

## 240 OLD PENETANGUIH ROAD (A CO-TENANCY)

### STATEMENT OF INCOME FOR THE YEAR ENDED DECEMBER 31, 2020 (UNAUDITED - SEE NOTICE TO READER)

	2020	2019
<b>Revenue</b>		
Tenant recoveries	\$ 384,964	\$ 498,058
Rental income	365,421	425,368
Interest and sundry income	<u>1,862</u>	<u>5,601</u>
	<u>752,247</u>	<u>929,027</u>
<b>Recoverable expenses</b>		
Realty tax	140,427	137,803
Repairs and maintenance	130,581	139,109
Utilities	75,635	102,636
Landscaping and snow removal	28,850	26,740
Property management fees	24,000	24,000
Insurance	<u>5,696</u>	<u>4,827</u>
	<u>405,189</u>	<u>435,115</u>
<b>Non-recoverable expenses</b>		
Bad debt expense	233,788	-
Loan interest	68,102	36,475
Office and general	9,182	3,416
Professional fees	4,883	7,055
Consulting	1,579	7,150
Amortization of deferred financing costs	23,517	13,652
Amortization of deferred tenant inducement	17,928	9,848
Amortization of deferred leasing commissions	<u>248</u>	<u>248</u>
	<u>359,227</u>	<u>77,844</u>
Income (loss) before the undernoted	<u>(12,169)</u>	<u>416,068</u>
<b>Other expenses</b>		
Mortgage interest	<u>159,911</u>	<u>164,788</u>
<b>Net income (loss) for the year</b>	<u>\$ (172,080)</u>	<u>\$ 251,280</u>

See accompanying notes to the financial statements

**240 OLD PENETANGUIISH ROAD (A CO-TENANCY)****NOTES TO THE FINANCIAL STATEMENTS****DECEMBER 31, 2020**

(UNAUDITED - SEE NOTICE TO READER)

**1. ADVANCES TO GROSS MEDICAL OFFICE BUILDINGS**

The advances to Gross Medical Office Buildings are non- interest bearing and consist of a number of balances with other co-tenancies under the management of Gross Capital Inc.

**2. REVENUE PRODUCING PROPERTY**

	2020	2019
Land	\$ 1,317,564	\$ 1,317,564
Building	6,917,212	6,917,212
Building improvements	<u>141,380</u>	<u>141,380</u>
	<u>\$ 8,376,156</u>	<u>\$ 8,376,156</u>

Title to the revenue producing property is held by 240 Old Penetanguish Holdings Inc. in trust for the co-tenants.

**3. ADVANCES FROM RELATED COMPANY**

The advances from Gross Capital Inc. bear interest at 9% per annum and have no specific terms of repayment.

**4. MORTGAGE PAYABLE**

	2020	2019
The mortgage payable bears interest at 4.17% per annum, is repayable in blended monthly principal and interest instalments of \$22,050 and matures on February 1, 2026.	<u>\$ 3,940,023</u>	<u>\$ 3,940,023</u>

No principal or interest payments, as required under the mortgage, were made during the year.

**240 OLD PENETANGUIH ROAD (A CO-TENANCY)****INCOME TAX INFORMATION  
FOR THE YEAR ENDED DECEMBER 31, 2020  
(UNAUDITED - SEE NOTICE TO READER)****1. NET LOSS FOR THE YEAR BEFORE CCA**

Net loss for the year per financial statements	\$ (172,080)
Add: Amortization - deferred financing costs for accounting	23,517
Less: Amortization - deferred financing costs for tax	(23,517)
Add: Amortization - deferred tenant inducements for accounting	17,928
Less: Amortization - deferred tenant inducements for tax	(17,928)
Add: Amortization - deferred leasing costs for accounting	248
Less: Amortization - deferred leasing costs for tax	<u>(248)</u>
 Net loss for the year before CCA	 <u><u>\$ (172,080)</u></u>
 Co-tenant's ownership interest	 _____ %
 Co-tenant's share of net loss for the year before CCA	 <u><u>\$</u></u>

**2. CAPITAL COST ALLOWANCE****CLASS 1**

Co-tenant's share of UCC, beginning of year	<u>\$</u>
Co-tenant's CCA - 4%	_____
Co-tenant's share of UCC, end of year	<u><u>\$</u></u>

**Note:** The capital cost allowance claimed by each co-tenant should be calculated by applying the statutory rate to the co-tenant's share of undepreciated capital cost. The actual capital cost allowance claimed by each co-tenant will depend on the particular co-tenant's overall tax situation. Each co-tenant should consult with his/her tax advisor to determine the amount of capital cost allowance to be deducted.

**2009 LONG LAKE ROAD (A CO-TENANCY)****FINANCIAL STATEMENTS****DECEMBER 31, 2020**

(UNAUDITED - SEE NOTICE TO READER)

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## NOTICE TO READER

On the basis of information provided by management, we have compiled the balance sheet of 2009 Long Lake Road (A Co-Tenancy) as at December 31, 2020 and the statements of income and co-tenants' equity for the year then ended.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

A handwritten signature in black ink that reads "Segal LLP". The signature is written in a cursive, flowing style.

Chartered Professional Accountants  
Licensed Public Accountants

Toronto, Ontario  
April 14, 2021

**2009 LONG LAKE ROAD (A CO-TENANCY)****BALANCE SHEET****AS AT DECEMBER 31, 2020**

(UNAUDITED - SEE NOTICE TO READER)

	2020	2019
<b>ASSETS</b>		
Cash	\$ 150,933	\$ -
Amounts receivable	-	33,846
Prepaid expenses and deposits	-	6,815
Advances to Gross Medical Office Buildings, note 1	608,345	405,344
Reserve funds	301,579	497,939
Deferred leasing costs	258	517
Deferred tenant inducements	6,157	12,312
Deferred financing costs	63,721	23,635
Revenue producing property, note 2	<u>10,137,123</u>	<u>10,137,123</u>
	<u>\$ 11,268,116</u>	<u>\$ 11,117,531</u>
<b>LIABILITIES</b>		
Bank indebtedness	\$ -	\$ 11,724
Accounts payable and accrued liabilities	154,820	151,696
Mortgage interest payable	259,614	20,409
Harmonized sales tax payable	30,884	100,709
Tenants' deposits	65,397	66,892
Advances from related company, note 3	566,477	520,374
Mortgage payable, note 4	<u>5,864,221</u>	<u>5,873,351</u>
	<u>6,941,413</u>	<u>6,745,155</u>
<b>CO-TENANTS' EQUITY</b>		
Co-tenants' equity	<u>4,326,703</u>	<u>4,372,376</u>
	<u>\$ 11,268,116</u>	<u>\$ 11,117,531</u>

**Approved on behalf of the Co-tenants:**

\_\_\_\_\_ Co-tenant

\_\_\_\_\_ Co-tenant

See accompanying notes to the financial statements

## 2009 LONG LAKE ROAD (A CO-TENANCY)

**STATEMENT OF CO-TENANTS' EQUITY**  
**FOR THE YEAR ENDED DECEMBER 31, 2020**  
(UNAUDITED - SEE NOTICE TO READER)

	% Ownership	Balance, Beginning of Year	Distributions	Net Income for the Year	Balance, End of Year
Gross Capital In Trust	80.309	\$ 3,232,993	\$ (67,120)	\$ 30,440	\$ 3,196,313
	2.818	161,356	(3,092)	1,068	159,332
	1.757	100,768	(1,229)	666	100,205
	1.500	86,008	(1,049)	569	85,528
	1.059	60,715	(740)	400	60,375
	1.054	60,459	(737)	401	60,123
	0.879	51,216	(614)	333	50,935
	0.879	50,385	(614)	333	50,104
	0.879	50,385	(614)	333	50,104
	0.879	50,694	(614)	333	50,413
	0.703	41,610	(1,064)	266	40,812
	0.527	30,844	(369)	200	30,675
	0.527	30,434	(498)	200	30,136
	0.439	25,153	(482)	166	24,837
	0.439	24,871	(467)	166	24,570
	0.439	25,189	(307)	166	25,048
	0.439	25,957	(307)	166	25,816
	0.439	25,957	(307)	166	25,816
	0.439	25,804	(307)	166	25,663
	0.395	23,500	(276)	150	23,374
	0.351	20,889	(246)	133	20,776
	0.264	15,670	(184)	100	15,586
	0.176	10,446	(123)	67	10,390
	0.176	9,890	(171)	67	9,786
	0.176	10,078	(123)	67	10,022
	0.176	10,385	(123)	67	10,329
	0.176	10,248	(165)	67	10,150
	0.176	10,446	(123)	67	10,390
	0.176	10,375	(247)	67	10,195
	0.176	9,904	(317)	67	9,654
	0.176	10,389	(247)	67	10,209
	0.176	10,446	(123)	67	10,390
	0.176	10,201	(123)	67	10,145
	0.176	10,446	(123)	67	10,390

