

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**APPLICATION UNDER SECTION 101 OF THE COURTS OF *JUSTICE ACT*, R.S.O.
1990 C. C. 43, AS AMENDED, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*,
R.S.O. 1990, C. C. 30, AS AMENDED**

APPLICATION RECORD

VOLUME II OF II

May 19, 2009

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Lawyers for the Applicants

TO: THIS HONOURABLE COURT

AND TO: SERVICE LIST ATTACHED

SERVICE LIST

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Properties

PIN 48143 - 0120 LT **Interest/Estate** Fee Simple
Description PCL 26105 SEC MUSKOKA; PT LT 24 CON 11 MEDORA PT 2 35R3373; MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA
Address MUSKOKA LAKES

PIN 48143 - 0242 LT **Interest/Estate** Fee Simple
Description PT LT 24 CON 11 MEDORA PT 5 & 6 35R20257; T/W EASEMENT OVER PT LT 24 CON 11 MEDORA AS IN LT22475; MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA
Address MUSKOKA LAKES

PIN 48143 - 0244 LT **Interest/Estate** Fee Simple
Description PT LT 24 CON 11 MEDORA PT 7 35R20257; T/W EASEMENT OVER PT LT 24 CON 11 MEDORA PT 5 35R7006 AS IN LT103789; MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA
Address MUSKOKA LAKES

PIN 48143 - 0246 LT **Interest/Estate** Fee Simple
Description PT LT 24 CON 11 MEDORA PT 8 35R20257; MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA
Address MUSKOKA LAKES

PIN 48143 - 0261 LT **Interest/Estate** Fee Simple
Description PART LT 25 CON 11 MEDORA, PT RDAL BTN LT 25 & 26 CON 11 MEDORA (CLOSED BY BY-LAW 72-34, INST. DM105704) PT 2 35R21398; PART LT 25 CON 11 MEDORA PT RDAL BTN LT 25 & 26 CON 11 MEDORA (CLOSED BY BY-LAW 72-34, INST. DM105704) PT 3 35R21398, S/T EASEMENT AS IN ME5721; PART LT 25 CON 11 MEDORA, PT RDAL BTN LT 25 & 26 CON 11 MEDORA (CLOSED BY BY-LAW 72-34, INST. DM105704), PART LT 25 CON 10 MEDORA, PT RDAL BTN CON 10 & 11 MEDORA IN FRONT OF LT 25 (CLOSED BY BY-LAW 190, INST. ME1289), PT RD RDAL BTN CON 10 & 11 MEDORA IN FRONT OF LT 24 (CLOSED BY BY-LAW 744, INST. DM12512) PT 4 35R21398; PART LT 25 CON 11 MEDORA, PT LT 25 CON 10 MEDORA, PT RDAL BTN CON 10 & 11 MEDORA IN FRONT OF LT 25 (CLOSED BY BY-LAW 190, INST. ME1289), PT RDAL BTN CON 10 & 11 MEDORA IN FRONT OF LT 24 (CLOSED BY BY-LAW 744, INST. DM12512) PT 10 35R21398 MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA
Address MUSKOKA LAKES

Chargor(s)

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

Name THE ROSSEAU RESORT DEVELOPMENTS INC.
Address for Service P.O. Box 24091
100 Hannover Drive
St. Catharines, Ontario
L2R 7P7

I, James Farrar, Authorized Signing Officer, have the authority to bind the corporation.

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

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

Name WESTLB AG, TORONTO BRANCH
Address for Service Suite 2301
P.O. Box 41
Royal Bank Plaza, North Tower
200 Bay Street
Toronto, Ontario
M5J 2J1

Attention: Robert Dyck

Statements

Schedule: See Schedules

Provisions

Principal \$ 125,000,000.00 Currency CDN
Calculation Period
Balance Due Date
Interest Rate 20.0%
Payments
Interest Adjustment Date
Payment Date On Demand
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount full insurable value
Guarantor

Signed By

Pam Nya 80 King Street Suite 800 Box 790 acting for Charge(s) Signed 2007 03 06
St. Catharines L2R 6Z1
Tel 9056411551
Fax 9056411830

Submitted By

LANCASTER, BROOKS & WELCH 80 King Street Suite 800 Box 790 2007 03 06
St. Catharines L2R 6Z1
Tel 9056411551
Fax 9056411830

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Total Paid \$60.00

File Number

Chargee Client File Number : 71418/2

SCHEDULE 1

RECITALS:

- A. The Chargor is the registered owner of Lands.
- B. The Chargor has agreed to grant this Charge to and in favour of the Chargee as general and continuing collateral security for the due payment and performance of the Secured Obligations (as defined below).

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Definitions

All capitalized terms used in this Charge that are not otherwise defined in this Charge shall have the meaning given to them in the Credit Agreement. In addition in this Charge, unless the context requires otherwise:

"Charge" means this charge/mortgage of land (including the attached charge/mortgage form, this schedule and all other schedules to this charge), as it may be amended, restated or replaced from time to time.

"Chargee" means WESTLB AG, TORONTO BRANCH, as administrative agent for the Secured Parties, in such capacity together with its successors and assigns in such capacity.

"Chargor" means THE ROSSEAU RESORT DEVELOPMENTS INC., and its successors and assigns.

"Credit Agreement" means the credit agreement dated as of February 1, 2007 among the Chargor, the Lenders, the Chargee and the other agents named in it, as it may be amended, supplemented or otherwise modified or restated from time to time.

"Default" means (i) an Event of Default under the Credit Agreement; or (ii) the failure by the Chargor to observe or perform any of the Chargor's obligations under this Charge or any other Loan Document beyond any applicable notice and cure period.

"include" and "including" mean, respectively, include and including without limitation.

"Lands" means the lands described in the attached charge/mortgage of land.

"Lease" means each existing and future lease, tenancy, right, use, agreement, occupation or licence, whether written, oral or otherwise, howsoever made in respect of the whole or any part of the Real Property.

"Lenders" means the lenders from time to time parties to the Credit Agreement and their successors and assigns.

"Permitted Lien" means (i) a Permitted Lien under the Credit Agreement; or (ii) any other encumbrance affecting the Lands otherwise permitted by the Chargee in writing.

"Principal Amount" means the principal amount set out in the attached charge/mortgage of land.

"Prior Charge" means any mortgage, charge or other financial encumbrance ranking in priority to, or equally with, this Charge and approved in writing by the Chargee.

"Property Lease" is defined in Section 9(f).

"Real Property" means all of the present and future interest of the Chargor in: (a) the Lands; (b) any real property charged in this Charge by Section 4 or under the Credit Agreement; (c) all rights, benefits, agreements, licences, privileges, option, rights-of-way, easements, privileges and rights to use or occupy now or hereafter to such real property including all amendments to them, replacements of them and substitutions for them from time to time; and (d) all fixtures.

improvements, buildings and other structures placed, installed or erected from time to time on any such real property.

"Receiver" is defined in Section 20.

"Rents" means all rents, additional rents, deposits as security or otherwise, revenues, other money, issues, benefits, rights or profits, present and future, absolute or contingent, derived or to be derived by the Chargor from the Leases or the Real Property.

"Secured Obligations" means all "Obligations" (as defined in the Credit Agreement) of the Chargor under the Loan Documents, except the obligation of the Chargor to pay an increased rate of interest pursuant to section 3.2.2 of the Credit Agreement.

"Specified Rate" means the nominal rate of 20% per annum.

2. Interpretation

(1) Headings. The division of this Charge into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge.

(2) Number and Gender. Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

(3) Business Days. If any payment is required to be made or other action is required to be taken or notice to be given pursuant to this Charge on a day that is not a Business Day, then such payment, action or notice shall be made, taken or given on the next Business Day.

(4) Calculation of Interest. In calculating interest payable under this Charge for any period of time, the first day of such period shall be included and the last day of such period shall be excluded.

(5) Statute References. Any reference in this Charge to any statute or any section of it shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

(6) Section and Schedule References. Unless the context requires otherwise, references in this Charge: if to Sections, are to Sections in this Schedule; or, if to Schedules, are Schedules to this Charge.

3. Promise to Pay

The Chargor, for value received (the receipt and adequacy of which is acknowledged), acknowledges itself indebted to the Chargee (for its own benefit and for the benefit of the Secured Parties) and its successors and assigns in the amount of the Secured Obligations and promises to pay the amount of the Secured Obligations (up to the Principal Amount) to or to the order of the Chargee (for its own benefit and for the benefit of the Secured Parties) and its successors and assigns on demand.

4. Charge

(1) Lands. As security for the payment of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate, overdue interest and all other amounts payable by the Chargor to the Chargee or to any other Secured Party or otherwise owing or payable under this Charge, and the performance by the Chargor of all its obligations under this Charge, the Chargor does by this Charge:

- (a) create a security interest in and grant, mortgage, assign, transfer and charge as and by way of a fixed and specific mortgage and charge to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties), its successors and assigns all the right, title, interest and benefit of the Chargor in, to, under or in respect of the Real Property;

- (b) subject to the last-day exception set out in Section 9(f) below, charge as and by way of a fixed and specific mortgage by way of sublease and charge to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties), its successors and assigns, all the right, title, interest and benefit of the Chargor, in, to, under or in respect of all its leasehold interests, if any, in the Real Property.

(2) Abutting Land. Where the law would make security under this Charge invalid because the Chargor has an interest in abutting land, the Chargor further mortgages and charges to the Chargee (for its own benefit and for the benefit of the Secured Parties) all abutting land that must be included in this Charge to make the security valid.

(3) Security on Other Related Land. The Chargor agrees that if it is, or becomes, entitled to an interest in other land and the other land or interest is used in connection with land described in the mortgage, the Chargor shall mortgage such other land to the Chargee (for its own benefit and for the benefit of the Secured Parties).

5. Provision for Redemption

Subject to Section 7(3), this Charge shall be void on full and indefeasible payment and performance of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate and all other amounts payable under this Charge. Interest on overdue interest shall be payable on demand at the Specified Rate.

6. Release by Chargor

The Chargor releases to the Chargee (for its own benefit and for the benefit of the Secured Parties) all its claims upon the Real Property, subject to the provision for redemption and its entitlement to obtain a discharge of this Charge.

7. Security for Secured Obligations

(1) Security for Secured Obligations. No part of any Secured Obligations of the Chargor existing at the date of this Charge or incurred or arising thereafter, shall be deemed to be unsecured by this Charge. This Charge is and shall be a continuing collateral security to the Chargee (for its own benefit and for the benefit of the Secured Parties) for the amount of such Secured Obligations and interest as herein provided and shall be deemed to be taken as security for the ultimate balance of such Secured Obligations.

(2) Changes of Form. This Charge shall be general and continuing collateral security for the Secured Obligations despite the nature or form of them or any change in the nature or form of them or in the accounts, bills of exchange, promissory notes, guarantees or other obligations now or from time to time hereafter held by the Chargee or any of the Secured Parties representing the Secured Obligations or any part of them or in the names of the parties to such bills, notes, guarantees or other obligations or any change in the constitution of the Chargor, whether because of the death or retirement or introduction of one or more partners or members or because of any corporate reorganization, amalgamation, continuance or name change or otherwise.

(3) Reductions of Principal Amount. This Charge secures or may secure loans made pursuant to one or more revolving lines of credit and such security shall continue to be effective whether any revolving line of credit is from time to time reduced and thereafter increased, or entirely extinguished and thereafter incurred again. Despite any other provision of this Charge and for greater certainty, this Charge shall not cease to operate or be or be deemed to be void by reason of the Secured Obligations becoming or being zero at any time or from time to time, and no payment (except for money realized from this Charge) received by the Chargee or any Secured Party shall reduce or be deemed to reduce, or be deemed to be a payment on account of, the Principal Amount unless at the time of such payment no Default shall have occurred and be continuing and such payment is specifically appropriated in writing by the Chargee in reduction of the Principal Amount.

(4) Application of Payments. Any and all payments made in respect of the Secured Obligations and interest, and the money or other proceeds realized from the sale of any securities held for it including this Charge, may be applied and reapplied despite any previous application on such part or parts of such Secured Obligations or interest as the Chargee may see fit or as otherwise provided in the Credit Agreement.

(5) Extensions. The Chargee may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Chargor and with other Persons and security as the Chargee may see fit without prejudice to the Secured Obligations or the Chargee's right to hold and realize the security of this Charge.

(6) No Merger. This Charge shall not operate by way of merger of the Secured Obligations or any part of them or any contract or instrument by which the Secured Obligations may now or at any time hereafter be represented, evidenced or secured. Neither the taking of any judgement nor the exercise of any power of seizure or sale shall operate to extinguish the obligation of the Chargor to pay the Secured Obligations or the Principal Amount together with interest on it, or any other money secured by this Charge, nor shall it operate as a merger of any covenant or affect the right of the Chargee to interest at the Specified Rate, and any judgement shall bear interest at the Specified Rate.

(7) Further Advances. Neither the execution nor the registration of this Charge, nor any loans or advances hereafter made to, or liability hereafter incurred for, the Chargor by the Chargee or other Secured Party shall bind the Chargee, any other Secured Party or any other Person to make or incur any further loan, advance or liability to or for the Chargor or any other Person; but nevertheless the Charge hereby created shall take effect forthwith upon the execution of this Charge by the Chargor.

(8) Additional Security. This Charge is in addition to and not in substitution for any other security now or hereafter held by the Chargee or any other Secured Party for all or any part of the Secured Obligations. The Chargor agrees that this Charge shall not create any merger or discharge of any debt owing by the Chargor to the Chargee or any other Secured Party. The Chargor further agrees that this Charge shall not in any way affect any other security now or hereafter held by the Chargee or any other Secured Party for all or any part of the Secured Obligations.

8. Representation and Warranty of the Chargor

The Chargor represents and warrants to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties) that the Chargor has good and marketable registered and beneficial title in fee simple to the Lands, subject only to any Permitted Liens.

9. Covenants of the Chargor

The Chargor covenants and agrees with the Chargee that it will:

- (a) Payment. On demand by the Chargee at any time that a Default shall have occurred and be continuing, pay the Principal Amount together with interest on it at the Specified Rate and all other amounts payable under this Charge, in the currency of the relevant obligation as stipulated in the Credit Agreement without deduction or set-off of any kind;
- (b) Perform Obligations. Duly and punctually observe and perform all of the terms and conditions of this Charge which are to be observed and performed by it;
- (c) Quiet Possession. On Default, deliver to the Chargee quiet possession of the Real Property free from all encumbrances, subject only to the Permitted Liens;
- (d) No Sale or Transfer. Not sell, transfer, assign or convey its interest in the Real Property except as permitted in the Credit Agreement; and

- (e) No Security Interests. Not create or assume or purport to create or assume any mortgage, charge, encumbrance or other security interest affecting the Real Property or any part of it other than the Permitted Liens.

