitment letter dated January 18, 2022 between, *inter alios*, the Mortgagor, as borrower, and the Lender, as lender (as the same may be amended, restated, modified, supplemented, assigned and/or assumed from time to time, the "**Commitment Letter**");

AND WHEREAS the Pledgor has made a limited recourse guarantee dated of even date herewith (as such limited recourse guarantee may be amended, extended, renewed, replaced, restated and in effect from time to time the "**Guarantee**") in favour of the Lender with respect to the payment of the Loan Indebtedness and observance and performance of the Loan Obligations;

AND WHEREAS as collateral security for the obligations under the Guarantee and as a condition for the Mortgagor receiving the Loan Indebtedness, the Lender has stipulated that the Pledgor enter into this Agreement 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 Pledgor, the

receipt and adequacy of which is acknowledged by the Pledgor, the Pledgor agrees with the Lender as follows:

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

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

- (a) **"Delivery"** and the corresponding term **"Delivered"** when used with respect to the Secured Property means:
 - (i) in the case of Secured Property constituting Certificated Securities, physical delivery thereof to the Lender or its nominee of the Security Certificates to the Lender or its nominee, such Secured Property to be endorsed for transfer or accompanied by endorsements or powers of attorney duly executed in blank, all in form and content satisfactory to the Lender;
 - (ii) in the case of Secured Property constituting Uncertificated Securities: (i) registration thereof on the books and records of the issuer thereof in the name of the Lender or its nominee; or (ii) the execution and delivery by the issuer thereof of an effective agreement (each, an **"Issuer Control Agreement"**), pursuant to which such issuer agrees that it will comply with instructions originated by the Lender or its nominee without further consent of any of the Pledgor or any other person; and
 - (iii) such additional or alternative procedures as may hereafter become reasonably appropriate to grant control of, or otherwise perfect a security interest in, the Secured Property in favour of the Lender or its nominee.
- (b) **"Demand Date"** means the earlier of the date on which: (i) the Lender demands repayment of the Loan Indebtedness in full and the performance of the Loan Obligations at any time; (ii) an Event of Default has occurred and is continuing; and (iii) the Maturity Date.
- (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) **"Issuer Control Agreement"** has the meaning set out in clause (ii) of the definition of **"Delivery"**.

- (e) "**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;
- (f) "**Loan Obligations**" means the obligations of the Mortgagor and any of the other Covenantors arising under the Loan Documents;
- (g) "**Pledged Entities**" means, collectively, 759 Winston Churchill GP Inc. and 759 Winston Churchill L.P.;
- (h) "**Pledged Interests**" has the meaning set out in clause (i) of the definition of Secured Property.
- (i) "**PPSA**" means the *Personal Property Security Act* (Ontario) and the regulations thereto, as each may be amended, replaced or revoked from time to time;
- (j) "**Secured Property**" means:
 - (i) all common shares and units, as applicable, in the capital of the Pledged Entities owned by the Pledgor (the "**Pledged Interests**") as set out in Schedule A, as such schedule may be amended or replaced from time to time, including all warrants and options relating to such shares and any substitutions, additions and proceeds arising out of any consolidation, subdivision, reclassification, conversion, stock dividend or similar increase or decrease in or alteration of the capital of the Pledged Entities, or any other event and additional Pledged Interests acquired pursuant to the exercise of a right or offer granted or made by the Pledgor to the extent that any such right or offer arises out of the ownership of any shares or units, as applicable, in the capital of the Pledged Entities, whether or not delivered to the Lender and all proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for any or all of such Secured Property;
 - (ii) all Security Certificates, if any, with respect to the Secured Property and any other instruments evidencing or representing such Pledged Interests, and all interest, distributions, cash, instruments and other property, income, profits and proceeds from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any and all of the Pledged Interests;
 - (iii) all additional or substitute units or shares or other equity interests in the Pledged Entities from time to time issued to or otherwise acquired by the Pledgor in any manner in respect of Pledged Interests, the Security Certificates, if any, and other instruments representing such additional or substitute units or interests, and all interests, distributions, cash, instruments and other property, income, profits and proceeds from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any or all of such additional or substitute units; and

- (iv) to the extent not otherwise included in the foregoing, all Proceeds thereof.
- (k) "STA" means the *Securities Transfer Act* (Ontario) and the regulations thereto, as each may be amended, replaced or revoked from time to time;

The terms "**Certificated Security**", "**Uncertificated Security**", "**Proceeds**", "**Securities Intermediary**", "**Security**", "**Securities Account**", "**Security Entitlements**" and "**Security Certificate**", whenever used herein have the meanings given to those terms in the PPSA.

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.

1.4 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

ARTICLE 2 **GRANT OF SECURITY INTEREST AND PLEDGE**

2.1 Grant and Pledge of Secured Property

As general and continuing security for the observance and performance of the Pledgor's liabilities and obligations under the Guarantee the Pledgor hereby grants to the Lender a security interest in, and pledges, assigns and hypothecates to the Lender, all right, title and interest of the Pledgor in and to, the Secured Property, whether now owned or existing or hereafter from time to time acquired, by way of amalgamation or otherwise.

2.2 Security Interest Absolute

The security interest granted hereby and all rights of the Lender hereunder are unconditional and absolute and independent and separate from any other security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, whether executed by the Pledgor or any other person.

2.3 Continuing Liability of the Pledgor

This Agreement and the security interest granted under Section 2.1 is granted as collateral security only and will not subject the Lender to, or transfer or in any way affect or modify, any obligation or liability of the Pledgor with respect to any of the Secured Property or any transaction in connection therewith.

2.4 Delivery of Secured Property

All Secured Property must be Delivered immediately to the Lender or its nominee. The Lender may, at its option, upon the occurrence and continuance of an Event of Default, cause all or any of the Secured Property to be registered in the name of the Lender or its nominee.

2.5 Subsequently Acquired Collateral

To the extent the Pledgor acquires, by way of amalgamation or otherwise, any additional Secured Property at any time or from time to time after the date hereof, such Secured Property will automatically (and without any further action being required to be taken by the Lender) be subject to the security interest and pledge created hereby. The Pledgor will take, or cause to be taken, as promptly as practicable and, in any event within five (5) days after it obtains such additional Secured Property, all steps and actions as the Lender deems necessary to ensure that the additional Secured Property is Delivered to the Lender.

2.6 Attachment

The Pledgor acknowledges that the security interest hereby created attaches upon the execution of this Agreement (or in the case of any after acquired property, upon the date of acquisition of the Pledgor of any rights therein), that value has been given by the Lender and that the Pledgor has, respectively, or in the case of after acquired Secured Property will have, rights in the Secured Property or the power to transfer rights in the Secured Property to the Lender.

ARTICLE 3 DEALING WITH COLLATERAL

3.1 Rights and Duties of the Lender

The Lender:

- (a) may perform any of its rights and duties hereunder by or through agents and is entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its rights and duties hereunder; and
- (b) in the holding of the Secured Property, the Lender and any nominee on its behalf is only bound to exercise the same degree of care as it would exercise with respect to similar property of its own of similar value held in the same place. The Lender and

any nominee on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Secured Property if it takes such action for that purpose as the Pledgor reasonably requests in writing.

3.2 Voting Rights

In connection with the rights and powers of a holder of such Secured Property:

- (a) subject to the provisions of Section 3.2(b), the Pledgor is entitled to exercise, either directly or, if the Secured Property is registered in the name of the Lender or its nominee, by power of attorney or proxy, all the rights and powers of a holder of such Secured Property, including the right to vote from time to time exercisable in respect of the Secured Property and to give proxies, consents, ratifications and waivers in respect thereof. No such action may be taken if it would be prejudicial to the interests of the Lender or would have the effect of reducing the value of the Secured Property as security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, or imposing any restriction on the transferability of any of the Secured Property; and
- (b) upon the occurrence and during the continuance of an Event of Default the Lender may give the Pledgor a notice prohibiting the Pledgor from exercising the rights and powers of a holder of the Secured Property, including the right to vote the Secured Property, at which time all such rights of the Pledgor will cease immediately and the Lender will have the right to exercise the rights and powers related to such Secured Property, including the right to vote.

3.3 Dividends, Distributions and Interest Payments

With respect to dividends, distributions and interest payments:

- (a) the Pledgor is entitled to receive all dividend payments or other distributions or interest payments in respect of the Secured Property. If the Secured Property has been registered in the name of the Lender or its nominee, the Lender will execute and deliver (or cause to be executed and delivered) to the Pledgor all directions and other instruments as the Pledgor may request for the purpose of enabling the Pledgor to receive the dividends or other payments that the Pledgor is authorized to receive pursuant to this Section 3.3(a); and
- (b) upon the occurrence and during the continuance of an Event of Default all rights of the Pledgor pursuant to Section 3.1(a) will cease, and all such rights will thereupon become vested in the Lender, and the Lender will have the sole and exclusive right and authority to receive and retain all payments that the Pledgor would otherwise be authorized to retain pursuant to Section 3.3(a). All money and other property received by the Lender pursuant to the provisions of this Section 3.3(b) may be applied on account of the Loan Indebtedness or may be retained by the Lender as additional Secured Property hereunder and be applied in accordance with the provisions of this Agreement. All payments which are received by the Pledgor contrary to the provisions of this Section 3.3(b) will be held by the Pledgor in trust

for the benefit of the Lender, will be segregated from other property or funds of the Pledgor and will be forthwith Delivered to the Lender or its nominee to hold as Secured Property.

ARTICLE 4

COVENANTS AND REPRESENTATIONS OF PLEDGOR

4.1 Covenants

The Pledgor covenants to and with the Lender, that:

- (a) in the event that the Pledgor shall receive any additional Secured Property, which the Pledgor shall accept same as the agent for the Lender in the form received and shall deliver to the Lender:
 - (i) the certificates with respect to the additional Secured Property if such additional Secured Property constitutes Certificated Securities;
 - (ii) if the additional Secured Property constitutes Uncertificated Securities, an Issuer Control Agreement with respect thereto; and
 - (iii) an updated Schedule A.

4.2 Representations and Warranties

The Pledgor represents and warrants:

- (a) as of the date hereof, the Pledgor has not assigned, mortgaged, pledged, hypothecated or encumbered the Secured Property except in favour of the Lender pursuant to this Agreement;
- (b) to the extent that the Secured Property includes an interest in, or unit certificates in a partnership, limited partnership, a limited liability partnership or a limited liability company, the partnership agreement, articles, articles of association, bylaws, other constating documents or any terms of any interest in such partnership, limited partnership, a limited liability partnership or a limited liability company, provide that such interest is a "**Security**" for the purposes of the STA;
- (c) has not consented to the entering into by: (i) any issuer of any Uncertificated Securities included in or relating to the Secured Property of an Issuer Control Agreement; or (ii) any Securities Intermediary for any Securities Accounts or Security Entitlements included in or relating to the Secured Property of an Issuer Control Agreement, other than, in either case, the Lender;
- (d) constitutes all of the issued and outstanding shares and units, as applicable, of the capital stock of the Pledged Entities owned by the Pledgor as at the date hereof;

- (e) all corporate action has been taken by the Pledged Entities and the Pledgor in order that the Secured Property is freely transferable and assignable to the Lender, its nominee or third party upon the exercise by the Lender of its rights hereunder to effect such transfer or assignment;
- (f) no consent is required, or is purported to be required, in connection with the granting of the security interest and the assignment, pledge and hypothecation of the Secured Property, or for enforcement thereof;
- (g) there are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Secured Property; and
- (h) there is no existing agreement, option, right or privilege capable of becoming an agreement or option pursuant to which the Pledgor would be required to sell or otherwise dispose of any of the Secured Property or under which the Pledged Entities have any obligation to issue any shares or units of the Pledged Entities to any other person.