See accompanying notes to the financial statements

**2009 LONG LAKE ROAD (A CO-TENANCY)**

**STATEMENT OF CO-TENANTS' EQUITY  
FOR THE YEAR ENDED DECEMBER 31, 2020  
(UNAUDITED - SEE NOTICE TO READER)**

	%	Balance, Beginning of Year	Distributions	Net Income for the Year	Balance, End of Year
	0.105	6,266	(74)	40	6,232
	0.105	6,266	(74)	40	6,232
	0.088	5,224	(61)	33	5,196
	0.088	5,285	(61)	33	5,257
	<u>0.088</u>	<u>5,224</u>	<u>(62)</u>	<u>33</u>	<u>5,195</u>
	<u>100.000</u>	<u>\$ 4,372,376</u>	<u>\$ (83,577)</u>	<u>\$ 37,904</u>	<u>\$ 4,326,703</u>

See accompanying notes to the financial statements



## 2009 LONG LAKE ROAD (A CO-TENANCY)

### STATEMENT OF INCOME FOR THE YEAR ENDED DECEMBER 31, 2020 (UNAUDITED - SEE NOTICE TO READER)

	2020	2019
<b>Revenue</b>		
Rental income	\$ 632,116	\$ 630,142
Tenant recoveries	511,675	539,629
Interest and sundry income	<u>2,033</u>	<u>18,472</u>
	<u>1,145,824</u>	<u>1,188,243</u>
<b>Recoverable expenses</b>		
Realty tax	238,242	222,670
Utilities	126,980	146,446
Repairs and maintenance	102,921	104,544
Property management fees	37,500	37,500
Superintendent wages	35,910	37,526
Landscaping and snow removal	17,554	17,725
Insurance	<u>11,310</u>	<u>9,456</u>
	<u>570,417</u>	<u>575,867</u>
<b>Non-recoverable expenses</b>		
Bad debts	196,504	-
Loan interest	41,234	252
Office and general	16,463	8,825
Consulting	6,200	12,600
Professional fees	4,980	10,343
Amortization of deferred financing costs	35,635	20,490
Amortization of deferred tenant inducements (recovery)	6,155	(4,844)
Amortization of deferred leasing costs	<u>258</u>	<u>258</u>
	<u>307,429</u>	<u>47,924</u>
Income before the undernoted	<u>267,978</u>	<u>564,452</u>
<b>Other expenses</b>		
Mortgage interest	<u>230,074</u>	<u>247,722</u>
<b>Net income for the year</b>	<u>\$ 37,904</u>	<u>\$ 316,730</u>

See accompanying notes to the financial statements

**2009 LONG LAKE ROAD (A CO-TENANCY)****NOTES TO THE FINANCIAL STATEMENTS****DECEMBER 31, 2020**

(UNAUDITED - SEE NOTICE TO READER)

**1. ADVANCES TO GROSS MEDICAL OFFICE BUILDINGS**

The advances to Gross Medical Office Buildings are non- interest bearing and consist of a number of balances with other co-tenancies under the management of Gross Capital Inc.

**2. REVENUE PRODUCING PROPERTY**

	2020	2019
Land	\$ 1,621,834	\$ 1,621,834
Building	<u>8,515,289</u>	<u>8,515,289</u>
	<u>\$ 10,137,123</u>	<u>\$ 10,137,123</u>

Title to the revenue producing property is held by 2009 Long Lake Holdings Inc. in trust for the co-tenants.

**3. ADVANCES FROM RELATED COMPANY**

The advances from Gross Capital Inc. bear interest at 9% per annum and have no specific terms of repayment.

**4. MORTGAGE PAYABLE**

	2020	2019
	<u>\$ 5,864,221</u>	<u>\$ 5,873,351</u>

No principal or interest payments, as required under the mortgage, were made during the year.

**2009 LONG LAKE ROAD (A CO-TENANCY)****INCOME TAX INFORMATION  
FOR THE YEAR ENDED DECEMBER 31, 2020  
(UNAUDITED - SEE NOTICE TO READER)****1. NET INCOME FOR THE YEAR BEFORE CCA**

Net income for the year per financial statements	\$ 37,904
Add: Amortization - deferred financing costs for accounting	35,635
Less: Amortization - deferred financing costs for tax	(35,635)
Add: Amortization - deferred tenant inducements for accounting	6,155
Less: Amortization - deferred tenant inducements for tax	(6,155)
Add: Amortization - deferred leasing costs for accounting	258
Less: Amortization - deferred leasing costs for tax	(258)
Add: Non-deductible interest	<u>746</u>
Net income for the year before CCA	<u>\$ 38,650</u>
Co-tenant's ownership interest	_____ %
Co-tenant's share of net income for the year before CCA	<u>\$ _____</u>

**2. CAPITAL COST ALLOWANCE****CLASS 1**

Co-tenant's share of UCC, beginning of year	\$ _____
Co-tenant's CCA - 4%	_____
Co-tenant's share of UCC, end of year	<u>\$ _____</u>

**Note:** The capital cost allowance claimed by each co-tenant should be calculated by applying the statutory rate to the co-tenant's share of undepreciated capital cost. The actual capital cost allowance claimed by each co-tenant will depend on the particular co-tenant's overall tax situation. Each co-tenant should consult with his/her tax advisor to determine the amount of capital cost allowance to be deducted.

## 2478658 ONTARIO LIMITED

### BALANCE SHEET

(Unaudited)

FOR THE YEAR ENDED DECEMBER 31, 2020 and 2019

#### ASSETS

	2020	2019
Cash	66,721	36,955
Accounts Receivable	234,472	88,000
Deferred costs	134,282	
Due from Carriage Gate Group	2,742,143	1,179,283
Revenue Producing Real Estate	8,136,456	8,136,456
Prepaid Expenses		11,515
	11,314,074	9,452,209

#### LIABILITIES AND SHAREHOLDER'S EQUITY

Accounts Payable & Accrued Liabilities	35,674	232,227
HST Payable	243,740	201,743
Realty Tax Payable		138,500
Tenant Deposits		
Loans from Associated Corporations	2,580,759	500,000
Mortgage Interest Payable	306,332	
Mortgage Payable	7,421,904	7,417,756
	10,588,409	8,490,226

#### Co-Tenants' Equity

Balance Beginning of Year	961,984	921,641
Withdrawals	(48,064)	(60,660)
Net Income (Loss)	(188,255)	101,003
	725,665	961,984
	11,314,074	9,452,210

**2478658 ONTARIO LIMITED**  
**(A CO-TENANCY)**  
**STATEMENT OF CO-TENANTS' EQUITY**  
**FOR THE PERIOD JANUARY 1, 2020 TO DECEMBER 31, 2020**  
**(UNAUDITED)**

