

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

MOTION RECORD

October 31, 2016

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

NOTICE OF MOTION

Rosen Goldberg Inc., in its capacity as Court-appointed receiver (the "**Receiver**") of the property, assets and undertaking of 206 Bloor West Limited ("**Bloor**"), will make a motion for directions to a Judge of the Commercial List on Wednesday November 23, 2016 at 10:00 am, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an order:

1. for directions regarding the competing priority claims of Romspen Investment Corporation ("**Romspen**"), a mortgagee, and Linda Paris Rosenberg ("**Rosenberg**"), a judgment

creditor, to a fund of \$350,000 held in the trust account of Dickinson Wright LLP (the "**Fund**") from the proceeds of sale of a condominium unit;

2. declaring that Romspen has priority to the Fund over Rosenberg and directing that the Fund be distributed to Romspen;

3. declaring that Romspen has priority over the proceeds of sale of the penthouse unit owned by 206 and appurtenant parking units and storage locker, once sold;

4. costs of this motion payable by Rosenberg;

5. Such further or other orders and relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Receiver was appointed the receiver of the property, assets and undertaking of Bloor pursuant to the order dated September 27, 2016 of Mr. Justice Newbould (the "**Appointment Order**").

2. Bloor was the developer of a 19 story, 27 unit, residential condominium project known as Museum House (the "**Project**"), located at 206 Bloor Street West, Toronto (the "**Project lands**").

Background to the Claim of Romspen

3. In or about May, 2011, the Project encountered cost overruns and Royal Bank of Canada ("RBC"), the Project lender, was not prepared to make further construction advances to Bloor, unless Bloor obtained additional financing. RBC's project funding was secured, in part, by a \$50 million first ranking mortgage against the Project lands.

4. The Project lands were also encumbered with a second ranking mortgage in the principal sum of \$30 million in favour of Lombard General Insurance Company of Canada ("Lombard"). Lombard provided Bloor with a condominium deposit insurance facility.

5. In May, 2011, Romspen agreed to advance additional, mezzanine funding to the Project. As part of its security, Romspen obtained from Bloor:
 - (i) a Promissory Note in the face amount of \$5 million, dated June 1, 2011, which note was extended by subsequent agreements;

 - (ii) a General Security Agreement dated June 2011;

 - (iii) a third-ranking mortgage over the Project lands ("**Romspen Charge**").

6. The Romspen Charge was granted in 2011 but it was not registered on title until May 15, 2014. The reasons for the delay in registration are:

(i) At RBC's request, Bloor agreed not to register the RBC charge without RBC's consent. Further, RBC required Romspen to subordinate the Romspen Charge in favour of RBC.

(ii) Lombard refused to consent to the registration of the Romspen Charge unless Bloor agreed that approximately \$400,000 from the sale of each condominium unit be held in trust in order to cover Lombard's exposure under the bond it had provided. The terms sought by Lombard were not acceptable to Bloor.

(iii) On January 17, 2013, after the Project was registered as a condominium, Bloor obtained replaced RBC with financing from United Overseas Bank Limited ("UOS") and granted a mortgage against the Project lands in the principal amount of \$10 million to UOS. The UOS mortgage prohibited Bloor from further encumbering the Project land.

(iv) On February 2, 2014, Bloor replaced UOS with financing from Home Trust Company ("**Home Trust**") and granted Home Trust a mortgage against the Project lands in the principal amount of \$4 million.

7. In view of the restrictions imposed by RBC, Lombard and UOS on the registration of the Romspen Charge, the Romspen Charge was not registered on title until May 15, 2014, after Bloor had satisfied its obligations to RBC, Lombard and UOS and their respective mortgages were discharged.

8. Romspen's loan to 206 matured on June 1, 2016 and it was not repaid. Romspen made formal demand on Bloor for repayment and delivered a Notice of Intention to Enforce Security.

9. As at July 1, 2016, the sum of \$12,265,134.34 was due and owing to Romspen by Bloor.

10. The Receiver has reviewed the books and records of the Debtor and has confirmed that between June 2, 2011 and November 13, 2013, the aggregate principal amount of \$4,265,000.00 was advanced under the Romspen Charge. The Receiver has further determined that all of the funds advanced under the Romspen Charge were applied on account of the Project and no distributions were made to the Debtor's shareholders.

11. The Receiver has obtained an opinion from its independent counsel, Battiston and Associates, with respect to the validity and enforceability of the Romspen Charge. Subject to the customary qualifications and limitations contained therein, it is Battiston and Associates' opinion that the Romspen Charge is valid and enforceable security as against Unit 901.

Background to the claim of Rosenberg

12. Pursuant to a Judgment dated June 29, 2016 of Mr. Justice Myers, Bloor was ordered to pay Rosenberg the sum of \$523,750 plus costs in the amount of \$225,000.

13. The Judgment arose from an action concerning the Agreement of Purchase and Sale dated August 16, 2010 ("APS") in respect to Unit 901 at the Project. By the time the action reached summary trial pursuant to motions for summary judgment, the parties to the dispute

were Bloor, as vendor of the unit, and Rosenberg as the purchaser, and concerned the entitlement to the deposit that had been paid by Rosenberg to Bloor.

14. Subsection 4(e) of Schedule A to the APS stipulated that Rosenberg's rights under the APS were subordinated and postponed to any mortgage on the Property arranged by Bloor and to any advances made thereunder.

15. The Judgment has been satisfied in part. On April 13, 2016, Rosenberg received \$494,750 in partial satisfaction. The money was paid from funds held by Miller Thomson LLP as cash collateral security for excess condominium deposit insurance.

16. An additional \$20,000 was received by Rosenberg in late June, 2016, from Tarion Warranty Corporation. What remains owing is the principal sum under the Judgment of \$9,000 and the costs of \$225,000.

17. On May 12, 2016 Rosenberg caused a caution to be registered against the title to Unit 901 at the Project. On June 29, 2016, Mr. Justice Myers ordered that the caution be vacated and that Dickinson Wright LLP hold the Fund in trust from the net proceeds of the sale of Unit 901, pending a determination of entitlement to the Fund. The Fund would otherwise have been payable to Romspen in reduction of its mezzanine loan.

18. The Receiver seeks the Court's determination as to the entitlement to the Fund.

19. The only remaining condominium unit in the Project which has not been sold is the penthouse. There are 3 unsold parking units and storage locker appurtenant to the penthouse. The penthouse unit is partially but not completely finished and is unsaleable in its current state. Romspen is the only mortgagee of the penthouse and the appurtenant parking units and storage locker.

20. The Appointment Order provides that Rosen Goldberg Inc. is a non-possessory receiver; the 206 remains in possession and control and can complete the finishing of the penthouse unit so that it can be sold. If the Fund is adjudged payable to Romspen, it will be advanced to 206 to fund the costs of finishing the penthouse unit so that it can be sold. If the Fund is payable to Rosenberg, the judgment will be satisfied in full.

21. Any determination the Court may make with respect to the Fund should apply equally to the proceeds of sale of the penthouse unit and the appurtenant parking units and storage locker, once sold.

22. Such further or other grounds as counsel may advise and this Honourable Court may permit.

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

1. The First Report of the Receiver dated October 31, 2016 and the appendices thereto.

2. Such further or other materials as counsel may advise and this Honourable Court may permit.

October 31, 2016

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ROMSPEN INVESTMENT CORPORATION
Applicant

-and-

206 BLOOR STREET WEST LIMITED
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO
(COMMERCIAL LIST)

NOTICE OF MOTION

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Tab 2



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-16-11529-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

FIRST REPORT OF ROSEN GOLDBERG INC.

INTRODUCTION

1. By Order of the Honourable Mr. Justice Newbould dated September 27, 2016 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of the Respondent (the “**Debtor**”) pursuant to section 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. A copy of the Appointment Order is attached as **A-ppendix “A”**.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

PURPOSE OF REPORT

2. This Report is being filed for the purpose of seeking directions regarding the competing priority claims of Romspen Investment Corporation ("**Romspen**") and Linda Paris Rosenberg ("**Rosenberg**") to the sum of \$350,000 (the "**Funds**"). The Funds are being held in the trust account of the law firm of Dickinson Wright LLP, from the proceeds of sale of a condominium unit. Romspen is a mortgagee. Rosenberg is a judgment creditor.

3. The factual narrative which should assist the Court in determining the issue of priority is set out below. The Receiver's legal submissions, which support of the view that Romspen has priority over the Funds, will be summarized in the Receiver's factum.

DISCLAIMER AND TERMS OF REFERENCE

4. In preparing this Report, the Receiver has relied upon certain unaudited financial information of the Debtor, including the Debtor's books and records, information obtained from the Debtor's management and other sources (collectively, the "**Information**"). Except as described in this Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

THE PROJECT

5. The Debtor was the developer of a 19 storey, 27 unit residential condominium project known as Museum House (the "**Project**"), which is located at 206 Bloor Street West, in Toronto (the "**Property**").



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING
PROJECT FUNDING

6. In order to finance the development of the Project, the Debtor obtained construction financing from Royal Bank of Canada (“RBC”). RBC’s funding was secured by, among other things, a \$50 million mortgage against the Property (the “RBC Charge”). A copy of the RBC Charge, registered on September 10, 2008, is attached as **Appendix “B”**.

7. Lombard General Insurance Company of Canada (“Lombard”) provided the Debtor with a condominium deposit insurance facility (the “Lombard Bond”), which was secured by a second-ranking mortgage in the principal amount of \$30 million (the “Lombard Charge”).¹ A copy of the Lombard Charge, registered on September 12, 2008, is attached as **Appendix “C”**.

8. In May of 2011 the Project encountered approximately \$3 million in cost overruns and RBC was not prepared to make further advances unless the Debtor obtained additional funding. An excerpt of Report No. 30 as at June 30, 2011, prepared by Altus Group Consulting & Project Management, who acted as RBC’s costs consultant in respect to the Project, which evidences the \$3 million increase in the Project budget, is attached as **Appendix “D”**

9. As a consequence, the Debtor obtained additional, mezzanine funding from Romspen, a non-bank commercial lender, pursuant to a term sheet dated June 1, 2011, a copy of which is attached as **Appendix “E.”**

10. As security for its mezzanine loan, Romspen received from the Debtor:

- (a) a promissory note in the face amount of \$5 million dated June 1, 2011, as extended by agreements dated June 1, 2013, June 1, 2014, and June 1, 2015 (collectively, the “**Promissory Note**”);

¹ Lombard is now Northbridge General Insurance Corporation.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

- (b) a general security agreement dated June 2011 (“GSA”); and
- (c) a third-ranking mortgage over the Property (the “Romspen Charge”).

Copies of the Promissory Note and GSA are attached as **Appendices “F” and “G”**, respectively.

11. The Romspen Charge, although granted in 2011, was not registered until later for the reasons described below. A copy of the Romspen Charge (unregistered) is attached as **Appendix “H”**.

12. Three directors and officers of the Debtor, namely, Sheldon Esbin, Arthur Resnick and Wesley Roitman, are also directors and officers of Romspen. Indirect shareholders of Romspen hold approximately 22% of the shares of the Debtor as a passive investment. The remaining shares of the Debtor are owned directly or indirectly by other business people who have no direct or indirect relationship with Romspen.

13. At RBC’s request, the Debtor agreed not to register the Romspen Charge without RBC’s prior written consent. A copy of the Undertaking given by the Debtor to RBC is attached as **Appendix “I”**. RBC also required that Romspen enter into an Interlender Agreement, pursuant to which Romspen agreed, among other things, to subordinate the Romspen Charge in favour of RBC. A copy of the Interlender Agreement is attached as **Appendix “J”**.

14. Lombard also refused to consent to the registration of the Romspen Charge on terms that were acceptable to the Debtor. Lombard insisted that approximately \$400,000 from the sale of each condominium unit be held in trust in order to cover its exposure under the Lombard Bond. A copy of correspondence from Lombard to the Debtor imposing that term is attached as **Appendix “K”**. As Lombard’s requirement regarding the application of sales proceeds was unacceptable to the Debtor, the registration of the Romspen Charge was deferred.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

15. The Project was registered as Toronto Standard Condominium Corporation No. 2254 on August 14, 2012.

16. On January 17, 2013, the Debtor's unsold inventory was refinanced with a mortgage from United Overseas Bank Limited ("UOB") and in the principal amount of \$10 million to UOB (the "UOB Charge") and the RBC Charge was discharged. A copy of the UOB Charge is attached as **Appendix "L"**. The UOB Charge prohibited the Debtor from further encumbering the Property.

17. The UOB Charge was refinanced on February 28, 2014 with a mortgage from Home Trust Company in the principal amount of \$4 million (the "**Home Trust Charge**"), a copy of which is attached as **Appendix "M"**.

18. The Romspen Charge was not registered until May of 2014, after the Debtor had satisfied its obligations to Lombard and UOB, and the Lombard Charge and the UOB Charge were discharged. A copy of the Romspen Charge registered on May 15, 2014 is attached as **Appendix "N"**. A copy of the parcel register in respect of condominium unit 901 at the Project ("**Unit 901**"), which evidences the dates when the Lombard Charge and the UOB Charge were discharged, is attached as **Appendix "O"**.

ADVANCES AND USE OF PROCEEDS UNDER ROMSPEN CHARGE

19. The Receiver has reviewed the books and records of the Debtor to consider whether funds were in fact advanced to the Debtor under the Romspen Charge and to consider the use of such funds by the Debtor.² It is clear that on the following dates, the following sums were advanced:

² More specifically, the Receiver reviewed the Debtor's bank statements, cheque register and general ledger.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

Dates of Advance	Amount Advanced
June 2 to 6, 2011	\$1,489,719.74
July 5 to 18, 2011	\$1,225,280.26
August 9 to 14, 2012	\$550,000.00
October 25 to November 1, 2013	\$1,000,000.00
Total Principal Advanced	\$4,265,000.00

20. The Receiver further determined that all of the funds advanced under the Romspen Charge were applied on account of the Project and no distributions were made to the Debtor's shareholders. In reviewing the flow of funds, the Receiver noted that during the course of the Project, the Debtor disbursed approximately \$26 million to Yorkville Construction Corporation ("Yorkville"). Yorkville administered many of the Debtor's payables in connection with the Project. The Receiver then reviewed Yorkville's disbursements and confirmed that the funds Yorkville received from the Debtor were applied on account of the Project.

MATURITY AND NON-PAYMENT OF ROMSPEN CHARGE

21. As Romspen's loan to the Debtor matured on June 1, 2016 and was not repaid, on July 19, 2016, Romspen made formal demand for repayment and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the *BIA*. Copies of the demand and Notice of Intention to Enforce Security are attached as **Appendix "P"**.

22. As at July 1, 2006, the sum of \$12,265,138.34 was due and owing to Romspen by the Debtor.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

VALIDITY AND ENFORCEABILITY OF ROMSPEN CHARGE

23. The Receiver has obtained an opinion from its independent counsel, Battiston and Associates, with respect to the validity and enforceability of the Romspen Charge. A copy of the opinion is attached as **Appendix "Q"**.

24. Subject to the customary qualifications and limitations contained therein, it is Battiston and Associates' opinion that the Romspen Charge is valid and enforceable security as against Unit 901.

JUDGMENT IN FAVOUR OF ROSENBERG

25. Pursuant to a Judgment of the Honourable Mr. Justice Myers dated June 29, 2016, the Debtor was ordered to pay Rosenberg the sum of \$523,750, plus costs in the amount of \$225,000 inclusive of disbursements and HST. A copy of the Judgment is attached as **Appendix "R"**. Copies of the reasons of Justice Myers released on January 4, 2016 and His Honour's reasons with respect to costs released on February 10, 2016 are attached as **Appendix "S"**.

26. The Debtor's liability to Rosenberg under the Judgment arose from a dispute regarding a deposit paid under an agreement of purchase and sale in respect Unit 901 between the Debtor, as vendor, and Rosenberg, as purchaser (the "APS"). A copy of the APS is attached as **Appendix "T"**.

27. Subsection 4(e) of Schedule A to the APS provides that Rosenberg's rights under the APS are subordinated and postponed to any mortgages on the Property arranged by the Debtor and any advances made thereunder.

28. The Judgment has been partially but not wholly satisfied. On April 13, 2016, Rosenberg received \$494,750 in partial satisfaction of the Judgment. Prior to being paid, the



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

funds had been held by Miller Thomson LLP as cash collateral security for excess condominium deposit insurance.

29. A further sum of \$20,000 was received by Rosenberg on account of the Judgment from Taron Warranty Corporation in late June of 2016. Accordingly, the principal sum of \$9,000 under the Judgment and the costs award of \$225,000 remain outstanding.

30. On May 12, 2016, Rosenberg caused a Caution to be registered against title to Unit 901.

THE FUNDS AND THE ISSUE OF PRIORITY

31. Pursuant to an endorsement of the Honourable Mr. Justice Myers dated June 29, 2016, the land registrar in Toronto was directed to delete and expunge the Caution and Dickinson Wright LLP was ordered to hold the Funds from the proceeds of sale of Unit 901 (which Funds would otherwise have been payable to Romspen in partial reduction of its mezzanine loan), in trust, pending a determination of entitlement to the Funds. A copy of the endorsement is attached as **Appendix "U"**.

32. Dickinson Wright LLP continues to hold the Funds.

33. The only remaining condominium unit in the Project which has not been sold is the penthouse. There are 3 unsold parking units and storage locker appurtenant to the penthouse.³ The penthouse unit is partially but not completely finished and is unsaleable in its current state. Romspen is the only mortgagee of the penthouse and the appurtenant parking units and storage locker.

³ PINs 76254-0029 (LT), 76254-0030 (LT), 76254-0031 (LT) and 76254-0089 (LT),



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

34. In order to fund the completion of the penthouse unit and stay Rosenberg from executing on the Judgment, Romspen obtained the Appointment Order. The Appointment Order provides that Rosen Goldberg Inc. is a non-possessory receiver; the Debtor remains in possession and control and can complete the finishing of the penthouse unit so that it can be sold.

35. Each of Romspen and Rosenberg appear eager to have the issue of priority over the Funds determined. If the Funds are adjudged payable to Romspen, they will be advanced to the Debtor to fund the costs of finishing the penthouse unit so that it can be sold. If the Funds are payable to Rosenberg, the judgment will be satisfied in full.

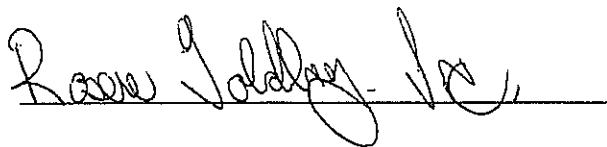
36. The Receiver's legal submissions, which support of the view that Romspen has priority over the Funds, will be summarized in the Receiver's factum.

37. The Receiver anticipates that any determination the Court may make with respect to the Funds will apply equally to the proceeds of sale of the penthouse unit and the appurtenant parking units and storage locker, once sold.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 31st day of October, 2016:

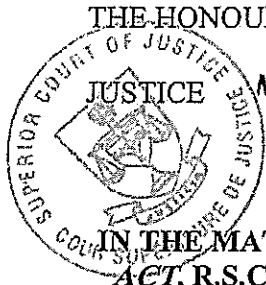
**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF THE ASSETS,
UNDERTAKINGS AND PROPERTIES of 206 BLOOR STREET
WEST LIMITED AND NOT IN A PERSONAL CAPACITY**



APPENDIX “A”

Court File No. CV-16-11529-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.)
JUSTICE NEWBOULD)
)

TUESDAY, THE 27th
DAY OF SEPTEMBER, 2016

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

ORDER

THIS APPLICATION made by Romspen Investment Corporation (the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), appointing Rosen Goldberg Inc. as receiver (in such capacity, the "Receiver") without security, of the assets, undertakings and properties of the Respondent (the

“Debtor”) acquired for, or used in relation to a business carried on by it, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Wesley Roitman sworn September 16, 2016, and the exhibits thereto, and on hearing the submissions of counsel for the Applicant, no one appearing for any other person although duly served as appears from the affidavit of service of Laura Micoli sworn, September 21, 2016 and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “Property”).

RECEIVER’S POWERS

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

- (a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by this Order;

- 3 -

- (b) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (d) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (f) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (g) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (h) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and
- (i) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person. For greater certainty, except to the extent subsequently ordered by this Court, (i) the Receiver is not appointed as manager and shall not take possession or control of the Property or operate the business of the Debtor or employ any of the Debtor's employees, and the Debtor shall remain in possession and control of the Property until and if the Property is sold; and (ii) the Debtor shall remain in possession of and exercise control over any and all proceeds, receipts and disbursements arising out of or from the Property (other than as a result of the sale of all or any portion of the Property by the Receiver).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of the current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

- 5 -

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, the claims of and against the Debtor and the Property in the action in the Ontario Superior Court of Justice, in Court File No. CV-13-491595, in Toronto (the "Deposit Action") shall not be stayed or suspended, without further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,0000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.rosengoldberg.com/company-files.php?company_id=28.

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

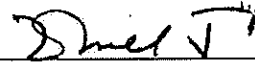
day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estates with such priority and at such time as this Court may determine.
31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

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likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 27 2016

PER / PAR:



- 13 -

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the assets, undertakings and properties 206 Bloor Street West Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 27th day of September, 2016 (the "Order") made in an action having Court file number CV-16-11529-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the ____ day of _____, 20__.

ROSEN GOLDBERG INC., solely in its
capacity as Receiver of the Property, and
not in its personal capacity

Per:

Name:

Title:

ROMSPEN INVESTMENT CORPORATION
Applicant

-and-

206 BLOOR STREET WEST LIMITED
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, Ontario, M5L 1G4

DAVID P. PREGGER
LSUC Registration No. 36870L
Email: dpregger@dickinsonwright.com
Tel: (416) 646-4606
Fax: (416) 865-1398

LISA S. CORNE
LSUC Registration No. 27974M
Email: lcorne@dickinsonwright.com
Tel: (416) 646-4608
Fax: (416) 865-1398

Lawyers for the Applicant

TORONTO 52719-1 1197716v4

APPENDIX “B”

Properties		
<i>Pin</i>	21213 - 0158 LT	<i>Interest/Estate</i> Fee Simple
<i>Description</i>	PART OF LOT 1, WEST OF AVENUE ROAD, PLAN 289 YORK, DESIGNATED AS PART 1, PLAN 66R22283, CITY OF TORONTO. : T/W EASEMENT OVER PART OF LOT 1, WEST OF AVENUE ROAD, PLAN 289 YORK, DESIGNATED AS PART 2, PLAN 66R22283, AS IN EM61712 & CA219983	
<i>Address</i>	206 BLOOR STREET WEST CITY OF TORONTO	

Chargor(s)	
The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.	
<i>Name</i>	206 BLOOR STREET WEST LIMITED
<i>Address for Service</i>	162 Cumberland Street Suite 300 Toronto, Ontario M5R 3N5

I, Jay Borkowsky, President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
<i>Name</i>	ROYAL BANK OF CANADA	
<i>Address for Service</i>	20 King Street West 2nd Floor Toronto, Ontario M5H 1C4	

Provisions			
<i>Principal</i>	\$50,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>			
<i>Balance Due Date</i>	On Demand		
<i>Interest Rate</i>	Prime + 0.75%		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>			
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>	20015		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>			

Signed By			
Dyhaine Lascetta Myrie	2600-200 Bay St., PO Box 185, Royal Bank Plaza, Toronto M5J 2J4	acting for Chargor	Signed 200
Tel	4163606336	(s)	
Fax	4163608425		

Submitted By			
HEENAN BLAIKIE LLP	2600-200 Bay St., PO Box 185, Royal Bank Plaza, Toronto M5J 2J4		200
Tel	4163606336		
Fax	4163608425		

LRO # 80 Charge/Mortgage

Registered as AT1891903 on 2008 09 10 at 14:1

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

yyyy mm dd Page :

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargee Client File Number : 3378-666

APPENDIX “C”

LRO # 80 Charge/Mortgage

Registered as AT1893957 on 2008 09 12 at 12:01

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

yyyy mm dd Page 1 of 3

Properties

PIN 21213 - 0158 LT *Interest/Estate* Fee Simple
Description PART OF LOT 1, WEST OF AVENUE ROAD, PLAN 289 YORK, DESIGNATED AS PART 1, PLAN 66R22283, CITY OF TORONTO.; T/W EASEMENT OVER PART OF LOT 1, WEST OF AVENUE ROAD, PLAN 289 YORK, DESIGNATED AS PART 2, PLAN 66R22283, AS IN EM61712 & CA219983
Address 206 BLOOR STREET WEST
 CITY OF TORONTO

Chargor(s)

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

Name 206 BLOOR STREET WEST LIMITED
Address for Service c/o Esbin Property Management Inc.
 Suite 300, 162 Cumberland Street
 Toronto, ON M5R 3N5

I, JAY BORKOWSKY, President, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name LOMBARD GENERAL INSURANCE COMPANY OF CANADA
Address for Service 105 Adelaide Street West
 Toronto, ON M5H 1P9

Statements

Schedule: See Schedules

Provisions

Principal \$30,000,000.00 *Currency* CDN
Calculation Period see standard charge terms 200501
Balance Due Date on demand
Interest Rate 18.0%
Payments
Interest Adjustment Date
Payment Date see standard charge terms 200501 for all payment provisions
First Payment Date
Last Payment Date
Standard Charge Terms 200501
Insurance Amount full insurable value
Guarantor

Signed By

Susana Piu Yiu Shen 40 King Street West, Suite 5800 acting for Chargor Signed 2008 09 12
 Toronto (s)
 M5H 3S1
 Tel 416-595-8500
 Fax 4165958695

Submitted By

MILLER THOMSON 40 King Street West, Suite 5800 2008 09 12
 Toronto
 M5H 3S1
 Tel 416-595-8500

LRO # 80 Charge/Mortgage

Registered as AT1893957 on 2008 09 12 at 12:01

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

yyyy mm dd Page 2 of 3

Submitted By

Fax 4165958695

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargee Client File Number: LAG/80917.3

PERMITTED ENCUMBRANCES – SCHEDULE "A"

Agreement in favour of The Corporation of the City of Toronto and The Municipality of Metropolitan Toronto registered as Instrument No. EM86167 on January 12, 1972.

Agreement in favour of The Corp. of the City of Toronto and The Municipality of Metropolitan Toronto registered as Instrument No. CT511239 on December 11, 1981.

Notice filed by 206 Bloor Street West Limited registered as Instrument No. AT1293492 on October 30, 2006.

Notice of Agreement between the City of Toronto and 206 Bloor Street West Limited registered as Instrument No. AT1350354 on January 9, 2007.

Charge given by 206 Bloor Street West Limited in favour of HSBC Bank Canada in the amount of \$3,800,000.00 registered as Instrument No. AT1503375 on July 11, 2007, which is to be discharged and paid out from the proceeds of the Royal Bank of Canada mortgage set out below.

Notice of Assignment of Rents General given by 206 Bloor Street West Limited in favour of HSBC Bank Canada registered as Instrument No. AT1503376 on July 11, 2007, which is to be discharged and paid out from the proceeds of the Royal Bank of Canada mortgage set out below.

Charge given by 206 Bloor Street West Limited in favour of the Royal Bank of Canada in the amount of \$50,000,000.00 to be registered concurrently and in priority to the within charge.

General Assignment of Rents given by 206 Bloor Street West Limited in favour of the Royal Bank of Canada to be registered concurrently and in priority to the within charge.

APPENDIX “D”



2 Project Budget, Capital Cost & Cost-to-Complete Summary

2.1 Enclosures

The following schedule(s) are enclosed in the appendices:

- Appendix A: Capital Cost & Cost-to-Complete Summary to June 30, 2011
- Appendix B: Draft Margin Calculation
- Appendix C: Draft Deposit Margin Calculation
- Appendix D: Borrower's Summary of Costs to Date
- Appendix E: Cost-to-Date Reconciliation – Claimed vs. Approved

2.2 Project Budget

2.2.1 Budget Commentary

We have met with the Borrower and based on our review of current documentation and discussions with the Borrower, we have updated our cash flow projections herein and have agreed to increase the project budget by \$3,000,000 to \$67,900,000. The budget contains approximately \$371,000 in development contingencies and approximately \$323,000 in construction contingencies, for a combined contingency of approximately \$694,000, which is ±\$381,000 more than previously reported. The budget increase is mainly attributable to increases to the construction budget for individual line items based on costs incurred to date and approved and anticipated extras, as well as development budget increases for construction management fees based on the agreement with the construction manager, consultant fees, marketing, interest, administration fees and reinstatement of contingency. The remaining contingency of \$694,000 is adequate, however will have to be closely monitored given that there remains approximately ten months until projected completion. Adherence to the schedule, ongoing administration costs, construction change orders and the award of the remaining contracts will have to be closely monitored. Refer to Appendix A for further detail.

We outline a number of the more salient points as follows:

- We are currently carrying a completion date of April 2012. This represents a three month extension beyond the amended Credit Facility Agreement, dated July 24, 2009.
- The construction budget is based on the Altus Group estimate from April 2008 and contracts awarded to date. We refer you to Section 4.
- Land Value is included in the amount of \$8,000,000

2.2.2 Exclusions

The following items are excluded from the project budget of \$67,900,000:

- Interest on equity
- Purchaser upgrades- paid for by purchaser

APPENDIX “E”



Strictly Private & Confidential

June 1, 2011

206 Bloor Street West Limited
 Suite 300
 162 Cumberland Street
 Toronto, Ontario
 M5R 3N5

Attention: Wes Roitman

Dear Wes:

Re: \$3,000,000 Second Mortgage Loan
 206 Bloor Street West, Toronto

Thank you for providing Romspen with the opportunity to consider the above-noted financing. We are pleased to provide you with this term sheet setting out the basic terms of the Loan which we believe will satisfy your requirements. If these terms are acceptable to you, please execute and return this agreement to us.

Terms:

Borrower: 206 Bloor Street West Limited

Lender: Romspen Investment Corporation, In Trust, for certain co-owners of the Borrower.

Security:

1. Promissory note in the principal amount of \$3,000,000;
2. Third-ranking mortgage on the property municipally known as 206 Bloor Street West, Toronto, Ontario (the "Property"), subject only to a first mortgage registered in favour of Royal Bank of Canada in the principal amount of \$50,000,000 and a second mortgage registered in favour of Lombard General Insurance Company of Canada in the principal amount of \$30,000,000;
3. General security agreement creating a next ranking charge in favour of the Lender over the assets of the Borrower;
4. Such other security as may be required by the Lender and/or the Lender's solicitors, acting reasonably.

Amount: \$3,000,000.

Rate: 24% per annum, due upon maturity.

Term: Two (2) years

Privileges: The Borrower may prepay the whole of the principal owing at any time without notice or bonus.

Provided that no event of default has ever occurred, Lender agrees to provide a partial discharge for any individual unit sold, upon receipt on account of principal of 100% of the net sales proceeds resulting from an agreement of purchase and sale to a bona fide third party, such agreement to be approved by Lender. Net sales proceeds is defined as the sale price approved by Lender, less real estate commissions and customary legal fees and disbursements associated with this type of sale transaction, purchaser deposits (provided same have been utilized in construction), prior registered encumbrances, and HST, if applicable.

Additional

Terms: This offer subject to the Lender receiving and being satisfied, in its sole and absolute discretion, with the following:

1. an inspection of the Property;
2. verification of the use of the Property.

Confidentiality: No terms of this term sheet may be disclosed to any third party without the prior written consent of the Lender.

Jurisdiction: The parties agree that this letter agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario.

If you wish to proceed we require the following:

1. An executed copy of this term sheet.

This term sheet may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. Counterparts may be executed either in original or faxed form.

We are enthusiastic about working with you in providing the financing outlined above. If you have any questions, please feel comfortable calling me at any time to discuss them further. We look forward to your early response.

Yours very truly,

Romspen Investment Corporation

Per:



Blake Cassidy
Managing Partner

We hereby agree to the above noted terms.

Dated at Toronto this 1st day of JUNE, 2011.

206 Bloor Street West Limited



Wes Roitman - Director
I have authority to bind the Corporation

APPENDIX “F”

PROMISSORY NOTE

\$ 5,000,000.00 CANADIAN

DATED: June 1, 2011

Toronto, Ontario, Canada

FOR VALUE RECEIVED the undersigned acknowledges itself indebted and agrees to pay to or to the order of ROMSPEN INVESTMENT CORPORATION (the "Lender") ON OR BEFORE June 1, 2013, (the "Maturity Date") at its office at Suite 300, 162 Cumberland Street, Toronto ON M5R 3N5, or at such other place as the Lender may from time to time direct, in lawful money of Canada, the lesser of:

- (a) the principal sum of FIVE MILLION CANADIAN DOLLARS (\$CAN 5,000,000.00); and
- (b) the unpaid principal balance of all advances made by the Lender to or on behalf of the undersigned as recorded by the Lender on the grid on the reverse hereof which advances shall include, without limitation, the principal amount of all letters of credit issued by or on behalf of the Lender at the request of or for the benefit of the undersigned;

together with interest on the outstanding amount thereof from time to time, accruing from and including the date hereof, both before and after demand, default and judgment, at a rate of twenty-four per cent (24%) per annum calculated and compounded yearly. Interest on overdue interest shall be computed and compounded in the same manner and at the same rate as provided for above and shall be payable on demand.

Without in any way limiting or restricting the right of the Lender to demand repayment of any and all amounts owing to the Lender hereunder, the entire outstanding principal amount of this Note together with all interest accrued and unpaid hereon may be declared by the Lender to be immediately due and payable upon the occurrence of any event described as a default or defined as an event of default and the expiry of any applicable cure periods in any of the mortgage, charge, security agreement or other writings provided to Lender as security for this Promissory Note.

Payments of principal and interest shall be made to the Lender, when due, on or before 2:00 o'clock p.m. Eastern Time on any day that the Lender is open for business. Any payments received by the Lender after 1:00 p.m. o'clock Eastern Time on any day shall be deemed to have been made and received by the Lender on the next following day that the Lender is open for business.


All payments of principal and interest hereunder shall be made free and clear of and without deduction for any setoff or counterclaim or other deduction of any nature.

The undersigned waives presentment, demand, protest, notice of protest, dishonour and default and any other notice of any kind with respect to this note or its enforcement and the undersigned also waives any defences based upon indulgences which may be granted by the holder to any party liable hereon.

This Note shall be read with all changes of gender and number as required by the context in each case. Where this Note is executed by more than one person, firm or corporation, the covenants of each hereunder shall be deemed to be joint and several. This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the parties hereto hereby attorn to the jurisdiction of the Province of Ontario; and this Note, together with all rights, entitlements, duties and obligations arising from the same, shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, legal personal representatives, successors and assigns.

206 BLOOR STREET WEST LIMITED

Per:



 Wesley Róitman - Director
 I have authority to bind the Corporation

AUTHORIZATION AND AGREEMENT

The undersigned:

- (a) authorizes any officer or employee of (Lender) (the "Lender") who is also authorized by the Lender for such purpose to record on the grid on the reverse hereof the amount of each advance, to record thereon any payments made on account thereof and to adjust from time to time the balance owing hereunder accordingly; and
- (b) agrees that the amounts recorded on the reverse hereof are prima facie proof of the amount owing hereunder to the Lender.

206 BLOOR STREET WEST LIMITED

Per:



Wesley Roitman - Director
I have authority to bind the Corporation

Agreement Extending Promissory Note

1

THIS AGREEMENT made this 1st day of June, 2013.

BETWEEN:

ROMSPEN INVESTMENT CORPORATION, the "Holder"

- and - **206 BLOOR STREET WEST LIMITED, the "Maker"**

WHEREAS:

By a Promissory Note dated the 1st day of June, 2011, the Maker did jointly and severally promise to pay to the Holder the principal sum of Five Million Dollars (\$5,000,000.00), with interest as therein set out upon the terms therein mentioned, a copy of which Promissory Note is attached hereto;

Notwithstanding that the said Promissory Note as signed, provides that its due date is the 1st day of June, 2013, on this maturity date there is owing on account of principal the sum of Three Million, Two Hundred and Sixty-Five Thousand Dollars (\$3,265,000.00), together with interest thereon at the rate of Twenty-Four, (24%) per cent per annum;

The party signing as the Maker herein has applied for an extension of time for payment of the said sum upon the terms and conditions hereinafter set forth, and the party signing as the Holder herein has agreed thereto.

NOW THEREFORE this Agreement witnesseth as follows:

1. The foregoing recitals are true and correct in each and every regard and shall form part of this Agreement.
2. The Holder, subject to the terms hereinafter set forth, grants and extends to the Maker time for payment of the said principal sum as follows:

THE FINAL PAYMENT OF THE PRINCIPAL SUM SHALL BECOME DUE AND PAYABLE ON THE 1ST DAY OF JUNE, 2014.

THE MAKER in the meantime and until final payment of the principal sum, shall pay interest on the unpaid principal sum at the Twenty-Four (24%) per cent per annum, calculated and compounded monthly, not in advance, both before and after maturity and before and after default. Interest, computed from the 1st day of June, 2011, shall accrue and be paid in full on the extended Maturity Date.

3. ALL OTHER TERMS AND CONDITIONS CONTAINED IN THE PROMISSORY NOTE ARE HEREBY CONFIRMED AND SHALL CONTINUE IN FULL FORCE AND EFFECT, SAVE AS EXPRESSLY AMENDED OR MODIFIED BY THIS AGREEMENT.

4. The Maker hereby covenants with the Lender to pay the said principal sum and interest at the rate and in the manner hereinbefore mentioned, and well and truly to keep, observe, perform and fulfil all the covenants, provisos and agreements in the within Agreement, and Promissory Note contained.

5. It is expressly declared and agreed that if at any time during the extended term the Maker shall make default in payment of the principal and interest secured by the within Agreement and Promissory Note, or any part thereof, or in the performance of any of the covenants contained in the within Agreement and Promissory Note, the extension hereby given shall, if the Maker so elects, become void, and the said principal sum and every part thereof shall become due and payable, and the Maker shall be at liberty to take any proceedings it may see fit for the purpose of enforcing payment of the said principal sum and interest or of the interest only, and performance of the said covenants in like manner as if this Agreement had not been executed.

6. Provided that nothing herein contained shall in any way affect or prejudice the rights of the Holder as against the Maker, or as against any party to the within Agreement and Promissory Note or as against any surety or other person whomsoever for the debt or any part thereof or as against any collateral which the Holder may now or hereafter hold against the debt or any part thereof.

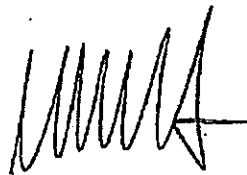
7. In construing this document, the words "Maker" and "Holder" and all personal pronouns shall be read as the number and gender of the party or parties referred to herein requires and all necessary grammatical changes, as the context requires, shall be deemed to be made.

8. The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

IN WITNESS WHEREOF the parties have executed these presents by signing and sealing same as of the day and year first above written.

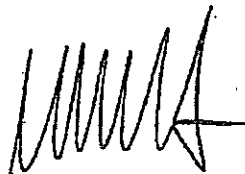
SIGNED, SEALED AND DELIVERED
In the presence of

206 BLOOR STREET WEST LIMITED (Maker)



Per _____
Wes Roitman - Director
I have authority to bind the corporation

ROMSPEN INVESTMENT CORPORATION (Holder)



Per _____
Wes Roitman - Director
I have authority to bind the corporation

COPY

PROMISSORY NOTE

\$ 5,000,000.00 CANADIAN

DATED: June 1, 2011

Toronto, Ontario, Canada

FOR VALUE RECEIVED the undersigned acknowledges itself indebted and agrees to pay to or to the order of ROMSPEN INVESTMENT CORPORATION (the "Lender") ON OR BEFORE June 1, 2013, (the "Maturity Date") at its office at Suite 300, 162 Cumberland Street, Toronto ON M5R 3N5, or at such other place as the Lender may from time to time direct, in lawful money of Canada, the lesser of:

- (a) the principal sum of FIVE MILLION CANADIAN DOLLARS (\$CAN 5,000,000.00); and
- (b) the unpaid principal balance of all advances made by the Lender to or on behalf of the undersigned as recorded by the Lender on the grid on the reverse hereof which advances shall include, without limitation, the principal amount of all letters of credit issued by or on behalf of the Lender at the request of or for the benefit of the undersigned;

together with interest on the outstanding amount thereof from time to time, accruing from and including the date hereof, both before and after demand, default and judgment, at a rate of twenty-four per cent (24%) per annum calculated and compounded yearly. Interest on overdue interest shall be computed and compounded in the same manner and at the same rate as provided for above and shall be payable on demand.

Without in any way limiting or restricting the right of the Lender to demand repayment of any and all amounts owing to the Lender hereunder, the entire outstanding principal amount of this Note together with all interest accrued and unpaid hereon may be declared by the Lender to be immediately due and payable upon the occurrence of any event described as a default or defined as an event of default and the expiry of any applicable cure periods in any of the mortgage, charge, security agreement or other writings provided to Lender as security for this Promissory Note.

Payments of principal and interest shall be made to the Lender, when due, on or before 2:00 o'clock p.m. Eastern Time on any day that the Lender is open for business. Any payments received by the Lender after 1:00 p.m. o'clock Eastern Time on any day shall be deemed to have been made and received by the Lender on the next following day that the Lender is open for business.

All payments of principal and interest hereunder shall be made free and clear of and without deduction for any setoff or counterclaim or other deduction of any nature.

The undersigned waives presentment, demand, protest, notice of protest, dishonour and default and any other notice of any kind with respect to this note or its enforcement and the undersigned also waives any defences based upon indulgences which may be granted by the holder to any party liable hereon.

This Note shall be read with all changes of gender and number as required by the context in each case. Where this Note is executed by more than one person, firm or corporation, the covenants of each hereunder shall be deemed to be joint and several. This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the parties hereto hereby attorn to the jurisdiction of the Province of Ontario; and this Note, together with all rights, entitlements, duties and obligations arising from the same, shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, legal personal representatives, successors and assigns.

206 BLOOR STREET WEST LIMITED

Per:



Wesley Reitman - Director
I have authority to bind the Corporation

AUTHORIZATION AND AGREEMENT

The undersigned:

- (a) authorizes any officer or employee of (Lender) (the "Lender") who is also authorized by the Lender for such purpose to record on the grid on the reverse hereof the amount of each advance, to record thereon any payments made on account thereof and to adjust from time to time the balance owing hereunder accordingly; and
- (b) agrees that the amounts recorded on the reverse hereof are prima facie proof of the amount owing hereunder to the Lender.

206 BLOOR STREET WEST LIMITED

Per:



Wesley Roitman - Director
I have authority to bind the Corporation

Agreement Extending Promissory Note

THIS AGREEMENT made this 1st day of June, 2014.

BETWEEN:

ROMSPEN INVESTMENT CORPORATION, the "Holder"

- and - **206 BLOOR STREET WEST LIMITED, the "Maker"**

WHEREAS:

By a Promissory Note dated the 1st day of June, 2011, the Maker did jointly and severally promise to pay to the Holder the principal sum of Five Million Dollars (\$5,000,000.00), with interest as therein set out upon the terms therein mentioned, a copy of which Promissory Note is attached hereto;

Notwithstanding that the said Promissory Note as signed, provided that its due date was the 1st day of June, 2013, by an Agreement on that date, the Holder subject to the terms therein set forth, granted and extended to the Maker time for repayment of the principal money then owing of Three Million, Two Hundred and Sixty-Five Thousand Dollars (\$3,265,000.00), together with interest thereon at the rate of Twenty-Four (24%) per cent per annum;

Notwithstanding that the said Promissory Note as signed and extended, provides that its due date is the 1st day of June, 2014, on this maturity date there is owing on account of principal the sum of Four Million, Two Hundred and Sixty-Five Thousand Dollars (\$4,265,000.00), together with interest thereon at the rate of Twenty-Four (24%) per cent per annum;

The party signing as the Maker herein has applied for an extension of time for payment of the said sum upon the terms and conditions hereinafter set forth, and the party signing as the Holder herein has agreed thereto.

NOW THEREFORE this Agreement witnesseth as follows:

1. The foregoing recitals are true and correct in each and every regard and shall form part of this Agreement.
2. The Holder, subject to the terms hereinafter set forth, grants and extends to the Maker time for payment of the said principal sum as follows:

THE FINAL PAYMENT OF THE PRINCIPAL SUM SHALL BECOME DUE AND PAYABLE ON THE 1ST DAY OF JUNE, 2015.

THE MAKER in the meantime and until final payment of the principal sum, shall pay interest on the unpaid principal sum at the Twenty-Four (24%) per cent per annum, calculated and compounded monthly, not in advance, both before and after maturity and before and after default. Interest, computed from the 1st day of June, 2011, shall accrue and be paid in full on the extended Maturity Date.

3. ALL OTHER TERMS AND CONDITIONS CONTAINED IN THE PROMISSORY NOTE ARE HEREBY CONFIRMED AND SHALL CONTINUE IN FULL FORCE AND EFFECT, SAVE AS EXPRESSLY AMENDED OR MODIFIED BY THIS AGREEMENT.

4. The Maker hereby covenants with the Lender to pay the said principal sum and interest at the rate and in the manner hereinbefore mentioned, and well and truly to keep, observe, perform and fulfil all the covenants, provisos and agreements in the within Agreement, and Promissory Note contained.

5. It is expressly declared and agreed that if at any time during the extended term the Maker shall make default in payment of the principal and interest secured by the within Agreement and Promissory Note, or any part thereof, or in the performance of any of the covenants contained in the within Agreement and Promissory Note, the extension hereby given shall, if the Maker so elects, become void, and the said principal sum and every part thereof shall become due and payable, and the Maker shall be at liberty to take any proceedings it may see fit for the purpose of enforcing payment of the said principal sum and interest or of the interest only, and performance of the said covenants in like manner as if this Agreement had not been executed.

6. Provided that nothing herein contained shall in any way affect or prejudice the rights of the Holder as against the Maker, or as against any party to the within Agreement and Promissory Note or as against any surety or other person whomsoever for the debt or any part thereof or as against any collateral which the Holder may now or hereafter hold against the debt or any part thereof.

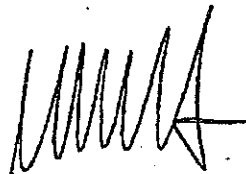
7. In construing this document, the words "Maker" and "Holder" and all personal pronouns shall be read as the number and gender of the party or parties referred to herein requires and all necessary grammatical changes, as the context requires, shall be deemed to be made.

8. The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

IN WITNESS WHEREOF the parties have executed these presents by signing and sealing same as of the day and year first above written.

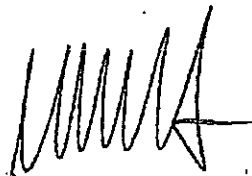
SIGNED, SEALED AND DELIVERED
In the presence of

206 BLOOR STREET WEST LIMITED (Maker)



Per _____
Wes Roitman - Director
I have authority to bind the corporation

ROMSPEN INVESTMENT CORPORATION (Holder)

A handwritten signature in black ink, appearing to be 'Wes Roitman', written in a cursive style.

Per _____
Wes Roitman - Director
I have authority to bind the corporation

COPY

PROMISSORY NOTE

\$ 5,000,000.00 CANADIAN

DATED: June 1, 2011

Toronto, Ontario, Canada

FOR VALUE RECEIVED the undersigned acknowledges itself indebted and agrees to pay to or to the order of ROMSPEN INVESTMENT CORPORATION (the "Lender") ON OR BEFORE June 1, 2013, (the "Maturity Date") at its office at Suite 300, 162 Cumberland Street, Toronto ON M5R 3N5, or at such other place as the Lender may from time to time direct, in lawful money of Canada, the lesser of:

- (a) the principal sum of FIVE MILLION CANADIAN DOLLARS (\$CAN 5,000,000.00); and
- (b) the unpaid principal balance of all advances made by the Lender to or on behalf of the undersigned as recorded by the Lender on the grid on the reverse hereof which advances shall include, without limitation, the principal amount of all letters of credit issued by or on behalf of the Lender at the request of or for the benefit of the undersigned;

together with interest on the outstanding amount thereof from time to time, accruing from and including the date hereof, both before and after demand, default and judgment, at a rate of twenty-four per cent (24%) per annum calculated and compounded yearly. Interest on overdue interest shall be computed and compounded in the same manner and at the same rate as provided for above and shall be payable on demand.

Without in any way limiting or restricting the right of the Lender to demand repayment of any and all amounts owing to the Lender hereunder, the entire outstanding principal amount of this Note together with all interest accrued and unpaid hereon may be declared by the Lender to be immediately due and payable upon the occurrence of any event described as a default or defined as an event of default and the expiry of any applicable cure periods in any of the mortgage, charge, security agreement or other writings provided to Lender as security for this Promissory Note.

Payments of principal and interest shall be made to the Lender, when due, on or before 2:00 o'clock p.m. Eastern Time on any day that the Lender is open for business. Any payments received by the Lender after 1:00 p.m. o'clock Eastern Time on any day shall be deemed to have been made and received by the Lender on the next following day that the Lender is open for business.


All payments of principal and interest hereunder shall be made free and clear of and without deduction for any setoff or counterclaim or other deduction of any nature.

The undersigned waives presentment, demand, protest, notice of protest, dishonour and default and any other notice of any kind with respect to this note or its enforcement and the undersigned also waives any defences based upon indulgences which may be granted by the holder to any party liable hereon.

This Note shall be read with all changes of gender and number as required by the context in each case. Where this Note is executed by more than one person, firm or corporation, the covenants of each hereunder shall be deemed to be joint and several. This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the parties hereto hereby attorn to the jurisdiction of the Province of Ontario; and this Note, together with all rights, entitlements, duties and obligations arising from the same, shall extend to, be binding upon and ensure to the benefit of the parties hereto and their respective heirs, legal personal representatives, successors and assigns.

200 BLOOR STREET WEST LIMITED

Per:


 Wesley Rollman - Director
 I have authority to bind the Corporation.

AUTHORIZATION AND AGREEMENT

The undersigned:

- (a) authorizes any officer or employee of (Lender) (the "Lender") who is also authorized by the Lender for such purpose to record on the grid on the reverse hereof the amount of each advance, to record thereon any payments made on account thereof and to adjust from time to time the balance owing hereunder accordingly; and
- (b) agrees that the amounts recorded on the reverse hereof are prima facie proof of the amount owing hereunder to the Lender.

208 BLOOR STREET WEST LIMITED

Per:



Wesley Roitman - Director
I have authority to bind the Corporation

Agreement Extending Promissory Note (Loan 8107)

1

THIS AGREEMENT made this 1st day of June, 2015.

BETWEEN:

ROMSPEN INVESTMENT CORPORATION, the "Holder"

- and - **206 BLOOR STREET WEST LIMITED, the "Maker"**

WHEREAS:

By a Promissory Note dated the 1st day of June, 2011, the Maker did jointly and severally promise to pay to the Holder the principal sum of Five Million Dollars (\$5,000,000.00), with interest as therein set out upon the terms therein mentioned, a copy of which Promissory Note is attached hereto;

Notwithstanding that the said Promissory Note as signed, provided that its due date was the 1st day of June, 2013, by an Agreement on that date, the Holder subject to the terms therein set forth, granted and extended to the Maker time for repayment of the principal money then owing of Three Million, Two Hundred and Sixty-Five Thousand Dollars (\$3,265,000.00), together with interest thereon at the rate of Twenty-Four (24%) per cent per annum;

Notwithstanding that the said Promissory Note as signed and extended, provided that its due date was the 1st day of June, 2014, by an Agreement on that date, the Holder subject to the terms therein set forth, granted and extended to the Maker time for repayment of the principal money then owing of Four Million, Two Hundred and Sixty-Five Thousand Dollars (\$4,265,000.00), together with interest thereon at the rate of Twenty-Four (24%) per cent per annum;

Notwithstanding that the said Promissory Note as signed and extended, provides that its due date is the 1st day of June, 2015, on this maturity date there is owing on account of principal money Four Million, Two Hundred and Sixty-Five Thousand Dollars (\$4,265,000.00), together with interest thereon at the rate of Twenty-Four (24%) per cent per annum;

The party signing as the Maker herein has applied for an extension of time for payment of the said money upon the terms and conditions hereinafter set forth, and the party signing as the Holder herein has agreed thereto.

NOW THEREFORE this Agreement witnesseth as follows:

1. The foregoing recitals are true and correct in each and every regard and shall form part of this Agreement.
2. The Holder, subject to the terms hereinafter set forth, grants and extends to the Maker time for payment of the said principal money as follows:

THE FINAL PAYMENT OF THE PRINCIPAL MONEY SHALL BECOME DUE AND PAYABLE ON THE 1ST DAY OF JUNE, 2016.

THE MAKER in the meantime and until final payment of the principal money, shall pay interest on the

unpaid principal money at the rate of Twenty-Four (24%) per cent per annum, calculated and compounded monthly, not in advance, both before and after maturity and before and after default. Interest, computed from the 1st day of June, 2011, shall accrue and be paid in full on the extended Maturity Date.

3. ALL OTHER TERMS AND CONDITIONS CONTAINED IN THE PROMISSORY NOTE ARE HEREBY CONFIRMED AND SHALL CONTINUE IN FULL FORCE AND EFFECT, SAVE AS EXPRESSLY AMENDED OR MODIFIED BY THIS AGREEMENT.

4. The Maker hereby covenants with the Lender to pay the said principal money and interest at the rate and in the manner hereinbefore mentioned, and well and truly to keep, observe, perform and fulfil all the covenants, provisos and agreements in the within Agreement, and Promissory Note as extended contained.

5. It is expressly declared and agreed that if at any time during the extended term the Maker shall make default in payment of the principal and interest secured by the within Agreement and Promissory Note as extended, or any part thereof, or in the performance of any of the covenants contained in the within Agreement and Promissory Note as extended, the extension hereby given shall, if the Maker so elects, become void, and the said principal money and every part thereof shall become due and payable, and the Maker shall be at liberty to take any proceedings it may see fit for the purpose of enforcing payment of the said principal money and interest or of the interest only, and performance of the said covenants in like manner as if this Agreement had not been executed.

6. Provided that nothing herein contained shall in any way affect or prejudice the rights of the Holder as against the Maker, or as against any party to the within Agreement and Promissory Note as extended or as against any surety or other person whomsoever for the debt or any part thereof or as against any collateral which the Holder may now or hereafter hold against the debt or any part thereof.

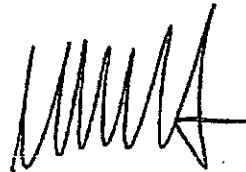
7. In construing this document, the words "Maker" and "Holder" and all personal pronouns shall be read as the number and gender of the party or parties referred to herein requires and all necessary grammatical changes, as the context requires, shall be deemed to be made.

8. The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

IN WITNESS WHEREOF the parties have executed these presents by signing and sealing same as of the day and year first above written.

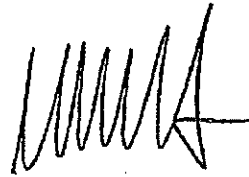
SIGNED, SEALED AND DELIVERED
In the presence of

206 BLOOR STREET WEST LIMITED (Maker)



Per _____
Wes Roitman - Director
I have authority to bind the corporation

ROMSPEN INVESTMENT CORPORATION (Holder)

A handwritten signature in black ink, appearing to read 'Wes Roitman', with a horizontal line extending from the end of the signature.

Per _____
Wes Roitman - Director
I have authority to bind the corporation

APPENDIX “G”

GENERAL SECURITY AGREEMENT**BETWEEN:**

206 BLOOR STREET WEST LIMITED
 (in this agreement called the "Debtor")

OF THE FIRST PART

- and -

ROMSPEN INVESTMENT CORPORATION, as trustee
 (in this agreement called the "Creditor")

OF THE SECOND PART

The Parties do agree as follows:

1. SECURITY INTEREST

This Security Agreement is in addition to and not in substitution for any other security interest or charge now or in the future held by the Creditor from the Debtor or from any other person and shall be general and continuing security for the payment and performance of all indebtedness, liabilities and obligations of the Debtor to the Creditor (including interest thereon), whether incurred prior to, at the time of or after the signing of this Security Agreement including extensions and renewals, and all other liabilities of the Debtor to the Creditor, present and future, absolute or contingent, joint or several, direct or indirect, matured or not, extended or renewed, wherever and however incurred, including all advances on current or running account, promissory notes, future advances and re-advances of any loans or credit by the Creditor and the Debtor's obligation and liability under any contract of guarantee now or in the future in existence, whereby the Debtor guarantees payment of the debts, liabilities and/or obligations of a third party to the Creditor and for the performance of all obligations of the Debtor to the Creditor whether or not contained in this Security Agreement (all of which indebtedness, liabilities and obligations are collectively called the "Obligations").

As security for the payment of all such obligations the Debtor does hereby grant to the Creditor a security interest in the following personal property of the Debtor (the "Collateral") and whether such Collateral is presently owned or is hereafter acquired:

A (i) all office, trade, manufacturing and all other equipment and all goods, including, without limitation, machinery, tools, fixtures, computers, furniture, furnishings, chattels, motor vehicles, trailers, and other tangible personal property that is not inventory, and all parts, components, attachments, accessories, accessions, replacements, substitutions, additions and improvements to any of the above (all of which is collectively called the "Equipment");

(ii) all inventory, including, without limitation, goods acquired or held for sale or lease or furnished or to be furnished under contracts of rental or service, motor vehicles and trailers and all raw materials, work in process, finished goods, returned goods, repossessed goods, and all packaging materials, supplies and containers relating to or used or consumed in

connection with any of the foregoing (all of which is collectively called the "Inventory");

(iii) all debts, accounts, claims, demands, moneys and choses in action which now are, or which may at any time be, due or owing to or owned by the Debtor and all books, records, documents, papers and electronically recorded data recording, evidencing or relating to the debts, accounts, claims, demands, moneys and choses in action (all of which is collectively called the "Accounts");

(iv) all documents of title, chattel paper, instruments, shares, securities and money, and all other personal property of the Debtor that is not Equipment, Inventory or Accounts;

(v) all patents, trade-marks, copyrights, industrial designs, integrated circuit topographies, trade-names, goodwill, confidential information, trade secrets and know-how, including without limitation, software and any registrations and applications for registration of the foregoing and all other intellectual and industrial property of the Debtor (all of which is collectively called the "Intellectual Property");

(vi) all the Debtor's contractual rights, licenses, undertaking and all other choses in action of every kind which now are, or which may at any time be due or owing to or owned by the Debtor, and all other intangible property of the Debtor, that is not Accounts, chattel paper, instruments, documents of title, Intellectual Property, securities or money;

(vii) all other assets and the undertaking of the Debtor and all proceeds of every nature and kind arising from the personal property referred to in this Security Agreement;

B. And as Security for the payment of all the Obligations and forming part of the Collateral, the Debtor grants to the Creditor a general and continuing security interest and charges by way of a floating charge in:

(i) all of the undertaking and assets of the Debtor, of every nature or kind and wherever situate, whether presently owned or hereafter acquired, and all their proceeds, other than its assets and undertakings that are otherwise validly and effectively subject to the charges and security interests in favour of the Creditor created pursuant to Clause 1. A hereof.

2. DISPOSITION IN NORMAL COURSE OF BUSINESS

Until default, the Debtor may use any of the assets subject to the security interest in any lawful manner not inconsistent with this agreement. The Debtor shall not permit the creation of any security interest, lien or claim against any of the assets which will rank in priority to the claim of the Creditor without the express written consent of the Creditor and the creation of such an interest without such consent shall be deemed to be an act of default under the terms of this agreement.

3. INSURANCE

The Debtor shall keep the Collateral insured against loss or damage by fire and such other risks as the Creditor may reasonably require to the full insurable value thereof, and shall either

assign the insurance policies to the Creditor or have the loss thereunder made payable to the Creditor as he may require. At the request of the Creditor such policies shall be delivered to and held by it. Should the Debtor neglect to maintain such insurance, the Creditor may insure, and any premiums paid by it together with interest thereon shall be payable by the Debtor to the Creditor upon demand.

4. EVENTS OF DEFAULT

All obligations and indebtedness of the Debtor to the Creditor shall notwithstanding any time or credit allowed by any instrument or writing of the Creditor, become immediately due and payable without notice or demand upon the occurrence of any of the following events of default:

- (a) Default in payment of any amount due and owing by the Debtor to the Creditor occurs or default occurs under or any other Agreement, debt instrument, mortgage/charge, guarantee promissory note or any other security document of every nature and kind to which the Debtor is subject or has delivered to the Creditor;
- (b) The Debtor becomes insolvent or makes an assignment for the benefit of creditors or proceedings under any bankruptcy or insolvency laws are taken against the Debtor or a receiver or any part of the assets or property of the Debtor is appointed;
- (c) If the debtor is a corporation, if termination of the corporate existence of the Debtor occurs, or the company is dissolved or winding-up occurs or is threatened;
- (d) If the Debtor contravenes any of the provisions or covenants of this Agreement;
- (e) If the Creditor believes in good faith that the prospect of payment of the indebtedness or performance of any of the Debtor's obligations is impaired or that the collateral is in danger of being lost, damaged or confiscated;
- (f) If the Debtor or a guarantor of the Debtor ceases or threatens to cease to carry on all or a substantial part of its business or makes or threatens to make a sale of all or substantially all of its assets;
- (g) If distress or execution is levied or issued against all or any part of the assets or property of the Debtor.

5. RIGHTS AND REMEDIES ON DEFAULT

5.1 Upon any default under this Security Agreement the Creditor may declare any or all of the Obligations whether or not payable on demand to become immediately due and payable and the Security Interests will immediately become enforceable. To enforce and realize on the Security Interests the Creditor may take any action permitted by law or in equity as it may deem expedient and in particular, without limitation, the Creditor may do any of the following:

- (a) appoint by instrument a receiver, manager, receiver and manager or receiver manager (the "Receiver") of all or any part of the Collateral, with or without bond as the Creditor may determine, and in its absolute discretion remove such Receiver and appoint another in its stead;
- (b) enter upon any of the Debtor's premises at any time and take possession of the Collateral with power to exclude the Debtor, its agents and its servants, without becoming liable as a mortgagee in possession;
- (c) preserve, protect and maintain the Collateral and make such replacements and repairs and additions to the Collateral as the Creditor deems advisable;
- (d) dispose of all or part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained and on such terms as

to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Creditor may seem reasonable, provided that if any sale, lease or other disposition is on credit the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies are actually received;

(e) register assignments of the Intellectual Property, and use sell, assign, license or sub-license any of the Intellectual Property; and

(f) exercise all of the rights and remedies of a secured party under the *Personal Property Security Act (Ontario)* and *The Bankruptcy and Insolvency Act (Canada)* and any other applicable laws.