All representations and warranties of the Pledgor made in this Agreement or in any certificate or other document delivered by or on behalf of the Pledgor to or for the benefit of the Lender are material, shall survive and shall not merge upon the execution and delivery of this Agreement and shall continue in full force and effect. The Lender shall be deemed to have relied upon such representations and warranties notwithstanding any investigation made by or on behalf of the Lender at any time.

ARTICLE 5 **REMEDIES**

5.1 Remedies

Upon the occurrence and during the continuance of an Event of Default, until payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, the Lender shall have, without obligation to resort to other security or to recourse against any of the other Covenantors, the right at any time and from time to time to sell, resell, assign and deliver all or any of the Secured Property in Canada or elsewhere, in whole or in part, at the same or different times, and all right, title, interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for immediate or future delivery, and at such price or prices and on such terms as the Lender may determine, the Pledgor hereby agreeing that upon any such sale any and all equity and right of redemption shall be automatically waived and released without any further action on the part of the Pledgor, and in connection therewith the Lender may grant options, all without any demand, advertisement or notice, all of which are hereby expressly waived by the Pledgor. Until payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, the Lender may, in its discretion, retain the Secured Property as continuing collateral security as provided herein. On and after a Demand Date where there are outstanding Loan Obligations, the Lender may in its own

right, purchase all or any of the Secured Property being sold, whether in connection with a sale made under the power of sale herein contained or pursuant to judicial proceedings or otherwise, free of any equity or right of redemption. The proceeds of each such sale shall be applied to the payment of all costs and expenses of every kind for sale or delivery, including reasonable agent's fees or legal fees (including legal fees on a substantial indemnity basis) and expenses of the party entitled to sell the Secured Property, and after deducting such costs and expenses from the proceeds of the sale, any residue shall be applied in payment of the Loan Indebtedness in such order as the party entitled to sell the Secured Property may deem fit. The balance, if any, remaining after payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations shall be paid over to the Pledgor or to whomever else may be entitled thereto by law. Notwithstanding the foregoing provisions of this Section, the Lender shall not in any event be under any duty to do any of the foregoing. The Pledgor hereby ratify all that the Lender, or the Lender's nominee, as the case may be, shall do by virtue of the foregoing authority.

5.2 Compliance with Restrictions

The Pledgor agrees that in any sale of any of the Secured Property following the occurrence of an Event of Default that is continuing, the Lender is hereby authorized to comply with any limitation or restriction in connection with such sale as is necessary in order to avoid any violation of applicable law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Secured Property), or in order to obtain any required approval of the sale or of the purchaser by any governmental regulatory authority or official, and the Pledgor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Lender be liable nor accountable to the Pledgor for any discount allowed by the reason of the fact that such Secured Property is sold in compliance with any such limitation or restriction.

5.3 Remedies Cumulative

The rights, powers and remedies of the Lender hereunder shall not be deemed exclusive, but shall be cumulative with and in addition to all other rights and remedies existing at law or in equity and available to a secured creditor under the PPSA, the *Securities Transfer Act* (Ontario) or any similar legislation of any other appropriate jurisdiction and the *Business Corporations Act* (Ontario) or any similar legislation of any other appropriate jurisdiction.

5.4 Private Sales

The Pledgor recognizes that subject to compliance with applicable securities laws and the rules and regulations of any stock exchange on which the applicable Secured Property is

listed and posted for trading, any sale by the Lender of all or any portion of the Secured Property may be by way of one or more private sales to a restricted group of purchasers who may be obligated to agree, among other things, to acquire the Secured Property for their own account, for investment and not with a view to the distribution or resale thereof. The Pledgor acknowledges that any such private sales may be at prices and on terms less favorable than those of public sales.

5.5 Indemnity and Expenses

The Pledgor hereby indemnify and hold harmless the Lender from and against any and all claims, losses, and liabilities arising out of or resulting from this Agreement, save and except for those arising from the gross negligence or willful misconduct of the Lender or its agents. Upon demand, the Pledgor will pay to the Lender the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its legal counsel and of any experts and agents, which the Lender may incur in connection with:

- (a) the administration of this Agreement;
- (b) the custody, preservation, use, or operation of, or the sale of, collection from, or other realization upon, any of the Secured Property;
- (c) the exercise or enforcement of any of the rights of the Lender hereunder; or
- (d) the failure by the Pledgor to perform or observe any of the provisions hereof.

ARTICLE 6 GENERAL

6.1 Termination of Pledge and Reassignment

The provisions of this Agreement shall remain in full force and effect as general and continuing collateral security for the payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations until the earlier of: (i) termination in writing by the parties hereto; or (ii) payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations. The Lender covenants and agrees that upon the termination of the Pledge as aforesaid it will release its security interests created hereby in the Secured Property at the sole cost and expense of the Pledgor.

6.2 Power of Attorney

The Pledgor hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof the true and lawful attorney of the Pledgor upon the occurrence of an Event of Default, with full power of substitution, to do, make and execute all such statements, assignments, documents, agreements, acts, matters or things with the right to use the name of the Pledgor whenever and wherever the officer or agent may deem necessary or expedient and from time to time to exercise all rights and powers and to perform all acts of ownership in respect to the Secured Property in accordance with this Agreement, such power being coupled with an interest.

6.3 Authorization to Provide Copy of Agreement

The Pledgor hereby authorizes the Lender to provide a copy of this Agreement and such other information and documents specified under the PPSA to any person entitled pursuant to the PPSA to demand and receive same.

6.4 Copy of Agreement and Financing Statement

The Pledgor:

- (a) acknowledges receiving a copy of this Agreement; and
- (b) waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed, issued or obtained at any time in respect of this Agreement.

6.5 Payments

All payments required to be made by the Pledgor to the Lender under this Agreement will be made at the address of the Lender set out in Section 6.13 (or at any other place specified by the Lender by written notice to the Pledgor and the Mortgagor) in immediately available funds in lawful Canadian currency, without any set off counter claim or deduction.

6.6 Failure of Indulgence Not Waiver

No failure or delay by the Lender 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.

6.7 Modification

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

6.8 Entire Agreement

On the execution and delivery by the Pledgor, this Agreement is deemed to be finally executed and delivered by the Pledgor 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 the Pledgor. No agreement, promise, representation or statement by the Lender 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 Pledgor and the Mortgagor under it.

6.9 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.

6.10 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 Commitment Letter, the Mortgage or any of the other Security Documents or any one or more of them at the option of the Lender.

6.11 Paramountcy

The provisions of any agreement between the Pledgor 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 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.

6.12 Assignability

The Pledgor hereby consents to the Lender 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 Lender may enter into participation, contending or syndication agreements with other Lenders in connection with this Agreement, 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 the Pledgor, this Agreement, the Loan Indebtedness and the Loan Obligations.

6.13 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 Pledgor:

1111 Clarkson Road, North
Mississauga, Ontario
L5J 2W1

Attention: Michael Moldenhauer
Email: mm@moldenhauer.ca
Facsimile: 416-637-9633

with a copy to the Pledgor's solicitors at

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

Attention: Sarit Pandya
Email: spandya@mccarthy.ca
Facsimile: 416-601-7785

(a) to the Lender:

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

Attention: Scott Coates
Email: 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 (3rd) 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.

6.14 Expenses, Fees and Indemnity

The Pledgor will pay to the Lender all reasonable 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 Agreement by the Pledgor to the Lender. The Pledgor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by the Pledgor under this Agreement.

6.15 Applicable Law

This Agreement and the rights and obligations of the Pledgor 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.

6.16 Time of the Essence

Time is of the essence of this Agreement.

6.17 Jurisdiction

Any legal action or proceeding with respect to this Agreement may be brought, in the discretion of the Lender, in the courts of the Province or in such other courts as the Lender in its sole discretion elects and each of the Pledgor and the Mortgagor irrevocably submits to each such jurisdiction.

6.18 Execution by the Lender

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

6.19 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 Pledgor 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.

6.20 Further Assurances

The Pledgor will promptly do all further acts and execute and deliver further documents as the Lender considers necessary or advisable to carry out the terms or intent of this Agreement.

6.21 Successors and Assigns

This Agreement is binding on and enures to the benefit of the Lender and the Pledgor and their respective executors, administrators, successors and assigns and to any Person to

whom the Lender may grant any participation in this Agreement, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender under this Agreement or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.

6.22 Multiple Parties

This Agreement will be read with all necessary grammatical changes and each reference to the Pledgor includes each and every such Person or corporation individually. All covenants and agreements herein of the Pledgor are the joint and several covenants and agreements of each such Person or corporation. If the Lender 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 Lender under this Agreement.

-- signatures follow on next page --

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first written above.

2712611 ONTARIO CORP.

Per: _____
Name: M. MOLDENHAWER
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. MOLDENHAWER
Title: A.S.O.

Per: _____
Name: _____
Title: _____

OBUYASHI CANADA LTD.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement 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

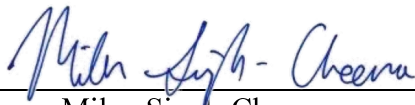
Per: _____
Name:
Title:

SCHEDULE A

Pledged Entities	Type/Class of Pledged Securities	Stock Certificate Number	Number of Shares/ Units	Shareholder/ Unitholder
759 Winston Churchill L.P.	Class A Units	CA-5	5,000,000	South Shore Holdings LP
759 Winston Churchill L.P.	Class A Units	CA-6	1,666,667	Obayashi Canada Ltd.
759 Winston Churchill L.P.	Class B Units	CB-2	10	2712611 Ontario Corp.
759 Winston Churchill GP Inc.	Common Shares	C-3	100	South Shore Holdings LP
759 Winston Churchill GP Inc.	Common Shares	C-4	33	Obayashi Canada Ltd.

**T
A
B
P**

THIS IS **EXHIBIT "P"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



Milan Singh-Cheema

A Commissioner for taking Affidavits
(or as may be)

LAND
REGISTRY
OFFICE #43

13493-0225 (LT)

PAGE 1 OF 2
PREPARED FOR JZHANG01
ON 2024/02/05 AT 15:09:11

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: 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; SUBJECT TO AN EASEMENT IN GROSS AS IN PR4168667; CITY OF MISSISSAUGA

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2018/08/23. CORRECTION: DOCUMENT 43R39986 ADDED TO 13493-0225 ON 2022/05/18 AT 11:04 BY STEINKRAUS, TRICIA.