	% Ownership	Opening Balance	Distributions	Net Income for Year	Balance End of
Gross Capital Inc	79.809	211,094	(38,359)	(150,244)	22,491
	2.818	107,053	(1,824)	(5,305)	99,924
	2.000	56,982	(618)	(3,765)	52,599
	1.757	66,759	(725)	(3,308)	62,726
	1.059	40,226	(437)	(1,994)	37,795
	1.054	40,054	(435)	(1,984)	37,635
	0.879	30,775	(362)	(1,655)	28,758
	0.879	33,474	(362)	(1,655)	31,457
	0.879	33,383	(362)	(1,655)	31,366
	0.879	33,383	(362)	(1,655)	31,366
	0.703	27,140	(628)	(1,323)	25,189
	0.527	20,244	(217)	(992)	19,035
	0.527	20,389	(294)	(992)	19,103
	0.439	17,141	(181)	(826)	16,134
	0.439	16,688	(276)	(826)	15,586
	0.439	16,688	(181)	(826)	15,681
	0.439	17,050	(181)	(826)	16,043
	0.439	16,688	(284)	(826)	15,578
	0.439	17,050	(181)	(826)	16,043
	0.395	15,426	(163)	(744)	14,519
	0.351	13,711	(145)	(661)	12,905
	0.264	10,343	(109)	(497)	9,737
	0.176	6,859	(77)	(331)	6,451
	0.176	6,678	(101)	(331)	6,246
	0.176	6,823	(72)	(331)	6,420
	0.176	6,714	(145)	(331)	6,238
	0.176	6,823	(97)	(331)	6,395
	0.176	6,859	(72)	(331)	6,456
	0.176	6,787	(187)	(331)	6,269
	0.176	6,787	(145)	(331)	6,311
	0.176	6,859	(72)	(331)	6,456
	0.176	6,714	(72)	(331)	6,311
	0.176	6,896	(72)	(331)	6,493
	0.176	6,859	(72)	(331)	6,456
	0.105	4,111	(43)	(198)	3,870
	0.105	4,111	(43)	(198)	3,870
	0.088	3,484	(36)	(166)	3,282
	0.088	3,430	(36)	(166)	3,228
	0.088	3,448	(36)	(166)	3,246
	100.000	961,983	(48,064)	(188,255)	725,664

**2478658 ONTARIO LIMITED**  
**STATEMENT OF EARNINGS**  
**(Unaudited)**  
**FOR THE YEAR ENDED DECEMBER 31, 2020**

<b>Revenue</b>		
Rent	432,067	983,572
Recoveries	380,347	
Interest & Sundry Income	1,987	
	<u>814,401</u>	<u>983,572</u>
<b>Recoverable Expense</b>		
Repairs & Maintenance	136,759	83,886
Exterior Maintenance	32,781	24,682
Insurance	19,003	22,192
Office & General	4,299	4,626
Interest & Bank charges	6,767	
Realty Taxes	265,692	244,829
Consulting	3,678	
Property Management Fees	24,000	38,263
Superintendent	23,593	
Utilities	110,283	115,023
Consulting		
	<u>626,855</u>	<u>533,501</u>
Gross Profit	187,546	450,071
<b>Non-Recoverable Expenses</b>		
Amortization	33,571	14,319
Professional Fees	31,750	2,532
Mortgage Interest	310,480	332,217
	<u>375,801</u>	<u>349,068</u>
Net income for the year	<u>(188,255)</u>	<u>101,003</u>

## SOUTHMOUNT HEALTHCARE CENTRE INC.

### BALANCE SHEET

(Unaudited)

FOR THE YEAR ENDED DECEMBER 31, 2020 and 2019

#### ASSETS

	2020	2019
Cash	32,885	215,298
Accounts Receivable	1,507,677	1,670,225
Deferred costs	237,262	750,000
Due from Carriage Gate Group	8,947,244	5,540,378
Revenue Producing Real Estate	20,520,862	20,520,862
	31,245,930	28,696,763

#### LIABILITIES AND SHAREHOLDER'S EQUITY

Accounts Payable & Accrued Liabilities	540,169	82,000
HST Payable	567,978	
Tenant Deposits	13,852	
Loans from Associated Corporations	277,049	
Mortgage Interest Payable	915,739	
Mortgage Payable	25,197,823	25,183,740
	27,512,610	25,265,740

#### Co-Tenants' Equity

Balance Beginning of Year	3,431,023	3,431,023
Withdrawals	16,792	
Net Income	318,889	
	3,733,320	3,431,023
	31,245,930	28,696,763

**SOUTHMOUNT HEALTHCARE CENTRE INC.**  
**(A CO-TENANCY)**  
**STATEMENT OF CO-TENANTS' EQUITY**  
**FOR THE PERIOD JANUARY 1, 2020 TO DECEMBER 31, 2020**  
**(UNAUDITED)**


	% Ownership	Opening Balance	Distributions	Net Income for Year	Balance End of
Gross Capital Inc	77.812	585,464		248,134	833,598
	1.098	181,936		3,501	185,437
	0.439	41,991		1,400	43,391
	1.059	98,239		3,377	101,616
	0.615	126,759	(1,981)	1,961	126,739
	0.176	16,800		561	17,361
	0.351	102,307	(1,442)	1,119	101,984
	2.000	139,164		6,378	145,542
	0.088	8,499		281	8,780
	0.439	40,759		1,400	42,159
	0.176	16,702		561	17,263
	0.176	93,058	(964)	561	92,655
	1.757	163,046		5,603	168,649
	0.105	10,074		335	10,409
	0.351	33,590		1,119	34,709
	0.351	186,126	(2,868)	1,119	184,377
	0.176	16,406	(179.00)	561	16,788
	0.176	16,505	(91.00)	561	16,975
	0.527	49,504		1,681	51,185
	0.439	41,744		1,400	43,144
	0.088	8,400		281	8,681
	0.351	102,800		1,119	103,919
	0.879	81,774		2,803	84,577
	0.351	102,505	(1,613)	1,119	102,011
	0.879	81,528		2,803	84,331
	0.176	16,505	(179.00)	561	16,887
	0.879	81,528		2,803	84,331
	0.395	37,790		1,260	39,050
	0.176	16,800		561	17,361
	0.703	66,403	(815)	2,242	67,830
	0.176	16,406		561	16,967
	0.176	16,899		561	17,460
	0.176	93,058	(1,430)	561	92,189
	0.900	237,503	(2,996)	2,870	237,377
	1.054	97,826		3,361	101,187
	0.439	40,759	(274.00)	1,400	41,885
	0.264	25,348		842	26,190
	2.819	261,451	(1,760)	8,989	268,680
	0.176	16,800		561	17,361
	0.088	8,449		281	8,730
	0.105	10,074		335	10,409
	0.439	41,744		1,400	43,144
	100.000	3,431,023	(16,592)	318,889	3,733,320



**SOUTHMOUNT HEALTHCARE CENTRE INC.**  
**STATEMENT OF EARNINGS**  
**(Unaudited)**  
**FOR THE YEAR ENDED DECEMBER 31, 2020**

<b>Revenue</b>		
Rent	1,447,978	2,147,578
Recoveries	556,466	
Interest & Sundry Income	337	
	<u>2,004,781</u>	<u>2,147,578</u>
 <b>Recoverable Expense</b>		
Repairs & Maintenance	99,086	108,159
Exterior Maintenance	13,117	25,250
Insurance	22,820	25,263
Office & General	593	1,495
Realty Taxes	331,119	333,202
Property Management Fees	64,440	82,647
Utilities	173,617	211,307
Consulting	1,500 -	
	<u>706,292</u>	<u>787,323</u>
 Gross Profit	 1,298,489	 1,360,255
 <b>Non-Recoverable Expenses</b>		
Amortization	59,316	19,637
Professional Fees	4,545	6,279
Mortgage Interest	915,739	976,733
	<u>979,600</u>	<u>1,002,649</u>
 Net income for the year	 <u><b>318,889</b></u>	 <u><b>357,606</b></u>

This is **Exhibit "O"** referred to in the  
Affidavit of Jacob Baron  
sworn before me by video conference  
this 18<sup>th</sup> day of June, 2021



---

A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.