5.2 A Receiver appointed pursuant to this Security Agreement insofar as responsibility for its actions is concerned shall be the agent of the Debtor and not of the Creditor and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Creditor under this Security Agreement, and in addition shall have power to:

- a) carry on the Debtor's business and for such purpose from time to time to borrow money either secured or unsecured, and if secured by granting a security interest on the Collateral, such security interest may rank before or on an equal basis with or behind any of the Security Interests and if it does not so specify such security interest shall rank in priority to the Security Interests; and
- b) make an assignment for the benefit of the Debtor's creditors or a proposal on behalf of the Debtor under the *Bankruptcy and Insolvency Act (Canada)*; and
- c) commence, continue or defend proceedings in the name of the Receiver or in the name of the Debtor for the purpose of protecting, seizing, collecting, realizing or obtaining possession of or payment for the Collateral; and
- d) make any arrangement or compromise that the Receiver deems expedient.

5.3 Subject to the claims, if any, of the creditors of the Debtor ranking in priority to this Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this Security Agreement will be applied as the Creditor, in its absolute discretion and to the full extent permitted by law, may direct as follows:

A) in payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and its own client basis) incurred by the Creditor respecting or incidental to:

(i) the exercise by the Creditor of the rights and powers granted to it by this Security Agreement; and

(ii) the appointment of the Receiver and the exercise by the Receiver of the powers granted to it by this Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

B) in or toward payment to the Creditor of all principal and other monies (except interest) due in respect of the Obligations;

C) in or toward payment to the Creditor of all interest remaining unpaid respecting the Obligations; and

D) in payment to those parties entitled thereto by the applicable legislation or by common law;

6. GENERAL PROVISIONS PROTECTING THE CREDITOR

6.1 To the full extent permitted by law, the Creditor shall not be liable for any debts contracted by it during enforcement of this Security Agreement, for damages to persons or property or for salaries or non-fulfillment of contracts during any period when the Creditor shall manage the Collateral upon entry or seizure, nor shall the Creditor be liable to account as a mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Creditor shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Creditor, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Creditor be obliged to keep any of the Collateral identifiable. To the full extent permitted by law, the Debtor waives any provision of law permitted to be waived by it which imposes greater obligations upon the Creditor than described above.

6.2 Neither the Creditor nor any Receiver appointed by it shall be liable or accountable for any failure to seize, collect, realize, sell or obtain payments for the Collateral nor shall they be bound to institute proceedings for the purposes of seizing, collecting, realizing or obtaining payment or possession of the Collateral or the preserving of any right of the Creditor, the Debtor or any other party respecting the Collateral. The Creditor shall also not be liable for any misconduct, negligence, misfeasance by the Creditor, the Receiver or any employee or agent of the Creditor or the Receiver, or for the exercise of the rights and remedies conferred upon the Creditor or the Receiver by this Security Agreement.

6.3 The Creditor or any Receiver appointed by it may grant extensions of time and other indulgences, take and give securities, accept compromises, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the debtors of the Debtor, co-obligants, guarantors and others and with the Collateral and other securities as the Creditor may see fit without liability to the Creditor and without prejudice to the Creditor's rights respecting the Obligations or the creditor's right to hold and realize the Collateral.

6.4 The Creditor in its sole discretion may realize upon any other security provided by the Debtor in any order or concurrently with the realization under this Security Agreement whether such security is held by it at the date of this Security Agreement or is provided at any time in the future. No realization or exercise of any power or right under this Security Agreement or under any other security shall prejudice any further realization or exercise until all Obligations have been fully paid and satisfied.

6.5 Any right of the Creditor and any obligation of the Debtor arising under any other agreements between the Creditor and the Debtor shall survive the signing, registration and advancement of any money under this Security Agreement, and no merger respecting any such right or obligation shall occur by reason of this Security Agreement.

6.6 In the event that the Creditor registers a notice of assignment of Intellectual Property the Debtor shall be responsible for and shall indemnify the Creditor against all maintenance and renewal costs in respect thereof, and any costs of initiating or defending litigation, together with

all costs, liabilities and damages related thereto.

6.7 Notwithstanding any taking of possession of the Collateral, or any other action which the Creditor or the Receiver may take, the Debtor now covenants and agrees with the Creditor that

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if the money realized upon any disposition of the Collateral is insufficient to pay and satisfy the whole of the Obligations due to the Creditor at the time of such disposition, the Debtor shall immediately pay to the Creditor an amount equal to the deficiency between the amount of the Obligations and the sum of money realized upon the disposition of the Collateral, and the Debtor agrees that the Creditor may bring action against the Debtor for payment of the deficiency, notwithstanding any defects or irregularities of the Creditor or the Receiver in enforcing its rights under this Security Agreement

7. APPOINTMENT OF ATTORNEY


The Debtor hereby irrevocably appoints the Creditor or the Receiver, as the case may be, with full power of substitution, as the attorney of the Debtor for and in the name of the Debtor to do, make, sign, endorse or execute under seal or otherwise all deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do everything necessary or incidental to the exercise of all or any of the powers conferred on the Creditor, or the Receiver, as the case may be, pursuant to this Security Agreement.

8. GENERAL

- (a) The Creditor shall not be deemed to have waived any of the Creditor rights hereunder or under any other agreement unless such waiver be in writing and signed by the Creditor. No delay or omission on the part of the Creditor in exercising any right shall operate as a waiver of such right or any other right.
- (b) All costs and expenses of the Creditor relating to the execution and enforcement of this Agreement including, without limiting the generality of the foregoing, legal costs (on a solicitor and client basis), lost interest, collection costs, trustee fees and any and all other costs and expenses of whatever nature whatsoever shall be for the account of and paid for by the Debtor.
- (c) This Agreement shall be governed by the laws of the Province of Ontario.
- (d) Time shall be of the essence of this agreement.
- (e) This Security Agreement shall enure to the benefit of the Creditor and its successors and assigns, and shall be binding upon the Debtor and its successors and any assigns permitted by the Creditor, as the case may be.

DATED this day of June, 2011

206 BLOOR STREET WEST LIMITED

Per: 

Wesley Roitman - President

I have authority to bind the Corporation

APPENDIX “H”

ACKNOWLEDGEMENT AND DIRECTION

TO: Paul Muchnik
(Insert lawyer's name)

AND TO: CASSELS BROCK & BLACKWELL LLP
(Insert firm name)

RE: Charge/Mortgage to Romspen Investment Corporation - 208 Bloor Street West, Toronto, ON (the transaction)
(Insert brief description of transaction)

This will confirm that:

- I/We have reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the "Documents"), and that this information is accurate;
- You, your agent or employee are authorized and directed to sign, deliver, and/or register electronically, on my/our behalf the Documents in the form attached.
- You are hereby authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto being a copy of the version of the Document Registration Agreement, which appears on the website of the Law Society of Upper Canada as of the date of the Agreement of Purchase and Sale herein. I/We hereby acknowledge the said Agreement has been reviewed by me/us and that I/We shall be bound by its terms;
- The effect of the Documents has been fully explained to me/us, and I/We understand that I/We are parties to and bound by the terms and provisions of the Documents to the same extent as if I/We had signed them; and
- I/We are in fact the parties named in the Documents and I/We have not misrepresented our identities to you.
- I, _____, am the spouse of _____ the (Transferor/Chargor), and hereby consent to the transaction described in the Acknowledgment and Direction. I authorize you to indicate my consent on all the Documents for which it is required.

DESCRIPTION OF ELECTRONIC DOCUMENTS

The Document(s) described in the Acknowledgement and Direction are the document(s) selected below which are attached hereto as "Document in Preparation" and are:

- A Transfer of the land described above.
- A Charge of the land described above.
- Other documents set out in Schedule "B" attached hereto.

Dated at TORONTO, this _____ day of June, 2010.

WITNESS

(As to all signatures, if required)

208 BLOOR STREET WEST LIMITED

PER: 

Wesley Roitman, Director

I have authority to bind the Corporation

LRO # 80 Charge/Mortgage

In preparation on 2011 08 22 at 15:35

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

Properties

PIN 21213 - 0158 LT *Interest/Estate Fee Simple*

Description PART OF LOT 1, WEST OF AVENUE ROAD, PLAN 288 YORK, DESIGNATED AS PART 1, PLAN 68R22283; T/W EASEMENT OVER PART OF LOT 1, WEST OF AVENUE ROAD, PLAN 288 YORK, DESIGNATED AS PART 2, PLAN 68R22283, AS IN EM81712 & CA219983 SUBJECT TO AN EASEMENT OVER PART 1 ON PLAN 68R22283 IN FAVOUR OF ROGERS CABLE COMMUNICATIONS INC. AS IN AT2296458 CITY OF TORONTO

Address 208 BLOOR STREET WEST
TORONTO

Chargor(s)

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

Name 208 BLOOR STREET WEST LIMITED
Acting as a company

Address for Service 300-162 Cumberland Street
Toronto, Ontario
M5R 3N5

I, Wesley Rollman, Director, have the authority to bind the corporation.

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

Chargee(s)*Capacity**Share*

Name ROMSPEN INVESTMENT CORPORATION
Acting as a company

Address for Service 300-162 Cumberland Street
Toronto, Ontario
M5R 3N5

Statements

Schedule: See Schedules

Provisions

Principal \$ 5,000,000.00 *Currency* CDN

Calculation Period

Balance Due Date 2013/06/01

Interest Rate 24% per annum, due on maturity

Payments

Interest Adjustment Date 2011 08 01

Payment Date 1st day of each month

First Payment Date 2011 07 01

Last Payment Date 2013 06 01

Standard Charge Terms ATTACHED

Insurance Amount full insurable value

Guarantor

File Number

Chargee Client File Number: 43258-3

SCHEDULE "A"

COLLATERAL CHARGE/MORTGAGE

- A) This Mortgage/Charge is given as Collateral security for the due and punctual performance and payment to the Mortgagee/Chargee, whether at stated maturity by acceleration or otherwise, of all obligations, debts and monies now owing or existing, or becoming due or arising in the future, of every nature and kind, of the Mortgagee/Chargee to the Mortgagee/Chargee, under or pursuant to all and any Mortgage Commitment, Loan Agreement, Promissory Note, Guarantee, Charge, Mortgage, Security Agreement, Hypothec, Deed of Loan, or any other indenture, agreement or document of every nature and kind and whether same was entered into prior to the date hereof, contemporaneous herewith or is entered into in the future (collectively a "Security Document") and whether arising by virtue of a loan made directly by the Mortgagee/Chargee to the Mortgagee/Chargee or by virtue of any assignment or transfer of any debt or Security Document assigned or transferred to the Mortgagee/Chargee from a third party, or by guarantee of the debts and obligations of another and whether such obligations or debts are for principal, interest, bonus, fees, expenses, indemnity or otherwise, and any and all out-of-pocket expenses (including legal fees and disbursements on a substantial indemnity basis) incurred by the Mortgagee/Chargee in enforcing any of its rights under this Mortgage/Charge or any Security Document.
- B) In addition to the Events of Default described in Article 33 of the Standard Charge Terms and Conditions contained in Schedule B, any default, including, without limitation, any failure to pay any monies, as and when due, under or pursuant to any Security Document (as previously defined herein) or any breach or failure to completely perform any term, condition or obligation under or pursuant to such Security Document, shall constitute an event of Default under this Charge/Mortgage.
- C) This Charge/Mortgage shall also be subject to and shall include the Standard Charge Terms and Conditions contained in Schedule B hereof.

SCHEDULE "B"

STANDARD CHARGE TERMS AND CONDITIONS

1. DEFINED TERMS

Unless otherwise expressly defined or otherwise required by the context, the following words and phrases shall have the following meanings when used in the Charge:

- 1.1 "Borrower" means all Persons who have given the Charge and who have executed the same as Borrower;
- 1.2 "Charge" means the Charge/Mortgage of Land and all schedules attached to the Charge and all amendments thereto and replacements thereof from time to time;
- 1.3 "Costs" includes all costs, fees, charges and expenses of every nature and kind whatsoever incurred by the Lender or paid by the Lender to any other party in connection with the protection and preservation of the Property or any other security held by the Lender, or for the purpose of preserving and maintaining the enforceability and priority of the Charge and any such other security, or in connection with any and all demands and enforcement proceedings of every nature and kind made or carried out by or on behalf of the Lender under or pursuant to the Charge, and includes, without limitation, legal costs incurred by the Lender on a full indemnity basis;
- 1.4 "Commitment" means each and every letter of commitment, loan approval, term sheet or other similar agreement establishing or pertaining to the loan secured by the Charge or pursuant to which the Charge has been given, and all amendments thereto and renewals or replacements thereof from time to time;
- 1.5 "Condominium Corporation" means each corporation created or continued pursuant to the Condominium Act, 1998 (Ontario) and pertaining to all or any part of the Property which are governed by the said Act;

- 1.6 "Covenantor" means any party to the Charge expressly defined as such and any and all Persons who have directly, indirectly, as principal debtor or as surety covenanted to pay or guaranteed payment of the whole or any part of the amount or amounts secured by the Charge or which are owing under the loan facilities referred to in this Commitment or who have covenanted to perform or guaranteed performance by the Borrower of its obligations under the Charge or under this Commitment or under any security given in connection therewith;
- 1.7 "Environmental Laws" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable directives, orders, codes, judgments and decrees of Governmental Bodies, whether now in existence or hereafter arising, intended to regulate and/or protect the environment and/or any living thing and/or relating to Hazardous Substances;
- 1.8 "Governmental Body" means any government, parliament, legislature, or any regulatory authority, bureau, bureau, tribunal, department, instrumentality, agency, commission or board of any government, parliament or legislature, or any court, and without limiting the foregoing, any other law, regulation or rule-making entity having or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator) and "Governmental Bodies" means any one or more of the foregoing collectively;
- 1.9 "Hazardous Substance" means any hazardous or dangerous waste or substance, pollutant, contaminant, waste or other substance without limitation, whether solid, liquid or gaseous in form, which when released into the natural environment may, based upon reasonably authoritative information then available concerning such substance, immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing,
- 1.9.1 any such substance as defined or designated under any Environmental Law;
- 1.9.2 asbestos, urea formaldehyde, poly-chlorinated biphenyl (PCB) and materials manufactured with or containing the same; and,
- 1.9.3 radioactive and toxic substances;
- and "Hazardous Substances" means any one or more of the foregoing collectively;
- 1.10 "Lender" means all Persons in whose favour the Charge is given and who is or are named in the Charge as Lender;
- 1.11 "Person" means an individual, sole proprietorship, partnership, joint venture, syndicate, association, trust, body corporate, a natural person in its capacity as trustee, personal representative or other legal representative, the Crown or any agency or instrumentality thereof, and/or any other entity recognized by law;
- 1.12 "Property" means the Property, tenements, hereditaments and appurtenances and any estate or interest therein described in the Charge, and all buildings and improvements now or hereafter situate or constructed thereon, and all easements, rights-of-way and other appurtenances thereto, and all structures, additions, improvements, machinery, equipment, decorations and other fixtures of every nature and kind (whether or not affixed to land) attached thereto or placed, installed or erected thereon or used in connection therewith;
- 1.13 "Receiver" means any receiver, receiver and manager, receiver-manager or trustee of the Property as may be appointed from time to time by the Lender pursuant to the provisions of the Charge or by any court of competent jurisdiction;
- 1.14 "Taxes" means all taxes, rates, assessments, local improvement charges, levies, penalties and other charges imposed upon or in respect of the Property by any Governmental Body having jurisdiction.

2. STATUTORY REFERENCES

Unless expressly stipulated or otherwise required by the context, all references in the Charge to any federal, provincial or municipal statute, regulation, by-law, order, directive or other governmental enactment shall be deemed to be and construed as a reference to the same as amended or re-enacted from time to time.

3. EXCLUSION OF STATUTORY COVENANTS

The implied covenants deemed to be included in a charge under sub-section 7(1) of the Land Registration Reform Act (Ontario) shall be and are hereby expressly excluded and replaced by the terms hereof which are covenants by the Borrower, for and on behalf of the Borrower, with the Lender.

4. **SHORT FORMS OF MORTGAGE ACT**

If any of the forms of words contained herein are substantially in the form of words contained in Column One of Schedule B of the *Short Forms of Mortgages Act*, R.S.O. 1980, c. 474, and distinguished by a number therein, the Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act, distinguished by the same number, and the Charge shall be interpreted as if the said Act was still in full force and effect.

5. **PROVISO FOR REDEMPTION**

Provided the Charge to be void upon payment of the principal sum hereby secured, in lawful money of Canada, with interest as herein provided and taxes and performance of statute labour and performance of all covenants and agreements contained in the Charge.

6. **RELEASE**

And the Borrower releases to the Lender all its claims upon the Property subject to the proviso for redemption herein.

7. **ADVANCE OF FUNDS**

The Borrower agrees that neither the preparation, execution nor registration of the Charge shall bind the Lender to advance the monies hereby secured, nor shall the advance of a part of the principal sum herein bind the Lender to advance any unadvanced portion thereof, but nevertheless the estate hereby charged shall take effect forthwith upon the execution of the Charge by the Borrower, and the expenses of the acquisition of the title and of the Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum herein not being advanced, the same to be charged hereby upon the Property, and shall be without demand thereof, payable forthwith with interest at the rate provided for in the Charge, and in default the remedies herein shall be exercisable.

8. **BORROWER'S COVENANTS**

The Borrower covenants with the Lender that the Borrower will pay the principal sum herein and interest and observe the proviso for redemption herein, and will pay as they fall due all Taxes and when required by the Lender, shall transmit the receipts therefore to the Lender;

The Borrower further covenants with the Lender that the Borrower will pay all amounts which are payable hereunder or which are capable of being added to the principal sum herein pursuant to the provisions of the Charge including, without limiting the generality of the foregoing, all servicing or other fees, costs or charges provided for herein; all insurance premiums; the amount paid for the supply of any fuel or utilities in the Property; all costs, commissions, fees and disbursements incurred by the Lender in constructing, inspecting, appraising, selling, managing, repairing or maintaining the Property; all Costs incurred by the Lender with respect to the Charge or incurred by the Lender arising out of or in any way related to the Charge; any amounts paid by the Lender on account of any encumbrance, lien or charge against the Property and any and all Costs incurred by the Lender arising out of, or in any way related to, the Lender realizing on its security by sale or lease or otherwise;

And that the Borrower has a good title in fee simple to the Property and has good right, full power and lawful and absolute authority to charge the Property and to give the Charge to the Lender upon the covenants contained in the Charge;

And that the Borrower has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Property, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose; and free from all encumbrances except as may be permitted by the Lender;

And that the Borrower will execute such further assurances of the Property as may be requisite;

And that the Borrower will produce the title deeds and allow copies to be made at the expense of the Borrower.

9. **COMPLIANCE WITH LAWS AND REGULATIONS**

The Borrower shall, in its ownership, operation and use of the Property, promptly and at all times observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every Governmental Body having jurisdiction with respect to the same, and further agrees at its cost and expense to take any and all steps or make any improvements or alterations thereto, structural or otherwise, ordinary or extraordinary, which may

be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances or regulations.

10. CHANGE OF USE

The Borrower will not change or permit to be changed the existing use or uses of the Property without the prior written consent of the Lender.

11. REPAIR

The Borrower will keep the Property including the buildings, erections and improvements thereon in good condition and repair according to the nature and description thereof, and the Lender may, whenever it deems necessary, enter upon and inspect the Property, and the cost of such inspection shall be added to the indebtedness secured hereunder, and if the Borrower neglects to keep the Property in good condition and repair, or commits or permits any act of waste on the Property (as to which the Lender shall be sole judge) or makes default as to any of the covenants or provisions herein contained, the principal sum herein shall, at the option of the Lender, forthwith become due and payable, and in default of payment thereof with interest as in the case of payment before maturity, the powers of entering upon and leasing or selling hereby given may be exercised forthwith and the Lender, upon five days notice to the Borrower and in the event that the Borrower does not in such period cause and diligently proceed with such repairs, may make such repairs as it deems necessary, and the cost thereof with interest at the rate aforesaid shall be added to the monies hereby secured and shall be payable forthwith and be a charge upon the Property prior to all claims thereon subsequent to the Charge.

12. ALTERATIONS OR ADDITIONS

The Borrower will not make or permit to be made any alterations or additions to the Property without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion or may be given only subject to compliance with such terms and conditions at the cost of the Borrower as the Lender may impose.

13. PROPERTY INCLUDE ALL ADDITIONS

The Property shall include all structures and installations brought or placed on the Property for the particular use and enjoyment thereof or as an integral part of or especially adapted for the buildings thereon whether or not attached in law to the Property including, without limiting the generality of the foregoing, piping, plumbing, electrical equipment or systems, service, refrigerators, stoves, clothes washers and dryers, dishwashers, refrigerators, radiators and covers, fixed mirrors, fixed blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment, cooking and refrigeration equipment and all component parts of any of the foregoing and that the same shall become fixtures and an accession to the freehold and a part of the realty.

14. ENVIRONMENTAL WARRANTY AND SILENCE

The Borrower and each Covenanter jointly and severally represent, warrant, covenant and agree that:

- 14.1. They have not, and to the best of their knowledge, information and belief after making due inquiry, no other Person has caused or permitted any Hazardous Substance to be placed, discharged, stored, located or disposed of, on, under, at or near the Property nor to be released from the Property;
- 14.2. The Property have never been used as a land fill site, waste disposal site or coal gasification site, or to store Hazardous Substances either above or below ground in storage tanks, pipes, conduits or otherwise;
- 14.3. They and, to the best of their knowledge, information and belief after making due inquiry, the tenants, invitees and all other occupiers of the Property have at all times carried out all business and other activities upon the Property in strict compliance with all Environmental Laws;
- 14.4. They will at all times carry out all business and other activities upon the Property in strict compliance with all Environmental Laws, and they will at all times take all necessary measures to ensure that those for whom they are liable in law will also at all times carry out all business and other activities upon the Property in strict compliance with all Environmental Laws.
- 14.5. To the best of their knowledge, information and belief after making due inquiry, the use and occupation of the Property have at all times been in strict compliance with all Environmental Laws;

- 14.6. No notice, order, stop work order, inspection file, investigation, directive, enforcement action, regulatory action, suit, claim, action, proceeding or charge relating to any Hazardous Substance or to a breach or non-compliance with any Environmental Laws has been issued by any Governmental Body with respect to the Borrower or the Property, or is otherwise threatened to be issued;
- 14.7. They will provide the Lender with full and complete copies of all communications received from time to time from all Governmental Bodies with respect to the Property;
- 14.8. They will provide to the Lender on request and from time to time, information with respect to the status of the environmental matters referred to herein and will complete and deliver, on request, the Lender's standard form of report, if any, on environmental matters;
- 14.9. The representations and warranties contained in this Warranty and Indemnity are true and accurate in all respects as of the date of the first advance made pursuant to the Charge, and such representations and warranties shall remain true and accurate in all respects and shall survive the release and discharge of the Charge and the repayment and satisfaction of the indebtedness secured by the Charge; and,
- 14.10. The Lender may delay or refuse to make any advance to the Borrower if the Lender believes that any of the representations and warranties set out in this Warranty and Indemnity are not presently true and accurate or if such representations and warranties have become untrue or inaccurate at any time hereafter.

The Borrower hereby agrees to permit the Lender to conduct, at the Borrower's sole expense, from time to time as required, any and all tests, inspections, appraisals and environmental audits of the Property so as to determine and ensure continuing compliance with the provisions of this Warranty and Indemnity including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Property and/or to the businesses and other activities conducted thereon.

The Borrower and each Covantor jointly and severally agrees to indemnify and save fully and completely harmless the Lender and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, demands, claims, actions, charges, orders, directives, undertakings, costs, legal fees and expenses, of every nature and kind, whatsoever and howsoever, which at any time or from time to time may be paid by, or incurred by, or suffered by, or asserted against, any of them as a direct or indirect result of:

- a) a breach of any of the representations, warranties or covenants hereinafter set out;
- b) the presence of any Hazardous Substance in, on, under or about the Property;
- c) the breach of any Environmental Laws; and/or,
- d) the discharge, emission, release, spill or disposal of any Hazardous Substance from the Property into or upon any land, the atmosphere, any watercourse, body of water or wetland or any other property.

The representations, warranties, covenants, acknowledgments and indemnifications set out in this Warranty and Indemnity shall survive the release and discharge of the Charge and of any other security held by the Lender and the repayment and satisfaction of the indebtedness secured by the Charge.

15. INSPECTION

The Lender shall have access to and the right to inspect the Property at all reasonable times.

16. TAXES

WITH respect to Taxes, the Borrower covenants and agrees with the Lender that:

- 16.1. The Lender may deduct from any advance of the monies secured by the Charge an amount sufficient to pay all Taxes which have become due and payable during any calendar year.
- 16.2. The Lender may at its sole option estimate the amount of the Taxes payable in each year and the Borrower shall forthwith upon demand of the Lender pay to the Lender one-twelfth (1/12) of the estimated annual amount of such Taxes on the 1st day of each and every month during the term of the Charge commencing with the 1st day of the first full month of the term of the Charge. The Lender may at its option apply such payments to the Taxes so long as the Borrower is not in default under any covenant or agreement contained in the Charge, but nothing herein contained shall obligate the Lender to apply such payments on account of Taxes more often than yearly. Provided however, that if the Borrower shall pay any coin or sums to the Lender to apply on account of Taxes, and if before such payments have been so applied by the Lender, there shall be default by the Borrower in respect of any payment of principal or interest as herein provided,

the Lender may at its option apply such sum or sums in or towards payment of the principal and interest in default. If the Borrower desires to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Borrower may pay to the Lender such additional amounts as are required for that purpose.

- 16.3. In the event that the Taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Lender as aforesaid, the Borrower shall pay to the Lender, on demand, the amount required to make up the deficiency. The Lender may at its option, pay any of the Taxes when payable, either before or after they are due, without notice, or may make advances therefor in excess of the then amount of credit held by the Lender for Taxes. Any excess amount advanced by the Lender shall be secured as an additional principal sum under the Charge and shall bear interest at the rate as provided for in the Charge until repaid by the Borrower.
- 16.4. The Borrower shall transmit to the Lender all assessment notices, tax bills and other notices pertaining to the imposition of Taxes forthwith after receipt thereof.
- 16.5. The Borrower shall pay to the Lender, in addition to any other amounts required to be paid hereunder, the amount required by the Lender in its sole discretion for a reserve on account of future liability for Taxes.
- 16.6. In no event shall the Lender be liable for any interest on any amount paid to it on account of Taxes and the monies so received may be held with its own funds pending payment or application thereof as herein provided; provided that in the event that the Lender does not utilize the funds received on account of Taxes in any calendar year, such amount or amounts may be held by the Lender on account of any pre-estimate of Taxes required for the next succeeding calendar year, or at the Lender's option the Lender may repay such amount to the Borrower without any interest.
- 16.7. The Borrower shall in all instances be responsible for the payment of any and all penalties resulting from any arrears of Taxes or any late payment of current instalments thereof, and at no time shall such penalties be the responsibility of the Lender.
- 16.8. In the event the Lender does not collect payments on account of Taxes as aforesaid, the Borrower shall deliver to the Lender within thirty (30) days following the due date for each instalment of Taxes written evidence from all taxing authorities having jurisdiction to the effect that the then current instalment of Taxes and all other Taxes due in respect of the then current calendar year and any preceding calendar years have been paid in full, failing which, the Lender shall be entitled to charge a servicing fee for each written inquiry directed to such taxing authorities or the Borrower for the purpose of ascertaining the status of the Taxes together with any costs payable to such taxing authorities for such information.

17. UTILITIES

The Borrower covenants that it will pay all utility and fuel charges related to the Property as and when they are due and that the Borrower will not allow or cause the supply of utilities or fuel to the Property to be interrupted or discontinued and that, if the supply of fuel oil or utilities is interrupted or discontinued, the Borrower will take all steps that are necessary to ensure that the supply of utilities or fuel is restored forthwith. It is specifically agreed that the failure to pay all fuel and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel or utilities to the Property shall constitute a default by the Borrower within the meaning of the Charge and in addition to all other remedies provided for herein, the principal sum of the Charge shall, at the sole option of the Lender forthwith become due and payable.

18. INSURANCE

The Borrower will insure and keep insured during the term of the Charge the buildings and other improvements on the Property (now or hereafter erected) on an all-risk basis in an amount of not less than the greater of the full replacement value of the buildings located thereon from fire to fire, or the principal money herein, with no co-insurance provisions and with the Lender's standard mortgage clause forming part of such insurance policy. The Borrower shall carry such liability, rental, loss of income, business interruption, boiler, plate glass and other insurance coverage as is required by the Lender to be placed with such insurance companies and in such amounts and in such form as may be acceptable to the Lender. All such policies shall provide for loss payable to the Lender and contain such additional clauses and provisions as the Lender may require. An original of all insurance policies and endorsements from the insurer to the effect that coverage has been bound and/or extended for a minimum period of at least one year and that all premiums with respect to such term of such coverage have been paid for in full, shall be produced to the Lender prior to any advance and at least thirty (30) days before expiration of any term of any such respective policy, failing which the Lender may provide therefor and charge the premium paid therefore and interest thereon at the aforesaid rate to the Borrower and any amounts so paid by the Lender shall be payable forthwith to the Lender and shall also be a charge upon the Property and secured by the Charge. It is further agreed that the Lender may at any time require any insurance on the said buildings to be cancelled and new insurance effected with a company to be named by it,

and also may, of its own accord, effect or maintain any insurance herein provided for, and any amount paid by the Lender therefor shall be forthwith payable to it, together with interest at the rate aforesaid by the Borrower (together with any Costs of the Lender as herein set out), and shall be a charge upon the Property and secured by the Charge.

In the event that the evidence of continuation of such insurance as herein required has not been delivered to the Lender within the required time, the Lender shall be entitled to a servicing fee for each written inquiry which the Lender shall make to the insurer or the Borrower pertaining to such renewal (or resulting from the Borrower's non-performance of the within covenant). In the event that the Lender pursuant to the within provision arranges insurance coverage with respect to the Property, the Lender, in addition to the aforesaid servicing fee, shall be entitled to a further servicing fee for arranging the necessary insurance coverage.

In the event of any loss or damage, the Borrower shall forthwith notify the Lender in writing and notwithstanding any other provision to the contrary, statutory or otherwise, in the event of any monies becoming payable pursuant to any insurance policy herein required, the Lender may, at its option, require the said monies to be applied by the Borrower in making good the loss or damage in respect of which the money is received, or in the alternative, may require that any or all of the monies so received be applied in or towards satisfaction of any or all of the indebtedness hereby secured whether or not such indebtedness has become due. No damage may be repaired nor any reconstruction effected without the approval in writing of the Lender in any event.

The Borrower, upon demand, will transfer all policies of insurance provided for herein and the indemnity which may become due thereon to the Lender. The Lender shall have a lien for the indebtedness hereby secured on all the said insurance proceeds and policies, and may elect to have these insurance monies applied as it may deem appropriate, including payment of monies secured hereby, whether due or not, but the Lender shall not be bound to accept the said monies in payment of any principal not yet due.

19. REMITTANCE AND APPLICATION OF PAYMENTS

All payments of principal, interest and other monies payable hereunder to the Lender shall be payable at par in lawful money of Canada at the Lender's address for service as set out in the Charge or at such other place as the Lender shall designate in writing from time to time. In the event that any of the monies secured by the Charge are forwarded to the Lender by mail, payment will not be deemed to have been made until the Lender has actually received such monies and the Borrower shall assume and be responsible for all risk of loss or delay.

Notwithstanding anything herein to the contrary, in the event of any default under the Charge, the Lender may apply any payments received in whatever order the Lender may elect as between principal, interest, rent, taxes, insurance premiums, repairs, Costs and any other advances or payments made by the Lender hereunder.

20. RECEIPT OF PAYMENT

Any payment received after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest to have been made and received on the next bank business day and the Lender shall be entitled to interest on the amount due it, to and including the date on which the payment is deemed by this provision to have been received.

21. NO REQUIRED RE-INVESTMENT

Except in the case where the Charge provides for blended payments of principal and interest whether paid monthly or otherwise, the parties hereto agree that the Lender shall not be deemed to reinvest any monthly or other payments received by it hereunder.

22. FINANCIAL AND OPERATING STATEMENTS

The Borrower covenants that, within the periods of time hereinafter specified, or within such other period(s) of time as may be specified by this Commitment, the Borrower shall deliver or cause to be delivered to the Lender the following:

- 22.1. within one hundred and twenty (120) days after the end of each fiscal year of operation of the Property, an annual operating statement in respect of the Property for the immediately preceding fiscal year setting forth the gross rents and other income derived from the Property, the cost and expenses of operation and maintenance of the Property and such other information and explanations in respect of the same as may be required by the Lender;
- 22.2. within one hundred and twenty (120) days after the end of each fiscal year of each Borrower and Co-borrower which is a corporation or partnership, the annual financial statements of each such corporation or partnership for its immediately preceding fiscal year including, without limitation, the balance sheet of the corporation or partnership as at its fiscal year end with comparative figures for prior years, statements of earnings, retained earnings and changes in financial position as at the fiscal year end with comparative figures for prior fiscal years, any

supporting schedules and notes thereto and such other information and explanations as may be required by the Lender; and

- 25.3. with respect to each Borrower and Covenantor who is an individual and within thirty (30) days after each anniversary of the date of this Commitment, an annual updated net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Lender.

All such operating and financial statements shall be prepared at the expense of the Borrower and in accordance with generally accepted accounting principles applied on a consistent basis and by a duly qualified chartered accountant or certified public accountant which is acceptable to the Lender, and shall be submitted in audited form if so required by the Lender in the event of a default occurring pursuant to the Charge, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Borrower or Covenantor, as the case may be.

The Lender reserves the right to disclose to third parties, any of the foregoing financial information or otherwise required in respect to the Loan as may be required in connection with the fulfillment of its rights and/or obligations under this Commitment or the Charge or to carry out its terms of to enforce its security for mortgage securitization purposes.

22. RENEWAL OR EXTENSION OF TIME: ATTENTION SUBSEQUENT INTERESTS

No renewal or extension of the term of the Charge given by the Lender to the Borrower, or anyone claiming under it, or any other dealing by the Lender with the owner of the equity of redemption of the Property, shall in any way affect or prejudice the rights of the Lender against the Borrower or any other Person liable for the payment of the monies hereby secured. The Charge may be amended, extended and/or renewed by an agreement in writing at maturity for any term with or without an increased rate of interest, or amended from time to time as to any of its terms, including, without limitation, an increase of interest rate or principal amount and notwithstanding that there may be subsequent encumbrances, and it shall not be necessary to register any such agreement in order to retain priority for the Charge so amend over any instrument registered subsequent to the Charge. PROVIDED that nothing contained in this paragraph shall confer any right of amendment, extension or renewal upon the Borrower.

The terms of the Charge may be amended, extended and the Charge may be renewed from time to time by mutual agreement between the then current owner of the Property and the Lender and the Borrower hereby covenants and agrees that, notwithstanding that the Borrower may have disposed of its interest in the Property, the Borrower will remain liable as a principal debtor and not as a surety for the observance of all of the terms and provisions herein and will in all matters pertaining to the Charge well and truly do, observe, fulfil and keep all of the covenants, provisions, conditions and agreements in the Charge and all amendment(s), extension(s) and renewal(s) thereof, and without limiting the foregoing, notwithstanding the amendment, extension and/or renewal of the Charge, and notwithstanding the giving of time for the payment of the Charge or the varying of the terms of the payment thereof or of the rate of interest thereon, and notwithstanding any other indulgence by the Lender to the Borrower.

The Borrower covenants and agrees with the Lender that no agreement for amendment, extension and/or renewal hereof, or for extension of the time for payment of any monies payable hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Borrower to the Lender after the expiration of the original term of the Charge or of any subsequent term agreed to in writing between the Borrower and the Lender, and that no amendment, extension and/or renewal hereof or any extension of the time for payment of any monies hereunder shall result from, or be implied from, any other act, matter or thing, save only express agreement in writing between the Borrower and the then current owner of the Property.

24. EXPROPRIATION

If the Property or any part thereof which, in the reasonable opinion of the Lender is material to the viability and operations hereon shall be expropriated by any Governmental Body vested with the powers of expropriation, the principal sum herein remaining unpaid shall at the option of the Lender forthwith become due and payable together with interest thereon at the rate provided for herein to the date of payment together with a bonus equal to the aggregate of (a) three months' interest at the said rate calculated on the amount of the principal remaining unpaid, and (b) one month's interest at the rate provided for herein calculated on the principal remaining unpaid, for each full year of the term of the Charge or any part of such year from the said date of payment to the date the said principal sum or balance thereof remaining unpaid would otherwise under the provisions of the Charge become due and payable and in any event all the proceeds of any expropriation shall be paid to the Lender at its option in priority to the claims of any other party.

28. LETTERS OF CREDIT

The parties to the Charge hereby acknowledge and agree that, in addition to all other amounts advanced and/or secured hereby, the Charge shall stand as good and valid security with respect to

any and all letters of credit, letters of guarantee or similar instruments (collectively the "Letters of Credit") issued by or on behalf of the Lender for the benefit of or on account of the Borrower and in favour of any other party as may be requested or directed by the Borrower from time to time, and that the total amount of the financial obligations under each Letter of Credit shall be deemed to have been advanced and fully secured under the Charge as of and from the date of issuance of each such Letter of Credit regardless of when the same may be called upon by the holder thereof, in the event that at any time the Lender is of the opinion, in its sole and unfettered discretion, that the Property or such part(s) thereof as remain undischarged are insufficient to secure the aggregate amount of all of the Lender's outstanding obligations under, pursuant to or in connection with such Letters of Credit from time to time outstanding, the Lender shall be entitled to retain out of any payment received under the Charge or out of the proceeds of any sale or revenue received in respect of the Property or any part(s) thereof or out of the proceeds of any amounts received by the Lender upon the enforcement of the Charge, an amount equal to the aggregate amount of all of the Lender's outstanding obligations under, pursuant to or in connection with Letters of Credit as remain from time to time outstanding without being obliged to apply any portion of such amount on account of any principal, interest or other monies otherwise outstanding and secured by the Charge; and the Lender shall be entitled to retain such amount for such period of time as any of the Letters of Credit remain outstanding and the Lender is hereby irrevocably authorized and directed to utilize the same in order to satisfy payment of any amounts called upon for payment pursuant to the Letters of Credit.

26. SALE OR CHANGE OF CONTROL

In the event of any sale, conveyance or transfer of the Property or any portion thereof, or a change in control or beneficial ownership of the Borrower or a change in the beneficial ownership of the Property or any portion thereof or a lease of the whole of the Property, all sums secured hereunder shall, at the Lender's option, become due and payable forthwith unless the prior written consent of the Lender has been obtained, which consent may be arbitrarily or unreasonably withheld. The rights of the Lender pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under the Charge from the Borrower or any Person claiming through or under it and the rights of the Lender hereunder shall continue without distribution for any reason whatsoever until such time as the Lender has consented in writing as required by this provision.

Provided further that no permitted sale or other dealing by the Borrower with the Property or any part thereof shall in any way change the liability of the Borrower or in any way alter the rights of the Lender as against the Borrower or any other Person liable for payment of the monies hereby secured.

27. NO FURTHER ENCUMBRANCES

In the event that the Borrower enters into, creates, incurs, assumes, suffers or permits to exist any additional charge, encumbrance, pledge or other financing of the Property, or of the chattels, equipment or personal property related to the Property, all sums secured hereunder shall, at the Lender's option, become due and payable forthwith unless the prior written consent of the Lender has been obtained, which consent may be arbitrarily or unreasonably withheld.

28. EVENTS OF DEFAULT

Without limiting any of the provisions of the Charge, each of the following events shall be considered events of default hereunder upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall immediately become due and payable at the option of the Lender exercised by notice in writing to the Borrower:

- 33.1 Failure by the Borrower to pay any instalment of principal, interest and/or Taxes under the Charge or under any charge or other encumbrance of the Property, on the date upon which any of the payments for same become due;
- 33.2 Failure by the Borrower or any Coventor to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application or Commitment for the loan secured by the Charge, the provisions of the Charge, or any other document creating a contractual relationship as between them or any of them or if it is found at any time that any representation to the Lender with respect to the loan secured by the Charge or in any way related thereto is incorrect or misleading;
- 33.3 Default by the Borrower in the observance or performance of any of the covenants, provisions, agreements or conditions contained in any charge or other encumbrance affecting the Property, whether or not it has priority over the Charge;
- 33.4 Upon the registration of any construction lien against the Property which is not discharged or vacated within a period of ten (10) days after the date of registration thereof;
- 33.5 In the event that any Hazardous Substance is discovered in, on or under the Property or any part thereof and the same is not completely removed therefrom to the entire satisfaction of the Lender within ten (10) days after demand therefore by the Lender;

- 33.6 In the event that the Property are abandoned or there is any cessation of the business activities or any material part thereof now being conducted upon the Property by the Borrower or the beneficial owner of the Property or any of their respective officers, agents, employees, tenants or invitees;
- 33.7 If the Borrower or any Covenantor commits an act of bankruptcy or becomes insolvent or has a receiver or receiver and manager appointed for it or over any of its assets or if any creditor takes possession of any of its assets or if any execution, distress or other like process is levied or enforced upon the Property or any part thereof or if any compromise or arrangement with creditors is made by any of them;
- 33.8 Default by the Borrower, its successors or assigns, or any of the Covenantor(s) in the observance or performance of any representation, warranty, covenant, proviso, agreement or condition contained in any charge or encumbrance or document securing, evidencing or relating to any indebtedness owing by the Borrower, its successors or assigns, to the Lender from time to time whether or not related to or affecting the within Loan and the Property or any other loan and property given as security therefor.

20. DEFAULT

The Lender may, on default of payment or in the performance of any covenant in the Charge contained or implied by law or statute, enter on and lease the Property, or in default of payment or in default in performance of any covenant in the Charge contained or implied by law or statute for at least fifteen (15) days may, on at least thirty-five (35) days' notice and the Property. Such notice shall be given to such Persons and in such manner and form and within such time as provided under the Mortgage Act (Ontario). In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable it is agreed that notice may be effectually given by leaving it with a grown-up person on the Property, if occupied, or by placing it on the Property if unoccupied, or at the option of the Lender, by mailing it in a registered letter addressed to the Borrower at the Borrower's last known address, or by publishing it once in a newspaper published in the city, county or district in which the Property are situated; and such notice shall be sufficient although not addressed to any Person or Persons by name or designation, and notwithstanding that any Person to be affected thereby may be unknown, unascertained, or under disability. If there be legal personal representatives of the Borrower on the death of the Borrower, such notice may, at the option of the Lender, be given in any of the above modes or by personal service upon such representatives.

Without prejudice to the statutory powers of the Lender under the preceding proviso, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for two months after any payment of either principal or interest falls due, the Lender may exercise the powers given under the preceding proviso with or without entry on the Property without any notice, it being understood and agreed, however, that if the giving of notice by the Lender shall be required by law then notice shall be given to such Persons and in such manner and form and within such time as so required by law. The Lender may sell the whole or any part or parts of the Property by public auction or private contract, or partly one or partly the other, and the proceeds of any sale hereunder may be applied in payment of any Costs incurred in taking, recovering or keeping possession of the Property or by reason of non-payment or procuring payments of monies secured hereby or otherwise. The Lender may sell any of the Property on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper; and may buy in or resell or vary any contract for the sale of the whole or any part of the Property and resell without being answerable for loss occasioned thereby; and in the case of a sale on credit the Lender shall be bound to pay the Borrower only such monies as have been actually received from purchasers after the satisfaction of the claims of the Lender and for any of said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any Person damaged by an unauthorized, improper or irregular exercise of the power shall have its remedy against the Person exercising the power in damages only.

It is hereby agreed that the Lender may pay all premiums of insurance and all Taxes which shall from time to time fall due and be unpaid in respect of the Property, and that such payments together with all Costs which may be incurred in taking, recovering and keeping possession of the Property, and of negotiating this loan, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize this security, (including legal fees, real estate commissions, appraisal costs and other Costs incurred in leasing or selling the Property or in exercising the power of entering, leasing and selling herein contained) shall be with interest at the rate aforesaid and shall be a charge upon the Property in favour of the Lender and that the Lender may pay or satisfy any tax, charge or encumbrance now existing or

hereafter created or claimed upon the Property, and that any amount paid by the Lender shall be added to the monies hereby secured and shall be payable forthwith with interest at the rate hereto, and in default the Charge shall immediately become due and payable at the option of the Lender and all powers in the Charge conferred shall become exercisable. In the event of the Lender paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the money advanced on the security of the Charge or otherwise, the Lender shall be entitled to all the rights, equities and securities of the Person or Persons so paid and is hereby authorized to obtain an assignment or discharge thereof, and to retain same, for whatever period the Lender shall deem it proper to do so.

Whenever a power of sale is hereby conferred upon the Lender, all provisions hereof relating to exercising such power, including, without in any way limiting the generality of the foregoing, the Persons to whom notice of exercising such power shall be given and the manner of giving such notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and whenever there shall be a conflict between the provisions of the Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no such conflict, the provisions of the Charge shall remain unchanged.

The Lender may lease or sell as aforesaid without entering into possession of the Property.

The Lender may disburse for arrears of interest and the Lender may disburse for arrears of principal and arrears of Taxes in the same manner as if the same were arrears of interest.

Upon default of the payment of the interest hereby secured the principal hereby secured shall become payable at the option of the Lender, together with interest thereon.

Upon default of payment of installments of principal promptly as the same become due, the balance of the principal and interest shall immediately become due and payable at the option of the Lender. Upon default under the Charge, the Lender shall be entitled and shall have full power to assume control of, manage, operate and carry on the business of the Borrower being conducted at or upon the Property on the date of the Charge or at any time thereafter.

Until default hereunder the Borrower shall have quiet possession of the Property.

On default the Lender shall have quiet possession of the Property.

The Lender may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of the principal secured herein shall be as set out in the provision for redemption herein. Any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. No waiver shall be effective or binding on the Lender unless made in writing.

It is further agreed that the Lender may at its discretion at any time, release any part or parts of the Property or any other security or any surety for the money hereby secured either with or without any antecedent consideration therefore, without responsibility therefore, and without thereby releasing any other part of the Property or any Person from the Charge or from any of the covenants herein contained, it being especially agreed that every part or lot into which the Property are or may hereafter be divided does and shall stand charged with all of the monies hereby secured and no Person shall have the right to require the principal secured hereunder to be apportioned; further the Lender shall not be accountable to the Borrower for the value thereof, or for any monies except those actually received by the Lender. No sale or other dealing by the Borrower with the equity of redemption in the Property or any part thereof shall in any way change the liability of the Borrower or in any way alter the rights of the Lender as against the Borrower or any other Person liable for payment of the monies hereby secured.

It is further agreed that the Lender may exercise all remedies provided for in the Charge concurrently or in such order and at such times as it may see fit and shall not be obligated to exhaust any remedy or remedies before exercising its rights under any other provisions contained in the Charge.

Without limiting any other provision of the Charge, the Borrower acknowledges and agrees that, upon the occurrence of any default under the Charge and whether or not the monies hereby secured have been fully advanced, the Lender may, at any time and from time to time at the Lender's sole discretion, advance such further sums under the Charge as are necessary to pay any arrears of Taxes, utilities or other charges capable of constituting a lien upon the Property pari passu with or in priority to the Charge, to pay all amounts due under any encumbrance having priority over the Charge, to pay all amounts required to discharge or vacate any construction lien registered against the Property whether or not priority is claimed over the Charge, to maintain in good standing any policies of insurance in respect of the Property, to maintain, repair, operate and/or manage the Property and any or all improvements thereon, to complete construction or renovation of any improvements on the Property, to realize upon any security held by the Lender for the loan secured by the Charge and generally to enforce all of the Lender's rights, title and interest hereunder and to protect the Property and to preserve the

enforceability and priority of the Charge, and to pay any and all Costs and all amounts advanced by the Lender for any of the purposes as aforesaid shall bear interest at the rate applicable under the Charge from the date so advanced until repaid in full and shall be secured by the Charge in the same priority as the principal amount hereof.

30. RIGHT OF LENDER TO REPAIR, ETC.

The Borrower covenants and agrees with the Lender that in the event of default in the payment of any instalment or other monies payable hereunder by the Borrower or on breach of any covenant, proviso or agreement herein contained after all or any of the monies hereby secured have been advanced, the Lender may, at such times or times as the Lender may deem necessary and without the concurrence of any Person, enter upon the Property and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the Property or for inspecting, taking care of, leasing, collecting the rents of and generally managing the Property, as the Lender may deem expedient; and all Costs including, but not limited to, allowances for the time and services of any employees of the Lender or other Person appointed for the above purposes and a servicing fee shall be forthwith payable to the Lender by the Borrower and shall be a charge upon the Property and shall bear interest at the rate applicable under the Charge until paid.

31. APPOINTMENT OF A RECEIVER

It is agreed that at any time and from time to time when there shall be default under the provisions of the Charge, the Lender may at such time and from time to time and with or without entering into possession of the Property appoint in writing a Receiver 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 by similar writing remove any such Receiver and appoint another in its place and stead, and in making any such appointment or removal, the Lender shall be deemed to be acting as the agent or attorney for the Borrower. The Borrower hereby irrevocably agrees and consents to the appointment of such Receiver of the Lender's choice and without limitation whether pursuant to the Charge, the Mortgage Act (Ontario), the Construction Lien Act (Ontario), or the Trustee Act (Ontario), as the Lender may at its sole option require. Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Property or any part thereof and the Borrower hereby consents to a court order for the appointment of such Receiver, if the Lender in its discretion chooses to obtain such order, and on such terms and for such purposes as the Lender at its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the Property and/or to complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the Receiver or the Borrower, and if required by the Lender, in priority to any existing encumbrances affecting the Property, including without limitation, charges and construction lien claims.

Upon the appointment of any such Receiver from time to time the following provisions shall apply:

- 30.1. A Statutory Declaration made by the Lender or by any authorized representative of the Lender as to default under the provisions of the Charge shall be conclusive evidence thereof;
- 30.2. Every such Receiver shall be the irrevocable agent or attorney of the Borrower for the collection of all rents falling due in respect to the Property, or any part thereof, whether in respect of any tenancies created in priority to the Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
- 30.3. The Lender may from time to time fix the remuneration of every such Receiver which shall be a charge on the Property, and may be paid out of the income therefrom or the proceeds of sale thereof;
- 30.4. The appointment of every such Receiver by the Lender shall not incur or create any liability on the part of the Lender 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 Lender a mortgagee in possession in respect of the Property or any part thereof;
- 30.5. The Receiver shall have the power to lease any portion of the Property for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any leases of the Property or any part thereof in the name and on behalf of the Borrower and the Borrower undertakes to ratify and confirm, and hereby ratifies and confirms, whatsoever acts such Receiver may do on the Property;
- 30.6. In all instances, the Receiver shall be acting as the attorney or agent of the Borrower;
- 30.7. The Receiver shall have full power to complete any unfinished construction upon the Property;

- 36.8. The Receiver shall have full power to manage, operate, amend, repair, alter or extend the Property or any part thereof in the name of the Borrower for the purposes of securing the payment of rental from the Property or any part thereof;
- 36.9. The Receiver shall have full power to assume control of, manage, operate and carry on the business of the Borrower being conducted at or upon the Property on the date of the Charge or at any time thereafter;
- 36.10. The Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Lender's interest in the Property including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges, mortgages and other encumbrances which may be registered against the Property from time to time, whether or not any of the same are prior to the interest of the Lender in the Property; selling the Property; borrowing money on the security of the Property; applying for and executing all documents in any way related to any re-zoning applications, severance of Property pursuant to the provisions of the Planning Act (Ontario), or extended, subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the Property; issuing grants of Property or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent Governmental Body, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the Property as a condominium; completing any application for first registration pursuant to the provisions of the Land Titles Act (Ontario) or pursuant to the Certification of Titles Act (Ontario); and for all and every of the purposes aforesaid the Borrower does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Property, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Property, as fully and effectually to all intents and purposes as the Borrower itself could do if personally present and acting therein.
- 36.11. The Receiver shall not be liable to the Borrower to account for monies or damages other than cash received by it in respect of the Property or any part thereof and out of such cash so received every such Receiver shall pay in the following order:
- i) its remuneration;
 - ii) all payments made or incurred by it in the exercise of its powers hereunder;
 - iii) any payment of interest, principal and other money which may from time to time be or become charged upon the Property in priority to the monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect of the Property or any part thereof.

The Borrower hereby irrevocably appoints the Lender as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Lender and/or its solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Borrower and all parties dealing with the Borrower, the Lender and/or the Receiver and/or with respect to the Property in the same manner as if such documentation was duly executed by the Borrower itself.

32. LENDER NOT TO BE DEEMED LENDER IN POSSESSION

It is agreed that the Lender in exercising any of the rights given to the Lender under the Charge shall be deemed not to be a Lender or mortgagee in possession.

33. ENFORCEMENT OF ADDITIONAL SECURITY

In the event that, in addition to the Property charged hereby, the Lender holds further security on account of the monies secured hereby, it is agreed that no single or partial exercise of any of the Lender's powers hereunder or under any of such security, shall preclude other and further exercise of any other right, power or remedy pursuant to any of such security. The Lender shall at all times have the right to proceed against all, any, or any portion of such security in such order and in such manner as it shall in its sole discretion deem fit, without waiving any rights which the Lender may have with respect to any and all of such security, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Borrower under the remaining security, provided however, that upon payment of the full indebtedness secured hereunder the rights of the Lender with respect to any and all such security shall be at an end.

34. TAKING OF JUDGMENT NOT A MERGER

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Lender's right to interest at the rate and times herein

provided; and further that the said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

35. **BANKRUPTCY AND INSOLVENCY ACT.**

The Borrower hereby acknowledges and agrees that the security held by the Lender is not all or substantially all of the inventory, accounts receivable or other property of the Borrower acquired for or used in relation to any business carried on by the Borrower. The Borrower hereby further acknowledges and agrees that notwithstanding any act of the Lender by way of appointment of any Person or Persons for the purposes of taking possession of the Property as agent on behalf of the Borrower or otherwise or by taking possession of the Property itself pursuant to any rights that the Lender may have with respect thereto shall not constitute the Lender or any such Person, a receiver within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), and that any and all requirements of Part XI of the BIA as it may pertain to obligations of receivers shall not be applicable to the Lender with respect to the transaction pursuant to which the Charge has been given or with respect to enforcement of the Charge or any other security held by the Lender. The Borrower hereby acknowledges and agrees that no action shall lie against the Lender as a receiver and manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the BIA whether or not the Lender had reasonable grounds to believe that the Borrower was not insolvent.

The Borrower further acknowledges and agrees that any and all Costs as may be incurred from time to time by the Lender in order to effect compliance or avoid any adverse ramifications of the BIA shall be entirely for the account of the Borrower. The Lender shall be entitled to incur any such Costs, including any costs of its personnel in administering any requirements of the BIA and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Lender for the indebtedness owing to the Lender in the same manner and in the same priority as the principal secured hereunder.

36. **PERMISSIBLE INTEREST RATE**

It is not the intention of the Charge to violate any provisions of the *Interest Act* (Canada), the *Criminal Code* (Canada) (the "Code") or any other statute dealing with permitted rates of interest in the Province of Ontario or in Canada. Notwithstanding any provisions set out herein, in no event shall the "interest" (as that term is defined in the Code) exceed the "criminal rate" (as defined therein) of interest on the "credit advanced" (as defined therein) lawfully permitted under the said legislation. In the event that it is determined at any time that, by virtue of this Commitment, the Charge or any other document given as security for the herein contemplated loan, the payments of interest required to be made by the Borrower exceed the "criminal rate", then the Borrower shall only be required to pay interest at the highest rate permitted by law. Nothing herein shall invalidate any requirements for payment pursuant to this Commitment, the Charge or such other security documents, and any excess interest paid to the Lender shall be refunded to the Borrower and the provisions of the Charge shall in all respects be deemed to be amended accordingly.

37. **INDEMNIFICATION**

The Borrower and Covenantor hereby agree to indemnify and save harmless the Lender, 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 and kind whatsoever and howsoever arising out of the provisions of this Commitment and the Security, any letters of credit or letters of guarantee issued, 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 tasks, inspections, management and other activities permitted by the Commitment and the Security.

In addition to any liability imposed on the Borrower and Covenantor under any instrument evidencing or securing the Loan indebtedness, the Borrower and Covenantor 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. The Borrower and the Covenantor(s) shall be further bound by the representations, warranties and indemnity set out herein.

The representations, warranties, covenants and agreements of the Borrower and Covenantor set forth in this Section:

42.1. are separate and distinct obligations from the Borrower's and Covenantor's other obligations;

42.2. survive the payment and satisfaction of their other obligations and the discharge of the Security from time to time taken as security therefore;

42.3. are not discharged or satisfied by foreclosure of the charges created by any of the Security; and

42.4. 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.

38. **NON-MERGER**

The Borrower's obligations as contained in this Commitment shall survive the execution and registration of the mortgage and other security documentation and all advances of funds under the mortgage, and the Borrower agrees that these obligations shall not be deemed to be merged in the execution and registration of the mortgage and other security. All terms and conditions of the mortgage and other security documentation shall be deemed to be incorporated in and form part of the Commitment, except to the extent provided for herein. In the event of conflict, the terms of this Commitment shall prevail.

39. **NOTICE**

All notices or other communications to be given pursuant to or in connection with the Charge shall be in writing, signed by the party giving such notice or by its solicitors, and shall be personally delivered or sent by registered mail or facsimile transmission to the party or parties intended at its or their respective addresses for service as set out in the Charge. The date of receipt of such notice or demand, if served personally or by facsimile, shall be deemed to be the date of the delivery thereof, or if mailed as aforesaid, the date of mailing thereof. For the purposes hereof, personal service on the Borrower or any Coventor shall be effectively given by delivery to any officer, director or employee of such Borrower or Coventor. Any party may from time to time by notice given as provided herein change its address for the purpose of this provision.

40. **PRIORITY OVER VENDOR'S LIEN**

The Borrower hereby acknowledges that the Charge is intended to have priority over any vendor's lien, whether in favour of the Borrower or otherwise, and the Borrower covenants that it has done no act to give priority over the Charge to any vendor's lien, nor is it aware of any circumstances that could create a vendor's lien. Further, the Borrower covenants to do all acts and execute or cause to be executed all documents required to give the Charge priority over any vendor's lien and to give effect to the intent of this clause.

41. **CONSENT OF LENDER**

Whenever the Borrower is required by the Charge to obtain the consent or approval of the Lender, it is agreed that, subject to any other specific provision contained in the Charge to the contrary, the Lender may give or withhold its consent or approval for any reason that it may see fit in its sole and absolute discretion, and the Lender shall not be liable to the Borrower in damages or otherwise for its failure or refusal to give or withhold such consent or approval, and all costs of obtaining such approval shall be for the account of the Borrower.

42. **DISCHARGE**

The Lender shall have a reasonable period of time after payment in full of the monies hereby secured within which to prepare and execute a discharge of the Charge; and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Lender; and all legal and other expenses for the preparation and execution of such discharge shall, together with the Lender's fee for providing same, be borne by the Borrower. The discharge shall be prepared and executed by such Persons as are specifically authorized by the Lender and the Lender shall not be obligated to execute any discharge other than a discharge which has been so authorized.

If the Charge, this Commitment or any other document provides for the giving of partial discharges of the Charge, it is agreed that, notwithstanding any other provision to the contrary, the Borrower shall not be entitled to request or receive any such partial discharge if and for so long as the Borrower is in default under the Charge, this Commitment or such other document.

43. **FAMILY LAW ACT**

The Borrower shall forthwith after any change or happening affecting any of the following, namely, (a) the spousal status of the Borrower, (b) the qualification of the Property or any part thereof as a matrimonial home within the meaning of Part II of the Family Act (Ontario), (c) the ownership of the equity of redemption in the Property or any part thereof, and (d) a shareholder of the Borrower obtaining rights to occupy the Property or any part thereof by virtue of shareholding within the meaning of Section 18(2) of the Family Law Act (Ontario), the Borrower will advise the Lender accordingly and furnish the Lender with full particulars thereof, the intention being that the Lender shall be kept fully informed of the names and addresses of the owner or owners for the time being of the said equity of redemption and of any spouse who is not an owner but who has a right of possession in the Property by virtue of Section 18 of the Family Law Act (Ontario). In furtherance of

such intention, the Borrower covenants and agrees to furnish the Lender with such evidence in connection with any of (a), (b), (c) and (d) above as the Lender may from time to time request.

44. INDEPENDENT LEGAL ADVICE

The Borrower and such Co-owner(s) acknowledge that they have full knowledge of the purpose and substance of this transaction, and that they have been appropriately and independently legally advised in that regard or have been advised of their right to independent legal advice and have declined same. Such parties agree to provide to the Lender a Certificate of Independent Legal Advice as and when same may be required, regarding their knowledge and understanding of this transaction.

45. SERVICING FEES

All servicing fees as herein provided are intended to and shall be in an amount sufficient in the sole opinion of the Lender to compensate the Lender for its administrative costs and shall not be deemed a penalty. The amount of such servicing fees if not paid shall be added to the principal amount secured hereunder, and shall bear interest at the rate aforesaid and the Lender shall have the same rights with respect to collection of same as it does with respect to collection of principal and interest hereunder or at law.

46. CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM

Provided the Borrower is not in default of the provisions of this Commitment or any loan documents and provided that there are no costs or financial obligations to the Lender, the Lender hereby agrees that it will consent to the Borrower registering a plan of condominium and declaration (the "Condominium") pursuant to the Condominium Act, 1998 (Ontario), as amended, with respect to the Property or any part thereof provided that the Lender has received and approved the draft plan of condominium and the declaration and provided further that the Borrower, if requested by the Lender, shall deliver to the Lender prior to the registration of the Condominium, a further charge of the Property (the "Replacement Charge") on the same terms and conditions save and except for the new legal description of the Property. It is agreed that the Replacement Charge shall secure the same indebtedness as the original Charge. In connection with the provision of the Replacement Charge, the Borrower shall also provide a replacement general assignment of rents (the "Replacement Assignment of Rents"), and together with and such Co-owner(s), where applicable, shall provide a re-confirmation of all existing security and such further and other documentation as may then be required by the Lender's solicitors.

Provided further that the original Charge and the original assignment of rents and leases relating thereto shall not be released or discharged from the Property (save and except for any partial discharge provisions provided for therein) until the expiration of ninety (90) days immediately following the later of the registration of the Condominium and the registration of the Replacement Charge and Replacement Assignment of Rents. Provided further that at the time of the request for a discharge of the Charge and the original assignment of rents and leases the Borrower shall not be in default of the provisions of the Charge, the Replacement Charge and/or this Commitment, failing which the Lender shall not be obliged to discharge same.