ESTATE/QUALIFIER:
FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY:
DIVISION FROM 13493-0204

PIN CREATION DATE:
2021/12/06

OWNERS' NAMES
759 WINSTON CHURCHILL GP INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
PR607844	2004/03/19	NOTICE		THE CORPORATION OF THE CITY OF MISSISSAUGA		C
PR3528940	2019/08/27	TRANSFER	\$45,841,000	TERRANATA WINSTON CHURCHILL INC.	759 WINSTON CHURCHILL GP INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
43R39884	2021/04/29	PLAN REFERENCE				C
REMARKS: PR3823551.						
43R39986	2021/07/09	PLAN REFERENCE				C
REMARKS: PR3867794.						
PR3932694	2021/10/25	NOTICE		759 WINSTON CHURCHILL GP INC.	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
REMARKS: PART 1 PLAN 43R39884 & PARTS 5 & 6 PLAN 43R39986						
PR3997327	2022/02/16	CHARGE	\$250,000,000	759 WINSTON CHURCHILL GP INC.	KINGSETT MORTGAGE CORPORATION	C
PR3997328	2022/02/16	NO ASSGN RENT GEN		759 WINSTON CHURCHILL GP INC.	KINGSETT MORTGAGE CORPORATION	C
REMARKS: PR3997327						
PR4168667	2023/02/07	TRANSFER EASEMENT	\$2	759 WINSTON CHURCHILL GP INC.	ALECTRA UTILITIES CORPORATION	C
PR4199478	2023/05/12	NOTICE	\$2	759 WINSTON CHURCHILL GP INC.		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		<i>REMARKS: SITE PLAN AGREEMENT</i>				
PR4199484	2023/05/12	POSTPONEMENT		KINGSETT MORTGAGE CORPORATION	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
		<i>REMARKS: PR3997327 TO PR4199478</i>				
PR4201936	2023/05/19	NOTICE OF LEASE	\$2	SCI LOGISTICS LTD.		C
PR4286490	2023/12/20	CONSTRUCTION LIEN	\$2,015,660	JC INFRASTRUCTURE LTD.		C
PR4287910	2023/12/22	CONSTRUCTION LIEN	\$550,503	SUPERIOR SPRINKLER CO. LTD.		C
PR4288557	2023/12/28	CONSTRUCTION LIEN	\$30,076,837	KEN Aidan CONTRACTING LTD.		C
PR4293671	2024/01/18	CONSTRUCTION LIEN	\$117,695	NORAM GLASS CORPORATION		C
PR4294645	2024/01/22	CONSTRUCTION LIEN	\$289,607	BLACK & MCDONALD LIMITED		C
PR4296093	2024/01/26	CERTIFICATE		JC INFRASTRUCTURE LTD.		C
		<i>REMARKS: PR4286490</i>				
PR4296305	2024/01/26	CONSTRUCTION LIEN	\$145,240	NUCOR STEEL ULC		C
PR4296425	2024/01/26	CONSTRUCTION LIEN	\$637,007	MONTANA ELECTRICAL CONTRACTORS LTD.		C

LAND
REGISTRY
OFFICE #43

13493-0226 (LT)

PAGE 1 OF 2
PREPARED FOR JZHANG01
ON 2024/02/05 AT 15:08:21

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: 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

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2018/08/23.

ESTATE/QUALIFIER: RECENTLY:
FEE SIMPLE DIVISION FROM 13493-0204
LT ABSOLUTE PLUS

PIN CREATION DATE:
2021/12/06

OWNERS' NAMES CAPACITY SHARE
759 WINSTON CHURCHILL GP INC.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
PR607844	2004/03/19	NOTICE		THE CORPORATION OF THE CITY OF MISSISSAUGA		C
PR3528940	2019/08/27	TRANSFER	\$45,841,000	TERRANATA WINSTON CHURCHILL INC.	759 WINSTON CHURCHILL GP INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
43R39986	2021/07/09	PLAN REFERENCE				C
REMARKS: PR3867794.						
PR3932694	2021/10/25	NOTICE		759 WINSTON CHURCHILL GP INC.	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
REMARKS: PART 1 PLAN 43R39884 & PARTS 5 & 6 PLAN 43R39986						
PR3997327	2022/02/16	CHARGE	\$250,000,000	759 WINSTON CHURCHILL GP INC.	KINGSETT MORTGAGE CORPORATION	C
PR3997328	2022/02/16	NO ASSGN RENT GEN		759 WINSTON CHURCHILL GP INC.	KINGSETT MORTGAGE CORPORATION	C
REMARKS: PR3997327						
PR4199478	2023/05/12	NOTICE	\$2	759 WINSTON CHURCHILL GP INC.		C
REMARKS: SITE PLAN AGREEMENT						
PR4199484	2023/05/12	POSTPONEMENT		KINGSETT MORTGAGE CORPORATION	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
REMARKS: PR3997327 TO PR4199478						

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

LAND
 REGISTRY
 OFFICE #43

13493-0226 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR4287910	2023/12/22	CONSTRUCTION LIEN	\$550,503	SUPERIOR SPRINKLER CO. LTD.		C
PR4288557	2023/12/28	CONSTRUCTION LIEN	\$30,076,837	KENAIIDAN CONTRACTING LTD.		C
PR4293671	2024/01/18	CONSTRUCTION LIEN	\$117,695	NORAM GLASS CORPORATION		C
PR4294645	2024/01/22	CONSTRUCTION LIEN	\$289,607	BLACK & MCDONALD LIMITED		C
PR4296305	2024/01/26	CONSTRUCTION LIEN	\$145,240	NUCOR STEEL ULC		C
PR4296425	2024/01/26	CONSTRUCTION LIEN	\$637,007	MONTANA ELECTRICAL CONTRACTORS LTD.		C

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

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

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2018/08/23.

ESTATE/QUALIFIER: FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY: DIVISION FROM 13493-0203

PIN CREATION DATE:
2021/12/06

OWNERS' NAMES 759 WINSTON CHURCHILL GP INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
PR3528940	2019/08/27	TRANSFER	\$45,841,000	TERRANATA WINSTON CHURCHILL INC.	759 WINSTON CHURCHILL GP INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
43R39986	2021/07/09	PLAN REFERENCE				C
REMARKS: PR3867794.						
PR3932694	2021/10/25	NOTICE		759 WINSTON CHURCHILL GP INC.	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
REMARKS: PARTS 2 & 3 PLAN 43R39986						
PR3997327	2022/02/16	CHARGE	\$250,000,000	759 WINSTON CHURCHILL GP INC.	KINGSETT MORTGAGE CORPORATION	C
PR3997328	2022/02/16	NO ASSGN RENT GEN		759 WINSTON CHURCHILL GP INC.	KINGSETT MORTGAGE CORPORATION	C
REMARKS: PR3997327						
PR4199478	2023/05/12	NOTICE	\$2	759 WINSTON CHURCHILL GP INC.		C
REMARKS: SITE PLAN AGREEMENT						
PR4199484	2023/05/12	POSTPONEMENT		KINGSETT MORTGAGE CORPORATION	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
REMARKS: PR3997327 TO PR4199478						
PR4287910	2023/12/22	CONSTRUCTION LIEN	\$550,503	SUPERIOR SPRINKLER CO. LTD.		C
PR4288557	2023/12/28	CONSTRUCTION LIEN	\$30,076,837	KENAI DAN CONTRACTING LTD.		C
PR4293671	2024/01/18	CONSTRUCTION LIEN	\$117,695	NORAM GLASS CORPORATION		C
PR4296305	2024/01/26	CONSTRUCTION LIEN	\$145,240	NUCOR STEEL ULC		C

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

13493-0213 (LT)

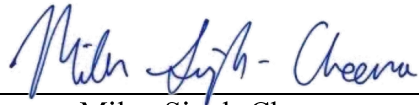
* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR4296425	2024/01/26	CONSTRUCTION LIEN	\$637,007	MONTANA ELECTRICAL CONTRACTORS LTD.		C

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

**T
A
B
Q**

THIS IS **EXHIBIT "Q"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

RESPONSE CONTAINS: APPROXIMATELY 1 FAMILIES and 20 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 1 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: 759 WINSTON CHURCHILL L.P.
OCN :
04 ADDRESS : 66 WELLINGTON STREET WEST, SUITE 5300
CITY : TORONTO PROV: ON POSTAL CODE: M5K 1E6
05 IND DOB : IND NAME:
06 BUS NAME: 759 WINSTON CHURCHILL GP INC.
OCN :
07 ADDRESS : 66 WELLINGTON STREET WEST, SUITE 5300
CITY : TORONTO PROV: ON POSTAL CODE: M5K 1E6

08 SECURED PARTY/LIEN CLAIMANT :
KINGSETT MORTGAGE CORPORATION
09 ADDRESS : SCOTIA PLAZA, 40 KING ST WEST, STE 3700
CITY : TORONTO PROV: ON POSTAL CODE: M5H 3Y2
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY
14 LOCATED AT, RELATING TO, ARISING FROM OR USED IN CONNECTION WITH, OR
15 WHICH IS NECESSARY TO THE USE AND OPERATION OF THE PROPERTY
16 AGENT: BENNETT JONES LLP (59445.57/O'GRADY/JS)
17 ADDRESS : 3400-1 FIRST CANADIAN PLACE
CITY : TORONTO PROV: ON POSTAL CODE: M5X 1A4

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 2 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 002 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 MUNICIPALLY KNOWN AS 759 WINSTON CHURCHILL BOULEVARD, MISSISSAUGA,
14 ONTARIO, AND LEGALLY IDENTIFIED AS PIN NO. 13493-0203 (LT), PART OF
15 LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET DESIGNATED AS PART 1,
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 3 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 003 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 PLAN 43R-38482, CITY OF MISSISSAUGA AND PIN NO. 13493-0204 (LT), PART
14 OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET DESIGNATED AS PART 2
15 PLAN 43R38482, T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 4 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 004 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 OF DUNDAS STREET, DESIGNATED AS PART 3 PLAN 43R38482 AS IN PR782354.
14 T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS
15 STREET, DESIGNATED AS PART 4 PLAN 43R38482 AS IN PR1663804. T/W
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 5 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 005 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET,
14 DESIGNATED AS PART 5 PLAN 43R38482 AS IN PR1662397. T/W EASEMENT OVER
15 PART OF LOT 35, CONCESSION 2, SOUTH OF DUNDAS STREET, DESIGNATED AS
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 6 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 006 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 PART 6 PLAN 43R38482 AS IN PR782354. T/W EASEMENT OVER PART OF LOT
14 35, CONCESSION 2, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 7 PLAN
15 43R38482 AS IN PR823503. T/W EASEMENT OVER PART OF LOT 34, CONCESSION
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 7 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 007 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 3, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 8 PLAN 43R38482 AS IN
14 PR896377 AND PR1021917, CITY OF MISSISSAUGA AND ALL PROCEEDS
15 THEREFROM.

16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 8 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 001 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 759 WINSTON CHURCHILL L.P.

25 OTHER CHANGE:

26 REASON: TO AMEND THE GENERAL COLLATERAL

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY

14 LOCATED AT, RELATING TO, ARISING FROM OR USED IN CONNECTION WITH, OR

15 WHICH IS NECESSARY TO THE USE AND OPERATION OF THE PROPERTY

16 NAME : BENNETT JONES LLP (O'GRADY/59445-83/OD)

17 ADDRESS : 3400-1 FIRST CANADIAN PLACE

CITY : TORONTO PROV : ON POSTAL CODE : M5X 1A4

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 9 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 002 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 MUNICIPALLY KNOWN AS 759 WINSTON CHURCHILL BOULEVARD, MISSISSAUGA,

14 ONTARIO, AND LEGALLY IDENTIFIED AS (I) PIN NO. 13493-0213 (LT), PART

15 LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 10 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 003 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

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12

13 43R39986, CITY OF MISSISSAUGA, (II) PIN NO. 13493-0225, PART LOT 35,

14 CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884, TOGETHER

15 WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 11 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 004 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 STREET, PART 3 PLAN 43R38482 AS IN PR782354, TOGETHER WITH AN

14 EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART

15 4 PLAN 4R43R38482 AS IN PR1663804, TOGETHER WITH AN EASEMENT OVER

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 12 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 005 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN

14 43R38482 AS IN PR1662397, TOGETHER WITH AN EASEMENT OVER PART LOT 35,

15 CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 13 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 006 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 PR782354, TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2

14 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503, TOGETHER

15 WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 14 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 007 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 STREET, PART 8 PLAN 43R38482 AS IN PR896377, TOGETHER WITH AN

14 EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART

15 8 PLAN 43R38482 AS IN PR1021917, CITY OF MISSISSAUGA, AND (III) PIN

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 15 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 008 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 NO. PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6

14 PLAN 43R39986, TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION

15 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354,

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 16 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 009 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF

14 DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804, TOGETHER WITH

15 AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET,

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 17 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 010 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 PART 5 PLAN 43R38482 AS IN PR1662397, TOGETHER WITH AN EASEMENT OVER

14 PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN

15 43R38482 AS IN PR782354, TOGETHER WITH AN EASEMENT OVER PART LOT 35,

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 18 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 011 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN

14 PR823503, TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3

15 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377, TOGETHER

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 19 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 012 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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13 WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS

14 STREET, PART 8 PLAN 43R38482 AS IN PR1021917, CITY OF MISSISSAUGA AND

15 ALL PROCEEDS THEREFROM.

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill L.P.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 1 ENQUIRY PAGE : 20 OF 20

SEARCH : BD : 759 WINSTON CHURCHILL L.P.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 01 OF 001 MV SCHED: 20220215 1732 1590 8392

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 2 CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 759 WINSTON CHURCHILL L.P.