## EARNOUT RESERVE AGREEMENT

**THIS EARNOUT RESERVE AGREEMENT** (this “**Agreement**”), dated as of January 25, 2016, is made by and between **CARRIAGE GATE GROUP INC., 180 VINE INC., 2478658 ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH HOLDINGS INC., 100 COLBORNE HOLDINGS INC. and 240 OLD PENETANGUISH HOLDINGS INC.** (collectively, the “**Borrower**”) and **AMERICAN GENERAL LIFE INSURANCE COMPANY**, as to an undivided 44% interest, **THE VARIABLE ANNUITY LIFE INSURANCE COMPANY**, as to an undivided 23% interest, and **LEXINGTON INSURANCE COMPANY**, as to an undivided 33% interest (collectively, the “**Lender**”), and acknowledged and agreed to by **LARGO REAL ESTATE ADVISORS, INC. & 6995756 CANADA, INC. LOAN ADMINISTRATOR LICENSE #11669** (“**Servicer**”).

### RECITALS

- A. Lender has agreed, pursuant to a mortgage loan application dated November 30, 2015 (the “**Loan Agreement**”), to make a loan to Borrower in the principal amount of up to Seventy Million Canadian Dollars (\$70,000,000.00) (the “**Loan**”), to be evidenced by seven mortgages of even date herewith made by Borrower in favour of Lender, each in the original principal amount of Seventy Million Canadian Dollars (\$70,000,000.00) (collectively, the “**Mortgages**”) for the benefit of Lender covering certain real property more specifically described in the Mortgages (collectively, the “**Properties**”). In connection with the Loan and as further security therefor, the Borrower also granted to the Lender general assignments of leases and rents, general security agreements, assignments of contracts, environmental indemnity agreements and other security/documentation (collectively, with the Loan Agreement and the Mortgages, the “**Loan Documents**”). All capitalized terms used herein without definition shall have the meanings given to such terms in the Loan Documents.
- B. As a condition precedent to Lender making the Loan to Borrower, and as additional security for the repayment of the Loan and Borrower’s performance of its obligations under the Loan Documents, Borrower has agreed to deliver the Funds (as defined below) to Lender, to be held by or on behalf of Lender, and used by Lender, in accordance with the terms of this Agreement.

### AGREEMENT

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Deposit of Cash and Maintenance of Reserve.**
  - (a) On the date hereof, Borrower shall deposit with Lender the amount of Five Million, Five Hundred Thousand Canadian Dollars (\$5,500,000.00) by wire transfer of immediately available funds (which funds, together with all interest earned thereon from time to time, hereinafter the “**Funds**”) for deposit in a deposit account in the name of Lender. Lender may, in its sole, absolute and unfettered discretion and at its sole option, direct such Funds to be held on

- 2 -

Lender's behalf by the Servicer, in which case the Servicer shall hold such Funds as Lender's agent and such Funds shall be held in a deposit account in the name of the Servicer as agent for and on behalf of Lender. Notwithstanding anything to the contrary in the Loan Documents, the Servicer is not, and shall not be deemed to be, Lender's agent in any capacity other than as the holder of the Funds on behalf of Lender. The account or accounts in which the Funds are held from time to time are hereinafter referred to as the "Reserve".

- (b) For the avoidance of doubt, the portion of the Loan proceeds deposited in the Reserve shall be deemed for all purposes to be proceeds of the Loan that have been funded and disbursed and, in connection therewith, but without limitation, shall be considered a portion of the principal amount of the Loan on which interest shall accrue as provided in the Loan Documents regarding interest on the principal amount of the Loan.

2. **Investment of Funds.**

- (a) Lender (or the Servicer) shall hold and invest or cause to be held and invested the Funds in an interest bearing account, in the name of Lender, or in the name of the Servicer as agent of Lender, and with Borrower assuming all risk of investment loss if held in accordance with this Agreement. Without limiting the foregoing, Borrower further acknowledges and agrees that Lender does not guarantee any rate of interest, that the interest actually accruing on any such account may not be based on the highest rate of interest payable by the bank or institution in which such account is held (on deposits or otherwise), and is not based on any particular external interest rate or interest rate index, nor shall any interest reflect the interest rate used to calculate interest payable on deposits held with respect to any other loan or borrower or class of loans or borrowers, and Lender shall have no liability with respect to the amount of interest paid and/or loss of principal. The Reserve shall not constitute a trust fund and, subject to the foregoing, may be commingled with other monies held by Lender or the Servicer.
- (b) All interest earned from time to time on the Funds shall be added to and shall become a part of the Funds, provided that all such interest income shall be reported for income tax purposes as income of, and taxable to, Borrower. Borrower shall supply to Lender and the Servicer all documents and information reasonably requested by Lender or the Servicer in connection with the investment of such Funds, including, without limitation, Borrower's taxpayer identification number(s).

3. **Specific Conditions and Requirements for Disbursements.** Lender shall disburse Funds to the Borrower from the Reserve as follows:

- (a) \$2,500,000.00 of the Reserve on the date on which the Properties first achieve a 9% debt yield based upon the net operating income for the previous 12 months, inclusive of a 7% vacancy and the then outstanding Loan balance, provided that such sum shall not be released prior to the date which is eighteen (18) months

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following Closing (defined as the initial advance date of the Loan) and not be released after the date which is thirty-six (36) months following Closing;

- (b) \$2,500,000.00 of the Reserve on the date on which the Properties first achieve a 9.5% debt yield based upon the net operating income for the previous 12 months, inclusive of a 7% vacancy and the then outstanding Loan balance, provided that such sum shall not be released prior to the date which is eighteen (18) months following Closing and not be released after the date which is thirty-six (36) months following Closing; and
- (c) \$500,000.00 of the Reserve on the date on which the Borrower delivers the following to the Lender:
  - (i) an unconditional lease with KMH pertaining to 35 Upper Centennial Parkway, Hamilton;
  - (ii) an unconditional lease with KMH pertaining to 180 Vine Street South, St. Catharines (and the aggregate annual base rent for this lease and the lease described in (i) above shall not be less than \$200,000.00); and
  - (iii) an estoppel certificate in respect of each of the two leases above, confirming that KMH is in occupancy and paying rent.

If part or all of the Reserve has not been disbursed to the Borrower on or before the date which is thirty-six (36) months following Closing, then the Lender may decide, in its sole, absolute and unfettered discretion, to apply such Funds to the outstanding principal balance of the Loan and in such event the Borrower shall be obligated to pay all related prepayment premiums (referred to in the Loan Documents as Yield Maintenance).

4. **General Conditions and Requirements for Disbursements.** In addition to the specific conditions and requirements set forth in Section 3 above, Lender shall be not obligated to disburse any Funds from the Reserve:
- (a) on a Friday, any day preceding a public holiday or any day that is not a business day; or
  - (b) unless the disbursement request has been submitted to Lender not less than ten (10) days prior to the date of the requested advance; or
  - (c) if, at the time of Borrower's request for such disbursement, or at the time such disbursement is to be funded, there shall exist any Default or Event of Default under any Loan Document; or
  - (d) unless Borrower has made the disbursement request, in writing, which request shall include Borrower's certification that it has satisfied all of the relevant disbursement conditions and requirements.
5. **Disbursement of Funds to Lender.** After the occurrence of an Event of Default under any Loan Document, Lender shall be entitled to apply the Funds to any and all amounts

due under the Loan Documents in such order of priority as Lender shall determine, in its sole, absolute and unfettered discretion. If Lender applies such proceeds to the outstanding principal balance of the Loan, then Borrower shall be liable for the immediate payment of a prepayment premium.