47. CONDOMINIUM PROVISIONS

If all or any part of the Property is or becomes a condominium unit pursuant to the provisions of the Condominium Act, 1998 (Ontario) (the "Act"), the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in the Charge:

47.1. For the purposes of all parts of the Property comprising one or more such condominium units, all references in the Charge to the Property shall include the Borrower's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;

47.2. The Borrower shall at all times comply with the Act and shall forward to the Lender proof of such compliance as the Lender may request from time to time including, without limitation, status certificates issued by the Condominium Corporation; and if the Borrower fails to so comply in any respect, the Lender may do so at its option and all costs incurred by the Lender in connection therewith shall be secured by the Charge and payable by the Borrower to the Lender forthwith upon demand, together with interest thereon as herein provided;

47.3. The Borrower shall pay, when due, all monies payable by the Borrower or with respect to the Property in accordance with the provisions of the Act and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions for common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Lender upon request; and if the Borrower fails to make any such payment, the Lender may do so at its option and all amounts so paid by the Lender shall be secured by the Charge and shall be payable by the Borrower to the Lender forthwith upon demand, together with interest thereon as herein provided;

52.4. The Borrower hereby irrevocably appoints, authorizes and empowers the Lender to exercise the rights of the Borrower to vote or to consent as an owner within the meaning of the Act with respect to all matters relating to the affairs of the Condominium Corporation, or to abstain from doing so, provided that:

- 51.4.1. the Lender may at any time and from time to time give notice in writing to the Borrower and to the Condominium Corporation that the Lender does not intend to exercise such right to vote or to consent, in which case the Borrower may exercise its right to vote or to consent for so long as such notice remains effective or until such notice is revoked by the Lender; and any such notice may be for an indeterminate period of time, a limited period of time or for a specific meeting or matter;
- 51.4.2. the Lender shall not be under any obligation to vote or to consent or to protect the interests of the Borrower; and,
- 51.4.3. the exercise by the Lender of its right to vote or to consent or to abstain from doing so shall not constitute the Lender as a mortgagee or Lender in possession and shall not give rise to any liability on the part of the Lender;

52.5. The Borrower shall forward to the Lender by delivery or by prepaid registered mail copies of every notice, assessment, claim, demand, by-law, rule, request for consent and other communication relating to all or any part of the Property or the common elements or affairs of the Condominium Corporation on or before the date which is the earlier of:

- 51.5.1. fourteen (14) days after receipt of the same by the Borrower;
- 51.5.2. seven (7) days prior to the date set for any meeting of the Condominium Corporation or any committee thereof;
- 51.5.3. seven (7) days prior to the due date of any claim or demand for payment; and,
- 51.5.4. within twenty-four (24) hours after becoming aware of any information concerning termination of any insurance policy, insurance trust agreement or management agreement relating to the Condominium Corporation or any of its assets;

52.6. The Borrower hereby authorizes and directs the Condominium Corporation to permit the Lender to inspect the records of the Condominium Corporation at any reasonable time;

52.7. In addition to and notwithstanding any other provisions of the Charge, the outstanding principal amount and all accrued interest and other charges secured by the Charge shall, at the Lender's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:

- 51.7.1. the government of the Condominium Corporation or the government of the Property by the Condominium Corporation is terminated;
- 51.7.2. a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Property, or any part of the same is expropriated;
- 51.7.3. the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules;
- 51.7.4. the Condominium Corporation fails to insure its assets, including the Property, in accordance with the Act and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or discontinues cancellation of any existing obligation to insure the same.

48. ASSIGNMENT OF RENTS

As additional primary security for the monies secured by the Charge, the Borrower transfers and assigns to the Lender all rents, income, profits, rights and other benefits (collectively the "Rents") now or hereafter due or arising pursuant to all present and future oral or written leases, agreements to lease, licences or other agreements for the use or occupancy of the whole or any part of the Property and all extensions and renewals thereof (collectively the "Leases" and individually a "Lease") granted to any and all tenants, licensees and other occupants thereof (collectively the "Tenants" and individually a "Tenant"); and in furtherance thereof, the Borrower covenants and agrees as follows:

- 53.1. the Leases and details thereof heretofore provided by the Borrower to the Lender are in full force and effect and have not been assigned or pledged to any other party except as disclosed by registered 55s to the Property;

- 63.2. except with the prior written consent of the Lender, the Borrower shall not amend, terminate, release or accept a surrender of any Lease or any guarantee thereof or waive, release, reduce, discount, discharge or otherwise compromise any Rents payable thereunder, and any attempt to do any of the foregoing without such prior written consent shall be null and void as against the Lender;
- 63.3. except for the last month's rent and any security deposit, the Borrower has not received and shall not accept payment of any Rents more than thirty (30) days in advance;
- 63.4. except with the prior written consent of the Lender, the Borrower shall not further assign the Rents, the Leases or any interest therein or consent or agree to any postponement or subordination of the same in favour of any mortgage or other encumbrance now or hereafter affecting the Property;
- 63.6. except with the prior written consent of the Lender, the Borrower shall not consent to or permit any assignment or subletting of the interest of any Tenant under any Lease or exercise any right of election thereunder which would in any way lessen the liability of any Tenant or shorten the stated term of any Lease;
- 63.5. the Borrower shall diligently and in good faith observe and perform all of the landlord's covenants contained in the Leases and shall execute and deliver to the Tenant's and other parties to the Leases fully observe and perform the covenants and agreements imposed upon them by the Leases, failing which, the Lender may, at its option, require the same at the expense and in the name of the Borrower, and all such expenses incurred by the Lender shall be a charge upon the Property and be paid by the Borrower to the Lender forthwith upon demand;
- 63.7. the Borrower shall give prompt written notice to the Lender of default by any Tenant and any notice of default received from any Tenant, including a copy of such notice;
- 63.8. all of the Leases are and shall be bona fide and at rental rates and upon terms which are commercially reasonable and consistent with comparable space in the municipality within which the Property are situated;
- 63.9. the Borrower shall, at its own expense, execute and deliver to the Lender all such further assurance and assignments with respect to the Rents and the Leases and enforce and do all other acts with respect to the Leases as may be required from time to time by the Lender.

Upon default hereunder by the Borrower, the Lender shall be entitled, as agent and attorney of the Borrower, to collect, sue for, waive or compromise the Rents and to enforce performance of the Leases or amend, terminate, release or accept a surrender of the same as the Lender may determine in its sole discretion.

The Lender shall not be obligated to perform or discharge any obligation or liability under the Leases, or under or by reason of the assignment herein contained, and the Borrower agrees to save and hold harmless the Lender of and from any and all actions, proceedings, claims, demands, liability, damages, Costs or expenses which the Lender may incur under or by reason of the Leases or the assignment herein contained; and all Costs incurred by the Lender in connection therewith shall be a charge upon the Property and be paid by the Borrower to the Lender forthwith upon demand.

In the event that the Lender collects any Rents by reason of the Borrower's default, the Lender shall be entitled in payment from the same of an administration fee equal to 5.0% of the gross amount of Rents collected, and the Borrower acknowledges and agrees that such administration fee is just and equitable having regard to the circumstances.

42. MATERIAL ADVERSE CHANGES

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of the Charge, the Lender discovers a discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Lender by or on behalf of the Borrower or any Covenantor concerning the Property or the financial condition and responsibility of the Borrower or any Covenantor in the event of any material adverse change in the value of the Property or the financial status of the Borrower or any Covenantor or any lease on which the Lender relied upon in making any advances hereunder, which material change, discrepancy or inaccuracy cannot be rectified by the Borrower or such Covenantor (if applicable) within thirty (30) days after written notification thereof by the Lender to the Borrower or such Covenantor, the Lender shall be entitled to decline to advance any further funds pursuant hereto and/or to declare any and all amounts advanced pursuant hereto together with interest thereon to be forthwith due and payable.

50. **PROFESSIONAL MANAGEMENT**

The Property must at all times be professionally managed by property managers acceptable to the Lender, failing which the Lender reserves the right, in its sole discretion, to appoint now or other property managers at the sole expense of the Borrower. A change in the property managers for Property shall require the prior written consent of the Lender. No management fee shall be payable to the manager of the Property, other than to a professional arm's-length manager approved by the Lender, without the prior written consent of the Lender. No management fees in excess of market fees for similar properties in the general location of the Property shall be payable without the prior written consent of the Lender.

51. **NO PREPAYMENTS**

Save and except as otherwise provided for in the Commitment or any schedule to a specific charge, the Borrower shall have no right to prepay all or any part of the amount outstanding under the Charge prior to the maturity date thereof.

52. **NO PARTIAL DISCHARGES**

Save and except as otherwise provided for in the Commitment or any schedule to a specific charge, the Borrower shall have no right to obtain a partial discharge(s) of the Charge.

53. **ADDITIONAL FEES**

All advances, in addition to legal fees and disbursements of the Lender's solicitors, shall be subject to an administrative processing fee of Five Hundred Dollars (\$500.00) for each advance made under the Loan in favour of the Lender. The Borrower shall be permitted one advance per month. If the Lender, in its sole discretion, agrees to make an advance in an amount not less than the minimum amount per advance as specified in this Commitment, an additional processing fee of Five Hundred Dollars (\$500.00) for any such advance so made shall be payable by the Borrower.

54. **ABANDONMENT**

In the event of abandonment of the Project for a period in excess of fifteen (15) consecutive days, the Lender shall be entitled, after giving the Borrower written notice of any abandonment and provided the Borrower fails to rectify same within ten (10) days after such notice, has been given, to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds as the case may be and in addition to declare any funds advanced to forthwith become due and payable plus interest at the Lender's option.

55. **INTERPRETATION**

It is hereby agreed that, in construing the Charge, everything herein contained shall extend to and bind and may be enforced or applied by the respective heirs, personal representatives, successors and assigns, as the case may be, of each and every of the parties hereto, and where any of the Borrower, the Lender and any Co-borrower is more than one Person, their respective covenants shall be deemed to be joint and several, and the provisions of the Charge shall be read and construed with all changes of gender and number as required by the context.

56. **HEADINGS**

The headings with respect to the various paragraphs of the Charge are intended to be for identification of the various provisions of the Charge only and the wording of such headings is not intended to have any legal effect.

57. **INVALIDITY**

If any of the covenants or conditions in the Charge include of all schedules forming a part hereof shall be void for any reason it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

58. **COUNTERPARTS**

The Charge may be executed and/or registered in counterparts, each of which, so executed, and/or registered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, and notwithstanding their date of execution shall be deemed to bear date as of the date above written.

APPENDIX “I”

UNDERTAKING

TO: ROYAL BANK OF CANADA

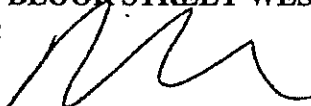
RE: Royal Bank of Canada credit facilities in favour of 206 BLOOR STREET WEST LIMITED in respect of and pertaining to the lands and premises municipally known as 206 Bloor Street West Limited, Toronto, Ontario (the "Property")

The undersigned hereby undertakes and agrees not to register any charge/mortgage in favour of Romspen Investment Corporation, in Trust, or any other mortgagee, against the Property without the prior written consent of Royal Bank of Canada.

Dated this 26th day of August, 2011.

206 BLOOR STREET WEST LIMITED

Per:


Name: ARTHUR RESNICK.

Title: ASO


Name: R. W. D. W. W.

Title: ASO

I/We have authority to bind the Corporation

APPENDIX “J”

INTERLENDERS AGREEMENT

THIS AGREEMENT made as of the ____ of August, 2011.
BETWEEN:

ROYAL BANK OF CANADA
(hereinafter called "Lender")
- and -

206 BLOOR STREET WEST LIMITED
(hereinafter called "Borrower")
- and -

ROMSPEN INVESTMENT CORPORATION, IN TRUST
(hereinafter called "Third Mortgagee")

WHEREAS the Borrower is the registered owner of the Project;

AND WHEREAS the Borrower has or will incur the Lender Obligations and the Lender Obligations are to be secured by the Lender Security;

AND WHEREAS the Project is subject to a second mortgage and charge in favour of Lombard General Insurance Company of Canada;

AND WHEREAS the Borrower and the Third Mortgagee have agreed, among other things, to postpone the Third Mortgage Security to the Lender Security.

NOW THEREFORE in consideration of the sum of Two Dollars (\$2.00) now paid by the Lender to the Third Mortgagee, the receipt and sufficiency whereof are hereby acknowledged, and other good and valuable consideration, it is hereby covenanted and agreed as follows:

ARTICLE 1 DEFINITIONS

1.1 In this Agreement:

- (a) "Borrower" means 206 Bloor Street West Limited, and its successors and assigns;
- (b) "Business Day" means a day other than a Saturday, Sunday or other day on which Schedule I Banks are authorized or obligated to close under the laws of the Province of Ontario or of Canada;
- (c) "Charged Property" means the Project, all leases pertaining thereto, all rents, revenues and personal property of the Borrower pertaining thereto or arising therefrom, and all associated rights, benefits and proceeds therefrom, as charged, assigned, pledged or in which a security interest has been created by the Lender Security;
- (d) "Commitment Letter" means a letter of commitment dated August 28, 2008 as issued by the Lender in favour of and accepted by the Borrower and the Guarantors as amended and restated from time to time;
- (e) "Guarantors" means collectively Salomon Wasseemuhl, Wesley Noah Reitman, Gil Dov Blutchik, Empire Milling Limited, 1589171 Ontario Limited, Pastoral Investments Limited, Romspen Holdings Inc., Renovay Investments Limited, Tochter Investments Ltd., and Charles S. Moon;
- (f) "Lender" means Royal Bank of Canada and its successors and assigns;
- (g) "Lender Obligations" means all debts, liabilities and obligations arising under the Commitment Letter, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender in any currency, whether arising from dealings between the Borrower and the Lender or from any other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower and whether incurred by the Borrower alone or with another or others and whether as principal or surety, including all advances made after the date hereof, plus all accrued and unpaid interest thereon and all legal and other costs, charges, fees and expenses pertaining thereto;
- (h) "Lender Security" means all mortgages, pledges, charges, debentures, assignments and security agreements of any nature now or hereafter executed or made by the Borrower or the Guarantors in favour of the Lender to secure the Lender Obligations, as amended or supplemented from time to time, and includes without limitation, the following documents, as amended or supplemented from time to time:
 - (i) Collateral Charge No. AT1891903 registered September 10, 2008, in the principal amount of \$50,000,000 executed by the Borrower charging the Charged Property (the "Charge");
 - (ii) Acknowledgement and Direction executed by the Borrower authorizing registration of the Charge;
 - (iii) Acknowledged set of Standard Charge Terms No. 20015 executed by the Borrower;

- (iv) General Security Agreement (E-Form 924) executed by the Borrower in favour of the Lender;
- (v) Priority Agreement between Lombard General Insurance Company of Canada, as Surety, and the Lender, as Construction Lender dated September 17th, 2008;
- (vi) Cash Collateral Agreement (E-Form 610) executed by the Borrower in favour of the Lender;
- (vii) Assignment of Material Agreements executed by the Borrower in favour of the Lender;
- (viii) Assignment of Agreements of Purchase and Sale executed by the Borrower in favour of the Lender;
- (ix) Assignment of Insurance Policies executed by the Borrower in favour of the Lender with certificate of insurance attached and a copy of the insurance policy for the Charged Property;
- (x) Trustee-Beneficial Owner Direction and Agreement among the Lender, the Borrower, as nominee and bare trustee, and 2059938 Ontario Inc., 2112518 Ontario Limited, Blutrach Holdings Inc., Empire Milling Limited, 1589171 Ontario Limited, Tochter Investments Ltd., Pastoral Investments Limited, Renovay Investments Limited, Romspen Holdings Inc., and 1442739 Ontario Limited, collectively as Beneficial Owners;
- (xi) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal sum of \$2,025,000, executed by Salomon Wassemuhl;
- (xii) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal sum of \$900,000 executed by Wesley Noah Roitman;
- (xiii) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal amount of \$747,000, executed by Gil Dov Blutrach;
- (xiv) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal amount of \$747,000, executed by Empire Milling Limited;
- (xv) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal amount of \$747,000, executed by 1589171 Ontario Limited;
- (xvi) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal amount of \$450,000, executed by Pastoral Investments Limited;
- (xvii) Guarantee and Postponement of Claim, on the Lender's E-Form 812, limited to the principal amount of \$225,000, executed by Romspen Holdings Inc.;
- (xviii) Guarantee and Postponement of Claim, limited to the principal amount of \$3,135,000, executed by Renovay Investments Limited, Tochter Investments Ltd., and Charles S. Moon on the Lender's E-Form 812;
- (xix) Joint and Several Unconditional Undertaking re Cost Overruns and Completion Undertaking executed by the Borrower and the Guarantors;
- (xx) Postponement and Assignment (Form 918) executed by Sheldon Gold in favour of the Lender;
- (xxi) and any other documentation executed and delivered to the Lender.

- (l) "PPSA" means *Personal Property Security Act of Ontario*;
- (j) "Project" means the lands described in Schedule "A" attached hereto and all buildings, structures, improvements, parking facilities, walkways, expansions, re-configurations, additions, fixtures, renovations and alterations thereon, thereof and thereto, from time to time;
- (k) "Third Mortgage Obligations" means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Third Mortgagee in any currency, whether arising from dealings between the Borrower and the Third Mortgagee or from any other dealings or proceedings by which the Third Mortgagee may be or become in any manner whatever a creditor of the Borrower and whether incurred by the Borrower alone or with another or others and whether as principal or surety plus an accrued and unpaid interest thereon and all legal and other costs, charges, fees and expenses pertaining thereto; and
- (l) "Third Mortgage Security" means all mortgages, pledges, charges, assignments and security agreements of any nature now or hereafter executed or made by the Borrower in favour of the Third Mortgagee to secure the Third Mortgage Obligations, as amended or supplemented from time to time, and includes, without limitation, the following:
 - (i) the charge/mortgage of land granted by the Borrower in favour of the Third Mortgagee registered / to be registered in the Land Titles Office against title to the Project on _____ as Instrument No. _____; and
 - (ii) financing statements filed under the PPSA as Reference File No. _____.

**ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE THIRD MORTGAGEE**

- 2.1 The Third Mortgagee hereby represents and warrants to the Lender that:
- (a) the Third Mortgage Security is in full force and effect and has not been amended, and there has been, no default thereunder by the Borrower;
 - (b) it has not assigned the Third Mortgage Security or the Third Mortgage Obligations or any interest therein;
 - (c) there is currently outstanding under the Third Mortgage Security the principal amount of \$3,000,000;
 - (d) it has the legal right and the power and authority to execute and deliver this Agreement and perform and observe its obligations and agreements hereunder, and
 - (e) this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof.
- 2.2 The Third Mortgagee agrees to provide to the Lender, or as the Lender directs, forthwith upon demand a partial discharge in proper and registerable form of the Third Mortgage Security upon and in order to facilitate the sale of any lot/condominium unit of the Project without demand for payment of any monies, including principal, interest, bonus, and regardless of default under or maturity of the Third Mortgage Security. In the event for any reason the Third Mortgagee does not complete and register, without payment of principal, interest or any other amounts, a partial discharge of the Third Mortgage Security upon completion of a sale of a lot/unit of the Project, then the Lender shall be entitled to and the Third Mortgagee hereby irrevocably authorizes and directs the Lender and its counsel to execute and register from time to time partial discharges of the Third Mortgage Security for each lot/unit of the Project upon completion of a sale of a lot/unit of the Project in order to validly and fully discharge any such lot/unit from the Third Mortgage Security without payment of any principal, interest or any other amounts to the Third Mortgagee provided that all net proceeds from each sale are paid to the Lender to reduce the Lender Obligations. Upon the Lender Obligations being fully satisfied, the direction and authorization shall be of no further force and effect. In order to effect this authorization and direction, the Third Mortgagee approves the form of authorization and direction attached hereto as Schedule "B" and will deliver such authorization and direction fully executed to the Lender at the same time as the delivery by it of the executed Interlenders Agreement.

**ARTICLE 3
SUBORDINATION AND POSTPONEMENT**

- 3.1 The Third Mortgagee and the Lender hereby agree that:
- (a) the Third Mortgage Security and the mortgages, charges, pledges, assignments and security interests constituted by the Third Mortgage Security, together with all of the rights, title, interest, benefits and advantages of the Third Mortgagee therein or derived thereunder; and
 - (b) the Third Mortgage Obligations,
- are hereby and shall hereafter be fully postponed and subordinated to:
- (c) the Lender Security and all advances thereunder and the mortgages, charges, pledges, assignments and security interests constituted by the Lender Security, together with all of the Lender's rights, title, interest, benefits and advantages therein or derived thereunder; and
 - (d) the Lender Obligations,
- to the intent and purpose that the Lender Security, the mortgages, charges, pledges, assignments and security interests constituted by the Lender Security and the Lender Obligations shall at all times hereafter rank prior and superior to the Third Mortgage Security, the mortgages, charges, pledges, assignments and security interests constituted by the Third Mortgage Security and the Third Mortgage Obligations to the extent of the Lender Obligations.
- Without limiting the generality of the foregoing:
- (i) the Third Mortgagee shall not be entitled to receive any amounts owing under the Third Mortgage Security, including without limitation any principal, interest or fees, until all of the Lender Obligations have been fully paid and performed; and
 - (ii) the Lender shall have priority to, and the first right to receive, all proceeds, rents, revenues and other amounts arising out of or pertaining to the Project, including without limitation all proceeds arising from the sale of dwellings at the Project or other portions of the Project, until all of the Lender Obligations have been fully paid and performed.
- 3.2 For the purposes of Section 3.1 hereof only, the Lender agrees that all of the Lender Obligations shall be deemed to have been fully paid and performed even though there are still outstanding letters of credit or letters of guarantee issued by the Lender, provided that such letters of credit or letters of guarantee have been cash collateralized to 100% of the amount outstanding and undrawn thereunder and provided that all other Lender Obligations have been fully paid and performed. The parties hereto agree that if a letter of credit or letter of guarantee issued by the Lender as part of the Lender Obligations is returned, undrawn, for cancellation, and such letter of credit or letter of guarantee is cash collateralized, and all other outstanding letters of credit are cash collateralized and all other Lender Obligations have been satisfied, then the cash collateral for such letter of credit or letter of guarantee shall be paid to the Borrower, and all of the parties hereto other than the Lender hereby irrevocably direct the Lender to

so pay such cash collateral. A declaration or certificate from an officer of the Third Mortgagee as to the amount of the Third Mortgage Obligations shall be conclusive evidence thereto as between the parties hereto, and the Lender shall have no obligation to make any further inquiries as to such amount after the Lender receives such declaration or certificate.

- 3.3 The Third Mortgagee covenants and agrees that it will, at no expense to the Lender:
- (a) execute such postponement and partial discharges of its security, as may be required to convey any part of the Charged Property and/or grant easements over the Project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the Project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided, however, that any monies received by Borrower from such governmental authorities in connection therewith shall be remitted to the Lender until the Lender Obligations are discharged;
 - (b) execute any and all plans and documents required to facilitate development of the Project and to re-zone the Project, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or re-zoning (collectively the "Documents"); and
 - (c) the Third Mortgagee hereby irrevocably constitutes and appoints the Lender to be and act as its lawful attorney in order to execute the Documents in the event that the Third Mortgagee refuses or fails to execute the Documents within seven (7) days of receipt thereof. In accordance with the *Power of Attorney Act*, the Third Mortgagee hereby confirms and agrees that this power of attorney may be exercised by the Lender during any subsequent legal incapacity of the Third Mortgagee.

ARTICLE 4 EFFECT OF POSTPONEMENT

- 4.1 This Agreement shall be effective as between the Lender and the Third Mortgagee notwithstanding any past, present or future agreement, event, act or omission to act on the part of the Lender, the Third Mortgagee, the Borrower or any other person, including, without limitation, anyone or more of the following:
- (a) the timing of execution, delivery, attachment, perfection, registration or enforcement of the Lender Security or the Third Mortgage Security;
 - (b) the failure of the Lender to register, maintain, renew or keep current any registration of or pertaining to any of the Lender Security;
 - (c) the respective dates or timing of any advances or defaults under the Lender Obligations or the Third Mortgage Obligations; and
 - (d) any partial or complete repayment at any time and from time to time by the Borrower of any monies secured by the Lender Security.

ARTICLE 5 APPLICATION OF PROCEEDS

- 5.1 The Third Mortgagee acknowledges that all and every part of the Lender Security is held by the Lender as security for all and every part of the Lender Obligations and agrees that the Lender may apply as a permanent reduction any monies received, whether from the enforcement of and realization upon any or all of the Lender Security, the sale or refinancing of all or any part of the Charged Property or otherwise, to any part of the Lender Obligations which the Lender, in its sole and unfettered discretion, may determine.

ARTICLE 6 DELIVERY OF INFORMATION AND NOTICES

- 6.1 The Third Mortgagee hereby acknowledges that it has provided the Lender with all material information relating to the Third Mortgage Security and any property charged thereby as required by the Lender.
- 6.2 The Borrower hereby acknowledges that it has provided the Lender with all material information relating to the Third Mortgage Security and any property charged thereby.

ARTICLE 7 AGREEMENT OF THE THIRD MORTGAGEE

- 7.1 The Third Mortgagee agrees with the Lender and Borrower that:
- (a) notwithstanding the provisions of the Third Mortgage Security:
 - (i) realty taxes respecting the Project shall not be paid to the Third Mortgagee by the Borrower, but shall be paid by the Borrower to the extent provided for in the Lender Security or Commitment;

and

- (ii) the Borrower shall be entitled to sell lots/units in the Project to bona fide third party purchasers without the consent of the Third Mortgagee.
 - (b) it shall not amend, or terminate the Third Mortgage Security, nor consent to the doing of the same, without first receiving the Lender's prior written consent thereto and it shall not assign the Third Mortgage Security nor consent to the doing of the same, unless the Lender receives the prior written agreement of the assignee, in form and substance satisfactory to the Lender and its solicitors to be bound by all of the terms and obligations of the Third Mortgagee under this Agreement.
 - (c) if the Borrower defaults under the Third Mortgage Security, where, but for this Agreement, the Third Mortgagee would elect to enforce its remedies in respect thereof under the Third Mortgage Security, then the Third Mortgagee shall forthwith give written notice to the Lender of such default, which notice shall specify the nature of such default, and whether or not the Borrower is entitled to notice from the Third Mortgagee of such default.
 - (d) it shall not take or authorize to be taken any action by way of suit, power of sale, foreclosure, summary proceedings, or otherwise, or exercise any rights or remedies under the Third Mortgage Security or otherwise for the purpose of directly or indirectly, realizing on any of the Charged Property, until repayment in full of the Lender Obligations and the termination of all commitments of the Lender. The Third Mortgagee hereby waives all other rights, liens, claims and security interests that it may have whether by operation of law or otherwise (including but not limited to statutory lien), in and to the Charged Property of the Borrower or any of their other properties or assets of the Borrower, until such time as the Lender Obligations have been repaid in full and the termination of all commitments of the Lender.
- 7.2 The Third Mortgagee may, at its sole option, but shall not be obliged to, pay to the Lender the entire amount owing under the Lender Obligations at any time after default shall occur under the Lender Security or the Third Mortgage Security, in which event the Lender shall, at the option of the Third Mortgagee, discharge the Lender Security.

ARTICLE 8 FURTHER ASSURANCES

- 8.1 The Third Mortgagee and the Borrower shall forthwith, and from time to time, on the request of the Lender, execute and do all deeds, documents and things which the Lender requests in order to give full effect to the subordinations and postponements of the Third Mortgage Security, the rights and remedies of the Third Mortgagee thereunder and the Third Mortgage Obligations to the Lender Security, the rights and remedies of the Lender thereunder and the Lender Obligations in accordance with the intent of this Agreement.

ARTICLE 9 SUCCESSORS AND ASSIGNS

- 9.1 Subject to Section 9.2, this Agreement is binding upon and shall enure to the benefit of the Lender, the Borrower and the Third Mortgagee, and their respective successors and assigns.
- 9.2 The Third Mortgagee shall not be entitled to assign its rights or obligations under this Agreement or the Third Mortgage Security unless, prior to entering into such assignment, the proposed assignee enters into an agreement in favour of the Lender, in form satisfactory to the Lender, pursuant to which the proposed assignee shall assume all obligations of the Third Mortgagee hereunder, and provided that such agreement has been provided, upon completion of such assignment by the Third Mortgagee of its rights or obligations hereunder, the Third Mortgagee shall be released and forever discharged from its obligations hereunder.

ARTICLE 10 NOTICE

- 10.1 Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand delivery as hereinafter provided. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the business day following the sending or, if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below to the individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. Notices and other communications shall be addressed as follows:
- (a) if to the Lender;
 - Royal Bank of Canada
 - Real Estate Markets
 - Real Estate Markets
 - 20 King Street West, 2nd Floor
 - Toronto, Ontario M5H 1C4
 - (b) if to the Borrower:
 - 162 Cumberland Street, Suite 300
 - Toronto, Ontario
 - M5R 3N5

- (c) if to the Third Mortgagee:
 162 Cumberland Street, Suite 300
 Toronto, Ontario
 M5R 3N5

**ARTICLE 11
 GOVERNING LAW**

- 11.1 This Agreement shall be governed by and construed in accordance with the laws of the Ontario and the laws of Canada applicable herein.

**ARTICLE 12
 HEADINGS**

- 12.1 The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**ARTICLE 13
 ENTIRE AGREEMENT**

- 13.1 This Agreement constitutes the entire agreement between the parties. There are no warranties, representations or collateral agreements between the parties in connection with the subject matter herein except as specifically set out herein and in the Postponement. All representations, warranties and covenants made by a party hereto shall be deemed to have been relied upon by the party to whom such representations, warranties and covenants were made.

**ARTICLE 14
 ACKNOWLEDGMENT OF BORROWER**


- 14.1 The Borrower acknowledges and consents to this Agreement and agrees to perform its obligations and hold and deal with the Charged Property in accordance with the priorities set out in this Agreement.

**ARTICLE 15
 EXECUTION IN COUNTERPARTS & AUTHORITY TO COMPLETE**

- 15.1 This Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and an of which together shall constitute one and the same agreement.
- 15.2 The Lender is hereby authorized to complete clauses 1.1(h)(ii) and 1.1(k)(i) with the respective dates and registration numbers of the Lender's and Third Mortgagee's Charge.

IN WITNESS WHEREOF the parties have executed this Agreement.

206 BLOOR STREET WEST LIMITED

Per: 
 Name: WESLEY ROITMAN
 Title: PRESIDENT

I have authority to bind the Corporation.

ROYAL BANK OF CANADA

Per: _____
 Name:
 Title:

Per: _____
 Name:
 Title:
 We have authority to bind the Bank.

ROMSPEN INVESTMENT CORPORATION, IN
 TRUST

Per: 
Name: WESLEY ROITMAN
Title: DIRECTOR

Per: _____
Name: _____
Title: _____
We/I have authority to bind the Bank.

SCHEDULE "A"

PIN 21213-0158(LT)

206 Bloor Street West, Toronto, Ontario

Part of Lot 1, West of Avenue Road, Plan 289 York, designated as Part 1, Plan 66R-22283; T/W Easement over Part of Lot 1, West of Avenue Road, Plan 289 York, designated as Part 2, Plan 66R-22283, as in EM-61712 and CA219983 subject to an easement over Part 1 on Plan 66R-22283 in favour of Rogers Cable Communications Inc. as in AT2296458, City of Toronto

SCHEDULE "B"

AUTHORIZATION AND DIRECTION

TO: Royal Bank of Canada (the "Lender")

AND TO: Heenan Blaikie LLP,
its solicitors herein

RE: Sale of units in

In consideration of the terms and conditions of an Interlenders Agreement dated the _____ day of _____, 2011 between the Lender, 206 Bloor Street West Limited, as the Borrower, and the undersigned, and in the event for any reason the undersigned does not complete and register, without payment of principal, interest or any other amounts, a partial discharge of its Third Mortgage Security upon completion of a sale of a unit in the Project, the undersigned hereby irrevocably authorizes and directs the Lender and its counsel to execute and register from time to time partial discharges of the Third Mortgage Security for each unit of the Project upon completion of a sale of a unit of the Project in order to validly and fully discharge any such unit from the Third Mortgage Security without payment of any principal, interest or any other amounts to the Third Mortgagee, provided that all net proceeds from each sale are paid to the Lender to reduce the Lender Obligations (as such term is defined in the Interlenders Agreement). Upon the Lender Obligations being fully satisfied, this direction and authorization shall be of no further force and effect.

DATED this _____ day of _____, 2011.

ROMSPEN INVESTMENT CORPORATION, IN TRUST

Per: _____

Per: _____

/I We have authority to bind the Corporation

HBdocs - 10309514v1

APPENDIX “K”



Lombard Canada Ltd.
105 Adelaide Street West
Toronto, Ontario M5H 1P9
Tel: (416) 350-4400 Fax: (416) 369-7166
Web: http://www.lombard.ca

August 15, 2011

206 Bloor Street West Limited
c/o Esbin Property Management Inc.
310-162 Cumberland Street
Toronto, ON M5R 3N5

Attention: Mr. Ross Lyndon

Dear Mr. Lyndon:

Re: Tarion Bond and Condominium Deposit Insurance Facility
For: 206 Bloor Street West Limited
Project: A 27 Unit Condominium project located at 206 Bloor Street West, Toronto, and known as "Museum House"

Lombard will consent to a new \$3,000,000.00 third (3rd) mortgage subject to the June 2, 2008 Commitment letter being amended. ✓

Proposed amendment, Page 4, under the heading of Collateral Mortgage, the clause:

- After completion of the project, the mortgage shall remain on unsold inventory to secure the Tarion Bond. Should no units remain unsold prior to the return of the Bond, Lombard will require \$200,000 cash security as a condition of discharge for the last unit. All amounts retained by Lombard shall be returned to the Principal upon return of the Tarion Bond to Lombard for cancellation, less any costs incurred by Lombard on behalf of the Principal. ✓

Shall be replaced with:

- After completion of the project and full repayment of the construction lender, RBC, the next closing proceeds equal to the Tarion Bond exposure and deposit insurance exposure shall be retained in the Miller, Thomson Trust Account. All amounts retained by Lombard shall be returned to the Principal upon return of the Tarion Bond to Lombard for cancellation, less any costs incurred by Lombard on behalf of the Principal. ✓

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter by August 31, 2011. ✓

Lombard General Insurance Company of Canada

Per: R. A. (Sandy) Ewen
Vice-President, Developer Solutions

I/We have the authority to bind the Corporation.

Accepted this _____ day of _____, 2011.

206 Bloor Street West Limited

Per: I/We have the authority to bind the Corporation.

Per:

2011 08 15 MuseumHouse AmendmenttoTC
Ont. Developer

APPENDIX “L”

LRO # 80 Charge/Mortgage

Registered as AT3218546 on 2013 01 17 at:

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

yyyy mm dd Paç

Properties

<i>PIN</i>	76254 - 0007 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL 6, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0064 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0076 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 13, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0009 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL 7, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0056 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 7, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0063 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 14, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0011 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	TORONTO		
<i>PIN</i>	76254 - 0039 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 4, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND		

Properties

TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0047 LT *Interest/Estate* Fee Simple

Description UNIT 12, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0012 LT *Interest/Estate* Fee Simple

Description UNIT 2, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0084 LT *Interest/Estate* Fee Simple

Description UNIT 7, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0085 LT *Interest/Estate* Fee Simple

Description UNIT 8, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0086 LT *Interest/Estate* Fee Simple

Description UNIT 9, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0013 LT *Interest/Estate* Fee Simple

Description UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0034 LT *Interest/Estate* Fee Simple

Description UNIT 7, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0015 LT *Interest/Estate* Fee Simple

Description UNIT 1, LEVEL 10, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS

Properties

APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0050 LT Interest/Estate Fee Simple

Description UNIT 1, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0062 LT Interest/Estate Fee Simple

Description UNIT 13, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0019 LT Interest/Estate Fee Simple

Description UNIT 1, LEVEL 12, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0036 LT Interest/Estate Fee Simple

Description UNIT 1, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0048 LT Interest/Estate Fee Simple

Description UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0021 LT Interest/Estate Fee Simple

Description UNIT 1, LEVEL 13, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

PIN 76254 - 0053 LT Interest/Estate Fee Simple

Description UNIT 4, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Properties

Address TORONTO
PIN 76254 - 0061 LT *Interest/Estate* Fee Simple
Description UNIT 12, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO
PIN 76254 - 0027 LT *Interest/Estate* Fee Simple
Description UNIT 1, LEVEL 18, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO
PIN 76254 - 0029 LT *Interest/Estate* Fee Simple
Description UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO
PIN 76254 - 0030 LT *Interest/Estate* Fee Simple
Description UNIT 3, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO
PIN 76254 - 0031 LT *Interest/Estate* Fee Simple
Description UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO
PIN 76254 - 0089 LT *Interest/Estate* Fee Simple
Description UNIT 12, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address TORONTO

Chargor(s)

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

Name 206 BLOOR STREET WEST LIMITED
Address for Service c/o Romspen Investment Corporation
 162 Cumberland Street
 Suite 300
 Toronto, Ontario
 M5R 3N5

LRO # 80 Charge/Mortgage

Registered as AT3218546 on 2013 01 17 at

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

yyyy mm dd Pa

Chargor(s)

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

I, Wesley Roitman, President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s) Capacity Sha

Name UNITED OVERSEAS BANK LIMITED
Address for Service 650 West Georgia Street
Suite 1680
P.O.Box 11616
Vancouver, BC
V6B 4N9

Statements

Schedule: See Schedules

Provisions

Principal \$10,000,000.00 Currency CDN
Calculation Period
Balance Due Date On Demand
Interest Rate Lender's Prime Rate + 1.25%
Payments
Interest Adjustment Date
Payment Date 26th day of each month
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount full insurable value
Guarantor

Additional Provisions

Payment: Interest Only

Signed By

Gregory David Sanders 181 University Ave, Suite 816 acting for Chargor Signed 2/
Toronto (s)
M5H 2Y7

Tel 4163646211
Fax 4163641697

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

Submitted By

RICKETTS, HARRIS 181 University Ave, Suite 816 20
Toronto
M5H 2Y7

Tel 4163646211
Fax 4163641697

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Total Paid \$60.00

ADDITIONAL PROVISIONS

The following additional provisions shall be included in and form part of this Charge:

INTERPRETATION

1. Definitions

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

"Act" means the *Land Registration Reform Act*, R.S.O. 1990, c.L.4, as amended and/or restated from time to time.

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

"Borrower" means the Borrower as defined in the Commitment.

"Business Day" means a day of the year, other than a Saturday, Sunday or statutory holiday in the Provinces of Ontario or British Columbia, on which the Chargee is open for business at its executive offices in Vancouver, British Columbia.

"Change of Control" means 1442739 Ontario Limited; 1589171 Ontario Inc.; 2059938 Ontario Inc.; 2112518 Ontario Limited; Blutrich Holdings Inc.; Empire Milling Limited; Pastoral Investments Limited; Renovay Investments Limited; Romspen Holdings Inc.; Tochter Investments Limited; 1517939 Ontario Inc. and 1209818 Alberta Ltd. ceases to Control, directly or indirectly, any of the Obligors.

"Charge" means:

- (a) the Charge Form, together with
- (b) these additional provisions; and
- (c) any other schedules hereto.

"Charge Form" means

- (a) for the non-electronic paper based registration system, the Charge/Mortgage of Land (Form 2) to which these additional provisions are attached, and
- (b) for the electronic registration system, the Charge to which these additional provisions are attached prepared in the electronic format and registered electronically pursuant to Part III of the Act.

"Chargee" means United Overseas Bank Limited.

"Chargor" means 206 Bloor Street West Limited.

"Commitment" means the commitment letter December 10, 2012 between the Chargee and the Borrower in respect of the Loan, and all amendments thereto.

"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. "Controlling" and "Controlled" have corresponding meanings.

"Costs" means all reasonable fees, costs, charges and expenses of the Chargee of and incidental to:

- (a) the preparation, execution and registration of this Charge and any other instruments connected herewith and every renewal hereof, including, without limitation, all of the Loan Documents,

- 2 -

- (b) the collection, enforcement, realization of and upon this Charge and the other Loan Documents,
- (c) procuring payment of the Obligations due and payable hereunder, including without limitation, foreclosure, power of sale, execution, judicial sale, court appointed receivership and management of the Properties or other proceedings of enforcement commenced by the Chargee or any other party,
- (d) any inspection required to be, and actually, made of the Properties,
- (e) all necessary repairs required to be, and actually, made to the Properties,
- (f) the Chargee having to go into possession of the Properties and secure, complete and equip the building or buildings in any way in connection therewith, including without limitation any leasehold inducements or improvements required to lease the Properties,
- (g) the Chargee's renewal of any leasehold interests,
- (h) the exercise of any of the powers of a receiver contained herein, and
- (i) any Transfers or any changes to, amendments of, or alterations to, the Loan or Loan Documents by request or reason of the Chargor, including without limitation, any costs of the Chargee in granting approvals or consents thereto and the costs of obtaining confirmation thereof by applicable rating agencies,

and all reasonable legal costs incurred by the Chargee on a substantial indemnity basis, and all reasonable costs and expenses of any examination of title to and of valuation of the Properties or the obtaining of credit reports on any Obligor.

"Default" means any event or condition that would constitute an Event of Default upon satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

"Event of Default" means any one or more of the following events:

- (a) if the Chargor fails to pay any amount of principal of the Loan when due;
- (b) if the Chargor fails to pay any interest, fees or other Obligations (other than any principal amount) when due and such default continues for three Business Days after notice of such default has been given by the Chargee to the Chargor;
- (c) if the Chargor sells, assigns, transfers, conveys, or otherwise disposes of, or permits the sale, assignment, transfer, conveyance, or other disposition of, all or any portion of the Properties in contravention of the provisions of the Loan Documents;
- (d) if there is a breach of any of the Financial Covenants (as defined in the Commitment);
- (e) if any Obligor neglects to observe or perform any covenant or obligation contained in this Charge, the Commitment or any other Loan Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this definition or such Loan Document) and such Obligor fails to remedy such default within 15 days from the earlier of (i) the date such Obligor becomes aware of such default, and (ii) the date the Chargee delivers written notice of the default to such Obligor;
- (f) if any information, representation or warranty given or made by any Obligor in the Commitment, any Loan Document or in any certificate or other document at any time delivered hereunder to the Chargee proves to have been incorrect or misleading in any material respect on and as of the date that it was made or was deemed to have been made and such Obligor fails to remedy such default within ten (10) Business Days of the occurrence of such event (or such longer period as the Chargee may agree to having regard to the nature of such default and provided the affected Obligor is proceeding diligently to cure such default);
- (g) if any Obligor ceases or threatens to cease to carry on business generally or admits its inability or fails to pay its Debts generally;

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- (h) if any Obligor denies, to any material extent, its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part;
- (i) any of the Loan Documents or any material provision of any of them becomes unlawful or is changed by virtue of legislation or by a governmental authority, if any Obligor does not, within 15 Business Days of receipt of notice of such Loan Document or material provision becoming unlawful or being changed, replace such Loan Document with a new agreement that is in form and substance satisfactory to the Chargee, acting reasonably, or amend such Loan Document to the satisfaction of the Chargee acting reasonably;
- (j) if a decree or order of a court of competent jurisdiction is entered adjudging an Obligor a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of an Obligor under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code* or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of an Obligor or ordering the winding-up or liquidation of its affairs and such decree, order or petition is not stayed;
- (k) if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *United States Bankruptcy Code*, the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, 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, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or 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 creditors' rights or consents to, or acquiesces in, the filing of such a petition;
- (l) if any Person, other than a tenant or other occupant of the Properties, takes possession, by appointment of a receiver, receiver and manager or otherwise, of all or any part of the Properties;
- (m) if proceedings are commenced for the dissolution, liquidation or voluntary winding-up of any Obligor, or for the suspension of the operations of any Obligor unless such proceedings are being actively and diligently contested in good faith;
- (n) if a final judgment or decree for the payment of money due has been obtained or entered against an Obligor in an amount, when combined with any other such judgment or decrees, is in an amount in excess of \$100,000 and such judgment or decree has not been and remained vacated, discharged or stayed pending appeal within the applicable appeal period or the applicable Obligor has not demonstrated to the satisfaction of the Chargee, acting reasonably, that it has the financial ability to satisfy such judgement or decree without adversely affecting in any material way, such Obligor's ability to perform its obligations under the Loan Documents;
- (o) if an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of an Obligor is outstanding occurs and is continuing and such debt is (i) debt owing by an Obligor to the Chargee, or (ii) debt owing by an Obligor to any other Person;
- (p) if any Security ceases to constitute a valid and perfected first priority security interest and, provided the Chargee, acting reasonably, is satisfied that its position will not be prejudiced, the applicable Obligor has failed to remedy such default within five Business Days of becoming aware of such fact;
- (q) if, except as permitted under the Loan Documents, there is any reorganization of any Obligor or any consolidation, merger or amalgamation of any Obligor with any

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other company or companies, the effect of which would be a Material Adverse Change, or if a Change of Control occurs;

- (r) if any part of the Properties is expropriated and, in the opinion of the Chargee, acting reasonably, such expropriation materially impairs any of (i) the value of the Properties, (ii) the validity, enforceability or priority of the Security, or (iii) the ability of any Obligor to fulfil its Obligations; or
- (s) if in the opinion of the Chargee, acting reasonably, a Material Adverse Change has occurred.

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

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

"Interest Rate" means the rate of interest set out in and calculated in accordance with these additional provisions or as shown on the Charge Form, as the case may be.

"Lease" means any lease, sublease, or agreement to lease or sublease space at or in the Properties.

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

"Loan" means the loan advanced by the Chargee to the Borrower in the Principal Amount in accordance with this Charge.

"Loan Documents" means, collectively, (i) the Commitment, (ii) the Security, and (iii) all present and future agreements, documents, certificates and instruments delivered by or on behalf of the Obligors or any of them to the Chargee in connection with the Loan, in each case as the same may from time to time be amended, restated or replaced.

"Material Adverse Change" means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (i) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of an Obligor, (ii) the value or marketability of the Properties, or (iii) the ability of any Obligor to perform its Obligations in all material respects.

"Obligations" means all obligations of the Obligors or any of them to the Chargee under or in connection with the Loan Documents, including (i) the Principal Amount, (ii) all interest thereon and compound interest as provided in this Charge, (iii) all Costs, and (iv) all other debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Obligors or any of them to the Chargee or remaining unpaid by the Obligors or any of them to the Chargee under or in connection with the Loan Documents, and whether incurred by any Obligor alone or with another or others and whether as principal or surety, and all interest, fees and Costs relating thereto.

"Obligors" means, collectively, the Chargor, the Borrower and the Guarantor (if any) and "Obligor" means any one of them, as the context may require.

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

- (a) Liens for Taxes or utility charges in either case only if same are not yet due or payable;

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- (b) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility provided in each case that
 - (i) same has been complied with, and
 - (ii) the Chargee, acting reasonably, is satisfied in its sole discretion with the nature, scope and cost of any outstanding obligations thereunder and security, if required, has been posted to ensure performance of all such obligations;
- (c) minor title defects or irregularities;
- (d) any subsisting reservations contained in the original grant of the Properties from the Crown; or
- (e) leases of the Properties which are either
 - (i) disclosed by the Chargor to the Chargee prior to the Loan being made in a rent roll or other document, or
 - (ii) entered into after the Loan is made in accordance with the Loan Documents; and
- (f) such other Liens consented to in writing by the Chargee in its sole discretion.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

"Principal Amount" means the amount referred to in the Charge Form as the Principal Amount.

"Requirements of Environmental Law" means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments, decrees, orders and approvals of any federal, territorial, provincial, regional, municipal or local judicial, regulatory or administrative agency, board or governmental authority relating to environmental or occupational health and safety matters and the Properties and the activities carried out thereon (whether in the past, present or the future) which have the force of law, including, but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) the generation, handling, treatment, storage, transportation or disposal of or other dealing with solid, gaseous or liquid waste; and (c) the presence on or at the Properties of Hazardous Substances.

"Security" means this Charge and all other documents creating a lien in favour of, or any collateral held from time to time by, the Chargee, in each case securing or intended to secure repayment of the Obligations.

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

"Transfer" means any sale, transfer, assignment, conveyance or other disposition of the Properties, in whole or in part, or of any interest therein, subject to the further provisions of Section 45, entitled "Transfers".

"Transferee" means any purchaser, transferee or assignee pursuant to a Transfer.

2. Obligations as Covenants

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

3. Land Registration Reform Act

The parties hereby exclude from this Charge all of the covenants deemed to be included by Section 7(1) of the Act, which covenants are hereby replaced by the covenants and agreements contained herein.

4. Severability

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

5. Interpretation and Headings

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

6. Successors and Assigns

Every reference in this Charge to a party hereto shall extend to and include the heirs, executors, administrators, successors and assigns of such party. This Charge shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Charge may be assigned by the Chargee at any time without prior notice to or consent of the Chargor.

7. Date of Charge

Notwithstanding the actual date of execution or registration of this Charge, this Charge may be referred to in the Loan Documents as having been executed as of, or bearing a formal date of December 27, 2012.

8. No Merger

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

CHARGE, PAYMENTS, INTEREST

9. Charge

As security for the payment and performance to the Chargee of the Obligations, the Chargor hereby mortgages and charges the Properties to and in favour of the Chargee.

10. Interest

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

11. Payment

- (a) This Charge shall operate until all Obligations are paid and performed in full in the manner provided in this Charge. The provisions of subsection 6(2) of the Act are hereby expressly excluded from the terms of this Charge.

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- (b) Interest at the Interest Rate on the amounts from time to time advanced, computed from the respective dates of such advances, shall become due and be paid on the first Business Day of each month following the date of the first advance to and including the Interest Adjustment Date set out in the Charge Form. At the option of the Chargee, interest so due and payable may be deducted from such advances. Thereafter the sums set out in the Charge Form shall become due and be paid on each Payment Date and Period set out in the Charge Form. However, if specific dates have not been inserted in the Charge Form for the Interest Adjustment Date, First Payment Date, Last Payment Date or Balance Due Date, then the Interest Adjustment Date shall be deemed to be the first Business Day of the calendar month next following the earlier of the following dates:
- (i) the date by which the entire Principal Amount has been advanced, and
 - (ii) the date the Chargee exercises any right it may have to cancel its commitment to advance any unadvanced portion of the Principal Amount

(unless the earlier of such dates occurs on the first Business Day of a calendar month, in which event that date shall be deemed to be the Interest Adjustment Date), the First Payment Date shall be deemed to be the first Business Day of the calendar month next following the deemed Interest Adjustment Date and both the Last Payment Date and Balance Due Date shall be deemed to be the date that occurs such number of months following the deemed Interest Adjustment Date as corresponds with the number of months in the term of this Charge. If the Payment Date and Period have not been inserted in the Charge Form, then principal and interest payments shall be payable monthly on the first day of each month commencing on the First Payment Date. On the Balance Due Date, all Obligations then remaining, including, without limitation the balance of the Principal Amount and interest thereon, will be repaid in full.

- (c) The Chargor may at any time, and from time to time, repay the whole or any part of the Principal Amount, provided that:
- (i) the Chargor must give written notice to the Chargee at least three Business Days prior to the repayment date; and
 - (ii) each repayment must be in the amount that is an integral multiple of \$100,000.

Any portion of the Principal Amount prepaid cannot be redrawn by the Chargor.

12. Timing, Place of Payments

Notwithstanding any other provision of this Charge, all payments under this Charge shall be paid to the Chargee or as the Chargee may otherwise direct the Chargor in writing, such payments to be made before 2:00 p.m. o'clock (Eastern Standard Time) on any day on which payment is to be made. If for any reason any payment is made after 2:00 p.m. o'clock (Eastern Standard Time) on any particular Business Day or on any day that is not a Business Day, it is understood and agreed that any such payment will be deemed to have been made on the next following Business Day.

13. Advances and Expenses

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

14. Compound Interest

All interest on becoming overdue, and any amount, cost, charge or expense that has been added to the Obligations under the terms of this Charge, shall be treated (as to payment of interest thereon as aforesaid) as principal and shall bear compound interest at the Interest Rate both before

and after default, demand, maturity and judgment until paid, and all such interest and compound interest shall be added to the Obligations and secured by this Charge. If any of the monies hereby secured are not paid when due, the Chargor will, so long as any part thereof remains unpaid, pay interest thereon as above provided.

15. Application of Instalments

The monthly instalments set out in the Charge Form are to be applied firstly to the interest portion of the Obligations and the balance of the said monthly instalments shall be applied to the principal component of the Obligations; except, however, following the occurrence and during the continuance of an Event of Default, the Chargee may then apply any payments received to any part of the Obligations in whatever order it may elect notwithstanding any contrary stipulation by the Chargor.

16. Pre-Authorized Payment Plan/Dishonoured Payments

- (a) The Chargor, on written request from the Chargee, and at the Chargee's option, will make all payments pursuant to this Charge by pre-authorized chequing or electronic debit entry on an account maintained by the Chargor and will execute and provide such written authorizations and sample cheques as the Chargee may require.
- (b) If any cheque issued by the Chargor to the Chargee or any electronic direct-debit transfer in payment of any amount due and owing hereunder is not honoured when presented for payment, the Chargor shall pay to the Chargee on demand all expenses incurred by the Chargee as a result of such dishonour and the Chargee's reasonable administrative costs arising therefrom, which expenses and costs shall, together with interest thereon at the Interest Rate, be added to the Obligations and secured by this Charge and shall be forthwith due and payable to the Chargee.

17. Covenant to Pay

The Chargor covenants with the Chargee that the Chargor will pay and perform the Obligations to the Chargee as and when provided in this Charge without any deduction, set-off, abatement or counterclaim. If more than one Person signs this Charge as Chargor, such Persons are jointly and severally liable to perform and observe all of the Obligations herein.

18. Taxes

- (a) The Chargor covenants with the Chargee to pay all Taxes promptly as they fall due and will forthwith provide the Chargee with evidence satisfactory to the Chargee of payment thereof. Without limiting or restricting any other covenant or obligation on the part of the Chargor under this Charge, but subject to the terms of the Commitment, it is understood and agreed that the Chargee shall during the term of this Charge estimate the amount of the Taxes and
 - (i) the Chargor will pay to the Chargee on each monthly instalment due date hereunder, an amount estimated by the Chargee to be sufficient to pay the Taxes as they become due and payable;
 - (ii) if the Taxes for any period together with any interest and penalties thereon exceed the estimated amount or if any part of the estimated amount paid to the Chargee being applied by the Chargee in or toward principal, interest or other monies in default, the Chargor will pay to the Chargee on demand the amount required to make up the deficiency (the "Deficiency") occurring as a result of the foregoing. In the event of a Deficiency, the Chargee may, but shall not be obliged to, pay the Taxes and the Chargor shall, on request by the Chargee, either pay the Deficiency, with interest thereon at the Interest Rate, to the Chargee forthwith or, if the Chargee so elects, pay the Deficiency to the Chargee, with interest thereon at the Interest Rate, in monthly instalments specified by the Chargee from time to time;
 - (iii) so long as no Event of Default has occurred and is continuing, the Chargee may apply such payments on the Taxes annually, semi-annually or as and when such Taxes become owing and due;
 - (iv) if before any such sum or sums in the hands of the Chargee shall have been so applied, there shall be default in respect of any payment of the

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Obligations, the Chargee may, at its option, apply such sum or sums in or toward payment of such Obligations so in default;

- (v) if the Chargor desires to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Chargor shall pay to the Chargee such additional amounts as are required for that purpose;
 - (vi) when making advances from time to time of the Principal Amount or any part thereof, the Chargee may, and is hereby directed to, deduct and pay out of any such advances any amount that shall have become due and payable on account of Taxes; and
 - (vii) at the time of the first advance the Chargor shall pay to the Chargee an amount that Chargee reasonably estimates is required to pay the Taxes next coming due following the making of the Loan.
- (b) Nothing herein shall create, with respect to any monies paid pursuant hereto, a relationship of trust between the Chargee and the Chargor nor shall the Chargee be accountable to the Chargor for any interest on any monies so received or for any penalties accruing from time to time on unpaid Taxes.
 - (c) The Chargor agrees that the Chargee has no obligation to pay to the Chargor, and the Chargor is not entitled to, any interest on any amount of monies held by the Chargee on account of payment of Taxes from the time the Chargee receives such monies from the Chargor until the Chargee disburses such monies in accordance with this Section.
 - (d) The Chargor will transmit to the Chargee true copies of the assessment notices, tax bills and other notices affecting the imposition of Taxes within 30 days of receipt of the same by the Chargor.

REPRESENTATIONS, WARRANTIES, COVENANTS

19. Authorization, Power and Authority

The Chargor represents and warrants to the Chargee that each Obligor: (a) which is a corporation is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (b) which is a partnership is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; (c) which owns an interest in the Properties has full power, authority and legal right to own the Properties and to carry on its business thereon in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, Properties and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (d) has full power, authority and legal right to enter into each of the Loan Documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (e) has taken all necessary action and proceedings to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; (f) shall maintain in good standing its existence, capacity, power and authority as a corporation or partnership, as the case may be, and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith; and (g) will not amend any of its articles, memorandum or other charter documents, partnership agreement, joint venture agreement, declaration of trust, trust agreement, by-laws, unanimous shareholder agreement, or any and all other similar agreements, documents and instruments pursuant to which it is constituted, organized or governed in a manner that could reasonably be expected to have a Material Adverse Effect.

20. Enforceability

The Chargor represents and warrants that the Loan Documents constitute valid and legally binding obligations of each Obligor that is a party thereto, enforceable against each of them in accordance with their terms, and are not subject to any right of rescission, and at the date of entering into the Loan Documents, no Obligor has any right of set-off, counterclaim or defence in respect of the Chargee, the Loan or the Loan Documents. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them (a) has resulted or will result in a violation of the constating documents governing any Obligor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors,

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shareholders or partners, as the case may be, of any Obligor, (b) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which any Obligor is a party or by which it or the Properties or any part thereof is bound, or (c) requires any approval or consent of any Person except such as has already been obtained.

21. Litigation

The Chargor represents and warrants that there are no existing or threatened actions, proceedings or claims against or relating to the Properties or any Obligor except as disclosed to and accepted by the Chargee in writing prior to the Loan advance. Upon becoming aware of any threatened or actual action, proceeding or claim against or relating to the Properties or any Obligor, the Chargor shall promptly notify the Chargee of same and shall provide the Chargee with reasonable information concerning such action, proceeding or claim as the Chargee may require from time to time.

22. Good Title

The Chargor has good and marketable title in fee simple to the Properties.

23. Residency

The Chargor is not now, and will not be at any time prior to the discharge of this Charge, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

24. Right to Charge

The Chargor covenants that it has the right to give this Charge.

25. Quiet Possession

The Chargor covenants that upon the occurrence and during the continuance of an Event of Default, the Chargee shall have quiet possession of the Properties, free from all Liens except Permitted Encumbrances and those disclosed at the date of this Charge by the records of the appropriate land registry office as are agreed to by the Chargee.

26. Services, Access and No Expropriation

All services and utilities (including storm and sanitary sewers, water, hydro, telephone and gas services) necessary for the use and operation of the Properties are located in the public highway(s) abutting the Properties (or within easements disclosed to and approved by the Chargee in writing prior to the Loan advance) and are connected and available to the Properties. The Properties has unrestricted and unconditional rights of public access to and from public highways (completed, dedicated and fully accepted for public use by all applicable Governmental Authorities) abutting the Properties at all existing access points. The Chargor is not aware of any proposed changes affecting such access or public highways. The Chargor is not aware of any existing or threatened expropriation or other similar proceeding in respect of the Properties or any part thereof.

27. Right of Inspection

The Chargee and its agents and employees shall have the right, subject to the rights of tenants under the Leases, to enter and inspect the Properties at all reasonable times and, except in an emergency or following a Default of the Chargor under any of the Loan Documents, upon reasonable notice to the Chargor. Upon a Default of the Chargor under any of the Loan Documents, the Chargee may also enter upon the Properties and make such repairs as it deems necessary and the costs of such repairs, together with interest thereon at the Interest Rate, shall be payable immediately by the Chargor to the Chargee and until paid, shall be added to the Obligations and secured by this Charge. The Chargee shall not be a mortgagee in possession by reason of its exercise of any of its rights hereunder.

28. Permits; Conduct of Business

The Chargor: (a) has obtained all necessary permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "Permits") necessary to permit the lawful construction, occupancy, operation and use of the Properties; (b) shall maintain all such Permits in good standing and in full force and effect; (c) has delivered to the Chargee complete copies of each Permit existing as of the date of the Loan advance; (d) shall not terminate, amend or waive any of its rights and privileges under any Permits without the Chargee's prior written consent in its sole discretion; (e) is not in default under any

Permits and is not aware of any proposed changes to any Permits (including pending cancellation, termination or expiry thereof); and (f) will engage in business of the same general type as now conducted by it; carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice. No action, proceeding, notice, judgment, order or claim has been given or received by or on behalf of the Chargor alleging or relating to any such default, proposed changes or other dispute in respect of any Permit and the Chargor shall promptly deliver to the Chargee any such action, proceeding, notice, order, judgment or claim given or received by the Chargor at any time in the future.

29. Estoppel Certificates

Within 10 Business Days following a request by the Chargee from time to time, the Chargor shall, at the Chargor's expense, provide the Chargee with a statement certifying (a) the original and outstanding Principal Amount, (b) the Interest Rate, (c) the date of the last payment of principal and interest, (d) that no offsets or defences to the payment of the Obligations exist, or if any are alleged, the particulars thereof, (e) that the Loan Documents have not been amended, or if amended, the particulars thereof, and (f) that, to its knowledge, there is no existing Default or Event of Default under any of the Loan Documents, or if any such Default or Event of Default exists, the particulars thereof and any action being taken to remedy such Default or Event of Default.

30. Further Assurances

The Chargor covenants that it will execute such documents and further assurances of the Properties and take such action, all at its own expense, as may be requisite to carry out the intention of this Charge or any other Loan Document.

31. No Act to Encumber

The Chargor covenants that neither it nor any other Obligor has done any act to encumber the Properties, except as the records of the appropriate land registry office disclose; the Chargor shall not, without the Chargee's prior written approval, not to be unreasonably withheld or delayed, charge, encumber or otherwise create any Lien in respect of the Properties or any part thereof or interest therein or permit any Lien thereon, in each case other than Permitted Encumbrances.