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : BENNETT JONES LLP (O'GRADY/59445-83/OD)

17 ADDRESS : 3400-1 FIRST CANADIAN PLACE

CITY : TORONTO PROV : ON POSTAL CODE : M5X 1A4

LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

RESPONSE CONTAINS: APPROXIMATELY 2 FAMILIES and 21 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 1 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: 759 WINSTON CHURCHILL L.P.
OCN :
04 ADDRESS : 66 WELLINGTON STREET WEST, SUITE 5300
CITY : TORONTO PROV: ON POSTAL CODE: M5K 1E6
05 IND DOB : IND NAME:
06 BUS NAME: 759 WINSTON CHURCHILL GP INC.
OCN :
07 ADDRESS : 66 WELLINGTON STREET WEST, SUITE 5300
CITY : TORONTO PROV: ON POSTAL CODE: M5K 1E6

08 SECURED PARTY/LIEN CLAIMANT :
KINGSETT MORTGAGE CORPORATION
09 ADDRESS : SCOTIA PLAZA, 40 KING ST WEST, STE 3700
CITY : TORONTO PROV: ON POSTAL CODE: M5H 3Y2
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY
14 LOCATED AT, RELATING TO, ARISING FROM OR USED IN CONNECTION WITH, OR
15 WHICH IS NECESSARY TO THE USE AND OPERATION OF THE PROPERTY
16 AGENT: BENNETT JONES LLP (59445.57/O'GRADY/JS)
17 ADDRESS : 3400-1 FIRST CANADIAN PLACE
CITY : TORONTO PROV: ON POSTAL CODE: M5X 1A4

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 2 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 002 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 MUNICIPALLY KNOWN AS 759 WINSTON CHURCHILL BOULEVARD, MISSISSAUGA,
14 ONTARIO, AND LEGALLY IDENTIFIED AS PIN NO. 13493-0203 (LT), PART OF
15 LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET DESIGNATED AS PART 1,
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 3 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 003 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 PLAN 43R-38482, CITY OF MISSISSAUGA AND PIN NO. 13493-0204 (LT), PART
14 OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET DESIGNATED AS PART 2
15 PLAN 43R38482, T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 4 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 004 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 OF DUNDAS STREET, DESIGNATED AS PART 3 PLAN 43R38482 AS IN PR782354.
14 T/W EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS
15 STREET, DESIGNATED AS PART 4 PLAN 43R38482 AS IN PR1663804. T/W
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 5 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 005 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 EASEMENT OVER PART OF LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET,
14 DESIGNATED AS PART 5 PLAN 43R38482 AS IN PR1662397. T/W EASEMENT OVER
15 PART OF LOT 35, CONCESSION 2, SOUTH OF DUNDAS STREET, DESIGNATED AS
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 6 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 006 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 PART 6 PLAN 43R38482 AS IN PR782354. T/W EASEMENT OVER PART OF LOT
14 35, CONCESSION 2, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 7 PLAN
15 43R38482 AS IN PR823503. T/W EASEMENT OVER PART OF LOT 34, CONCESSION
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 7 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 765542457 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 007 OF 7 MV SCHEDULE ATTACHED :
REG NUM : 20200908 1636 9234 3143 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 3, SOUTH OF DUNDAS STREET, DESIGNATED AS PART 8 PLAN 43R38482 AS IN
14 PR896377 AND PR1021917, CITY OF MISSISSAUGA AND ALL PROCEEDS
15 THEREFROM.

16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 8 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 001 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 759 WINSTON CHURCHILL L.P.

25 OTHER CHANGE:

26 REASON: TO AMEND THE GENERAL COLLATERAL

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY

14 LOCATED AT, RELATING TO, ARISING FROM OR USED IN CONNECTION WITH, OR

15 WHICH IS NECESSARY TO THE USE AND OPERATION OF THE PROPERTY

16 NAME : BENNETT JONES LLP (O'GRADY/59445-83/OD)

17 ADDRESS : 3400-1 FIRST CANADIAN PLACE

CITY : TORONTO PROV : ON POSTAL CODE : M5X 1A4

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 9 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 002 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 MUNICIPALLY KNOWN AS 759 WINSTON CHURCHILL BOULEVARD, MISSISSAUGA,

14 ONTARIO, AND LEGALLY IDENTIFIED AS (I) PIN NO. 13493-0213 (LT), PART

15 LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 10 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 003 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 43R39986, CITY OF MISSISSAUGA, (II) PIN NO. 13493-0225, PART LOT 35,

14 CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884, TOGETHER

15 WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 11 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 004 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 STREET, PART 3 PLAN 43R38482 AS IN PR782354, TOGETHER WITH AN

14 EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART

15 4 PLAN 4R43R38482 AS IN PR1663804, TOGETHER WITH AN EASEMENT OVER

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 12 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 005 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

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12

13 PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN

14 43R38482 AS IN PR1662397, TOGETHER WITH AN EASEMENT OVER PART LOT 35,

15 CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 13 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 006 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

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12

13 PR782354, TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2

14 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503, TOGETHER

15 WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 14 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 007 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 STREET, PART 8 PLAN 43R38482 AS IN PR896377, TOGETHER WITH AN

14 EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART

15 8 PLAN 43R38482 AS IN PR1021917, CITY OF MISSISSAUGA, AND (III) PIN

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 15 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 008 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 NO. PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6

14 PLAN 43R39986, TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION

15 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354,

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 16 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 009 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

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13 TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF

14 DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804, TOGETHER WITH

15 AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET,

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 17 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 010 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13 PART 5 PLAN 43R38482 AS IN PR1662397, TOGETHER WITH AN EASEMENT OVER

14 PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN

15 43R38482 AS IN PR782354, TOGETHER WITH AN EASEMENT OVER PART LOT 35,

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 18 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 011 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

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13 CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN

14 PR823503, TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3

15 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377, TOGETHER

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 19 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 012 OF 12 MV SCHED: 20220215 1455 9234 1423

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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13 WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS

14 STREET, PART 8 PLAN 43R38482 AS IN PR1021917, CITY OF MISSISSAUGA AND

15 ALL PROCEEDS THEREFROM.

16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 20 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

FILE NUMBER 765542457

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 01 OF 001 MV SCHED: 20220215 1732 1590 8392

21 REFERENCE FILE NUMBER : 765542457

22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 2 CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 759 WINSTON CHURCHILL L.P.

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : BENNETT JONES LLP (O'GRADY/59445-83/OD)

17 ADDRESS : 3400-1 FIRST CANADIAN PLACE

CITY : TORONTO PROV : ON POSTAL CODE : M5X 1A4

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 759 Winston Churchill GP Inc.

FILE CURRENCY: February 4, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 2 ENQUIRY PAGE : 21 OF 21

SEARCH : BD : 759 WINSTON CHURCHILL GP INC.

00 FILE NUMBER : 792089595 EXPIRY DATE : 04APR 2028 STATUS :
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20230404 1443 1530 8421 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: 759 WINSTON CHURCHILL GP INC.
OCN :
04 ADDRESS : 2680 ROYAL WINDSOR DR
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5J 1K7
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
THE TORONTO-DOMINION BANK - 12752
09 ADDRESS : 20 MILVERTON DR
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5R 3G2
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GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X
YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: D+H LIMITED PARTNERSHIP

17 ADDRESS : SUITE 200, 4126 NORLAND AVENUE

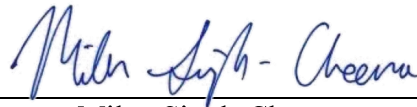
CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

T A B R

THIS IS **EXHIBIT "R"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



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



August 19, 2021

South Shore Holdings LP
c/o McCarthy Tetrault LLP
Suite 5300, TD Bank Tower
66 Wellington Street West, Toronto, Ontario

Attention: Mr. Sarit Pandya

Re: First mortgage acquisition and remediation financing of 688 Southdown Road, Mississauga, ON.

A. LOAN TERMS

The Lender is pleased to offer a 1st Mortgage, non-revolving 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:** Acquisition of 688 Southdown Road, being a ~91-acre industrial site (80 acres developable) in Mississauga, Ontario (the "**Property**"). The Property will be remediated through the Loan Term to accommodate +/- 1,700,000 square feet of Class A industrial buildings (the "**Proposed Development**").
2. **Lender:** KingSett Mortgage Corporation (the "**Lender**").
3. **Borrower:** 688 Southdown LP (the "**Borrower**").
4. **Guarantor:** South Shore Holdings LP (collectively, the "**Guarantor**").
5. **Loan Amount:** \$155,000,000 (the "**Loan Amount**").
6. **Interest Rate:** Prime Rate + 6.05% (floor rate of 8.50%) 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 for each and every month of the Term, save and except for the last month of the Term, and 14.50% per annum for the last month of the Term and each 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 loans in Toronto, Ontario.
7. **Amortization:** Not applicable; monthly interest payments only.
8. **Lender's Fee:** \$2,325,000 (1.50% 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, adjusted to reflect any credit for the remaining Good Faith Deposit, from the proceeds of the initial advance of the Loan.

9. **Term:** 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 principal balance of the Loan outstanding on the last day of the Term (the "**Maturity Date**") 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.
10. **Good Faith Deposit:** The Lender acknowledges prior receipt of a \$250,000 good faith deposit from the Borrower (the "**Good Faith Deposit**"). The Good Faith Deposit will be used for expenses that may be incurred by the Lender prior to the initial advance of the Loan with the remaining balance, if any, to be credited towards the Lender's Fee at the time of the initial advance of the Loan. The Borrower acknowledges that the Good Faith Deposit is a reasonable estimate of the Lender's cost incurred in sourcing, investigating, underwriting and preparing the Loan and holding monies available to fund the Loan and that the same may be retained by the Lender should the Loan not be funded as a result of non-performance by the Borrower.
11. **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.
12. **Sources and Uses:**

Sources	\$	Uses	\$
KingSett 1st Mortgage	\$155,000,000	Purchase Price	\$125,000,000
Equity (Cash)	2,500,000	Land Transfer Tax	3,200,000
		Closing Costs / Consultants / Misc.	2,000,000
		Remediation	4,000,000
		Contingency	1,571,733
		Soft Costs	21,728,267
TOTAL	\$157,500,000	TOTAL	\$157,500,000

13. **Project Budget:** The Lender acknowledges that the Borrower will complete environmental remediation of the site which will be funded by the Loan on a cost in place / cost to complete basis. The Lender approved Project Budget shall be no greater than \$157,500,000 (the "**Project Budget**"). 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 by the Borrower.