In addition, with respect to any leasehold interest of the Chargor in the Real Property, the Chargor covenants and agrees with the Chargee as follows:

- (f) Last Day. To the extent that the Chargor has a leasehold interest in the Real Property pursuant to a Lease (a "Property Lease"), the security created with this Charge shall not extend or apply to the last day of the term or any renewal term of any Property Lease and it shall stand possessed of such last day in trust and shall assign it as the Chargee may direct it. At the request of the Chargee and at the cost and expense of the Chargor, the Chargor shall sell and assign to the Chargee, or any person appointed by the Chargee, the last day of the term or any renewal term of the Property Lease. If there is a sale by the Chargee as contemplated by this Charge, the Chargor shall hold such last day in trust for the purchaser. The Chargee may remove the Chargor or any other person from being a trustee of such last day and upon such removal appoint a new trustee in place of such Chargor;
- (g) No Merger. Unless the Chargee shall otherwise expressly consent in writing, the freehold interest in the Real Property and any leasehold interest of the Chargor in the Real Property under a Property Lease shall not merge but shall always remain separate despite the union of such interests either in the landlord or tenant under the Property Lease or in a third party by purchase or otherwise; and
- (h) No Surrender. Except as permitted under the Credit Agreement or with the prior written consent of the Chargee, the Chargor shall not: (i) surrender any Property Lease or any rights of renewal under any Property Lease or terminate or cancel its leasehold interest in any Real Property under any Lease; or (ii) modify, change, supplement, alter or amend its leasehold interest in any Real Property under any Lease either orally or in writing.

10. Condominium

The Chargor shall not subject the Real Property or any part of it to a condominium regime or any other form of multiple ownership or governance except in accordance with the terms of the Credit Agreement. If any part of the Real Property is a condominium unit, then the following provisions shall apply to each unit in each condominium forming part of the Real Property:

- (1) Condominium Obligations. The Chargor shall promptly observe and perform in all material respects all of its covenants, duties and obligations under or pursuant to the *Condominium Act, 1998* (Ontario) (the "*Condominium Act*") and the declaration, by-laws and rules of the condominium corporation created by registration of the declaration and the description relating to it of which the condominium unit forms part (the "*Condominium Corporation*").
- (2) Contributions and Levies. The Chargor will pay promptly when due any and all contributions to common expenses and all other levies, charges and assessments made, assessed or levied by or on behalf of the Condominium Corporation payable in respect of, or charged to the owner of, the Real Property (all such common expenses, levies, charges, assessments are called "Unit Charges").
- (3) Proof of Payment. Upon request by the Chargee from time to time, the Chargor shall provide satisfactory proof to the Chargee acting reasonably that all Unit Charges have been paid in full.
- (4) Self-Help Remedy for Non-Payment. If the Chargor does not pay any unit charges when due, then without limiting any of the other rights and remedies of the Chargee under this Charge or otherwise at law or in equity, the Chargee may (but shall not be obligated to) pay such Unit Charges and the amount so paid together with interest on it at the Specified Rate.

shall be added to the Secured Obligations and secured by this Charge and shall be payable forthwith to the Chargee upon demand.

(5) Notices. Promptly following receipt of it, the Chargor shall deliver to the Chargee copies of every notice, assessment, request, claim or demand, notice of meeting and all other documentation or information of any kind relating to the condominium unit or the Condominium Corporation received by the Chargor so that to the extent possible the Chargee receives them at least five (5) days before the date that any response, payment or other action is required.

(6) Default under this Section. Any default by the Chargor under this Section (regardless of any action or proceedings taken or proposed by the Condominium Corporation) shall constitute a Default under this Charge.

(7) Rights to Vote and Consent. The Chargor hereby irrevocably assigns to the Chargee (for its own benefit and for the benefit of the Secured Parties), and irrevocably authorizes and empowers the Chargee to exercise, all rights of the Chargor as the owner of the Real Property to vote or to consent to all matters relating to the affairs of the Condominium Corporation, provided however that:

- (a) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise such right to vote or consent and in that event until the Chargee revokes such notice the Chargor may exercise the right to vote or consent in respect of all matters not requiring a unanimous resolution (any such notice may be for an indeterminate period of time or for a specific meeting or matter);
- (b) the Chargee's right to vote and consent do not impose any obligation on the Chargee to consult with the Chargor as to the manner in which such right to vote or consent will be exercised or not exercised or to protect the Chargor's interests and the Chargee shall not be responsible for any exercise or failure to exercise the right to vote or consent;
- (c) neither this assignment and authorization in favour of the Chargee, nor the exercise by the Chargee of the right to vote or consent, shall constitute the Chargee a mortgagee in possession nor give rise to any liability on the part of the Chargee; and
- (d) until the Chargee has given to the Chargor written notice that the Chargee intends to exercise such right to vote or consent or until a Default has occurred and is continuing, the Chargor may exercise such right to vote or consent.

(8) Leases and Licenses. The Charge includes a mortgage, charge, assignment and sublease in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties) of any lease or rights to occupy any parking space or spaces in the building(s) or on the lands of which the Real Property forms part demised to or reserved or designated for exclusive use by the Chargor or its condominium unit and of any lease or right to exclusive use of any common property or special privileges in respect of it granted to the Chargor of its condominium unit.

(9) Insurance. Without limiting the obligations of the Chargor under the Credit Agreement, the Chargor shall cause the Condominium Corporation to: maintain the insurance required by the Credit Agreement with respect to all of the Real Property that is governed by the *Condominium Act* for the benefit of the Chargee (for its own benefit and for the benefit of the Secured Parties); and, comply fully with the terms of the required policies of insurance and the insurance provisions of the *Condominium Act*, the declaration, the by-laws and the rules of the Condominium Corporation.

(10) Events of Default. In addition to the events constituting Default as defined in Section 1, the occurrence of any one or more of the following events shall constitute Default:

- (a) the government of the Real Property by the Condominium Corporation or any part thereof by the Condominium Act is terminated;
- (b) 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 that are all or any part of the Real Property (unless, in the case of a part of such common elements, the Chargee, acting reasonably, determines that such part is immaterial). However, the foregoing shall not apply if the Chargee voted in favour of such sale or otherwise approved of it in writing;
- (c) all or any part of such common elements of the Condominium Corporation is expropriated (unless, in the case of a part of such common elements, the Chargee, acting reasonably, determines that such part is immaterial);
- (d) the Condominium Corporation fails to comply with any provision of the *Condominium Act* or the declaration, by-laws or any of the rules of the Condominium Corporation (unless the Chargee, acting reasonably, determines that such failure is immaterial);
- (e) the Condominium Corporation fails to insure the condominium units and the common elements governed by it in accordance with the Condominium Act and declaration and by-laws of the Condominium Corporation; or
- (f) in the Chargee's opinion acting reasonably, the Condominium Corporation fails to manage its property and assets in a prudent and business-like manner and in keeping with the highest standards for similar properties in the locality in which the Real Property is located.

11. Discharge

Upon full and indefeasible payment and performance of the Secured Obligations or upon payment of the Principal Amount, together with interest at the Specified Rate and all other amounts payable to the Chargee under this Charge, and provided that in either case neither the Chargee nor any other Secured Party nor any other Person is under any obligation to make any further loans or advances under the Credit Agreement, the Chargee shall, within a reasonable time, deliver to the Chargor a discharge of this Charge in registrable form upon reasonable prior written request by the Chargor to do so, and all reasonable legal and other expenses for the preparation, execution and delivery of such discharge shall be paid by the Chargor to the Chargee at the time of delivery of it.

12. Maintenance and Preservation of Security

(1) Maintenance. The Chargor shall maintain and repair the Real Property as required under the Credit Agreement.

(2) Maintenance and Preservation of Security. The Chargee may from time to time (without any obligation to do so or any liability in connection with it) on reasonable prior notice to the Chargor (which notice shall not be required if Default has occurred and is continuing) make such repairs as the Chargee may deem requisite or proper and may perform any acts, matters or things necessary in the opinion of the Chargee acting reasonably to protect or preserve or prevent damage to any buildings or improvements situate on the Real Property. In addition, the Chargee may from time to time (without any obligation to do so or any liability in connection with it) elect to perform any covenant of the Chargor under this Charge that the Chargor has failed to perform following reasonable prior written notice from the Chargee to the Chargor and that the Chargee is capable of performing, including any covenant the performance of which requires the payment of money, provided that no such performance by the Chargee shall require the Chargee to further perform the covenants of the Chargor. Any amounts paid by the Chargee pursuant to this Section 12(2) shall be repaid by the Chargor to the Chargee on demand, shall be secured by this Charge and shall bear interest from the date of payment by the Chargee at the Specified Rate.

(3) Inspections. The Chargor shall permit inspections of the Real Property by or on behalf of the Chargee as provided for in the Credit Agreement

(4) Not Mortgagee in Possession. It is agreed that the Chargee in exercising any of the rights given to the Chargee under this Section shall be deemed not to be a mortgagee in possession.

(5) Not a Building Charge. The buildings, erections, structures or improvements, if any, being erected or to be erected on the Real Property shall form part of it and of the security for the full amount of the money secured by this Charge, but the foregoing shall not constitute this Charge a building mortgage pursuant to section 21 of the *Mortgages Act* (Ontario) or obligate the Chargee or any other Person to advance the Principal Amount or any portion of it or any other amount whether from time to time or in the future in accordance with the progress of such building or upon its completion, occupation or sale or otherwise.

13. Prior Charges

(1) Chargor to Satisfy Terms. If the Real Property or any part of it should at any time be subject to any Prior Charge, the Chargor covenants that it will pay or cause to be paid as they become due all payments under it, whether for principal, interest, taxes or otherwise, and will observe, perform and comply with all of the other covenants, provisions and agreements contained in such Prior Charge.

(2) Chargee May Satisfy Terms. The Chargee may (but shall not be obliged to) on reasonable prior notice to the Chargor (which notice shall not be required if Default has occurred and is continuing) satisfy the whole or any part of any Prior Charge or any other prior claim or encumbrance now existing or hereafter affecting the Real Property (except as to any such Prior Charge that is a Permitted Lien, so long as the Chargor is not in default (as defined therein) under the Prior Charge (beyond any applicable notice or cure period) or so long as the Prior Charge has not matured in accordance with its terms as set out in the registered copy of it registered against title to the Real Property as of the date of this Charge) and the Chargee shall be entitled to all the equities and securities of the Person or Persons receiving such satisfaction. Any amount so paid shall be added to the Secured Obligations, shall bear interest at the Specified Rate and shall be forthwith payable by the Chargor to the Chargee on demand.

14. Fixtures

Except for any fixtures which are under the terms of any Leases the property of tenants of the Real Property and which such tenants are entitled to remove in accordance with the terms of such Leases, all buildings, erections, structures and improvements now or hereafter erected or placed upon the Real Property or now or hereafter attached to or used in connection with the Real Property including all elevators, machinery, motors, furnaces, boilers, oil and gas burners, stokers, blowers, water heaters, television antennae, tanks, electric light fixtures, floor coverings, window blinds, partitions, fire alarm and protective systems, sprinklers, screen doors and windows, refrigerators, stoves and air-conditioning, ventilating, plumbing, electrical, cooking, lighting, heating, cooling and refrigeration fixtures and equipment, and all things appurtenant to them, shall for all purposes of this Charge be fixtures and form part of the Real Property, whether or not affixed at law to the Real Property.

15. Non-Appportionment

Every part or lot into which the Real Property is or may hereafter be divided does and shall stand charged with the whole of the Principal Amount and interest and all other amounts payable under this Charge, and no Person shall have any right to require the Principal Amount or interest or such other amounts to be apportioned upon or in respect of any such part or lot.

16. Quiet Possession

Until Default, the Chargor shall be entitled to quiet possession of the Real Property.

17. Default

In addition to the Chargee's other rights, whether under this Charge or otherwise, upon the occurrence and during the continuance of any one or more Defaults, at the option of the Chargee, the Secured Obligations (including the Principal Amount), together with all interest and other amounts secured by this Charge, shall forthwith become due and payable.

18. Remedies on Default

Upon the occurrence and during the continuance of Default, the Chargee may, personally or by agent, at such time or times as the Chargee in its discretion may determine, exercise any one or more of the remedies in and by this Charge or conferred by law in case of default, including the following remedies:

- (a) Possession - entry into possession and use of the Real Property or any part or parts of it with power, among other things, to exclude the Chargor from it or them, to preserve and maintain the Real Property and to make such repairs, replacements, alterations and additions to the whole or any part of the Real Property that the Chargee may think advisable, to satisfy the whole or any part of any Prior Charge or any other prior claim or encumbrance then affecting the Real Property, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Real Property and to pay from it or them all expenses of maintaining, preserving, protecting and operating the Real Property, including payments which may be due for insurance, Taxes, assessments, charges or liens prior to the charge of this Charge upon the Real Property (including Prior Charges) and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including the power to advance its own money (with interest payable on it at the Specified Rate) and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;
- (b) Court Receiver - proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Real Property, and removal or replacement from time to time of any such receiver;
- (c) Private Receiver - appointment by instrument in writing of a receiver of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it, and removal or replacement from time to time of any such receiver;
- (d) Distress - distraint for arrears of payments in respect of the Principal Amount, interest or any other amount payable under this Charge;
- (e) Sale or Lease - sale (in accordance with Section 19), lease or other disposition of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it;
- (f) Foreclosure - proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Real Property, with or without entry into possession of it;
- (g) Action on Covenant - taking any action or proceeding to enforce the performance of any covenant in favour of the Chargee contained in this Charge, whether before or after entry into possession of the Real Property or any part of it;
- (h) Proof of Claim - filing of proofs of claim and other documents to establish the claims of the Chargee in any proceeding relating to the Chargor; and
- (i) Other - any other remedy or proceeding authorized or permitted by this Charge or at law or in equity.

No right or remedy of the Chargee under this Charge or that the Chargee may have at law or in equity shall be exclusive or dependent on any other right or remedy, but any one or more of such rights and remedies may from time to time be exercised independently or in combination. The rights, remedies and powers conferred under this Charge are supplementary to and not in substitution for any of the powers that the Chargee may have or be entitled to at law, in equity or otherwise.

19. Power of Sale

(1) Power of Sale. The Chargee, on and during Default (whether of payment or otherwise) for 15 days, may then on 35 days' prior written notice sell the Real Property. It is agreed that any notice under this Section shall be sufficiently given for all purposes if given in accordance with such applicable statutory provisions as may now or hereafter be in force and that notice shall not be required or lesser notice may be given if and to the extent permitted or authorized under or pursuant to such statutory provisions.