6. **Grant of Security Interest.**

- (a) Borrower grants to Lender a security interest in the Collateral (as defined below) to secure the timely payment and performance by Borrower of the Loan and all related obligations. The term "Collateral" shall mean all Funds, all money or cash from time to time on deposit in the Reserve, all Borrower's right, title and interest in and to the Funds and the Reserve, all proceeds and all rights to payment from the Funds and the Reserve, all interest accruing thereon, all increases, renewals, extensions, substitutions and replacements thereof and all proceeds of the foregoing. To the extent Lender's security interest in any portion of the Collateral may be perfected by possession thereof, Lender shall be deemed to be in possession of the same by virtue of the Servicer holding the Collateral as Lender's agent and for Lender's benefit in accordance with this Agreement. To the extent Lender's security interest in any portion of the Collateral may be perfected by control thereof, Lender shall be deemed to be in control of the same by virtue of the Servicer, in its capacity as Lender's agent with respect to the Collateral, being a customer of the bank in which the Servicer holds the Collateral. Borrower represents and warrants to Lender that as of the date hereof, and as of each date any Funds are deposited into the Reserve, the Collateral is free and clear of all liens, encumbrances and claims of any party, except for the security interest and rights of Lender granted hereunder. Except for the liens, encumbrances and security interests granted to Lender hereunder and under the Loan Documents, Borrower shall not create or permit the creation of any lien, encumbrance or security interest in or to the Collateral during the term of the Loan for so long as such Collateral is held by Lender, or by Servicer as agent for Lender, hereunder.
- (b) At its option, Lender may notify the financial institution that holds the Reserve of Lender's security interest in such account. Borrower shall execute such financing statements or other documents as Lender may request to perfect the rights assigned and the security interest granted by this Agreement, and shall pay the cost of filing such financing statements in such offices in such jurisdictions as Lender may reasonably require.

7. **Fees and Expenses; Administration by Servicer.** Borrower shall (i) pay all reasonable out-of-pocket fees and expenses incurred by Lender in connection with disbursements under this Agreement or the documentation thereof including, but not limited to, solicitor's fees and disbursements (on a substantial indemnity basis), and (ii) execute and deliver all documents reasonably requested by Lender to evidence and secure the indebtedness represented by the Loan Documents following the disbursements. Without limiting the foregoing, Borrower acknowledges and agrees that Lender may delegate the administration and review of disbursement request (including, without limitation, review of any and all materials submitted by Borrower in connection with such request and

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preparation of written reports to Lender summarizing such materials and recommending whether the request should be granted) to the Servicer and that Borrower shall pay all fees and expenses in connection therewith. Borrower shall indemnify and hold harmless Lender from and against any liability to Servicer in respect of such fees and expenses.

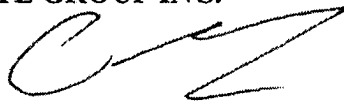
8. **Notices.** All notices or instructions required or permitted to be given under this Agreement shall be in writing, and delivered in accordance with the notice provisions set forth in the Loan Documents.
9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws in effect within the Province of Ontario, without giving effect to the conflict of laws principles thereof. All legal proceedings arising under this Agreement shall take place in a court in the Province of Ontario. The parties waive the right to assert that such court is located in an inconvenient forum.
10. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute the same agreement.
11. **Further Assurances.** Borrower shall cooperate with Lender and the Servicer and shall execute and deliver, or cause to be executed and delivered, all such other documents and instruments, and shall take all such other action that Lender may reasonably request from time to time in order to accomplish and satisfy the provisions and purposes of this Agreement (including, without limitation, any actions reasonably necessary to accomplish the grant to Lender of a first priority security interest in the Collateral and the perfection thereof).

*[Remainder of page intentionally left blank]*

The parties have executed this Agreement as of the date first set forth above.

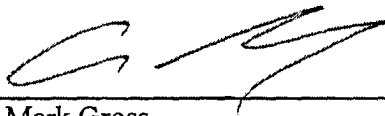
**BORROWER:**

**CARRIAGE GATE GROUP INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

**180 VINE INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross


I have the authority to bind the Corporation.

**2478658 ONTARIO LTD.**

Per:   
\_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

**2009 LONG LAKE HOLDINGS INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.




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**65 LARCH HOLDINGS INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

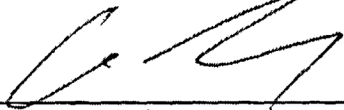
I have the authority to bind the Corporation.

**100 COLBORNE HOLDINGS INC**

Per:   
\_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

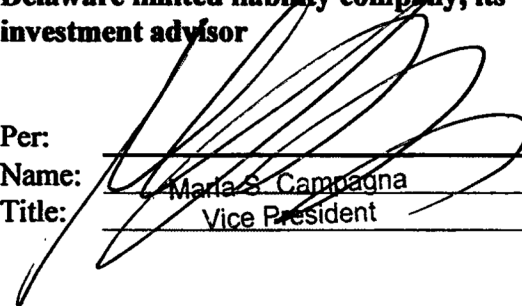
**240 OLD PENETANGUISH HOLDINGS INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

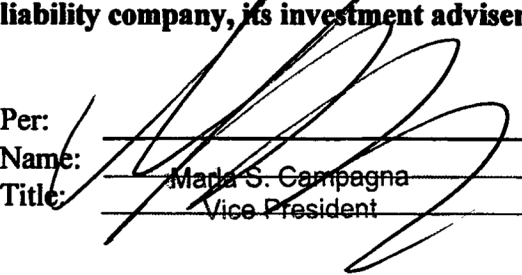
I have the authority to bind the Corporation.

**LENDER:**

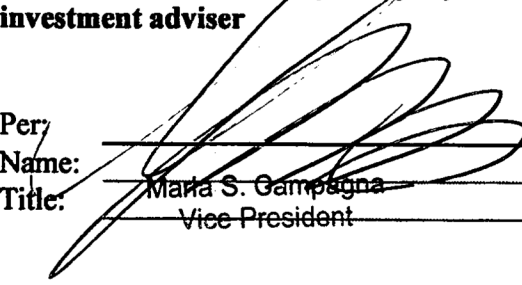
**AMERICAN GENERAL LIFE  
INSURANCE COMPANY by  
AIG Asset Management (U.S.), LLC, a  
Delaware limited liability company, its  
investment advisor**

Per:   
Name: \_\_\_\_\_  
Title:           Maria S. Campagna            
                    Vice President          

**THE VARIABLE ANNUITY LIFE  
INSURANCE COMPANY by AIG Asset  
Management (U.S.), LLC, a Delaware limited  
liability company, its investment adviser**

Per:   
Name: \_\_\_\_\_  
Title:           Maria S. Campagna            
                    Vice President          

**LEXINGTON INSURANCE COMPANY by  
AIG Asset Management (U.S.), LLC, a  
Delaware limited liability company, its  
investment adviser**

Per:   
Name: \_\_\_\_\_  
Title:           Maria S. Campagna            
                    Vice President

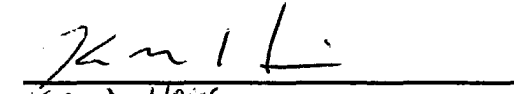
**Acknowledgement of Servicer.**

The undersigned Servicer hereby executes this Agreement in order to acknowledge Lender's security interest in the Funds and the Collateral as set forth above, and that it shall hold the Funds and the Collateral in its possession for the benefit of Lender, and that any and all accounts in which Servicer holds such Funds shall be titled in Servicer's name for the benefit of Lender.

**SERVICER:**

LARGO REAL ESTATE ADVISORS, INC.  
& 6995756 CANADA, INC. LOAN  
ADMINISTRATOR LICENSE #11669

Per:

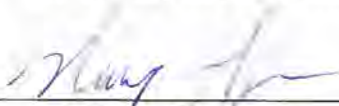


Name: *Kevin Heiss*

Title: *Managing Director*

I have the authority to bind the Corporation.

This is **Exhibit "P"** referred to in the  
Affidavit of Jacob Baron  
sworn before me by video conference  
this 18<sup>th</sup> day of June, 2021



\_\_\_\_\_  
A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.