14. **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 environmental remediation at the Borrower's expense. The Lender's project monitor shall be Pinchin Ltd. The lender reserves the right to engage Finnegan Marshall Inc. as an additional project monitor (each, a "**Project Monitor**"). The Lender shall have received a review prepared by the Project Monitor confirming the reasonableness of the Project Budget. 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.
15. **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 \$12,000,000 (the "**Interest Reserve**"). At such time as the Loan is in 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.
16. **Prepayment**: This Loan is closed for prepayment from the date of the initial advance of the Loan until the date which is 12 months after the Interest Adjustment Date. The Loan will be open thereafter for prepayment, in whole but not in part, subject to a fee of 0.30% of the Loan Amount multiplied by the number of months remaining in the Term, rounded up to the nearest whole month, payable by the Borrower to the Lender, subject to a minimum of 30 days prior written notice to the Lender.
17. **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 (the "**Administration Fee**"). The 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.
18. **Permitted Encumbrances**: The Lender hereby acknowledges and consents to a second mortgage in the amount of \$20,000,000, provided by 7037619 CANADA INC. (the "**Vendor**"), under the mechanism determined in the Agreement of Purchase and Sale between the Borrower and the Vendor dated April 27, 2021 (the "**Permitted Encumbrance**"). The Permitted Encumbrance is acknowledged by the Lender provided that all terms and conditions thereof together with any related security are acceptable to the Lender in its sole but commercially reasonable discretion and the holder of the Permitted Encumbrance enters into a subordination and standstill agreement with the Lender in the Lender's prescribed form (the "**Subordination and Standstill Agreement**"). The Borrower may also request the Lender to provide postponements of its Security as may be required for easements in favour of governmental authorities and/or public utilities. The Lender will review and approve any postponements on a case-by-case basis.
19. **No Further Encumbrances**: Additional financing (prior or subsequent) of the Property, secured or unsecured, or the registration of any other encumbrance save and except for Permitted Encumbrances is not permitted in connection with the Property without the prior

written consent of the Lender, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender.

20. **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 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, out-of-pocket expenses for property inspections and any applicable sales taxes related to all such costs and expenses. The Lender shall apply the Good Faith Deposit in payment of the costs and expenses listed under this Section.

B. SECURITY

The Loan shall be secured by security set forth below which, prior to any advance under the Loan, shall be delivered by the Borrower and the Guarantor, (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 the other documentation delivered in connection with this Commitment Letter and the Security, collectively, the "**Loan Documents**").

1. **Mortgage**: A \$193,750,000 mortgage/charge (~125% of the Loan Amount) granted by the Borrower, including, without limitation, a negative pledge by the Borrower not to repay any shareholder loans, redeem shares, pay out dividends, or to otherwise compensate the Loan's 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.
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 Property.
4. **General Assignment of Material Contracts**: A general assignment of all current and future material contracts for the Property granted by the Borrower and/or the Nominee, as applicable, provided that upon the request of the Lender the Borrower and/or the Nominee, as applicable, shall grant a specific assignment of any current or future material contract for the Property which shall be acknowledged and consented to in writing by all counterparties to such material contract.
5. **Specific Assignment of Property Management Agreement**: A specific assignment of the commercial or residential property management contract 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 and/or the Nominee, as applicable, under the same if an Event of Default has occurred or 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.

6. **Assignment of Insurance**: An assignment of insurance granted by the Borrower and/or the Nominee, as applicable, with respect to any and all insurance proceeds arising in connection with all insurance for the Property maintained or cause to be maintained by the Borrower in accordance with the requirements set forth on Schedule A.
7. **Fraud, Misrepresentation and Environmental Indemnity**: A fraud, misrepresentation and environmental indemnity granted by the Loan Parties.
8. **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.
9. **Guarantee**: An unlimited corporate joint and several guarantee granted by the Guarantor 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 an acknowledgement by the Guarantor that it shall not accept the repayment of any shareholder loans, redemption of shares, payment of dividends, or any other compensation from the Borrower 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.
10. **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.
11. **Subordination and Standstill Agreement**: The Subordination and Standstill Agreement contemplated in Section A18.
12. **Other**: Such other Security as the Lender and/or its legal counsel may reasonably require.

C. **CONDITIONS PRECEDENT TO INITIAL ADVANCE**

The obligation of the Lender to make available the advance of the Loan shall be subject to the pre-funding conditions below (collectively, the "**Conditions Precedent**") which shall be satisfied

or waived by the Lender in its sole, absolute, and unfettered discretion at least two business days prior to the advance of the Loan.

1. **Inspection**: The Lender shall have completed an inspection of the Property.
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. **PNW Statements**: The Lender shall have received certified and current-dated net worth statements for any personal Guarantor, if applicable, with supporting documentation of asset values.
4. **Property Agreement of Purchase and Sale**: The Lender shall have received the agreement of purchase and sale for the acquisition of the Property, any amendments thereto, and the statement of adjustments delivered on closing collectively confirming a minimum aggregate purchase price of \$125,000,000.
5. **Rent Roll and Operating Statements**: The Lender shall have received a certified rent roll and operating statements along with proof of expenses (utilities, property taxes and insurance) for the Property.
6. **Lease Agreements**: The Lender shall have received executed copies of all lease agreements and any amendments or extensions thereto for all tenants.
7. **Appraisal**: The Lender shall have received an appraisal report for the Property from an acceptable appraisal firm reporting an "as is" minimum value of \$125,000,000 which appraisal report is to be addressed to the Lender or supported by a letter of transmittal in favour of the Lender.
8. **Third Party Contracts**: The Lender shall have received all third-party operating contracts, including but not limited to landscaping, snow removal, pest removal and the property management contract(s), if applicable. In the event that the property management agreement is non-arm's length, then such property management agreement shall have a termination right in favour of the Lender upon and during the continuance of an Event of Default.
9. **Environmental Site Assessment**: The Lender shall have received a phase II environmental site assessment for the Property 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.
10. **Environmental Remediation Budget**: The Lender, and the Project Monitor, shall have received a satisfactory review of the Project Budget required to bring the Property within applicable MOE standards.
11. **Geotechnical Soil Report**: The Lender shall have received a geotechnical report confirming the feasibility of the proposed construction on the Property 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.

12. **Planning Approvals**: The Lender shall have received evidence confirming zoning approval, development permit and partial/full building permit availability to improve the Property together with evidence satisfactory to the Lender that the full building permit will be issued in time to meet the construction schedule.
13. **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 E.1;
 - (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 Property and the ranking of the liens constituted by the Security thereon.
14. **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.
15. **Survey/Title Insurance**: The Lender shall have received survey coverage in a loan policy of title insurance.
16. **Searches/Title Insurance**: The Lender shall have received 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.
17. **Clean Title**: The Lender shall be satisfied with title to the Property including, without limitation, the absence of liens and other encumbrances.
18. **No Litigation**: There shall exist no judicial, administrative or other proceeding, investigation or litigation affecting the Property 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 Property, the Lender's liens on the Property 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.
19. **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*.

20. **Insurance**: The Lender shall have received duly executed certificate(s) of insurance evidencing the insurance over the Property in accordance with the requirements set out in Schedule A showing the Lender as mortgagee and loss payee as is interest may appear and showing the Lender as an additional insured under all liability policies relating to the Property, all such insurance coverage and certificate(s) to be acceptable to the Lender's insurance consultant, as confirmed by a report to the Lender from its insurance consultant.
21. **Payout Statement**: Receipt and satisfactory review of a payout statement with respect to any loan secured by an existing mortgage/charge registered against title to the Property.
22. **Levies and Fees**: All levies, impost fees, local improvement charges, property taxes and other charges that are due and payable in connection with the Property shall have been paid to the date of the advance of the Loan.
23. **Notice to Property Tax Authority**: The Borrower shall have executed and delivered the Lender's Notice to Property Tax Authority set forth on Schedule D, which shall permit the Lender to request information from the municipality from time to time regarding the Property's realty taxes.
24. **Pre-Authorized Debit**: The Borrower shall have executed and delivered the Lender's Pre Authorized Debit Form set forth on Schedule E, which shall permit the Lender to debit the Borrower's applicable current account each month for the Monthly Payment should full utilization, suspension or cancelation of the Interest Reserve occur, including, but not limited to any applicable Lender's Fees and Extension Fees.
25. **ESG Survey**: The Borrower shall have completed and delivered the Lender's ESG Survey set forth on Schedule F.
26. **Lender's Approvals**: The Lender shall have received the approval of its investment committee and any other approvals required by the Lender.
27. **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 Property.

D. **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 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 environmental remediation prepared by the Project Monitor.
6. **Title Search**: The Lender shall have received on the date of each subsequent advance of the Loan a title subsearch 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. **FUNDING**

The advance of the Loan shall be subject to the Conditions Precedent and be subject to the following funding conditions, as applicable.

1. **Advance of the Loan**: An initial advance of the Loan in the amount of \$138,000,000 is expected.
2. **Subsequent Advances**: Subsequent advances under the Loan shall be permitted not more frequently than once per month and in minimum monthly increments of \$100,000 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.
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 purchaser deposits used as source of funds within the Project Budget
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 October 31, 2021, 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.

F. **SPECIAL CONDITIONS**

The Loan shall be subject to the following special conditions which shall each have been received, reviewed and/or met, as the context implies, to the satisfaction of the Lender in its sole, absolute, and unfettered discretion prior to any advance of the Loan:

1. **Lender Right of First Opportunity:** In connection with providing construction financing should the Property be rezoned for residential use the Lender shall be given the first right of opportunity to provide the Borrower with construction financing for the Proposed Development.
2. **New Leases:** The Borrower shall not enter into leases or binding offers to lease without the prior written consent of the Lender, acting reasonably.

G. **COUNSEL**

1. **Lender's Legal 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


Borrower's Legal Counsel:


McCarthy Tétrault LLP (Attn: Sarit Pandya)
66 Wellington Street West
Suite 5300
Toronto, ON M5K 1E6
Ph: (416) 601-7785
E: 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's office by 3:00pm Eastern Standard Time on September 10, 2021, failing which this letter shall, at the Lender's option, be deemed null and void.

Yours truly,

KINGSETT MORTGAGE CORPORATION

Per: 
Justin Walton (Sep 10, 2021 10:24 EDT)
Justin Walton
Managing Director, Mortgage
Investments

Per: 
Michael Jarvela
Director, Mortgage Investments

Per: 
Bryan Salazar (Sep 10, 2021 10:30 EDT)
Bryan Salazar
Managing Director, Mortgage
Underwriting & Funding

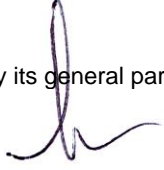
ACKNOWLEDGEMENT

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 10th day of SEPTEMBER, 2021.

BORROWER:

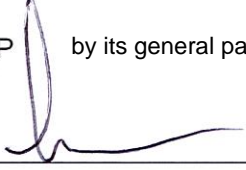
688 Southdown LP by its general partner 688 Southdown GP Inc.



Per: _____
Name:
Title:

GUARANTOR:

South Shore Holdings LP by its general partner South Shore GP Inc.