(2) Terms of Sale. Any sale under this Charge may be by public auction, by public tender or by private sale, with only such notice as may be required by law, at such time or times as the Chargee may determine, and either for cash or part cash and part credit, and with or without advertisement, and with or without a reserve bid, and otherwise upon such terms and conditions as the Chargee may determine (or as may be required by law). The proceeds of any sale or lease of the Real Property may be applied in payment of any costs, charges and expenses, including surveyor's charges, lawyer's fees and disbursements on a full indemnity basis and any agent's charges or commissions, including realtor's and appraiser's fees and commissions, incurred in taking, recovering and keeping possession of the Real Property or in leasing or selling the Real Property or by reason of non-payment or endeavouring to procure payment of money secured by this Charge (including sums which the Chargee has paid for Taxes, insurance and maintenance) as well as in payment of the Principal Amount and interest and all other amounts payable under this Charge to the Chargee. Sales may be made from time to time of portions of the Real Property (including sales of all or any part of the buildings, fixtures and machinery comprising the Real Property) or of the whole of the Real Property. The Chargee may make any stipulations as to title or evidence or commencement of title or otherwise which the Chargee shall deem proper and may rescind or vary any contract for sale of any of the Real Property and may buy in and resell (subject to applicable law, if any) without being answerable for loss occasioned thereby. On any sale under this Charge, the Chargee shall be accountable only for money actually received in cash as and when so received and for such purposes may make and execute all agreements and assurances as the Chargee shall think fit. The purchaser at any sale under this Charge or the lessee under any such lease shall not be bound to see to the legality, propriety or regularity of it, or that Default has happened on account of which the sale or lease is made, and no want of Default or of notice (other than as required by law) shall invalidate any sale or lease under this Charge and the remedy of the Chargor shall be in damages only. No sale or other dealing by the Chargee with the Real Property or any part of it shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee or any other Secured Party as against the Chargor or any other Person liable for payment of the money secured by this Charge.

20. Receiver

(1) Appointment of Receiver. Upon the occurrence, and during the occurrence, of any one or more events of Default, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) (a "Receiver") of the Real Property or any part of it and of the rents and profits from it and may from time to time remove any Receiver and appoint another in his place, and in making any such appointment or appointments the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention.

(2) General. The following provisions shall apply in respect of the appointment of any Receiver:

- (a) such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Real Property or any part of it;

- (b) such Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee and shall have the power to borrow on the security of the Real Property;
- (c) the Chargee may from time to time fix the remuneration of such Receiver and direct the payment of such remuneration from out of the proceeds of the Real Property;
- (d) such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and the Chargee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever;
- (e) such Receiver shall from time to time have the power to collect, realize, sell or otherwise deal with the Real Property in such manner, upon such terms and conditions and at such time or times as may seem to the Receiver to be advisable and without notice to the Chargor;
- (f) such Receiver shall from time to time have the power to lease any portion of the Real Property which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and, in so doing, such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute, under seal or otherwise, any Leases of any such premises in the name of and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever any such Receiver may do in the premises; and
- (g) such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Real Property or any part of it in the name of the Chargor for the purpose of securing the payment of rental from the Real Property or any part of it, including the power to:
 - (i) take proceedings in the name of the Chargor or otherwise and to make any arrangement or compromise;
 - (ii) borrow or raise money on all or any part of the Real Property in priority to this Charge or otherwise for such purposes as may be approved by the Chargee;
 - (iii) give any and all notices to be given by the Chargor under any Leases and exercise any and all rights of the Chargor under them;
 - (iv) do or cause to be done any and all acts and things under any Lease and adjust and settle all matters relating to such performance; and
 - (v) institute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, defend all suits, proceedings and actions against the Chargor or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action.

21. Attorney of the Chargor

(1) Under Leases. After the occurrence and during the continuance of a Default, the Chargee, as attorney or agent for the Chargor and in its name, may at any time and from time to time, exercise any of the rights, powers, authorities and discretion which under the terms of any of the Leases could be exercised by the Chargor.

(2) On Sale. In case of any sale under this Charge, whether by the Chargee or by a Receiver or under any judicial proceedings, the Chargor agrees that it will, forthwith upon

request, execute and deliver to the purchaser such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the Real Property or any part or parts of it sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such Receiver may execute and deliver to the purchaser of the Real Property or any part or parts of it such deeds, assurances, conveyances and receipts as may be necessary to transfer good and sufficient title to it or them, the Chargee or, if appointed, the Receiver being hereby irrevocably constituted the attorney of the Chargor for the purpose of making such sale and executing all deeds, assurances, conveyances, receipts and documents pertaining to it.

22. Limitation of Obligations

The Chargee shall not, nor shall any Receiver appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by it or for salaries during any period during which the Chargee or such Receiver is managing the Real Property or any part or parts of it upon or after entry, as provided for in this Charge, nor shall the Chargee nor the Receiver be liable to account as 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 might be liable.

23. Chargee's Costs

(1) Payment by Chargee. The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees and disbursements) incurred from time to time in taking, recovering and keeping possession of the Real Property or in performing work in respect of the buildings, erections, structures and improvements situate on it or in inspecting it and generally in any other proceedings taken to realize the money secured by this Charge or in protecting the security for such money, whether any action or other judicial proceeding to enforce such payment has been taken or not. Any and all amounts so paid shall be added to the Secured Obligations and shall be payable forthwith by the Chargor to the Chargee with interest at the Specified Rate from the date of payment by the Chargee.

(2) Reimbursement by Chargor. The Chargor shall immediately pay to the Chargee all amounts paid or incurred by or on behalf of the Chargee and all reasonable costs and expenses of preparing, executing and registering the Charge and any other related instruments, inspecting, protecting, repairing, completing, insuring, taking, keeping possession of and managing all or any part of the Real Property, preparing the Real Property for sale or lease, selling or leasing the Real Property, collecting all or any part of the Principal Amount, the exercise of any of the rights of a Receiver appointed pursuant to the provisions of this Charge and such Receiver's fees and expenses, agents' costs and expenses, legal fees and disbursements, and any other costs and expenses of exercising or protecting the Chargee's rights (under this Charge or otherwise) or all or any part of the Real Property.

24. Amendments

This Charge (or any agreement referred to in this Section) may from time to time be renewed or amended by one or more written agreements between the Chargor and the Chargee, with any increase or decrease in interest or extension of time for payment. Whether or not there are any other instruments registered on title to the Real Property after this Charge at the time any such written agreement is entered into, it will not be necessary for the Chargee to register the written agreement on title to the Real Property in order to retain priority for this Charge, as renewed or amended, over any other instrument registered after this Charge. No amendment of this Charge shall be effective unless made in writing and signed by the parties to this Charge.

25. Copy of Charge

The Chargor acknowledges having received a true copy of this Charge.

26. Rights and Waivers

The rights and remedies of the Chargee under this Charge:

- (a) are cumulative;

- (b) may be exercised as often and in such order as the Chargee considers appropriate;
- (c) are in addition to its rights and remedies under the general law; and
- (d) shall not be capable of being waived or varied except by virtue of an expressed waiver or variation in writing signed by an officer of the Chargee.

In particular, any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy, any defective or partial exercise of any of such rights and remedies shall not preclude any other or future exercise of that or any other such right or remedy and no act or course of conduct or negotiation on the part of the Chargee or on its behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

27. Severability

If any covenant, obligation or agreement contained in this Charge or part of it or the application of it to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Charge or the application of such covenant, obligation or agreement or part of it to any Person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement contained in this Charge shall be separately valid and enforceable to the fullest extent permitted by law.

28. Further Assurances

The Chargor covenants and agrees that it will at all times, at its own cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, charges, assignments and assurances in law, in each case consistent with the terms of this Charge or the Credit Agreement, as the Chargee may reasonably require for the better mortgaging, charging, pledging and assigning the Real Property unto the Chargee and for the better accomplishing, effectuating and perfecting of this Charge, including without limiting the generality of the foregoing, such as may be required in order to register or file this Charge or perfect the registration of this Charge wherever the Chargee in its discretion, acting reasonably, considers that it or notice of it ought to be registered or filed.

29. After Acquired Real Property

The Chargor covenants and agrees that if and to the extent that any of its right, title and interest in any of the Lands is not acquired until after delivery of this Charge, this Charge shall nonetheless apply to it and the security interest of the Chargee hereby created shall attach to such Lands, subject to Section 9(f) above, at the same time as the Chargor acquires rights in it, without the necessity of any further mortgage, charge, pledge, assignment or assurance.

30. Notices

All notices and other communications provided for under this Charge shall be given in the form and manner and delivered as specified in the Credit Agreement.

31. Time of Essence

Time shall be of the essence of this Charge in all respects.

32. Deemed Covenants

The covenants deemed to be included in a charge by Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be in addition and without limitation to the terms of this Charge.

33. Entire Agreement

This Charge, together with all other contracts or instruments evidencing or securing the Secured Obligations, constitutes the entire agreement between the parties pertaining to the subject matter of this Charge and supersedes all prior agreements, understandings, negotiations

and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Charge (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Charge and all other contracts or instruments evidencing or securing the Secured Obligations.

34. Governing Law

This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario. Without prejudice to the ability of the Chargee to enforce this Charge in any other proper jurisdiction, the Chargor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such Province. To the extent permitted by applicable law, the Chargor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Charge in the courts of such Province.

35. Assignment of Leases and Rents

(1) Assignment. As additional general and continuing collateral security for the due payment and performance of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate and all other amounts payable under this Charge, in consideration of \$10.00 now paid by the Chargee to the Chargor, the receipt and adequacy of which are acknowledged, the Chargor assigns, transfers and sets over to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties), all its right, title and interest in and the full benefit of:

- (a) the Rents; and
- (b) the Leases, including the benefit of all tenants' covenants and obligations (other than covenants or obligations to pay Rents) contained in any Leases, or in any agreement collateral to them, and including the benefit of any right, option or obligation of any tenant or other Person to renew or extend any Lease, or to lease other space, and any other collateral advantage or benefit to be derived from the Leases or any of them,

and each and every one of them (all of which are hereinafter collectively referred to as the "Assigned Lease Rights"), to have and to hold and to receive them unto the Chargee (for its own benefit and for the benefit of the Secured Parties) with full power and authority to demand, collect, sue for, recover, receive and give receipts for Rents and to enforce payment of the Assigned Lease Rights in accordance with and subject to the terms of this Charge.

(2) Performance by the Chargee. Nothing contained in this Charge shall obligate the Chargee to assume or to perform any obligation of the Chargor to any tenant or other Person in respect or arising out of the Assigned Lease Rights or any of them. The Chargee may, however, only after Default, at its option, assume or perform any of such obligations as the Chargee considers necessary or desirable to obtain the benefit of the Assigned Lease Rights free from any right of set-off, deduction or abatement and any money expended by the Chargee in this regard shall form part of the Secured Obligations and shall bear interest at the Specified Rate.

(3) Re-Assignment at the Chargee's Option. The Chargee may, at any time and whether or not Default has occurred, without further request or agreement by the Chargor, re-assign to the Chargor, its successors and assigns, any and all of the Assigned Lease Rights, by an instrument of re-assignment in writing executed by the Chargee delivered to the Chargor at its address for notice under this Charge. Such instrument upon delivery shall constitute a good and sufficient re-assignment of all of the Chargee's right, title and interest in and benefit of the Assigned Lease Rights to which it pertains and a release and termination of obligations (if any) of the Chargee with respect to them. The Chargee shall not by such re-assignment give any express or implied representation or warranty to the Chargor as to the Assigned Lease Rights or anything related to them.

(4) Re-Assignment upon Discharge of Charge. A discharge of this Charge shall operate as a re-assignment to the Chargor, its successors and assigns, of the Assigned Lease

Rights and no further acts on the part of the Chargee will be required to effect such re-assignment.

(5) Security. The assignment of the Assigned Lease Rights provided for in this Section is to be held by the Chargee (for its own benefit and for the benefit of the Secured Parties) as general and continuing collateral security for the due payment and performance of the Secured Obligations, and upon full payment and performance of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate and all other amounts payable under this Charge, the Assigned Lease Rights shall be re-assigned to the Chargor or as it may direct.

(6) Until Default. Until Default, the Chargor shall be entitled to receive all Rents and all other benefits under the Leases and to exercise its rights with respect to the Leases and shall not be liable to account for them to the Chargee, but nothing shall permit or authorize the Chargor to collect or receive the Rents contrary to the covenants contained in this Charge.

(7) Default. Upon Default, the Chargee shall have, in addition to any other remedy provided for in this Charge, the following rights and remedies:

- (a) to enter upon the Real Property or any part or parts of it for the purpose of collecting the Rents and managing, operating and maintaining its interest in the Real Property; and
- (b) to generally perform all such acts including the payment of any expenses in connection with the operation and maintenance of the Real Property and the cancellation, surrender or renewal of existing Leases, the assignment or variation of existing Leases and making concessions to tenants and other Persons and any acts by way of endorsement of the covenants and exercise of the rights contained in the Leases or otherwise, as may in the reasonable opinion of the Chargee be necessary or desirable for the proper operation and maintenance of the Real Property, which acts may be performed in the name of the Chargor or in the name of the Chargee.

(8) Rents. Upon Default, the Chargee may (but shall not be obligated to) collect the Rents, receive the other benefits under the Leases or manage the Real Property, or do all of the foregoing.

(9) Notification. Upon Default, the Chargee may, at any time or from time to time, with respect to any and all Assigned Lease Rights, give to the tenant or any other Person from whom the Chargor would have been entitled to receive or claim any benefit under the Assigned Lease Rights in question express notice in writing of this Charge, and thereafter the Chargee shall be entitled to the benefit of section 53(1) of the *Conveyancing and Law of Property Act* (Ontario). Without limiting the foregoing, the Chargee may, after giving such notice, deal with the party or parties to whom it delivered such notice in respect of the Assigned Lease Rights without reference to or consent of the Chargor, as if the Chargee were the absolute owner of the Assigned Lease Rights. The Chargor agrees that any such party or parties may rely upon any such notice given by the Chargee or on its behalf pursuant to this Section. The Chargor waives as against any such party or parties any claims it might otherwise have by reason of such party or parties acting on such notice.

(10) Collection Proceedings. Upon Default, the Chargee may (but shall not be obligated to) take in the name of the Chargor from time to time any proceeding that, in the opinion of the Chargee or its counsel, is expedient for the purpose of collecting Rents or securing the payment of Rents or enforcing the Chargor's rights under the Leases, and to demand and receive Rents and give acquittances or receipts for Rents. Upon Default, the Chargee may (but shall not be obligated to) compound, compromise or submit to arbitration any dispute that has arisen or may arise under the Leases or any of them, including disputes with respect to the amount of Rents or the rights of the parties under any Lease, and any settlement arrived at shall be binding upon the Chargor.