32. Compliance and No Material Adverse Change

The Chargor is not aware of any action, proceedings, notices, judgments, orders or claims by any Person alleging or relating to any non-compliance by the Properties with any Applicable Laws, Permitted Encumbrances, material agreements or any permits, licenses or approvals and the Chargor shall promptly deliver to the Chargee copies of any such actions, proceedings, notices, judgments, orders or claims received by the Chargor after the Loan advance. The Chargor covenants and agrees to forthwith provide written notice to the Chargee of any circumstances, events, actions, claims or changes which constitute or could reasonably be expected to constitute a Material Adverse Change.

33. Hazardous Substances

- (a) The Chargor warrants and represents that, except as disclosed in the Environmental Report (as defined in the Commitment), to the best of its knowledge and belief:
- (i) no Hazardous Substances have been or will be used, stored, processed, manufactured, handled or discharged in, on, under or from the Properties except in accordance with all Requirements of Environmental Law;
 - (ii) neither the Properties nor any adjacent lands have ever been used as or for a waste disposal site or coal gasification site, and there are not now, nor were there ever, any underground storage tanks on the Properties;
 - (iii) all permits, licences, certificates, approvals, authorizations, registrations or the like required by the Requirements of Environmental Law for the operation of the Chargor's business on the Properties have been obtained and are valid, in full force and effect and in good standing; and
 - (iv) there are no convictions (or prosecutions settled prior to conviction) or outstanding or threatened investigations, claims, work orders, notices, directives or other similar remedial actions against the Properties or the Chargor in relation to any Requirements of Environmental Law.

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- (b) The Chargor covenants that it will:
- (i) remedy at its own expense with recovery from any Person who caused, permitted or contributed to, any environmental damage that may occur or be discovered on the Properties in the future and which requires action to comply with Environmental Law;
 - (ii) comply with all Requirements of Environmental Law;
 - (iii) notify the Chargee promptly of any event or occurrence that will, or is likely to, give rise to a report, inquiry or investigation relating to a matter that may have a material adverse effect on the financial position of the Chargor, any other Obligor or the Properties or any action, suit or proceeding against the Chargor or others having an interest in the Properties relating to, or a violation of, the Requirements of Environmental Law;
 - (iv) not lease or consent to any sub-lease of any part of the Properties to a tenant or sub-tenant who may engage in a business involving the storing, handling, processing, manufacturing or disposing of Hazardous Substances (except in the ordinary course of such tenant's or sub-tenant's business and in compliance with the Requirements of Environmental Law) in, on, under or from the Properties;
 - (v) remove, if required by and in accordance with all Requirements of Environmental Law, any Hazardous Substances from the Properties forthwith upon their discovery and advise the Chargee forthwith in writing of the procedures taken, and
 - (vi) provide to the Chargee upon reasonable request such information, certificates, or statutory declarations as to compliance with the provisions hereof and all Requirements of Environmental Law and conduct such environmental audits or site assessments as may be reasonably necessary to ensure compliance with the Requirements of Environmental Law, all at the Chargor's expense.
- (c) The Chargor will indemnify and hold harmless the Chargee, each of its directors, officers, employees, affiliates and agents from and against all costs, losses, damages, expenses, judgments, suits, claims, awards, fines, sanctions and liabilities whatsoever (including, without limitation, legal fees and costs on a substantial indemnity basis incurred in the investigation, defence and settlement of any claim and any costs or expenses for preparing any necessary environmental assessment report or other such reports) relating to the release, deposit, discharge, disposal or presence of any Hazardous Substance on, from or under the Properties, including, without limitation, the remedial actions (if any) taken by the Chargee, in respect of any such release, deposit, discharge or disposal except to the extent caused by the Chargee. This indemnity will survive the repayment of the Loan and discharge of the Loan Documents.

34. Insurance

The Chargor shall insure the buildings, structures, chattels, fixtures and equipment, and improvements on the land forming part of the Properties and contents at the Properties owned by the Chargor in accordance with the Commitment.

35. Waste, Condition of Property, Repair and Inspection

The Chargor covenants and agrees with the Chargee that the Chargor will not permit waste to be committed or suffered on the Properties and the Chargor will not remove or attempt to remove from the Properties any building, structure or improvement forming part of the Properties and the Chargor shall refrain from doing anything or allowing anything to be done which would result in a material impairment or diminution of the value of the Properties. The Chargor will maintain such buildings, structures, or other improvements in good order and repair to the satisfaction of the Chargee, acting reasonably. The Properties are in good condition and repair. All heating, air conditioning, electrical, plumbing and other major building systems within the Properties are in good working order and condition. The Properties comply with all Applicable Laws, Permitted Encumbrances and all material agreements and the present use and location of the improvements on or forming part of the Properties are legal conforming uses under all Applicable Laws. No

improvements have been made or removed from the Properties since the date of the survey of the Properties delivered by the Chargor prior to the Loan advance and such survey accurately shows the location of all improvements. The Chargee may, whenever, acting reasonably and upon reasonable notice, it deems necessary, enter upon and inspect the Properties and review such records and information relating thereto and may require the Chargor, at its sole expense, to effect such repair or remediation of which the Chargor is notified by the Chargee, or the Chargee may effect such repairs or remediation as it deems necessary and the Chargor shall execute all consents, authorizations and directions that are required to permit any such inspection, review, repair or remediation, and the cost thereof and of such inspection, review, repair or remediation, together with interest thereon at the Interest Rate, shall be payable forthwith by the Chargor to the Chargee and shall be added to the Obligations and secured by this Charge.

36. Management of Properties

The Properties shall at all times be managed by a professional property manager satisfactory to the Chargee, acting reasonably. Any changes in property management shall require the prior written consent of the Chargee, acting reasonably. If at any time during the currency of this Charge, the Chargee is of the opinion, acting reasonably, that the Properties is not being managed, in all respects, in a satisfactory manner, the Chargee shall have the right to give the Chargor written notice requiring that the management be improved to the Chargee's satisfaction within 30 days from the date of such notice (or earlier if the Chargee, in its sole discretion, believes prejudice to the Chargee or impairment of its security could result from the current management practices), failing which the Obligations shall be due and payable immediately, at the Chargee's sole option.

37. Material Contracts

The Chargor covenants to remain in full compliance in all material respects with all of its covenants, agreements and obligations in and diligently enforce all its material rights under all contracts and agreements that are material to the ownership or operation of the Properties and not to amend, vary or alter, consent to any assignment or transfer of, or waive or surrender any of its material rights or material entitlements under any such contract or agreement, in each case if same could reasonably be expected to cause a Material Adverse Change.

38. Transactions with Affiliates

The Chargor covenants not to enter into any contract with any Person who is not at arm's length (as defined in section 251 of the *Income Tax Act* (Canada)) with the Chargor for the sale, purchase, lease or other dealing in any property other than at a consideration which equals the fair value of such property or other than at a fair market rental as regards leased property.

39. Alterations

The Chargor covenants and agrees with the Chargee that the Chargor will not make or permit to be made any material alterations or additions in or to the Properties without the consent of the Chargee.

40. Observance of Laws

The Chargor covenants and agrees with the Chargee to promptly observe, perform, execute and comply with all Applicable Laws concerning the Properties (including without limitation all Requirements of Environmental Law) as well as with all private covenants and restrictions affecting the Properties and the Chargor further agrees at its own cost and expense to make any and all repairs, alterations and improvements ordinary or extraordinary, which may be required at any time hereafter by any such present or future Applicable Law.

41. Reporting Requirements

The Chargor covenants and agrees with the Chargee to maintain at all times proper records and books of account in accordance with the Commitment.

The Chargor further covenants and agrees to provide to the Chargee such further information, financial or otherwise, in respect of the Properties or any Obligor as required by the Chargee, acting reasonably. The Chargee may, either by its officers or authorized agents at any time during normal business hours, and upon having reasonable concerns, inspect and examine the records and books of account of the Chargor relating to the Properties and the business of the Chargor pertaining thereto and make copies or extracts from them and generally conduct such examination of the records and books of account and other records of the Chargor as the Chargee may deem necessary and the Chargor will, immediately upon the request of the Chargee, advise

where the records and books of account are maintained and will render such assistance in connection with such examination as the Chargee deems necessary.

42. Construction Lien Act

- (a) At the time of each advance there shall have been full and complete compliance with all requirements of the *Construction Lien Act* R.S.O. 1990, c.C.30 (or the equivalent legislation in the province in which the Properties are located), as amended and/or restated from time to time, and the Chargor shall submit to the Chargee, in form and content satisfactory to the Chargee, evidence of such compliance. The Chargor agrees that the Chargee shall be entitled to withhold from any advance, or pay into court as an advance, such amounts as the Chargee, in its sole discretion, considers advisable to protect its interests from subordination under the provisions of the said act, and to secure the priority of this Charge over any actual or potential construction liens. Nothing in this Section shall be construed to make the Chargee an "owner" or "payer" as defined by the said act, nor shall there be, or be deemed to be, any obligation by the Chargee to retain any holdback or otherwise or to maintain on the Chargor's behalf any holdback which may be required to be made by the owner or payer. Any such obligation shall remain solely the Chargor's obligation. The Chargor hereby covenants and agrees to comply in all respects with the provisions of the said act.
- (b) The Chargor covenants and agrees to provide to the Chargee, prior to each advance, an officer's certificate delivered by an officer of the Chargor and outlining the particulars of all contracts entered into by the Chargor in respect of the supply of services or materials to any improvements on the Properties. Such officer's certificate shall be acceptable to the Chargee as to form and content. In addition, the Chargor covenants and agrees to produce such contracts for examination by the Chargee if and whenever the Chargee shall so require.
- (c) The Chargor covenants and agrees that all improvements to the Properties shall comply in all respects with the provisions of the said act and if a construction lien is filed against all or part of the Properties, then within 10 days after receipt of notice thereof, the Chargor shall have the lien vacated or discharged. If the Chargor fails to do so, then in addition to its other rights provided herein, the Chargee shall be entitled to pay into court a sum sufficient to obtain an order vacating such lien or to purchase a financial guarantee bond in the form prescribed under the said act. All costs, charges and expenses incurred by the Chargee in connection with such payment into court or in connection with the purchase of a financial guarantee bond or in connection with any legal proceedings described below, together with interest thereon at the Interest Rate, shall be added to the Obligations and secured by this Charge and shall be payable forthwith by the Chargor to the Chargee. If any person that performs work, labour or services or that provides materials to or for the Properties names the Chargee as a party to any legal proceedings which it takes to enforce a construction lien or trust claim, then the Chargor agrees to reimburse the Chargee for any and all legal expenses (on a substantial indemnity basis) incurred by the Chargee in such legal proceedings.

43. Fixtures

It is the intention of the parties hereto that the building or buildings forming part of the Properties form part of the security for the full amount of the monies secured by this Charge. It is hereby mutually covenanted and agreed by and between the parties hereto that all erections, buildings, improvements, machinery, plant, furnaces, boilers, oil burners, stokers, electric light fixtures, plumbing and heating equipment, refrigeration equipment, air conditioning and cooling equipment, screen doors and windows, gas and electric stoves and water heaters, floor coverings, window coverings, and all apparatus and equipment appurtenant thereto (collectively, the "Improvements"), which are now or which shall hereafter be placed or installed upon the Properties and owned by the Chargor or Borrower, are or shall thereafter be deemed to be fixtures and an accession to the freehold and a part of the Properties as between the parties hereto, their heirs, executors, administrators, successors, legal representatives and assigns, and all persons claiming by, through or under them, and shall be subject to this Charge. Notwithstanding the foregoing, provided that no Event of Default has occurred and is continuing, the Improvements may be removed (i) in the ordinary course of business or (ii) if such Improvements are no longer required in connection with the operation of the Properties.

44. Prior Encumbrances etc.

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

45. Transfers

(a) If a Transfer occurs and if:

- (i) the Chargor, or any subsequent owner of the Properties, fails to apply for the approval of the Chargee as to the Transferee and the terms and conditions of the Transfer,
- (ii) the Chargee does not approve the Transferee (which approval shall not be unreasonably withheld or delayed by the Chargee),
- (iii) the Chargee does not approve the terms and conditions of the Transfer (which approval shall not be unreasonably withheld or delayed by the Chargee),
- (iv) the Transferee fails to enter into an assumption agreement agreeing to assume this Charge and the other Loan Documents and to pay and perform the Obligations at the times and in the manner set out in this Charge and the other Loan Documents and to observe, perform, keep and be liable under and be bound by every covenant, condition and obligation contained in this Charge and any other Loan Documents to be performed by the Chargor thereunder (including this obligation) at the time and in the manner and in all respects as therein contained and to be bound by each and all of the terms, covenants, conditions and obligations of this Charge and the other Loan Documents as though the same had originally been made, executed and delivered by such Transferee as Chargor or Borrower, and
- (v) the Chargor fails to satisfy such other conditions as the Chargee may require, acting reasonably,

then, and in any such case, there shall be a default hereunder and the outstanding Obligations shall, at the option of the Chargee, immediately become due and payable.

- (b) A Change in Control of the Chargor or any beneficial owner of the Properties, or any other change in the ownership of the Chargor or any beneficial owner of the Properties, shall be deemed to be a Transfer within the meaning of this Charge and the Transferee shall be deemed to be the Person or Persons who acquired the shares, units or other interests in the Chargor or beneficial owner and the provisions hereof in respect of any Transfer and any Transferee (except for the requirement for the Transferee to enter into an assumption agreement) shall apply with all necessary changes thereto. The Chargor shall make available to the Chargee or the Chargee's representatives, all of the corporate books and records of the Chargor or any beneficial owner of the Properties for inspection and provide such other information required by the Chargee in order to ascertain whether a Change in Control has occurred.

46. Releases

It is hereby agreed that the Chargee may at all times at its discretion and subject to the provisions of the *Planning Act*, R.S.O. 1990, as amended and/or restated from time to time, release any part or parts of the Properties from the security of this Charge or any other Security either with

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or without any consideration therefor, without thereby releasing any Person from this Charge or from any of the covenants herein contained, and no such release shall diminish or prejudice this Charge or such other Security as against the portion of the Properties remaining unreleased.

47. No Change in Chargor Liability

It is hereby agreed that no sale or other dealing by the Chargor with the Properties or any part thereof, whether with the consent or approval of the Chargee or not, shall in any way change the liability of the Chargor or any other Obligor or in any way alter the rights of the Chargee as against the Chargor, any other Obligor or any other Person liable for payment of the Obligations.

48. Extension of Time

No extension of time given by the Chargee to the Chargor, or anyone claiming under the Chargor, or any other dealing by the Chargee with the owner of the Properties, shall in any way affect or prejudice the rights of the Chargee against the Chargor, any other Obligor or any other Person liable for the payment of the Obligations.

49. Discharge

The Chargee shall have a reasonable time after payment of the Obligations within which to prepare and execute a discharge of this Charge, and interest as aforesaid shall continue to run and accrue until actual payment in full of the Obligations has been received by the Chargee, and all legal and other expenses for the preparation and execution of such discharge, including the Chargee's then current standard discharge fee, shall be paid by the Chargor.

50. Waiver

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

51. Priority of Extension Agreements

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

52. Notice

Any demand, notice or other communication to be given in connection with this Charge must be given in writing and may be given by delivery or by facsimile, addressed to the recipient as follows:

To the Chargor or Borrower:

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206 Bloor Street West Limited
 c/o Romspen Investment Limited
 162 Cumberland Street
 Suite 300
 Toronto, Ontario
 M5R 3N5

Attention: Wesley Roitman
 Facsimile No.: 416-928-3841

To the Chargee:

United Overseas Bank Limited
 650 West Georgia Street
 Suite 1680, PO Box 11616
 Vancouver BC V6B 4N9

Attention: General Manager
 Facsimile No.: (604) 662-3356

or such other address, individual or facsimile number as may be designated by notice given by any party to the other. Any demand, notice or other communication given by delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given by 4:00 p.m. on a Business Day or on the next Business Day if given by facsimile after 4:00 p.m. on a day that is not a Business Day.

DEFAULT

53. Acceleration

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

54. Power of Sale, etc.

- (a) If an Event of Default has occurred and continued for the minimum period provided by Applicable Law, the Chargee, on giving the minimum notice required by Applicable Law, may enter on, lease or sell the Properties or any part thereof; and it is agreed that such notices shall be given in such manner and to such Persons as may be lawfully required at the time when such notices are given and in accordance with Section 53 of this Charge.
- (b) The Chargee may sell the Properties or any part thereof by public auction or private contract, or partly one or partly the other; and the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred about taking, recovering or keeping possession of the Properties or by reason of non-payment or procuring payment of the Obligations or otherwise, including a reasonable allowance for the time and effort of the Chargee's employees; and the Chargee may sell any part of the Properties on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper; and may buy in or rescind or vary any contract for the sale of the whole or any part of the Properties and resell without being answerable for loss occasioned thereby; and in the case of a sale on credit the Chargee shall be bound to account to subsequent encumbrancers and to the Chargor for only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of such purposes may make and execute all agreements and assurances as it shall think fit; and that any purchaser shall not be bound to see to the propriety or regularity of any sale or be affected by express notice that any sale is improper; and that no want of notice or publication when required hereby shall invalidate any sale hereunder.

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

55. Distress

Provided that the Chargee may distress for arrears of interest and for arrears of principal and for any other monies lawfully charged against the Properties in the same manner as if the same were arrears of interest.

56. No Merger on Judgment

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

57. Possession

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

58. Receiver

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

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

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- (d) the rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have;
- (e) the Chargee may from time to time fix the remuneration for every Receiver, who shall be entitled to deduct the same out of revenue or sale proceeds of the Properties;
- (f) every Receiver shall so far as concerns responsibility for its acts or omissions, be deemed the agent or attorney of the Chargor and in no event the agent of the Chargee;
- (g) the appointment of every Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver or to the Chargor or to any other Person in any respect, and such appointment or anything which may be done by any Receiver or the removal of any Receiver or the termination of any receivership shall not have the effect of constituting the Chargee a mortgagee-in-possession in respect of the Properties or any part thereof;
- (h) every such Receiver shall from time to time have the power to lease any portion of the Properties which may become vacant, for such term and subject to such provisions as it may deem advisable or expedient, subject to the restrictions on leasing contained in any existing leases or agreements to lease affecting any of the Properties, and in so doing, every Receiver shall act as the attorney or agent of the Chargor and shall have authority to execute under seal any lease of any such premises in the name of and on behalf of the Chargor, and the Chargor agrees to ratify and confirm whatever any Receiver may do in the Properties;
- (i) every Receiver may make such arrangements, at such time or times as it may deem necessary without the concurrence of any other persons, for the repairing, finishing, adding to, or putting in order of the Properties, including without restricting the generality of the foregoing, completing the construction of any building or buildings, structures, services or improvements on the Properties left in an unfinished state, and constructing or providing for leasehold improvements notwithstanding that the resulting cost may exceed the Principal Amount, and the Receiver shall have the right to register plans of subdivision and condominium declarations and descriptions in respect of the Properties as well as the right to take possession of and use or permit others to use all or any part of the Chargor's materials, supplies, plans, tools, equipment (including appliances on this Charged Premises) and Properties of every kind and description;
- (j) every Receiver shall have full power to manage, operate, amend, repair or alter the Properties and the buildings and improvements thereon or any part thereof in the name of the Chargor for the purpose of obtaining rental and other income from the Properties or any part thereof;
- (k) no Receiver shall be liable to the Chargor to account for monies other than monies actually received by it in respect of the Properties and out of such monies so received from time to time every Receiver shall, in the following order, pay:
 - (i) its remuneration as aforesaid,
 - (ii) all obligations, costs and expenses made or incurred by it, including but not limited to, any expenditures in connection with the management, operation, amendment, repair, construction or alteration of the Properties or any part thereof,
 - (iii) interest, principal and other monies which may, from time to time, be or become charged upon the Properties in priority to this Charge, including all Taxes,
 - (iv) to the Chargee, all Obligations, to be applied in such order as the Chargee in its discretion shall determine, and
 - (v) subject to subparagraph (iv) above, at the discretion of the Receiver, interest, principal and other monies which may from time to time constitute a

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charge or encumbrance on the Properties subsequent in priority or subordinate to the interest of the Chargee under this Charge,

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

- (l) the Chargee may at any time and from time to time terminate any receivership by notice in writing to the Chargor and to any Receiver; and
- (m) save as to monies payable to the Chargor pursuant to subparagraph (k) of this Section, the Chargor hereby releases and discharges the Chargee and every Receiver from every claim of every nature, whether sounding in damages for negligence or trespass or otherwise, which may arise or be caused to the Chargor or any Person claiming through or under it by reason of or as a result of anything done by the Chargee or any Receiver under the provisions of this Section, unless such claim be the direct and proximate result of bad faith or gross neglect.

59. Cumulative Remedies

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

60. Maximum Rate of Return

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

MULTIFAMILY/CONDOMINIUM

61. Additional Definitions

If the Properties is registered under the *Condominium Act*, R.S.O. 1990, c.C.26 (or the equivalent legislation in the province in which the Properties is situate), as amended and/or restated from time to time (the "*Condominium Act*") or is proposed to be registered under the *Condominium Act*, the following definitions and provisions shall apply to this Charge:

"Declaration" means the declaration which, together with the description, was registered under the *Condominium Act* and subjected the Properties to the provisions of the *Condominium Act*, and all amendments to such declaration.

"Condominium Corporation" means the corporation created by the registration of the Declaration and the description relating thereto.

"Common Expenses" means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Declaration.

"Insurance Trustee" means the insurance trustee appointed pursuant to the Declaration.

62. Condominium Provisions

If all or any part of the Properties is a condominium unit or units and its or their appurtenant common interest then:

- (a) If and only to the extent that the Condominium Corporation maintains any insurance that the Chargor would otherwise be responsible to obtain and maintain under this Charge, the Chargor shall be relieved from such responsibility.

The Chargor shall insure all improvements which at any time the Chargor or any previous owner makes or made to the Properties and the Chargor's common or other interest in buildings which are part of the condominium Properties, against such risks as the Chargee may require. If the Condominium Corporation fails to obtain and maintain the insurance required by the *Condominium Act*, the Declaration, the by-laws or rules of the Condominium Corporation or otherwise with respect to all or any part of the Properties, the condominium property or the assets of the Condominium Corporation, the Chargor shall do so. If the Chargor fails to so insure, the Chargee may (but shall not be obligated to) do so and all amounts so paid by the Chargee, together with interest thereon at the Interest Rate, shall be added to the Obligations and secured by this Charge and shall be forthwith payable by the Chargor to the Chargee. All policies of insurance required to be effected pursuant to this subsection upon or in respect of the buildings on the Properties shall provide for any loss to be payable to the Chargee or an Insurance Trustee pursuant to an insurance trust agreement approved by the Chargee, the terms of which shall not be altered without the Chargee's prior written consent.

In the event of loss or damage, the Chargor or the Condominium Corporation or both of them shall notify the Chargee, and the Chargor and the Condominium Corporation shall forthwith upon such event comply fully with the terms of the policy or policies of insurance, and without limiting the application of any provision in this Charge or the obligation of the Chargor to observe and perform all of the duties and obligations imposed by the *Condominium Act*, the Declaration and/or the by-laws of the Condominium Corporation, the Chargor and the Condominium Corporation shall comply with the insurance provisions of the Declaration. The Chargor shall furnish at his own expense all necessary proofs and do all necessary acts to enable the Chargee or the Insurance Trustee to obtain payment of the insurance proceeds.

In the event of loss or damage, the Chargee shall have the right to apply the insurance proceeds in whole or in partial reduction of the Obligations, notwithstanding that the Obligations may not otherwise be due and payable under the terms of this Charge and/or in meeting costs of repair or reconstruction and/or the Chargee may pay such proceeds in whole or in part to the Chargor or to the assigns of the Chargor.

- (b) The Chargor agrees to comply with all of the terms imposed by the *Condominium Act*, the Declaration, the by-laws and rules of the Condominium Corporation, all as amended from time to time. Any contravention of those terms will constitute a contravention and Default under this Charge;
- (c) The Chargor agrees to pay Common Expenses as they fall due and in default of so doing, the Chargee may at its option pay these contributions and the amounts so paid, together with interest thereon at the Interest Rate, shall be added to the Obligations and secured by this Charge and shall be immediately due and payable by the Chargor to the Chargee;
- (d) The Chargor authorizes and empowers the Chargee to exercise its right as an owner of the Properties to vote or to consent in all matters relating to the affairs of the Condominium Corporation and will forthwith deliver to the Chargee all notices of meetings of the Condominium Corporation which the Chargor receives provided that until the Chargee gives notice in writing to the Chargor and to the Condominium Corporation, the Chargor may exercise the right to vote and to consent. The Chargee is not under any obligation to vote or consent or protect the Chargor's

- 22 -

interest and the exercise by the Chargee of the right to vote or consent will not constitute the Chargee a mortgage in possession of the Properties;

- (e) The Chargor covenants with the Chargee to deliver to the Chargee in person or by prepaid registered mail, a copy of the following:
- (i) every request or claim for the consent of the Chargor affecting the unit or common elements of the condominium which copy is to be received by the Chargee within five days from the date such request or claim is received or made by the Chargor, and
 - (ii) any information known to the Chargor concerning the termination of any management agreement or insurance trust agreement in respect of the condominium, such information to be delivered immediately upon the Chargor learning of such information.
- (f) The Chargor hereby assigns to the Chargee the proceeds of all insurance that may be otherwise payable to the Chargor by the Insurance Trustee.

63. **Mandatory Repayment**

The Borrower shall apply 100% of the proceeds from the sale of a Property, net of customary closing and transaction costs, including sales commission, towards the permanent repayment of the loan.

64. **No Secondary Financing**

The Borrower is not permitted to encumber any Property with secondary financing, subsequent mortgage charges, or pledge any of its shares as security.

65. **Sale or Dispose**

The Borrower shall not sell or dispose of any Property at a price that is less than 80% of the greater of (i) the listed sales price of the Property in Schedule E to the Commitment and (ii) its Appraised Value, without the prior written consent of the Lender which shall not be unreasonably withheld.

66. **Rent**

The Borrower shall not rent any of the Properties or enter into a rental or lease agreement with respect to any of the Properties.

67. **Occupancy**

The Borrower shall not allow any of the Properties to be occupied except in accordance with the customary terms of a purchase and sale agreement for a Property.

APPENDIX “M”

Properties

<i>PIN</i>	76254 - 0011 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	801 SUITE 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0039 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 4, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	PARK UNIT 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0047 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 12, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	LOCKER UNIT 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0013 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	901 SUITE 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0034 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 7, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	PARK UNIT 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0019 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL 12, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	1201 SUITE 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0036 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 1, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.;		

Properties

	THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO
<i>Address</i>	PARK UNIT 206 BLOOR STREET WEST TORONTO
<i>PIN</i>	76254 - 0048 LT <i>Interest/Estate</i> Fee Simple
<i>Description</i>	UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO
<i>Address</i>	LOCKER UNIT 206 BLOOR STREET WEST TORONTO
<i>PIN</i>	76254 - 0021 LT <i>Interest/Estate</i> Fee Simple
<i>Description</i>	UNIT 1, LEVEL 13, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO
<i>Address</i>	1401 SUITE 206 BLOOR STREET WEST TORONTO
<i>PIN</i>	76254 - 0053 LT <i>Interest/Estate</i> Fee Simple
<i>Description</i>	UNIT 4, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO
<i>Address</i>	PARK UNIT 206 BLOOR STREET WEST TORONTO
<i>PIN</i>	76254 - 0061 LT <i>Interest/Estate</i> Fee Simple
<i>Description</i>	UNIT 12, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO
<i>Address</i>	LOCKER UNIT 206 BLOOR STREET WEST TORONTO
<i>PIN</i>	76254 - 0027 LT <i>Interest/Estate</i> Fee Simple
<i>Description</i>	UNIT 1, LEVEL 18, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO
<i>Address</i>	PH01 PENTHOUSE 206 BLOOR STREET WEST TORONTO
<i>PIN</i>	76254 - 0029 LT <i>Interest/Estate</i> Fee Simple
<i>Description</i>	UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Properties

Address PARK UNIT
206 BLOOR STREET WEST
TORONTO

PIN 76254 - 0030 LT **Interest/Estate** Fee Simple

Description UNIT 3, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address PARK UNIT
206 BLOOR STREET WEST
TORONTO

PIN 76254 - 0031 LT **Interest/Estate** Fee Simple

Description UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address PARK UNIT
206 BLOOR STREET WEST
TORONTO

PIN 76254 - 0089 LT **Interest/Estate** Fee Simple

Description UNIT 12, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Address LOCKER UNIT
206 BLOOR STREET WEST
TORONTO

Chargor(s)

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

Name 206 BLOOR STREET WEST LIMITED
Address for Service 162 Cumberland Street, Suite 300
Toronto, Ontario M5R 3N5

I, Sheldon Esbin (Director), have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s) **Capacity** **Share**

Name HOME TRUST COMPANY
Address for Service 145 King Street West, Suite 2300
Toronto, Ontario M5H 1J8

Statements

Schedule: See Schedules

Provisions

Principal \$4,000,000.00 **Currency** CDN
Calculation Period semi-annually, not in advance
Balance Due Date 2015/03/01

Provisions

Interest Rate	5.99% per annum
Payments	\$23,767.94
Interest Adjustment Date	2014 03 01
Payment Date	first day of each month
First Payment Date	2014 04 01
Last Payment Date	2015 03 01
Standard Charge Terms	200727
Insurance Amount	See standard charge terms
Guarantor	

Signed By

Lindsay Mitchell Kazdan	1 Adelaide Street E., Suite 801 Toronto M5C 2V9	acting for Chargor (s)	Signed	2014 02 25
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Tel 416-869-1234

Fax 416-869-0547

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

Submitted By

GARFINKLE, BIDERMAN LLP	1 Adelaide Street E., Suite 801 Toronto M5C 2V9	2014 02 28
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Tel 416-869-1234

Fax 416-869-0547

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargor Client File Number : 6645-055

ADDITIONAL CHARGE PROVISIONS

1. Realty Taxes The Chargor, while not in default hereunder, will be permitted to pay property taxes to the appropriate tax authorities. The Chargor covenants to provide to the Chargee confirmation on a quarterly basis, or at such other times and from time to time as the Chargee may reasonably require, proving payment of such realty taxes. However, in the event such confirmations are not provided or the taxes are not paid as they fall due, then, at the sole and unfettered discretion of the Chargee, the Chargor will pay an additional monthly payment of 1/12th of the estimated annual realty taxes assessed against the subject lands and the Chargee shall remit such amounts to the applicable taxing authority in a timely manner; it being understood that the tax portion of the payment may be adjusted from time to time in order to ensure sufficient sums are collected in advance to pay taxes as they fall due .
2. Assignment of Rents As further security to this Charge, the Chargor covenants and agrees to grant to the Chargee a specific assignment of all rents and leases of premises in the building on the lands comprising the security of this Charge.
3. Environmental The Chargee or agent of the Chargee may, at any time, before and after default, and for any purpose deemed necessary by the Chargee acting reasonably, enter upon the said lands to inspect the land and buildings thereon, subject to existing tenant's rights. Without in any way limiting the generality of the foregoing, the Chargee (or its respective agents) may enter upon the said lands to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Chargee acting reasonably; and the reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the mortgage rate, shall be payable by the Chargor forthwith and shall be a charge upon the said lands. The exercise of any of the powers enumerated in this clause shall not deem the Chargee, or its respective agents to be in possession, management or control of the said lands and buildings.

In consideration of the advance of funds by the Chargee, the Chargor hereby agrees that, in addition to any liability imposed on the Chargor under any instrument evidencing or securing the loan indebtedness, the Chargor shall be jointly and severally liable for any and all of the costs, expenses, damages or liabilities of the Chargee, its directors and officers (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 and such liability shall survive foreclosure of the security for the loan and any other existing obligations of the Chargor to the Chargee in respect of the loan and any other exercise by the Chargee of any remedies available to them for any default under the loan.

4. Due on Sale In the event of the Chargor selling, conveying, transferring or entering into an agreement for sale or transfer of (a) the Penthouse hereunder mortgaged, or (b) the whole of the Property being all the units comprising the Property including the Penthouse hereunder mortgaged to a purchaser or transferee not approved in writing by the Lender, which approval shall not be unreasonably withheld, then all monies secured, together with accrued interest thereon shall forthwith become due and payable at the Lender's option and sole discretion. Notwithstanding the afore-mentioned, where any of Suite 801, Suite 901, Suite 1201, or Suite 1401 (together with appurtenant parking and storage units as applicable) are sold, no consent shall be required, subject to the "Prepayment" provisions as noted herein.
5. No Further Encumbrances Except as may otherwise be contemplated under the terms of the Letter of Commitment (as defined below), the Chargor shall not, without first obtaining the Chargee's prior written approval, which approval may be granted or withheld in its sole and unfettered discretion.
6. Financial Statements Until repayment of the mortgage loan and upon request by the Chargee, the Chargor covenants to provide the Chargee detailed financial statements in accordance with the terms of the mortgage loan commitment letter referable to the subject loan transaction dated January 22, 2014, as same may be amended from time to time (the "Letter of Commitment"), issued to the Chargor. Failure to deliver the said financial statements and/or other related information shall constitute an event of default under this Charge.

7. Professional Management At all times the Chargor is to provide professional management of the Property satisfactory to the Chargee in accordance with the terms of the Letter of Commitment.
8. Non-Merger Notwithstanding the registration of this Charge and the advancement of funds thereunder, the terms and provisions of the Letter of Commitment shall remain binding and effective upon the involved parties. It is understood and agreed that any default under the Letter of Commitment shall be deemed a default under this Charge. In the event of any inconsistency between the terms of the Letter of Commitment and the Charge, the Chargee may, in its sole discretion, determine which terms shall take precedence.
9. Prepayment Privilege Provided that the Chargor has never been in default hereunder, the Chargor, when not in default, shall have the privilege of prepaying the whole or any part of the outstanding principal amount and accrued interest secured hereunder at any time or times during the term without penalty upon delivery of prior written notice of such intention, to be received by the Chargee no less than THIRTY (30) days prior to the proposed date of prepayment.
10. Partial Discharges Provided the Chargor is not in default hereunder, partial discharges of this Charge will be granted by the Chargee on a unit by unit basis provided that: (i) the Chargee shall receive the sum of ONE MILLION DOLLARS (\$1,000,000.00) from each unit sale; and (ii) the Chargor shall also pay the Chargee's discharge fee of TWO HUNDRED DOLLARS (\$200.00) per discharge, along with all applicable discharge registration fees, disbursements and taxes.
11. Definitions In construing the terms hereof, the words "Charge", "Chargee", "Chargor", "land" and "successor" shall have the meanings assigned to them in Section 1 of the Land Registration Reform Act and the words "Chargor" and "Chargee" and the personal pronouns "he", "she", "her" and "his" relating thereto and used therewith shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees, and "he", "she", "they", or "it", "his", "her", their" or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. The word "successor" shall also include successors and assigns of corporations including amalgamated and continuing corporations. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee, or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

Throughout this Charge, the terms "Mortgagor" and "Borrower" shall be interchangeable with the word "Chargor" and shall mean the Chargor. Throughout this Charge, the terms "Mortgagee" and "Lender" shall be interchangeable with the word "Chargee" and shall mean the Chargee. The terms "Charge" and "Mortgage" shall also be interchangeable and shall mean this Charge in its entirety. The paragraph headings in the provisions hereto are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

CONDOMINIUM SCHEDULE

1. The word "land" shall have the meaning stated herein and includes a "unit" or "units" as defined in the Condominium Act (Ontario) as amended.
2. The Chargor shall be equally responsible for seeing that the Condominium Corporation provides insurance in accordance with the provisions of these charge terms as herein set out.
3. The land forms part of the property described in a Declaration under the Condominium Act and registered pursuant to the provisions thereof. The expressions "Condominium Corporation" shall mean the corporation created by the registration of the said Declaration.
4. The Chargor shall:
 - a) Pay any and all money due and payable by the Chargor in accordance with the provisions of the Condominium Act or the said Declaration or the said by-law of the by-laws of the corporation from time-to-time on or before the dates for payment thereof and upon demand of the Chargee submit satisfactory proof of payment, including, without limiting the foregoing, contributions to common expenses or in respect of any special assessments required as owner. In the event of default the Chargee, at the option of the Chargee, may pay the same and treat such default as a default of payment under the terms of the charge.
 - b) Comply with and observe all the covenants, provisions, terms, conditions, stipulations, specification, rules and regulations of the Condominium Act and of the said Declaration and of the by-laws of the Corporation and any future by-laws of the Corporation and of any of the said rules and regulations applying to the owners of the said units.
5. In the event that the government of the property by the Corporation is terminated or in the event of a sale of the property or a part of the common elements of the corporation being authorized by a vote of the owners of the said units then, and in any such event, the monies hereby secured shall, at the option of the Chargee, become due and payable, and all the powers given herein shall become exercisable notwithstanding any consent given by the Chargee to such termination or sale.
6. The Chargee may exercise from time-to-time and at any time the right of the Chargor in the name of the Chargor and on the behalf of the Chargor, to vote or consent at all times and for all purposes, wherever and whenever the Chargor would have such right to vote, at any meeting of the Chargor or the Corporation or wherever and whenever the Chargor would have such right of consent to any matter relevant to the management or sale or any dealings with the property of the Corporation or its assets or the termination of the application of the Condominium Act to the Corporation.
7. The Chargee may from time-to-time waive the right to vote or right or consent by giving notice of intention to do so to the corporation and such waiver may be for an indeterminate period of time until withdrawn or for a limited period of time or for a specific meeting or matter, and while such waiver is in effect the Chargor may exercise the right to vote or to consent.
8. Notwithstanding the exercise by the Chargee of the right of the Chargor to either vote or consent, such exercise shall not render the Chargee a Chargee in possession.
9. The right to vote or to consent conferred upon the Chargee herein does not entail any representation express or implied, that the Chargee shall be in any way responsible to protect the interest of the Chargor, and the Chargee shall not be responsible for the exercise of the right to vote or the right to consent or any failure to exercise the right to vote or the right to consent.

APPENDIX “N”

LRO # 80 Charge/Mortgage

Received as AT3581991 on 2014 05 15 at 11:44

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

yyyy mm dd Page 1 of 23

Properties

PIN	76254 - 0011 LT	Interest/Estate	Fee Simple
Description	UNIT 1, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	801 SUITE 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0039 LT	Interest/Estate	Fee Simple
Description	UNIT 4, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	PARK UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0047 LT	Interest/Estate	Fee Simple
Description	UNIT 12, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	LOCKER UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0013 LT	Interest/Estate	Fee Simple
Description	UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	901 SUITE 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0034 LT	Interest/Estate	Fee Simple
Description	UNIT 7, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	PARK UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0019 LT	Interest/Estate	Fee Simple
Description	UNIT 1, LEVEL 12, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	1201 SUITE 206 BLOOR STREET WEST TORONTO		

LRO # 80 Charge/Mortgage

Received as AT3581991 on 2014 05 15 at 11:44

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

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Properties

PIN	76254 - 0036 LT	<i>Interest/Estate</i>	Fee Simple
Description	UNIT 1, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	PARK UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0048 LT	<i>Interest/Estate</i>	Fee Simple
Description	UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	LOCKER UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0021 LT	<i>Interest/Estate</i>	Fee Simple
Description	UNIT 1, LEVEL 13, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	1401 SUITE 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0053 LT	<i>Interest/Estate</i>	Fee Simple
Description	UNIT 4, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	PARK UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0061 LT	<i>Interest/Estate</i>	Fee Simple
Description	UNIT 12, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	LOCKER UNIT 206 BLOOR STREET WEST TORONTO		
PIN	76254 - 0027 LT	<i>Interest/Estate</i>	Fee Simple
Description	UNIT 1, LEVEL 18, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
Address	PH01 PENTHOUSE 206 BLOOR STREET WEST TORONTO		

LRO # 80 Charge/Mortgage

Received as AT3581991 on 2014 05 15 at 11:44

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

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Properties

<i>PIN</i>	76254 - 0029 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	PARK UNIT 208 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0030 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	PARK UNIT 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0031 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	PARK UNIT 206 BLOOR STREET WEST TORONTO		
<i>PIN</i>	76254 - 0089 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 12, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO		
<i>Address</i>	LOCKER UNIT 206 BLOOR STREET WEST TORONTO		

Chargor(s)

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

Name 206 BLOOR STREET WEST LIMITED
Address for Service c/o 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5

I, Wesley Roitman (President), have the authority to bind the corporation.

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

Chargee(s)*Capacity**Share*

Name ROMSPEN INVESTMENT CORPORATION
Address for Service 162 Cumberland Street, Suite 300, Toronto, Ontario M5R 3N5

LRO # 80 Charge/Mortgage

Received as AT3581991 on 2014 05 15 at 11:44

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

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Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$ 5,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	semi-annually not in advance		
<i>Balance Due Date</i>	On Demand		
<i>Interest Rate</i>	24.0%		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>			
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>			
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>			

Signed By

Barry Mitchell Polisuk	1 Adelaide Street E., Suite 801 Toronto M5C 2V9	acting for Chargor(s)	Signed	2014 05 15
Tel 416-869-1234				
Fax 416-869-0547				

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

Submitted By

GARFINKLE, BIDERMAN LLP	1 Adelaide Street E., Suite 801 Toronto M5C 2V9	2014 05 15
Tel 416-869-1234		
Fax 416-869-0547		

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$60.00
<i>Total Paid</i>	\$60.00

SCHEDULE "B"

STANDARD CHARGE TERMS AND CONDITIONS

1. DEFINED TERMS

Unless otherwise expressly defined or otherwise required by the context, the following words and phrases shall have the following meanings when used in the Charge:

- 1.1 "Borrower" means all Persons who have given the Charge and who have executed the same as Borrower;
- 1.2 "Charge" means the Charge/Mortgage of Land and all schedules attached to the Charge and all amendments thereto and replacements thereof from time to time;
- 1.3 "Costs" includes all costs, fees, charges and expenses of every nature and kind whatsoever incurred by the Lender or paid by the Lender to any other party in connection with the protection and preservation of the Property or any other security held by the Lender, or for the purpose of preserving and maintaining the enforceability and priority of the Charge and any such other security, or in connection with any and all demands and enforcement proceedings of every nature and kind made or carried out by or on behalf of the Lender under or pursuant to the Charge, and includes, without limitation, legal costs incurred by the Lender on a full indemnity basis;
- 1.4 "Commitment" means each and every letter of commitment, loan approval, term sheet or other similar agreement establishing or pertaining to the loan secured by the Charge or pursuant to which the Charge has been given, and all amendments thereto and renewals or replacements thereof from time to time;
- 1.5 "Condominium Corporation" means each corporation created or continued pursuant to the *Condominium Act, 1998* (Ontario) and pertaining to all or any part of the Property which are governed by the said Act;
- 1.6 "Covenantor" means any party to the Charge expressly defined as such and any and all Persons who have directly, indirectly, as principal debtor or as surety covenanted to pay or guaranteed payment of the whole or any part of the amount or amounts secured by the Charge or which are owing under the loan facilities referred to in this Commitment or who have covenanted to perform or guaranteed performance by the Borrower of its obligations under the Charge or under this Commitment or under any security given in connection therewith;
- 1.7 "Environmental Laws" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable directives, orders, codes, judgments and decrees of Governmental Bodies, whether now in existence or hereafter arising, intended to regulate and/or protect the environment and/or any living thing and/or relating to Hazardous Substances;
- 1.8 "Governmental Body" means any government, parliament, legislature, or any regulatory authority, bureau, tribunal, department, instrumentality, agency, commission or board of any government, parliament or legislature, or any court, and without limiting the foregoing, any other law, regulation or rule-making entity having or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator) and "Governmental Bodies" means any one or more of the foregoing collectively;
- 1.9 "Hazardous Substance" means any hazardous or dangerous waste or substance, pollutant, contaminant, waste or other substance without limitation, whether solid, liquid or gaseous in form, which when released into the natural environment may, based upon reasonably authoritative information then available concerning such substance, immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing,
- 1.9.1 any such substance as defined or designated under any Environmental Laws;
- 1.9.2 asbestos, urea formaldehyde, poly-chlorinated biphenyl (PCB) and materials manufactured with or containing the same; and,
- 1.9.3 radioactive and toxic substances;
- and "Hazardous Substances" means any one or more of the foregoing collectively;
- 1.10 "Lender" means all Persons in whose favour the Charge is given and who is or are named in the Charge as Lender;
- 1.11 "Person" means an individual, sole proprietorship, partnership, joint venture, syndicate, association, trust, body corporate, a natural person in its capacity as trustee, personal

representative or other legal representative, the Crown or any agency or instrumentality thereof, and/or any other entity recognized by law;

- 1.12 "Property" means the Property, tenements, hereditaments and appurtenances and any estate or interest therein described in the Charge, and all buildings and improvements now or hereafter situate or constructed thereon, and all easements, rights-of-way and other appurtenances thereto, and all structures, additions, improvements, machinery, equipment, decorations and other fixtures of every nature and kind (whether or not affixed in law) attached thereto or placed, installed or erected thereon or used in connection therewith;
- 1.13 "Receiver" means any receiver, receiver and manager, receiver-manager or trustee of the Property as may be appointed from time to time by the Lender pursuant to the provisions of the Charge or by any court of competent jurisdiction;
- 1.14 "Taxes" means all taxes, rates, assessments, local improvement charges, levies, penalties and other charges imposed upon or in respect of the Property by any Governmental Body having jurisdiction.

2. **STATUTORY REFERENCES**

Unless expressly stipulated or otherwise required by the context, all references in the Charge to any federal, provincial or municipal statute, regulation, by-law, order, directive or other governmental enactment shall be deemed to be and construed as a reference to the same as amended or re-enacted from time to time.

3. **EXCLUSION OF STATUTORY COVENANTS**

The implied covenants deemed to be included in a charge under sub-section 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded and replaced by the terms hereof which are covenants by the Borrower, for and on behalf of the Borrower, with the Lender.

4. **SHORT FORMS OF MORTGAGES ACT**

If any of the forms of words contained herein are substantially in the form of words contained in Column One of Schedule B of the *Short Forms of Mortgages Act*, R.S.O. 1980, c. 474, and distinguished by a number therein, the Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act, distinguished by the same number, and the Charge shall be interpreted as if the said Act was still in full force and effect.

5. **PROVISO FOR REDEMPTION**

Provided the Charge to be void upon payment of the principal sum hereby secured, in lawful money of Canada, with interest as herein provided and taxes and performance of statute labour and performance of all covenants and agreements contained in the Charge.

6. **RELEASE**

And the Borrower releases to the Lender all its claims upon the Property subject to the proviso for redemption herein.

7. **ADVANCE OF FUNDS**

The Borrower agrees that neither the preparation, execution nor registration of the Charge shall bind the Lender to advance the monies hereby secured, nor shall the advance of a part of the principal sum herein bind the Lender to advance any unadvanced portion thereof, but nevertheless the estate hereby charged shall take effect forthwith upon the execution of the Charge by the Borrower, and the expenses of the examination of the title and of the Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum herein not being advanced, the same to be charged hereby upon the Property, and shall be without demand thereof, payable forthwith with interest at the rate provided for in the Charge, and in default the remedies herein shall be exercisable.

8. **BORROWER'S COVENANTS**

The Borrower covenants with the Lender that the Borrower will pay the principal sum herein and interest and observe the proviso for redemption herein, and will pay as they fall due all Taxes and when required by the Lender, shall transmit the receipts therefore to the Lender;

The Borrower further covenants with the Lender that the Borrower will pay all amounts which are payable hereunder or which are capable of being added to the principal sum herein pursuant to the provisions of the Charge including, without limiting the generality of the foregoing, all servicing or other fees, costs or charges provided for herein; all insurance premiums; the amount paid for the

supply of any fuel or utilities to the Property; all costs, commissions, fees and disbursements incurred by the Lender in constructing, inspecting, appraising, selling, managing, repairing or maintaining the Property; all Costs incurred by the Lender with respect to the Charge or incurred by the Lender arising out of, or in any way related to the Charge; any amounts paid by the Lender on account of any encumbrance, lien or charge against the Property and any and all Costs incurred by the Lender arising out of, or in any way related to, the Lender realizing on its security by sale or lease or otherwise;

And that the Borrower has a good title in fee simple to the Property and has good right, full power and lawful and absolute authority to charge the Property and to give the Charge to the Lender upon the covenants contained in the Charge;

And that the Borrower has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Property, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose; and free from all encumbrances except as may be permitted by the Lender;

And that the Borrower will execute such further assurances of the Property as may be requisite;

And that the Borrower will produce the title deeds and allow copies to be made at the expense of the Borrower.

9. **COMPLIANCE WITH LAWS AND REGULATIONS**

The Borrower shall, in its ownership, operation and use of the Property, promptly and at all times observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every Governmental Body having jurisdiction with respect to the same, and further agrees at its cost and expense to take any and all steps or make any improvements or alterations thereto, structural or otherwise, ordinary or extraordinary, which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances or regulations.

10. **CHANGE OF USE**

The Borrower will not change or permit to be changed the existing use or uses of the Property without the prior written consent of the Lender.

11. **REPAIR**

The Borrower will keep the Property including the buildings, erections and improvements thereon in good condition and repair according to the nature and description thereof, and the Lender may, whenever it deems necessary, enter upon and inspect the Property, and the cost of such inspection shall be added to the indebtedness secured hereunder, and if the Borrower neglects to keep the Property in good condition and repair, or commits or permits any act of waste on the Property (as to which the Lender shall be sole judge) or makes default as to any of the covenants or provisos herein contained, the principal sum herein shall, at the option of the Lender, forthwith become due and payable, and in default of payment thereof with interest as in the case of payment before maturity, the powers of entering upon and leasing or selling hereby given may be exercised forthwith and the Lender, upon five days notice to the Borrower and in the event that the Borrower does not in such period cause and diligently proceed with such repairs, may make such repairs as it deems necessary, and the cost thereof with interest at the rate aforesaid shall be added to the monies hereby secured and shall be payable forthwith and be a charge upon the Property prior to all claims thereon subsequent to the Charge.

12. **ALTERATIONS OR ADDITIONS**

The Borrower will not make or permit to be made any alterations or additions to the Property without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion or may be given only subject to compliance with such terms and conditions at the cost of the Borrower as the Lender may impose.

13. **PROPERTY INCLUDE ALL ADDITIONS**

The Property shall include all structures and installations brought or placed on the Property for the particular use and enjoyment thereof or as an integral part of or especially adapted for the buildings thereon whether or not affixed in law to the Property including, without limiting the generality of the foregoing, piping, plumbing, electrical equipment or systems, aenials, refrigerators, stoves, clothes washers and dryers, dishwashers, incinerators, radiators and covers, fixed mirrors, fitted blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment, cooking and refrigeration equipment and all component parts of any of the foregoing and that the same shall become fixtures and an accession to the freehold and a part of the realty.

14. ENVIRONMENTAL WARRANTY AND INDEMNITY

The Borrower and each Covenantor jointly and severally represent, warrant, covenant and agree that:

- 14.1. They have not, and to the best of their knowledge, information and belief after making due inquiry, no other Person has caused or permitted any Hazardous Substance to be placed, discharged, stored, located or disposed of, on, under, at or near the Property nor to be released from the Property;
- 14.2. The Property have never been used as a land fill site, waste disposal site or coal gasification site, or to store Hazardous Substances either above or below ground in storage tanks, pipes, conduits or otherwise;
- 14.3. They and, to the best of their knowledge, information and belief after making due inquiry, the tenants, invitees and all other occupiers of the Property have at all times carried out all business and other activities upon the Property in strict compliance with all Environmental Laws;
- 14.4. They will at all times carry out all business and other activities upon the Property in strict compliance with all Environmental Laws, and they will at all times take all necessary measures to ensure that those for whom they are liable in law will also at all times carry out all business and other activities upon the Property in strict compliance with all Environmental Laws.
- 14.5. To the best of their knowledge, information and belief after making due inquiry, the use and occupation of the Property have at all times been in strict compliance with all Environmental Laws;
- 14.6. No notice, order, stop work order, inspection file, investigation, directive, enforcement action, regulatory action, suit, claim, action, proceeding or charge relating to any Hazardous Substance or to a breach or non-compliance with any Environmental Laws has been issued by any Governmental Body with respect to the Borrower or the Property, or is otherwise threatened to be issued;
- 14.7. They will provide the Lender with full and complete copies of all communications received from time to time from all Governmental Bodies with respect to the Property;
- 14.8. They will provide to the Lender on request and from time to time, information with respect to the status of the environmental matters referred to herein and will complete and deliver, on request, the Lender's standard form of report, if any, on environmental matters;
- 14.9. The representations and warranties contained in this Warranty and Indemnity are true and accurate in all respects as of the date of the first advance made pursuant to the Charge, and such representations and warranties shall remain true and accurate in all respects and shall survive the release and discharge of the Charge and the repayment and satisfaction of the indebtedness secured by the Charge; and,
- 14.10. The Lender may delay or refuse to make any advance to the Borrower if the Lender believes that any of the representations and warranties set out in this Warranty and Indemnity are not presently true and accurate or if such representations and warranties have become untrue or inaccurate at any time hereafter.

The Borrower hereby agrees to permit the Lender to conduct, at the Borrower's sole expense, from time to time as required, any and all tests, inspections, appraisals and environmental audits of the Property so as to determine and ensure continuing compliance with the provisions of this Warranty and Indemnity including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Property and/or to the businesses and other activities conducted thereon.

The Borrower and each Covenantor jointly and severally agrees to indemnify and save fully and completely harmless the Lender and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, demands, claims, actions, charges, orders, directives, undertakings, costs, legal fees and expenses, of every nature and kind, whatsoever and howsoever, which at any time or from time to time may be paid by, or incurred by, or suffered by, or asserted against, any of them as a direct or indirect result of:

- a) a breach of any of the representations, warranties or covenants hereinbefore set out;
- b) the presence of any Hazardous Substance in, on, under or about the Property;
- c) the breach of any Environmental Laws; and/or,

- d) the discharge, emission, release, spill or disposal of any Hazardous Substance from the Property into or upon any land, the atmosphere, any watercourse, body of water or wetland or any other property.

The representations, warranties, covenants, acknowledgments and indemnifications set out in this Warranty and Indemnity shall survive the release and discharge of the Charge and of any other security held by the Lender and the repayment and satisfaction of the indebtedness secured by the Charge.

15. INSPECTION

The Lender shall have access to and the right to inspect the Property at all reasonable times.

16. TAXES

WITH respect to Taxes, the Borrower covenants and agrees with the Lender that:

- 16.1. The Lender may deduct from any advance of the monies secured by the Charge an amount sufficient to pay all Taxes which have become due and payable during any calendar year.
- 16.2. The Lender may at its sole option estimate the amount of the Taxes payable in each year and the Borrower shall forthwith upon demand of the Lender pay to the Lender one-twelfth (1/12) of the estimated annual amount of such Taxes on the 1st day of each and every month during the term of the Charge commencing with the 1st day of the first full month of the term of the Charge. The Lender may at its option apply such payments to the Taxes so long as the Borrower is not in default under any covenant or agreement contained in the Charge, but nothing herein contained shall obligate the Lender to apply such payments on account of Taxes more often than yearly. Provided however, that if the Borrower shall pay any sum or sums to the Lender to apply on account of Taxes, and if before such payments have been so applied by the Lender, there shall be default by the Borrower in respect of any payment of principal or interest as herein provided, the Lender may at its option apply such sum or sums in or towards payment of the principal and interest in default. If the Borrower desires to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Borrower may pay to the Lender such additional amounts as are required for that purpose.
- 16.3. In the event that the Taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Lender as aforesaid, the Borrower shall pay to the Lender, on demand, the amount required to make up the deficiency. The Lender may at its option, pay any of the Taxes when payable, either before or after they are due, without notice, or may make advances therefore in excess of the then amount of credit held by the Lender for Taxes. Any excess amount advanced by the Lender shall be secured as an additional principal sum under the Charge and shall bear interest at the rate as provided for in the Charge until repaid by the Borrower.
- 16.4. The Borrower shall transmit to the Lender all assessment notices, tax bills and other notices pertaining to the imposition of Taxes forthwith after receipt thereof.
- 16.5. The Borrower shall pay to the Lender, in addition to any other amounts required to be paid hereunder, the amount required by the Lender in its sole discretion for a reserve on account of future liability for Taxes.
- 16.6. In no event shall the Lender be liable for any interest on any amount paid to it on account of Taxes and the monies so received may be held with its own funds pending payment or application thereof as herein provided; provided that in the event that the Lender does not utilize the funds received on account of Taxes in any calendar year, such amount or amounts may be held by the Lender on account of any pre-estimate of Taxes required for the next succeeding calendar year, or at the Lender's option the Lender may repay such amount to the Borrower without any interest.
- 16.7. The Borrower shall in all instances be responsible for the payment of any and all penalties resulting from any arrears of Taxes or any late payment of current instalments thereof, and at no time shall such penalties be the responsibility of the Lender.
- 16.8. In the event the Lender does not collect payments on account of Taxes as aforesaid, the Borrower shall deliver to the Lender within thirty (30) days following the due date for each instalment of Taxes written evidence from all taxing authorities having jurisdiction to the effect that the then current instalment of Taxes and all other Taxes due in respect of the then current calendar year and any preceding calendar years have been paid in full, failing which, the Lender shall be entitled to charge a servicing fee for each written inquiry directed to such taxing authorities or the Borrower for the purpose of ascertaining the status of the Taxes together with any costs payable to such taxing authorities for such information.

17. UTILITIES

The Borrower covenants that it will pay all utility and fuel charges related to the Property as and when they are due and that the Borrower will not allow or cause the supply of utilities or fuel to the Property to be interrupted or discontinued and that, if the supply of fuel oil or utilities is interrupted or discontinued, the Borrower will take all steps that are necessary to ensure that the supply of utilities or fuel is restored forthwith. It is specifically agreed that the failure to pay all fuel and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel or utilities to the Property shall constitute a default by the Borrower within the meaning of the Charge and in addition to all other remedies provided for herein, the principal sum of the Charge shall, at the sole option of the Lender forthwith become due and payable.

18. INSURANCE

The Borrower will insure and keep insured during the term of the Charge the buildings and other improvements on the Property (now or hereafter erected) on an all-risks basis in an amount of not less than the greater of the full replacement value of the buildings located thereon from time to time, or the principal money herein, with no co-insurance provisions and with the Lender's standard mortgage clause forming part of such insurance policy. The Borrower shall carry such liability, rental, loss of income, business interruption, boiler, plate glass and other insurance coverage as is required by the Lender to be placed with such insurance companies and in such amounts and in such form as may be acceptable to the Lender. All such policies shall provide for loss payable to the Lender and contain such additional clauses and provisions as the Lender may require. An original of all insurance policies and endorsements from the insurer to the effect that coverage has been bound and/or extended for a minimum period of at least one year and that all premiums with respect to such term of such coverage have been paid for in full, shall be produced to the Lender prior to any advance and at least thirty (30) days before expiration of any term of any such respective policy, failing which the Lender may provide therefore and charge the premium paid therefore and interest thereon at the aforesaid rate to the Borrower and any amounts so paid by the Lender shall be payable forthwith to the Lender and shall also be a charge upon the Property and secured by the Charge. It is further agreed that the Lender may at any time require any insurance on the said buildings to be cancelled and new insurance effected with a company to be named by it, and also may, of its own accord, effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be forthwith payable to it, together with interest at the rate aforesaid by the Borrower (together with any Costs of the Lender as herein set out), and shall be a charge upon the Property and secured by the Charge.

In the event that the evidence of continuation of such insurance as herein required has not been delivered to the Lender within the required time, the Lender shall be entitled to a servicing fee for each written inquiry which the Lender shall make to the insurer or the Borrower pertaining to such renewal (or resulting from the Borrower's non-performance of the within covenant). In the event that the Lender pursuant to the within provision arranges insurance coverage with respect to the Property, the Lender, in addition to the aforesaid servicing fee, shall be entitled to a further servicing fee for arranging the necessary insurance coverage.

In the event of any loss or damage, the Borrower shall forthwith notify the Lender in writing and notwithstanding any other provision to the contrary, statutory or otherwise, in the event of any monies becoming payable pursuant to any insurance policy herein required, the Lender may, at its option, require the said monies to be applied by the Borrower in making good the loss or damage in respect of which the money is received, or in the alternative, may require that any or all of the monies so received be applied in or towards satisfaction of any or all of the indebtedness hereby secured whether or not such indebtedness has become due. No damage may be repaired nor any reconstruction effected without the approval in writing of the Lender in any event.

The Borrower, upon demand, will transfer all policies of insurance provided for herein and the indemnity which may become due therefrom to the Lender. The Lender shall have a lien for the indebtedness hereby secured on all the said insurance proceeds and policies, and may elect to have these insurance monies applied as it may deem appropriate, including payment of monies secured hereby, whether due or not, but the Lender shall not be bound to accept the said monies in payment of any principal not yet due.

19. REMITTANCE AND APPLICATION OF PAYMENTS

All payments of principal, interest and other monies payable hereunder to the Lender shall be payable at par in lawful money of Canada at the Lender's address for service as set out in the Charge or at such other place as the Lender shall designate in writing from time to time. In the event that any of the monies secured by the Charge are forwarded to the Lender by mail, payment will not be deemed to have been made until the Lender has actually received such monies and the Borrower shall assume and be responsible for all risk of loss or delay.

Notwithstanding anything herein to the contrary, in the event of any default under the Charge, the Lender may apply any payments received in whatever order the Lender may elect as between principal, interest, realty taxes, insurance premiums, repairs, Costs and any other advances or payments made by the Lender hereunder.

20. RECEIPT OF PAYMENT

Any payment received after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest to have been made and received on the next bank business day and the Lender shall be entitled to interest on the amount due it, to and including the date on which the payment is deemed by this provision to have been received.

21. NO DEEMED RE-INVESTMENT

Except in the case where the Charge provides for blended payments of principal and interest whether paid monthly or otherwise, the parties hereto agree that the Lender shall not be deemed to reinvest any monthly or other payments received by it hereunder.

22. PRE-AUTHORIZED CHEQUING PLAN

If and when required by the Lender, all payments made under the Charge by the Borrower shall be made by a pre-authorized cheque payment plan as approved by the Lender. The Lender shall not be obligated to accept any payment other than payment made by pre-authorized cheque. Failure to make all payments by pre-authorized cheque shall be an act of default within the meaning of the Charge and the Lender shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option.