Per: _____
Name:
Title:

SCHEDULE A
LAND INSURANCE REQUIREMENTS CHECKLIST

1. All insurance policies/certificates must be forwarded to our 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 an Additional Insured under all liability insurance covering the Property with respect to claims arising out of the operations of the Named Insured.
4. 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 Property.
5. The insurers, policy numbers, policy limits, policy term, applicable reasonable deductibles and the location of the Property as an insured location must be shown on the insurance policies.
6. 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.
7. There must be evidence of Commercial General Liability insurance, with a minimum limit of **\$5,000,000.00** per occurrence and **\$5,000,000.00** policy aggregate covering the Property. This may be in the form of primary insurance and/or Excess/Umbrella insurance and include Cross Liability, Severability of Interests, Contractual Liability, Non-Owned Automobile Liability, Tenant's Legal Liability, Limited Pollution Liability insurance to cover Sudden & Accidental Pollution (including with a Wording to be the IBC 2313 wording or equivalent) and include Waiver of Subrogation in favour of the Lender.
8. If Excess or Umbrella liability is evidenced, confirmation the Excess/Umbrella Liability ***follows form*** of the underlying Commercial General Liability.
9. 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.
10. Such other insurance as the Lender or the 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 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 (at the Lender's sole, absolute and unfettered discretion) for the Property 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 Property:** 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 Property, 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 Property, 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 and provide to the Lender evidence of such payment annually or as otherwise requested from time to time by the Lender.
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 Property and/or the use or occupation of the Property including, without limitation, those arising from the right to enter the Property 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 Property of any hazardous or noxious substances except in compliance with environmental laws. 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 Property pursuant to the Security; and
 - (d) shall continue in effect after any transfer of the Property 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 Property 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 Property at any time at the expense of the Borrower, but subject to the right of tenants of the Property.
11. **Demand and Default:** 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 any Event of Default 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 Property, 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 Property 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 Property, (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 Property, and no undefended material actions, suits or proceedings with respect to such Loan Party or the Property, (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, (k) that there are no other encumbrances registered against title to the Property except for those approved by the Lender, (l) that all necessary services are available to the Property, and (m) that no hazardous substances used, stored, discharged or present on the Property 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. **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.
20. **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 Property 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 Property. 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.

21. **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
22. **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
23. **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 where the context so requires.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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 REPORTING

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

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. property tax statements supported by proof of payment on a quarterly basis or as otherwise requested by the Lender from time to time;
3. all commercial leases and any and all other agreements (e.g., commercial lease amendments) including offers to lease for any and all Major Leases as requested by the Lender from time to time;
4. certified property operating statements, together with a summary of capital expenses at the Property, to the Lender on an annual basis within 90 days of the end of its fiscal years or as otherwise requested by the Lender from time to time;
5. within 90 days of the end of each of its fiscal years, the Borrower shall provide to the Lender:
 - (a) notice to reader financial statements for the Borrower and any Corporate Guarantor, as applicable, 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; and
 - (b) certified and current-dated net worth statements for any personal Guarantor, if applicable, with supporting documentation of asset values; and
6. at the Lender's request from time to time, the Borrower shall provide the Lender with any other relevant updates regarding the Property.

**SCHEDULE D
NOTICE TO PROPERTY TAX AUTHORITY**

Re: **Borrower:** 688 Southdown LP
 Property: 688 Southdown Road, Mississauga, Ontario
 Loan No.: _____

To Whom It May Concern:

Approval is being given to release any information verbally or in writing as requested by our mortgage company, KingSett Mortgage Corporation, 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 _____ day of _____, 2021.

BORROWER:
688 Southdown LP by its general partner 688 Southdown GP Inc.

Per: _____
 Name: _____
 Title: _____

GUARANTOR:
South Shore Holdings LP by its general partner South Shore GP Inc.

Per: _____
 Name: _____
 Title: _____

<p>Property Civic Address: 688 Southdown Road, Mississauga, Ontario</p> <p>Roll Number: 05-02-0-024-04700-0000</p> <p style="text-align: center;">(Please complete in full)</p>

**SCHEDULE E
PRE-AUTHORIZED DEBIT FORM**

I/we authorize KingSett Mortgage Corporation ("**KingSett**") or its affiliates and the financial institution designated (or any other financial institution I/we may authorize at any time) to debit my/our bank account for regular recurring payments and/or one-time payments from time to time, for payment of all monies owing under a mortgage granted to and in favour of KingSett (the "**Mortgage**"). Regular recurring payments will be debited from my/our specified account monthly on the due date specified in the Mortgage. The entry in my/our bank statement will constitute my/our receipt.

I/We acknowledge that the regular recurring payments may vary from time to time in light of changes to realty taxes, interest adjustments, arrears, fees or, if the Mortgage bears a variable interest rate, because of interest rate fluctuations. I/We agree that no prior notification of the amount of each regular recurring payment will be given to me/us and I/we specifically waive any pre-notification requirements in respect of same. KingSett will obtain my/our authorization for any other one-time or sporadic debits.

If there is a change in the bank and/or account numbers from which payments are to be drawn, and if the new account is in my/our name, then only a new personalized cheque marked "**VOID**" will be required for KingSett to draw from the new account.

This authorization may be revoked by the undersigned on 30 days prior written notice. A sample cancellation form and further information on cancellation rights may be obtained from the financial institution noted above or by visiting www.cdnpay.ca.

I/We have certain recourse rights if any debit does not comply with this document. For example, I/we have the right to receive reimbursement for any debit that is not authorized by, or is not consistent with, this document. More information on recourse rights may be obtained from the financial institution noted above or by visiting www.cdnpay.ca.

Borrower Name	
Address	Province
City	Postal Code
Phone #	

FI Name:	Institution #
Account #	Transit #
Address	Province
City	Postal Code

Authorized Signatures(s)	
Name(s)	

SCHEDULE F 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: September 10, 2021
Borrower: 688 Southdown LP
Property: 688 Southdown Road, Mississauga
Completed By: Sarit Pandya

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

General	Does your organization have an ESG strategy or annual report? If yes, where can we find more information?
Environmental Initiatives (please select all that apply to the property being financed)	<input type="checkbox"/> Water & energy consumption tracking <input 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 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 _____
Social Impact	<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 _____
Governance	<input checked="" 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 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:

MORTGAGE AMENDING AGREEMENT AND CONFIRMATION OF SECURITY

This Agreement made this 16th day of June, 2023 (the "**Agreement**").

B E T W E E N:

688 SOUTHDOWN GP INC.

(the "**Mortgagor**")

- and -

688 SOUTHDOWN LP

(the "**Borrower**")

- and -

SOUTH SHORE HOLDINGS LP

(the "**Guarantor**")

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Mortgagee**")

WHEREAS:

- A. The Mortgagee, the Borrower and the Guarantor entered into a commitment letter dated August 19, 2021 as such commitment letter was amended by a letter amendment dated March 29, 2023 between the Mortgagee, the Borrower and the Guarantor pursuant to which the Mortgagee agreed to increase the Maximum Loan Amount to \$165,000,000 as a result of a \$10,000,000 increase in the Interest Reserve (as defined therein) to \$22,000,000 (collectively, the "**Commitment Letter**");
- B. The Mortgagor has granted a first ranking mortgage (the "**Mortgage**") to and in favour of the Mortgagee, as mortgagee, of the lands and premises charged therein (the "**Property**"), notice of which was registered on September 15, 2021 in the Land Registry Office for the Land Titles Division of Peel County (No. 43) as Instrument No. PR3909580 to secure the payment of principal, interest and other monies and the performance of all obligations arising under the Mortgage, as amended, modified, supplemented or replaced from time to time;
- C. The parties hereto have agreed to amend certain terms of the Mortgage and the Mortgagor, the Borrower and the Guarantor have agreed to confirm that the Security Documents secure the obligations of the Covenantors to repay the Loan Indebtedness and perform the Loan Obligations contained in the Commitment Letter (including, without limitation, with respect to the \$10,000,000 increase in the Interest Reserve (as defined in the Commitment Letter); and
- D. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Mortgage.

NOW THEREFORE in consideration of the sum of \$2.00 now paid by each of the parties hereto to one another and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Amendments to the Mortgage**

The Mortgage is hereby amended from and after the date hereof as follows:

- (a) the definition of "Maximum Loan Amount" in Section 1(y) of the Mortgage is hereby amended by deleting "\$155,000,000.00" and replacing it with "\$165,000,000.00"; and
- (b) Section 3(d)(iii)(A) is hereby amended by deleting "\$12,000,000.00" and replacing it with "\$22,000,000.00".

2. **Further Assurances**

Each of the parties hereto agree to do such acts and to provide such further assurances as may be reasonably necessary to give full force and effect and to carry out the true intent of this Agreement.

3. **Successors and Assigns**

All of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

4. **Governing Law**

This Agreement shall be interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein.

5. **Confirmation of Security**

Each of the Mortgagor, the Borrower and the Guarantor hereby (a) acknowledges receipt of a copy of this Agreement, (b) confirms to the Mortgagee that it continues to be bound by the Commitment Letter, the Mortgage (as amended by this Agreement) and the other Security to the extent it is a party thereto and that the Mortgage (as amended by this Agreement) and the Security shall continue to exist and apply to all of the Loan Indebtedness and the Loan Obligations in accordance with the terms thereof as amended, in the case of the Mortgage, by this Agreement, and (c) confirms and agrees that for all purposes of the Commitment Letter, the Mortgage and the other Security, any references to the Mortgage shall refer to the Mortgage as amended by this Agreement. Each of the Mortgagor, the Borrower and the Guarantor hereby covenants and agrees that the Commitment Letter, the Mortgage (as amended by this Agreement) and the other Security continue to constitute a legal, valid and binding obligation of the Mortgagor, the Borrower and the Guarantor to the extent it is a party thereto, enforceable against it in accordance with the terms thereof.

6. **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.

-- signatures follow on next page --

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first written above.

688 SOUTHDOWN GP INC.

DocuSigned by:
Per: Michael Moldenhauer
8F28003A738647A...
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

688 SOUTHDOWN GP INC., in its capacity as general partner for an on behalf of 688 SOUTHDOWN LP

DocuSigned by:
Per: Michael Moldenhauer
8F28003A738647A...
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation and limited partnership.

SOUTH SHORE GP INC., in its capacity as general partner for an on behalf of SOUTH SHORE HOLDINGS LP

DocuSigned by:
Per: Michael Moldenhauer
8F28003A738647A...
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation and limited partnership.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first written above.

688 SOUTHDOWN GP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

688 SOUTHDOWN GP INC., in its capacity as general partner for an on behalf of **688 SOUTHDOWN LP**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation and limited partnership.


SOUTH SHORE GP INC., in its capacity as general partner for an on behalf of **SOUTH SHORE HOLDINGS LP**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation and limited partnership.

KINGSETT MORTGAGE CORPORATION

Per:  _____
Bryan Salazar (Jun 15, 2023 11:08 EDT)
Name: Bryan Salazar
Title: Managing Director

Per: _____
Name:
Title:

I/We have authority to bind the corporation.



March 29, 2023

South Shore Holdings LP
2680 Royal Windsor Drive
Mississauga, Ontario
L5J 1K7

Attention: Mr. Michael Moldenhauer

Re: First mortgage acquisition and remediation financing of 688 Southdown Road, Mississauga, ON.

We are pleased to advise that KingSett Mortgage Corporation has approved the following First amendment (the "**First Amendment**") to the commitment letter dated August 19, 2021 (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. 5 is deleted in its entirety and replaced with the following:

5. Loan Amount: \$165,000,000 (the "**Loan Amount**").

- 2. Section A. 12 is deleted in its entirety and replaced with the following:

12. Sources and Uses:

Sources	\$	Uses	\$
KingSett 1 st Mortgage	\$165,000,000	Purchase Price	\$125,000,000
Equity (Cash)	2,500,000	Land Transfer Tax	3,200,000
		Closing Costs / Consultants / Misc.	2,000,000
		Remediation	4,000,000
		Contingency	1,571,733
		Soft Costs	31,728,267
TOTAL	\$167,500,000	TOTAL	\$167,500,000

- 1. Section A. 13 is deleted in its entirety and replaced with the following:

13. Project Budget: The Lender acknowledges that the Borrower will complete environmental remediation of the site which will be funded by the Loan on a cost in place / cost to complete basis. The Lender approved Project Budget shall be no greater than \$167,500,000 (the "**Project Budget**"). 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 by the Borrower.