PROMISSORY NOTE

Up to \$30,800,000.00 Canadian

January 25, 2016

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, **CARRIAGE GATE GROUP INC., 180 VINE INC., 2478658 ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH HOLDINGS INC., 100 COLBORNE HOLDINGS INC. and 240 OLD PENETANGUISH HOLDINGS INC.** (collectively, "**Maker**"), hereby promise to pay to the order of **AMERICAN GENERAL LIFE INSURANCE COMPANY** (hereinafter referred to, together with each subsequent holder hereof, as "**Holder**"), c/o AIG Investments, 777 South Figueroa Street, 16th Floor, Los Angeles, California 90017-5800, or at such other address as may be designated from time to time hereafter by Holder, the maximum principal sum of **Thirty Million, Eight Hundred Thousand CANADIAN DOLLARS (\$30,800,000.00)**, together with interest on the principal balance outstanding from time to time, as hereinafter provided.

Concurrently herewith, Maker is also entering into the Variable Note (as defined in Section 2(b) hereof) and the Lexington Note (as defined in Section 2(b) hereof).

By its execution and delivery of this promissory note (this "**Note**"), Maker hereby covenants and agrees as follows:

1. **Interest Rate and Blended Payments.**

(a) Up to the maximum principal amount of Thirty Million, Eight Hundred Thousand CANADIAN DOLLARS (\$30,800,000.00) will be advanced hereunder, upon satisfaction of the terms and conditions set forth in the mortgage loan application agreement dated November 30, 2015, between, among others, Gross Capital Inc., on behalf of Maker, as borrower, and AIG Asset Management (U.S.), LLC on behalf of Holder and its co-lenders, The Variable Annuity Life Insurance Company ("**Variable**") and Lexington Insurance Company ("**Lexington**").

(b) The balance of principal outstanding from time to time under this Note shall bear interest at the rate of Four and Seventeen One Hundredths Percent (4.17%) per annum (the "**Interest Rate**"), based on a three hundred and sixty (360) day year composed of twelve (12) months of thirty (30) days each; provided, however, (i) interest for partial months shall be calculated by multiplying the principal balance of this Note by the Interest Rate, dividing the product by three hundred and sixty (360), and multiplying that result by the actual number of days elapsed (such calculation being referred to herein as an "**Actual/360 Calculation**"); and (ii) interest on any advance made by Holder to Maker on any day, other than the first day of a month, shall be calculated using the Actual/360 Calculation for the month in which such advance is made. For purposes of the *Interest Act* (Canada), the Interest Rate, which is calculated on the basis of a 360 day year, can be converted to an annual rate or percentage of interest by multiplying the Interest Rate by a fraction, the numerator of which is 365 and the denominator of which is 360.

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(c) Interest only shall be payable from and after the date the loan evidenced by this Note (the "**Loan**") is funded by Holder to and including February 1, 2016 (the "**Stub Interest Period**").

(d) Commencing on March 1, 2016, and on the first day of each month thereafter through and including the first day of the calendar month immediately preceding the Maturity Date (as hereinafter defined), combined payments of principal and interest shall be payable, in arrears, in the amount of One Hundred and Fifty-Seven Thousand, Nine Hundred and Thirty-Six CANADIAN DOLLARS and Eighty-One CANADIAN CENTS (\$157,936.81) each (such amount representing an amount sufficient to fully amortize the original principal amount of this Note over a three hundred and twenty-four (324) month period). Interest shall be payable at the Interest Rate both before and after maturity, default, demand and judgment.

(e) Any payment by Maker hereunder which is received by Holder after 1:00 p.m. (Toronto time) on any day shall be deemed to have been made by Maker and received by Holder on the next Business Day. Any payment due and payable hereunder by Maker on a day that is not a Business Day shall be deemed to be due and payable on the next Business Day.

(f) The entire outstanding principal balance of this Note, together with all accrued and unpaid interest and all other sums due hereunder, shall be due and payable in full on February 1, 2026 (the "**Maturity Date**").

## 2. Prepayment.

(a) Maker shall have no right to prepay all or any part of this Note before the date (the "**Lockout Expiration Date**") that is sixty (60) calendar months from and after the first day immediately following the Stub Interest Period.

(b) At any time on or after the Lockout Expiration Date, so long as no Event of Default shall have occurred and be continuing, but subject to clauses (i) through (iii) of this Section 2(b) and Section 2(c) hereof, Maker shall have the right to prepay the full (but not part) outstanding principal amount of this Note, all accrued and unpaid interest and all other sums due hereunder, provided that (i) Maker provides not less than thirty (30) days' prior written notice to Holder of Maker's election to prepay this Note, (ii) prior to one hundred and fourteen (114) calendar months from and after the first day immediately following the Stub Interest Period, Maker pays Yield Maintenance (as hereinafter defined) to Holder, and (iii) Maker simultaneously prepays the full principal amount, all accrued and unpaid interest and all other sums due under a promissory note (the "**Variable Note**") in the original principal amount of \$16,100,000.00 made by Maker in favour of Variable and under a promissory note (the "**Lexington Note**") in the original principal amount of \$23,100,000.00 made by Maker in favour of Lexington.

(c) Holder shall notify Maker of the amount and basis for determination of Yield Maintenance (if payable above). Maker may not prepay the Loan on a Friday or on any day preceding a public holiday, or the equivalent for banks generally under the laws in effect within the Province of Ontario, or on any day that is not a Business Day (as hereinafter defined).

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(d) Except for the application of insurance proceeds or condemnation awards by Holder to the principal balance of this Note (which shall only be deemed to have been paid hereunder after Holder's actual receipt thereof), as provided in the Mortgages, in no event shall Maker be permitted to make any partial prepayments of this Note.

(e) Except as expressly provided for in Subsection 2(b) above, if by operation of law or by acceleration of the principal sum hereunder by the Holder or for any other reason whatsoever, Maker shall become entitled or obligated, prior to the Maturity Date, to prepay, and does prepay the principal sum hereunder or any part thereof, then Maker shall also pay to Holder, in addition to all other amounts owing hereunder, Yield Maintenance.

(f) Maker acknowledges that Holder, in connection with the Loan, may execute one or more cross-currency swap agreements covering changes in exchange rates between the Canadian dollar and the United States dollar. Maker undertakes to indemnify and save harmless Holder from and against all foreign exchange losses and all losses, costs and expenses incurred by Holder resulting from the unwinding or amendment of such cross-currency swap agreements arising from prepayment of the Loan prior to the Maturity Date (whether voluntary, mandatory, by reason of acceleration or otherwise).

### 3. Business Days.

Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or public holiday or the equivalent for banks generally under the laws of the Province of Ontario (any other day being a "Business Day"), such payment shall be due on the next succeeding Business Day, but no additional interest or other payment shall be payable in respect of such delay.

### 4. Application of Payments.

All payments hereunder shall be applied first to the payment of overdue blended payments of principal and interest (with partial payments applied to principal and interest in proportion to the principal and interest amounts of the relevant blended payment), then to the payment of outstanding Yield Maintenance (if applicable), then to the payment of all outstanding sums advanced by Holder for the payment of insurance premiums, taxes and other similar charges pertaining to the Properties, then to the payment of all other costs and expenses incurred by Holder pursuant to the Loan Documents (as hereinafter defined) (including without limitation, all out-of-pocket enforcement costs, expenses and legal fees and disbursements on a substantial indemnity basis), then to the payment of additional interest on the above amounts, and then to the reduction of principal. Notwithstanding the foregoing, for so long as any Event of Default shall be continuing, Holder shall have the continuing exclusive right to apply any payments received by Holder from or on behalf of Maker as Holder may elect against the then due and owing obligations of Maker under this Note in such order of priority or in such allocation as Holder shall deem advisable in its sole, absolute and unfettered discretion.

### 5. Immediately Available Funds.

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Payments hereunder shall be payable in immediately available funds without setoff, counterclaim or deduction of any kind, and shall be made by electronic funds transfer from a bank account established and maintained by Maker for such purpose.

6. **Event of Default.**

Each of the following events shall constitute an event of default (an "Event of Default") under this Note:

(a) any failure of Maker to pay when due any sum under this Note and the continuance of such failure for a period of two (2) Business Days (it being acknowledged that the Holder shall have no obligation to provide notice of such failure to Maker); or

(b) the occurrence of any "Event of Default" under and as defined in the Mortgages.