23. POSTDATED CHEQUES

The Borrower shall, if and when required by the Lender, deliver to the Lender upon the first advance of moneys hereunder or upon request and thereafter on each anniversary date thereof in each year for the duration of the term of the Charge, postdated cheques for the payments of principal, interest and estimated realty taxes required to be made herein during the twelve month period commencing on each such anniversary date. In the event of default by the Borrower in delivery to the Lender of the postdated cheques as herein provided, the Charge shall be deemed in default and the Lender shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option. In addition, the Lender upon the Borrower's failure to deliver such postdated cheques as required hereunder shall be entitled to a servicing fee for each written request that it makes to the Borrower for the purpose of obtaining such postdated cheques. Any step taken by the Lender hereunder by way of a request for further postdated cheques shall be without prejudice to the Lender's rights hereunder to declare the Charge to be in default in the event that such postdated cheques are not delivered within the required time.

24. DISHONoured CHEQUES

In the event that any of the Borrower's cheques are not honoured when presented for payment to the drawee, the Borrower shall pay to the Lender for each such returned cheque a servicing fee to cover the Lender's administration costs with respect to same. In the event that the said cheque which has not been honoured by the drawee is not forthwith replaced by the Borrower, the Lender shall be entitled to a further servicing fee for each written request therefore which may be necessitated by the Borrower not forthwith replacing such dishonoured cheque.

25. FINANCIAL AND OPERATING STATEMENTS

The Borrower covenants that, within the periods of time hereinafter specified, or within such other period(s) of time as may be specified by this Commitment, the Borrower shall deliver or cause to be delivered to the Lender the following:

- 25.1. within one hundred and twenty (120) days after the end of each fiscal year of operation of the Property, an annual operating statement in respect of the Property for the immediately preceding fiscal year setting forth the gross rents and other income derived from the Property, the cost and expenses of operation and maintenance of the Property and such other information and explanations in respect of the same as may be required by the Lender;
- 25.2. within one hundred and twenty (120) days after the end of each fiscal year of each Borrower and Covenantor which is a corporation or partnership, the annual financial statements of each such corporation or partnership for its immediately preceding fiscal year including, without limitation, the balance sheet of the corporation or partnership as at its fiscal year end with comparative figures for prior years, statements of earnings, retained earnings and changes in financial position as at the fiscal year end with comparative figures for prior fiscal years, any supporting schedules and notes thereto and such other information and explanations as may be required by the Lender; and
- 25.3. with respect to each Borrower and Covenantor who is an individual and within thirty (30) days after each anniversary of the date of this Commitment, an annual updated net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Lender.

All such operating and financial statements shall be prepared at the expense of the Borrower and in accordance with generally accepted accounting principles applied on a consistent basis and by a duly qualified chartered accountant or certified public accountant which is acceptable to the Lender, and shall be submitted in audited form if so required by the Lender in the event of a default occurring pursuant to the Charge, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Borrower or Covenantor, as the case may be.

The Lender reserves the right to disclose to third parties, any of the foregoing financial information or otherwise acquired in respect to the Loan as may be required in connection with the fulfillment of its rights and/or obligations under this Commitment or the Charge or to carry out its terms of to enforce its security for mortgage securitization purposes.

26. **ESTOPPEL ACKNOWLEDGEMENTS**

If and whenever the Lender requests an acknowledgement from the Borrower as to the statement of account with respect to the Charge or the status of the terms and conditions of the Charge, the Borrower shall execute such an acknowledgement in such form as may be required by the Lender provided that the contents of such form are correct, and the Borrower shall do so forthwith upon request and without cost to the Lender and shall return such acknowledgement duly executed within two (2) business days of such request.

27. **STATEMENTS OF ACCOUNT**

The Borrower shall be entitled to receive upon written request, a statement of account with respect to the Charge as of any payment date under the Charge and the Lender shall be entitled to a servicing fee for each such statement.

28. **RENEWAL OR EXTENSION OF TIME; ATTENTION SUBSEQUENT INTERESTS**

No renewal or extension of the term of the Charge given by the Lender to the Borrower, or anyone claiming under it, or any other dealing by the Lender with the owner of the equity of redemption of the Property, shall in any way affect or prejudice the rights of the Lender against the Borrower or any other Person liable for the payment of the monies hereby secured. The Charge may be amended, extended and/or renewed by an agreement in writing at maturity for any term with or without an increased rate of interest, or amended from time to time as to any of its terms, including, without limitation, an increase of interest rate or principal amount and notwithstanding that there may be subsequent encumbrancers, and it shall not be necessary to register any such agreement in order to retain priority for the Charge so altered over any instrument registered subsequent to the Charge. PROVIDED that nothing contained in this paragraph shall confer any right of amendment, extension or renewal upon the Borrower.

The terms of the Charge may be amended, extended and the Charge may be renewed from time to time by mutual agreement between the then current owner of the Property and the Lender and the Borrower hereby further covenants and agrees that, notwithstanding that the Borrower may have disposed of its interest in the Property, the Borrower will remain liable as a principal debtor and not as a surety for the observance of all of the terms and provisions herein and will in all matters pertaining to the Charge well and truly do, observe, fulfill and keep all of the covenants, provisos, conditions and agreements in the Charge and all amendment(s), extension(s) and renewal(s) thereof, and without limiting the foregoing, notwithstanding the amendment, extension and/or renewal of the Charge, and notwithstanding the giving of time for the payment of the Charge or the varying of the terms of the payment thereof or of the rate of interest thereon, and notwithstanding any other indulgence by the Lender to the Borrower.

The Borrower covenants and agrees with the Lender that no agreement for amendment, extension and/or renewal hereof, or for extension of the time for payment of any monies payable hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Borrower to the Lender after the expiration of the original term of the Charge or of any subsequent term agreed to in writing between the Borrower and the Lender, and that no amendment, extension and/or renewal hereof or any extension of the time for payment of any monies hereunder shall result from, or be implied from, any other act, matter or thing, save only express agreement in writing between the Borrower and the then current owner of the Property.

29. **EXPROPRIATION**

If the Property or any part thereof which, in the reasonable opinion of the Lender is material to the viability and operations thereon shall be expropriated by any Governmental Body clothed with the powers of expropriation, the principal sum herein remaining unpaid shall at the option of the Lender forthwith become due and payable together with interest thereon at the rate provided for herein to the date of payment together with a bonus equal to the aggregate of (a) three months' interest at the said rate calculated on the amount of the principal remaining unpaid, and (b) one month's interest at the rate provided for herein calculated on the principal remaining unpaid, for each full year of the term of the Charge or any part of such year from the said date of payment to the date the said principal sum or balance thereof remaining unpaid would otherwise under the provisions of

the Charge become due and payable and in any event all the proceeds of any expropriation shall be paid to the Lender at its option in priority to the claims of any other party.

30. LETTERS OF CREDIT

The parties to the Charge hereby acknowledge and agree that, in addition to all other amounts advanced and/or secured hereby, the Charge shall stand as good and valid security with respect to any and all letters of credit, letters of guarantee or similar instruments (collectively the "Letters of Credit") issued by or on behalf of the Lender for the benefit of or on account of the Borrower and in favour of any other party as may be requested or directed by the Borrower from time to time, and that the total amount of the financial obligations under each Letter of Credit shall be deemed to have been advanced and fully secured under the Charge as of and from the date of issuance of each such Letter of Credit regardless of when the same may be called upon by the holder thereof. In the event that at any time the Lender is of the opinion, in its sole and unfettered discretion, that the Property or such part(s) thereof as remain undischarged are insufficient to secure the aggregate amount of all of the Lender's outstanding obligations under, pursuant to or in connection with such Letters of Credit from time to time outstanding, the Lender shall be entitled to retain out of any payment received under the Charge or out of the proceeds of any sale or revenue received in respect of the Property or any part(s) thereof or out of the proceeds of any amounts received by the Lender upon the enforcement of the Charge, an amount equal to the aggregate amount of all of the Lender's outstanding obligations under, pursuant to or in connection with Letters of Credit as remain from time to time outstanding without being obliged to apply any portion of such amount on account of any principal, interest or other monies otherwise outstanding and secured by the Charge; and the Lender shall be entitled to retain such amount for such period of time as any of the Letters of Credit remain outstanding and the Lender is hereby irrevocably authorized and directed to utilize the same in order to satisfy payment of any amounts called upon for payment pursuant to the Letters of Credit.

31. SALE OR CHANGE OF CONTROL

In the event of any sale, conveyance or transfer of the Property or any portion thereof, or a change in control or beneficial ownership of the Borrower or a change in the beneficial ownership of the Property or any portion thereof or a lease of the whole of the Property, all sums secured hereunder shall, at the Lender's option, become due and payable forthwith unless the prior written consent of the Lender has been obtained, which consent may be arbitrarily or unreasonably withheld. The rights of the Lender pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under the Charge from the Borrower or any Person claiming through or under it and the rights of the Lender hereunder shall continue without diminution for any reason whatsoever until such time as the Lender has consented in writing as required by this provision.

Provided further that no permitted sale or other dealing by the Borrower with the Property or any part thereof shall in any way change the liability of the Borrower or in any way alter the rights of the Lender as against the Borrower or any other Person liable for payment of the monies hereby secured.

32. NO FURTHER ENCUMBRANCES

In the event of that the Borrower enters into, creates, incurs, assumes, suffers or permits to exist any additional charge, encumbrance, pledge or other financing of the Property, or of the chattels, equipment or personal property related to the Property, all sums secured hereunder shall, at the Lender's option, become due and payable forthwith unless the prior written consent of the Lender has been obtained, which consent may be arbitrarily or unreasonably withheld.

33. EVENTS OF DEFAULT

Without limiting any of the provisions of the Charge, each of the following events shall be considered events of default hereunder upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall immediately become due and payable at the option of the Lender exercised by notice in writing to the Borrower:

- 33.1 Failure by the Borrower to pay any instalment of principal, interest and/or Taxes under the Charge or under any charge or other encumbrance of the Property, on the date upon which any of the payments for same become due;
- 33.2 Failure by the Borrower or any Covenantor to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application or Commitment for the loan secured by the Charge, the provisions of the Charge, or any other document creating a contractual relationship as between them or any of them or if it is found at any time that any representation to the Lender with respect to the loan secured by the Charge or in any way related thereto is incorrect or misleading;
- 33.3 Default by the Borrower in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any charge or other encumbrance affecting the Property, whether or not it has priority over the Charge;

- 33.4 Upon the registration of any construction lien against the Property which is not discharged or vacated within a period of ten (10) days after the date of registration thereof;
- 33.5 In the event that any Hazardous Substance is discovered in, on or under the Property or any part thereof and the same is not completely removed therefrom to the entire satisfaction of the Lender within ten (10) days after demand therefore by the Lender;
- 33.6 In the event that the Property are abandoned or there is any cessation of the business activities or any material part thereof now being conducted upon the Property by the Borrower or the beneficial owner of the Property or any of their respective officers, agents, employees, tenants or invitees;
- 33.7 If the Borrower or any Covenantor commits an act of bankruptcy or becomes insolvent or has a receiver or receiver and manager appointed for it or over any of its assets or if any creditor takes possession of any of its assets or if any execution, distress or other like process is levied or enforced upon the Property or any part thereof or if any compromise or arrangement with creditors is made by any of them; or,
- 33.8 Default by the Borrower, its successors or assigns, or any of the Covenantor(s) in the observance or performance of any representation, warranty, covenant, proviso, agreement or condition contained in any charge or encumbrance or document securing, evidencing or relating to any indebtedness owing by the Borrower, its successors or assigns, to the Lender from time to time whether or not related to or affecting the within Loan and the Property or any other loan and property given as security therefor.

34. DEFAULT

The Lender may, on default of payment or in the performance of any covenant in the Charge contained or implied by law or statute, enter on and lease the Property, or in default of payment or in default in performance of any covenant in the Charge contained or implied by law or statute for at least fifteen (15) days may, on at least thirty-five (35) days' notice sell the Property. Such notice shall be given to such Persons and in such manner and form and within such time as provided under the *Mortgages Act* (Ontario). In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable it is agreed that notice may be effectually given by leaving it with a grown-up person on the Property, if occupied, or by placing it on the Property if unoccupied, or at the option of the Lender, by mailing it in a registered letter addressed to the Borrower at the Borrower's last known address, or by publishing it once in a newspaper published in the city, county or district in which the Property are situate; and such notice shall be sufficient although not addressed to any Person or Persons by name or designation; and notwithstanding that any Person to be affected thereby may be unknown, unascertained, or under disability. If there be legal personal representatives of the Borrower on the death of the Borrower, such notice may, at the option of the Lender, be given in any of the above modes or by personal service upon such representatives.

Without prejudice to the statutory powers of the Lender under the preceding proviso, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for two months after any payment of either principal or interest falls due, the Lender may exercise the powers given under the preceding proviso with or without entry on the Property without any notice, it being understood and agreed, however, that if the giving of notice by the Lender shall be required by law then notice shall be given to such Persons and in such manner and form and within such time as so required by law. The Lender may sell the whole or any part or parts of the Property by public auction or private contract, or partly one or partly the other; and the proceeds of any sale hereunder may be applied in payment of any Costs incurred in taking, recovering or keeping possession of the Property or by reason of non-payment or procuring payments of monies secured hereby or otherwise. The Lender may sell any of the Property on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefore and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper; and may buy in or rescind or vary any contract for the sale of the whole or any part of the Property and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Lender shall be bound to pay the Borrower only such monies as have been actually received from purchasers after the satisfaction of the claims of the Lender and for any of said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any Person damaged by an unauthorized, improper or irregular exercise of the power shall have its remedy against the Person exercising the power in damages only.

It is hereby agreed that the Lender may pay all premiums of insurance and all Taxes which shall from time to time fall due and be unpaid in respect of the Property, and that such payments together

with all Costs which may be incurred in taking, recovering and keeping possession of the Property, and of negotiating this loan, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize this security, (including legal fees, real estate commissions, appraisal costs and other Costs incurred in leasing or selling the Property or in exercising the power of entering, leasing and selling herein contained) shall be with interest at the rate aforesaid and shall be a charge upon the Property in favour of the Lender and that the Lender may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the Property, and that any amount paid by the Lender shall be added to the monies hereby secured and shall be payable forthwith with interest at the rate herein, and in default the Charge shall immediately become due and payable at the option of the Lender and all powers in the Charge conferred shall become exercisable. In the event of the Lender paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the money advanced on the security of the Charge or otherwise, the Lender shall be entitled to all the rights, equities and securities of the Person or Persons so paid and is hereby authorized to obtain an assignment or discharge thereof, and to retain same, for whatever period the Lender shall deem it proper to do so.

Whenever a power of sale is hereby conferred upon the Lender, all provisions hereof relating to exercising such power, including, without in any way limiting the generality of the foregoing, the Persons to whom notice of exercising such power shall be given and the manner of giving such notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of the Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no such conflict, the provisions of the Charge shall remain unchanged.

The Lender may lease or sell as aforesaid without entering into possession of the Property.

The Lender may distrain for arrears of interest and the Lender may distrain for arrears of principal and arrears of Taxes in the same manner as if the same were arrears of interest.

Upon default of the payment of the interest hereby secured the principal hereby secured shall become payable at the option of the Lender, together with interest thereon.

Upon default of payment of instalments of principal promptly as the same become due, the balance of the principal and interest shall immediately become due and payable at the option of the Lender. Upon default under the Charge, the Lender shall be entitled and shall have full power to assume control of, manage, operate and carry on the business of the Borrower being conducted at or upon the Property on the date of the Charge or at any time thereafter.

Until default hereunder the Borrower shall have quiet possession of the Property.

On default the Lender shall have quiet possession of the Property.

The Lender may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of the principal secured herein shall be as set out in the proviso for redemption herein. Any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. No waiver shall be effective or binding on the Lender unless made in writing.

It is further agreed that the Lender may at its discretion at any time, release any part or parts of the Property or any other security or any surety for the money hereby secured either with or without any sufficient consideration therefore, without responsibility therefore, and without thereby releasing any other part of the Property or any Person from the Charge or from any of the covenants herein contained, it being especially agreed that every part or lot into which the Property are or may hereafter be divided does and shall stand charged with all of the monies hereby secured and no Person shall have the right to require the principal secured hereunder to be apportioned; further the Lender shall not be accountable to the Borrower for the value thereof, or for any monies except those actually received by the Lender. No sale or other dealing by the Borrower with the equity of redemption in the Property or any part thereof shall in any way change the liability of the Borrower or in any way alter the rights of the Lender as against the Borrower or any other Person liable for payment of the monies hereby secured.

It is further agreed that the Lender may exercise all remedies provided for in the Charge concurrently or in such order and at such times as it may see fit and shall not be obligated to exhaust any remedy or remedies before exercising its rights under any other provisions contained in the Charge.

Without limiting any other provision of the Charge, the Borrower acknowledges and agrees that, upon the occurrence of any default under the Charge and whether or not the monies hereby secured have been fully advanced, the Lender may, at any time and from time to time as the Lender shall determine at its sole option and discretion, advance such further sums under the Charge as are necessary to pay any arrears of Taxes, utilities or other charges capable of constituting a lien upon the Property *pari passu* with or in priority to the Charge, to pay all amounts

due under any encumbrance having priority over the Charge, to pay all amounts required to discharge or vacate any construction lien registered against the Property whether or not priority is claimed over the Charge, to maintain in good standing any policies of insurance in respect of the Property, to maintain, repair, operate and/or manage the Property and any or all improvements thereon, to complete construction or renovation of any improvements on the Property, to realize upon any security held by the Lender for the loan secured by the Charge and generally to enforce all of the Lender's rights, title and interest hereunder and to protect the Property and to preserve the enforceability and priority of the Charge, and to pay any and all Costs; and all amounts advanced by the Lender for any of the purposes as aforesaid shall bear interest at the rate applicable under the Charge from the date so advanced until repaid in full and shall be secured by the Charge in the same priority as the principal amount hereof.

35. RIGHT OF LENDER TO REPAIR, ETC.

The Borrower covenants and agrees with the Lender that in the event of default in the payment of any instalment or other monies payable hereunder by the Borrower or on breach of any covenant, proviso or agreement herein contained after all or any of the monies hereby secured have been advanced, the Lender may, at such time or times as the Lender may deem necessary and without the concurrence of any Person, enter upon the Property and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the Property or for inspecting, taking care of, leasing, collecting the rents of and generally managing the Property, as the Lender may deem expedient; and all Costs including, but not limited to, allowances for the time and services of any employee of the Lender or other Person appointed for the above purposes and a servicing fee shall be forthwith payable to the Lender by the Borrower and shall be a charge upon the Property and shall bear interest at the rate applicable under the Charge until paid.

36. APPOINTMENT OF A RECEIVER

It is agreed that at any time and from time to time when there shall be default under the provisions of the Charge, the Lender may at such time and from time to time and with or without entering into possession of the Property appoint in writing a Receiver 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 by similar writing remove any such Receiver and appoint another in its place and stead, and in making any such appointment or removal, the Lender shall be deemed to be acting as the agent or attorney for the Borrower. The Borrower hereby irrevocably agrees and consents to the appointment of such Receiver of the Lender's choice and without limitation whether pursuant to the Charge, the *Mortgages Act* (Ontario), the *Construction Lien Act* (Ontario), or the *Trustee Act* (Ontario), as the Lender may at its sole option require. Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Property or any part thereof and the Borrower hereby consents to a court order for the appointment of such Receiver, if the Lender in its discretion chooses to obtain such order, and on such terms and for such purposes as the Lender at its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the Property and/or to complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the Receiver or the Borrower, and if required by the Lender, in priority to any existing encumbrances affecting the Property, including without limitation, charges and construction lien claims.

Upon the appointment of any such Receiver from time to time the following provisions shall apply:

- 36.1. A Statutory Declaration made by the Lender or by any authorized representative of the Lender as to default under the provisions of the Charge shall be conclusive evidence thereof;
- 36.2. Every such Receiver shall be the irrevocable agent or attorney of the Borrower for the collection of all rents falling due in respect to the Property, or any part thereof, whether in respect of any tenancies created in priority to the Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
- 36.3. The Lender may from time to time fix the remuneration of every such Receiver which shall be a charge on the Property, and may be paid out of the income therefrom or the proceeds of sale thereof;
- 36.4. The appointment of every such Receiver by the Lender shall not incur or create any liability on the part of the Lender 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 Lender a mortgagee in possession in respect of the Property or any part thereof;
- 36.5. The Receiver shall have the power to lease any portion of the Property for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any lease of the Property or any part thereof in the name and on behalf of the Borrower and the Borrower undertakes to ratify and confirm, and hereby ratifies and confirms, whatever acts such Receiver may do on the Property;

- 36.6. In all instances, the Receiver shall be acting as the attorney or agent of the Borrower;
- 36.7. The Receiver shall have full power to complete any unfinished construction upon the Property;
- 36.8. The Receiver shall have full power to manage, operate, amend, repair, alter or extend the Property or any part thereof in the name of the Borrower for the purposes of securing the payment of rental from the Property or any part thereof;
- 36.9. The Receiver shall have full power to assume control of, manage, operate and carry on the business of the Borrower being conducted at or upon the Property on the date of the Charge or at any time thereafter;
- 36.10. The Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Lender's interest in the Property including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges, mortgages and other encumbrances which may be registered against the Property from time to time, whether or not any of the same are prior to the interest of the Lender in the Property; selling of the Property; borrowing money on the security of the Property; applying for and executing all documents in any way related to any re-zoning applications, severance of Property pursuant to the provisions of the *Planning Act* (Ontario), as amended, subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the Property, including grants of Property or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent Governmental Body, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the Property as a condominium; completing any application for first registration pursuant to the provisions of the *Land Titles Act* (Ontario) or pursuant to the *Certification of Titles Act* (Ontario); and for all and every of the purposes aforesaid the Borrower does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Property, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Property, as fully and effectually to all intents and purposes as the Borrower itself could do if personally present and acting therein.
- 36.11. The Receiver shall not be liable to the Borrower to account for monies or damages other than cash received by it in respect of the Property or any part thereof and out of such cash so received every such Receiver shall pay in the following order:
- i) its remuneration;
 - ii) all payments made or incurred by it in the exercise of its powers hereunder;
 - iii) any payment of interest, principal and other money which may from time to time be or become charged upon the Property in priority to the monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect of the Property or any part thereof.

The Borrower hereby irrevocably appoints the Lender as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Lender and/or its solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Borrower and all parties dealing with the Borrower, the Lender and/or the Receiver and/or with respect to the Property in the same manner as if such documentation was duly executed by the Borrower itself.

37. **LENDER NOT TO BE DEEMED LENDER IN POSSESSION**

It is agreed that the Lender in exercising any of the rights given to the Lender under the Charge shall be deemed not to be a Lender or mortgagee in possession.

38. **ENFORCEMENT OF ADDITIONAL SECURITY**

In the event that, in addition to the Property charged hereby, the Lender holds further security on account of the monies secured hereby, it is agreed that no single or partial exercise of any of the Lender's powers hereunder or under any of such security, shall preclude other and further exercise of any other right, power or remedy pursuant to any of such security. The Lender shall at all times have the right to proceed against all, any, or any portion of such security in such order and in such manner as it shall in its sole discretion deem fit, without waiving any rights which the Lender may have with respect to any and all of such security, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Borrower under the remaining security.

provided however, that upon payment of the full indebtedness secured hereunder the rights of the Lender with respect to any and all such security shall be at an end.

39. TAKING OF JUDGMENT NOT A MERGER

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

40. BANKRUPTCY AND INSOLVENCY ACT

The Borrower hereby acknowledges and agrees that the security held by the Lender is not all or substantially all of the inventory, accounts receivable or other property of the Borrower acquired for or used in relation to any business carried on by the Borrower. The Borrower hereby further acknowledges and agrees that notwithstanding any act of the Lender by way of appointment of any Person or Persons for the purposes of taking possession of the Property as agent on behalf of the Borrower or otherwise or by taking possession of the Property itself pursuant to any rights that the Lender may have with respect thereto shall not constitute the Lender or any such Person, a receiver within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act (Canada)* (the "BIA"), and that any and all requirements of Part XI of the BIA as it may pertain to obligations of receivers shall not be applicable to the Lender with respect to the transaction pursuant to which the Charge has been given or with respect to enforcement of the Charge or any other security held by the Lender. The Borrower hereby acknowledges and agrees that no action shall lie against the Lender as a receiver and manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the BIA whether or not the Lender had reasonable grounds to believe that the Borrower was not insolvent.

The Borrower further acknowledges and agrees that any and all Costs as may be incurred from time to time by the Lender in order to effect compliance or avoid any adverse ramifications of the BIA shall be entirely for the account of the Borrower. The Lender shall be entitled to incur any such Costs, including any costs of its personnel in administering any requirements of the BIA and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Lender for the indebtedness owing to the Lender in the same manner and in the same priority as the principal secured hereunder.

41. PERMISSIBLE INTEREST RATE

It is not the intention of the Charge to violate any provisions of the *Interest Act (Canada)*, the *Criminal Code (Canada)* (the "Code") or any other statute dealing with permitted rates of interest in the Province of Ontario or in Canada. Notwithstanding any provisions set out herein, in no event shall the "interest" (as that term is defined in the Code) exceed the "criminal rate" (as defined therein) of interest on the "credit advanced" (as defined therein) lawfully permitted under the said legislation. In the event that it is determined at any time that, by virtue of this Commitment, the Charge or any other document given as security for the herein contemplated loan, the payments of interest required to be made by the Borrower exceed the "criminal rate", then the Borrower shall only be required to pay interest at the highest rate permitted by law. Nothing herein shall invalidate any requirements for payment pursuant to this Commitment, the Charge or such other security documents, and any excess interest paid to the Lender shall be refunded to the Borrower and the provisions of the Charge shall in all respects be deemed to be amended accordingly.

42. INDEMNIFICATION

The Borrower and Covenantor hereby agree to indemnify and save harmless the Lender, 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 and kind whatsoever and howsoever arising out of the provisions of this Commitment and the Security, any letters of credit or letters of guarantee issued, 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, management and other activities permitted by the Commitment and the Security.

In addition to any liability imposed on the Borrower and Covenantor under any instrument evidencing or securing the Loan indebtedness, the Borrower and Covenantor 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. The Borrower and the Covenantor(s) shall be further bound by the representations, warranties and indemnity set out herein.

The representations, warranties, covenants and agreements of the Borrower and Covenantor set forth in this Section:

- 42.1. are separate and distinct obligations from the Borrower's and Covenantor's other obligations;
- 42.2. survive the payment and satisfaction of their other obligations and the discharge of the Security from time to time taken as security therefore;
- 42.3. are not discharged or satisfied by foreclosure of the charges created by any of the Security; and
- 42.4. 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.

43. **NON-MERGER**

The Borrower's obligations as contained in this Commitment shall survive the execution and registration of the mortgage and other security documentation and all advances of funds under the mortgage, and the Borrower agrees that those obligations shall not be deemed to be merged in the execution and registration of the mortgage and other security. All terms and conditions of the mortgage and other security documentation shall be deemed to be incorporated in and form part of the Commitment, except to the extent provided for herein. In the event of conflict, the terms of this Commitment shall prevail.

44. **NOTICES**

All notices or other communications to be given pursuant to or in connection with the Charge shall be in writing, signed by the party giving such notice or by its solicitors, and shall be personally delivered or sent by registered mail or facsimile transmission to the party or parties intended at its or their respective addresses for service as set out in the Charge. The date of receipt of such notice or demand, if served personally or by facsimile, shall be deemed to be the date of the delivery thereof, or if mailed as aforesaid, the date of mailing thereof. For the purposes hereof, personal service on the Borrower or any Covenantor shall be effectively given by delivery to any officer, director or employee of such Borrower or Covenantor. Any party may from time to time by notice given as provided herein change its address for the purpose of this provision.

45. **PRIORITY OVER VENDOR'S LIEN**

The Borrower hereby acknowledges that the Charge is intended to have priority over any vendor's lien, whether in favour of the Borrower or otherwise, and the Borrower covenants that it has done no act to give priority over the Charge to any vendor's lien, nor is it aware of any circumstances that could create a vendor's lien. Further, the Borrower covenants to do all acts and execute or cause to be executed all documents required to give the Charge priority over any vendor's lien and to give effect to the intent of this clause.

46. **CONSENT OF LENDER**

Whenever the Borrower is required by the Charge to obtain the consent or approval of the Lender, it is agreed that, subject to any other specific provision contained in the Charge to the contrary, the Lender may give or withhold its consent or approval for any reason that it may see fit in its sole and absolute discretion, and the Lender shall not be liable to the Borrower in damages or otherwise for its failure or refusal to give or withhold such consent or approval, and all costs of obtaining such approval shall be for the account of the Borrower.

47. **DISCHARGE**

The Lender shall have a reasonable period of time after payment in full of the monies hereby secured within which to prepare and execute a discharge of the Charge; and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Lender; and all legal and other expenses for the preparation and execution of such discharge shall, together with the Lender's fee for providing same, be borne by the Borrower. The discharge shall be prepared and executed by such Persons as are specifically authorized by the Lender and the Lender shall not be obligated to execute any discharge other than a discharge which has been so authorized.

If the Charge, this Commitment or any other document provides for the giving of partial discharges of the Charge, it is agreed that, notwithstanding any other provision to the contrary, the Borrower shall not be entitled to request or receive any such partial discharge if and for so long as the Borrower is in default under the Charge, this Commitment or such other document.

48. **FAMILY LAW ACT**

The Borrower shall forthwith after any change or happening affecting any of the following, namely, (a) the spousal status of the Borrower, (b) the qualification of the Property or any part thereof as a matrimonial home within the meaning of Part II of the *Family Act* (Ontario), (c) the ownership of the

equity of redemption in the Property or any part thereof, and (d) a shareholder of the Borrower obtaining rights to occupy the Property or any part thereof by virtue of shareholding within the meaning of Section 18(2) of the *Family Law Act* (Ontario), the Borrower will advise the Lender accordingly and furnish the Lender with full particulars thereof, the intention being that the Lender shall be kept fully informed of the names and addresses of the owner or owners for the time being of the said equity of redemption and of any spouse who is not an owner but who has a right of possession in the Property by virtue of Section 19 of the *Family Law Act* (Ontario). In furtherance of such intention, the Borrower covenants and agrees to furnish the Lender with such evidence in connection with any of (a), (b), (c) and (d) above as the Lender may from time to time request.

49. **INDEPENDENT LEGAL ADVICE**

The Borrower and each Covenantor acknowledge that they have full knowledge of the purpose and essence of this transaction, and that they have been appropriately and independently legally advised in that regard or have been advised of their right to independent legal advice and have declined same. Such parties agree to provide to the Lender a Certificate of Independent Legal Advice as and when same may be required, regarding their knowledge and understanding of this transaction.

50. **SERVICING FEES**

All servicing fees as herein provided are intended to and shall be in an amount sufficient in the sole opinion of the Lender to compensate the Lender for its administrative costs and shall not be deemed a penalty. The amount of such servicing fees if not paid shall be added to the principal amount secured hereunder, and shall bear interest at the rate aforesaid and the Lender shall have the same rights with respect to collection of same as it does with respect to collection of principal and interest hereunder or at law.

51. **CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM**

Provided the Borrower is not in default of the provisions of this Commitment or any loan documents and provided that there are no costs or financial obligations to the Lender, the Lender hereby agrees that it will consent to the Borrower registering a plan of condominium and declaration (the "Condominium") pursuant to the *Condominium Act, 1998* (Ontario), as amended, with respect to the Property or any part thereof provided that the Lender has received and approved the draft plan of condominium and the declaration and provided further that the Borrower, if requested by the Lender, shall deliver to the Lender prior to the registration of the Condominium, a further charge of the Property (the "Replacement Charge") on the same terms and conditions save and except for the new legal description of the Property. It is agreed that the Replacement Charge shall secure the same indebtedness as the original Charge. In connection with the provision of the Replacement Charge, the Borrower shall also provide a replacement general assignment of rents (the "Replacement Assignment of Rents"), and together with and each Covenantor, where applicable, shall provide a re-confirmation of all existing security and such further and other documentation as may then be required by the Lender's solicitors.

Provided further that the original Charge and the original assignment of rents and leases relating thereto shall not be released or discharged from the Property (save and except for any partial discharge provisions provided for therein) until the expiration of ninety (90) days immediately following the later of the registration of the Condominium and the registration of the Replacement Charge and Replacement Assignment of Rents. Provided further that at the time of the request for a discharge of the Charge and the original assignment of rents and leases the Borrower shall not be in default of the provisions of the Charge, the Replacement Charge and/or this Commitment, failing which the Lender shall not be obliged to discharge same.

52. **CONDOMINIUM PROVISIONS**

If all or any part of the Property is or becomes a condominium unit pursuant to the provisions of the *Condominium Act, 1998* (Ontario) (the "Act"), the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in the Charge:

- 52.1. For the purposes of all parts of the Property comprising one or more such condominium units, all references in the Charge to the Property shall include the Borrower's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
- 52.2. The Borrower shall at all times comply with the Act and shall forward to the Lender proof of such compliance as the Lender may request from time to time including, without limitation, status certificates issued by the Condominium Corporation; and if the Borrower fails to so comply in any respect, the Lender may do so at its option and all Costs incurred by the Lender in connection therewith shall be secured by the Charge and payable by the Borrower to the Lender forthwith upon demand, together with interest thereon as herein provided;
- 52.3. The Borrower shall pay, when due, all monies payable by the Borrower or with respect to the Property in accordance with the provisions of the Act and the declaration, by-laws and rules

of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Lender upon request; and if the Borrower fails to make any such payment, the Lender may do so at its option and all amounts so paid by the Lender shall be secured by the Charge and shall be payable by the Borrower to the Lender forthwith upon demand, together with interest thereon as herein provided;

52.4. The Borrower hereby irrevocably appoints, authorizes and empowers the Lender to exercise the rights of the Borrower to vote or to consent as an owner within the meaning of the Act with respect to all matters relating to the affairs of the Condominium Corporation, or to abstain from doing so, provided that:

51.4.1. the Lender may at any time and from time to time give notice in writing to the Borrower and to the Condominium Corporation that the Lender does not intend to exercise such right to vote or to consent, in which case the Borrower may exercise its right to vote or to consent for so long as such notice remains effective or until such notice is revoked by the Lender; and any such notice may be for an indeterminate period of time, a limited period of time or for a specific meeting or matter;

51.4.2. the Lender shall not be under any obligation to vote or to consent or to protect the interests of the Borrower; and,

51.4.3. the exercise by the Lender of its right to vote or to consent or to abstain from doing so shall not constitute the Lender as a mortgagee or Lender in possession and shall not give rise to any liability on the part of the Lender;

52.5. The Borrower shall forward to the Lender by delivery or by prepaid registered mail copies of every notice, assessment, claim, demand, by-law, rule, request for consent and other communication relating to all or any part of the Property or the common elements or affairs of the Condominium Corporation on or before the date which is the earlier of:

51.5.1. fourteen (14) days after receipt of the same by the Borrower;

51.5.2. seven (7) days prior to the date set for any meeting of the Condominium Corporation or any committee thereof;

51.5.3. seven (7) days prior to the due date of any claim or demand for payment; and,

51.5.4. within twenty-four (24) hours after becoming aware of any information concerning termination of any insurance policy, insurance trust agreement or management agreement relating to the Condominium Corporation or any of its assets;

52.6. The Borrower hereby authorizes and directs the Condominium Corporation to permit the Lender to inspect the records of the Condominium Corporation at any reasonable time;

52.7. In addition to and notwithstanding any other provisions of the Charge, the outstanding principal amount and all accrued interest and other charges secured by the Charge shall, at the Lender's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:

51.7.1. the government of the Condominium Corporation or the government of the Property by the Condominium Corporation is terminated;

51.7.2. a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Property, or any part of the same is expropriated;

51.7.3. the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules;

51.7.4. the Condominium Corporation fails to insure its assets, including the Property, in accordance with the Act and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same.

53. ASSIGNMENT OF RENTS

As additional primary security for the monies secured by the Charge, the Borrower transfers and assigns to the Lender all rents, income, profits, rights and other benefits (collectively the "Rents") now or hereafter due or arising pursuant to all present and future oral or written leases, agreements to lease, tenancies or other agreements for the use or occupancy of the whole or any part of the Property and all extensions and renewals thereof (collectively the "Leases" and individually a "Lease") granted to any and all tenants, licensees and other occupiers thereof. (collectively the

"Tenants" and individually a "Tenant"); and in furtherance thereof, the Borrower covenants and agrees as follows:

- 53.1. the Leases and details thereof heretofore provided by the Borrower to the Lender are in full force and effect and have not been assigned or pledged to any other party except as disclosed by registered title to the Property;
- 53.2. except with the prior written consent of the Lender, the Borrower shall not amend, terminate, release or accept a surrender of any Lease or any guarantee thereof or waive, release, reduce, discount, discharge or otherwise compromise any Rents payable thereunder, and any attempt to do any of the foregoing without such prior written consent shall be null and void as against the Lender;
- 53.3. except for the last month's rent and any security deposit, the Borrower has not received and shall not accept payment of any Rents more than thirty (30) days in advance;
- 53.4. except with the prior written consent of the Lender, the Borrower shall not further assign the Rents, the Leases or any interest therein or consent or agree to any postponement or subordination of the same in favour of any mortgage or other encumbrance now or hereafter affecting the Property;
- 53.5. except with the prior written consent of the Lender, the Borrower shall not consent to or permit any assignment or subletting of the interest of any Tenant under any Lease or exercise any right of election thereunder which would in any way lessen the liability of any Tenant or shorten the stated term of any Lease;
- 53.6. the Borrower shall diligently and in good faith observe and perform all of the landlord's covenants contained in the Leases and shall likewise require that the Tenants and other parties to the Leases fully observe and perform the covenants and agreements imposed upon them by the Leases, failing which, the Lender may, at its option, require the same at the expense and in the name of the Borrower, and all such expenses incurred by the Lender shall be a charge upon the Property and be paid by the Borrower to the Lender forthwith upon demand;
- 53.7. the Borrower shall give prompt written notice to the Lender of default by any Tenant and any notice of default received from any Tenant, including a copy of such notice;
- 53.8. all of the Leases are and shall be bona fide and at rental rates and upon terms which are commercially reasonable and consistent with comparable space in the municipality within which the Property are situate;
- 53.9. the Borrower shall, at its own expense, execute and deliver to the Lender all such further assurance and assignments with respect to the Rents and the Leases and enforce and do all other acts with respect to the Leases as may be required from time to time by the Lender.

Upon default hereunder by the Borrower, the Lender shall be entitled, as agent and attorney of the Borrower, to collect, sue for, waive or compromise the Rents and to enforce performance of the Leases or amend, terminate, release or accept a surrender of the same as the Lender may determine in its sole discretion;

The Lender shall not be obligated to perform or discharge any obligation or liability under the Leases, or under or by reason of the assignment herein contained, and the Borrower agrees to save and hold harmless the Lender of and from any and all actions, proceedings, claims, demands, liability, damages, Costs or expenses which the Lender may incur under or by reason of the Leases or the assignment herein contained; and all Costs incurred by the Lender in connection therewith shall be a charge upon the Property and be paid by the Borrower to the Lender forthwith upon demand.

In the event that the Lender collects any Rents by reason of the Borrower's default, the Lender shall be entitled to payment from the same of an administration fee equal to 5.0% of the gross amount of Rents collected, and the Borrower acknowledges and agrees that such administration fee is just and equitable having regard to the circumstances.

54. MATERIAL ADVERSE CHANGES

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of the Charge, the Lender discovers a discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Lender by or on behalf of the Borrower or any Covenantor concerning the Property or the financial condition and responsibility of the Borrower or any Covenantor in the event of any material adverse change in the value of the Property or the financial status of the Borrower or any Covenantor or any lessee on which the Lender relied upon in making any advances hereunder, which material change, discrepancy or inaccuracy cannot be rectified by the Borrower or such Covenantor (if applicable) within thirty (30) days after written

notification thereof by the Lender to the Borrower or such Covenantor, the Lender shall be entitled to decline to advance any further funds pursuant hereto and/or to declare any and all amounts advanced pursuant hereto together with interest thereon to be forthwith due and payable.

55. **PROFESSIONAL MANAGEMENT**

The Property must at all times be professionally managed by property managers acceptable to the Lender, failing which the Lender reserves the right, in its sole discretion, to appoint new or other property managers at the sole expense of the Borrower. A change in the property managers for Property shall require the prior written consent of the Lender. No management fee shall be payable to the manager of the Property, other than to a professional arm's-length manager approved by the Lender, without the prior written consent of the Lender. No management fees in excess of market fees for similar properties in the general location of the Property shall be payable without the prior written consent of the Lender.

56. **NO PREPAYMENTS**

Save and except as otherwise provided for in the Commitment or any schedule to a specific charge, the Borrower shall have no right to prepay all or any part of the amount outstanding under the Charge prior to the maturity date thereof.

57. **NO PARTIAL DISCHARGES**

Save and except as otherwise provided for in the Commitment or any schedule to a specific charge, the Borrower shall have no right to obtain a partial discharge(s) of the Charge

58. **ADDITIONAL FEES**

All advances, in addition to legal fees and disbursements of the Lender's solicitors, shall be subject to an administrative processing fee of Five Hundred Dollars (\$500.00) for each advance made under the Loan in favour of the Lender. The Borrower shall be permitted one advance per month. If the Lender, in its sole discretion, agrees to make an advance in an amount not less than the minimum amount per advance as specified in this Commitment, an additional processing fee of Five Hundred Dollars (\$500.00) for any such advance so made shall be payable by the Borrower.

59. **ABANDONMENT**

In the event of abandonment of the Project for a period in excess of fifteen (15) consecutive days, the Lender shall be entitled, after giving the Borrower written notice of any abandonment and provided the Borrower fails to rectify same within ten (10) days after such notice, has been given, to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds as the case may be and in addition to declare any funds advanced to forthwith become due and payable plus interest all at the Lender's option.

60. **INTERPRETATION**

It is hereby agreed that, in construing the Charge, everything herein contained shall extend to and bind and may be enforced or applied by the respective heirs, personal representatives, successors and assigns, as the case may be, of each and every of the parties hereto, and where any of the Borrower, the Lender and any Covenantor is more than one Person, their respective covenants shall be deemed to be joint and several, and the provisions of the Charge shall be read and construed with all changes of gender and number as required by the context.

61. **HEADINGS**

The headings with respect to the various paragraphs of the Charge are intended to be for identification of the various provisions of the Charge only and the wording of such headings is not intended to have any legal effect.

62. **INVALIDITY**

If any of the covenants or conditions in the Charge inclusive of all schedules forming a part hereof shall be void for any reason it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

63. **COUNTERPARTS**

The Charge may be executed and/or registered in counterparts, each of which, so executed, and/or registered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, and notwithstanding their date of execution shall be deemed to bear date as of the date above written.

APPENDIX “O”

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

UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

FOR THIS PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2006-02-03.

RECENTLY
CONDOMINIUM FROM 21213-0171

PIN CREATION DATE:
2012/08/13

LT ABSOLUTE PLUS
OWNERS' NAMES
206 BLOOR STREET WEST LIMITED

CAPACITY SHARE
BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2012/08/13 **						
**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. **						
64BA2083	1983/10/12	PLAN BOUNDARIES ACT				C
REMARKS: DB14, CT624306						
AT882645	2005/08/05	NOTICE		206 BLOOR STREET WEST LIMITED		C
REMARKS: NOTICE OF AMENDED APPLICATION FOR ABSOLUTE TITLE, SUBSECTION 46(2) OF THE LTA; AT866447						
AT1293492	2006/10/30	NOTICE	\$2	206 BLOOR STREET WEST LIMITED		C
AT1350354	2007/01/09	NOTICE	\$2	CITY OF TORONTO	206 BLOOR STREET WEST LIMITED	C
AT1891903	2008/09/10	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 206 BLOOR STREET WEST LIMITED	ROYAL BANK OF CANADA	C
AT1893957	2008/09/12	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 206 BLOOR STREET WEST LIMITED	LOMBARD GENERAL INSURANCE COMPANY OF CANADA	C
AT22311743	2009/11/18	NOTICE		CITY OF TORONTO		C
REMARKS: THIS NOTICE IS FOR AN INDETERMINATE PERIOD						
AT2296458	2010/02/02	TRANSFER EASEMENT	\$2	206 BLOOR STREET WEST LIMITED		C
AT2326093	2010/03/12	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** ROYAL BANK OF CANADA	ROGERS CABLE COMMUNICATIONS INC. CITY OF TORONTO	C
REMARKS: AT1891903 POSTPONED TO AT2311743						

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LAND
REGISTRY
OFFICE #66

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 5
PREPARED FOR BGabbidon
ON 2016/07/13 AT 15:51:24

76254-0013 (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/ CHRD
AT2326094	2010/03/12	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** LOMBARD GENERAL INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
		REMARKS: AT1893957 POSTPONED TO AT23231743				
AT2641338	2011/03/14	NOTICE		EXHIBIT RESIDENCES INC. 206 BLOOR STREET WEST LIMITED 208 BLOOR STREET WEST INC. LAW, LUCY YIN HING		C
		REMARKS: THIS NOTICE IS FOR AN INDETERMINATE PERIOD				
AT2641339	2011/03/14	NOTICE		EXHIBIT RESIDENCES INC. 206 BLOOR STREET WEST 208 BLOOR STREET WEST LIMITED LAW, LUCY YIN HING		C
		REMARKS: THIS NOTICE IS FOR AN INDETERMINATE PERIOD				
AT2957014	2012/03/01	APL CH NAME INST		*** DELETED AGAINST THIS PROPERTY *** LOMBARD GENERAL INSURANCE COMPANY OF CANADA	NORTHBRIDGE GENERAL INSURANCE CORPORATION	C
		REMARKS: AT1893957.				
AT3088551	2012/06/06	NOTICE		CITY OF TORONTO		C
TCP2254	2012/07/31	STANDARD CONDO PLAN				C
AT3089641	2012/07/31	CONDO DECLARATION		206 BLOOR STREET WEST LIMITED		C
AT3100107	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
		REMARKS: BYLAW NO. 1				
AT3100115	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
		REMARKS: BYLAW NO. 2				
AT3100138	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
AT3100145	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
AT3100165	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
AT3100186	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C

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76254-0013 (LT)

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* 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
AT3100195	2012/08/14	CONDO BYLAW/98		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
AT3100299	2012/08/14	NOTICE		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254	206 BLOOR STREET WEST LIMITED	C
AT3100362	2012/08/14	NOTICE		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
		REMARKS: AT3038551				
AT3100391	2012/08/14	NOTICE		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
		REMARKS: AT2641338				
AT3100412	2012/08/14	NOTICE		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
AT3100519	2012/08/14	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** LOMBARD GENERAL INSURANCE COMPANY OF CANADA		C
		REMARKS: AT1893957 POSTPONED TO AT3100299			206 BLOOR STREET WEST LIMITED TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254	
AT3103876	2012/08/17	POSTPONEMENT		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: AT1891903 TO AT3100299			206 BLOOR STREET WEST LIMITED TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254	
AT3218546	2013/01/17	CHARGE		*** COMPLETELY DELETED *** 206 BLOOR STREET WEST LIMITED	UNITED OVERSEAS BANK LIMITED	
AT3218547	2013/01/17	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 206 BLOOR STREET WEST LIMITED	UNITED OVERSEAS BANK LIMITED	
		REMARKS: AT3218546				
AT3220773	2013/01/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** NORTHBRIDGE GENERAL INSURANCE CORPORATION		
		REMARKS: AT1893957.				
AT3220915	2013/01/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: AT1891903.				
AT3245808	2013/02/28	NOTICE		206 BLOOR STREET WEST LIMITED		C
AT3245809	2013/02/28	NOTICE		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 4 OF 5

PREPARED FOR EGABDIDON
ON 2016/07/13 AT 15:51:24

76254-0013 (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/ CHRD
AT3503361	2014/01/21	CERTIFICATES		*** COMPLETELY DELETED *** ROSENBERG, LINDA PARIS FAITH		
AT3529682	2014/02/28	CHARGE		*** COMPLETELY DELETED *** 206 BLOOR STREET WEST LIMITED	HOME TRUST COMPANY	
AT3529683	2014/02/28	NO ASSIGN RENT GEN		*** COMPLETELY DELETED *** 206 BLOOR STREET WEST LIMITED	HOME TRUST COMPANY	
AT3535871	2014/03/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** UNITED OVERSEAS BANK LIMITED		
		REMARKS: AT3218546.				
AT3581991	2014/05/15	CHARGE	\$5,000,000	206 BLOOR STREET WEST LIMITED	ROMSPEN INVESTMENT CORPORATION	C
AT3581992	2014/05/15	NO ASSIGN RENT GEN		206 BLOOR STREET WEST LIMITED	ROMSPEN INVESTMENT CORPORATION	C
		REMARKS: AT3581991.				
AT3757704	2014/12/03	NO CHNG ADDR CONDO		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254		C
AT3816341	2015/02/23	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	206 BLOOR STREET WEST LIMITED	
		REMARKS: DELETE AT3503361				
AT3852436	2015/04/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** HOME TRUST COMPANY		
		REMARKS: AT3529682.				
AT3955078	2015/07/23	CONDO AMENDMENT		TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2254 1071.		C
		REMARKS: AT3089641. AMENDMENT TO DECLARATION (SECTION				
AT4217182	2016/05/12	CAUTION-LAND		*** COMPLETELY DELETED *** 206 BLOOR STREET WEST LIMITED	ROSENBERG, LINDA PARIS FAITH	
AT4266746	2016/07/04	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	206 BLOOR STREET WEST LIMITED	
		REMARKS: DELETE AT4217182				
AT4267004	2016/07/04	TRANSFER	\$1,579,526	206 BLOOR STREET WEST LIMITED	GOLDEN BRIAN JEE, LINDA	

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76254-0013 (LT)

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
AT4267169	2016/07/04	DISCH OF CHARGE		KOWSPEN INVESTMENT CORPORATION		
REMARKS: AT3501991.						

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APPENDIX “P”



199 BAY STREET, SUITE 2200
 P.O. BOX 447, COMMERCE COURT POSTAL STATION
 TORONTO, ON CANADA M5L 1G4
 TELEPHONE: (416) 777-0101
 FACSIMILE: (416) 865-1398
<http://www.dickinsonwright.com>

LISA S. CORNE
 LCorne@dickinsonwright.com
 (416) 646-4608

July 19, 2016

**PRIVILEGED AND CONFIDENTIAL
 HAND DELIVERED**

206 Bloor Street West Limited
 carrying on business as Museum House
 162 Cumberland Street, Suite 200
 Toronto ON M5R 3N5

Attention: Charles Moon

Dear Mr. Moon:

**Re: 206 Bloor Street West Limited carrying on business as Museum House
 (the "Borrower")
 Our File No. 52719-1**

We act as solicitors for Romspen Investment Corporation ("Romspen").

We refer to the indebtedness of the Borrower to Romspen pursuant to the Promissory Note dated June 1, 2011, as extended by Agreements Extending Promissory Note dated June 1, 2013, June 1, 2014, and June 1, 2015 and the Charge/Mortgage registered as instrument AT 3581992 against condominium units 901, and PH01 Penthouse at the property municipally known as 206 Bloor Street West, Toronto, Ontario (collectively, the "Agreements").

Pursuant to the Agreements, the Borrower is indebted to Romspen in the amount of \$12,265,138.34 as at June 30, 2016, plus all interest accruing thereon from and after that date, and costs.

The Borrower is in default of its obligation pursuant to the Agreements by virtue of its failure to make payment due on June 1, 2016.


Accordingly, we hereby make formal demand for payment of the indebtedness owing by the Borrower to Romspen pursuant to the Agreements in the amount of \$12,265,138.34 as at June 30, 2016, together with all interest accrued thereon, plus costs, solicitor's fees and expenses which may be incurred by Romspen in connection with the recovery of the indebtedness owing by the Borrower to it. Interest will continue to accrue until payment is received.

206 Bloor Street West Limited
July 19, 2016
Page 2

DICKINSON WRIGHT LLP

We enclose a copy of a Notice of Intention to Enforce Security delivered pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

Very truly yours,
DICKINSON WRIGHT LLP



David P. Preger

LSC/jss
Enclosure
TORONTO 52719-2 1178239v2

NOTICE OF INTENTION TO ENFORCE A SECURITY

Subsection 244(1) of the
Bankruptcy and Insolvency Act (Canada)

Form 86

TO: 206 Bloor Street West Limited
carrying on business as Museum House (an Insolvent Person)

Attention: Charles Moon

TAKE NOTICE THAT:

1. Romspen Investment Corporation ("Romspen"), a secured creditor, intends to enforce its security on the insolvent person's property described below:

All present and future property, assets and undertaking of 206 Bloor Street West Limited (the "Borrower"), including without limitation, accounts, books and records, chattel paper, documents of title, equipment, goods, instruments, intangibles (including intellectual property rights, contracts and permits), inventory, money, securities, contracts, licenses, agreements and real property, as more fully described in the security agreements set out below:

2. The security that is to be enforced is in the form of the following (hereinafter referred to collectively as the "Security"):

- (a) General Security Agreement dated June 2011; and ;
- (b) Charge/Mortgage registered as AT 3581991 on May 5, 2014 against the property known as:

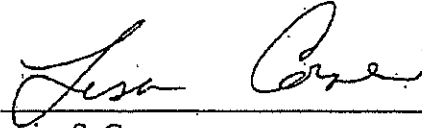
PH01 Penthouse and Condominium Unit 1, level 9
206 Bloor Street West, Toronto Standard Condominium Plan no.
2254 and appurtenant interests.

3. The total amount of the indebtedness secured is \$12,265,138.34 as at June 30, 2016, plus interest accruing thereon after that date at the rate of 24 percent per annum, plus costs.
4. The secured creditor will not have the rights to enforce the security until after the expiration of the 10 day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, Ontario this 17 day of July, 2016.

**ROMSPEN INVESTMENT CORPORATION,
by its Solicitors, DICKINSON WRIGHT LLP
199 Bay Street, Suite 2200, Toronto, Ontario
M5L 1G4**

Per:



Lisa S. Come

TORONTO 52719-1 1178232v2

APPENDIX “Q”

Battiston & Associates

Barristers and Solicitors

*Eddy J. Battiston, B.A., LL.B.
 **Flavio J. Battiston, LL.B.
 Harold Rosenberg, LL.B.
 Alexandra M. Battiston, B.A., LL.B.

1013 Wilson Avenue, Suite 202
 Toronto, Ontario M3K 1G1
 Tel: (416) 630-7151
 Fax: (416) 630-7472
 f.battiston@battistonlaw.com
 October 31, 2016

Rosen Goldberg Inc.
 5255 Yonge Street, Suite 804
 Toronto, Ontario M2N 5P8
 Att'n: Brahm Rosen

**Re: 206 Bloor Street West Limited (the "Borrower")
 Mortgage in Favour of Romspen Investment Corporation (the "Lender")**

Rosen Goldberg Inc. was appointed receiver of the undertakings, properties and assets of the Borrower pursuant to an Order of the Ontario Superior Court of Justice dated September 27, 2016. You have requested that we review the mortgage described below in connection with security granted by the Borrower in favour of the Lender and provide you with our opinion as to the validity and enforceability thereof against the Borrower. We would advise as follows:

Security Document Reviewed:

Charge/Mortgage granted by the Borrower in favour of the Lender on, *inter alia*, the property legally described as;

UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMITED OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMITED OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCDEULE A AS IN AT3089641; CITY OF TORONTO

Being all of PIN 72654-0013 LT and municipally described as 901 Suite, 206 Bloor Street West, Toronto (the "Property"), which Charge/Mortgage was registered on title to the Property on May 15, 2014 as Instrument No. AT3581991 (the "Security Document").

Scope of Examination

For the purposes of the opinions set out herein, we have examined the following:

1. The parcel register in respect of the Property showing existing and deleted instruments as of July 13, 2016;

*E J Battiston Professional Corporation
 **Flavio Battiston Professional Corporation



2. Such statutes and public records, originals or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

We have also made such other searches, inquiries, investigations and considered such questions of law as we have deemed relevant and necessary as a basis for the opinions hereinafter expressed.

Assumptions and Fact Reliance

In expressing our opinions, we have assumed, without independent verification by us:

- (a) that all of the documents comprising the Security Document were executed on the date indicated therein;
- (b) the genuineness of all signatures on and the authenticity and completeness of all documents submitted to us as original documents, the conformity to the original documents of all documents submitted to us as true, certified, conformed or photostatic copies thereof, the genuineness of all signatures on and the authenticity of the originals of such copies;
- (c) the completeness, truth, accuracy and currency of the filing systems maintained by the public offices and registries where we have searched or inquired or have caused searches or inquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other like officials with respect to the matters referred to herein;
- (d) the accuracy of the description of the Property as set out in the Security Document;
- (e) the Security Document was delivered by the Borrower as security for direct advances made by the Lender to it;
- (f) that there is a legal, valid, enforceable and subsisting debt owing by the Borrower to the Lender;
- (g) that each of the Borrower and the Lender;
 - (i) was at the time of the authorization, execution and delivery of the Security Document, and is still constituted and existing under the laws pursuant to which it was constituted;
 - (ii) had the requisite capacity, corporate power and authority to execute, deliver and perform its obligations under the Security Document;
 - (iii) took all necessary corporate, statutory, regulatory and other action to authorize the execution, delivery and the performance of its obligations under the Security Document; and
 - (iv) duly authorized, executed and delivered the Security Document;
- (h) that the Security Document has not been amended, restated or replaced and there are no agreements or understandings between the parties thereto, whether written or oral, and there

is no usage of trade or course of dealing between the parties that would, in either case, define, supplement, limit or qualify the terms of the Security Document, or any of them;

- (i) that there are no agreements, judgments, rulings, instruments, facts, understandings, mistakes of fact or misunderstandings affecting or concerning the Security Document and/or the obligations with respect to which the Security Document was granted or statutory or regulatory prohibitions on the execution and delivery of the Security Document or the security granted thereunder and/or the obligations with respect to which the Security Document was granted;
- (j) the Lender did not know and did not have any reason to believe that the Security Document was in contravention of any agreement by which the Borrower or its property or assets were bound, if there was such a contravention;
- (k) that the execution, delivery and performance of obligations under the Security Document by the Borrower did not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), the *Fraudulent Conveyances Act* (Ontario), the *Assignment and Preferences Act* (Ontario) or any other similar legislation;
- (l) the Lender has not, by course of conduct, implicit or explicit, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which could, would or have altered, diminished, suspended or otherwise affected the terms, conditions or enforceability of the Security Document or the indebtedness, liabilities and obligations secured thereby;
- (m) the Borrower has no legal defences against the Lender, or, without limitation, absence of legal capacity, fraud by or to the knowledge of the Lender or misrepresentation, undue influence or duress; and
- (n) that the conduct of the parties to the Security Document has complied with all requirements of good faith, fair dealing and conscionability and the Security Document was fair and reasonable to the Borrower at the time that it was approved and entered into.

Laws Addressed

We are solicitors qualified to practice law in the Province of Ontario only. The opinions expressed in this letter are limited to the laws of the Province of Ontario and the federal laws of Canada applicable therein. In particular, without limiting the generality of the foregoing, where we express an opinion based on the laws of Ontario, we express no opinion with respect to:

- (a) the laws of any other jurisdiction to the extent that such laws may govern any aspect of the Security Document or govern the validity, or the enforcement of the security created thereunder as a result of the application of the conflict of laws rules of Ontario, as applicable; or
- (b) whether, pursuant to the conflict of laws rules of Ontario, as applicable, the laws of a particular province or other jurisdiction would govern the validity, or the enforcement of any security created by the Security Document.



Opinion

Based and relying upon the foregoing, and subject to the qualifications, exceptions and limitations expressed herein, we are of the opinion that:

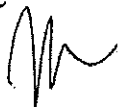
- (a) as of the date hereof, the Security Document constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms; and
- (b) the security created by the Security Document was duly registered and recorded under the *Land Titles Act* (Ontario).

Qualifications

The foregoing opinions are subject to the following exceptions and qualifications:

1. General Qualifications

- (a) enforcement may be limited by laws of general application affecting creditors' rights including, without limitation: the common law with respect to lenders' obligations (such as the obligation of a lender to act reasonably and in good faith and to provide reasonable notice prior to enforcement of security), and bankruptcy, winding up, insolvency, reorganization, moratorium, limitation of action, fraudulent preference and conveyance, assignment and preference laws, including the notice requirements and restrictions on enforcement contained in the *Bankruptcy and Insolvency Act* (Canada);
- (b) enforcement may be limited by principles of public policy and by general principles of equity, the availability of equitable remedies (such as specific performance and injunctive relief) and is subject to certain equitable defences and to the discretion of a court of competent jurisdiction and the court has jurisdiction to grant relief from acceleration;
- (c) pursuant to the *Currency Act* (Canada), courts in Canada may not grant judgment in a currency other than Canadian currency and any such judgment may be based on a rate of exchange in existence on a date other than the date expressed to be relevant or applicable pursuant to the terms of the security Documents;
- (d) the enforceability of the Security Document is subject to the powers of a court to grant relief from forfeiture, to stay proceedings before them and to stay executions on judgments and may be affected by the course of conduct of the party seeking to enforce it;
- (e) the enforceability of the Security Document may be limited by general principles of law and equity relating to the conduct of a Lender prior to execution of or in the administration or performance of the Security Document, including, without limitation (i) undue influence, unconscionability, duress, misrepresentation and deceit, (ii) estoppel and waiver, (iii) laches, (iv) reasonableness and good faith in the exercise of discretionary powers, (v) the obligation to generally act in a reasonable manner, (vi) the materiality of the breach or alleged breach of the provisions of the Security Document and (vii) impracticability or impossibility of performance. Without limiting the foregoing, the rights of the Lender to exercise the unilateral and unfettered discretion set forth in the Security Document will not prevent a court of competent jurisdiction from requiring that such rights and discretion be exercised reasonably and in good faith;
- (f) the enforceability of the Security Document by an Ontario court is subject to the *Limitations Act, 2002* (Ontario) which provides that a limitation period under such Act applies despite

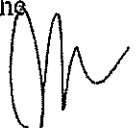


any agreement to vary or exclude it. We express no opinion as to whether a court may find any provisions of the Security Document to be unenforceable as an attempt to vary or exclude a limitation period under the Act;

- (g) any action before a court in the Province of Ontario on the Security Document may be barred by the *Limitations Act, 2002* (Ontario) after the applicable prescription or limitation period has expired;
- (h) this opinion is limited to the statements of fact or matters set forth herein as existing as at the date of this opinion; and
- (i) no opinion is expressed as to any licences, permits or approvals that may be required in connection with the enforcement of the Security Document by the Lender or by any person on its behalf, whether such enforcement involves the operation of the business of the Borrower or a sale, transfer or disposition of its property and assets.