2. Section A. 15 is deleted in its entirety and replaced with the following:

15. 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 capitalization of a total of \$22,000,000 (the "Interest Reserve"). At such time as the Loan is in 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.

Amendment Fee – \$50,000 fee (the "Amendment Fee") earned by and payable to the Lender upon receipt of the executed First Amendment.

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. Subsequent advances of the Loan Amount shall be made available as of April 1, 2023; and
2. 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 31, 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 31, 2023, along with a cheque for the Amendment Fee in the amount of \$50,000 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

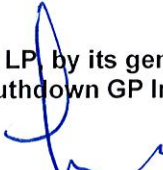


ACKNOWLEDGEMENT

The terms and conditions of this Commitment are hereby acknowledged and agreed to by the Borrower and Guarantors at Mississauga this 29th day of March, 2023.

BORROWER:

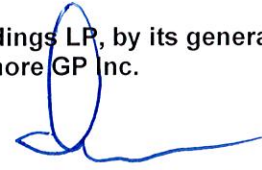
688 Southdown LP, by its general partner, 688 Southdown GP Inc.

Per: 
Name: M. MOLDENHAUS
Title: A.S.O.

I/we have authority to bind the Corporation.

GUARANTOR:

South Shore Holdings LP, by its general partner, South Shore GP Inc.

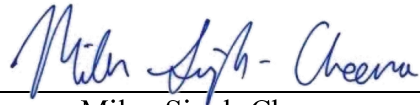
Per: 
Name: M. MOLDENHAUS
Title: A.S.O.

I/we have authority to bind the Corporation.

T A B S



THIS IS **EXHIBIT "S"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH 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 September, 2021.

B E T W E E N:

SOUTH SHORE GP INC., in its capacity as general partner for and on behalf of **SOUTH SHORE HOLDINGS LP**

(the "**Guarantor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Lender**")

OF THE SECOND PART

WHEREAS 688 Southdown GP Inc., in its capacity as general partner for and on behalf of 688 Southdown LP (the "**Mortgagor**"), as mortgagor, has granted a first ranking 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 the Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantor 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 Guarantor, the receipt and adequacy of which is acknowledged by the Guarantor, the 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 Guarantor

The 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) the Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) the Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) the Guarantor has not 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 the Guarantor with all financial and other information and copies of all agreements and documents the 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 the Guarantor incurs under this Guarantee;

- (e) the 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 the 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 the Guarantor incurs under this Guarantee;
- (f) the 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) the 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 the 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 the 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 the 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 the 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 the 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 the Guarantor.

ARTICLE 3 **COVENANTS**

3.1 Covenants

The 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, the Guarantor or any shareholder, unitholder or partner of the Guarantor; and

- (e) that it will not compensate any person who is a sponsor of the Project, including without limitation any of the other Guarantor, 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 the Guarantor

The Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of the 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, the 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 the 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 the Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of the 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 the 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 the Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of the 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 the Guarantor to the extent permitted by applicable law.

3.3 Authorizations

The Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantor and without in any manner affecting any obligation or liability of the Guarantor under this Guarantee or any security furnished to the Lender by the 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, the 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, the 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, the 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, the Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the Lender by the Mortgagor, the 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 the 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, the 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 the 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, the 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, the 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, the 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, the 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 the 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 the 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 the 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, the 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 the 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 the 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 the Guarantor to the Lender.

ARTICLE 4
SUBORDINATION

4.1 Subordination of Indebtedness

The 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 Covenants to the Guarantor, to all of the Loan Indebtedness and the Guarantor assigns and transfers to the Lender every right of the Guarantor relating to the Indebtedness.

4.2 Payment of Indebtedness

Any right of the Guarantor to receive any payment on account of Indebtedness of the Mortgagor and any of the other Covenants to the Guarantor will be subordinated to any right of the Lender to receive any payment of the Loan Indebtedness and the Guarantor shall not:

- (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 Covenants to the 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 Covenants to the Guarantor;
- (c) enforce or apply any security now or hereafter furnished by the Mortgagor and any of the other Covenants to the Guarantor; or
- (d) incur any Indebtedness to or receive any loan, advance or gift from the Mortgagor or any of the other Covenants.

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 Covenants are made to the 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 the 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 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 the 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 Guarantor and at the Guarantor's expense, provide such releases and other documents as the Guarantor 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 the 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 the Guarantor, this Guarantee is deemed to be finally executed and delivered by the 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 the 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 the 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 the 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

The 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 the 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 Guarantor:

1111 Clarkson Road, North
Mississauga, Ontario
L5J 2W1

Attention: Michael Moldenhauer
Email: mm@moldenhauer.ca
Facsimile: 416-637-9633

with a copy to the Guarantor's solicitors at

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

Attention: Sarit Pandya
Email: 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
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 (3rd) 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

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

5.14 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 (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

The 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 Guarantor 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

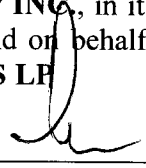
If the Guarantor consists of more than one party, this Agreement will be read with all necessary grammatical changes and each reference to the Guarantor includes each and every such Person or corporation individually. All covenants and agreements herein of the Guarantor are the joint and several covenants and agreements of each such Person or

corporation. 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 the Guarantor has executed this Guarantee as of the date and year first written above.

SOUTH SHORE GP INC., in its capacity as
general partner for and on behalf of **SOUTH
SHORE HOLDINGS LP**

Per: 

Name:
Title:

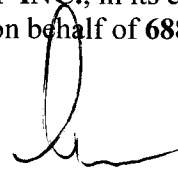
Per: _____
Name:
Title:

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.

688 SOUTHDOWN GP INC., in its capacity as
general partner for and on behalf of **688**
SOUTHDOWN LP



Per: _____
Name:
Title:

Per: _____
Name:
Title:

LIMITED RECOURSE GUARANTEE

THIS GUARANTEE made as of the ____ day of September, 2021.

B E T W E E N:

SOUTH SHORE GP II INC. and SOUTH SHORE HOLDINGS II LP

(collectively, the "**Guarantor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Lender**")

OF THE SECOND PART

WHEREAS 688 Southdown GP Inc., in its capacity as general partner for and on behalf of 688 Southdown LP (the "**Mortgagor**"), as mortgagor, has granted a first ranking 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 0 (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
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
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
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 (3rd) 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.

SOUTH SHORE GP II INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SOUTH SHORE GP II INC., in its capacity as general partner for and on behalf of **SOUTH SHORE HOLDINGS II LP**

Per: _____
Name:
Title:

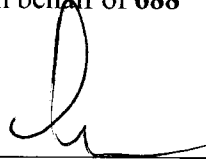
Per: _____
Name:
Title:

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.

688 SOUTHDOWN GP INC., in its capacity as
general partner for and on behalf of **688**
SOUTHDOWN LP

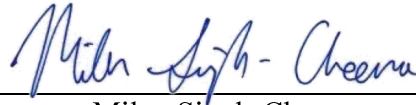
Per: 

Name:
Title:

Per: _____
Name:
Title:

**T
A
B
T**

THIS IS **EXHIBIT "T"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



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

MORTGAGE

688 SOUTHDOWN GP INC., in its capacity as general partner for and on behalf of **688 SOUTHDOWN LP**, 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 \$193,750,000.00 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) "**Budgeted Project Costs**" means the Project Costs as set out in the Project Budget;
 - (c) "**Commitment Letter**" means the mortgage commitment letter dated as of August 19, 2021 between, inter *alios*, the Mortgagor and the Mortgagee, as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time;
 - (d) "**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;
 - (e) "**Construction Completion**" means total completion of the construction of the Project in accordance with the Plans and Specifications 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));
 - (f) "**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;
 - (g) "**Cost Overruns**" means all Project Costs in excess of Budgeted Project Costs (which, for greater certainty, includes any Contingency Amount);
 - (h) "**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;
 - (i) "**Event of Default**" has the meaning ascribed thereto in Section 30;
 - (j) "**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;
 - (k) "**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);

- (l) **"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;
- (a) **"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 Mortgagee 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 Mortgagee. 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;

- (m) **"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;
- (n) **"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;
- (o) **"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 24th month after the Interest Adjustment Date, the RBC Prime Rate plus 6.05% per annum (with a floor rate of 8.50%), 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 25th month after the Interest Adjustment Date and every month thereafter, 14.50% 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;
- (p) **"Lands"** means those lands and premises more particularly described in Schedule "A" attached hereto;

- (q) **"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;
- (r) **"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;
- (s) **"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;
- (t) **"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.
- (u) **"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;
- (v) **"Loan Obligations"** means the obligations from time to time of the Mortgagor or any of the other Covenantors arising under the Loan Documents;
- (w) **"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;
- (x) **"Maturity Date"** means twenty-five (25) months after the Interest Adjustment Date as may be extended in accordance with the Commitment Letter;
- (y) **"Maximum Loan Amount"** means, notwithstanding the Principal Amount, the amount of \$155,000,000.00;
- (z) **"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;

- (aa) **"Mortgagee"** means KingSett Mortgage Corporation;
- (bb) **"Mortgagor"** means 688 Southdown GP Inc., in its capacity as general partner for and on behalf of 688 Southdown LP;
- (cc) **"Other Obligations"** has the meaning ascribed thereto in Section 39;
- (dd) **"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 any 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, which shall include, a second mortgage in the amount of \$20,000,000 (the "**Subordinate Vendor Charge**"), provided by 7037619 CANADA INC. (the "**Vendor**"), under the mechanism determined in the Agreement of Purchase and Sale between South Shore Investment Corp. (the "**Original Purchaser**") and the Vendor dated April 27, 2021, as amended, and as assigned by the Original Purchaser to the Borrower;
- (ee) "**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);
- (ff) "**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 Mortgagee, as amended from time to time with the approval of the Mortgagee;
- (gg) "**Principal Amount**" has the meaning ascribed thereto in the preamble to this Mortgage;
- (hh) "**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;

- (ii) **"Project"** means the acquisition of 688 Southdown Road, being a 91 acre industrial site (80 acres developable) in Mississauga, Ontario, to be remediated through the term of the Loan to accommodate +/- 1,700,000 square feet of Class A industrial buildings, and all landscaping, all plants, machinery, improvements and equipment and all other property whether free standing or otherwise, auxillary or ancillary thereto or connected therewith or added thereto. For greater certainty, the construction and development of such buildings shall not be included in the Project;
- (jj) **"Project Budget"** has the meaning ascribed to such term such term in the Commitment Letter;
- (kk) **"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;
- (ll) **"Project Monitor"** means the project monitor appointed for the Project;
- (mm) **"Property"** means, collectively, the Lands and the Mortgaged Premises;
- (nn) **"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;
- (oo) **"Rents"** means, collectively, all rents, issues and profits now due or to become due under or derived from the Leases and/or the Property;
- (pp) **"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) an assignment of insurance;
 - (vi) a fraud, misrepresentation and environmental indemnity;
 - (vii) an unlimited joint and several guarantee;
 - (viii) a limited recourse guarantee; and
 - (ix) a pledge agreement;in each case as the same may be hereafter amended, modified, supplemented or restated in accordance with the terms thereof.;
- (qq) **"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);
- (rr) **"Statutory Lien"** has the meaning ascribed thereto in Section 1(dd)(i);
- (ss) **"Subordinate Vendor Charge"** has the meaning ascribed thereto in Section 1(dd)(xii);