7. **Acceleration.**

Upon the occurrence of an Event of Default which is continuing, the entire balance of principal, accrued and unpaid interest and all other sums due hereunder (including Yield Maintenance, if applicable) shall, at the option of Holder and upon notice to Maker, become immediately due and payable without further notice or demand.

8. **Certain Waivers and Consents.**

Maker and all parties now or hereafter liable for the payment hereof, primarily or secondarily, directly or indirectly, and whether as endorser, guarantor, surety or otherwise, hereby (a) waive presentment, demand, protest, notice of protest and/or dishonor, and all other demands or notices of any sort whatsoever with respect to this Note, excepting any notice of acceleration to be delivered as contemplated under Section 7 hereof, (b) consent to impairment or release of collateral, extensions of time for payment, and acceptance of partial payments before, at, or after maturity, (c) waive any right to require Holder to proceed against any security for this Note before proceeding hereunder, (d) waive diligence in the collection of this Note or in filing suit in respect of this Note, and (e) agree to pay all reasonable costs and expenses, including solicitors' fees on a substantial indemnity basis, which may be incurred in the collection of this Note or any part thereof or in preserving, securing possession of and/or realizing upon any security for this Note.

9. **Usury Savings Clause.**

The provisions of this Note and of all agreements between Maker and Holder are, whether now existing or hereinafter made, hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, prepayment, demand for payment or otherwise, shall the amount paid, or agreed to be paid, to Holder for the use, forbearance or detention of the principal hereof or interest hereon, which remains unpaid from time to time, exceed the maximum amount permitted to be paid under applicable law. If from any circumstance whatsoever, the performance or fulfillment of any provision hereof or of any other agreement between Maker and Holder shall, at the time performance or fulfillment of such provision is due, involve or purport to require any payment in excess of the limits prescribed by



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law, then the obligation to be performed or fulfilled is hereby reduced to the limit of such validity prescribed by law, and if from any circumstance whatsoever Holder should ever receive as interest or loan charges an amount which would exceed the highest lawful rate or maximum amount collectible, then the amount which would be excessive interest or loan charges shall be applied to the reduction of the principal balance owing hereunder and shall not constitute interest or loan charges.

10. **Defined Terms.**

For purposes of this Note the following terms shall have the meanings indicated:

(a) **“Loan Documents”** shall mean this Note, the Variable Note, the Lexington Note, the guarantee from Mark Gross and Sheldon Gross, the Mortgages, the general assignments of leases and rents, the general security agreements, the assignments of contracts, the directions to noninee and acknowledgements, the environmental indemnities and all other documentation pertaining to the Loan;

(b) **“Mortgages”** shall mean the mortgages of the Properties from one or more of the parties comprising the Maker, in the original principal amount of \$70,000,000.00;

(c) **“Properties”** shall mean the properties municipally and legally described in Schedule “A” attached hereto; and

(d) **“Yield Maintenance”** shall mean, when used in connection with a prepayment of principal hereunder after the Lockout Expiration Date, compensation for the loss on the return of funds allocated to the principal sum being prepaid, which compensation shall be the greater of the two following amounts:

(i) an amount equal to the amount by which:

(A) the sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the Maturity Date and the present value of the principal sum which would be payable on the Maturity Date (these present values shall be calculated using a discount rate as determined by the Holder one (1) week prior to the prepayment date, expressed as an annual rate of interest calculated semi-annually and not in advance, equal to (x) the yield to maturity of a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the Maturity Date and of a non-callable Government of Canada bond having a maturity closest to but following the Maturity Date);

exceeds

(B) the principal sum prepaid;

- 6 -

and

(ii) an amount equal to 1% of the then outstanding principal sum.

11. **Severability.**

If any provision hereof or of any other document securing or related to the indebtedness evidenced hereby is, for any reason and to any extent, invalid or unenforceable, then neither the remainder of the document in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other document referred to herein, shall be affected thereby, but instead shall be enforceable to the maximum extent permitted under law.

12. **Transfer of Note.**

Each provision of this Note shall be and remain in full force and effect notwithstanding any negotiation or transfer hereof and any interest herein to any other Holder or participant. Maker shall not assign part or all of its interest hereunder without Holder's prior written consent, which consent may be withheld in its sole, absolute and unfettered discretion.

13. **Governing Law.**

Regardless of the place of its execution, this Note shall be construed and enforced in accordance with the laws in effect within the Province of Ontario.

14. **Time of Essence.**

Time shall be of the essence with respect to all of Maker's obligations under this Note.

15. **Remedies Cumulative.**

The remedies provided to Holder in this Note, the Mortgages and the other Loan Documents are cumulative and concurrent and may be exercised singly, successively or together against Maker, one or more of the Properties, the other security or one or both of the entities comprising the Guarantor, at the sole, absolute and unfettered discretion of Holder.

16. **No Waiver.**

Holder shall not by any act or omission be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder and then only to the extent specifically set forth therein. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy granted to Holder hereunder in connection with a subsequent event.

17. **Administrative Fee.**

Holder shall be entitled to receive hereunder an administrative fee of \$250.00 for each monetary default of Maker and, for purposes of this Note, such sums shall be added to the outstanding principal sum.

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**18. Securitization/Servicer.**

(a) Holder may, without notice to and without the consent of Maker, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Note, the Loan Documents and/or the Loan and any and all rights, title, benefits, remedies and obligations relating thereto to any Person (as defined in the Mortgages).

(b) Maker acknowledges that Holder may, at the reasonable cost and expense of Holder, retain the services of a servicer (the "Servicer") to service the Loan, including the collection of payments under this Note. Maker further acknowledges that the Servicer is not Holder and that the Servicer does not owe any obligations to Maker to advance funds under the Loan, or to continue to be the Servicer. All references to Holder following the advance of the Loan shall be deemed to include the Servicer, and, subject to the terms and conditions of the servicing agreement between Holder and the Servicer, the Servicer shall have and may exercise at all times and without restriction all of the rights and benefits of Holder under this Note and the other Loan Documents, provided, however, that Holder may replace the Servicer in its sole, absolute and unfettered discretion.

(c) Maker covenants, at the reasonable cost and expense of Holder, to execute all documentation and take all action that Holder, acting reasonably, deems necessary or useful in order to effect, perfect, complete or facilitate such assignment, provided that such documentation shall not modify the rights or obligations of Maker or Holder pursuant to this Note.

**19. Joint and Several Liability**

The obligations hereunder of the parties comprising the Maker shall be joint and several.

**20. Limited Recourse**

Notwithstanding any other provision of this Note, the Holder's full and unimpeded recourse to Maker's assets pursuant to this Note and pursuant to the Loan Documents shall be limited to the following:

- (a) Maker's liability pursuant to the Environmental Indemnity;
- (b) Maker's liability pursuant to the Covenant and Undertaking; and

(c) (i) all damages, losses and reasonable out-of-pocket costs (including, without limitation, reasonable legal fees and disbursements on a substantial indemnity basis) incurred by Holder as a result of waste on the Properties committed by Maker and/or its affiliates; (ii) any condemnation or insurance proceeds attributable to the Properties that were not paid to Holder or used to restore the Properties, in each case to the extent required to be so paid or used pursuant to the Mortgages; (iii) all rents, profits, advances, rebates, prepaid rents, lease termination payments and similar sums attributable to the Properties collected by Maker or its affiliates (A) following an Event of Default (as defined in the Mortgages) that is continuing, and not properly applied to the reasonable fixed and/or reasonable operating expenses of the Properties (including payments and other sums due under the Loan Documents), or (B) to the extent not deposited into the Properties bank account(s) as and when required pursuant to the Loan Documents; (iv) all

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security deposits collected by or for Maker (and/or its affiliates) under Properties leases and not applied in accordance with the relevant Properties leases; (v) all accrued realty taxes, assessments and utility charges affecting the Properties and all related interest and penalties (whether or not the same have been billed to Maker and/or its affiliates); (vi) all sums expended by Holder in fulfilling Maker's obligations pursuant to Properties leases; (vii) all losses suffered by Holder (that would otherwise be covered by insurance), resulting from Maker's or its affiliates' failure to maintain insurance pursuant to the Loan Documents and/or to pay any deductible thereunder; and (viii) all damages, losses and costs suffered, directly or indirectly, by Holder, as a result of any acts of fraud, misrepresentation, wilful misconduct and/or gross negligence committed by Maker and/or any Persons for whom it is liable under law, in connection, directly or indirectly, with the Properties.