(11) Forbearance. If the Chargee elects to invoke any of its rights under this Section and thereafter, for any reason, relinquishes to the Chargor such rights, the provisions of this

Section shall in no respect be terminated, but instead shall remain in full force and effect until the Secured Obligations have been fully paid and performed, it being the intent of the parties that the Chargee shall, from time to time upon the occurrence of any Default under this Charge, have all the rights granted by this Section.

(12) Limitation of the Chargee's Obligations. The Chargee's obligations as to any Rents or other amounts actually collected shall be discharged by the application of such Rents or other amounts against the Secured Obligations and for any of the other purposes described in this Charge. The Chargee shall not be liable for uncollected Rents or other amounts. The Chargee shall not be liable to any tenant or other Person for the return of any security deposit made under any Lease unless the Chargee shall have received such security deposit. The Chargee shall not by reason of this Section or the exercise of any right granted under this Section be responsible for any act committed by the Chargor, or any breach or failure to perform by the Chargor with respect to any of the Assigned Lease Rights. Nothing contained in this Section shall be deemed to have the effect of making the Chargee a mortgagee in possession of the Real Property or any part of the Real Property.

(13) Receipts by the Chargee. The Chargor agrees that all receipts given by the Chargee to any tenant or other Person under the Leases on account of any Rents paid to the Chargee in accordance with the terms of this Section shall constitute a good and valid discharge of such Rents to each such tenant or other Person.

36. Successors and Assigns

This Charge shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

37. Conflict

If there is a conflict or inconsistency between the provisions of the Credit Agreement and the provisions of this Charge, the provisions of the Credit Agreement shall prevail. However, the existence of additional terms, conditions or provisions (including any rights, remedies, covenants, representations or warranties) that are contained in this Charge and that are not included in the Credit Agreement shall not be construed or deemed as being in conflict and shall remain in effect.

Properties

PIN 48143 - 0266 LT Interest/Estate Fee Simple ☒ Redescription
Description [ATTACH DESCRIPTION]
Address MUSKOKA LAKES

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 THE ROSSEAU RESORT DEVELOPMENTS INC.
Acting as a company
Address for Service 1112 Juddhaven Road
P.O. Box 30
Minett, Ontario
POB 1G0

I, , have the authority to bind the corporation.

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

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

Name WESTLB AG, TORONTO BRANCH
Acting as a company
Address for Service Suite 2301
P.O. Box 41
Royal Bank Plaza, North Tower
200 Bay Street
Toronto, Ontario
M5J 2J1
Attention: Robert Dyck, Executive Director

Provisions

Principal \$ 125,000,000.00 Currency CDN
Calculation Period SEE SCHEDULE
Balance Due Date ON DEMAND
Interest Rate 20.0%
Payments
Interest Adjustment Date
Payment Date ON DEMAND
First Payment Date
Last Payment Date
Standard Charge Terms N/A
Insurance Amount full insurable value
Guarantor N/A

Additional Provisions

[attach schedule]

File Number

Chargor Client File Number : 00777101011

Chargee Client File Number : 71416/2

Appendix A to Schedule 1
(WestLB Supplemental Charge)

LANDS

Freehold Lands

FIRSTLY: [*Development Lands and Commercial Condominium Lands*]

Part of PIN 48143-0266 (LT)

Firstly: Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 2 on Reference Plan 35R-21398;

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 3 on Reference Plan 35R-21398, SUBJECT to Easement as in ME5721;

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), part of Lot 25, Concession 10 Medora, part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512), designated as Part 4 on Reference Plan 35R-21398;

Part of Lot 25, Concession 11 Medora, part of Lot 25, Concession 10 Medora, part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512) designated as Part 10 on Reference Plan 35R-21398;

all in the Township of Muskoka Lakes, in the District Municipality of Muskoka

Secondly: Part of Lot 24, Concession 11 Medora, designated as Part 8 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

Thirdly: Part of Lot 24, Concession 11 Medora, designated as Part 7 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

TOGETHER WITH an easement over Part of Lot 24, Concession 11 Medora, designated as Part 5 on Reference Plan 35R-7006, as in LT103789

Fourthly: Part of Lot 24, Concession 11 Medora, designated as Parts 5 and 6 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

TOGETHER WITH an easement over Part of Lot 24, Concession 11 Medora, as in LT22475

Fifthly: Part of Lot 24, Concession 11 Medora, designated as Part 2 on Reference Plan 35R-3373, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

SAVE AND EXCEPT Parts 13, 21, 22, 24, 25, 37, 38, 40, 41, 48, 49, 50 and 52 on Reference Plan 35R-22417 [being Units 1 to 39, both inclusive, Level 1; Units 1 to 66, both inclusive, Level 2; Units 1 to 67, both inclusive, Level 3; Units 1 to 50, both inclusive, Level 4; Muskoka Standard Condominium Plan No. ; together with their appurtenant interests];

TOGETHER WITH an easement over part of Lot 25, Concession 11 Medora, part of Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704) designated as Part 1 on Plan 35R-21398, as in Instrument No. MT62693; (*Golf Course Blanket Easement*);

TOGETHER WITH an easement over part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2, Plan 35R-22417, as in Instrument No. MT62703; (*Sewage Treatment Plant Easement*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 4, 5, 6, 7, 8, 9, 10 and 12, Plan 35R-22417, as in Instrument No. MT62714; (*Circle Road/Services and Access Easement – 2162262 Ontario Inc. PIN 48143-0247*);

TOGETHER WITH Sewer Line Easement over Part 3 on Plan 35R-22417 as in Instrument No. MT62714;

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 14 and 15, Plan 35R-22417, as in Instrument No. MT62715; (*Circle Road/Services and Access Easement – 2027587 Ontario Inc. – PIN 48143-0245*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 17 and 18, Plan 35R-22417, as in Instrument No. MT62717; (*Circle Road/Services and Access Easement - Wallace Marine - PIN 48143-0243*);

TOGETHER WITH easements over part of Lots 24 and 25, Concession 11 Medora, designated as Part 20, Plan 35R-22417 and Part of Lot 25, Concession 11 Medora, designated as Part 27, Plan 35R-22417, as in Instrument No. MT62718; (*Circle Road/Services and Access Easement – 2027588 Ontario Inc. – PIN 48143-0267*);

TOGETHER WITH Access and Services Easement over, along, upon and under all of the Common Elements of Muskoka Standard Condominium Plan No. _____ as in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Circle and Loop Roads Easement over, along and upon Parts 25, 37 and 38, Plan 35R-22417, as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO easement as in Instrument No. MT62692. (*RRDI Blanket Easement*);

SUBJECT TO Access and Services Easement [*over, along, upon and under all of the Development Lands and the Commercial Condominium Lands in favour of the lands in Muskoka Standard Condominium Plan No. _____*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Propane Tank Easement over Part 44 on Plan 35R-22417 [*in favour of Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Stormwater Pond Easement over Parts 43 and 45 on Plan 35R-22417 [*in favour of Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Loop Road Easement over Parts 36 and 39 on Plan 35R-22417 [*in favour of the Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Cabana Easement over Part 51 on Plan 35R-22417 [*in favour of the Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Golf Course Access Easement over Parts 36, 39 and 43 on Plan 35R-22417 [*in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269*], as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Golf Course Water Easement over Parts 39, 43 and 45 on Plan 35R-22417 [in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269], as in Instrument No. [Insert Resort Declaration No.];

SUBJECT TO Wallace Marine Bay Properties Access Easement over Parts 36 and 39 on Plan 35R-22417 [in favour of the lands in PIN Nos. 48143-0518, 48143-0247, 48143-0245, 48143-0045, 48143-0243 and 48143-0267], as in Instrument No. [Insert Resort Declaration No.];

SECONDLY: [Resort Condominium Lands]

Part of PIN 48143-0266(LT)

Part of Lot 24, Concession 11 Medora, designated as Part 13 on Reference Plan 35R-22417 and part of Lots 24 and 25, Concession 11 Medora, designated as Parts 21 and 22 on Reference Plan 35R-22417 and part of Lot 25, Concession 11 Medora, designated as Parts 24, 37, 38, 40, 41, 48, 49, 50 and 52, on Reference Plan 35R-22417 and part of Lot 25, Concession 11 Medora, and part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (closed by By-law 72-34, Instrument No. DM105704), designated as Part 25, on Reference Plan 35R-22417, [being Units 1 to 39, both inclusive, Level 1; Units 1 to 66, both inclusive, Level 2; Units 1 to 67, both inclusive, Level 3; Units 1 to 50, both inclusive, Level 4; Muskoka Standard Condominium Plan No. ; together with their appurtenant interests]; in the Township of Muskoka Lakes; in the District Municipality of Muskoka;

TOGETHER WITH easement over part of Lot 25, Concession 11 Medora, part of Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704) designated as Part 1 on Plan 35R-21398, as in Instrument No. MT62693; (*Golf Course Blanket Easement*);

TOGETHER WITH easement over part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2, Plan 35R-22417, as in Instrument No. MT62703; (*Sewage Treatment Plant Easement*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 4, 5, 6, 7, 8, 9, 10 and 12, Plan 35R-22417, as in Instrument No. MT62714; (*Circle Road/Services and Access Easement – 2162262 Ontario Inc. PIN 48143-0247*);

TOGETHER WITH the Sewer Line Easement over Part 3 on Plan 35R-22417, as in Instrument No. MT62714;

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 14 and 15, Plan 35R-22417, as in Instrument No. MT62715; (*Circle Road/Services and Access Easement – 2027587 Ontario Inc. – PIN 48143-0245*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 17 and 18, Plan 35R-22417, as in Instrument No. MT62717; (*Circle Road/Services and Access Easement - Wallace Marine - PIN 48143-0243*);

TOGETHER WITH easements over part of Lots 24 and 25, Concession 11 Medora, designated as Part 20, Plan 35R-22417 and Part of Lot 25, Concession 11 Medora, designated as Part 27, Plan 35R-22417, as in Instrument No. MT62718; (*Circle Road/Services and Access Easement – 2027588 Ontario Inc. – PIN 48143-0267*);

TOGETHER WITH Access and Services Easement [over, along, upon and under the Development Lands and Commercial Condominium Lands] as in Instrument No. [Insert Resort Declaration No.];

TOGETHER WITH Signage Easement over Part 7 on Plan 35R-3373, as in Instrument No. [Insert Resort Declaration No.];

TOGETHER WITH Propane Tank Farm Easement over Part 44 on Plan 35R-22417, as in Instrument No. *[Insert Resort Declaration No.]*;

TOGETHER WITH Stormwater Pond Easement over Parts 43 and 45 on Plan 35R-22417, as in Instrument No. *[Insert Resort Declaration No.]*;

TOGETHER WITH Loop Road Easement over Parts 36 and 39 on Plan 35R-22417, as in Instrument No. *[Insert Resort Declaration No.]*;

TOGETHER WITH Cabana Easement over Part 51 on Plan 35R-22417 as in Instrument No. *[Insert Resort Declaration No.]*;

TOGETHER WITH Hotel Easement in favour of Unit 28, Level 1, Muskoka Standard Condominium Plan No. (the Hotel Management Unit) and its appurtenant interest over the common interest in the Common Elements only appurtenant to Units 1 to 39, Level 1; Units 1 to 66, Level 2; Units 1 to 67, Level 3; Units 1 to 50, Level 4; Muskoka Standard Condominium Plan No. as in Instrument No. *[Insert Hotel Easement No.]*

SUBJECT TO Hotel Easement over the common interest in the Common Elements only appurtenant to Units 1 to 39, Level 1; Units 1 to 66, Level 2; Units 1 to 67, Level 3; Units 1 to 50, Level 4; Muskoka Standard Condominium Plan No. *[in favour of Unit 28, Level 1, Muskoka Standard Condominium Plan No. and its appurtenant interest]* as in Instrument No. *[Insert Hotel Easement No.]*

SUBJECT TO easement over Part 25 on Plan 35R-22417 as in Instrument No. ME5721;

SUBJECT TO easement as in Instrument No. MT62692; *(RRDI Blanket Easement)*

SUBJECT TO Access and Services Easement *[over, along, upon and under the Common Elements of Resort Condominium in favour of the Development Lands and the Commercial Condominium Lands]* as in Instrument No. *[Insert Resort Declaration No.]*;

SUBJECT TO Circle and Loop Roads Easement over Parts 25, 37 and 38, Plan 35R-22417 *[in favour of the Development Lands and the Commercial Condominium Lands]*, as in Instrument No. *[Insert Resort Declaration No.]*;

SUBJECT TO Golf Course Access Easement over Parts 25, 37 and 38 on Plan 35R-22417 *[in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269]* as in Instrument No. *[Insert Resort Declaration No.]*;

SUBJECT TO Golf Course Water Easement over Parts 24, 25, 38, 41 and 52 on Plan 35R-22417 *[in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504; 48142-0341, 48143-0201 and 48143-0269]* as in Instrument No. *[Insert Resort Declaration No.]*;

SUBJECT TO Wallace Marine Bay Properties Access Easement over Parts 25, 37 and 38 on Plan 35R-22417 *[in favour of lands in PIN Nos. 48143-0518, 48143-0247, 48143-0245, 48143-0045, 48143-0243 and 48143-0267]* as in Instrument No. *[Insert Resort Declaration No.]*.

Leasehold Lands

Part of PIN 48143-0518(LT)

Part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2, on Reference Plan 35R-22417, in the Township of Muskoka Lakes, in the District Municipality of Muskoka;

TOGETHER WITH an easement over part of Lot 25, Concession 11 Medora, part of Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law

72-34, Instrument No. DM105704) designated as Part 1 on Plan 35R-21398, as in Instrument No. MT62704; (*Blanket Effluent Easement*);

SUBJECT TO an easement over part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2 on Plan 35R-22417, [*in favour of the Resort Condominium Lands, Development Lands and Commercial Condominium Lands*] as in Instrument No. MT62703. (*Sewage Treatment Plant Easement*).

SCHEDULE 1

RECITALS:

- A. The Chargor is the registered: freehold owner of the Freehold Lands; and, leasehold owner of the Leasehold Lands, as the tenant under the Ground Lease.
- B. The Chargor has agreed to grant this Charge to and in favour of the Chargee as general and continuing collateral security for the due payment and performance of the Secured Obligations (as defined below).

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Definitions

All capitalized terms used in this Charge that are not otherwise defined in this Charge shall have the meaning given to them in the Credit Agreement. In addition in this Charge, unless the context requires otherwise:

"Charge" means this charge/mortgage of land (including the attached charge/mortgage form or notice of charge of lease form, this schedule and all other schedules to this charge), as it may be amended, restated or replaced from time to time.