- (tt) **"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;
- (uu) **"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;
- (vv) **"Title Agreements"** has the meaning ascribed thereto in Section 50;
- (ww) **"Vendor"** has the meaning ascribed thereto in Section 1(dd)(xii);
- (xx) **"Winston Churchill First Mortgage Charge"** means a first charge/mortgage granted by 759 Winston Churchill GP Inc., in its capacity as general partner for and on behalf of 759 Winston Churchill L.P., to and in favour of the Mortgagee which was registered October 1, 2020 in the Land Registry Office for the Land Titles Division of Peel (No. 43) against title to the Winston Churchill Lands as Instrument No. PR3711010;
- (yy) **"Winston Churchill Lands"** means the lands and premises municipally known as 759 Winston Churchill Boulevard, Mississauga, Ontario; and
- (zz) **"Winston Churchill Second Mortgage Charge"** means a second charge/mortgage granted by 759 Winston Churchill GP Inc., in its capacity as general partner for and on behalf of 759 Winston Churchill L.P., to and in favour of the Mortgagee which was registered October 1, 2020 in the Land Registry Office for the Land Titles Division of Peel (No. 43) against title to the Winston Churchill Lands as Instrument No. PR3711012;

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 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 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 \$12,000,000.00;
 - 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 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) there are no rights to renew or extend this Mortgage; and
- (c) 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 for the first twelve (12) months from the date of the initial advance of the Loan if the same occurs on the first calendar day of a month otherwise twelve (12) months from the Interest Adjustment Date (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, subject to a fee of 0.30% of the Maximum Loan Amount multiplied by the number of months remaining prior to the Maturity Date, rounded up to the nearest whole month, with a minimum of thirty (30) days' prior written notice to the Mortgagee.

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 Mortgagee, 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 mortgagee and loss payee as the Mortgagee's 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 complete the construction of the 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 Mortgagor, 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(d) 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 and 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 Covenantors 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 Covenantors 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.

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.

ATTORNMENT

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. 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 breach or failure to perform or observe any of the terms and conditions contained in Section F.1 through Section F.2 inclusive of the Commitment Letter, 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 amendment, extension, renewal, modification, replacement, supplement, or restatement of the Subordinate Vendor Charge or any accompanying security occurs without the prior consent in writing of the Mortgagee;
- (g) the occurrence of an event of default under either the Winston Churchill First Mortgage Charge or the Winston Churchill Second Mortgage Charge which is continuing;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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(j) 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;

- (l) 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;
- (m) 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;
- (n) the Mortgagor does not comply within a reasonable period with any work order issued by a municipal or provincial authority;
- (o) 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;
- (p) 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;
- (q) 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;
- (r) 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;
- (s) if a Material Adverse Effect occurs; or
- (t) 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 32(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 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) Except as disclosed to the Mortgagee prior to the date hereof, 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, except as disclosed to the Mortgagee prior to the date hereof,

- (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) property tax statements supported by proof of payment on a quarterly basis or as otherwise requested by the Mortgagee from time to time;
 - (c) all commercial leases and any and all other agreements related to any of the Rents, income, and profits arising from or in connection with the Property as requested by the Mortgagee from time to time;
 - (d) certified property operating statements, together with a summary of capital expenses at the Property, to the Mortgagee on an annual basis within ninety (90) days of the Mortgagor's fiscal year end 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, financial statements of the Mortgagor and of the Guarantors, 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 hereunto affixed its corporate seal attested to by the duly authorized officers in that behalf this ___ day of September, 2021.

688 SOUTHDOWN GP INC., in its capacity
as general partner for and on behalf of **688**
SOUTHDOWN LP

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE "A"

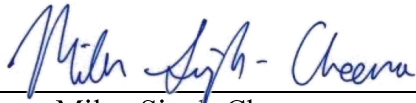
DESCRIPTION OF THE LANDS

PIN: 13493-0044(LT)

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

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THIS IS **EXHIBIT "U"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



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 September, 2021.

B E T W E E N:

688 SOUTHDOWN GP INC., in its capacity as general partner for and on behalf of **688 SOUTHDOWN LP**

(the "**Assignor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Assignee**")

OF THE SECOND PART

WHEREAS the Assignor, as mortgagor, has granted a first ranking 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
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
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
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 (3rd) 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

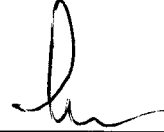
If the Assignor consists of more than one party, this Agreement will be read with all necessary grammatical changes and each reference to the Assignor includes each and every such Person individually. All covenants and agreements herein of the Assignor are the joint and several covenants and agreements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

688 SOUTHDOWN GP INC., in its capacity
as general partner for and on behalf of **688**
SOUTHDOWN LP

Per: _____



Name:

Title:

Per: _____

Name:

Title:

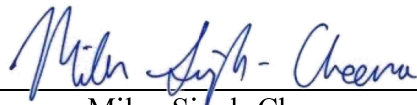
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THIS IS **EXHIBIT "V"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.

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)

ASSIGNMENT OF INSURANCE

THIS AGREEMENT made as of the ____ day of September, 2021.

B E T W E E N:

688 SOUTHDOWN GP INC., in its capacity as general partner for and on behalf of **688 SOUTHDOWN LP**

(the "**Assignor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Assignee**")

OF THE SECOND PART

WHEREAS the Assignor, as mortgagor, has granted a first ranking 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
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
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
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 (3rd) 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

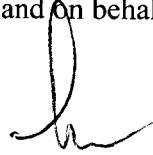
corporation. If the Assignee consists of more than one party, this Agreement will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Assignee under this Agreement.

-- signatures follow on next page --

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date and year first written above.

688 SOUTHDOWN GP INC., in its capacity
as general partner for and on behalf of **688**
SOUTHDOWN LP

Per:



Name:

Title:

Per:

Name:

Title:

SCHEDULE "A"
INSURANCE CERTIFICATE

Please see attached.

This is to certify that the Policy(ies) of insurance listed below ("Policy" or "Policies") have been issued to the Named Insured identified below for the policy period(s) indicated. This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder named below other than those provided by the Policy(ies).

Notwithstanding any requirement, term, or condition of any contract or any other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the Policy(ies) is subject to all the terms, conditions, and exclusions of such Policy(ies). This certificate does not amend, extend, or alter the coverage afforded by the Policy(ies). Limits shown are intended to address contractual obligations of the Named Insured.

Limits may have been reduced since Policy effective date(s) as a result of a claim or claims.

Certificate Holder: KingSett Mortgage Corporation Scotia Plaza, 40 King Street West Suite 3700, PO Box 110 Toronto, ON M5H 3Y2	Named Insured and Address: 688 Southdown LP 1125 Clarkson Rd. North Mississauga, ON L5J 2W1
---	---

This certificate is issued regarding:

Loan No. - Ln5241

688 Southdown Road, Mississauga, ON, L5J 2Y4 - a 91-acre future industrial site (80 acres developable) in Mississauga, ON
 Square Footage: +/- 1,700,000 square feet of Class A industrial buildings

Type(s) of Insurance	Insurer(s)	Policy Number(s)	Effective/Expiry Dates	Sums Insured Or Limits of Liability	
COMMERCIAL GENERAL LIABILITY • Cross Liability • Severability of Interest • Contractual Liability • Primary & Non-Contributory • Waiver of subrogation (only when required by contract)	XL Specialty Insurance Company	BOWCI2151502	Sep 09, 2021 to Sep 09, 2022	Each Occurrence (inclusive of bodily injury and/or property damage)	CDN 5,000,000
				Products & Completed Operations Aggregate	CDN 5,000,000
				Personal & Advertising Injury	CDN 5,000,000
				Non - Owned Auto	CDN 1,000,000
				Tenants Legal Liability	CDN 2,000,000
				Sudden & Accidental Pollution (120 hours)	CDN 5,000,000 Limited Pollution Liability
				Employee Benefits	CDN 2,000,000 any one person employed and in the annual aggregate
				Contingent Employers Liability	CDN 2,000,000 any one employee and in the annual aggregate
				Forest Firefighting Expense	CDN 1,000,000 Aggregate limit
				Deductible	CDN 5,000 Each and every claim except
				Deductible	CDN 10,000 in respect of Fire Fighting Expense (as per Memorandum CGL006)
				Deductible	CDN 1,000 in respect of Tenant's Legal Liability
Deductible	CDN 1,000 in respect of Employee Benefits Liability				

Additional Information:

It is hereby agreed and understood that KingSett Mortgage Corporation is added to the Commercial General Liability Policy as Additional Insured, but only with respect to liability arising out of the operations of the Named Insured.

South Shore Holdings LP is added as Named Insured.

Notice of cancellation:

Should any of the policies described herein be cancelled before the expiration date thereof, the insurer(s) affording coverage will mail 30 days written notice to the certificate holder named herein.

No.: **2021-156-REV-1**

Dated: **September 09, 2021**

This document supersedes any certificate previously issued under this number

Marsh Canada Limited

120 Bremner Boulevard
Suite 800
Toronto, ON M5J 0A8
Telephone: 1-844-990-2378
Fax: (416)-3494518
constructioncertrequests@marsh.com

Marsh Canada Limited

By: 

Brian LeNguyen

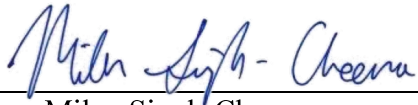
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THIS IS **EXHIBIT "W"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH DAY OF FEBRUARY, 2024.



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 September, 2021.

BETWEEN:

688 SOUTHDOWN GP INC., in its capacity as general partner for and on behalf of **688 SOUTHDOWN LP**

(the "**Grantor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Grantee**")

OF THE SECOND PART

WHEREAS the Grantor, as mortgagor, has granted a first ranking 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 one 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;
- (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) 688 Southdown GP Inc. is the full legal name of the general partner of 688 Southdown LP which is its full legal name. There are no French forms of name or trade names for either 688 Southdown GP Inc. or 688 Southdown LP; 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
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
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
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.

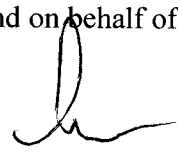
9.21 Multiple Parties

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.

688 SOUTHDOWN GP INC., in its capacity
as general partner for and on behalf of **688**
SOUTHDOWN LP



Per: _____

Name:

Title:

Per: _____

Name:

Title:

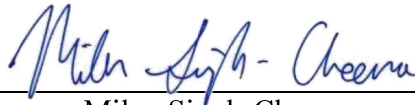
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A

B

X

THIS IS **EXHIBIT "X"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME THIS
12TH 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)

GENERAL ASSIGNMENT OF MATERIAL CONTRACTS

THIS AGREEMENT made as of the ___ day of September, 2021.

B E T W E E N:

688 SOUTHDOWN GP INC., in its capacity as general partner for and on behalf of **688 SOUTHDOWN LP**

(the "**Assignor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Assignee**")

OF THE SECOND PART

WHEREAS the Assignor, as mortgagor, has granted a first ranking 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
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
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
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 (3rd) 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.

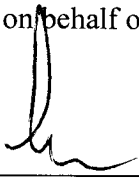
3.17 Multiple Parties

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.

688 SOUTHDOWN GP INC., in its capacity
as general partner for and on behalf of **688**
SOUTHDOWN LP

Per: 

Name:
Title:

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

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

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