2. Qualifications regarding the Security Document

- (a) no opinion is expressed regarding the enforceability of clauses in the Security Document which:
 - (i) provide that a Security Document constitutes the "entire agreement" among the parties and there are no other representations, conditions or collateral agreements among the parties;
 - (ii) purport to waive any or all defences which might be available to, or constitute a discharge of the liability of the Borrower;
 - (iii) state that modifications, amendments or waivers of or with respect to the Security Document are not binding or are ineffective unless made in writing;
 - (iv) purport to confer upon any party the right to exercise any discretionary power or make any determination in its sole or unfettered discretion, or which provide that any such determination, record or certificate produced by a party is deemed to be conclusive;
 - (v) purport to limit or exculpate a party from liability in respect of its own acts or omissions or in respect of acts or omissions which may be illegal, fraudulent or involve wilful misconduct;
 - (vi) purport to limit or exculpate a party from any duty or obligation otherwise imposed by law, or to exclude or limit such party's liability for failure to discharge any such duty or obligation;
 - (vii) purport to waive the benefit of statutory rights;
 - (viii) provide that a party agrees not to commence, maintain or be a party to any judicial proceeding, or in which a party agrees to consent to any order or judgment which may be given in any such proceeding;
 - (ix) provide that if any provision in the Security Document contravenes any law, the



- provision is deemed to be amended to the extent that it does not contravene such law;
- (x) purport to establish evidentiary standards;
 - (xi) purport to waive or affect any rights to notices;
 - (xii) relate to delay or omission of the enforcement of remedies by a Lender;
 - (xiii) relate to time periods for complying with demands (including demands for payment) or to determinations made by a party in the exercise of a discretion purported to be given to such party where such demands or determinations are made in an unreasonable or arbitrary fashion;
 - (xiv) purport to stipulate the rate of interest which a judgment debt will bear; or
 - (xv) require the payment of interest, fees or other amounts at a higher rate after maturity or default than is payable before maturity or default, to the extent that any such requirement may be considered by a court to constitute a penalty or for the receipt of interest by the Lender at a "criminal rate" within the meaning of and in contravention of section 347 of the *Criminal Code* (Canada);
- (b) rights of indemnity and contribution under the Security Document may not be enforceable to the extent that they are found to be contrary to equitable principles or public policy or that they directly or indirectly relate to liabilities imposed on a Lender by law for which it would be contrary to public policy or equitable principles to require the Borrower to indemnify a Lender;
 - (c) the awarding and recoverability of costs and expenses and the quantum and scale of costs and expenses is in the discretion of a court of competent jurisdiction notwithstanding any provisions in the Security Document, and may be limited to those a court considers to be reasonably incurred. A court of competent jurisdiction has the discretion to determine by whom and to what extent costs and expenses incidental to court proceedings shall be paid;
 - (d) no opinion is given as to the enforceability of any specific provisions of the Security Document including any provision which purports to provide for the severance of illegal or unenforceable provisions from the remaining provisions of the Security Document without affecting the enforceability of the remaining provisions;
 - (e) a receiver or receiver and manager appointed pursuant to the provisions of any Security Document may, for certain purposes, be treated by a court as being the agent of the secured party and not solely the agent of the Borrower (and the secured party may not be deemed to be acting as the agent and attorney of the Borrower in making such appointment), notwithstanding any agreement to the contrary;
 - (f) provisions in the Security Document to the effect that a Lender is not responsible to the Borrower for its own misconduct or negligence or the misconduct or negligence of any receiver and manager or any other person appointed by it may be invalid. Moreover, no opinion is expressed on the legality, validity, binding effect or enforceability of any provision of the Security Document to the extent that it purports to oblige the Borrower to indemnify

any person for losses, claims, damages, liabilities and related expenses resulting from the negligence, wilful misconduct or breach of contract by such person;

- (g) a court of competent jurisdiction may impose limitations or restrictions at common law or in equity upon the rights of a creditor to enforce or receive immediate payment of amounts stated to be payable on demand. For instance, a Lender may be required to give the Borrower a reasonable time to repay following a demand for payment prior to taking any action to enforce a right of repayment or before exercising any of the rights and remedies expressed to be exercisable by a Lender in the Security Document;
- (h) a court may decline to hear an action if it determines, in its discretion, that it is not the proper forum or if concurrent proceedings are brought elsewhere;
- (i) a provision in the Security Document which restricts or purports to restrict or has the effect of restricting access to a court or which compels arbitration and limits or restricts appeals therefrom or which purports to waive any statutory rights or to relieve a person from any liability or duty imposed or owed by law may be unenforceable. Similarly, the effectiveness of rights of indemnification or provisions which purport to relieve a party from liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a court, to the extent that they relate to the failure of such party to have performed such liability or duty;
- (j) any provision of the Security Document that provides for a forfeiture of a deposit or any other property or which provides for a particular calculation of damages upon breach may not be enforceable if it is interpreted by a court to be a penalty or if the court determines that relief from forfeiture is appropriate;
- (k) a court may decline to accept the factual and legal determinations or a certificate of a party or to treat such determinations or certificates as conclusive notwithstanding that a contract or instrument provides that the determinations or the certificate of that party are to be so treated;
- (l) a court might not allow a Lender to exercise rights to accelerate the performance of obligations or otherwise seek the enforcement of the Security Document based upon the occurrence of a default deemed immaterial or which has been remedied.

3. Qualifications Regarding Security Issues

- (a) no opinion is expressed in respect of the ownership or other right, title and interest of the Borrower in the Property intended to be subject to the security created by the Security Document or as to the rank or the priority of the Lender's security interests therein vis-à-vis other creditors of the Borrower;
- (b) insofar as any security in favour of the Lender consists of a mortgage, pledge, charge or assignment of or upon any lease, agreement, agreement for income, proceeds or other monies or any other document for any rent, income, or other interest derived therefrom, our opinion pertaining thereto is subject to the qualification that notice of such security interest may have to be given to the obligor thereunder, the consent of the obligor thereunder may be required in order for such assignment to be effective and the further qualification that the party intended to be secured thereby may be affected by the equities between the immediate parties thereto;

- (c) to the extent that the Security Document purports to assign or create security in amounts due to the Borrower by any governmental agency or authority, such assignment or security interest is subject to any applicable restrictions relating to the assignment of Crown debts (such as restrictions contained in the Financial Administration Act (Canada));
- (d) pursuant to the provisions of Section 8 of the *Interest Act* (Canada), no fine, penalty or rate of interest may be exacted on any arrears of principal or interest secured by a mortgage on real property that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears;
- (e) no opinion is expressed in this opinion letter as to any of those matters which we assumed for the purposes of rendering the opinions expressed above; and
- (f) no opinion is expressed in this opinion letter as to the legality, validity, binding effect or enforceability of any provision of the Security Document purporting to create a right of set-off or compensation of any deposit with or obligations of any affiliate of the Lender against the obligations of the Borrower to the Lender.

Reliance

This opinion may be relied upon by the addressee hereof and its respective successors and assigns. Without our prior written consent, this opinion letter, together with the opinions expressed herein, may not be:

- (a) relied upon by any other party;
- (b) quoted from, used or circulated in whole or in part or otherwise referred to in any manner, save and except for the purpose of the proceedings regarding the Borrower under the Bankruptcy and Insolvency Act.

We do not act for the Borrower or the Lender in this matter and did not act in the preparation of the Security Document or the registration effected in respect thereof.

Yours,

BATTISTON & ASSOCIATES

Per: Flavio Battiston

APPENDIX “R”

Court File No. CV-12-469391

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.)	WEDNESDAY, THE 29TH
)	
JUSTICE F. L. MYERS)	DAY OF JUNE, 2016

BETWEEN:

LINDA PARIS FAITH ROSENBERG

Plaintiff

- and -

206 BLOOR STREET WEST LIMITED carrying on business as
MUSEUMHOUSE, CRAYON DESIGN COMPANY INC. also known as
CRAYON DESIGN CO. INC. and **CHERYL KRISMER**
also known as **CHERYL ANN KRISMER**

Defendants



JUDGMENT

THESE MOTIONS made by the Plaintiff for summary judgment and by the Defendant 206 Bloor Street West Limited ("206") for summary judgment were heard on June 16, 17, July 2, July 24, August 24, 25, 26, October 20, 21, 22, December 16 and 17, 2015 at 393 University Avenue, Toronto Ontario.

ON READING the pleadings, the Plaintiff's Amended Notice of Motion, Motion Record, Supplementary Motion Record, Further Supplementary Motion Record, Factum, Book of Authorities, Compendium and Closing Brief of Documents; 206's Motion Record, Factum, Book of Authorities, Brief of Documents and Memorandum re: Plaintiff's Factum Paragraph 89; the Motion Record of the Defendants, Crayon Design Co. Inc. and Cheryl Krismer; and the Joint

- 2 -

Brief of Documents of the Plaintiff and 206; and on reading the transcripts of the cross-examinations of Linda Paris Faith Rosenberg held September 12, 23, 2014 and January 16, 2015, of Cheryl Krismer held August 20, September 9, 2014 and January 23, 2015, and of David Hart held August 18, 2014 and January 22, 2015, and the answers to undertakings filed in respect of the cross-examinations, and on hearing the evidence and the submissions of the lawyers for the Plaintiff and 206,

1. **THIS COURT ORDERS AND ADJUDGES** that 206 pay to Plaintiff the amount of \$523,750.00.
2. **THIS COURT ORDERS AND ADJUDGES** that the counterclaim of 206 is dismissed.
3. **THIS COURT ORDERS AND ADJUDGES** that 206 pay to the Plaintiff costs of these motions, and of the action and counterclaim, in the amount of \$225,000.00, inclusive of disbursements and HST (the "Costs").
4. **THIS COURT ORDERS AND ADJUDGES** that in relation to the amount referred to in paragraph 1 an appointment will be convened to determine:
 - (a) whether the Plaintiff is entitled to prejudgment interest, and if so, in what amount;
 - (b) postjudgment interest; and
 - (c) costs of the appointment.

THIS JUDGMENT BEARS INTEREST on the Costs at the rate of 2 per cent per year commencing on February 12, 2016.

TORONTO 52719-1 1150529v4

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 30 2016

PER / PAR:



206 BLOOR STREET WEST LIMITED carrying on business as
MUSEUM HOUSE et al.
Applicant

-and- LINDA PARIS FAITH ROSENBERG

Respondent

Court File No. CV-16-555721

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, Ontario, M5L 1G4

DAVID P. PREGER
LSUC Registration No. 36870L
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Tel: (416) 646-4606
Fax: (416) 865-1398

Lawyers for the Applicant

APPENDIX “S”

CITATION: Rosenberg v. 206 Bloor Street West Limited, 2016 ONSC 6
 COURT FILE NO.: CV-12-469391
 DATE: 20160104

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

LINDA PARIS FAITH ROSENBERG

Plaintiff

– and –

206 BLOOR ST. WEST LIMITED carrying
 on business as MUSEUM HOUSE,
 CRAYON DESIGN COMPANY INC., also
 known as CRAYON DESIGN CO. INC.
 and CHERYL KRISMER, also known as
 CHERYL ANN KRISMER

Defendants

)
)
) Shawn Pulver and Lauren Sigal, counsel for
) the plaintiff
)

)
)
) David Preger and Thomas Arndt, counsel for
) the defendants
)

)
)
)
)
) HEARD: June 17, 18, August 24, 25,
) October 20, 21, 22, December 16 and 17,
) 2015.

F.L. Myers J.

The Motion

[1] By agreement of purchase and sale dated August 16, 2010 and amended thereafter, the plaintiff Paris Rosenberg purchased a luxury residential condominium in a building being developed by the defendant 206 Bloor St. West, Limited. The agreed purchase price was \$2,059,000. The plaintiff paid deposits of over \$500,000.

[2] Try as they might, the parties could not agree on final specifications and plans for the condominium unit. The developer has purported to terminate the agreement of purchase and sale and claims that it is entitled to keep the funds on deposit. Ms. Rosenberg wants her deposit back.

[3] Both sides have moved for summary judgment. They agree under rule 20.04(2)(b) that the claim should be determined summarily. Moreover, I am satisfied that I can find the facts and

apply the law on the material that is now before the court so that it is in the interests of justice that summary judgment be granted in this case. This motion was argued over the course of nine days. Oral evidence was heard. Overall, in my view, the use of a customized, hybrid procedure allowed the parties to focus on the key issues and avoid a full trial that would have taken much longer and cost each of the sides much more. At the same time, the evidence presented illuminated the fundamental issues so that I have full insight into the facts that underpin the parties' positions, counsels' narratives, and the legal issues.

[4] For the reasons that follow, I find that the plaintiff is entitled to the return of her deposit funds.

The Agreement of Purchase and Sale

[5] The developer marketed its proposed building as a very high-end, luxury residence. As befits multi-million dollar units in the heart of city, the developer provided buyers with opportunities to customize the design and finishes for their condominium units. Unfortunately, the parties became so bogged down in the customization process that they became deadlocked.

[6] The resolution of this case turns on a very few contractual provisions governing the customization process. Para. 12 (a) of the agreement provides:

Within 21 days after notification by the Vendor, the Purchaser shall complete the Vendor's colour and material selection form for those items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement, failing which the Vendor may complete the same in its sole and absolute discretion, on behalf of the Purchaser and the Purchaser shall be bound by the Vendor's selection, and the Vendor shall not be liable for any delays in having the Property ready for occupancy on the Confirmed Possession Date. The Purchaser acknowledges that only the items set out in Schedule C are included in the Purchase Price, and those [sic] furnishings, decor, improvements and samples are for conceptual and display purposes only and are not included in the Purchase Price unless specified in schedule C. The Purchaser shall have no selection whatsoever insofar as exterior colours, designs and materials are concerned. The Purchaser further acknowledges that selections of exterior colours, designs and materials may be subject to architectural approval from a third party or the Municipality, over which the Vendor has no control. All selections of items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement are to be made from the Vendor's samples. If the Purchaser's colour, material, construction or finishing selections are unavailable for any reason whatsoever, the Vendor shall give the Purchaser 21 days prior written notice of such unavailability, during which period, the Purchaser may make an alternate selection. If the Purchaser fails to make an alternate selection as aforesaid, the Vendor may substitute in its sole and absolute discretion, without the consent of the Purchaser, materials or finishing which are of equal or better quality, whether the same are different in colour and/or finish. The opinion of the Consultant as to the difference in quality is final and binding on the Purchaser. The Purchaser acknowledges that the colour, finish, grain, texture

and/or shading of wood finishes, marble, granite, carpet, tiles, kitchen cabinetry or other manufactured finishing materials or natural [*sic*] may vary from that of those selected by the Purchaser from the Vendor's samples, due to the variations or shading in dye lots produced or manufactured by suppliers. [Emphasis added]

[7] The process for customization set out in this paragraph therefore can be described in the following steps :

- a. Only the items set out in Schedule C to the agreement are included in the purchase price for the unit;
- b. All selections of items of construction or finishing for which the purchaser is entitled to make a selection are to be made from the vendor's samples;
- c. Within 21 days after notification by the vendor, the purchaser shall complete the vendor's colour and material selection form for those items of construction or finishing for which the purchaser is entitled to make a selection, failing which the vendor may make the selection(s) in its sole and absolute discretion;
- d. If the purchaser's selections are unavailable, the vendor shall give the purchaser 21 days written notice in which to make alternate selection(s); and
- e. If the purchaser fails to make alternate selection(s) within that time, the vendor may substitute materials or finishes of equal or better quality at its sole and absolute discretion.

[8] One therefore starts with Schedule C of the agreement, to see what details are included in the price of the unit. Then, where the vendor gives the purchaser choices of different items to satisfy a particular element, the vendor is required to provide samples of the items to the purchaser for her to make her choices. The purchaser makes her choices by completing the vendor's colour and material selection form. If she fails to complete the vendor's colour and material selection form within 21 days after notification by the vendor that the form is due, the vendor can complete the form and make the choices for her.

[9] Much of the case, and almost all of the oral evidence heard, concerned the information that the vendor provided to Ms. Rosenberg and why she claimed to be unable to finalize the choices necessary to complete the design of her unit. However, there are two facts that are not in dispute at all and which are important to understanding the customization process in this case:

- a. First, the vendor had no "colour and material selection form." It did not provide a piece of paper to Ms. Rosenberg listing all of the choices to be made by Ms. Rosenberg or for her to list her choices. Instead, the parties engaged in an extensive amount of communication that for the bulk of the material time had no clear delineation of the precise decisions to be made.
- b. Second, while the vendor had extensive samples available for the typical choices set out in its basic Schedule C, it was not ready for the plaintiff. The plaintiff is a

designer by trade. She is very knowledgeable, intelligent, and energetic. She is detail oriented in the extreme. For the hearing, for example, she produced a 75 page chronology highlighted in five colours detailing nearly every interaction between the parties. There is no hyperbole in describing the plaintiff's presentation as ultra-intense bordering on compulsive. There is no doubt that the defendants found the plaintiff's approach off-putting. Several of the representatives of the defendants who had been engaged in dealing with the plaintiff wrote internal emails that left no doubt about what they thought of dealing with her. They were not nice characterizations.

[10] The parties engaged in many meetings prior to the agreement of purchase and sale being signed. The plaintiff negotiated extensively to customize the description of the items to be included in the price of her unit that were to be listed in Schedule C to the agreement. After finishing negotiations and entering into the agreement, the vendor understood that Ms. Rosenberg was going to be a very difficult customer. Mr. Rusonik called her "unbelievable" as early as September 2, 2010. Mr. Hart, the project manager, later lamented that the developer knew what it was getting into with the plaintiff early on. Perhaps many purchasers of luxury condominium units are content to leave the precise, picky design and pricing details to others. Ms. Rosenberg was not such a purchaser. She took full advantage of the vendors' willingness to allow customization of her unit. As a result of her negotiation, the vendor agreed to include in her Schedule C a number of items that were unique to her unit. Ms. Rosenberg wanted to be involved and know every detail of every choice that was available to her and the precise pricing impact of each. While the vendor had many details available in its presentation centre and in its customizations binder, it did not have samples of all of the items listed in Schedule C to Ms. Rosenberg's contract including the items that were unique to her unit. Moreover, pricing of alternatives is necessarily an iterative process that depends on what alternatives the purchaser seeks and what the vendor will allow.

[11] It should be noted that it was not only the standard items that were included in the price of the unit that were to be picked from the vendor's samples. Rather, the vendor was required to have samples of *all* standard choices and *all* available upgrades from which the plaintiff could choose. Under para. 12(a) of the agreement, all of her selections were to be made from the vendor's samples.

[12] Para. 12(b) of the agreement requires the purchaser to pay the vendor in advance, forthwith upon demand, for all extras or changes that she orders. In order to build the unit therefore, the purchaser must make all of her choices and pay for them.

[13] It is implicit in the agreement as drafted therefore, that to make the choices required of her, the purchaser must know what she was entitled to as the standard items contained in Schedule C that are included in the price of the unit and all of the choices of upgrades that the vendor is willing to allow her to make. The vendor was required to provide samples for all of the choices or upgrades that the vendor made available. It was also required to provide cost details for each available upgrade in order for the plaintiff to be armed with the information required to make the necessary choices.

[14] When faced with a purchaser who could not or would not make her choices, the vendor had the authority under para. 12 (a) of the agreement to make choices for the purchaser and to proceed with the construction of the unit on that basis. The vendor did not proceed in that manner however. Rather, it alleges that the failure of the purchaser to make timely choices amounted to a default and entitled the vendor to terminate the agreement.

[15] Para. 25(a) of the agreement provides for the following terms to govern defaults by the purchaser:

Upon default of the Purchaser of any of the covenants, representations, stipulations, warranties, acknowledgments, agreements and obligations to be performed under this Agreement, which continues for 7 days, then, in addition to any other rights or remedies which the Vendor may have, the Vendor may deem the Purchaser in fundamental breach of this Agreement and in such event, all deposit monies paid hereunder (including all monies paid to the Vendor by the Purchaser) shall become the absolute property of the Vendor, and may also terminate this Agreement and claim for damages in excess of deposit monies. The Vendor is not obliged to give notice to the Purchaser that the Vendor has deemed the Purchaser to be in fundamental breach, nor is the Vendor obliged to act on the Purchaser's breach promptly or to make an election to terminate at any time prior to the delivery to the Purchaser of notice that the fundamental breach is to be treated as grounds for termination. The taking of a fresh step by the Vendor shall not be a waiver of the Vendor's rights herein, unless the vendor waives any existing breach in writing. The Vendor may, in its sole discretion, offer the Purchaser an opportunity to cure his/her breach, but the making of such an offer, or the failure for any reason by the Vendor to communicate the offer to the Purchaser shall be deemed not to be a waiver of the Vendor's right to terminate the Agreement for the breach.

[16] By contrast, if the agreement is terminated through no fault of the purchaser, para. 26 provides that the deposit money shall be returned to the purchaser with interest from the termination date. It goes on to state however, that in no event shall the vendor be liable for "any costs or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or for any fees, professional or otherwise, expended in relation to this transaction."

[17] Among her legal arguments, Ms. Rosenberg claims that the vendor failed to terminate the agreement on a timely basis and she relies upon common law precedents that stand for the propositions that:

- a. a party faced with a breach of contract must act upon the breach within a reasonable time; and
- b. if the party intends to terminate the agreement consequent upon a repudiation, it must say so within a reasonable time.

[18] As undoubted as those common law principles are, they do not apply to this agreement. Para. 25(a) is clear in its deliberate wording to oust the elements of common law relied upon by

the plaintiff. Under this agreement, the vendor is entitled to wait before acting upon a breach and it could give the plaintiff opportunities to cure a breach without waiving the breach. Moreover, it could terminate the agreement by written notice that was not promptly given as would otherwise be required by the common law. Ms. Rosenberg's counsel was not able to point to any basis in law to prevent competent, adult parties, each of whom had independent legal advice, from agreeing to contractual terms to expressly and clearly oust the common law from their private transaction.

Ms. Krismer's Position – This was a Production Build

[19] Ms. Krismer is an employee of the defendant Crayon Design Company Ltd. Crayon was the vendor's designer and agent. Ms. Krismer was the face of the vendor, the architect, the designer, and the builder to the plaintiff. Mr. Preger accepts that the developer is bound by Ms. Krismer's (and Crayon's) acts on its behalf in her dealings with the plaintiff. In reliance on that admission, the plaintiff let Crayon and Ms. Krismer out of the action during the case management process that preceded the hearing of these summary judgment motions.

[20] Ms. Krismer gave important evidence orally concerning the differences between a condominium development process and the construction process associated with a typical private residence. Ms. Krismer was not put forward by Mr. Preger as an expert witness on the design process. However, her understanding of her role with Ms. Rosenberg drew upon her background understanding of the process in which she was engaged. Some of Ms. Krismer's reactions are better understood in terms of her understanding of the process. I take her evidence then as illuminating her approach and her frustration rather than as an abstract or authoritative dissertation on the construction industry.

[21] Ms. Krismer testified that unlike a custom house project, in a production building process, such as a condominium building, there are significant limits imposed on parties' flexibility. The building has a fixed design. Unit designs are fixed as set out in the agreements of purchase and sale. The developer can agree to allow limited choices if it chooses to do so. Typically, the developer will enter into agreements with trades and suppliers and will have cost surveyed all of the available choices in advance. Purchasers are not given allowances to fill-in whatever they want for a price. Rather, there is a menu of available standard items and optional, fully-costed upgrades. Samples of all of the standard items and the available upgrades are then displayed at the vendor's presentation centre so that purchasers can come and see and touch them as desired. Tiles, for example, need to be seen to be assessed. Seeing a list of tile names does nothing to help a purchaser make subjective design choices. In this project, the developer also had a binder prepared for each unit that contained additional choices for items that may or may not have also been available to view at the presentation centre.

[22] The timing of the project is also a major difference between a production build project and building a private house. In a private scenario, the owner can take as much time as he or she likes for a price. In a production build, efficiency has to rule. Trades are scheduled to go through the building in a sensible order as the building is built. Pipes and ducts and similar building services have to be built and run through lower units to get to upper units. For finishes, rough-ins for electric, mechanical, and plumbing need to be completed in order and on time for

the arrival of the next set of trades. While this is true in a house too, in a production build, once the trades have finished a floor, they move on to other floors. The contracts with the trades make it prohibitively expensive to let purchasers dictate when trades should attend at each of their units.

[23] In addition, instead of there being a relatively intimate group making and implementing all decisions (such as owner, designer, and general contractor in a house) in a production build there are large numbers of people involved. There are multiple, large commercial enterprises engaged. Unions may assign labour. There is substantial government oversight. Controls are needed. Changes require a paper trail from purchaser to designer to architect to builder to trades in order to keep track of what may amount to thousands of customizations in a project. Ms. Krismer testified that in light of the complexity of the communication and paper work processes, the vendor would only finalize floor plans for a unit through the necessary channels once a purchaser signed an upgrade agreement and had paid for her customization selections. Then, the plans were finalized and released to the builder and its trades on site. Those plans were fixed in stone.

[24] As I noted previously, all of this background understanding goes some way to help illuminate the reasonableness of the defendants' ongoing efforts to cajole and demand that the plaintiff make her selections so she could sign her upgrade agreement. The defendants' frustration with the plaintiff's ongoing requests for more information is palpable in their contemporaneous communication.

This was Not Just a Production Build

[25] There is one very significant problem with Ms. Krismer's evidence. The agreement as drafted and Ms. Krismer's understanding of a standard production build all turn on the builder costing and providing samples to a buyer at the outset for all of choices that a buyer can possibly make. Recall that the agreement requires that all selections be made from the samples provided by the vendor. All of the choices are to be listed on a colour and selection form under para. 12(a) of the agreement. Ms. Krismer said that in a production build all of the options are cost surveyed in advance and are available at the presentation centre or in the binder. But her reliance on her understanding of a typical production build was inapplicable in this case on two counts.

[26] First, the plaintiff was able to negotiate some items in her Schedule C that were unique to her unit. The vendor did not have standard or upgrade choices available for these items on day one as these items had understandably not been included on the vendor's menu previously. No prior cost surveying had been done on the items that were unique on the plaintiff's agreement. There is internal correspondence shortly after the plaintiff signed her agreement in which Ms. Krismer instructed colleagues concerning the need to obtain additional choices and upgrade the customization binder for the unique items in Ms. Rosenberg's Schedule C.

[27] Of greater significance however, was a decision by the vendor to allow purchasers to go "off-menu." This building was marketed as offering a unique amount of customization for ultra-luxurious units. The vendor allowed purchasers to go out and source their own choices. Notwithstanding Ms. Krismer's understanding of the process applicable on a typical production

build, for this project, purchasers were *not* limited to the menu of selections assembled, costed, and offered by the vendor in advance. Indeed they were invited to go “off-menu” by Ms. Krismer and the defendants’ other representatives. Ms. Krismer and others invited the plaintiff to speak to the vendor’s suppliers herself to find other choices that the vendor could then price for her.

[28] At the time of the plaintiff’s agreement, the vendor had not yet finalized its contracts with all of its finishes suppliers. In directing the plaintiff to the vendor’s approved suppliers, it was Ms. Krismer’s hope that she might have some success incorporating the plaintiff’s choices with those suppliers into the final contracts to be entered into between the suppliers and the vendor.

[29] Ms. Rosenberg gave evidence of the suppliers working with her and telling her that her choices were standard choices that should come at no cost to her. In addition to being inadmissible hearsay evidence, the pricing of upgrades between the vendor and the purchaser was not the suppliers’ decision. It was up to the vendor to price upgrades. In that process the vendor looked not only at the price of goods that needed to be purchased but at handling costs, installation costs, labour, scheduling efficiency, and any number of other variables that were open to it to consider.

[30] So, not only did the vendor not have samples for all of the plaintiff’s Schedule C items that it was bound to provide for the contract price, it was faced with the prospect of pricing and supplying an infinite universe of available “off-menu” upgrade choices that the defendants expressly made available to the plaintiff. Perhaps the outcome was inevitable given this plaintiff and the range of choices made available to her. But it was the vendor’s decision to run the project as it chose. Ms. Krismer was clear and resolute that purchasers were allowed to go off-menu to an unusual degree on this project. This meant that instead of having all the upgrade choices costed with samples displayed in the presentation centre or in the customization binder on day one, under para. 12(a) of the agreement, Ms. Krismer had to continually price and obtain samples of whatever choices the purchaser brought to her in real time.

[31] The requirements of para. 12(a) of the agreement created serious practical difficulties to Ms. Krismer and her team in dealing with ongoing off-menu upgrades sought by the plaintiff. However, it was open to the vendor to word its contract as it chose. It could have amended its contractual wording to deal with its amended process. It could have imposed all manner of limits or lessened its burden to price and supply samples for off-menu selections. It did not do so. The fact that off-menu purchases were allowed and fell to be dealt with under para. 12(a) of the agreement was expressly accepted by Mr. Preger in argument. That issue is discussed in greater detail below.

The Evolution of the Mini-Trial Process

[32] The parties’ positions evolved as the argument of these motions was heard. Each started with a broad, extreme claim that the other simply refused to perform its contractual obligations. As the events unfolded however, the real positions were much more complicated and nuanced.

[33] The parties entered into the agreement of purchase and sale and quickly finalized the descriptions and initial floor plans in Schedules C and D to the agreement respectively. There was time pressure on the defendants to get the basic layout of the plaintiff's unit settled quickly because construction of the building was already under way by the time the plaintiff bought her unit. While details of finishes could wait a bit, the floor plan had to be finalized quickly to allow the unit to be constructed with the walls in the right places and with appropriate rough-ins for services.

[34] The architect prepared draft plans based on Schedules C and D as agreed in September, 2010. The defendants forwarded the initial plans to the plaintiff with her customization binder in October, 2010.

[35] In para. 89 of her factum, Ms. Rosenberg pleaded that her binder:

...did not include any standard choices for stones, tiles, hardwood floors, granite or stainless steel counters, the *en suite* tub filler, back splashes, etched-glass, crown moulding, doors, door casings, baseboards, accessories for the washroom, laundry and kitchen, fireplace mantles, tubs, sinks or faucets for the laundry room, kitchen or island sink. Although being advised that the Binder would be updated, at no time did Krismer provide Rosenberg with an updated Binder that reflected the standard finishes for the unit.

[36] Ms. Rosenberg grossly over-stated her case in this argument. Ms. Rosenberg attended the vendor's presentation centre many times while she negotiated her agreement. To the extent that materials were there, she had plenty of access to them. Moreover her complaint that she was not invited back into the presentation centre until late 2011 rings hollow. Had she wanted to go, she could have set up an appointment to do so. She was never barred from attending. In light of her intelligence, including a near photographic memory that she repeatedly displayed throughout the hearing, I have no doubt that she had a very good handle on what was there. She did not demand to go back in because she was looking elsewhere as she was invited to do by the vendor and Ms. Krismer.

[37] The blanket denial in para 89 of the plaintiff's factum was repeated and generalized orally at the first hearing by Mr. Pulver. Ms. Rosenberg essentially denied seeing standard samples for the bulk of her unit. This led me to call for greater details to provide clarification as to how the binder could have been so empty. On the next return of the cross-motions, the parties had prepared a thick record that established that samples of many of the items were indeed provided to the plaintiff in the presentation centre, in her binder, and on a one-off basis throughout the piece despite the plaintiff's bald assertion to the contrary.

[38] The second return of the hearing confirmed for me however, that there were a host of individual issues that led to the parties' stalemate. The cause of the termination of the agreement could not be ascribed simply on the basis of saying either that the vendor did not give *any* standard samples as essentially alleged by the plaintiff or that the plaintiff simply *refused* to make her choices as was essentially alleged by the defendants. Neither extreme position made sense and neither conformed to the very large amount of correspondence on over 200

individualized, detailed items discussed by the parties in real time. Therefore, with input from counsel, I ordered that Ms. Krismer and Ms. Rosenberg give oral evidence on a select number of individual items that the parties would agree were in issue and were illustrative of the 200 or so total issues noted.

The Partial Upgrade Agreement

[39] As mentioned above, Ms. Krismer said that the floor plans and upgrades are normally finalized in an upgrade agreement. It is only once this agreement is signed and money paid for agreed upgrades that the architect prepares final plans to be released to the site. In this case, as time was so short, the parties agreed to enter into a partial upgrade agreement containing the minimum choices needed for the architect to complete the electrical, plumbing, and other basic plans required for the unit to be built with other finishing and design choices deferred for a time.

[40] Although the vendor never provided a material and colour selection form as contemplated by paragraph 12(a) of the agreement, it prepared a Finishes Selections & Upgrades form to record the upgrades chosen by Ms. Rosenberg as choices were made or were priced and offered by Ms. Krismer. The form went through multiple drafts as will be discussed below. The third Finishes Selections & Upgrades form provided by the vendor was attached to the Partial Upgrade Agreement between the parties dated December 17, 2010.

[41] The Partial Upgrade Agreement recited that the parties desired "certain additional improvements, changes, upgrades and/or extras" as set out in the Finishes Selection & Upgrades appendix. The agreement is silent on standard items where no upgrades are chosen. In the Partial Upgrade Agreement, the vendor covenanted to install and complete all of the upgrades listed in the appendix. It provides that funds paid for upgrades are not refundable even if the transaction is not completed.

[42] The Partial Upgrade Agreement also provides that there will be "no further changes, revisions, deletions to the upgrades permitted" except for discontinued items. Under that agreement, once an item was selected and priced, it was supposed to be final. The vendor and Ms. Krismer complain about the plaintiff's subsequent changes to the plans. However, the vendor allowed her to make changes and Ms. Krismer priced them for her. The vendor could have stuck to its guns but it chose not to do so for its own reasons.

[43] It is also significant that para. 4(a) of the Partial Upgrade Agreement continues to track para. 12(a) of the agreement of purchase and sale in that it also confirms expressly that upgrades are to be selected from samples provided by the vendor. While the defendants argued that the evidence discloses the unreasonableness of Ms. Rosenberg's conduct in failing to make her final choices on a timely basis, it seems to me that the contract provided the vendor with the ability, if not the responsibility, to control the customization process. It was wholly within the vendor's ability to have the samples in one place at one time and to require the purchaser to attend and make choices or have the choices made for her. It could have provided and given the plaintiff 21 days to complete a colour and selection form in which it listed all choices for the plaintiff to make or had her do so as contemplated by para. 12(a) of the agreement of purchase and sale. It

was the vendor's choice to allow off-menu choices without altering the applicable contractual terms that it now seeks to enforce.

[44] The total price for the partial upgrades agreed to in the Partial Upgrade Agreement was \$36,441.58. The vendor required Ms. Rosenberg to pay \$9,000 on signing the Partial Upgrade Agreement and she did so.

[45] The Finishes Selection & Upgrades appendix to the Partial Upgrade Agreement lists 80 choices. But most are described as "not selected" indicating that a choice was still outstanding. Several of the prices provided for choices that were made were noted to be estimates that were subject to finalization by the vendor with its trades. The Partial Upgrade Agreement also has attached the revised drawings that were based on the plaintiff's selections after reviewing the first drawings that had been prepared by the architects in October.

[46] The defendants had the architects prepare drawings based on the Partial Upgrade Agreement and continued to press the plaintiff for her other choices. The plaintiff continued to make changes to the layout in January that she said reflected errors made by the defendants in their drawings or further choices that she was making as she was being asked to do.

[47] On February 11, 2011, the plaintiff gave her signoff on plans. She wrote "As far as I can see all the changes have been incorporated. Ta daaa!!!... You have my blessings and gratitude that this part is done." She noted only one outstanding issue in her email.

[48] At the hearing, much time was spent discussing the "Ta da" email. It is plainly a signoff by the plaintiff and intended as such. The defendants complain that the changes to the plans in January and February included changes from the Partial Upgrade Agreement that was supposed to have been written in stone. Be that as it may, they accepted the "ta da" drawings and issued plans to site shortly after.

The Vendor puts Construction of the Plaintiff's Unit on Hold

[49] Efforts then focused on all remaining finishings choices. By email dated February 29, 2011, Ms. Krismer wrote to Ms. Rosenberg:

When we signed off on the electrical, mechanical and floor plan on December 17, 2010, it was with the understanding that these were the final plans. We have since reviewed and revised architectural and mechanical plans several times since, as a result could [*sic*] not issue them to site. We are not doing that with electrical, which we have reviewed for compliance to the signed off drawings and are issuing to the site this week. There can be no further revisions to the drawings. Anything else that may need revision, will have to be priced and approved before we issue. The trades are continuing to build your suite on their contract drawings and will not wait. They have a timeline, which they are required to maintain. As discussed in December, we need all of your final design as soon as possible. The absolute deadline for completion of all finishes, details, specifications must be March 21, 2011....

As a result of you not being able to issue Mechanical drawings once we did the first review in January, the drawings did not get to site prior to stacks for plumbing being installed. At this time, in order to achieve the layout we have been working towards on site, we are now faced with making several stack revisions. This work is not included in the quoted prices we gave you in December, so I do need to review it with you and have you advise how to proceed.

[50] Under para. 12(b) of the agreement of purchase and sale, if the structural change caused by unilateral placement of the plumbing stack by the vendor was material, the plaintiff had ten days in which she was entitled to cancel the agreement. The placement of the stack affected the kitchen design and layout so the plaintiff may well have had grounds to exercise her termination right. However, she did not do so.

[51] . The plaintiff had also learned that the layout for the kitchen set out in the plans did not work. There was insufficient depth for the refrigerator as specified so that if the refrigerator door opened to 90 degrees it would have bumped into the kitchen island. Mr. Arndt argued that this was not a significant issue as there was no impairment of the refrigerator's function. But Ms. Rosenberg fairly noted that in a \$2 million condominium, the refrigerator door should not be bumping into another element. It certainly interferes with the flow of movement and therefore the functionality of the kitchen. Moreover, it is just inappropriate to suggest that a fridge door should not be able to open fully and should actually risk bumping into an island each time it is opened. So in addition to the plumbing stack issue, Ms. Rosenberg had started redesigning the kitchen to move appliances and walls to fix the layout problem. The redesign was extensive.

[52] I am not assessing a breach here. Rather, this dispute between the parties informs a major element of the overall dispute. Given Ms. Rosenberg's concerns, Ms. Krismer sent Ms. Rosenberg to work with the vendor's cabinet designer The Gracious Living Centre ("TGLC") to help her finalize a design her kitchen. Ms. Rosenberg says she worked with the owner of TGLC who helped her design a kitchen for the space and assured her that he was bringing it in within budget so that there should be no extra cost.¹

[53] While the plaintiff was out working with the vendor's various suppliers, the March deadline that had been set by Ms. Krismer was amended and then passed. As the plaintiff had not made all of her selections by May 2, 2011, Ms. Krismer told the plaintiff that the vendor had put the finalization of her unit "on hold." The plaintiff then proceeded throughout the rest of 2011 to try to work with the vendor's suppliers to finalize plans for finishes.

¹ I have already indicated that such hearsay assurances from tradespeople are not admissible for the truth of its contents. Neither would it be binding on the vendor. The fact that it was said just informs an understanding of the plaintiff's conduct and the reasonableness of her discontent with being charged extra for the kitchen as redesigned with the supplier when the vendor could not deliver the kitchen on the initial plans as agreed.

[54] Ms. Rosenberg came back to Ms. Krismer with a revised kitchen layout in the summer. Ms. Krismer pointed out several major changes in the design and layout that Ms. Rosenberg had worked on with the supplier. Rather than rejecting the new design however, Ms. Krismer priced it and told Ms. Rosenberg that it would cost an additional \$14,000. Ms. Rosenberg could not understand why that would be. She had not been given standard plans. Schedule C was very general in its description of the cabinetry that was included in the kitchen. It turned out that the vendor had internal ideas about the quantities and qualities of different lines of cabinetry offered by TGLC that it would treat as standard or included. It did not share that information with her at the outset however. Ms. Rosenberg says that the vendor never gave her shop drawings for a standard kitchen to which she could compare her design. In fact, Ms. Krismer gave her drawings but not until November, 2011. That communication just begged the question, how could the plaintiff have known what was included or not before November 11, 2011 at the earliest? That was six months after the vendor had put her unit on hold and ten months after it had demanded that she make her final choices. Even in November, 2011, it is not clear to me that the vendor told the plaintiff what aspects of the Neos brand or Rational brand cabinetry lines were included in the price of her unit and which were upgrades.

[55] Ms. Rosenberg testified that Ms. Krismer had offered to speak to the supplier in order to clarify with it what was standard or not. Ms. Krismer did not deny this. Neither did she speak to the supplier for Ms. Rosenberg. In fact, she expressly refused to attend a meeting with the plaintiff and the kitchen supplier. She felt that the design was for the plaintiff and the supplier. The cost was for the developer. She probably did not want to be squeezed by the supplier in front of the client. The way Ms. Krismer handled "off-menu" items was that the plaintiff would bring forward her requests and Ms. Krismer would price them and announce whether they were an upgrades and at what price. But the vendor never told Ms. Rosenberg what she could change to eliminate the \$14,000 charge or how she could get her kitchen made with standard components in light of the placement of the plumbing stack and without the refrigerator being cut off by the island.

[56] I am not finding a breach in this part of the story either. What it illustrates is that the design process is an iterative one. If the vendor could not or would not provide a list of samples for all choices required and it was willing to let Ms. Rosenberg go "off-menu," then she cannot be faulted for trying to do so. This is not to ignore however that the burden put on Ms. Krismer by the plaintiff's delays and volume of ongoing inquiries became significant in 2011. Rather than continue pricing one-off requests, Ms. Krismer determined to wait until she had received nearly all of the plaintiff's design plans before pricing them *en masse*. This accounted for most of 2011. Ms. Krismer followed up periodically seeking to push Ms. Rosenberg forward. For her part, Ms. Rosenberg was equally frustrated as she was working with suppliers as she had been invited to do, but she did not know in any comprehensive way what she was entitled to have as standard designs and how she could keep her designs within the defined terms of Schedule C.

[57] The inter-personal relationship between Ms. Krismer and Ms. Rosenberg also became strained in this interregnum. Ms. Rosenberg tried to enlist the assistance of other representatives of the developer and was told that Ms. Krismer was the only person with whom she was to communicate.

[58] Ms. Krismer confirmed in cross-examination out of court that while she had the means to provide a full listing of what was standard and included in the unit (at least before Ms. Rosenberg's customizations were included) she did not do so. Mr. Hart, the project manager, confirmed in cross-examination that the defendants understood that Ms. Rosenberg was moving forward during the mid-2011 interregnum.

Enter the Lawyers

[59] On November 17, 2011, Ms. Rosenberg had her real estate lawyers write to the lawyers for the vendor.² She expressed willingness to pay for upgrades to which she had agreed to that time and expressed her need for information as to her remaining options. She complained that no one was getting back to her.

[60] In response, Ms. Krismer wrote to Ms. Rosenberg on November 17, 2011. She opened with "I hope you are well, and you've had a great fall." thereby confirming a period of silence as alleged. In an attempt to move matters forward, Ms. Krismer said that she had sought prices for Ms. Rosenberg's plans for the kitchen, bathroom, and laundry room so that the plaintiff should be ready to receive prices and make her choices shortly. It is also in this email that Ms. Krismer agreed to provide Ms. Rosenberg shop drawings for the Rational brand cabinetry line, "as well as a copy of the base contract drawings, which will give you a reference about why the costs of revisions are what they are." Ms. Krismer also asked Ms. Rosenberg to identify any areas where she knew that she did not want to pay for an upgrade as this would save Crayon from wasting time obtaining unnecessary pricing for those issues. Finally, Ms. Krismer enclosed a new Finishes Selections & Upgrades Form reflecting a few further prices obtained by Ms. Krismer to that point.

[61] By letter dated December 22, 2011, the vendor's lawyers responded with their understanding of the situation:

As provided in our correspondence dated June 28, 2011, the Purchaser is not purchasing a 'custom unit'. The Purchaser is only entitled to make selections of finishes and features within the Unit as per the Purchase Agreement.

The Vendor and its representatives have been more than available and cooperative with the Purchaser and finalizing the selections the Unit. Correspondence between the Purchaser and its representatives evidence this. Further, our client advises that the Purchaser has consistently delayed the making of decisions with respect to the selection of finishes and features within the Unit. In addition, the Purchaser has consistently modified her selections, once she has made her selections. The Purchaser's delays and constant changes to the selections result in delays in finishing the Unit.

² The lawyers for both parties at the outset were not with the same firms as counsel who appeared on these motions.

Pursuant to section 12 (a) of Schedule "A" of the Purchase Agreement, this letter is to serve as written notice to the Purchaser that the Purchaser is to complete the Purchaser's selections of finishes and features for all items for which the Purchaser is entitled to make selections as per the Purchase Agreement on or before Thursday, January 12, 2012 at 5:00 p.m. (Toronto time). In the event that the Purchaser does not complete the selections by this time, the Vendor shall, in accordance with section 12 (a) of the Purchase Agreement, complete the selection of features of finishes within the Unit in the Vendor's sole and absolute discretion, on behalf of the Purchaser. The Purchaser shall be bound by the Vendor's selections in this regard. [Emphasis in original]

[62] The letter also advised that as a result of the purchaser's delays, the Confirmed Possession Date for the unit under the agreement was extended to June 28, 2012.

[63] This letter is notable for several points. First, the one sentence that the author chose to highlight with underlining was not completely correct. It is true of course that all purchases are covered by para. 12(a) of the agreement. But, as noted previously, the vendor concedes that the purchaser was entitled to look off-menu. Second, it is telling that there is no reference, or allegation, that the plaintiff was committing any breach of the agreement. Rather than alleging a breach and threatening termination, the vendor threatened to exercise its right under para. 12(a) of the agreement to make Ms. Rosenberg's choices for her. Third, the vendor purported to give the 21 day notice under para. 12(a) of the agreement, but in slightly different words than are used in that paragraph of the agreement. Recall that para. 12(a) provides that the plaintiff is required to "complete the Vendor's colour and material selection form for those items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement." Instead, the counsel insisted that the purchaser complete her "selections of finishes and features for all items for which the Purchaser is entitled to make selections as per the Purchase Agreement." By deleting reference to the "Vendor's colour and material selection form" the vendor was eliminating or ignoring the plaintiff's key concern. Her complaint was that she did not know which items were standard under the agreement and which items were extra or upgrades. Had the vendor provided a form listing the "selections of finishes for all items for which the purchaser is entitled to make selections as per the Purchase Agreement," the matter would have been resolved readily or at least brought to a head. In fact, the vendor's threat to make the choices for the plaintiff under para. 12(a) must have been particularly galling to Ms. Rosenberg as it suggested that the vendor had the ability to identify and make each of the choices and yet it continued to decline to share that information with the plaintiff.

The Vendor Fills the Purchaser's Shopping Cart

[64] The parties met on January 4, 2012 with many of the samples from the presentation centre having been moved to the site of the meeting. Ms. Rosenberg made further choices that day. A Crayon employee who was present with Ms. Krismer recorded the following conversation:

[Purchaser] does not want to spend extra, if something has an extra charge, then present this to [Purchaser] and she will decide whether or not to proceed [with] extra. If she decides against extra then we will steer in [standard] direction.

[65] The next day, Ms. Rosenberg delivered a set of plans detailing the status of her choices as far as she understood them after the meeting. Ms. Krismer plainly understood that, as set out in her colleague's notes, Ms. Rosenberg was bristling against paying extra charges and wanted to get the unit built without paying extra as much as she could. With this understanding, Ms. Krismer testified that she proceeded to obtain prices for the new plans based on a "shopping cart" analogy. That is, she obtained and presented prices for the items shown in Ms. Rosenberg's plans on the express, mutual understanding that for each item, Ms. Rosenberg could keep the item in her shopping cart and pay the price claimed by the vendor or remove the item and go with the standard promised by the contract.

[66] It sounds simple enough. What happened?

[67] On February 17, 2012, Ms. Krismer provided another draft of the Finishes Selections & Upgrades form containing near final pricing of all elements sought by the plaintiff. The form lists 205 choices with a total price of \$230,618.91 (not even including the kitchen).

[68] The plaintiff was aghast.

[69] Ms. Rosenberg responded with a lengthy email dated February 22, 2012. The soured relationship between Ms. Krismer and Ms. Rosenberg is reflected in the tone of the email. Ms. Rosenberg claimed that 90% of the items priced as upgrades by Ms. Krismer were actually included in Schedule C of the agreement of purchase and sale. She identified in a painstaking, item-by-item basis, those items that she felt were included in her Schedule C (and should have been included in the contract price) and made other comments about problems and errors in the pricing provided.

[70] Ms. Krismer responded, in part, as follows:

The price of the extras sent to you on Feb 17 is based entirely on your APS and is accurate to the standards for the project. Statements such as I have had this information for 7 months is incorrect. I have had the final information since Jan 6th and only final kitchen drawings since Jan 30 of 2012. It took over a year to receive the finishes for your suite after the Dec 17 2010 sign off on the floor plans.

I will be ready to meet with you as soon as we have all the pricing completed. This is not refusal to meet with you, this is refusal to waste more time. The meeting will not be productive until we can discuss your suite in the light of pricing. I must have all documentation in place in order to provide you with accurate numbers and I rely on the trades to give me these prices which I have told you before. This also requires review of all the quotes to ensure they are correct.

This is a collaborative undertaking and should be done with respect and professionalism which includes allowing me the time to get correct numbers. If you want to meet on Feb 29th I will estimate these final numbers to ensure we have covered potential costs. [Emphasis added]

[71] The overwhelming nature of the pricing task to Ms. Krismer is clear from her plea for time in face of her ongoing criticism of the amount of time that the plaintiff had taken already.

[72] On February 29, 2012, Ms. Krismer provided a detailed response to Ms. Rosenberg's itemized issues. Ms. Krismer explained to Ms. Rosenberg that changes to the plans have to be built by the builder and its trades so that if Ms. Rosenberg wants an extra, she has to pay their prices that include six levels of supervision which cannot be overridden. She wrote "[a]s a result, pricing that I have given you is not negotiable and is accurate." Confirming the shopping cart approach, she continued, "[y]our decision is either to accept the price, or to select standard."

[73] By letter dated April 3, 2012, the vendor's lawyers confirmed that Ms. Rosenberg made all of her design and finishing selections by February 6, 2012, but noted that she had not yet accepted the pricing or made arrangements to pay for those choices.³ Counsel recited para. 12(b) of the agreement requiring the purchaser to pay on demand for all extras specifically ordered. The vendor agreed "as a courtesy" to allow the purchaser to finalize her selections, accept pricing, and pay for her upgrades by April 25, 2012, failing which, "the Vendor will complete the Unit based upon the selections that the Purchaser has last finalized without upgrades and for those items that the Purchaser has not finalized, the Vendor shall, pursuant to section 12(a) of the Purchase Agreement, make such selections on behalf of the purchaser."

[74] The letter continued.

The Vendor will not be offering the Purchaser another or further opportunities to finalize selections for the Unit. This is the Purchaser's last opportunity to finalize your selections for the unit. [Emphasis in original]

[75] Finally, counsel extended the Confirmed Possession Date under the agreement to December 3, 2012.

[76] Also on April 3, 2012, the vendor provided its next Finishes Selection & Upgrades form that lists 226 matters with the total price of \$314,268.20. The form expressly notes that a few of the prices were not yet finalized.

[77] By letter dated April 24, 2012, Ms. Rosenberg's counsel responded, in part, as follows:

Given that Ms. Rosenberg has not had the opportunity to properly review and choose her selections with full particulars of what is included in the Purchase Price and what is extra,

³ To avoid confusion I note that the reference to Ms. Rosenberg having completed her selections in February meant that she had advised Ms. Krismer fully of what she wanted. Ms. Krismer was pricing those choices and there still remained a final selection process to decide what items remained in Ms. Rosenberg's shopping cart and which were to be removed depending on the pricing (and resolution of any disagreements as to whether they were standard or upgrades). To that extent, selections remained outstanding.

the Vendor is not entitled to make unilateral selections on Ms. Rosenberg's behalf. Rather, as the stage of the Unit is such that a few more weeks will not cause undue delay, Ms. Rosenberg ought to have at least a few more weeks to make her selections. Accordingly, I would suggest that upon receipt of the list of the Vendor's standard selections, the opportunity to see the samples reference thereon and confirm pricing of any extras, Ms. Rosenberg will be in a position to make her selections within 2 weeks of receiving those items. Given the breakdown in the relationship between Ms. Rosenberg and Ms. Krismer, I would ask that another representative of the Vendor deal directly with Ms. Rosenberg.

Please confirm that this arrangement is acceptable to your client, provide me with a copy of the Vendor's original standard selection list and advise of dates to set up a meeting for Ms. Rosenberg to see the selections available to her.

[78] By letter dated April 30, 2012, delivered on a "with prejudice" basis, counsel for the vendor took umbrage at the plaintiff's allegations that she "has not been given a fair opportunity to fully complete the Vendor's colour and selection with respect to those items that require selection for the unit." The omission of the word "form" is, once again, significant. Counsel then alleges that the customization binder that had been provided to the plaintiff outlined "in detail what constituted standard finishes for the Unit." That is only correct to the extent that items were included in the binder. As noted previously, many standard items were also contained in the presentation centre and some were provided by Ms. Krismer throughout. If counsel was suggesting that the vendor has ever provided a full listing of standard items for all the items set out in Schedule C of the agreement of purchase and sale, she has been contradicted by Ms. Krismer's evidence. Moreover, I find that this is not so.

[79] The vendor's lawyer continued:

If the Purchaser is in any way unclear on what constitutes an upgrade, we refer you to the Purchase Agreement, the Standard Finishes Binder and the [April 3, 2012 Finishes Selection & Upgrades]. These documents explicitly provide details on what is a standard finish included [in] the purchase price for the Unit and what is an upgrade for the Unit.

[80] Counsel once again ducked the issue. The plaintiff understood that Ms. Krismer was claiming up to 226 extras. But the plaintiff could not understand is why the bulk of those items were claimed to be upgrades and were not included as standard under her Schedule C. Moreover, to the extent that some were extra, the plaintiff wanted to see what her alternative standard option was. Despite counsel's assertion to the contrary, neither the binder nor the further disclosures made by the vendor dealt fully with unique items contained in Ms. Rosenberg's schedule C and her off-menu discussions with suppliers.

[81] Continuing the trend, it also appears that the language that counsel chose to highlight in his April 3, 2012 letter (stating that there would be no further extensions of time) was another hollow threat despite its bold font as the vendor agreed to provide yet another two weeks as a final, final opportunity for the plaintiff to make her selections and pay for them. Counsel then reiterated the vendor's (equally hollow) threat that if the plaintiff did not comply, it would

complete the unit based on the plaintiff selections without upgrades and make choices for the plaintiff's choices have not been made under paragraph 12(a). The vendor also insisted that only Ms. Krismer could work with the plaintiff going forward.

[82] Counsel continued to exchange letters in which, like ships passing in the night, the plaintiff's lawyer asked for comprehensive set of standard finishes and counsel for the vendor continued to assert that the binder was complete.

[83] A meeting was held between the clients on May 9, 2012. On May 28, 2012 counsel for Ms. Rosenberg provided a 25 page detailed list of her responses to all of the claimed extras explaining why she believed some to be standard, where she needed to see a standard alternative, and removing others from the shopping cart. Realistically, that is where matters ended. No final Finishes Selections & Upgrade form was ever provided by the vendor. Ms. Krismer washed her hands of the plaintiff and did not deal with her further.

Findings on the Substance of the Upgrades Disputes

[84] As is apparent from the foregoing recitation, the parties' positions had become entrenched. The relationship among individuals was beyond repair. However, in order to try to assess who was "right" or who was "reasonable" and, perhaps, who was complying with the contract and who was in breach, it is necessary to dig into some of the details of the 226 upgrades claimed by vendor.

[85] In the discussion that follows, references to item numbers are to the listing set out in the vendor's April 3, 2012 Finishes Selections & Upgrades form.⁴

a. Item 20 - Foyer Tile - \$2,640

[86] The plaintiff claims that Jura limestone and Greystone marble should be included in her foyer tile. Schedule C provides that flooring in the foyer includes "marble, limestone or granite tiles." The defendant produced pictures of the presentation centre, as well as a copy of the tile list sent to the plaintiff in January, 2012. Although the plaintiff claims that she saw Greystone marble in the presentation centre, this is inconsistent with her repeated denials of being provided access to the presentation centre in any meaningful way. Under the terms of para 12(a) of the agreement, the defendant is entitled to choose the standards and upgrades for the unit as long as they meet the description in Schedule C. In addition, the plaintiff advises that the styles that she picked were less expensive than some of the vendor's standards. As noted previously however, the vendor was not obliged to pass on its wholesale costs of materials. In setting a price, the vendor was entitled to consider its other costs associated with the plaintiff's choices. If the

⁴ Readers are advised that all of the information needed to understand the outcome of the factual recitation that follows is summarized in para. 112 below. This lengthy section of the Reasons is recited out of deference to the parties who lived through the issues and gave evidence about them and for completeness.

plaintiff did not wish to pay the vendor's price, she was free to take these tiles out of her "shopping cart."

[87] This is one example, therefore, in which it appears to me that the position of the vendor was correct. I note in passing however, that the vendor only provided its list of standard tiles to the plaintiff in January, 2012, almost a year after it had purported to demand that the plaintiff make her choices and nine months after it put her unit on hold.

b. Item 27 – Knife Edge Detail - \$9,000

[88] This charge relates to a design detail proposed for the drop ceiling in the gallery. Under Schedule C, the plaintiff was entitled to determine ceiling heights where possible. As a result of work done by the vendor in building out the unit, the ceiling in the gallery had to be dropped. The gallery also functioned as part of the return air system for the unit. The plaintiff claimed that she was entitled to receive the knife edge detail in return for the defendant having dropped the height of the ceiling. In cross-examination, Ms. Krismer advised that regular grills or crown molding were standard finishes to accommodate return air.

[89] This is another example of the plaintiff overstating the case. It is clear from Schedule C that the ultimate choice for ceiling heights has to and does belong to the vendor. The plaintiff confirmed that she had told Ms. Krismer to delete design elements that carried an extra cost. The only issue with this item then is why it continues to remain in the shopping cart and carry a cost as at April 3, 2012.

c. Item 38 – Microwave Drawer - \$1,450

[90] The plaintiff was entitled to a combined microwave convection oven. She chose instead a microwave steam oven. TGLC told her that her cabinetry design for her chosen microwave would not work. The plaintiff deleted this item from the shopping cart and yet it continued to show up in the vendor's April 3, 2012 listing.

d. Item 39, Wall Oven \$500

[91] The plaintiff is entitled to a particular wall oven as set out in the customization binder as a standard product included within schedule C of her agreement. In addition, she chose a microwave oven of the same brand, but a 2012 model. Ms. Krismer thought that the plaintiff would want to upgrade her wall oven to the 2012 model so that the handles matched the handle on the newer model microwave. In their February 17, 2012 Finishes Selections & Upgrades form, the 2012 model wall oven was listed with no extra cost. In the March 26, 2012 iteration of the form, the vendor proposed to charge Ms. Rosenberg \$2,135 just to change from the 2010 to 2012 model year. In the April 3, 2012 form, the vendor proposed a price of \$500.

[92] It seems to me that this item presents an example of the iterative design process working. Ms. Krismer made a helpful design suggestion that probably would have been accepted by Ms. Rosenberg, all things being equal. Ultimately, Ms. Rosenberg determined that she could live without matching handles for the price offered.

[93] The evolution of the pricing is also interesting. The vendor's position has vacillated on pricing throughout. Ms. Krismer conceded in examination that there were times where she would offer changes to the standard item at no cost provided that she was satisfied that the change could be made conveniently and at no cost to the vendor. At other times, Ms. Krismer stated that pricing was solely a matter for the vendor and there was some correspondence suggesting that once the defendants were fed up with Ms. Rosenberg, the vendor determined to treat any deviation at all from any element of Schedule C or the plans at Schedule D of the agreement as a change that entitled it to charge for the item in full as an upgrade. At the outset of the motion, much stress was laid by the vendor's counsel on any change suggested by Ms. Rosenberg, no matter how trivial, as justification for treating items as an extra or upgrade completely. Ultimately, however, some reason has prevailed and a more realistic price for the upgraded model was arrived at. As I said previously, had the matter resolved in the ordinary course, I expect that Ms. Rosenberg would have accepted this extra. It was plainly open to her however eliminate it from her shopping cart and she chose to do so.

e. Items 70 and 71 – Stainless Steel Countertops

[94] Schedule C to the agreement expressly entitles the plaintiff to choose from a selection of countertops in stone, Corian, and stainless steel (with 1 ½ inch square edged nosing). In January, 2012, Ms. Krismer advised Ms. Rosenberg that she believed that it would be possible for her to obtain ¾ inch nosing at no extra cost. Previously, Ms. Krismer had obtained a quotation from the vendor's steel supplier and determined that the steel countertop sought by the plaintiff, "is coming in less than the 125 /sq ft budget, but more than the price of stone." Yet at that time, she reported to the project manager that she was, "inclined to charge her for the 'custom' nature of the counter, as well as, add extra money in for site work just in case." That is, Ms. Krismer understood that she could obtain the plaintiffs desired countertop within the budget set by the vendor with its supplier and yet she proposed to charge Ms. Rosenberg for it anyway because she could. Ultimately, however, the plaintiff's January 5, 2012 drawings increased the quantity of steel required for the kitchen. In addition, Ms. Krismer testified that she had simply been wrong in the January meeting (when she suggested that it might be a no charge upgrade) because the nosing detail desired by the plaintiff had to be fabricated by hand.

[95] As to the quantity of steel required, the plaintiff pointed out that as a result of the changes to the kitchen cabinetry necessitated by the problem discussed above with the refrigerator depth, the wall behind the oven had changed from a gabled wall (that TGLC advised it could not make) to a glass wall. This led to a change in the cooktop and necessitated design changes that increased the amount of steel countertop. All of this seems quite reasonable in a cooperative, iterative design process. Ms. Rosenberg understands that she would have to pay extra for increased square footage of steel. However, when the parties left off, she was extremely dubious of the extra charged and her suspicion has been borne out by Ms. Krismer's internal pricing memo.