"Chargee" means WESTLB AG, TORONTO BRANCH, as administrative agent for the Secured Parties, in such capacity together with its successors and assigns in such capacity.

"Chargor" means THE ROSSEAU RESORT DEVELOPMENTS INC., and its successors and assigns.

"Credit Agreement" means the credit agreement dated as of February 1, 2007 among the Chargor, the Lenders, the Chargee and the other agents named in it, as it may be amended, supplemented or otherwise modified or restated from time to time.

"Default" means (i) an Event of Default under the Credit Agreement; or (ii) the failure by the Chargor to observe or perform any of the Chargor's obligations under this Charge or any other Loan Document beyond any applicable notice and cure period.

"Freehold Lands" means the lands described under heading "Freehold Lands" in the attached Appendix A.

"Ground Lease" means the lease dated February 13, 2009 from Wallace Marine Limited, as landlord, to the Chargor, as tenant (including all amendments, extensions, renewals and replacements with respect to it), notice of which was registered against title to the Leasehold Lands on February 13, 2009 as Instrument No. MT62702.

"include" and **"including"** mean, respectively, include and including without limitation.

"Lands" means the Freehold Lands and Leasehold Lands described in the attached Appendix A.

"Lease" means each existing and future lease, tenancy, sub-lease, sub-tenancy, right, use, agreement, occupation or licence, whether written, oral or otherwise, howsoever made in respect of the whole or any part of the Real Property.

"Leasehold Lands" means the lands described under heading "Leasehold Lands" in the attached Appendix A.

"Leasehold Mortgagee Agreement" means the leasehold mortgagee agreement made as of March _____, 2009 between Wallace Marine Limited, the Chargor, the Chargee, Fortress Credit Corp., Muskoka Standard Condominium Corporation No. _____ and Meridian Credit Union Limited.

"Lenders" means the lenders from time to time parties to the Credit Agreement and their successors and assigns.

"Permitted Lien" means (i) a Permitted Lien under the Credit Agreement; or (ii) any other encumbrance affecting the Lands otherwise permitted by the Chargee in writing.

"Principal Amount" means the principal amount set out in the attached charge/mortgage of land or notice of charge of lease.

"Prior Charge" means any mortgage, charge or other financial encumbrance ranking in priority to, or equally with, this Charge and approved in writing by the Chargee.

"Property Lease" is defined in Section 10(f).

"Real Property" means all of the present and future interest of the Chargor in: (a) the Lands; (b) any real property charged in this Charge by Section 4 or under the Credit Agreement; (c) all rights, benefits, agreements, licences, privileges, option, rights-of-way, easements, privileges and rights to use or occupy now or hereafter relating to such real property including: (i) all amendments to them, replacements of them and substitutions for them from time to time; or (ii) under the Ground Lease; and (d) all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property.

"Receiver" is defined in Section 21.

"Rents" means all rents, additional rents, deposits as security or otherwise, revenues, other money, issues, benefits, rights or profits, present and future, absolute or contingent, derived or to be derived by the Chargor from the Leases or the Real Property.

"Secured Obligations" means all "Obligations" (as defined in the Credit Agreement) of the Chargor under the Loan Documents, except the obligation of the Chargor to pay an increased rate of interest pursuant to section 3.2.2 of the Credit Agreement.

"Specified Rate" means the nominal rate of 20% per annum.

2. Interpretation

(1) **Headings.** The division of this Charge into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge.

(2) **Number and Gender.** Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

(3) **Business Days.** If any payment is required to be made or other action is required to be taken or notice to be given pursuant to this Charge on a day that is not a Business Day, then such payment, action or notice shall be made, taken or given on the next Business Day.

(4) **Calculation of Interest.** In calculating interest payable under this Charge for any period of time, the first day of such period shall be included and the last day of such period shall be excluded.

(5) **Statute References.** Any reference in this Charge to any statute or any section of it shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

(6) **Section and Schedule References.** Unless the context requires otherwise, references in this Charge: if to Sections, are to Sections in this Schedule; or, if to Schedules, are Schedules to this Charge.

3. Promise to Pay

The Chargor, for value received (the receipt and adequacy of which is acknowledged), acknowledges itself indebted to the Chargee (for its own benefit and for the benefit of the

Secured Parties) and its successors and assigns in the amount of the Secured Obligations and promises to pay the amount of the Secured Obligations (up to the Principal Amount) to or to the order of the Chargee (for its own benefit and for the benefit of the Secured Parties) and its successors and assigns on demand.

4. Charge

(1) Lands. As security for the payment of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate, overdue interest and all other amounts payable by the Chargor to the Chargee or to any other Secured Party or otherwise owing or payable under this Charge, and the performance by the Chargor of all its obligations under this Charge, the Chargor does by this Charge:

- (a) create a security interest in and grant, mortgage, assign, transfer and charge as and by way of a fixed and specific mortgage and charge to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties), its successors and assigns all the right, title, interest and benefit of the Chargor in, to, under or in respect of the Real Property; and
- (b) subject to the last-day exception set out in Section 10(f) below, charge as and by way of a fixed and specific mortgage by way of sublease and charge to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties), its successors and assigns, all the right, title, interest and benefit of the Chargor, in, to, under or in respect of all its leasehold interests, if any, in the Real Property, including:
 - (i) all options of any kind, rights of first refusal, privileges and other benefits under the Ground Lease; and
 - (ii) all Leases, licenses, operator agreements and concessions under the Ground Lease or otherwise affecting the Real Property.

(2) Abutting Land. Where the law would make security under this Charge invalid because the Chargor has an interest in abutting land, the Chargor further mortgages and charges to the Chargee (for its own benefit and for the benefit of the Secured Parties) all abutting land that must be included in this Charge to make the security valid.

(3) Security on Other Related Land. The Chargor agrees that if it is, or becomes, entitled to an interest in other land and the other land or interest is used in connection with land described in the mortgage, the Chargor shall mortgage such other land to the Chargee (for its own benefit and for the benefit of the Secured Parties).

5. Provision for Redemption

Subject to Section 7(3), this Charge shall be void on full and indefeasible payment and performance of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate and all other amounts payable under this Charge. Interest on overdue interest shall be payable on demand at the Specified Rate.

6. Release by Chargor

The Chargor releases to the Chargee (for its own benefit and for the benefit of the Secured Parties) all its claims upon the Real Property, subject to the provision for redemption and its entitlement to obtain a discharge of this Charge.

7. Security for Secured Obligations

(1) Security for Secured Obligations. No part of any Secured Obligations of the Chargor existing at the date of this Charge or incurred or arising thereafter, shall be deemed to be unsecured by this Charge. This Charge is and shall be a continuing collateral security to the Chargee (for its own benefit and for the benefit of the Secured Parties) for the amount of such Secured Obligations and interest as herein provided and shall be deemed to be taken as security for the ultimate balance of such Secured Obligations.

(2) Changes of Form. This Charge shall be general and continuing collateral security for the Secured Obligations despite the nature or form of them or any change in the nature or form of them or in the accounts, bills of exchange, promissory notes, guarantees or other obligations now or from time to time hereafter held by the Chargee or any of the Secured Parties representing the Secured Obligations or any part of them or in the names of the parties to such bills, notes, guarantees or other obligations or any change in the constitution of the Chargor, whether because of the death or retirement or introduction of one or more partners or members or because of any corporate reorganization, amalgamation, continuance or name change or otherwise.

(3) Reductions of Principal Amount. This Charge secures or may secure loans made pursuant to one or more revolving lines of credit and such security shall continue to be effective whether any revolving line of credit is from time to time reduced and thereafter increased, or entirely extinguished and thereafter incurred again. Despite any other provision of this Charge and for greater certainty, this Charge shall not cease to operate or be or be deemed to be void by reason of the Secured Obligations becoming or being zero at any time or from time to time, and no payment (except for money realized from this Charge) received by the Chargee or any Secured Party shall reduce or be deemed to reduce, or be deemed to be a payment on account of, the Principal Amount unless at the time of such payment no Default shall have occurred and be continuing and such payment is specifically appropriated in writing by the Chargee in reduction of the Principal Amount.

(4) Application of Payments. Any and all payments made in respect of the Secured Obligations and interest, and the money or other proceeds realized from the sale of any securities held for it including this Charge, may be applied and reapplied despite any previous application on such part or parts of such Secured Obligations or interest as the Chargee may see fit or as otherwise provided in the Credit Agreement.

(5) Extensions. The Chargee may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Chargor and with other Persons and security as the Chargee may see fit without prejudice to the Secured Obligations or the Chargee's right to hold and realize the security of this Charge.

(6) No Merger. This Charge shall not operate by way of merger of the Secured Obligations or any part of them or any contract or instrument by which the Secured Obligations may now or at any time hereafter be represented, evidenced or secured. Neither the taking of any judgement nor the exercise of any power of seizure or sale shall operate to extinguish the obligation of the Chargor to pay the Secured Obligations or the Principal Amount together with interest on it, or any other money secured by this Charge, nor shall it operate as a merger of any covenant or affect the right of the Chargee to interest at the Specified Rate, and any judgement shall bear interest at the Specified Rate.

(7) Further Advances. Neither the execution nor the registration of this Charge, nor any loans or advances hereafter made to, or liability hereafter incurred for, the Chargor by the Chargee or other Secured Party shall bind the Chargee, any other Secured Party or any other Person to make or incur any further loan, advance or liability to or for the Chargor or any other Person, but nevertheless the Charge hereby created shall take effect forthwith upon the execution of this Charge by the Chargor.

(8) Additional Security. This Charge is in addition to and not in substitution for any other security now or hereafter held by the Chargee or any other Secured Party for all or any part of the Secured Obligations. The Chargor agrees that this Charge shall not create any merger or discharge of any debt owing by the Chargor to the Chargee or any other Secured Party. The Chargor further agrees that this Charge shall not in any way affect any other security now or hereafter held by the Chargee or any other Secured Party for all or any part of the Secured Obligations.

8. Title

The Chargor represents and warrants to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties) that Chargor has a good and marketable, registered and beneficial:

- (a) freehold title to the Freehold Lands; and
 - (b) leasehold title to the Leasehold Lands pursuant to the Ground Lease
- subject only to any Permitted Liens.

9. Ground Lease

The Chargor covenants, represents and warrants to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties) that:

- (a) No Default. There is and has been no default in the performance of the Ground Lease by the Chargor, nor has any event occurred or condition arisen to the best knowledge of the Chargor that, with the passage of time, or the giving of notice, or both, would constitute a default under or a breach of the Ground Lease by the Chargor.
- (b) Rents. All rents, additional rents, percentage rents and all other charges due and payable under the Ground Lease have been fully paid.
- (c) Leased Lands. Except as otherwise previously disclosed in writing by the Chargor to the Chargee, the Ground Lease and the Real Property cover 100% of any leasehold interest in and to the lands leased by the Ground Lease and the Chargor is the owner of the entire tenant's interest in and under the Ground Lease and has the right and authority under the Ground Lease to execute this Charge and to encumber the Chargor's interest in the Ground Lease.
- (d) Performance. The Chargor shall, at its sole cost and expense, promptly and timely perform and observe all the terms covenants and conditions required to be performed and observed by the Chargor as tenant the Ground Lease (including the payment of all rent, additional rent, percentage rent and other charges required to be paid under the Ground Lease).
- (e) Curing Default. If the Chargor violates any of the covenants specified in Section 9(d) above, or any covenant or obligation to the Chargor under the Ground Lease that may have the effect of jeopardizing any of the Chargee's rights under Article 16 of the Ground Lease, the Chargee shall have the right (but not the obligation), without notice to the Chargor: (i) to take any action that may be necessary to prevent or cure any default of the Chargor under the Ground Lease, if necessary to protect the Chargee's and the Lenders' interests under this Charge; and (ii) to enter all or any portion of the Lands at such times and in such manner as the Chargee deems necessary, in order to prevent or to cure any such default, all of the foregoing subject to and in accordance with the Leasehold Mortgagee Agreement.
- (f) Effect of Curing Default. The curing by the Chargee of any default by the Chargor under the Ground Lease shall not remove or waive, as between the Chargor and the Chargee, the default that occurred under this Charge by virtue of the default by the Chargor under the Ground Lease. All such indebtedness shall be deemed to be secured by this Charge. No action or payment taken or made by the Chargee to prevent or cure a default by the Chargor under the Ground Lease shall waive or cure the corresponding default by the Chargor under this Charge.
- (g) Notice of Default. The Chargor shall notify the Chargee promptly in writing of:
 - (i) the occurrence of any material default by the landlord under the Ground Lease or the occurrence of any event that, with the passage of time or service of notice,

or both, would constitute a material default by the landlord under the Ground Lease; and, (ii) the receipt by the Chargor of any notice (written or otherwise) from the landlord under the Ground Lease noting or claiming the occurrence of any default by the Chargor under the Ground Lease or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a default by the Chargor under the Ground Lease. The Chargor shall deliver to the Chargee a copy of any such written notice of default.

- (h) Estoppel Certificate. Promptly upon demand by the Chargee from time to time, the Chargor shall use reasonable efforts (other than payment to the landlord) to obtain from the landlord under the Ground Lease, and furnish to the Chargee, an estoppel certificate of such landlord stating the date through which rent has been paid and whether or not there are any defaults under its lease and specifying the nature of such claimed defaults, if any.
- (i) Arbitration or Appraisal Etc. The Chargor shall promptly notify the Chargee, in writing, of any request made by either party to the Ground Lease for arbitration or appraisal proceedings, pursuant to the Ground Lease and of the institution of any arbitration or appraisal proceedings, as well as of all proceedings under the Ground Lease, and shall promptly deliver to the Chargee a copy of the determination of the arbitrators or appraisers in each such arbitration or appraisal proceeding. The Chargee shall have the right (but not the obligation), following the delivery of written notice of the Chargor, to participate in the appointment of any arbitrator or appraiser to be appointed by the Chargor and to participate in such arbitration or appraisal proceedings in association with the Chargor or on its own behalf as an interested party. The Chargor shall promptly notify the Chargee, in writing, of the institution of any legal proceedings involving obligations under the Ground Lease. The Chargee may intervene in any such legal proceedings and be made a party to them. The Chargor shall promptly provide the Chargee with a copy of any decisions rendered in connection with such proceedings.
- (j) Attorney Etc. The Chargor shall promptly execute, acknowledge and deliver to the Chargee such instruments as may reasonably be required to permit the Chargee to cure any default under the Ground Lease or permit the Chargee to take such other action required to enable the Chargee to cure or remedy the matter in default and preserve the security interest of the Chargee under this Charge with respect to the Ground Lease. The Chargor hereby irrevocably appoints the Chargee as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents which are necessary to preserve any rights of the Chargor under or with respect to the Ground Lease, including the right to effectuate any extension or renewal of the Ground Lease, or to preserve any rights of the Chargor whatsoever in respect of any part of a Ground Lease (and the above powers granted to the Chargor are coupled with an interest and shall be irrevocable).