[96] In my view, this matter was unresolved but was soluble had the parties been able to continue discussions in good-faith.

f. Item 74 – Starfire Back Splash - \$4,850

[97] This charge related to an upgrade for low iron glass. The plaintiff had vacillated in her instructions. She originally sought this high-end product throughout the unit. But, as noted above, she ultimately asked Ms. Krismer to remove design upgrades where possible

[98] Ms. Krismer was very clear that this was included in the April 3, 2012 form simply as an option for the plaintiff to consider and to remove from her shopping cart if she so desired.

g. Item 76 Island Sink - \$2,150

[99] Schedule C of the agreement provided that the plaintiff was entitled to a single bowl stainless steel undercount sink on her island in the kitchen. The customization binder only showed a Franke brand professional series sink for the kitchen. Ms. Krismer claimed that plaintiff was only entitled to a “bar” sink on the island and that this was the only unit in the building that had one. As the Franke brand professional series did not include a bar sink, Ms. Krismer determined that a different brand of sink would be the standard. The sink that she chose was tiny and generally useless. It certainly did not befit a luxury unit. Nor would it be especially useful to someone preparing food on the island. Be that as it may, it was not in the binder. In fact, it was not disclosed as the standard until February, 2012. I am not sure where Ms. Krismer determined that the sink on the island was to be a bar sink as the description in Schedule C does not contain that description. Once again, the timing is also significant. In addition, this is one clear example of an item that was not in the binder or the presentation centre at all. The whole exchange demonstrates the inaptness of the vendor’s former counsel’s ongoing responses and unwillingness to engage with the plaintiff, despite Ms. Krismer referring to the process as a “collaborative undertaking.”

[100] By April 3, 2012, Ms. Rosenberg knew what the vendor claimed as the standard. But she disagreed with the plaintiff’s entitlement to choose a dysfunctional bar sink instead of the matching sink that she sourced. This was an item in *bona fide* dispute at the time. Had the vendor purported to choose its standard on Ms. Rosenberg’s behalf, a neat issue would have been joined for negotiation, mediation, or perhaps even small claims court. But its position here is that Ms. Rosenberg was in breach of the agreement in failing to choose one way or the other.

h. Item 77 Faucets - \$7,770

[101] According to Schedule C, the plaintiff was entitled to a “designer quality faucet with vegetable spray in chrome or matte nickel finish.” The vendor’s standard sample in the binder did not come in matte nickel finish. Moreover, it did not have a vegetable spray. The faucet head could be pressed so as to make the water shoot out in a spray pattern. That is simply a dual-function faucet. I accept Ms. Rosenberg’s evidence that a vegetable spray is a separate or extendable head on a flexible hose to be used to wash vegetables. It was Ms. Krismer’s testimony that Ms. Rosenberg saw the standard at the presentation centre and saw that it functioned *like* a vegetable spray. The cost of the standard faucet shown in the binder at the retail store Taps was approximately \$1,300.

[102] In my view, a faucet that functions like a vegetable spray is not a vegetable spray. This item was not properly an extra or an upgrade.

i. Items 89 – 20 Studs for Fireplace – @\$220 = \$4,400

[103] Schedule C provided that Ms. Rosenberg was entitled to a specific model of three-sided fireplace. Initially, the vendor determined that it could not deliver the three-sided fireplace that it agreed to provide because it was not yet approved for sale in Canada. Ms. Krismer suggested that Ms. Rosenberg look in the binder and choose a two-sided unit up to 6 feet in width. Ms. Rosenberg chose the 52 inch model. In addition, Schedule C provided that Ms. Rosenberg was entitled to “a selection of plaster or wood mantles and the choice of selected stone surround and hearth.” Initially, the plaintiff agreed to finish the fireplace wall herself in the Partial Upgrade Agreement. Then she asked for a stone wall above the fireplace.

[104] Ms. Krismer claims that the 52 inch fireplace chosen by Ms. Rosenberg was not standard. But this was not an issue of standard or not. The vendor was in breach of its obligation to provide the specified model and Ms. Krismer had offered up another model in return. Whether that was just an initial suggestion or a binding compromise, the question of whether the item chose was standard or not was not the appropriate question for this item.

[105] Ms. Krismer said that to accommodate such a large fireplace and the stone wall desired by Ms. Rosenberg required extra bracing studs for the wall. It is significant again that Ms. Krismer did not price fireplace alternatives until after receiving Ms. Rosenberg’s plans in January, 2012. Ms. Rosenberg had no basis to know that the vendor would consider the 52 inch model that she selected from the binder at Ms. Krismer’s suggestion to be an extra. This issue only arose in the spring of 2012 therefore. Ultimately, the original three-sided fireplace that the parties had agreed upon became available in Canada. Had the parties not become deadlocked, they might have gone back to original contract item that included installation (and hence studs). The vendor did not establish that it was entitled to charge this item as an upgrade.

j. Item 114 – Main Bathroom Vanity - \$2,080

[106] Under Schedule C, the plaintiff was entitled to a “quality wood vanity cabinet.” No wood option was ever shown to the plaintiff by the vendor. The vendor’s standard cabinetry was faux wood with a lacquer finish. Having said that, the plans attached to the Partial Upgrade Agreement and referenced in the “ta da” email, show a simple rectangular vanity. The plaintiff’s design included a cabinet of double height.

[107] While the plaintiff seems to have been asking for something extra, I find that the vendor also never provided a standard sample that met the description Schedule C as well. This matter remains unresolved with both sides deviating from Schedule C.

k. Item 181 – Master Ensuite Vanity - \$7,815

[108] Under Schedule C, the plaintiff was entitled to “custom vanity cabinetry in a selection of finishes” in the master *ensuite* bathroom. The vendor’s standard was provided to Ms. Rosenberg by Ms. Krismer on November 17, 2011. They are not “custom cabinetry” at all, but rather were

all pre-fabricated factory standard models. However, the plaintiff certainly added to the vendor's design. This matter too therefore remained unresolved with both sides deviating from Schedule C.

l. Item 123 – Main Bathroom Shower Assembly - \$915

[109] Schedule C provided that the plaintiff was entitled to a “showerhead on a slide bar and a toe faucet.” This item was unique for Ms. Rosenberg's unit. Ms. Rosenberg understood that Hansgrohe brand faucets were the standard used by the vendor generally. Ms. Rosenberg was not able to obtain a Hansgrohe showerhead on the slide bar with a toe faucet from the vendor's supplier. When Ms. Krismer indicated that this would be an extra, the plaintiff used the binder and picked separate components to suffice. It was during the mini-trial that Ms. Krismer advised for the first time that she had determined that a Rubinet brand shower and toe faucet were standard for the project.

m Item 156 - Master Ensuite Additional Stone Flooring - \$780

[110] The plaintiff was entitled to stone flooring in the master *ensuite* in accordance with Schedule C. On the plaintiff's plans, the *ensuite* opened directly into the bedroom with no clear wall or other demarcation. There was a makeup table included by the plaintiff as part of the *ensuite* cabinetry design. Ms. Krismer determined that the demarcation between the stone flooring of the *ensuite* and the commencement of the wood flooring of the bedroom would essentially bisect the makeup table. It is apparent that Ms. Krismer was concerned that because of the placement of the makeup table, the plaintiff had extended her *ensuite* so that area of the stone floor would exceed the amount of stone normally installed by the vendor in the standard *ensuite*. Nothing in the contract entitled the vendor to draw an arbitrary line where it said the *ensuite* ended and the bedroom began that did not conform to the actual floor plans. This matter was not properly an upgrade therefore. Having said that, had the vendor fairly disclosed its concern that it normally budgets for X square feet of stone and that Ms. Rosenberg's design required an additional Y square feet there was probably a fair basis for a discussion.

n. Item 197 – Tub Filler - \$3,390

[111] Schedule C provided that the plaintiff was entitled to a “floor mounted tub filler for freestanding tub.” This was another unique fixture for the plaintiff's unit that was not in the binder or the presentation centre. When the vendor constructed the unit, it failed to rough-in plumbing along the side of the tub where the freestanding faucet assembly was meant to go. (This is the same placement regardless of the no-charge change in the tub model agreed by the parties.) The plaintiff proposed a multi-piece faucet set that she sought in lieu of what she had bargained for. Ms. Krismer purported to provide a standard alternative in May, 2012, and suggested that the vendor could install a freestanding tub filler at the end of the tub. While complying with the words of the contract in that she was offering a tub filler, this made precious little sense from a function or a design viewpoint. It was not an offer within the parties' reasonable expectations in my view. This matter remains unresolved as it was caused by the vendor's failure to rough-in the correct plumbing.

Conclusions from the Survey of Upgrade Claims

[112] I have not recited all of the examples on which the parties gave evidence at the mini-trial, let alone the 226 total items listed in the April 3, 2012, Finishing Selections & Upgrades form. There is no benefit to going further. Nor are there any real surprises in the foregoing recitation. The individual items represented the give-and-take and back-and-forth that one would expect in a normal iterative, collaborative design and build undertaking. In some examples, the plaintiff overreached and tried to claim as standard items that she knew or should have known exceeded the vendor's offering. In others, the vendor failed to provide a standard sample that met the description of the items for which Ms. Rosenberg had bargained. In some cases the vendor's form still included prices for items when it knew that the plaintiff had selected to go with the standard. In many, neither side was completely right or wrong and had the parties been able to sit down and negotiate in good faith, the matter should have been resolved. I reject, again, the extreme positions adopted by each party. The vendor did not fail to provide standard samples of nearly everything as alleged in paragraph 89 of Ms. Rosenberg's factum. Neither did Ms. Rosenberg simply refuse to make choices when confronted with understandable samples of the vendor's standard offering and upgrade options. In most cases, there is much gray between the black and white asserted by the parties.

[113] However, saying that the parties ought to have been able to settle by negotiating in good faith does not resolve the contractual issue. But it is necessary to set out the nature of these disputes to inform the endgame.

Re-Enter the Lawyers

[114] By letter dated October 29, 2012, Ms. Rosenberg's counsel advised that she had retained the services of an engineer to map the unit as it then existed. This exercise led Ms. Rosenberg to conclude that, "there are numerous deficiencies in the construction of the unit, which cannot be corrected without major construction, if at all." The letter concludes with the following:

Accordingly, it will be necessary to proceed with litigation of this matter. Would you kindly confirm you will accept service of the statement of claim.

[115] The vendor retained its current counsel to carry the litigation. By letter dated November 21, 2012, Mr. Preger advised that he had instructions to accept service of a statement of claim. However, first, he made an inquiry:

As a preliminary matter, however, I would ask you to confirm in writing whether your client intends to complete the Agreement. If I do not have response by 5 pm on November 27, 2012, my client will proceed on the basis that your client does not intend to complete the Agreement.

[116] It was apparent to the vendor that the plaintiff's position had changed significantly. Prior to October 29, 2012, she was asking for details to allow her to make final design choices. However, in her counsel's October 29, 2012 letter she indicated that she would proceed with litigation because deficiencies in construction meant that the unit that she agreed to buy could

not be built without major construction, if at all. In response, Mr. Preger's question was certainly an appropriate one.

[117] Rather than responding with a letter, the plaintiff issued her statement of claim on December 6, 2012. In the statement of claim, the plaintiff sought specific performance of the agreement, damages of \$1 million in the alternative, a declaration that the vendor frustrated or fundamentally breached the agreement in the further alternative, rescission of the agreement in the further alternative, an order restraining the vendor from selling the unit, an order restraining the vendor from completing the unit without her agreement or order of the court, an oppression remedy, and further damages.

[118] The plaintiff's position was as clear as mud. At one and the same time she said that the unit could not be constructed in accordance with the agreement, yet she wanted specific performance of the agreement. She wanted specific performance, yet she wanted the return of her deposit. She wanted the return of her deposit, yet she wanted expectancy damages for loss of bargain. She wanted expectancy damages, yet she sought the remedy of rescission. Moreover, while waiting for the court to determine whether the plaintiff is entitled to rescind the agreement or declare it at an end, the plaintiff sought an injunction to prevent the plaintiff from selling the unit that she knew could no longer be built in accordance with her agreement without major construction if at all.

[119] The plaintiff argues that as at December, 2012 she was unsure as to whether she would be able to induce the vendor to close the sale and she had to cover all of her basis. If her goal was to induce the vendor to close, her lawyer's letter of October 29, 2012 and the statement of claim were opaque tactics to achieve that end.

[120] The vendor responded with its statement of defense and counterclaim dated January 11, 2013. In the counterclaim, the vendor sought a declaration that the plaintiff had repudiated the agreement and forfeited her deposit. In addition, the vendor sought damages of \$1 million for potential losses on the re-sale of the unit plus compensation for its out of pocket carrying costs.

[121] In July, 2013, the plaintiff moved to her current lawyers who inquired as to the status of her deposit. The vendor's real estate lawyer advised that the plaintiff failed to complete the transaction on the scheduled closing date and was therefore in fundamental breach of the agreement. Counsel continued:

This breach entitled the Vendor to immediately terminate the Agreement and forfeit her deposits, without prejudice to and reserving the Vendor's remedies at set forth in the said Agreement and at law. Notwithstanding, these deposits have been insured and released to the Vendor in accordance with Section 81(7)(b) of the *Condominium Act*.

[122] There was a conversation between counsel in which the vendor's real estate lawyer asked the plaintiff's lawyer to ignore her letter. She then sent a further letter confirming that the plaintiff's deposits totaling \$514,750 were insured and therefore had been released to the vendor as allowed by the statutory scheme. There was no reference to a breach or termination of the agreement in the second letter from the vendor's real estate counsel.

[123] The plaintiff's counsel responded and said that the plaintiff had never received written notice from the vendor that the agreement had been terminated as required under para. 25(a) of the agreement. Counsel objected to the release of the deposit to the vendor and demanded that the deposit funds be returned to counsel's trust account, failing which "will be required to name your firm as a defendant in this matter."

[124] By letter dated July 25, 2013, the vendor's real estate lawyer responded that the release of the deposit to the vendor was in accordance with the *Condominium Act, 1998* because the obligation to return of the deposit was insured as allowed by the statute. In addition, counsel recited a discussion with Mr. Preger who advised that the vendor's position was that Ms. Rosenberg repudiated the agreement so that the transaction was at an end.

[125] Some without prejudice discussions ensued in the fall of 2013. As the parties were not able to settle, the plaintiff insisted on proceeding with a motion for the issuance of a certificate of pending litigation. The vendor consented to an "interim" certificate being issued under an order that explicitly reserved its rights

[126] I began case managing the parties' motions in November, 2014. At the first case conference, the plaintiff's counsel said that the plaintiff was very concerned with the costs and pace of the proceeding. The parties advised me that the unit had, by that time, been completed by the vendor based on its view toward enhancing the marketability of the unit. That is, notwithstanding its repeated threats to act under para. 12(a) of the agreement to make choices on the plaintiff's behalf, it did not do so. It was living or dying with its position that the plaintiff was in breach and that it was entitled to and had properly declared the agreement to be at an end.

[127] It was obvious that the remedy of specific performance could not be available to the plaintiff in the circumstances. Not only would it be very difficult to show that a residential condominium was "unique" at the best of times, no court would order and supervise the vendor as it demolished and re-constructed the unit to meet the plaintiffs agreement (especially where five years into the piece there were continuing disputes as to what the unit was to entail).

[128] It was also then that the parties advised that the vendor had acknowledged that Crayon and Ms. Krismer acted as its agent.

[129] Through the case management process, the parties ultimately agreed to the removal of the certificate of pending litigation, the elimination of the claim for specific performance, and the dismissal of the claims against Ms. Krismer and Crayon. Doing so, focused the case on the discrete central issues and enabled the parties to move forward to summary judgment.

The Termination of the Agreement?

[130] In its letter of April 3, 2012, the vendor's lawyer set the Confirmed Possession Date under the agreement at December 3, 2012. The occupancy permit was issued in January, 2013. These dates came and went without the vendor tendering or otherwise suggesting that it expected the plaintiff to commence interim occupancy under the agreement.

[131] Plaintiff argues that Mr. Preger's letter of November 21, 2012 inquiring whether she wished to close was a confirmation that the agreement was still in force at that time. I do not think this is necessarily correct. If the plaintiff was right that by that time the unit could no longer meet the requirements of the agreement, as was asserted by her prior counsel, then Mr. Preger's inquiry could have been an offer to sell the unit as it then was to the plaintiff outside of the agreement.

[132] The vendor argues, by contrast, that the plaintiff's statement of claim was a repudiation of the agreement. By seeking damages, rescission, an oppression remedy, and a declaration that the plaintiff had committed a fundamental breach entitling her to terminate, the vendor argues that it was the plaintiff who first evinced an intention not to be bound by or to terminate the agreement. I do not accept that position either. As legally confused as it was, the first relief listed in the statement of claim was an order for specific performance of the agreement. The plaintiff was not sure at that time whether the agreement could be completed or not. Her lawyer's letter of October, 29, 2012 left open the possibility of completion, albeit with some major construction. Settlement negotiations ensued at various times. It is not unheard of to close on amended terms after negotiation. I do not see the plaintiff expressing a clear intention to no longer be bound by the agreement by any act up to and including the delivery of the statement of claim.

[133] The counterclaim, however, left no doubt of the vendor's position. It claimed that the plaintiff was a breach and had forfeited her deposit. It claimed damages from her for the breach. The damages were predicated upon losses that the vendor might incur on the resale of the unit to a third party purchaser. The plaintiff acted thereafter as if it was freed of its obligations to the plaintiff. Rather than choosing to finish the agreement on her behalf, it proceeded to construct the unit as it chose and bore the risk of doing so.

[134] The stutler steps in the vendor's counsel's correspondence the ensuing summer are without consequence in my view. First, the initial issue under discussion was the whereabouts of the deposit funds rather than an explication of the vendor's legal position. In any event, the position was clarified in a short period of time with no change of position by the plaintiff in the interim. The clarification by Mr. Preger was short on details of the breaches relied upon and the timing of the declaration, but it plainly confirmed the position that the vendor adopted in its counterclaim that the vendor had terminated the agreement. As I noted at the outset of these reasons, in the event that the counterclaim was not sufficient written notice of termination, the passage of time from the delivery of the counterclaim to the letters six months later is of no consequence under the express provisions of para 25(a) of the agreement in any event. Therefore the letters from counsel sufficed to terminate the agreement at the latest.

But was the Vendor Entitled to Terminate? Was the Plaintiff in Default?

[135] The outcome of the case therefore resolves to the question of whether the plaintiff was in default of any of the obligations to be performed under the agreement for 7 days as is required under para. 25(a) in order for the vendor to declare her to be in fundamental breach of the agreement.

[136] The vendor argues that the plaintiff committed two breaches that entitled it to declare her to be in fundamental breach. First, she failed to complete her selections of finishes on a timely basis under para. 12(a) of the agreement. Second, she failed to pay for upgrades including the \$36,000 that remained outstanding under the Partial Upgrade Agreement.

[137] Dealing with the second issue first, the plaintiff never failed to pay an amount that was due. The Finishes Selections & Upgrades documents were not invoices. They were lists of Ms. Rosenberg's shopping cart contents from which she was to make choices that would have led to an invoice or a final upgrade agreement in all likelihood. The last Finishes Selections & Upgrades form dated April 3, 2012 was incomplete on its face. Ms. Krismer plainly admitted in cross-examination in court that it was not a final document intended to be an invoice. It contained several items that Ms. Krismer knew were to be deleted. It contained items that were expressed as estimates only. The vendor would have had to make the plaintiff's choices for her in order to finalize an invoice and demand payment under para. 12(b) of the agreement. It chose not to do so despite its repeated threats.

[138] As to the amount remaining from the Partial Upgrade Agreement, those amounts are repeated and subsumed in the ongoing Finishes Selections & Upgrades forms. The vendor never made demand for the outstanding amount. Nor could it have reasonably done so before the ongoing process and been completed.

[139] So the \$500,000 question is "was the plaintiff in breach of her obligations under paragraph 12(a)". The vendor points to its real estate counsel's repeated letters establishing deadlines for the plaintiff to complete the process, make choices, and pay for all upgrades that she chose.

[140] I note first that counsel never asserted in those letters that Ms. Rosenberg's failure to complete selections by the dates set would be a breach of the agreement. This is not determinative of the question however.

[141] It strikes me as difficult to argue that the failure to make choices on a timely basis can be seen to be a fundamental breach or an expression of an unwillingness to be bound by a contract where (a) the purchaser asks for more information; and (b) the vendor has it within its power to either provide the information or to make the choices required to keep construction on schedule. One could argue that under the terms of para. 12(a), as drafted, the plaintiff is not in breach by failing to take a step that simply allows the vendor to take the step for her. In my view however, this confuses a failure to fulfill a positive contractual obligation with the remedy for that failure. Moreover, I am not inclined to narrowly construe a contractual term that on its face is designed to maximize a party's remedial flexibility. Para. 25(a) provides that the default remedy under that paragraph is "in addition to any other right or remedy which the Vendor may have." Accordingly, I proceed on the basis that if the plaintiff failed to fulfill her obligations under para. 12(a), then the vendor was entitled to declare her in fundamental breach and declare the agreement to be at an end.

[142] For convenience, I repeat the key wording of the plaintiff's obligations under para. 12(a):

Within 21 days after notification by the Vendor, the Purchaser shall complete the Vendor's colour and material selection form for those items of construction are finishing for which the Purchaser is entitled to make selection pursuant to this Agreement... All selections of items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement are to be made from the Vendor's samples.

[143] I am unable to conclude on the facts proven before me that the plaintiff failed to fulfill her obligations under this covenant. A precondition of the plaintiff making her choices was necessarily that the vendor had to provide her with samples of all selections of items of construction or finishing for which she is entitled to make her selections under the agreement. Providing samples necessarily also entailed providing cost information so that the plaintiff could understand financial implication of her choices.

[144] While the vendor tries to argue that it provided samples to the plaintiff early on justifying its putting the unit on hold as early as May 2011, the recitation of the evidence on individual items above makes it clear that in many cases there were no standards provided to the plaintiff until well into 2012. Prices were not finalized even in the April 3, 2012 Finishes Selections & Upgrades form which says on its face that there were more to come.

[145] Most of the disputes that were discussed before me appeared to be *bona fide*, soluble disputes. Without doubt, the degree and particularity of the plaintiff's engagement was well beyond what the defendants experienced with other purchasers on this project. In many cases the tone adopted by each side was less than ideal if the goal was to encourage a collaborative undertaking. However, the plaintiff's basic position that she was entitled to a luxurious, customized condominium specifically described in the heavily negotiated Schedule C of her agreement was not unreasonable. Nor was it unreasonable for her to demand to understand precisely what the vendor proposed as standard for each item agreed upon and what upgrades were available to her. Para 12 (a) provides for this.

[146] In retrospect, the defendants may rue the day when they unleashed the plaintiff on their suppliers rather than spending the time to work on her designs with her and collect standard samples for each design element and samples for those items where upgrades would be offered to her. They may equally regret having failed to make the plaintiff's choices for her despite repeatedly threatening to do so. They may regret failing to amend their form of contract document to reflect better the practical difficulties associated with the vendor's decision to allow purchasers to make selections "off-menu." However, regrets are not synonymous with a default. At the time that the agreement was declared to be at an end, I cannot find that the plaintiff was in breach or unreasonably failing to make final choices. As noted in the survey of items above, in some cases the vendor was in the wrong. In many there was good reason for discussions as both parties were neither fully right nor fully wrong. It was the vendor's choice to engage in an iterative process with the plaintiff. I see no provision of the agreement that gave it the right to unilaterally declare the process over in the absence of full performance on its own side.

[147] A party cannot claim that its counterparty is in default where the first party has failed to do things it was required to do so as to enable the other to fulfill her obligations. *Chairman's Brands Corp. v. Association of Danube-Swabians*, 2014 ONSC 6722 (CanLII), at paras. 27 and 28.

[148] Even ignoring the technicality that the vendor did not have a "colour and selection form," the fact that the agreement anticipated that all of the choices would be listed on one form within three weeks of demand and that all choices would be made from samples provided by the vendor, necessitated that the vendor actually go out and cost survey all of the contractual choices and provide them to the plaintiff in an intelligible way with samples of each and every one. Ms. Krismer said as much in the background portion of her examination-in-chief where she repeatedly stressed the standardized process of a production build. The presentation centre and the binder, she said, were supposed to have the standard and upgrade finishes that were available with samples and fixed prices for all upgrades on display

[149] However, because the plaintiff negotiated unique additions to her Schedule C and was entitled to go off-menu, the presentation centre and binder did not display samples of all of the standard items and upgrade choices for the her unit. The defendants resented the plaintiff's inquisitiveness and decided not to spend the time at the outset to give her the details of all the standard items to which she was entitled under the agreement. Instead, they ended up disclosing much of the material to her in late 2011 and in early 2012. The plaintiff made her choices based on what was disclosed when it was disclosed. But she was left facing a \$300,000 claim that was largely inexplicable based on the information that had been provided to her. As I noted in my conclusions on the survey of individual construction items above, the plaintiff was correct on some issues; the defendant on others. The remaining debates were, in the main, gray issues that ought to have been soluble in a collaborative undertaking.

[150] In my view, the vendor's failure to arm the plaintiff with all of the contractually required samples and pricing information in the contractually required form or in an intelligible, comprehensive, functionally equivalent basis, prevents an interpretation that would find the plaintiff to be in breach of para. 12(a) of the agreement.

[151] As a result, the vendor terminated the agreement through no fault of the plaintiff and it is therefore required refund her deposit under para. 26 of the agreement.

Other Issues

[152] The plaintiff asks for a further hearing to deal with the issue of damages. I note that paragraph 26 expressly precludes many heads of damages. However, I leave that issue to further argument.

[153] The plaintiff did expressly raise the issue of punitive damages at the hearing of the summary judgment motions. While the defendants' internal emails suggest some ill feelings toward the plaintiff, there is no indication that they committed any independently actionable tort. The defendants did not commit sufficiently reprehensible conduct to justify an award of punitive damages in my view.

[154] Finally, for completeness, I note that had I found the plaintiff to have been in breach of the agreement, I would not have found this case to be an appropriate one for relief from forfeiture. The burden is on the plaintiff to prove that the forfeiture of her deposit would amount to an unconscionable penalty. While a \$500,000 deposit is a substantial amount of money, deposits of 25% have been upheld. This is particularly so in cases like this where the contract involves construction and there is a real likelihood of very substantial damages to the builder or vendor in the event that the purchaser defaults. The plaintiff's argument that the amount is too high does not, in my view, fulfill the burden of proof that is upon her in the circumstances.

Outcome

[155] The vendor is therefore adjudged liable to pay to the plaintiff the sum of \$514,750 plus interest at the rate prescribed under the *Condominium Act, 1998* from the date of delivery of the vendor's statement of defence and counterclaim. The vendor's motion for summary judgment and its counterclaim are dismissed.

[156] The parties are to arrange a case conference with my office at which any outstanding issues in the litigation will be scheduled in January, 2016. The costs of these motions are reserved to me and will also be scheduled or otherwise dealt at the case conference.



F.L. Myers J.

Released: January 4, 2016

Rosenberg v. 206 Bloor Street West Limited, 2016 ONSC 6
COURT FILE NO.: CV-12-469391
DATE: 20160104

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LINDA PARIS FAITH ROSENBERG

Plaintiff

– and –

206 BLOOR ST. WEST LIMITED carrying on business
as MUSEUM HOUSE, CRAYON DESIGN
COMPANY INC., also known as CRAYON DESIGN
CO. INC. and CHERYL KRISMER, also known as
CHERYL ANN KRISMER

Defendants

REASONS FOR JUDGMENT

F.L. Myers J.

Released: January 4, 2016

CITATION: Rosenberg v. 206 Bloor Street West Limited, 2016 ONSC 1111
COURT FILE NO.: CV-12-469391
DATE: 20160212

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Linda Paris Faith Rosenberg, Plaintiff

AND:

206 Bloor St. West Limited carrying on business as Museum House, Crayon Design Company Inc., also known as Crayon Design Co. Inc. and Cheryl Krismer, also known as Cheryl Ann Krismer, Defendants

BEFORE: F.L. Myers, J.

COUNSEL: *Shawn Pulver and Lauren Sigal*, for the Plaintiff

David Preger and Thomas Arndt, for the Defendants

HEARD: February 10, 2016

COSTS ENDORSEMENT

[1] For reasons released January 4, 2016, reported at 2016 ONSC 6, the court granted summary judgment and ordered the defendant 206 Bloor St West Limited to refund to the plaintiff her deposit of \$514,750 on a failed condominium purchase. The parties agree that the plaintiff is also entitled to a refund of a further \$9,000 that she paid under the Partial Upgrade Agreement as a result of my having found that the agreement was terminated due to the vendor's default. Accordingly, my order is amended to correct that amount.

[2] Counsel are working on settling the determination of prejudgment interest. If they are unable to do so they may each deliver up to five pages of written submissions on the issue – plaintiff first followed by the defendant one week later. Submissions should canvass the questions of whether in circumstances where the interest formula prescribed under the *Condominium Act, 1998* produces a prejudgment interest rate of zero or less than zero, prejudgment interest is available under the *Court of Justice Act*, the *Interest Act*, or in equity. Under the *CJA*, the issue is whether under s.128(4)(g) interest “is payable by right other than under this section” when interest is payable under *Condominium Act, 1998* but the prescribed rate is zero or below.

[3] The applicant seeks costs of \$483,236 all-in on a substantial indemnity basis or \$330,874 on a partial indemnity basis. The defendant submits that the plaintiff should be entitled to costs on a partial indemnity basis fixed at \$100,000.

[4] The plaintiff says that her actual costs are \$523,645. The defendant's actual costs are \$309,461.22. It can be seen at once that the plaintiff spent about the same amount in costs as was in issue.

[5] In *DUCA Financial Services Credit Union Ltd. v. Bozzo*, 2010 ONSC 4601 (CanLII) at para. 5, Cumming J. described the basic approach to awarding costs as follows:

Costs are in the discretion of the Court: s. 131, Courts of Justice Act, R.S.O. 1990, c. C.43 and Rule 57.01 of the Rules of Civil Procedure. In Ontario, the normative approach is first, that costs follow the event, premised upon a two-way, or loser pay, costs approach; second, that costs are awarded on a partial indemnity basis; and third, that costs are payable forthwith, i.e. within 30 days discretion can, of course, be exercised in exceptional circumstances to depart from any one or more of these norms.

[6] In *Yelda v. Vu*, 2013 ONSC 5903 (CanLII) (leave to appeal denied, 2014 ONCA 353 (CanLII)) at para. 11, Arrell J. confirmed the long-standing principle that a successful party is entitled to costs except for good reason. He states as follows:

The principle that costs follow the event should only be departed from for very good reasons such as misconduct of the party, miscarriage in procedure, or oppressive or vexatious conduct of proceedings.

[7] The Divisional Court listed several principles to be considered in considering costs in *Andersen v. St. Jude Medical Inc.* (2006), 264 D.L.R. (4th) 557:

1. The discretion of the court must be exercised in light of the specific facts and circumstances of the case in relation to the factors set out in rule 57.01(1): *Boucher* [*Boucher v. Public Accountants Council for the Province of Ontario* (2004), 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291], *Moon* [*Moon v. Sher* (2004), 2004 CanLII 39005 (ON CA), 246 D.L.R. (4th) 440], and *Coldmatic Refrigeration of Canada Ltd. v. Leveltek Processing LLC* (2005), 2005 CanLII 1042 (ON CA), 75 O.R. (3d) 638 (C.A.).

2. A consideration of experience, rates charged and hours spent is appropriate, but is subject to the overriding principle of reasonableness as applied to the factual matrix of the particular case: *Boucher*. The quantum should reflect an amount the court considers to be fair and reasonable rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier* (2002), 119 A.C.W.S. (3d) 341 (Ont. C.A.), at para.

3. The reasonable expectation of the unsuccessful party is one of the factors to be considered in determining an amount that is fair and reasonable: rule 57.01(1)(0.b).

4. The court should seek to avoid inconsistency with comparable awards in other cases. "Like cases, [if they can be found], should conclude with like substantive results": *Murano v. Bank of Montreal* (1998), 1998 CanLII 5633 (ON CA), 41 O.R. (3d) 222 (C.A.), at p. 249.

5. The court should seek to balance the indemnity principle with the fundamental objective of access to justice: *Boucher*.

[8] In my view, the plaintiff was successful and is entitled to her costs. To fix the costs under Rule 57.03(1)(a), I need to consider first, what scale of costs is appropriate; and second, what amount is appropriate in that scale.

The Scale of Costs

[9] The plaintiff seeks costs on a substantial indemnity basis because, she says, she tried to engage the defendant in settlement discussions throughout and it was unwilling to make a counter-offer or to mediate formally. I do not understand there to be an obligation on the defendant to make offers. Nor is the failure to make an offer itself sufficiently reprehensible conduct to justify an award of substantial indemnity costs. *Mortimer v. Cameron* (1994), 17 O.R. (3d) 1 (C.A.) leave to appeal refused 19 O.R. (3d) xvi (note).

[10] The plaintiff

[11] had an option to try to increase the scale of costs that she might recover. She could make an offer to settle under Rule 49 with a sufficient compromise so that she could beat her offer in the judgment.

[12] The plaintiff actually made four written offers. The first two did not meet the requirements of a Rule 49 offer. The plaintiff's next two offers both sought 100% of her deposit back and used other currency to suggest a compromise. In the first of the two, dated April 3, 2014, she sought a refund of the deposit, plus \$30,000 in legal fees, reimbursement of another \$50,000 or so in interest expenses that she incurred on borrowing the funds used for her deposit, repayment of \$9,000 that she paid under the Partial Upgrade Agreement (that she won as discussed above) and another \$17,000 or so for engineering fees and expenses. In her offer dated March 10 2015, the plaintiff offered to take the deposit (including the Partial Upgrade Agreement amount), plus \$80,000 for legal fees, and over \$9,900 for engineering fees. The engineering fees were not in issue at the motion and were not awarded to the plaintiff. Regardless, the plaintiff says that she beat this offer because she will likely receive more in costs in this endorsement than the total that she was willing to take in legal and engineering costs at least in the fourth offer if not the third.

[13] I only need deal with the fourth offer. It was delivered expressly on the basis that it replaced the prior offer. *Hagyard v. Keele Plumbing & Heating Ltd.* (1989), 15 W.D.P.C. 375 (Ont. Div. Ct.)

[14] While the inclusion in an offer to settle of a fixed amount for costs is not a bar to success under Rule 49, *Brown v. Township of Ignace*, 2010 ONSC 348 (CanLII), in cases where the numbers are close, it creates a problem. *Noyes v. Attfield*, 1994 CanLII 7286 (ON SC). The plaintiff chose not to compromise one penny on the principal amount of her claim. For me to tell then whether the plaintiff's offer represented a compromise when it was made, I would have to assess the amount of costs to which the plaintiff would have been entitled as at March 10, 2015. Even if I were to do that now, how was the defendant to know what the plaintiff's assessable costs were on a partial indemnity basis at that date? It did not have counsels' dockets. It had no way to know that the plaintiff's firm was incurring costs at a far higher pace than its own law firm was. The defendant had no way to know if the offer of \$80,000 in costs plus \$9,900 in engineering fees was a compromise over the partial indemnity costs to which the plaintiff might have otherwise been entitled at that time.

[15] Making an offer with no compromise in principal is entirely proper and is also not a bar to being awarded substantial indemnity costs. But where, as here, there is serious uncertainty as to the costs entitlement at the date of the offer and other, non-assessable fees are included in the offer which then have to be accounted for to gauge success, it seems to me that the offer loses the predictability that is central to the success of the Rule 49 regime. Parties should be encouraged to make offers to settle that include a clear, genuine, understandable compromise. The Rule should apply almost automatically when one beats one's offer. But where there is no clear compromise and the other side cannot readily determine where it stands under the offer, then applying the Rule will incentivize a strategic game whereby counsel try to put enough certainty of compromise in an offer to fool the judge but leave enough uncertainty to fool the defendant. It seems to me that the incentives should be otherwise. Rule 49 should be interpreted so that clear, understandable, genuine compromise is rewarded and clever efforts to obtain the benefit of the Rule without making a meaningful, clear, and understandable compromise are not.

[16] I find that the plaintiff has failed to meet her burden to establish that the judgment is as favourable or more favourable than the terms of her offer to settle under Rule 49.10(1). The plaintiff then is not entitled to costs on a substantial indemnity basis from the date of the offer. Rather, she is entitled to costs on a partial indemnity basis throughout.

The Quantum of Costs

[17] I do not view it as my role to assess the plaintiff's costs on anything like a docket-by-docket or even a particularly mathematical basis.

[18] The fixing of costs is a discretionary decision under section 131 of the *Courts of Justice Act*. That discretion is generally to be exercised in accordance with the factors listed in Rule 57.01 of the *Rules of Civil Procedure*. These include the principle of indemnity for the successful party (57.01(1)(0.a)), the expectations of the unsuccessful party (57.01(1)(0.b)), the amount claimed and recovered (57.01(1)(a)), and the complexity of the issues (57.01(1)(c)). Overall, the court is required to consider what is "fair and reasonable" in fixing costs, and is to do so with a view to balancing compensation of the successful party with the goal

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of fostering access to justice: *Boucher v Public Accountants Council (Ontario)*, 2004 CanLII 14579 (ON CA), (2004), 71 O.R. (3d) 291, at paras 26, 37.

[19] I accept, as does counsel for the defendant, that the rates charged by the plaintiff's lawyer were discounted and were very reasonable.

[20] The plaintiff says that the matter was complex. It was complex factually in that there were literally over 200 small, individual disputes between the parties. Unfortunately it took many days of evidence to provide clarity on the facts after legal submissions did not provide the clarity required to determine the issues.

[21] But the case was not complex legally. It turned on one clause in a contract that should have been the focus throughout. The plaintiff approached the case with a scattergun of causes of action against multiple parties that made the case much more complex to resolve. While lawyers frequently sue everyone in sight especially in the insurance field, the risks of doing so in a commercial case are obvious. Here the plaintiff has incurred costs equal to her judgment if not more. I know from seeing the detailed dealings that she had with the defendant and others and the excessively detailed documents that she prepared for the purposes of case, that the plaintiff was very active in her own claim. Much as her zeal caused the defendants to incur much undesired time and expense in dealing with the condominium purchase, her approach to the litigation made it disproportionately expensive.

[22] Not every possible claim has to be made. For example, the Statement of Claim sought both rescission of the agreement of purchase and sale and specific performance of the same agreement. The two are mutually exclusive.

[23] The decision to seek a CPL also was unnecessary and, in my view, an unreasonable step at the late date what it was taken. By then, the plaintiff would only have closed if the defendant assured her that she was getting the unit built as she wanted it. I said in a prior endorsement that no court would order specific performance of this residential condominium agreement. Not only is the condo not unique in law, but here, the parties could not agree on how it was to be built. No court could or would superintend the re-design and construction processes with 200+ open decisions on which the parties could not agree. The plaintiff actually wanted her deposit back. Subsection 103(6)(a)(i) of the *Courts of Justice Act*, RSO 1990, c.C.43, specifically provides for the discharge of a CPL where money is sought in the alternative to the interest in land. You cannot get your deposit back and claim to own the land at the same time.

[24] Similarly, the decision to sue Crayon Design Company Inc. and its employee Ms. Krismer for a myriad of torts, while legally permissible, caused significant wasted costs. It drove a wedge between the vendor and its agent and thereby caused the vendor to use Mr. Hart as its witness while Ms. Krismer was represented by her insurer. This doubled the number of affidavits and the cross-examinations. Ultimately, after the vendor admitted that it was bound by its agent Crayon and Ms. Krismer, and case management had been implemented, the plaintiff agreed to let Crayon and Ms. Krismer out of the action and to discharge the CPL so as focus the case on the deposit. However, the plaintiff included in her Bill of Costs all the time she spent

suing the Crayon and Krismer and pursuing the CPL. Those costs do not lie at the feet of the vendor.

[25] I am not ignoring that the defendant did not make it easy for the plaintiff. It did agree to allow the CPL to be issued on consent under a reservation of rights. But it was slow to respond at times and it was strategic in its decision-making to be sure. Even once deals were made to remove the CPL or to let Crayon and Krismer out of the action, for example, it took months to implement the deals because of positional play on all sides.

[26] Moreover, I am mindful that while the defendant won on all but one issue at the summary judgment motion, there was no divided success. The plaintiff won her deposit back which was 100% of the money that was realistically at issue. It is true that she lost on her claim for punitive damages but that claim never had an air of reality in a contract case and it had little or no effect on the costs incurred.

[27] The plaintiff's failure to focus matters down to their essence resulted in unnecessary proceedings. The CPL, the shotgun of causes of action, the naming of Crayon and Krismer, and the plaintiff's initial allegation about the square footage of the unit that was made but never pursued, were all unnecessary issues that caused significant costs that did not contribute to the outcome. The plaintiff's gross over-statement of her case was referenced in para 36 of my Reasons. It resulted in at least two days of the hearing being wasted just trying to figure out which samples the plaintiff was shown and which were not provided and when. While the plaintiff repeatedly accuses the defendant of being unwilling to negotiate with her, her positions fanned the flames throughout.

[28] Finally, while I will not tax dockets closely at all, 179 hours of student time, especially time preparing for and attending to watch examinations is excessive. Students should freely be brought to examinations and to court to watch and to learn. But where there are already two billing counsel in attendance, the student learning time is overhead to the firm unless the students' are making a contribution of value in the proceeding.

[29] I have considered the fact that there was a 12 day motion/mini-trial, several case management hearings, and many days of examinations out of court. It seems to me that there was much duplication in the examinations of Krismer and Hart that was avoidable. There was a full banker's box containing over a dozen thick volumes of documents demanded as answers to undertakings and put before the court by the plaintiff with only one or two individual documents ever being referred to.

[30] In short, there were excessive and unnecessary steps taken by the plaintiff throughout the proceeding seemingly uninhibited by economic rationality. In *Marcus v. Cochrane*, 2014 ONCA 207, at para. 15, Goudge J.A. remarked:

The comparison of what this dispute was about and what was spent on it is stark and difficult to justify. While undoubtedly Mr. Marks, as counsel asserting the claim, must bear the greater responsibility, the principle of proportionality which is fundamental to any sound costs award cries out for application by both counsel. With the assistance and

- Page 7 -

indeed the direction of the trial judge if need be, counsel simply must cut the cloth to fit. The health of the justice system depends on it. Trial costs cannot serve as an incentive to look away from this important challenge.

[31] It took active case management to undo the CPL, end the claim for specific performance to require the defendant to re-build the condo unit, and to get Crayon and Krismer released from the claim so that the action could focus on the real issue under the agreement of purchase and sale.

[32] There was excessive time allocated to the defendant 206 Bloor for the proceedings against Krismer, Crayon, and for students. I also find that in conducting its own settlement calculus, the defendant cannot be taken to have reasonably anticipated that the plaintiff would incur costs anywhere near to the value of her entire claim. That just cannot be a proportional approach.

[33] The hourly rates charged by counsel for the defendant were higher than those charged by counsel for the plaintiff. Yet their bill to their client came in just over \$300,000. It seems to me that on a partial indemnity basis it is fair, reasonable, and appropriate for the defendant to have considered itself at jeopardy for partial indemnity costs of \$225,000 all-in and I fix the costs that it is to pay to the plaintiff at that amount.


F.L. Myers J.

Released: February 12, 2016

APPENDIX “T”

Suite No. 901
Residential Unit No. 01 Level 9
Floor Plan Half Floor North

206 BLOOR STREET WEST

CONDOMINIUM AGREEMENT OF PURCHASE AND SALE

1. PROPERTY

The undersigned Linda Paris Faith ROSENBERG (collectively or individually, as the case may be, the "Purchaser") agrees with 206 Bloor Street West Limited (the "Vendor") to purchase the following property (the "Property" or the "Residential Unit") being the proposed Residential Unit noted above, substantially as shown for identification purposes only on the floor plan attached hereto as Schedule D and finished substantially in accordance with the finishing package described in Schedule C hereto annexed, together with one parking unit to be in a location to be assigned by the Vendor, in its sole discretion, together with an undivided interest in the common elements appurtenant thereto, including any common element areas designated as being for the exclusive use of the Residential Unit, all in accordance with condominium plan documentation proposed to be registered on a portion of those lands and premises situate in the City of Toronto, being presently comprised of Part of Lot 1, West of Avenue Road, Registered Plan 289 York, designated as Part 1 according to Plan 66R-22283, City of Toronto, together with a right-of-way in the nature of an access easement in common with others entitled thereto over Part of Lot 1, west of Avenue Road, Plan 289 York, designated as Part 2 on said Plan 66R-22283 (the "Right-of-Way"), as more particularly and currently shown on the site plan attached to the Vendor's disclosure statement (the "Lands"), on the terms and conditions hereinafter set out.

2. PURCHASE PRICE

The purchase price for the Property shall be the sum of \$2,059,000.00 (Cdn.) (the "Purchase Price"), inclusive of the Goods and Services Tax and the Ontario Single Sales Tax (hereinafter collectively referred to as the "HST" or "Harmonized Sales Tax") (hereinafter defined) (but net of any applicable rebate) (as hereinafter defined) which shall be assigned to the Vendor, as set out in Schedule "E" - HST Included in the Agreement of Purchase of Sale price, attached hereto. The Purchase Price shall be payable as follows:

(B) CH # 454
October 4 2010
\$155,900.00

10.00 (Cdn.), by post-dated cheque with this Agreement the date of this Agreement as a further deposit, bringing the amount equal to 10% of the Purchase Price, pending termination of this Agreement;

(C) CH # 455
April 4 2011
\$102,950.00

1.00 (Cdn.) equal to 5% of the Purchase Price, by post-dated cheque payable 180 days after the date of this Agreement as bringing the total deposits to an amount equal to 15% of the purchase price on the completion or other termination of this Agreement;

(D) CH # 456
July 4 2011
\$205,900.00

1.00 (Cdn.) equal to 10% of the Purchase Price, by post-dated cheque payable 270 days after the date of this Agreement as bringing the total deposits to an amount equal to 25% of the purchase price on the completion or other termination of this Agreement;

- (e) The sum of \$1,544,250.00 (Cdn.) equal to 75% of the Purchase Price, by certified cheque payable to the Vendor's Solicitors, in trust, on the Confirmed Possession Date; and
- (f) The balance of the Purchase Price by certified cheque payable to the Vendor's Solicitors (or as they may direct) on the Closing Date, subject to the adjustments hereinafter set forth.

A *(Signature)*

3. CLOSING DATE

- (a) The Purchaser shall occupy the Unit on the Confirmed Possession Date, as defined in this Agreement, as such date may be extended or accelerated pursuant to the terms of this Agreement.
- (b) The transfer of title to the Unit shall be completed on the Closing Date, as defined in this Agreement, as such date may be extended or accelerated pursuant to the terms of this Agreement.

4. SCHEDULES

The following schedules are integral parts of this Agreement and are contained on subsequent pages:

- Schedule A - Additional Provisions of this Agreement
- Schedule B - Occupancy Agreement
- Schedule C - Residential Unit Finishes
- Schedule D - Floor Plan of Residential Unit
- Schedule E - HST Included in Agreement of Purchase and Sale Price

All deposit cheques shall be made payable to the Vendor's Solicitors, in trust. All funds shall, subject to what is contained in this Agreement to the contrary, be held in trust by the Vendor's Solicitors or replaced by security of a prescribed class in accordance with subsection 81(7) of the Act pending completion or other termination of this Agreement, and shall be credited on account of the Purchase Price on the Closing Date.

The Purchaser acknowledges that he or she has received all pages of, schedules and addendums to, this Agreement.

Notwithstanding anything herein contained to the contrary, if the Purchaser has not delivered to the Vendor an acknowledgement of receipt of each of the Vendor's disclosure statement (the "Disclosure Statement") and a copy of the Agreement accepted by the Vendor in order to evidence the commencement of the Purchaser's ten (10) day statutory rescission period by no later than the third (3rd) day following the date of the Purchaser's execution of this Agreement, then the Vendor may terminate this Agreement at any time thereafter upon delivery of written notice to the Purchaser. If the Purchaser does not execute the said acknowledgement while at the sales office, the Purchaser may deliver the acknowledgement in the manner provided in this Agreement, provided it is delivered within the afore-referenced time period.

DATED this 16th day of August, 2010.

SIGNED, SEALED AND DELIVERED

In the presence of) _____ (Signature)

WITNESS:) Purchaser: Linda Paris Faith Rosenberg

) D.O.B. January 15, 1960 S.I.N. 468 267 208

) _____ D.L.# _____

) Address: 487 St. Germain Ave. Toronto, Ontario M5M 1W9

) Telephone (H): 416-782-1464 (C) 416-505-4629

) Telefax: _____

) _____

A *LR*

In the presence of) _____ (Signature)

WITNESS:) Purchaser: _____

) D.O.B. _____ S.I.N. _____

) D.L.# _____

) Address: _____

) _____

) Telephone (H): _____ (B) _____

) Telefax: _____

) _____

The undersigned hereby accepts the offer and its terms, and agrees to and with the above-named Purchaser(s) to duly carry out the same on the terms and conditions above mentioned.

ACCEPTED this 16th day of August, 2010.

Vendor's Solicitors	Purchaser's Solicitors	SIGNED, SEALED AND DELIVERED
MILLER THOMSON LLP Barristers & Solicitors Suite 5800, 40 King Street West Toronto, ON M5H 3S1 Attn: Mr. Leonard Gangbar Telephone: 416.595.8199 Facsimile: 416.595.8695	Pikov & Kleinberg Bernie Kleinberg 110 Eglinton Ave. West Toronto, ON 416-488-2100	206 BLOOR STREET WEST LIMITED Per: _____ Authorized Signing Officer: I have the authority to bind the Company

Handwritten signature and initials, possibly 'A' and 'LQ'.

206 BLOOR STREET WEST

SCHEDULE A

ADDITIONAL PROVISIONS

1. DEFINITIONS

In addition to any other defined words or terms used throughout this Agreement, the defined terms set out below shall have the meanings ascribed thereto, namely:

- (a) "Act" means the *Condominium Act*, S.O. 1998, the regulations thereunder and any amendments thereto, and any other terms used herein shall have ascribed to them the definitions contained in the Act or in the Condominium Documents, unless the context herein otherwise requires;
- (b) "Agreement" means this agreement of purchase and sale, together with all Schedules hereto, and including any amendments and addendums to this Agreement;
- (c) "Building" means the residential structure constructed, or to be constructed, by the Vendor on the Lands;
- (d) "Closing Date" or "Date of Closing" or "Closing" means that date or dates designated by the Vendor's Solicitors as the date on which registrable transfer of title to the Property will be delivered to the Purchaser, which date shall be at least 15 days after written notice that the Creating Documents have been registered. The Vendor may, in its sole discretion, postpone the Closing Date from time to time, provided that the Closing Date shall not be later than 24 months after the Confirmed Possession Date;
- (e) "Condominium" means the condominium to be created by the registration of the Creating Documents;
- (f) "Condominium Corporation" or "Corporation" means the condominium corporation constituted under the Act by the registration of the Creating Documents;
- (g) "Condominium Documents" means, the Creating Documents, the by-laws and rules of the Condominium and the Disclosure Statement (inclusive of the budget statement), as may be amended from time to time;
- (h) "Confirmed Possession Date" means the date, or any extension or acceleration thereof, pursuant to the provisions of this Agreement selected by the Vendor and confirmed in writing to the Purchaser at least 120 days before the date identified in such notice, and confirmed no later than 30 days following the completion of the roof assembly of the Building which contains or incorporates the Residential Unit, and which selected date shall not be more than 24 months from the originally scheduled Tentative Possession Date. If the Vendor has not so provided the Purchaser with the notice and confirmation at least 90 days prior to the Tentative Possession Date, the Confirmed Possession Date shall be deemed to be the Tentative Possession Date. If the Creating Documents were registered at least 22 days prior to the Confirmed Possession Date, the Confirmed Possession Date shall also be the Closing Date;
- (i) "Consultant" means any or all of the Vendor's architects, planners, engineers and other professional and business advisors as may be relevant in the context;
- (j) "Creating Documents" means the declaration, plan, and description which are to be registered and will serve to create the Condominium, as may be amended from time to time;
- (k) "Disclosure Statement" means the statement delivered by the Vendor to the Purchaser as required by the Act;

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- (l) "ETA" means the Excise Tax Act (Canada), as amended;
- (m) "Governmental Authorities" or "Governmental Authority" means the Municipality or any other relevant governmental authority or agency or private or public utility;
- (n) "GST" means the federal goods and services tax exigible with respect to the within transaction pursuant to the ETA;
- (o) "Harmonized Sales Tax" or "HST" means the Goods and Services Tax and the Ontario Single Sales Tax exigible with respect to the within transaction pursuant to the ETA;
- (p) "Interim Occupancy Period" means the period of time from the Confirmed Possession Date to the Closing Date;
- (q) "Lands" means and includes the lands upon which the Building will be constructed by the Vendor together with any appurtenant and/or servient interests thereto, and shall also mean the Lands upon which the Residential Structure and the Retail Structure have been constructed, as the context may require;
- (r) "Mortgagee" means the Vendor's construction lender for the development of any part of the Lands comprising the Residential and Retail Structures;
- (s) "Municipality" means the City of Toronto;
- (t) "Occupancy Agreement" means the terms and conditions of occupation of the Unit during the Interim Occupancy Period, as described in Schedule B hereto;
- (u) "Occupancy Fee" means the monthly fee payable in advance by the Purchaser during the Interim Occupancy Period and based upon the aggregate of the following amounts:
 - (i) where applicable, interest calculated on a monthly basis on the unpaid balance of the Purchase Price at the rate prescribed by the Act;
 - (ii) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable to the Property; and
 - (iii) the projected monthly common expense contribution for the Property;
- (v) "Plan Act" means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31, as amended;
- (w) "Permitted Encumbrances" means those instruments and documents, to which the Purchaser's title will be subject being the following:
 - (i) the Condominium Documents, including any agreements referred to therein, notwithstanding that they may be amended and varied from the proposed Condominium Documents contained in the Disclosure Statement;
 - (ii) any subdivision, servicing, condominium, development, site plan, master site, joint user, security, access and circulation, construction licence, reciprocal or party wall agreement, or other instrument containing provisions relating to the use, development, constructing maintenance and repair of the Residential Structure and/or the Retail Structure;
 - (iii) all existing and proposed easements, rights of way, licences and rights affecting the Lands and which may be required by or for the Retail Structure and any Governmental Authority and/or owners of neighbouring lands, provided same are complied with and do not materially and adversely affect the use of the Property for residential purposes. The Purchaser shall consent to the granting of any such easements, licence and rights and shall execute all documents requisite for this purpose;

- (iv) an Encroachment Agreement between the then registered owner of the Property and the Corporation of the City of Toronto registered as Instrument No. EM86167, and a similar Encroachment Agreement with the City of Toronto and others registered as Instrument No. CT511239, registered in the Land Registry Office for the Registry Division of Toronto, and any similar encroachment agreement the existence of which does not impair the value, use or marketability of Property;
 - (v) any leases, restrictions, restrictive covenants or conditions that run with the Lands;
 - (vi) any agreements relating to the sharing of costs between the Condominium and owners of neighbouring lands, including, without limitation, the Retail Structure;
 - (vii) temporary easements in favour of the Vendor for construction, operation, sales and/or rentals relating to the Condominium, and any other component portion of the overall site currently owned by the Vendor including, but not limited to, the Retail Structure;
 - (viii) any reservations contained in the original Crown Patent; and
 - (ix) any other title qualifications which do not materially adversely affect the use, enjoyment or marketability of the Property.
- (x) "Reciprocal Agreement" means the reciprocal easement and cost sharing agreement between the Condominium Corporation and the owner, from time to time, of the Retail Structure governing the use, operation, maintenance and repair of the Shared Facilities within the Building, as the term "Shared Facilities" is defined in the Reciprocal Agreement, the format of which accompanies the Disclosure Statement received by the Purchaser;
 - (y) "Residential Structure" means the (proposed) units and common elements of the Condominium which form an integral part of the Building;
 - (z) "Retail Structure" means the ground floor and other portions of the Building owned by the Vendor that do not form part of the description of the Condominium;
 - (aa) "Tentative Possession Date" means October 31, 2011 or any extension or acceleration thereof pursuant to the provisions of this Agreement;
 - (bb) "Vendor's Solicitors" shall mean Miller Thomson LLP; and
 - (cc) "Warranty Program" means the Tarion Warranty Program.

2. CONFIRMED POSSESSION DATE

- (a) If the Residential Unit is not substantially completed, to a stage sufficient to permit lawful occupancy thereof in accordance with the applicable requirements of the Governmental Authorities, by the Confirmed Possession Date (determined or established in accordance with subparagraph 1(i) above), or by the accelerated Confirmed Possession Date pursuant to subparagraph 2(c) hereof, for any reason whatsoever, so that the Purchaser cannot be given possession thereof on such date, the Vendor, may unilaterally extend the Confirmed Possession Date (i) once for a period of up to 120 days, upon at least 65 days prior written notice to the Purchaser; and (ii) once for a period of up to 15 days, upon at least 35 days prior written notice to the Purchaser, or alternatively, the Vendor may declare this Agreement to be at an end, in which event all deposits shall be returned to the Purchaser with interest at the rate prescribed under the Act, and thereafter neither the Vendor nor its agents shall be liable for any costs or damages suffered or incurred by the Purchaser thereby;
- (b) The provisions of subparagraph (a) above are intended to reflect the Warranty Program's policies, regulations and/or guidelines on extension of the Confirmed

Possession Date, but notwithstanding anything herein contained to the contrary, the Vendor shall be entitled to unilaterally extend the Tentative Possession Date and/or the Confirmed Possession Date, on one or more occasions, for one or more periods of time, not exceeding twenty-four (24) months in the aggregate from the date specified in Paragraph 1(w) hereof and/or the Closing Date, on one or more occasions, for one or more periods of time, not exceeding twenty-four (24) months in the aggregate from the Confirmed Possession Date, without prior notice, and for any reason whatsoever either within or beyond the Vendor's control. Any failure to provide notices of the extensions of the Tentative Possession Date, the Confirmed Possession Date and/or Closing Date shall only give rise to a damage claim by the Purchaser against the Vendor up to a maximum of \$5,000.00, as more particularly set forth in the Plan Act, and under no circumstances shall the Purchaser be entitled to terminate this Agreement as a result thereof.

- (c) The Vendor may accelerate, and the Purchaser hereby consents to the acceleration of, the Tentative Possession Date and/or the Confirmed Possession Date for one or more periods of time, not exceeding six (6) months in the aggregate to an earlier date which shall become the Confirmed Possession Date upon the Vendor giving to the Purchaser not less than 60 days prior written notice thereof; and
- (d) The Purchaser shall notify the Vendor's Solicitors as to the manner in which title is to be taken by the Purchaser and, if not previously provided, the dates of birth and marital status of all persons taking title to the Property, and the address for service to be inserted in the transfer and in the event the Purchaser fails to so notify the Vendor's Solicitors by at least 30 days before the Confirmed Possession Date, then the Vendor and Vendor's Solicitors shall be entitled to engross the transfer of title to the Property in the name of the Purchaser as noted on Page 1 of this Agreement and the Purchaser agrees to accept the aforementioned conveyance in such manner and acknowledges that he/she shall be bound thereby and shall be estopped from requiring any further changes to the manner in which the transfer is so engrossed. In the event the Purchaser requests that the Vendor and/or the Vendor's Solicitors amend or in any way change the manner in which title has been engrossed after this period, then the Purchaser shall pay the Vendor's Solicitors costs, directly to the Vendor's Solicitors, as an adjustment on the Confirmed Possession Date, to amend or change the transfer.

3. POSSESSION DATE AND OCCUPANCY FEE

- (a) If the Residential Unit is substantially completed sufficient to permit occupancy on the Confirmed Possession Date (as extended or accelerated) the Purchaser shall occupy the Residential Unit on the Confirmed Possession Date. The Purchaser shall determine from the Vendor the time of day when the Purchaser may move into the Property. The Purchaser covenants to not move at any other time except with the consent of the Vendor. The Purchaser further covenants, acknowledges and agrees that during the Interim Occupancy Period, the Purchaser shall not be entitled to make any alterations or additions to the Property or to install any construction changes, finishes or items to the Property. The Purchaser agrees to indemnify and save harmless the Vendor from any damages, costs or expenses incurred by the Vendor as a result of a breach of this provision by the Purchaser.
- (b) The Act provides that the rate of interest prescribed in the Act is the rate that the Bank of Canada has most recently reported as the chartered bank administered interest rate for a conventional one-year mortgage, established or determined as of the first day of the month in which the Purchaser assumes (or is required to assume) interim occupancy of the Residential Unit. However, for ease of administration, the Vendor shall be entitled to utilize the Bank of Canada's reported chartered bank administered interest rate for a conventional one-year mortgage, established as of the first of the month immediately preceding the month in which the first interim occupancy occurs in the Condominium, and which interest rate figure shall be utilized for calculating the interest component of the Occupancy Fee for all purchasers completing an interim occupancy in the Condominium. All occupancy fees so paid by the Purchaser shall be re-adjusted

between the parties hereto on the Closing Date, if necessary, for any variance or discrepancy between the prescribed rate of interest and the rate of interest utilized by the Vendor as aforesaid. The common expense component of the Occupancy Fee shall also be re-adjusted on the Closing Date, if necessary, between the projected monthly common expense contributions, and the final monthly common expense contributions attributable to the Property as set out in or confirmed by the final first year budget statement in respect of the Condominium. In accordance with the Act, the realty tax component of the Occupancy Fee shall be re-adjusted between the parties hereto after the Closing Date, once the final realty taxes assessed against the Property, together with any supplementary taxes for the balance of the calendar year in which the Closing Date has occurred) have been finally established by the Municipality. The re-adjustment with respect to the realty tax component of the Occupancy Fee shall occur within 90 days following the receipt of the final and all applicable supplementary realty tax bills issued in respect of the Property. To facilitate such last mentioned re-adjustment, the Purchaser shall forthwith deliver to the Vendor copies of the final and all supplementary realty tax bills issued for the balance of the calendar year in which the Closing Date has occurred forthwith after receipt thereof. The Purchaser shall effect and complete any re-adjustment with the Vendor (whether with respect to any of the components of the Occupancy Fee or otherwise) within 30 days of being requested to do so by the Vendor.