10. Covenants of the Chargor

The Chargor covenants and agrees with the Chargee that it will:

- (a) Payment. On demand by the Chargee at any time that a Default shall have occurred and be continuing, pay the Principal Amount together with interest on it at the Specified Rate and all other amounts payable under this Charge, in the currency of the relevant obligation as stipulated in the Credit Agreement without deduction or set-off of any kind.
- (b) Perform Obligations. Duly and punctually observe and perform all of the terms and conditions of this Charge which are to be observed and performed by it;
- (c) Quiet Possession. On Default, deliver to the Chargee quiet possession of the Real Property free from all encumbrances, subject only to the Permitted Liens;

- (d) No Sale or Transfer. Not sell, transfer, assign or convey its interest in the Real Property except as permitted in the Credit Agreement; and
- (e) No Security Interests. Not create or assume or purport to create or assume any mortgage, charge, encumbrance or other security interest affecting the Real Property or any part of it other than the Permitted Liens.

In addition, with respect to any leasehold interest of the Chargor in the Real Property, the Chargor covenants and agrees with the Chargee as follows:

- (f) Last Day. To the extent that the Chargor has a leasehold interest in the Real Property pursuant to the Ground Lease or other Lease (collectively, a "**Property Lease**"), the security created with this Charge shall not extend or apply to the last day of the term or any renewal term of any Property Lease and it shall stand possessed of such last day in trust and shall assign it as the Chargee may direct it. At the request of the Chargee and at the cost and expense of the Chargor, the Chargor shall sell and assign to the Chargee, or any person appointed by the Chargee, the last day of the term or any renewal term of the Property Lease. If there is a sale or transfer by the Chargee as contemplated by this Charge, the Chargor shall hold such last day in trust for the purchaser or transferee. The Chargee may remove the Chargor or any other person from being a trustee of such last day and upon such removal appoint a new trustee in place of such Chargor;
- (g) No Merger. Unless the Chargee shall otherwise expressly consent in writing, the freehold interest in the Real Property and any leasehold interest of the Chargor in the Real Property under a Property Lease shall not merge but shall always remain separate despite the union of such interests either in the landlord or tenant under the Property Lease or in a third party by purchase or otherwise; and
- (h) No Surrender. Except as permitted under the Credit Agreement or with the prior written consent of the Chargee, the Chargor shall not: (i) surrender any Property Lease or any rights of renewal under any Property Lease or terminate or cancel its leasehold interest in any Real Property under any Lease; or (ii) modify, change, supplement, alter or amend its leasehold interest in any Real Property under any Lease either orally or in writing.

11. Condominium

The Chargor shall not subject the Real Property or any part of it to a condominium regime or any other form of multiple ownership or governance except in accordance with the terms of the Credit Agreement. If any part of the Real Property is a condominium unit, then the following provisions shall apply to each unit in each condominium forming part of the Real Property:

(1) Condominium Obligations. The Chargor shall promptly observe and perform in all material respects all of its covenants, duties and obligations under or pursuant to the *Condominium Act, 1998* (Ontario) (the "**Condominium Act**") and the declaration, by-laws and rules of the condominium corporation created by registration of the declaration and the description relating to it of which the condominium unit forms part (the "**Condominium Corporation**").

(2) Contributions and Levies. The Chargor will pay promptly when due any and all contributions to common expenses and all other levies, charges and assessments made, assessed or levied by or on behalf of the Condominium Corporation payable in respect of, or charged to the owner of, the Real Property (all such common expenses, levies, charges, assessments are called "**Unit Charges**").

(3) Proof of Payment. Upon request by the Chargee from time to time, the Chargor shall provide satisfactory proof to the Chargee acting reasonably that all Unit Charges have been paid in full.

(4) Self-Help Remedy for Non-Payment. If the Chargor does not pay any unit charges when due, then without limiting any of the other rights and remedies of the Chargee under this Charge or otherwise at law or in equity, the Chargee may (but shall not be obligated to) pay such Unit Charges and the amount so paid together with interest on it at the Specified Rate shall be added to the Secured Obligations and secured by this Charge and shall be payable forthwith to the Chargee upon demand.

(5) Notices. Promptly following receipt of it, the Chargor shall deliver to the Chargee copies of every notice, assessment, request, claim or demand, notice of meeting and all other documentation or information of any kind relating to the condominium unit or the Condominium Corporation received by the Chargor so that to the extent possible the Chargee receives them at least five (5) days before the date that any response, payment or other action is required.

(6) Default under this Section. Any default by the Chargor under this Section (regardless of any action or proceedings taken or proposed by the Condominium Corporation) shall constitute a Default under this Charge.

(7) Rights to Vote and Consent. The Chargor hereby irrevocably assigns to the Chargee (for its own benefit and for the benefit of the Secured Parties), and irrevocably authorizes and empowers the Chargee to exercise, all rights of the Chargor as the owner of the Real Property to vote or to consent to all matters relating to the affairs of the Condominium Corporation, provided however that:

- (a) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise such right to vote or consent and in that event until the Chargee revokes such notice the Chargor may exercise the right to vote or consent in respect of all matters not requiring a unanimous resolution (any such notice may be for an indeterminate period of time or for a specific meeting or matter);
- (b) the Chargee's right to vote and consent do not impose any obligation on the Chargee to consult with the Chargor as to the manner in which such right to vote or consent will be exercised or not exercised or to protect the Chargor's interests and the Chargee shall not be responsible for any exercise or failure to exercise the right to vote or consent;
- (c) neither this assignment and authorization in favour of the Chargee, nor the exercise by the Chargee of the right to vote or consent, shall constitute the Chargee a mortgagee in possession nor give rise to any liability on the part of the Chargee; and
- (d) until the Chargee has given to the Chargor written notice that the Chargee intends to exercise such right to vote or consent or until a Default has occurred and is continuing, the Chargor may exercise such right to vote or consent.

(8) Leases and Licenses. The Charge includes a mortgage, charge, assignment and sublease in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties) of any lease or rights to occupy any parking space or spaces in the building(s) or on the lands of which the Real Property forms part demised to or reserved or designated for exclusive use by the Chargor or its condominium unit and of any lease or right to exclusive use of any common property or special privileges in respect of it granted to the Chargor or its condominium unit.

(9) Insurance. Without limiting the obligations of the Chargor under the Credit Agreement, the Chargor shall cause the Condominium Corporation to: maintain the insurance required by the Credit Agreement with respect to all of the Real Property that is governed by the *Condominium Act* for the benefit of the Chargee (for its own benefit and for the benefit of the Secured Parties); and, comply fully with the terms of the required policies of insurance and the insurance provisions of the *Condominium Act*, the declaration, the by-laws and the rules of the Condominium Corporation.

(10) Events of Default. In addition to the events constituting Default as defined in Section 1, the occurrence of any one or more of the following events shall constitute Default:

- (a) the government of the Real Property by the Condominium Corporation or any part thereof by the Condominium Act is terminated;
- (b) 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 that are all or any part of the Real Property (unless, in the case of a part of such common elements, the Chargee, acting reasonably, determines that such part is immaterial). However, the foregoing shall not apply if the Chargee voted in favour of such sale or otherwise approved of it in writing;
- (c) all or any part of such common elements of the Condominium Corporation is expropriated (unless, in the case of a part of such common elements, the Chargee, acting reasonably, determines that such part is immaterial);
- (d) the Condominium Corporation fails to comply with any provision of the *Condominium Act* or the declaration, by-laws or any of the rules of the Condominium Corporation (unless the Chargee, acting reasonably, determines that such failure is immaterial);
- (e) the Condominium Corporation fails to insure the condominium units and the common elements governed by it in accordance with the Condominium Act and declaration and by-laws of the Condominium Corporation; or
- (f) in the Chargee's opinion acting reasonably, the Condominium Corporation fails to manage its property and assets in a prudent and business-like manner and in keeping with the highest standards for similar properties in the locality in which the Real Property is located.

12. Discharge

Upon full and indefeasible payment and performance of the Secured Obligations or upon payment of the Principal Amount, together with interest at the Specified Rate and all other amounts payable to the Chargee under this Charge, and provided that in either case neither the Chargee nor any other Secured Party nor any other Person is under any obligation to make any further loans or advances under the Credit Agreement, the Chargee shall, within a reasonable time, deliver to the Chargor a discharge of this Charge in registrable form upon reasonable prior written request by the Chargor to do so, and all reasonable legal and other expenses for the preparation, execution and delivery of such discharge shall be paid by the Chargor to the Chargee at the time of delivery of it.

13. Maintenance and Preservation of Security

(1) Maintenance. The Chargor shall maintain and repair the Real Property as required under the Credit Agreement.

(2) Maintenance and Preservation of Security. The Chargee may from time to time (without any obligation to do so or any liability in connection with it) on reasonable prior notice to the Chargor (which notice shall not be required if Default has occurred and is continuing) make such repairs as the Chargee may deem requisite or proper and may perform any acts, matters or things necessary in the opinion of the Chargee acting reasonably to protect or preserve or prevent damage to any buildings or improvements situate on the Real Property. In addition, the Chargee may from time to time (without any obligation to do so or any liability in connection with it) elect to perform any covenant of the Chargor under this Charge that the Chargor has failed to perform following reasonable prior written notice from the Chargee to the Chargor and that the Chargee is capable of performing, including any covenant the performance of which requires the payment of money, provided that no such performance by the Chargee shall require the Chargee to further perform the covenants of the Chargor. Any amounts paid by the Chargee pursuant to this Section 13(2) shall be repaid by the Chargor to the Chargee on demand, shall be

secured by this Charge and shall bear interest from the date of payment by the Chargee at the Specified Rate.

(3) Inspections. The Chargor shall permit inspections of the Real Property by or on behalf of the Chargee as provided for in the Credit Agreement

(4) Not Mortgagee in Possession. It is agreed that the Chargee in exercising any of the rights given to the Chargee under this Section shall be deemed not to be a mortgagee in possession.

(5) Not a Building Charge. The buildings, erections, structures or improvements, if any, being erected or to be erected on the Real Property shall form part of it and of the security for the full amount of the money secured by this Charge, but the foregoing shall not constitute this Charge a building mortgage pursuant to section 21 of the *Mortgages Act* (Ontario) or obligate the Chargee or any other Person to advance the Principal Amount or any portion of it or any other amount whether from time to time or in the future in accordance with the progress of such building or upon its completion, occupation or sale or otherwise.

14. Prior Charges

(1) Chargor to Satisfy Terms. If the Real Property or any part of it should at any time be subject to any Prior Charge, the Chargor covenants that it will pay or cause to be paid as they become due all payments under it, whether for principal, interest, taxes or otherwise, and will observe, perform and comply with all of the other covenants, provisions and agreements contained in such Prior Charge.

(2) Chargee May Satisfy Terms. The Chargee may (but shall not be obliged to) on reasonable prior notice to the Chargor (which notice shall not be required if Default has occurred and is continuing) satisfy the whole or any part of any Prior Charge or any other prior claim or encumbrance now existing or hereafter affecting the Real Property (except as to any such Prior Charge that is a Permitted Lien, so long as the Chargor is not in default (as defined therein) under the Prior Charge (beyond any applicable notice or cure period) or so long as the Prior Charge has not matured in accordance with its terms as set out in the registered copy of it registered against title to the Real Property as of the date of this Charge) and the Chargee shall be entitled to all the equities and securities of the Person or Persons receiving such satisfaction. Any amount so paid shall be added to the Secured Obligations, shall bear interest at the Specified Rate and shall be forthwith payable by the Chargor to the Chargee on demand.

15. Fixtures

Except for any fixtures which are under the terms of any Leases the property of tenants of the Real Property and which such tenants are entitled to remove in accordance with the terms of such Leases, all buildings, erections, structures and improvements now or hereafter erected or placed upon the Real Property or now or hereafter attached to or used in connection with the Real Property (including: the private sewage treatment plant to be erected on the Lands by the Chargor, together with all fixtures, equipment and other improvements; any other improvements which may be constructed by the Chargor in the future on the Lands; and all elevators, machinery, motors, furnaces, boilers, oil and gas burners, stokers, blowers, water heaters, television antennae, tanks, electric light fixtures, floor coverings, window blinds, partitions, fire alarm and protective systems, sprinklers, screen doors and windows, refrigerators, stoves and air-conditioning, ventilating, plumbing, electrical, cooking, lighting, heating, cooling and refrigeration fixtures and equipment) and all things appurtenant to them shall for all purposes of this Charge be fixtures and form part of the Real Property, whether or not affixed at law to the Real Property.

16. Non-Appportionment

Every part or lot into which the Real Property is or may hereafter be divided does and shall stand charged with the whole of the Principal Amount and interest and all other amounts payable under this Charge, and no Person shall have any right to require the Principal Amount or interest or such other amounts to be apportioned upon or in respect of any such part or lot.

17. Quiet Possession

Until Default, the Chargor shall be entitled to quiet possession of the Real Property.

18. Default

In addition to the Chargee's other rights, whether under this Charge or otherwise, upon the occurrence and during the continuance of any one or more Defaults, at the option of the Chargee, the Secured Obligations (including the Principal Amount), together with all interest and other amounts secured by this Charge, shall forthwith become due and payable.

19. Remedies on Default

Upon the occurrence and during the continuance of Default (subject only to the Leasehold Mortgage Agreement, if applicable) the Chargee may, personally or by agent, at such time or times as the Chargee in its discretion may determine, exercise any one or more of the remedies in and by this Charge or conferred by law in case of default, including the following remedies:

- (a) Possession - entry into possession and use of the Real Property or any part or parts of it with power, among other things, to exclude the Chargor from it or them, to preserve and maintain the Real Property and to make such repairs, replacements, alterations and additions to the whole or any part of the Real Property that the Chargee may think advisable, to satisfy the whole or any part of any Prior Charge or any other prior claim or encumbrance then affecting the Real Property, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Real Property and to pay from it or them all expenses of maintaining, preserving, protecting and operating the Real Property, including payments which may be due for insurance, Taxes, assessments, charges or liens prior to the charge of this Charge upon the Real Property (including Prior Charges) and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including the power to advance its own money (with interest payable on it at the Specified Rate) and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;
- (b) Court Receiver - proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Real Property, and removal or replacement from time to time of any such receiver;
- (c) Private Receiver - appointment by instrument in writing of a receiver of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it, and removal or replacement from time to time of any such receiver;
- (d) Distress - distraint for arrears of payments in respect of the Principal Amount, interest or any other amount payable under this Charge;
- (e) Sale or Lease - sale (in accordance with Section 20), lease or other disposition of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it;
- (f) Foreclosure - proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Real Property, with or without entry into possession of it;
- (g) Action on Covenant - taking any action or proceeding to enforce the performance of any covenant in favour of the Chargee contained in this Charge, whether before or after entry into possession of the Real Property or any part of it;

- (h) Proof of Claim - filing of proofs of claim and other documents to establish the claims of the Chargee in any proceeding relating to the Chargor;
- (i) Ground Lease - enter into amendments, extensions, cancellations or renewals of the Ground Lease; and
- (j) Other - any other remedy or proceeding authorized or permitted by this Charge or at law or in equity.

No right or remedy of the Chargee under this Charge or that the Chargee may have at law or in equity shall be exclusive or dependent on any other right or remedy, but any one or more of such rights and remedies may from time to time be exercised independently or in combination. The rights, remedies and powers conferred under this Charge are supplementary to and not in substitution for any of the powers that the Chargee may have or be entitled to at law, in equity or otherwise.

20. Power of Sale

(1) Power of Sale. The Chargee, on and during Default (whether of payment or otherwise) for 15 days, may then on 35 days' prior written notice sell the Real Property. It is agreed that any notice under this Section shall be sufficiently given for all purposes if given in accordance with such applicable statutory provisions as may now or hereafter be in force and that notice shall not be required or lesser notice may be given if and to the extent permitted or authorized under or pursuant to such statutory provisions.

(2) Terms of Sale. Any sale under this Charge may be by public auction, by public tender or by private sale, with only such notice as may be required by law, at such time or times as the Chargee may determine, and either for cash or part cash and part credit, and with or without advertisement, and with or without a reserve bid, and otherwise upon such terms and conditions as the Chargee may determine (or as may be required by law). The proceeds of any sale or lease of the Real Property may be applied in payment of any costs, charges and expenses, including surveyor's charges, lawyer's fees and disbursements on a full indemnity basis and any agent's charges or commissions, including realtor's and appraiser's fees and commissions, incurred in taking, recovering and keeping possession of the Real Property or in leasing or selling the Real Property or by reason of non-payment or endeavouring to procure payment of money secured by this Charge (including sums which the Chargee has paid for Taxes, insurance and maintenance) as well as in payment of the Principal Amount and interest and all other amounts payable under this Charge to the Chargee. Sales may be made from time to time of portions of the Real Property (including sales of all or any part of the buildings, fixtures and machinery comprising the Real Property) or of the whole of the Real Property. The Chargee may make any stipulations as to title or evidence or commencement of title or otherwise which the Chargee shall deem proper and may rescind or vary any contract for sale of any of the Real Property and may buy in and resell (subject to applicable law, if any) without being answerable for loss occasioned thereby. On any sale under this Charge, the Chargee shall be accountable only for money actually received in cash as and when so received and for such purposes may make and execute all agreements and assurances as the Chargee shall think fit. The purchaser at any sale under this Charge or the tenant under any such lease shall not be bound to see to the legality, propriety or regularity of it, or that Default has happened on account of which the sale or lease is made, and no want of Default or of notice (other than as required by law) shall invalidate any sale or lease under this Charge and the remedy of the Chargor shall be in damages only. No sale or other dealing by the Chargee with the Real Property or any part of it shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee or any other Secured Party as against the Chargor or any other Person liable for payment of the money secured by this Charge.

21. Receiver

(1) Appointment of Receiver. Upon the occurrence, and during the occurrence, of any one or more events of Default, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) (a "Receiver") of the Real Property or any part of it and of the rents and profits from it and may from time to time remove any Receiver and appoint another in his place, and in making any such appointment or appointments

the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention.

(2) General. The following provisions shall apply in respect of the appointment of any Receiver:

- (a) such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Real Property or any part of it;
- (b) such Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee and shall have the power to borrow on the security of the Real Property;
- (c) the Chargee may from time to time fix the remuneration of such Receiver and direct the payment of such remuneration from out of the proceeds of the Real Property;
- (d) such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and the Chargee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever;
- (e) such Receiver shall from time to time have the power to collect, realize, sell or otherwise deal with the Real Property in such manner, upon such terms and conditions and at such time or times as may seem to the Receiver to be advisable and without notice to the Chargor;
- (f) such Receiver shall from time to time have the power to lease any portion of the Real Property which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and, in so doing, such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute, under seal or otherwise, any Leases of any such premises in the name of and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever any such Receiver may do in the premises; and
- (g) such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Real Property or any part of it in the name of the Chargor for the purpose of securing the payment of rental from the Real Property or any part of it, including the power to:
 - (i) take proceedings in the name of the Chargor or otherwise and to make any arrangement or compromise;
 - (ii) borrow or raise money on all or any part of the Real Property in priority to this Charge or otherwise for such purposes as may be approved by the Chargee;
 - (iii) give any and all notices to be given by the Chargor under any Leases and exercise any and all rights of the Chargor under them;
 - (iv) do or cause to be done any and all acts and things under any Lease and adjust and settle all matters relating to such performance; and
 - (v) institute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, defend all suits, proceedings and actions against the Chargor or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action.

22. Attorney of the Chargor

(1) Under Leases. After the occurrence and during the continuance of a Default, the Chargee, as attorney or agent for the Chargor and in its name, may at any time and from time to time, exercise any of the rights, powers, authorities and discretion which under the terms of any of the Leases could be exercised by the Chargor.

(2) On Sale. In case of any sale under this Charge, whether by the Chargee or by a Receiver or under any judicial proceedings, the Chargor agrees that it will, forthwith upon request, execute and deliver to the purchaser such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the Real Property or any part or parts of it sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such Receiver may execute and deliver to the purchaser of the Real Property or any part or parts of it such deeds, assurances, conveyances and receipts as may be necessary to transfer good and sufficient title to it or them, the Chargee or, if appointed, the Receiver being hereby irrevocably constituted the attorney of the Chargor for the purpose of making such sale and executing all deeds, assurances, conveyances, receipts and documents pertaining to it.

23. Limitation of Obligations

The Chargee shall not, nor shall any Receiver appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by it or for salaries during any period during which the Chargee or such Receiver is managing the Real Property or any part or parts of it upon or after entry, as provided for in this Charge, nor shall the Chargee nor the Receiver be liable to account as 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 might be liable.

24. Chargee's Costs

(1) Payment by Chargee. The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees and disbursements) incurred from time to time in taking, recovering and keeping possession of the Real Property or in performing work in respect of the buildings, erections, structures and improvements situate on it or in inspecting it and generally in any other proceedings taken to realize the money secured by this Charge or in protecting the security for such money, whether any action or other judicial proceeding to enforce such payment has been taken or not. Any and all amounts so paid shall be added to the Secured Obligations and shall be payable forthwith by the Chargor to the Chargee with interest at the Specified Rate from the date of payment by the Chargee.

(2) Reimbursement by Chargor. The Chargor shall immediately pay to the Chargee all amounts paid or incurred by or on behalf of the Chargee and all reasonable costs and expenses of preparing, executing and registering the Charge and any other related instruments, inspecting, protecting, repairing, completing, insuring, taking, keeping possession of and managing all or any part of the Real Property, preparing the Real Property for sale or lease, selling or leasing the Real Property, collecting all or any part of the Principal Amount, the exercise of any of the rights of a Receiver appointed pursuant to the provisions of this Charge and such Receiver's fees and expenses, agents' costs and expenses, legal fees and disbursements, and any other costs and expenses of exercising or protecting the Chargee's rights (under this Charge or otherwise) or all or any part of the Real Property.

25. Amendments

This Charge (or any agreement referred to in this Section) may from time to time be renewed or amended by one or more written agreements between the Chargor and the Chargee, with any increase or decrease in interest or extension of time for payment. Whether or not there are any other instruments registered on title to the Real Property after this Charge at the time any such written agreement is entered into, it will not be necessary for the Chargee to register the written agreement on title to the Real Property in order to retain priority for this Charge, as renewed or amended, over any other instrument registered after this Charge. No amendment of this Charge shall be effective unless made in writing and signed by the parties to this Charge.

26. Copy of Charge

The Chargor acknowledges having received a true copy of this Charge.

27. Rights and Waivers

The rights and remedies of the Chargee under this Charge:

- (a) are cumulative;
- (b) may be exercised as often and in such order as the Chargee considers appropriate;
- (c) are in addition to its rights and remedies under the general law; and
- (d) shall not be capable of being waived or varied except by virtue of an expressed waiver or variation in writing signed by an officer of the Chargee.

In particular, any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy, any defective or partial exercise of any of such rights and remedies shall not preclude any other or future exercise of that or any other such right or remedy and no act or course of conduct or negotiation on the part of the Chargee or on its behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

28. Severability

If any covenant, obligation or agreement contained in this Charge or part of it or the application of it to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Charge or the application of such covenant, obligation or agreement or part of it to any Person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement contained in this Charge shall be separately valid and enforceable to the fullest extent permitted by law.

29. Further Assurances

The Chargor covenants and agrees that it will at all times, at its own cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, charges, assignments and assurances in law, in each case consistent with the terms of this Charge or the Credit Agreement, as the Chargee may reasonably require for the better mortgaging, charging, pledging and assigning the Real Property unto the Chargee and for the better accomplishing, effectuating and perfecting of this Charge, including without limiting the generality of the foregoing, such as may be required in order to register or file this Charge or perfect the registration of this Charge wherever the Chargee in its discretion, acting reasonably, considers that it or notice of it ought to be registered or filed.

30. After Acquired Real Property

The Chargor covenants and agrees that if and to the extent that any of its right, title and interest in any of the Lands is not acquired until after delivery of this Charge, this Charge shall nonetheless apply to it and the security interest of the Chargee hereby created shall attach to such Lands, subject to Section 10(f) above, at the same time as the Chargor acquires rights in it, without the necessity of any further mortgage, charge, pledge, assignment or assurance.

31. Notices

All notices and other communications provided for under this Charge shall be given in the form and manner and delivered as specified in the Credit Agreement.

32. Time of Essence

Time shall be of the essence of this Charge in all respects.

33. Deemed Covenants

The covenants deemed to be included in a charge by Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be in addition and without limitation to the terms of this Charge.

34. Entire Agreement

This Charge, together with all other contracts or instruments evidencing or securing the Secured Obligations, constitutes the entire agreement between the parties pertaining to the subject matter of this Charge and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Charge (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Charge and all other contracts or instruments evidencing or securing the Secured Obligations.

35. Governing Law

This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario. Without prejudice to the ability of the Chargee to enforce this Charge in any other proper jurisdiction, the Chargor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such Province. To the extent permitted by applicable law, the Chargor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Charge in the courts of such Province.

36. Assignment of Leases and Rents

(1) Assignment. As additional general and continuing collateral security for the due payment and performance of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate and all other amounts payable under this Charge, in consideration of \$10.00 now paid by the Chargee to the Chargor, the receipt and adequacy of which are acknowledged, the Chargor assigns, transfers and sets over to and in favour of the Chargee (for its own benefit and for the benefit of the Secured Parties), all its right, title and interest in and the full benefit of:

- (a) the Rents; and
- (b) the Leases, including the benefit of all tenants' covenants and obligations (other than covenants or obligations to pay Rents) contained in any Leases, or in any agreement collateral to them, and including the benefit of any right, option or obligation of any tenant or other Person to renew or extend any Lease, or to lease other space, and any other collateral advantage or benefit to be derived from the Leases or any of them,

and each and every one of them (all of which are hereinafter collectively referred to as the "Assigned Lease Rights"), to have and to hold and to receive them unto the Chargee (for its own benefit and for the benefit of the Secured Parties) with full power and authority to demand, collect, sue for, recover, receive and give receipts for Rents and to enforce payment of the Assigned Lease Rights in accordance with and subject to the terms of this Charge.

(2) Performance by the Chargee. Nothing contained in this Charge shall obligate the Chargee to assume or to perform any obligation of the Chargor to any tenant or other Person in respect or arising out of the Assigned Lease Rights or any of them. The Chargee may, however, only after Default, at its option, assume or perform any of such obligations as the Chargee considers necessary or desirable to obtain the benefit of the Assigned Lease Rights free from any right of set-off, deduction or abatement and any money expended by the Chargee in this regard shall form part of the Secured Obligations and shall bear interest at the Specified Rate.

(3) Re-Assignment at the Chargee's Option. The Chargee may, at any time and whether or not Default has occurred, without further request or agreement by the Chargor,

re-assign to the Chargor, its successors and assigns, any and all of the Assigned Lease Rights, by an instrument of re-assignment in writing executed by the Chargee delivered to the Chargor at its address for notice under this Charge. Such instrument upon delivery shall constitute a good and sufficient re-assignment of all of the Chargee's right, title and interest in and benefit of the Assigned Lease Rights to which it pertains and a release and termination of obligations (if any) of the Chargee with respect to them. The Chargee shall not by such re-assignment give any express or implied representation or warranty to the Chargor as to the Assigned Lease Rights or anything related to them.

(4) Re-Assignment upon Discharge of Charge. A discharge of this Charge shall operate as a re-assignment to the Chargor, its successors and assigns, of the Assigned Lease Rights and no further acts on the part of the Chargee will be required to effect such re-assignment.

(5) Security. The assignment of the Assigned Lease Rights provided for in this Section is to be held by the Chargee (for its own benefit and for the benefit of the Secured Parties) as general and continuing collateral security for the due payment and performance of the Secured Obligations, and upon full payment and performance of the Secured Obligations (including the payment of the Principal Amount), together with interest at the Specified Rate and all other amounts payable under this Charge, the Assigned Lease Rights shall be re-assigned to the Chargor or as it may direct.

(6) Until Default. Until Default, the Chargor shall be entitled to receive all Rents and all other benefits under the Leases and to exercise its rights with respect to the Leases and shall not be liable to account for them to the Chargee, but nothing shall permit or authorize the Chargor to collect or receive the Rents contrary to the covenants contained in this Charge.

(7) Default. Upon Default, the Chargee shall have, in addition to any other remedy provided for in this Charge, the following rights and remedies:

- (a) to enter upon the Real Property or any part or parts of it for the purpose of collecting the Rents and managing, operating and maintaining its interest in the Real Property; and
- (b) to generally perform all such acts including the payment of any expenses in connection with the operation and maintenance of the Real Property and the cancellation, surrender or renewal of existing Leases, the assignment or variation of existing Leases and making concessions to tenants and other Persons and any acts by way of endorsement of the covenants and exercise of the rights contained in the Leases or otherwise, as may in the reasonable opinion of the Chargee be necessary or desirable for the proper operation and maintenance of the Real Property, which acts may be performed in the name of the Chargor or in the name of the Chargee.