- (c) The Purchaser acknowledges that the Occupancy Fee shall not be credited by the Vendor as part of or as payment against the Purchase Price and shall not be considered as a deposit against the Purchase Price. The Purchaser shall, on or before taking possession of the Residential Unit deliver to the Vendor: (i) a series of twelve (12) monthly post-dated cheques as required by the Vendor to cover the Occupancy Fees; (ii) a cheque for the prorated Occupancy Fee period between the Confirmed Possession Date and the end of the month in which the Confirmed Possession Date occurs; and (iii) any and all other documents required by the Vendor.
- (d) The Purchaser acknowledges and agrees that the issuance of either a Consultant's certificate of substantial completion or the Municipality's occupancy certificate shall, constitute complete and absolute acceptance by the Purchaser of all construction matters, and the quality and sufficiency thereof.
- (e) The Vendor shall indemnify the Purchaser against any liability for any lien claims which are the responsibility of the Vendor, its trades and/or suppliers in full satisfaction of the Purchaser's rights under the *Construction Lien Act*, R.S.O. 1990, and any amendments thereto, and the Purchaser shall not claim any lien holdback, notwithstanding that the Vendor has not fully completed the Property or the common elements.
- (f) On each of the Confirmed Possession Date and the Closing Date, the Purchaser shall deliver to the Vendor's Solicitors a clear and up-to-date execution certificate for the Purchaser.
- (g) Notwithstanding what is contained in paragraph 3 (a) above, at the sole discretion of the Vendor, the Purchaser may not be allowed to occupy the Property until the occupancy requirements of any relevant Governmental Authority have been complied with and, if the Purchaser shall occupy the Property prior to the compliance of the aforesaid occupancy requirements, the Purchaser shall indemnify the Vendor for any costs, charges or penalties payable by, or claimed against, the Vendor as a result thereof. The Vendor shall have the right to defer the Confirmed Possession Date until all relevant Governmental Authorities consent to such occupancy.
- (h) Notwithstanding the occupancy of the Property and the delivery of title thereto, the Vendor or any person authorized by it shall be entitled at all reasonable times, (except in the case of an emergency or perceived emergency; in which event the Vendor shall have immediate entry into the Property) to enter the Property in order to make inspections or to do any work or repairs therein or thereon which may be deemed necessary by the Vendor in connection with the completion,

rectification or servicing of any installation in the Property and such right shall be in addition to any rights and easements created under the Act.

4. TITLE

- (a) The Vendor shall not be obligated to obtain or register on title to the Property a release of any of the Permitted Encumbrances, nor shall the Vendor be obliged to remove any of the Permitted Encumbrances, and the Purchaser shall satisfy himself or herself as to compliance therewith. If there are any outstanding work orders pertaining to the Condominium on either of the Confirmed Possession Date or the Closing Date, the Vendor shall take reasonable steps within its discretion, to assure any relevant Governmental Authority that such outstanding work will be attended to and, notwithstanding the existence of such notice or work orders, the Purchaser shall complete this transaction notwithstanding and accept the Vendor's undertaking to rectify and/or repair any work which is the subject of such outstanding work orders within a reasonable time thereafter.
- (b) If Permitted Encumbrances include one or more mortgages, charges, debentures or trust deeds in favour of a Mortgagee that are not to be assumed by the Purchaser, the Purchaser shall accept the Vendor's written undertaking to discharge the same from title within a reasonable time after the Closing Date, provided such undertaking of the Vendor is accompanied by a written statement from the Mortgagee confirming the amount required to be paid to obtain a discharge with respect to the Property, a direction from the Vendor directing payment of the amount specified by such Mortgagee, and an undertaking of the Vendor's Solicitors to register such discharge as and when received.
- (c) The Purchaser shall execute all documents, without payment by the Vendor which may be required to convey or confirm the Permitted Encumbrances and shall, if required by the Vendor, extract a similar covenant in any agreement entered into with any subsequent purchaser;
- (d) The Vendor shall have a vendor's lien for unpaid purchase monies on Closing and shall be entitled to register a notice of lien against the Property any time on or after the Closing Date.
- (e) This Agreement shall be subordinated to and postponed to any mortgages on the Lands arranged by the Vendor and any advances made thereunder from time to time.
- (f) This Agreement is personal to the Purchaser, and does not create an interest in, or a right to a lien against the Property, the Building and/or the Lands. The Purchaser shall not register, or cause to be registered on title, notice of this Agreement nor any notice thereof, nor any caution with respect thereto, nor any certificate of pending litigation or other similar court process, nor shall the Purchaser give, register or permit to be registered any encumbrance against the Lands or sell, encumber or make any other disposition of the Property, until after the Closing Date.
- (g) The deed/transfer of the Property may contain the covenants and restrictions referred to in this Agreement. The Purchaser hereby shall abide by such covenants and restrictions after the Closing Date, and, if the Vendor so requires, the Purchaser shall exact similar covenants and restrictions from any immediate successors in title to the Property, all of which shall be assigned to and for the benefit of the Vendor.

5. REQUISITIONS

Provided that the title to the Unit is good and free from all encumbrances, except the Permitted Encumbrances and save as otherwise set out in this Agreement, the Vendor shall notify the Purchaser or the Purchaser's solicitor forthwith after the registration of the Condominium Documents (the "Notification Date"). The Purchaser is to be allowed 10 days after the Notification Date to examine the title to the Property at his/her own expense, and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy

permits or certificates, nor any other proof or evidence of the title or occupiability of the Property, except such copies thereof as are in the Vendor's possession. If within the aforementioned time period the Purchaser furnishes the Vendor in writing with any valid objection to title which the Vendor shall be unable or unwilling to remove, and which the Purchaser will not waive, or that is not insurable (at the Purchaser's cost) by a title insurance provider, then this Agreement shall, notwithstanding any intervening acts or negotiations, be null and void, and all deposit monies theretofore paid shall be returned to the Purchaser with interest, from the date of termination, at the rate prescribed under the Act, save for deductions for any extras ordered by the Purchaser from the Vendor and then unpaid and a reasonable sum for the cost of repairing and cleaning the Property as a result of the Purchaser occupying the Property during the Interim Occupancy Period, and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages thereby. Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the title to the Property. Notwithstanding anything contained in this Agreement or in the Act or any other applicable legislation, where any encumbrance is registered on title and a discharge, or release thereof is tendered for registration, the same shall be deemed to have been discharged for all purposes on acceptance for registration, notwithstanding that the relevant registers have not yet been signed to reflect such registration. The Purchaser acknowledges that the Vendor may respond to requisitions by a standard title memo or title insurance binder (if the Vendor elects to provide title insurance) and the same shall be deemed to be a satisfactory manner of response.

6. TENDER

- (a) Any tender of documents or monies hereunder may be made on the Vendor or the Purchaser, or upon their respective solicitors, and money shall be tendered by negotiable cheque certified by a Canadian chartered bank, a Canadian trust company or by electronic transfer of funds;
- (b) Any tender that can be made on the Confirmed Possession Date shall be by attendance or delivery at the Vendor's Solicitor's office between the hours of 10:30 a.m. and 12:30 p.m. or between the hours of 2:00 p.m. and 4:30 p.m.
- (c) Since the Teraview Electronic Registration System (the "TERS") is operative in respect of the Lands, the Purchaser shall be obliged to retain a solicitor who is both an authorized TERS user and in good standing with the Law Society of Upper Canada, and shall authorize such solicitor to enter into the Vendor's Solicitors' standard form of escrow closing agreement (the "DRA"), establishing the procedures and timing for completing this transaction, to be delivered by the Vendor's Solicitors to the Purchaser's solicitor no later than 5 days prior to the Closing Date. The delivery and exchange of documents and monies shall not occur contemporaneously with the registration of the transfer/deed but shall be governed by the DRA. The Purchaser shall not be entitled to receive a transfer/deed to the Property until all of the Purchaser's requisite closing documents are delivered to the Vendor's Solicitors and the balance of funds due on Closing are either remitted by certified cheque or by electronic funds transfer. An effective tender shall be deemed to have been validly made upon the Purchaser without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor when the Vendor's Solicitors have:
 - (i) delivered all of the Vendor's closing documents in accordance with the DRA, it being acknowledged by the Purchaser that keys to the Property shall be released directly from the sales office or the construction site office and the Vendor shall not otherwise be required to produce or deliver the same;
 - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and,
 - (iii) completed all steps required by TERS in order to complete the transaction that can be performed by the Vendor's Solicitors without the co-operation or participation of the Purchaser's solicitor and the "completeness

signatory" for the transfer/deed has been electronically "signed" by the Vendor's Solicitors.

7. ADJUSTMENTS

- (a) Unused Occupancy Fees for the Interim Occupancy Period, all utility costs including electricity, gas and water (unless included as part of the common expenses or payable by the Purchaser during the Interim Occupancy Period), realty taxes (including any local improvement rates), interest on the unpaid balance of the Purchase Price and common expense contributions, attributable to the Property, shall be apportioned and allowed to the Closing Date, with that day itself to be apportioned to the Purchaser.
- (b) The Purchaser shall provide the Vendor on Closing with twelve (12) monthly post-dated cheques payable to the Condominium Corporation for common expense contributions for the one year period following the Closing Date.
- (c) Realty taxes shall be adjusted as if the Condominium had been fully completed and separately assessed (including any supplementary assessment with respect thereto), notwithstanding that same may not have been levied, assessed and/or paid by the Closing Date, and such realty tax adjustment shall be subject to re-adjustment as and when the actual final assessment for the Property is available.
- (d) The Purchaser shall pay to the Vendor on the Confirmed Possession Date, together with all GST and/or Harmonized Sales Tax, if applicable, payable in connection therewith:
- (i) the amount of the enrolment fee for the Property payable to Terion pursuant to the Plan Act; and
 - (ii) the cost of water meter installation, water and sewer service connection charges, sewer impost charges, hydro, sewer and gas installation and connection charges (inclusive of energization charges and any deposit required by any utility provider), the Purchaser's portion of such charges and cost to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the Condominium and by charging the Purchaser in the Statement of Adjustments with that portion of the charges and costs. A letter from the Vendor's Consultant certifying the said charges and costs shall be final and binding on the Purchaser.
- (e) An administration fee of \$150.00, plus GST and/or Harmonized Sales Tax, if applicable, shall be charged to the Purchaser for any cheque delivered to the Vendor and returned by the Vendor's bank.
- (f) If the Purchaser desires to increase the amount to be paid on the Confirmed Possession Date at any time after the expiry of the initial 10 day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested or indicated by execution of this Agreement to take title to the Property, or wishes to add or change any units being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitors the legal fees and/or disbursements incurred by the Vendor in order to implement any of the foregoing changes but without there being any obligation on the part of the Vendor to approve of, or to implement, any of the changes so requested.
- (g) The Purchase Price includes all development charges, municipal charges, education development charges and levies (collectively, the "Development Charges") in effect as of January 31, 2007. If such Development Charges increase on or after January 31, 2007 whether by an increase in the existing Development Charges or in the imposition of new Development Charges, any such increase, which shall be calculated on a proportionate basis according to the Residential Unit's proportionate share of common expenses described in Schedule D of the proposed Declaration, shall be paid by the Purchaser to the Vendor on

the Closing Date together with all GST and/or Harmonized Sales Tax payable in connection therewith.

8. FINANCIAL INFORMATION

The Purchaser hereby covenants and agrees to provide, from time to time, within 10 days after the Vendor's request, credit information required by the Vendor so as to establish the ability of the Purchaser to perform his or her obligations hereunder. The Purchaser is hereby notified that a consumer's report containing credit and personal information may be obtained and referred to at any time in connection with this transaction and the Purchaser hereby consents to such report being obtained by the Vendor and/or any Mortgagee. If the Purchaser has not provided the aforesaid credit information within the aforesaid time period, or if the Vendor in its sole discretion is not satisfied therewith, the Vendor may terminate this Agreement and the deposits paid by the Purchaser shall be forfeited to the Vendor as a contract termination fee.

Without limiting the generality of the foregoing paragraph, this Agreement shall be conditional upon the Purchaser, within 10 days of the date of execution of this Agreement by the Purchaser, producing satisfactory evidence to the Vendor, in its sole and absolute discretion, of a satisfactory mortgage commitment or pre-approval signed by a lending institution acceptable to the Vendor, confirming that the said lending institution will be advancing funds to the Purchaser sufficient to pay the balance due on the Closing Date. If such evidence is not provided by the Purchaser within the time period stated herein, the Vendor shall have the unilateral right and option to terminate this Agreement at any time thereafter upon delivery of written notice confirming such termination to the Purchaser at the address of the Purchaser set out in this Agreement, whereupon this Agreement shall be null and void and the Purchaser's initial deposit cheque shall be returned to the Purchaser without interest or deduction. This condition is included for the sole benefit of the Vendor and may be waived by it, at its sole option, by notice in writing to the Purchaser, at any time. The Vendor may, at its sole discretion, elect to accept in the place of such mortgage commitment to pre-approval, other evidence satisfactory to the Vendor that the Purchaser will have available sufficient funds to pay the balance due on the Closing Date.

9. MISCELLANEOUS CONDITIONS

- (a) This Agreement and the transaction arising therefrom is conditional upon the following:
- (i) the Vendor being satisfied, in its sole discretion, with the credit information referred to above;
 - (ii) the Vendor determining on or before December 15, 2007 in its sole, absolute, unreviewable and unfettered discretion that it is satisfied with the economic feasibility and viability of proceeding with the Condominium and/or the general acceptance and saleability of the suite type selected by the Purchaser. The Purchaser acknowledges and so accepts that the Vendor reserves the right to extend the date referenced in this subparagraph for a further period of three (3) months by notice delivered in writing by the Vendor (or its solicitor) to the Purchaser (or its solicitor) on or before the afore-referenced date, failing which it shall be deemed that the Vendor has not elected to exercise its right to extend such date; and
 - (iii) the receipt by the Vendor on or before the Confirmed Possession Date of zoning, site plan and draft condominium plan approval for the Condominium in form satisfactory to the Vendor, subject only to any conditions which are, in the Vendor's sole and absolute discretion, acceptable.
- (b) If the Vendor does not notify the Purchaser in writing that any or all of the conditions in this subparagraph (a) above have been satisfied or waived by the Vendor, then such conditions shall be conclusively deemed to have been waived, and this Agreement shall be completed in accordance with its terms. If the Vendor notifies the Purchaser that any or all of the conditions contained in this subparagraph (a) above have not been satisfied or waived, this Agreement shall be

at an end and all deposit monies heretofore paid by the Purchaser to the Vendor shall be returned with interest at the rate prescribed under the Act and the parties shall have no further obligations or liabilities to each other whatsoever.

10. PURCHASER'S SALE OR ASSIGNMENT

The Purchaser covenants not to list for sale or lease, enter into any offer to sell or lease, advertise for sale or lease, sell or lease nor in any way assign his or her interest under this Agreement or in the Property, nor directly or indirectly permit any third party to list or advertise the Property for sale or lease at any time until after the Closing Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld.

The Purchaser acknowledges and agrees that the Vendor may (but is not obligated to) provide its consent to the Purchaser's request to so assign his or her interest under this Agreement (including his/her right to personally occupy the Residential Unit) subject to such conditions as the Vendor in its discretion may reasonably determine, including the payment by the Purchaser to the Vendor of an assignment fee of \$5,000.00 which sum shall be paid to the Vendor at the time of the Purchaser's request for such assignment. In the event that the Vendor, having investigated the proposed assignment transaction does not consent to such assignment, the assignment fee less \$300.00 for review of the proposed assignment transaction shall be returned by the Vendor to the Purchaser without interest and in any event within 30 days of receipt of the Purchaser's request for the Vendor's permission to such assignment. In the event that the Vendor provides its consent to the Purchaser's request to so assign his/her interest under this Agreement then in that event the Vendor's Solicitors shall prepare the requisite assignment agreement to be executed by the parties and the assignor shall pay the Vendor's Solicitors' fees for the preparation of the assignment agreement at the time of execution of the assignment agreement by certified cheque made payable to the Vendor's Solicitors prior to completion of the assignment. If for any reason the assignor fails to pay the Vendor's Solicitors' fee then in that event the assignee shall pay same, with such payment by the Purchaser (assignee) to be reflected by an appropriate credit to the Vendor or the Vendor's Solicitors in the Statement of Adjustments on the Closing Date. The Purchaser further acknowledges and agrees that prior to the Purchaser entering into the proposed assignment transaction with the Vendor's consent, the aggregate total deposits set out in Paragraph 2 of the face page of this Agreement shall be paid in full to the Vendor.

The Purchaser acknowledges and agrees that once a breach of the preceding covenants occurs such breach is or shall be incapable of rectification and accordingly the Purchaser acknowledges and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy Agreement effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor whereupon the provisions of Paragraph 25 of this Agreement shall apply.

Notwithstanding the foregoing, provided the Purchaser provides written notice to the Vendor and the Vendor's Solicitors at least 30 days prior to the Confirmed Possession Date, the Purchaser shall be entitled to direct that title to the Property be taken in the name of his or her spouse or a member of his or her immediate family only and shall not be permitted to direct title to any other third parties.

11. CONSTRUCTION MATTERS AND WARRANTIES

- (a) The Vendor hereby notifies the Purchaser that a "Homeowner Information Package" (the "HIP") is available from the Tarion Warranty Program. The Vendor shall deliver a copy of the HIP to the Purchaser as soon as possible after the acceptance of this Agreement and, in any event at or before the inspection provided for in subparagraph (b) below.
- (b) The Purchaser agrees to meet the Vendor's representative either personally or in the company of a designate of the Purchaser or through such designate alone at a time designated by the Vendor prior to the Confirmed Possession Date to inspect the Property, and to complete the Warranty Program Certificate of Completion and Possession, the PDI form and the Confirmation of Receipt of the HIP form and any other requisite documents all as prescribed from time to time, and required to be completed under, the provisions of the Plan Act (the "Tarion Forms"). The Tarion Forms shall list all deficiencies, substitutions or items that

cannot be inspected because they are dirty, incomplete or missing and shall confirm the Confirmed Possession Date. The Taron Forms shall be executed by both the Purchaser and the Vendor's representative forthwith after such inspection, and the Taron Forms shall constitute the Vendor's only undertaking with respect to incomplete or deficient work. In the event that the Vendor performs any additional work to the Property in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise broadened its obligations hereunder. The Vendor shall use its reasonable commercial efforts (having regard to weather conditions, the Vendor's building schedules, the availability of supplies and services and the Purchaser's ability to access the Property) to complete or remedy all items listed in the Taron Forms in accordance with the Plan Act. No further request for completion of items may be maintained by the Purchaser, and this shall serve as a good and sufficient release of the Vendor in that regard. The Purchaser further acknowledges and agrees that any warranties of workmanship or materials in respect of any aspect of the construction of the Property or of the common elements of the Condominium, whether imposed by law, equity or any legislation, shall be restricted to only those warranties deemed to be given by the Vendor under the Plan Act, and shall extend only for the period and in respect of those items stipulated or covered by the Warranty Program. The Purchaser acknowledges that he/she may be disentitled to the statutory warranties stipulated or covered by the Plan Act if the Property is not initially occupied by the Purchaser. Under no circumstances whatsoever shall the Purchaser or the Condominium Corporation have any claim against the Vendor for any alleged deficiencies or defects of materials or workmanship other than as provided for in the Plan Act.

- (c) The Purchaser on behalf of himself/herself and the Condominium Corporation in respect of the common elements appurtenant to the Property hereby releases the Vendor, its servants, agents, employees, directors and officers from any and all remedies, claims and causes of action including negligence and nuisance and any actions that may be taken against the Vendor by third party proceedings except the warranty rights against the Vendor granted by the Plan Act.
- (d) The Vendor shall complete the common elements of the Condominium and the Property other than the Residential Unit as is soon as reasonably practicable, but the failure of the Vendor to complete the common elements, and the Property as aforesaid as soon as reasonably practicable or beyond the minimum standards required by the Municipality in order to permit occupancy thereof, on or before the Confirmed Possession Date, shall in no event entitle the Purchaser to refuse to take possession of the Property and/or close the within transaction, or to fail to remit to the Vendor the entire amount of purchase monies required to be paid by the Purchaser hereunder, or to maintain any holdback of any part of the Purchase Price or of the Occupancy Fee.
- (e) The Purchaser acknowledges and agrees that any warranty certificate contemplated will be issued after the Confirmed Possession Date and issuance of the said certificate shall not be a condition to the completion of the purchase and sale transaction, or a condition to the Purchaser performing its obligations under this Agreement.
- (f) The attendance and completion of the inspection and the endorsement of the Taron Forms by the Purchaser or the Purchaser's designate and the Vendor as contemplated in this Agreement are prerequisites of the Vendor's obligation to provide occupancy of the Property to the Purchaser and to complete this transaction on the Confirmed Possession Date. If the Purchaser fails to attend the aforesaid inspection, the Vendor may declare the Purchaser to be in default under this Agreement and exercise any or all of its remedies provided in this Agreement. Alternatively, at the Vendor's discretion, it may complete the Taron Forms on behalf of the Purchaser, and the Purchaser hereby irrevocably appoints and authorizes the Vendor to act as his/her lawful attorney, in order to execute the Taron Forms issued pursuant to the Plan Act.
- (g) The Vendor is not responsible beyond the warranties in the Plan Act for the repair and/or rectification of any work resulting from ordinary settlement of the Property

including (but not limited to) driveways, walkways, patio stones, sodded areas, or for any damage to improvements or decorations caused by warpage, twisting or material shrinkage. The Purchaser further acknowledges and agrees that the Vendor shall not be liable for any secondary or consequential damage (of any kind whatsoever) resulting from any defects in material design or workmanship related to the development or construction of the Condominium. From and after the Confirmed Possession Date and continuing after Closing, the Vendor shall not be responsible for any damage to any improvements, fixtures, furnishings or personal property made by the Purchaser to the Property resulting from any act or omission to act of the Vendor or anyone under its direction or control, in completing outstanding matters of, or deficiencies in construction, any damage or delays and attendant costs caused by the Purchaser or any person with whom the Purchaser has had direct dealings for the upgrading and/or installation of materials or equipment or any damage caused by the use of the Property by the Purchaser, or his/her family, guests or pets.

- (h) The Vendor may, from time to time in its sole discretion, or as required by any Governmental Authority or the Mortgagee, change, vary or modify the plans and specifications pertaining to the Property or the Condominium from the plans and specifications existing at the time the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure, model or otherwise, and the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its agent(s) for any such changes, variances or modifications; nor shall the Purchaser be entitled to any notice thereof. Where any such change, variation or modification is material or substantial in nature, the Purchaser's only recourse and remedy shall be the termination of this Agreement within 10 days after the Purchaser is notified or otherwise made aware of the material change as provided for in the Act and the return of the deposit monies paid under this Agreement, together with interest accrued thereon from the date of notification at the rate prescribed by the Act. The Purchaser acknowledges that the model and type of Residential Unit herein described, or as may be pictorially represented in any models, drawings, illustrations or renderings, may have a reversed architectural lay-out. The Purchaser further expressly acknowledges that the Vendor's ability to change, vary or modify plans and specifications is an essential requirement for the successful completion of the project. As a result, the Vendor may alter the model and type of the Residential Unit purchased by the Purchaser. If such alteration is material, the Purchaser may terminate the Agreement and all monies heretofore paid by the Purchaser to the Vendor shall be returned with interest from the date of notification at the rate prescribed by the Act and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages in respect thereof.
- (i) The Purchaser further acknowledges that any model suites displayed or to be displayed in the Vendor's sales office may include or contain items of finishing, furniture and/or equipment and/or be constructed methods and materials which are not to be used or contained in the Property or included in the Purchase Price. The Purchaser acknowledges that various types of flooring, such as carpets, marble, tile and/or hardwood floors may result in different heights in the transitional areas between them, and that the Vendor may use appropriate reducers in the area. The Purchaser further acknowledges that it may be necessary, during construction of the Residential Unit to construct the exit from the interior to the balcony or terrace adjacent to the Residential Unit with one or more steps leading from the floor of the interior to the balcony and/or terrace.
- (j) Notwithstanding anything contained in this Agreement to the contrary, if construction of the Residential Unit is not completed on or before the Confirmed Possession Date or any extension thereof as hereinbefore contemplated, for any reason except for the Vendor's wilful neglect, or if the Purchaser cannot take possession of the Residential Unit on the Confirmed Possession Date by reason of any fire, damage or other hazards or damages whatsoever occasioned thereto, the Vendor shall not be responsible or liable for reimbursing the Purchaser for any costs, expenses, or damages suffered or incurred by the Purchaser as a result of such delay or damage, and specifically shall not be responsible for any costs and expenses incurred by the Purchaser in obtaining alternate accommodation pending

the completion of construction of the Property or the rectification of the damage, nor for any costs incurred in having to store or move the Purchaser's furniture or other belongings pending such completion or rectification work, except such compensation as may be specifically paid under the Plan Act.

- (c) The Vendor shall have the right to enter upon the Property, after the completion of the within transaction, in order to complete and/or rectify those items which are included in the Tarrion Forms, and the Vendor shall complete and/or rectify same within a reasonable time after the Closing Date, having regard to the availability of equipment, materials and labour and access thereto.

12. FINISHES & APPLIANCES

- (a) Within 21 days after notification by the Vendor, the Purchaser shall complete the Vendor's colour and material selection form for those items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement, failing which the Vendor may complete the same in its sole and absolute discretion, on behalf of the Purchaser and the Purchaser shall be bound by the Vendor's selection, and the Vendor shall not be liable for any delays in having the Property ready for occupancy on the Confirmed Possession Date. The Purchaser acknowledges that only the items set out in Schedule C are included in the Purchase Price, and those furnishings, decor, improvements and samples are for conceptual and display purposes only and are not included in the Purchase Price unless specified in Schedule C. The Purchaser shall have no selection whatsoever insofar as exterior colours, designs and materials are concerned. The Purchaser further acknowledges that selections of exterior colours, designs and materials may be subject to architectural approval from a third party or the Municipality, over which the Vendor has no control. All selections of items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement are to be made from the Vendor's samples. If the Purchaser's colour, material, construction or finishing selections are unavailable for any reason whatsoever, the Vendor shall give to the Purchaser 21 days prior written notice of such unavailability, during which period, the Purchaser may make an alternate selection. If the Purchaser fails to make an alternate selection as aforesaid, the Vendor may substitute in its sole and absolute discretion, without the consent of the Purchaser, materials or finishing which are of equal or better quality, whether the same are different in colour and/or finish. The opinion of the Consultant as to the difference in quality is final and binding on the Purchaser. The Purchaser acknowledges that the colour, finish, grain, texture and/or shading of wood finishes, marble, granite, carpet, tiles, kitchen cabinetry or other manufactured finishing materials or natural may vary from that of those selected by the Purchaser from the Vendor's samples, due to the variations or shading in dye lots produced or manufactured by the suppliers.
- (b) The Purchaser covenants and agrees to pay the Vendor in advance, for all extras or changes specifically ordered by the Purchaser from the Vendor and to pay for the same forthwith upon demand. If this transaction does not close, by reason of the default of the Purchaser, the Vendor shall retain any sums so paid for extras or changes, whether installed or not, and shall not be obligated to return same to the Purchaser and the Vendor shall be allowed to deduct from any deposit or deposits paid to the Vendor any amounts remaining unpaid for extras or changes.
- (c) Where any extras so ordered are not available to the Vendor for any reason whatsoever or are not, or cannot be, installed, in the sole and absolute discretion of the Vendor, the Vendor shall refund to the Purchaser, on a timely basis after the Closing Date, all monies paid for such extras without interest, and the Purchaser shall have no recourse, action or claim against the Vendor whatsoever with respect thereto.
- (d) The Vendor shall not be responsible or liable in any way to the Purchaser for the quality of, and/or workmanship with respect to the extras, unless same are purchased from and/or constructed directly by the Vendor.

- (e) The Purchaser shall not be permitted to enter onto the Property prior to the Confirmed Possession Date without the express written authority of the Vendor and accompanied by a representative of the Vendor and any entry other than as aforesaid shall be deemed to be a trespass and the Vendor shall be entitled to exercise any rights that it may have pursuant to this Agreement or at law as a result of the same. The Purchaser also agrees that he or she will not in any circumstances, perform or have performed any work of any nature or kind whatsoever on the Property prior to the conveyance of the Property to the Purchaser and in the event of a breach of this covenant, the Vendor shall, in addition to any other remedy, be entitled to take whatever steps are necessary to remove, correct or remedy any such work and the cost or expenses thereof plus a 15% percent administration fee shall be paid forthwith upon demand to the Vendor, failing which the Vendor shall be entitled to terminate this Agreement.

13. NOISE WARNINGS AND ACKNOWLEDGMENTS

- (a) The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed from time to time by any Governmental Authorities and that the proximity of the Lands to the Bloor Subway right-of-way and transit operations may result noise, vibration, electromagnetic interference, and stray current transmissions to the Condominium ("Interferences") and despite the inclusion of control features within the Condominium, Interferences from transit operations may continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. Notwithstanding the foregoing, the Purchaser agrees to indemnify and save harmless the Toronto Transit Commission and the City of Toronto from all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore, the Purchaser acknowledges and agrees that an emissions, electromagnetic, stray current and noise-warning clause similar to the one contained herein shall be inserted into any succeeding lease, sublease, or sales agreement and that this requirement shall be binding not only on the parties hereto but also their prospective successors and assigns and shall not die with the closing of the transaction. Accordingly, despite inclusion of (proposed) noise and vibration control features within the Condominium, noise and vibration levels from the aforementioned sources may be or continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. The Purchaser further acknowledges that the elevator banks, garbage and recycling rooms, the garbage chutes, the Condominium's mechanical equipment, the Condominium's amenities and the carrying on of any commercial/retail/office activity on, upon and within the Retail Structure may cause noise levels to exceed a comfortable level and occasionally interfere with some activities of the dwelling occupants in the Condominium. Air conditioning has, or will have been, installed to achieve adequate interior sound levels. The Purchaser agrees to complete the transaction herein contemplated in accordance with the terms hereof, notwithstanding the existence of such potential noise and/or vibration concerns, and Purchaser further acknowledges and agrees that a noise warning clause similar to the preceding sentences may be registered on title to the Condominium if, in fact, same is required by any Governmental Authority. The Purchaser further acknowledges that in connection with the Vendor's application to the Governmental Authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by the Governmental Authorities relating to other warning provisions to be given to purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Building to major streets and similar matters).
- (b) The Purchaser further acknowledges that it is anticipated by the Vendor that, in connection with the Vendor's application to the Governmental Authorities for draft plan of condominium approval, certain requirements may be imposed upon the Vendor by the Governmental Authorities. Without limiting the generality of the foregoing, the Purchaser acknowledges that the City of Toronto may, in the future, assume ownership and control of the Right-of-Way over which this Condominium, its owners and occupants, will enjoy a right of access to the entrance to the below grade parking garage within the Condominium, located

immediately east of the Property as part of a potential redevelopment of lands within the vicinity of the Property. In such (future) event, the Purchaser, without prejudice to their rights under the *Planning Act*, agrees to waive and forego any right to object to any future increase in vehicular and pedestrian traffic on the Right-of-Way as may be caused either by the City's assumption of the Right-of-Way or by redevelopment of any lands whose owners have legal access to the Right-of-Way, including any change of use or increase in heights and densities as the City, or the Ontario Municipal Board on an appeal, may approve. Furthermore, the Purchaser acknowledges and agrees to provide their consent, or to direct the Condominium Corporation to provide its consent, as the case may be, to release its right-of-way without cost to the City in the event the City acquires the fee simple ownership of the Right-of-Way and opens the Right-of-Way as a public laneway. In such event, the Purchaser, as owner of the Residential Unit, agrees to execute, or to cause the Condominium Corporation within the Purchaser's ability to do so, to waive and release and claim against the City, and to indemnify and hold the City harmless from any claim or action brought by any unit owner in the Condominium arising from the use of the Right-of-Way for ingress/egress to and from the Condominium.

- (c) Notwithstanding that any proposed redevelopment of property lying to the north and east property lines of the Condominium will involve an application by an adjoining land owner for approval of any such (future) redevelopment under the *Planning Act*, and that the Purchaser, as the owner of Residential Unit, and each other unit owner in the Condominium, together with the Condominium Corporation will have rights to object to any proposed redevelopment of such adjacent lands under the *Planning Act*, including an appeal of any proposed redevelopment plan by such land owner to the Ontario Municipal Board, the Purchaser acknowledges the legal possibility that a building or a structure may, in the future, be erected immediately abutting the north and east property lines of the Condominium, to an indeterminate height.
- (d) In rooms or areas of the Residential Unit having extensive glass windows, the cooling and heating levels which are standard in other parts of the Residential Unit, may not be achieved. No supplemental heating or cooling equipment will be provided for this purpose.
- (e) The size of the Property as represented by the advertising and materials or by sales personnel is measured in accordance with the industry standard and, accordingly may differ from the measurements made using the unit boundaries set out in the Creating Documents and/or the floor plan as shown on Schedule D. The Purchaser agrees that he/she is purchasing the Property with the square footage as calculated under Builder Bulletin 22 of the Warranty Program and has no claim for rescission, damages or a price abatement based on any other method of price calculation, including using any advertised or written or verbal information about the size of the Property to calculate the price per square foot. Actual useable floor space may vary from the stated floor area as set forth in Builder Bulletin 22 of the Warranty Program. If for any reason the Vendor shall construct the Residential Unit smaller than the square footage described in Builder Bulletin 22 of the Warranty Program, the sole remedy of the Purchaser shall be damages for the difference, if any, in the market value between the Unit as constructed and the Unit as it should have been constructed. The date for determining such market value shall be the lesser value as of the date of this Agreement or the Closing Date. A letter or other acknowledgement from a Consultant calculating the size of the Residential Unit in accordance with Builder Bulletin 22 of the Warranty Program shall be final and binding. Without limiting the generality of the foregoing, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium Building for each suite type, such that units on lower levels may have less floor space due to thicker structural membranes, mechanical rooms and other similar items while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Residential Unit purchased hereunder are approximate only and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the

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Residential Unit or the actual or usable living space within the confines of the Residential Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Residential Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulk heads are installed within the Residential Unit and/or where drop ceilings are required, then the ceiling height of the Residential Unit will be less than that indicated, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.

- (f) The distances between any buildings shown on any site plan or model, and any neighbouring or adjacent buildings are approximate only and/or may be modified during construction.
- (g) The wires, cables and fittings comprising the communications system servicing the Condominium may be owned by the Vendor and/or the suppliers thereof.
- (h) The Vendor is presently, or may in the future, be processing a rezoning, Official Plan amendment, severance and/or site plan approval application (or any related and ancillary applications including, without limiting the generality of the foregoing, amendments to the Section 37 Agreement) with respect to the Lands. Without limiting the generality of the foregoing, the Purchaser acknowledges that the Vendor or its successors and assigns and/or any related and/or affiliated companies may, in the future, construct a building or buildings on land adjacent to or within the vicinity (whether separated by roadways or otherwise) of the Condominium, and that such construction will involve the operation of an overhead crane and/or boom from time to time above and over the Condominium. The Purchaser covenants and agrees not to object to such construction or claim such construction or any result in noise, odor, dust or vibration as an inconvenience or nuisance. The Purchaser further agrees with the Vendor not to object thereto, whether directly or indirectly through representation whether before the primary approval agency of any Governmental Authority or any tribunal on appeal or reference thereto, and not in any way impede or delay the process of obtaining a re-zoning, Official Plan amendments, site plan amendments, building plans, draft plans of subdivision or condominium, severance, variance or re-zoning applications brought by the Vendor, its successors or assigns or related and affiliated companies, with regard to any approvals of present or future uses of adjacent or neighbouring properties or any portions thereof. The Purchaser hereby covenants and agrees that he/she shall not oppose any such applications and this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto or in aid of an injunction restraining such opposition. The Purchaser agrees not to, whether directly or indirectly impede or delay the process of obtaining any rezoning, Official Plan amendments, site plan amendments, building plans, draft plans of subdivision or condominium, severance, variance or rezoning applications brought by the Vendor, its successors and assigns or related and/or affiliated companies, with regard to any approvals of present or future uses of the Lands.
- (i) The Purchaser acknowledges that the Declarant may lease a portion of the residential units in the Condominium, and that the portion of the residential units to the nearest anticipated 25% that the Declarant intends to lease is 25% and this paragraph shall constitute notice to the Purchaser as registered owner of the Residential Unit after Closing. The Vendor does not currently intend (but expressly reserves it right) to market blocks of units to investors.

14. NOTICES

Any notice or document required or desired to be given to the Purchaser shall be deemed to have been sufficiently given if same is in writing, and either personally delivered to the Purchaser or to his/her solicitor at the address noted in this Agreement or as subsequently confirmed by the Purchaser or the Purchaser's solicitor after acceptance of this Agreement, or mailed by prepaid ordinary post or by registered mail, or sent by facsimile transmission, addressed to the Purchaser or to his/her solicitor (as the case may be), and any such document or notice shall be deemed to have been given on the date of personal delivery, or on the date of facsimile transmission

(provided a confirmation of transmission receipt is produced at the time of facsimile transmission), or on the date of registered mailing, or on the third day (excluding Saturdays, Sundays and statutory holidays) after the date of mailing, as the case may be. Any document or notice given to the Vendor shall be in writing, and shall be deemed to have been sufficiently given if personally delivered or delivered by registered mail or telefaxed to 206 Bloor Street West Limited, Attention: the President at 416.923.0300, Renaissance Court, 162 Cumberland Street, Suite 200, Toronto, ON M5R 3N5 or at such other address as the Vendor may designate from time to time, with a copy of same to be personally delivered or telefaxed to the Vendor's Solicitors, and any such document or notice shall be deemed to have been given on the date of such personal delivery, or on the next day (excluding Saturdays, Sundays and statutory holidays) following the date of facsimile transmission, provided a confirmation of transmission receipt is produced at the time of facsimile transmission.

15. POWER OF ATTORNEY

- (a) The Purchaser hereby irrevocably constitutes and appoints the Vendor to be his/her lawful attorney, in order to execute any deposit receipt issued pursuant to Plan Act, as well as any excess condominium deposit insurance policy documents and the Tarrion Forms; and,
- (b) If the Purchaser is comprised of more than one individual, each individual (hereinafter referred to as the "Donor") hereby constitutes and appoints the other to be and act as the Donor's lawful agent and attorney, in order to execute the Purchaser's acknowledgement of receipt of the disclosure statement (or amended disclosure statement), the acknowledgement of receipt of the Disclosure Statement, the acknowledgement of receipt of a copy of the fully executed Agreement and/or for the purposes of receiving notices required or desired to be delivered by the Vendor pursuant to this Agreement.

16. GST

The Vendor acknowledges and agrees that the Purchase Price for the Residential Unit is inclusive of GST, and the Vendor shall remit the GST to the relevant Governmental Authorities as and when required under the ETA.

17. ONTARIO SINGLE SALES TAX/HARMONIZED SALES TAX

The Purchaser agrees to pay Harmonized Sales Tax on the chattels included in the Purchase Price, based on the Vendor's determination of the portion of the Purchase Price allocable thereto. The Purchaser agrees to deliver to the Vendor's solicitor, a copy of the Affidavit of Residence and Value of the Consideration on or prior to the Closing Date, indicating that Harmonized Sales Tax will be paid on the value of the chattels, as aforesaid.

18. SALES OFFICE

The Purchaser covenants that it shall not interfere with the completion of other units and common elements by the Vendor as well as the completion of the Retail Structure by the Vendor. Until the Condominium is completed and all units have been sold and title transferred, and if applicable, in circumstances where the Vendor, in the Vendor's discretion, determines in accordance with the Vendor's disclosure materials to create any future proposed condominium plan on the lands adjacent to or within the vicinity of the Condominium, the Purchaser agrees that the Vendor may make such use of the Condominium as may facilitate such completion, sale and conveyance including but not limited to the maintenance of any sales/rental or administration offices, model units, parking spaces, locker units and the adverting or showing of units and the display of signs.

19. RESIDENCY

The Vendor hereby represents that it is not now, and will not on Closing be, a non-resident of Canada as defined by Section 116 of the *Income Tax Act* (Canada).

20. NO OTHER REPRESENTATIONS

This Agreement, when accepted, shall constitute a binding agreement of purchase and sale. It is agreed and understood that there is no representation, warranty, collateral term or condition affecting this Agreement or the Property, or for which the Vendor will be held responsible or liable in any way, whether contained, portrayed, illustrated or represented by or contained in, any plan, drawing, brochure, display, model or any other sales/marketing materials, or alleged against its agent or any sales representative, other than as expressed herein in writing.

21. VARIATION OF CONDOMINIUM DOCUMENTS

The Purchaser acknowledges that the Condominium Documents including the budget statement for the one year period immediately following registration of the Condominium may vary from the proposed Condominium Documents and proposed budget statement given to the Purchaser when entering into this Agreement, and the Purchaser further hereby acknowledges and agrees that the ultimate features of the Condominium and the ultimate content and composition of the property may vary from the intended features of the Condominium and the intended content and composition of the Condominium as related to the Purchaser or as shown or illustrated in any promotional literature, sales brochures, models, sketches or any other documents or illustrations shown or given to the Purchaser when entering into this Agreement. The Purchaser hereby acknowledges and agrees that if there is a material amendment to any of the documentation or information contained in any of the Condominium Documents as a result of any of the foregoing described events or situations that affects the disclosure statement viewed as a whole, to a material extent, the Purchaser's only remedy or recourse in such event shall be restricted to rescission of this Agreement within 10 days of the Purchaser receiving notice of such material amendment (subject to the rights of the Vendor under the Act), and under no circumstances shall the Purchaser have any claim or cause of action for damages and/or for specific performance of this Agreement, notwithstanding any rule of law or equity to the contrary. The Purchaser consents to any amendment required by the Vendor to the Creating Documents, whether after or before the Closing Date, with respect to structural changes or boundary amendments or variations in connection with any unit owned by the Vendor or Declarant so long as the Purchaser's proportion of contribution to the common expenses is not thereby increased, except as contemplated in the Condominium Documents.

22. REGISTRATION COSTS

- (a) The Vendor and the Purchaser each agree to pay the cost of registration of their own documents and any tax in connection therewith. Notwithstanding the generality of the foregoing, the Purchaser agrees to pay the land transfer tax in connection with the registration of the transfer and undertakes to register the transfer on the Closing Date;
- (b) If a business transfer tax or value added tax or sales tax or similar method of taxation is imposed by the Government of Canada or Ontario prior to the Closing Date, or prior to the final payment of the unpaid balance of the Purchase Price herein, and such tax or taxes are applied to the sale of the Property or against any component, building material or service relating to the construction of the Property or the Condominium, then, notwithstanding anything else contained herein, the Purchaser acknowledges and agrees that the Purchase Price as set out in this Agreement has been computed without taking into account any such tax and that the said Purchase Price shall be increased by the amount of tax eligible in respect of the Property or otherwise with the construction of the Property or the Condominium, with the amount of such increase being paid at the earlier of the Confirmed Possession Date or the Closing Date or as soon thereafter as the amount of the said tax can be calculated and the Purchaser hereby charges the Property in favour of the Vendor, with such amount owing to be secured by a Vendor's lien, charge or caution on and against the Property. If any tax whether categorized as a business transfer tax, a modified Harmonized Sales Tax, value added tax or any other type of tax whatsoever including without limitation GST is levied or charged in connection with the termination of this Agreement by reason of the Purchaser's default, the Purchaser shall be solely responsible for paying such taxes and/or reimbursing the Vendor therefor thereafter together with any

penalties or interest imposed thereon, whether or not the legislation imposing same may place responsibility for payment thereof onto the Vendor.

23. RISK

The Property and equipment therein shall be and remain at the risk of the Vendor until the Closing Date. If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may either repair the damage and finish the Condominium and complete this transaction, or may terminate this Agreement and cause all deposit monies theretofore paid to the Vendor to be returned to the Purchaser with interest at the rate prescribed by the Act (excluding any Occupancy Fee paid pursuant to paragraph 3 of this Schedule and excluding any monies paid or payable for extras ordered by the Purchaser, whether or not installed); The Purchaser acknowledges and agrees that all insurance policies and the procurement thereof are to be for the benefit of the Vendor alone. The Purchaser shall be responsible from the Confirmed Possession Date to arrange his/her own insurance coverage in respect of personal possessions and any improvements or betterment made by or on behalf of the Purchaser.

24. RIGHT OF RE-ENTRY

Notwithstanding the closing of this transaction, the Vendor or any of its authorized representatives shall be entitled at all reasonable times to enter the Condominium (including the Property) in order to make inspections, and to do any work or repairs therein or thereon which may be deemed necessary by the Vendor, in its sole discretion, in connection with the completion, servicing or rectification of any installations in the Property or any other part of the Condominium, any part of the common elements of which the owner has the exclusive use and/or the common elements of the Condominium. This right is in addition to any other rights and easements created under the Act and/or by any documents registered or to be registered on title to the Condominium.

25. DEFAULT

- (a) Upon default of the Purchaser of any of the covenants, representations, stipulations, warranties, acknowledgements, agreements and obligations to be performed under this Agreement which continues for 7 days, then, in addition to any other rights or remedies which the Vendor may have, the Vendor, may deem the Purchaser in fundamental breach of this Agreement and in such event all deposit monies paid hereunder (including all monies paid to the Vendor by the Purchaser) shall become the absolute property of the Vendor, and may also terminate this Agreement and claim for damages in excess of the deposit monies. The Vendor is not obliged to give notice to the Purchaser that the Vendor has deemed the Purchaser to be in fundamental breach, nor is the Vendor obliged to act on the Purchaser's breach promptly or to make an election to terminate at any time prior to the delivery to the Purchaser of notice that the fundamental breach is to be treated as grounds for termination. The taking of a fresh step by the Vendor shall not be a waiver of the Vendor's rights herein unless the Vendor waives any existing breach in writing. The Vendor may, in its sole discretion, offer the Purchaser an opportunity to cure his/her breach, but the making of such an offer, or the failure for any reason by the Vendor to communicate the offer to the Purchaser shall be deemed not to be a waiver of the Vendor's right to terminate the Agreement for the breach. Notwithstanding the foregoing, the Vendor shall not be obliged to wait 7 days before terminating the Agreement if the Purchaser has failed to pay the funds or provide the documents due on the Confirmed Possession Date or the Closing Date or has by letter, act or deed communicated to the Vendor or its solicitor that he/she does not have the funds necessary to complete his/her obligations and/or does not wish to complete his/her obligations, even if such a communication purports to be "hypothetical" or "without prejudice".
- (b) In the event of the termination of this Agreement and/or the Occupancy Agreement by reason of the Purchaser's default for any other reason or event which is herein expressly provided or contemplated, then the Purchaser shall on 7 days written notice vacate the Property. If the Purchaser has entered into occupancy of the Property, there shall be deducted from any deposit or other

monies paid which may be returned to the Purchaser an amount estimated and required by the Vendor to make repairs to the Property and common elements made necessary by such occupancy. The Purchaser shall execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser, in accordance with the terms of this Agreement, does not have, any interest whatsoever in the Unit, the Condominium and/or this Agreement, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his/her lawful attorney in order to execute such releases, documents and assurances. If the Vendor is required to pay any lien, execution or encumbrance to obtain a mortgage advance, the Purchaser shall reimburse the Vendor for all amounts and costs so paid. It is understood and agreed that the rights contained in this paragraph on the part of the Vendor are in addition to any other rights which the Vendor may have at law, in equity or under any other provisions of this Agreement, and the Vendor expressly has the right to exercise all or any one or more of the rights contained in this Agreement, at law or in equity, without exercising at such time, the remainder of such right or rights and without prejudice to the right of the Vendor to exercise any other rights at law, in equity or in this Agreement. The Purchaser shall be liable to the Vendor for all of the Vendor's costs, losses and expenses arising from any default of the Purchaser either before or after termination or completion, and whether there is termination or completion of this Agreement. If the Agreement is completed, the Vendor is entitled to collect such costs, losses and expenses on the Closing Date either by an adjustment to the Purchase Price or by registering a Vendor's lien in priority to any and all mortgages. The Purchaser shall not be entitled to dispute the said costs, losses and expenses on the Closing Date but shall be limited to an action for an accounting after the Closing Date.

- (c) In the event the Vendor's Solicitors or an escrow agent is/are holding any of the deposits in trust pursuant to this Agreement, then in the event of default by the Purchaser, as aforesaid, the Purchaser hereby releases the said Vendor's Solicitors or escrow agent from any obligation to hold the deposit monies in trust and shall not make any claim whatsoever against the said Vendor's Solicitors or escrow agent and the Purchaser hereby irrevocably directs and authorizes the said Vendor's Solicitors or escrow agent to deliver the said deposit monies and accrued interest, if any, to the Vendor.
- (d) Notwithstanding the preceding paragraphs, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which are due and payable by the Purchaser to the Vendor (or its solicitors) pursuant to this Agreement are not made and are not paid on the date due but are subsequently accepted by the Vendor, notwithstanding the Purchaser's default, then such amount, payment and/or adjustment shall, until paid in full, bear interest at the rate equal to 5% per annum above the bank rate as defined in Subsection 19(2) of Ontario Regulation 48/01 to the Act as at the date of default.

26. TERMINATION WITHOUT DEFAULT

If this Agreement is terminated through no fault of the Purchaser, any and all deposit monies paid shall be returned to the Purchaser with interest, from the termination date, at the rate prescribed under the Act. The foregoing shall not oblige the Vendor to return any monies paid as an Occupancy Fee. In no event shall the Vendor be liable for any costs or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or for any fees, professional or otherwise, expended in relation to this transaction. The Purchaser acknowledges and agrees that the foregoing may be pleaded by the Vendor as an estoppel to any action brought by the Purchaser.

27. TIME OF THE ESSENCE

Time shall be of the essence of this Agreement in all respects, and any waiver, extension, abridgement or other modification of any time provisions shall not be effective unless made in writing and signed by the parties hereto or by their respective solicitors who are hereby expressly authorized in that regard.

28. NON-MERGER

All of the Purchaser's covenants, warranties, obligations and agreements herein contained in this Agreement, shall not merge on the Closing Date, but shall remain in full force and effect according to their respective terms, notwithstanding the conveyance to the Purchaser of title to the Property and the payment of the Purchase Price. The Purchaser shall give further written assurances as to the non-merger of the Purchaser's covenants, on Closing, if so requested by the Vendor. All of the Vendor's covenants, warranties, obligations and agreements herein contained expire at the later of the limitation period of a warranty under the Plan Act, a limitation period under the Act or two years after the Closing Date.

29. SUCCESSORS AND ASSIGNS

This Agreement shall enure to the benefit of and be binding upon the parties and their respective personal representatives, and heirs, successors and permitted assigns. In the event of the assignment by the Vendor of this Agreement, to the extent that the assignee thereof assumes the covenants and obligations of the Vendor hereunder, the Vendor shall thereupon and without further agreement, be freed and relieved of all liability with respect to this Agreement.

30. SEVERABLE COVENANTS

If any provision in this Agreement conflicts with the any statute, law, by-law or regulation of any competent authority, such provision shall remain enforceable, but shall be deemed to include a clause interpreting the provision as subject thereto, or subject to the Vendor complying therewith. If the Vendor cannot or does not comply therewith, only the illegal portion of the provision shall be unenforceable and it shall be severed from all other provisions, and all other provisions shall remain valid and enforceable.

31. PLANNING ACT

This Agreement is subject to compliance with Section 50 of the *Planning Act* of Ontario, R.S.O. 1990, as amended.

32. MISCELLANEOUS

- (a) The meanings of the words and phrases used in this Agreement and in any schedules annexed hereto shall have the meanings ascribed to them in the Act, unless this Agreement or the context otherwise requires a different meaning for same. This Agreement shall be read with all changes in gender and number required by the context. Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement. Execution of this Agreement by facsimile transmission shall be binding upon each party hereto and upon the parties so signing by facsimile transmission. This Agreement may be executed in counterpart.
- (b) The Purchaser acknowledges and agrees on his/her own behalf and on behalf of the Condominium Corporation that notwithstanding any rights or causes of action which he/she might otherwise have at law or in equity arising out of this Agreement, neither he/she nor the Condominium Corporation shall assert any of such rights, nor have any claim or cause of action (as a result of any matter or thing arising under or in connection with this Agreement) against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically defined as the Vendor herein, even though the Vendor may be found to be a nominee or agent of another person, firm, corporation or other legal entity.
- (c) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for a corporation to be incorporated, the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust for a corporation to be incorporated, as the case may be, shall be deemed and construed to constitute the personal guarantee of such person or persons so signing with respect to the obligations of the Purchaser herein.

- (d) The Purchaser's initial deposit cheque will only be deposited by the Vendor following the expiry of the Purchaser's statutory 10 day rescission period, and statutory interest will only commence to accrue at the prescribed rate from and after the respective dates that the Purchaser's deposit cheques have been respectively deposited into the Vendor's account for the project.
- (e) This Agreement shall be irrevocable by the Purchaser and open for acceptance by the Vendor until one minute before midnight on the 15th day after the date of execution by the Purchaser of this Agreement after which time, if not accepted, this Agreement shall be null and void and any deposit monies returned to the Purchaser, without interest.
- (f) As soon as prescribed security for the said deposit monies has been provided in accordance with the Act, and any required replacement security has been provided by the Vendor to the Warranty Program, the Vendor's Solicitors shall be entitled to release such funds to the Vendor. The Purchaser acknowledges that the Vendor's Solicitor shall be entitled to release and disburse any deposits to the Vendor (or as the Vendor may direct), in excess of \$20,000.00 when one or more excess condominium deposit insurance policies issued by any insurers selected by the Vendor authorized to provide excess condominium deposit insurance in Ontario insuring the deposit monies so withdrawn or intended to be withdrawn and delivers the said excess condominium deposit insurance policy or policies to the Purchaser or his/her solicitors.
- (g) In this subparagraph 32(g), "information" means the Purchaser's personal information (except health information). It includes information provided to the Vendor by the Purchaser, including through the products and services the Purchaser uses, obtained from others with the Purchaser's consent, and obtained by the Vendor or any lender through credit investigations.

The provisions of this subparagraph 32(g) apply for the purposes of compliance with all federal and provincial privacy laws and regulations relating to private information, and constitutes the consent of the Purchaser to the Vendor's use of the Purchaser's information.

A copy of this Agreement will be provided to any mortgagee contemplated by the Agreement. All information and documents given by the Purchaser to such mortgagee will be provided to the Vendor, including, but not limited to, income verification and down payment particulars provided by the Purchaser, including the source of funds.

This Agreement and all information given by the Purchaser to the Vendor and the Vendor's mortgagee may be used by the Vendor and/or its solicitors and the solicitors for any mortgagee for all purposes required by the Vendor and/or the mortgagee. Such purposes include the completion of this Agreement and any litigation or arbitration arising from the enforcement of the rights of the parties to this Agreement and/or the renewal or enforcement of any mortgage arising from this Agreement. The Purchaser's information may be disclosed in such proceedings to the extent required by procedural rules and to advance or defend the legal rights of the Vendor and/or the mortgagee.

To facilitate the completion of the Purchaser's selections, the Vendor may disclose to its customer service department and to its trades and suppliers this Agreement and the Purchaser's addresses and telephone, fax and e-mail addresses.

The Purchaser's information and this Agreement or a copy thereof may be disclosed for information gathering and research purposes, but only to the extent required for such purposes, as follows:

- (i) To approved trades and suppliers of the Vendor in this project, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family; and

- (ii) To any companies or legal entities that are associated with, related to or affiliated with the Vendor, as well as other future new home builders or other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are or will be developing one or more other new home and/or condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family.

The Purchaser's information and this Agreement or a copy thereof may be disclosed:

- (i) To one or more providers (whether as vendors or lessors or marketing agents) of cable television, telephone, telecommunications, hydro-electricity, water utility, hot water heater and/or natural gas services to the extent required by them to open an account for the Purchaser.
- (ii) To all taxation and assessment authorities to the extent necessary (i) that they require the information as part of the completion of this Agreement, (ii) to carry to the obligations of the parties, and (iii) to ensure compliance with all laws, including but not limited to: (a) the Canada Customs and Revenue Agency for the purpose of GST compliance and any T-5 interest reporting on a condominium unit purchase; (b) the Ministry of Revenue for the purpose of Harmonized Sales Tax and Land Transfer Tax compliance; (c) the municipal property assessment for Corporation with respect to all real property assessments; and (d) the municipality and/or regional government for the purpose of demonstrating compliance with all applicable laws and the subdivision agreement.
- (iii) To any financial institution, including a bonding or indemnity company, that is requested by the Vendor to provide prescribed security for the Purchaser's deposits.
- (iv) To Taron (formerly the Ontario New Home Warranty Program) and to any title insurance company wishing to provide title insurance to the Purchaser or any mortgagee.
- (v) To the Vendor's solicitors to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System and which may in turn involve the disclosure of such personal information to any company utilized by the Vendor for electronic document production and registration assistance.
- (vi) To the Condominium's property management office and to the Condominium Corporation after its creation (for the purposes of facilitating the completion of the corporation's voting, leasing and/or other relevant records and to the condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions).
- (h) The Purchaser acknowledges, consents and agrees that delivery of documents not intended for registration on title to the Property may be delivered by the Vendor by telefax transmission or by similar system reproducing the original or by electronic transmission of electronically signed documents through the internet. Execution of this Agreement by the Purchaser is evidence of the Purchaser's consent to the electronic delivery of documents in accordance with the *Electronic Commerce Act* S.O. 2000, as same may be amended from time to time.
- (i) The Purchaser acknowledges that the Vendor shall be obligated to issue to the Purchaser a T5 Interest Income Tax Information Return (in the prescribed form) pursuant to the provisions of the *Income Tax Act*, R.S.C., as amended, in respect

of any interest accrued to or earned by the Purchaser pursuant to the terms and provisions of the Act or this Agreement. The Purchaser agrees to provide his or her SIN within 5 days of execution of this Agreement, if not already provided and set out on the signing line of this Agreement.

(i) This Agreement has been made in the Province of Ontario and for all purposes shall be construed in accordance with and shall be governed by the laws of the Province of Ontario.

APPENDIX “U”

LINDA PARIS FAITH ROSENBERG
Plaintiff

-and-

206 BLOOR STREET WEST LIMITED carrying on business as
MUSEUM HOUSE et al.
Defendants

Court File No. CV-12-469391

JUN 29/16

D. PREGER & 206
R.O. ROLLO AND L. HILL
FOR IT

THE IT HAS CLAIMS FOR AN
EQUITABLE LIEN, A FRAUDULENT
CONVEYANCE, AND A PROPRIETARY REMEDY,
AMONG OTHER THINGS, TO ESTABLISH
PRIORITY OR A RIGHT AGAINST
OTHERS. ACCORDINGLY, WHILE SHE
CONSENTS TO AN ORDER REQUIRING THE
REGISTRAR OR DIRECTOR TO REMOVE THE
CAUTION FROM ~~SHE~~ TITLE TO 206'S
PREMISES, HER POTENTIAL PRIORITY
MAY BE OVERLAP TO BE PROTECTED PENDING
THE RESOLUTION OF THE ENTITLEMENT
OF THE IT TO PRIORITY AGREEMENT.
THE ORDER TO DO THAT 206 SHALL
PAY TO DICKINSON WRIGHT LLP IN
TORONTO 52719-1 1171492V1
THE SUM OF \$50,000 AND THAT

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD OF THE DEFENDANT
206 BLOOR STREET WEST LIMITED carrying on
business as MUSEUM HOUSE

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Toronto, Ontario, M5L 1G4

DAVID P. PREGER (36870L)
Email: dpreg@ dickinsonwright.com
Tel: (416) 546-4606
Fax: (416) 865-1398

Lawyers for the Defendant, 206 Bloor Street West Limited
carrying on business as Museum House

2

BE DELETED FROM THE TITLE REGISTER,
 DICKINSON WRIGHT LLP SHALL HOLD THE
 SUM OF \$350,000 IN TRUST FOR THE
 TT AND 206 AS BENEFICIARIES. DICKINSON
 WRIGHT SHALL ~~BE~~ HOLD THE TRUST FUNDS IN
 AN INTEREST BEARING ACCOUNT UNTIL
 IT ~~IS~~ IS SERVED WITH ~~THE~~ OR A FINAL
 ORDER OF THE COURT OR AN APPELLATE COURT
 SPECIFYING THE AMOUNT OF TRUST FUNDS TO
 BE PAID OUT TO EACH BENEFICIARY. NO PAYMENT
 OUT SHALL BE MADE UNTIL THE TIME HAS PASSED
 FOR A PARTY TO APPEAL OR TO SEEK LEAVE TO
 APPEAL AND NO SUCH PROCEEDING IS BROUGHT.

- Costs reserved to the final resolution of
 the present issue.

206 BLOOR STREET WEST LIMITED carrying on business as -and- LINDA PARIS FAITH ROSENBERG
MUSEUM HOUSE
Applicant Respondent

Court File No. CV-16-55572

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

DICKINSON WRIGHT LLP
Barristers & Solicitors
Suite 2200, P.O. Box 447
199 Bay Street
Toronto, Ontario, M5L 1G4

DAVID P. PREGGER
LSUC Registration No. 36870L
Email: dpreger@dickinsonwright.com

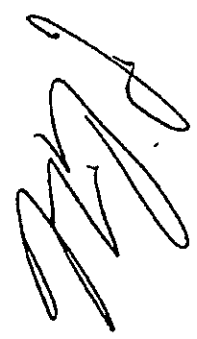
Tel: (416) 646-4606
Fax: (416) 865-1398

Lawyers for the Applicant

Just 2/15

D PREGGER FEE APP.
R.A. ROLLO AND L. HILL for
Re: RESP.

Order to go on terms set out in
para 1 (3) of this Notice of Application.
~~The~~ The order is not to be
transmitted to the Land Registrar
or registered on title to Unit 901 until
Dickinson Wright LLP in trust has received
and is held \$350,000 in accordance with
the enclosed of Party's date in Action
CV-12-469391. Costs reserved as per
the said enclosed.



TORONTO 52719-1 1171516v2

ROMSPEN INVESTMENT CORPORATION
Applicant

-and-

206 BLOOR STREET WEST LIMITED
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO
(COMMERCIAL LIST)

FIRST REPORT OF ROSEN GOLDBERG INC.

BATTISTON & ASSOCIATES
Barristers & Solicitors
1013 Wilson Avenue, Suite 202
Toronto, Ontario, M3K 1G1

HAROLD ROSENBERG (LSUC# 24219T)
Email: h.rosenberg@battistonlaw.com
Tel: (416) 630-7151 x 237
Fax: (416) 630-7472

Lawyers for Rosen Goldberg Inc.,
Court-Appointed Receiver

ROMSPEN INVESTMENT CORPORATION
Applicant

-and-

206 BLOOR STREET WEST LIMITED
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO
(COMMERCIAL LIST)

MOTION RECORD

BATTISTON & ASSOCIATES
Barristers & Solicitors
1013 Wilson Avenue, Suite 202
Toronto, Ontario, M3K 1G1

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Lawyers for Rosen Goldberg Inc.,
Court-Appointed Receiver