(8) Rents. Upon Default, the Chargee may (but shall not be obligated to) collect the Rents, receive the other benefits under the Leases or manage the Real Property, or do all of the foregoing.

(9) Notification. Upon Default, the Chargee may, at any time or from time to time, with respect to any and all Assigned Lease Rights, give to the tenant or any other Person from whom the Chargor would have been entitled to receive or claim any benefit under the Assigned Lease Rights in question express notice in writing of this Charge, and thereafter the Chargee shall be entitled to the benefit of section 53(1) of the *Conveyancing and Law of Property Act* (Ontario). Without limiting the foregoing, the Chargee may, after giving such notice, deal with the party or parties to whom it delivered such notice in respect of the Assigned Lease Rights without reference to or consent of the Chargor, as if the Chargee were the absolute owner of the Assigned Lease Rights. The Chargor agrees that any such party or parties may rely upon any such notice given by the Chargee or on its behalf pursuant to this Section. The Chargor waives as against any such party or parties any claims it might otherwise have by reason of such party or parties acting on such notice.

(10) Collection Proceedings. Upon Default, the Chargee may (but shall not be obligated to) take in the name of the Chargor from time to time any proceeding that, in the opinion of the Chargee or its counsel, is expedient for the purpose of collecting Rents or securing the payment of Rents or enforcing the Chargor's rights under the Leases, and to demand and receive Rents and give acquittances or receipts for Rents. Upon Default, the Chargee may (but shall not be obligated to) compound, compromise or submit to arbitration any dispute that has arisen or may arise under the Leases or any of them, including disputes with respect to the amount of Rents or the rights of the parties under any Lease, and any settlement arrived at shall be binding upon the Chargor.

(11) Forbearance. If the Chargee elects to invoke any of its rights under this Section and thereafter, for any reason, relinquishes to the Chargor such rights, the provisions of this Section shall in no respect be terminated, but instead shall remain in full force and effect until the Secured Obligations have been fully paid and performed, it being the intent of the parties that the Chargee shall, from time to time upon the occurrence of any Default under this Charge, have all the rights granted by this Section.

(12) Limitation of the Chargee's Obligations. The Chargee's obligations as to any Rents or other amounts actually collected shall be discharged by the application of such Rents or other amounts against the Secured Obligations and for any of the other purposes described in this Charge. The Chargee shall not be liable for uncollected Rents or other amounts. The Chargee shall not be liable to any tenant or other Person for the return of any security deposit made under any Lease unless the Chargee shall have received such security deposit. The Chargee shall not by reason of this Section or the exercise of any right granted under this Section be responsible for any act committed by the Chargor, or any breach or failure to perform by the Chargor with respect to any of the Assigned Lease Rights. Nothing contained in this Section shall be deemed to have the effect of making the Chargee a mortgagee in possession of the Real Property or any part of the Real Property.

(13) Receipts by the Chargee. The Chargor agrees that all receipts given by the Chargee to any tenant or other Person under the Leases on account of any Rents paid to the Chargee in accordance with the terms of this Section shall constitute a good and valid discharge of such Rents to each such tenant or other Person.

37. Successors and Assigns

This Charge shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

38. Conflict

If there is a conflict or inconsistency between the provisions of the Credit Agreement and the provisions of this Charge, the provisions of the Credit Agreement shall prevail. However, the existence of additional terms, conditions or provisions (including any rights, remedies, covenants, representations or warranties) that are contained in this Charge and that are not included in the Credit Agreement shall not be construed or deemed as being in conflict and shall remain in effect.

39. Supplemental Charge

This Charge is being delivered by the Chargor pursuant to the provisions of Section 8.2.3(c) of the Credit Agreement.

* * *

Appendix A - Lands

Appendix A to Schedule 1

LANDS

FREEHOLD LANDS

FREEHOLD PART 1

[Development Lands and Commercial Condominium Lands]

Part of PIN 48143-0266 (LT)

Firstly:

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 2 on Reference Plan 35R-21398;

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 3 on Reference Plan 35R-21398, SUBJECT to Easement as in ME5721;

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), part of Lot 25, Concession 10 Medora, part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512), designated as Part 4 on Reference Plan 35R-21398;

Part of Lot 25, Concession 11 Medora, part of Lot 25, Concession 10 Medora, part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512) designated as Part 10 on Reference Plan 35R-21398;

all in the Township of Muskoka Lakes, in the District Municipality of Muskoka

Secondly: Part of Lot 24, Concession 11 Medora, designated as Part 8 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

Thirdly: Part of Lot 24, Concession 11 Medora, designated as Part 7 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

TOGETHER WITH an easement over Part of Lot 24, Concession 11 Medora, designated as Part 5 on Reference Plan 35R-7006, as in LT103789

Fourthly: Part of Lot 24, Concession 11 Medora, designated as Parts 5 and 6 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

TOGETHER WITH an easement over Part of Lot 24, Concession 11 Medora, as in LT22475

Fifthly: Part of Lot 24, Concession 11 Medora, designated as Part 2 on Reference Plan 35R-3373, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

SAVE AND EXCEPT Parts 13, 21, 22, 24, 25, 37, 38, 40, 41, 48, 49, 50 and 52 on Reference Plan 35R-22417 [being Units 1 to 39, both inclusive, Level 1; Units 1 to 66, both inclusive, Level 2; Units 1 to 67, both inclusive, Level 3; Units 1 to 50, both inclusive, Level 4; Muskoka Standard Condominium Plan No. _____; together with their appurtenant interests];

TOGETHER WITH an easement over part of Lot 25, Concession 11 Medora, part of Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704) designated as Part 1 on Plan 35R-21398, as in Instrument No. MT62693; (Golf Course Blanket Easement);

TOGETHER WITH an easement over part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2, Plan 35R-22417, as in Instrument No. MT62703; (*Sewage Treatment Plant Easement*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 4, 5, 6, 7, 8, 9, 10 and 12, Plan 35R-22417, as in Instrument No. MT62714; (*Circle Road/Services and Access Easement – 2162262 Ontario Inc. PIN 48143-0247*);

TOGETHER WITH Sewer Line Easement over Part 3 on Plan 35R-22417 as in Instrument No. MT62714;

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 14 and 15, Plan 35R-22417, as in Instrument No. MT62715; (*Circle Road/Services and Access Easement – 2027587 Ontario Inc. – PIN 48143-0245*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 17 and 18, Plan 35R-22417, as in Instrument No. MT62717; (*Circle Road/Services and Access Easement - Wallace Marine - PIN 48143-0243*);

TOGETHER WITH easements over part of Lots 24 and 25, Concession 11 Medora, designated as Part 20, Plan 35R-22417 and Part of Lot 25, Concession 11 Medora, designated as Part 27, Plan 35R-22417, as in Instrument No. MT62718; (*Circle Road/Services and Access Easement – 2027588 Ontario Inc. – PIN 48143-0267*);

TOGETHER WITH Access and Services Easement over, along, upon and under all of the Common Elements of Muskoka Standard Condominium Plan No. _____ in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Circle and Loop Roads Easement over, along and upon Parts 25, 37 and 38, Plan 35R-22417, as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO easement as in Instrument No. MT62692. (*RRDI Blanket Easement*);

SUBJECT TO Access and Services Easement [*over, along, upon and under all of the Development Lands and the Commercial Condominium Lands in favour of the lands in Muskoka Standard Condominium Plan No. _____*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Propane Tank Easement over Part 44 on Plan 35R-22417 [*in favour of Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Stormwater Pond Easement over Parts 43 and 45 on Plan 35R-22417 [*in favour of Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Loop Road Easement over Parts 36 and 39 on Plan 35R-22417 [*in favour of the Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Cabana Easement over Part 51 on Plan 35R-22417 [*in favour of the Resort Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*].

SUBJECT TO Golf Course Access Easement over Parts 36, 39 and 43 on Plan 35R-22417 [*in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269*], as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Golf Course Water Easement over Parts 39, 43 and 45 on Plan 35R-22417 [*in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269*], as in Instrument No. [*Insert Resort Declaration No.*];

SUBJECT TO Wallace Marine Bay Properties Access Easement over Parts 36 and 39 on Plan 35R-22417 [*in favour of the lands in PIN Nos. 48143-0518, 48143-0247, 48143-0245, 48143-0045, 48143-0243 and 48143-0267*], as in Instrument No. [*Insert Resort Declaration No.*];

FREEHOLD PART 2

[Resort Condominium Lands]

Part of PIN 48143-0266(LT)

Part of Lot 24, Concession 11 Medora, designated as Part 13 on Reference Plan 35R-22417 and part of Lots 24 and 25, Concession 11 Medora, designated as Parts 21 and 22 on Reference Plan 35R-22417 and part of Lot 25, Concession 11 Medora, designated as Parts 24, 37, 38, 40, 41, 48, 49, 50 and 52, on Reference Plan 35R-22417 and part of Lot 25, Concession 11 Medora, and part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (closed by By-law 72-34, Instrument No. DM105704), designated as Part 25, on Reference Plan 35R-22417, [being Units 1 to 39, both inclusive, Level 1; Units 1 to 66, both inclusive, Level 2; Units 1 to 67, both inclusive, Level 3; Units 1 to 50, both inclusive, Level 4; Muskoka Standard Condominium Plan No. _____; together with their appurtenant interests]; in the Township of Muskoka Lakes; in the District Municipality of Muskoka;

TOGETHER WITH easement over part of Lot 25, Concession 11 Medora, part of Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704) designated as Part 1 on Plan 35R-21398, as in Instrument No. MT62693; (*Golf Course Blanket Easement*);

TOGETHER WITH easement over part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2, Plan 35R-22417, as in Instrument No. MT62703; (*Sewage Treatment Plant Easement*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 4, 5, 6, 7, 8, 9, 10 and 12, Plan 35R-22417, as in Instrument No. MT62714; (*Circle Road/ Services and Access Easement – 2162262 Ontario Inc. PIN 48143-0247*);

TOGETHER WITH the Sewer Line Easement over Part 3 on Plan 35R-22417, as in Instrument No. MT62714;

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 14 and 15, Plan 35R-22417, as in Instrument No. MT62715; (*Circle Road/ Services and Access Easement – 2027587 Ontario Inc. – PIN 48143-0245*);

TOGETHER WITH easements over part of Lot 24, Concession 11 Medora, designated as Parts 17 and 18, Plan 35R-22417, as in Instrument No. MT62717; (*Circle Road/ Services and Access Easement - Wallace Marine - PIN 48143-0243*);

TOGETHER WITH easements over part of Lots 24 and 25, Concession 11 Medora, designated as Part 20, Plan 35R-22417 and Part of Lot 25, Concession 11 Medora, designated as Part 27, Plan 35R-22417, as in Instrument No. MT62718; (*Circle Road/ Services and Access Easement – 2027588 Ontario Inc. – PIN 48143-0267*);

TOGETHER WITH Access and Services Easement [*over, along, upon and under the Development Lands and Commercial Condominium Lands*] as in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Signage Easement over Part 7 on Plan 35R-3373, as in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Propane Tank Farm Easement over Part 44 on Plan 35R-22417, as in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Stormwater Pond Easement over Parts 43 and 45 on Plan 35R-22417, as in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Loop Road Easement over Parts 36 and 39 on Plan 35R-22417, as in Instrument No. [*Insert Resort Declaration No.*];

TOGETHER WITH Cabana Easement over Part 51 on Plan 35R-22417 as in Instrument No. [Insert Resort Declaration No.];

TOGETHER WITH Hotel Easement in favour of Unit 28, Level 1, Muskoka Standard Condominium Plan No. _____ (the Hotel Management Unit) and its appurtenant interest over the common interest in the Common Elements only appurtenant to Units 1 to 39, Level 1; Units 1 to 66, Level 2; Units 1 to 67, Level 3; Units 1 to 50, Level 4; Muskoka Standard Condominium Plan No. _____ as in Instrument No. [Insert Hotel Easement No.]

SUBJECT TO Hotel Easement over the common interest in the Common Elements only appurtenant to Units 1 to 39, Level 1; Units 1 to 66, Level 2; Units 1 to 67, Level 3; Units 1 to 50, Level 4; Muskoka Standard Condominium Plan No. _____ [in favour of Unit 28, Level 1, Muskoka Standard Condominium Plan No. _____ and its appurtenant interest] as in Instrument No. [Insert Hotel Easement No.]

SUBJECT TO easement as in Instrument No. ME5721;

SUBJECT TO easement as in Instrument No. MT62692; (*RRDI Blanket Easement*)

SUBJECT TO Access and Services Easement [over, along, upon and under the Common Elements of Resort Condominium in favour of the Development Lands and the Commercial Condominium Lands] as in Instrument No. [Insert Resort Declaration No.];

SUBJECT TO Circle and Loop Roads Easement over Parts 25, 37 and 38, Plan 35R-22417 [in favour of the Development Lands and the Commercial Condominium Lands], as in Instrument No. [Insert Resort Declaration No.];

SUBJECT TO Golf Course Access Easement over Parts 25, 37 and 38 on Plan 35R-22417 [in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269] as in Instrument No. [Insert Resort Declaration No.];

SUBJECT TO Golf Course Water Easement over Parts 24, 25, 38, 41 and 52 on Plan 35R-22417 [in favour of 1515511 Ontario Inc. lands in PIN Nos. 48143-0504, 48142-0341, 48143-0201 and 48143-0269] as in Instrument No. [Insert Resort Declaration No.];

SUBJECT TO Wallace Marine Bay Properties Access Easement over Parts 25, 37 and 38 on Plan 35R-22417 [in favour of lands in PIN Nos. 48143-0518, 48143-0247, 48143-0245, 48143-0045, 48143-0243 and 48143-0267] as in Instrument No. [Insert Resort Declaration No.].

LEASEHOLD LANDS

Part of PIN 48143-0518(LT)

Part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2, on Reference Plan 35R-22417, in the Township of Muskoka Lakes, in the District Municipality of Muskoka;

TOGETHER WITH an easement over part of Lot 25, Concession 11 Medora, part of Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument No. DM105704) designated as Part 1 on Plan 35R-21398, as in Instrument No. MT62704; (*Blanket Effluent Easement*);

SUBJECT TO an easement over part of Lot 24, Concession 11 Medora, designated as Parts 1 and 2 on Plan 35R-22417, [in favour of the Resort Condominium Lands, Development Lands and Commercial Condominium Lands] as in Instrument No. MT62703. (*Sewage Treatment Plant Easement*).

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