Maker agrees to indemnify and save harmless Holder and its respective successors and assigns from and against all liabilities, obligations, losses, damages (including foreseeable and unforeseeable consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable solicitors' fees and disbursements on a substantial indemnity basis) of any kind or nature whatsoever, other than those arising from the gross negligence or wilful misconduct of Holder, that may at any time be incurred by, imposed on or asserted, directly or indirectly, against one or both of the entities comprising the Holder in connection with the subject-matter of (c) above.

*[balance of page intentionally left blank; signature page follows]*


IN WITNESS WHEREOF Maker has duly executed this Note as of the date first above written.

**CARRIAGE GATE GROUP INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

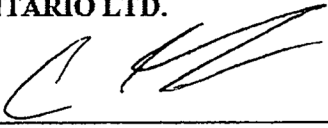
I have the authority to bind the Corporation.

**180 VINE INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

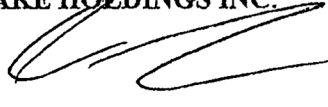
I have the authority to bind the Corporation.

**2478658 ONTARIO LTD.**

Per:   
\_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

**2009 LONG LAKE HOLDINGS INC.**

Per:   
\_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

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**65 LARCH HOLDINGS INC.**

Per:   
President - Mark Gross

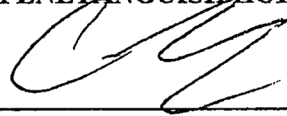
I have the authority to bind the Corporation.

**100 COLBORNE HOLDINGS INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**240 OLD PENETANGUISH HOLDINGS INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE A  
TO PROMISSORY NOTE**

**PROPERTIES**

**South Mount Medical Centre**

**35 Upper Centennial Parkway, Hamilton**

FIRSTLY: Part of Lot 25, Concession 8 Saltfleet, designated as Part 7 on Plan 62R-18917; Stoney Creek; together with an easement over Part of Lot 25, Concession 8 Saltfleet, designated as Parts 9, 11, 12 and 13 on Plan 62R-18917 as in WE749696; City of Hamilton

*being the whole of PIN 17088-0748(LT)*

SECONDLY: Part of Lot 25, Concession 8 Saltfleet, being Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917; subject to an easement over Part 3 on Plan 62R-18917 in favour of Parts 1-5 inclusive, 12-15 inclusive, 18, 21, 30, 31, 32, 36, 38, 42, 48 and 53 on Plan 62R-14684 as in LT562193; together with an easement over Parts 2, 4, 14, 21, 30, 31, 32, 36, 38 and 48 on Plan 62R-14684 as in LT562194; subject to an easement over Part 5 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 10 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 2 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 3 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; Stoney Creek; together with an easement over Parts 9, 11, 12 and 13 on Plan 62R-18917 as in WE749696; City of Hamilton

*being the whole of PIN 17088-0762(LT)*

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**Niagara Health Centre**180 Vine Street South, St. Catharines

Part of Lot 7, 9-10, Block D CY Plan 46 Grantham; Part of Block A CY Plan 79 Grantham; Part of Block A, B CY Plan 80 Grantham; Part Unnamed Street CY Plan 46 Grantham, closed by RO407053, Part 1 on Plan 30R-2209 except Part 1 on Plan 30R-3734, Part 1 on Plan 30R-6493 and Part 1 on Plan 30R-7456; St. Catharines

*being the whole of PIN 46272-0086(LT)*

**Alexander Medical Centre**849 Alexander Court, Peterborough

Part of Lots 3 and 4 on Plan 23Q, designated as Parts 1 and 2 on Plan 45R-647, North Monaghan; Peterborough

*being the whole of PIN 28061-0157(LT)*

**Four Corners**2009 Long Lake Road, Sudbury

FIRSTLY: Parcel 8259, Section SES; Part of Lot 6, Concession 1 McKim except LT52588, LT53059, LT109847, Part 7 on Plan 53R-4520 and Part 4 on Plan 53R-13501; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0102(LT)*

SECONDLY: Parcel 39445, Section SES; Part of Lot 6, Concession 1 McKim, designated as Parts 3 to 7 and 12 to 15 on Plan 53R-5036; Part of Lot 6, Concession 1 McKim, designated as Part 5 on Plan 53R-13501; subject to Parts 2 and 3 on Plan 53R-13501 as in LT717184; subject to LT25019, LT735739; Greater Sudbury

*being the whole of PIN 73595-0174(LT)*

THIRDLY: Parcel 39000, Section SES; designated as Part of Lot 6, Concession 1 McKim, designated as Parts 9 to 11 on Plan 53R-5036; together with a right-of-way over Parts 1 and 2 on Plan 53R-5036; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0333(LT)*



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**Sudbury Medical Centre**65 Larch Street, Sudbury

FIRSTLY: Lot 23, Block A, Plan 3SA McKim; Greater Sudbury

*being the whole of PIN 73584-0077(LT)*

SECONDLY: Lots 20-22, Block A, Plan 3SA McKim; Greater Sudbury

*being the whole of PIN 73584-0078(LT)*

THIRDLY: Part North Half of Lot 5, Concession 3 McKim as in S81426 (Secondly &amp; Thirdly); Greater Sudbury

*being the whole of PIN 73584-0097(LT)***Orillia Professional Centre**100 Colborne Street, Orillia

Part of Lots 10-15, 17, Block C, Plan 228 Orillia, designated as Parts 3, 4 and 5 on Plan 51R-10372; Orillia

*being the whole of PIN 58650-0115(LT)*77 Wyandotte Street, Orillia

Lot 16, Block G, Plan 228 Orillia; Part of Lot 15, Block G, Plan 228 Orillia as in RO1453448; Orillia

*being the whole of PIN 58644-0014(LT)***Huronian Medical Centre**240 Old Penetanguishene Road, Midland

Part East Half of Lot 106, Concession 1 WPR Tiny; Part of Lot 107, Concession 1 WPR Tiny, designated as Parts 3 and 4 on Plan 51R-18477 and Parts 4, 5, 6, 7 and 10 on Plan R1026 except 51R-3985; together with and subject to RO1045345; Midland

*being the whole of PIN 58454-0029(LT)*

**PROMISSORY NOTE**

Up to \$23,100,000.00 Canadian

January 25, 2016

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, **CARRIAGE GATE GROUP INC., 180 VINE INC., 2478658 ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH HOLDINGS INC., 100 COLBORNE HOLDINGS INC. and 240 OLD PENETANGUISH HOLDINGS INC.** (collectively, "**Maker**"), hereby promise to pay to the order of **LEXINGTON INSURANCE COMPANY** (hereinafter referred to, together with each subsequent holder hereof, as "**Holder**"), c/o AIG Investments, 777 South Figueroa Street, 16th Floor, Los Angeles, California 90017-5800, or at such other address as may be designated from time to time hereafter by Holder, the maximum principal sum of **Twenty-Three Million, One Hundred Thousand CANADIAN DOLLARS (\$23,100,000.00)**, together with interest on the principal balance outstanding from time to time, as hereinafter provided.

Concurrently herewith, Maker is also entering into the American General Note (as defined in Section 2(b) hereof) and the Variable Note (as defined in Section 2(b) hereof).

By its execution and delivery of this promissory note (this "**Note**"), Maker hereby covenants and agrees as follows:

1. **Interest Rate and Blended Payments.**

(a) Up to the maximum principal amount of Twenty-Three Million, One Hundred Thousand CANADIAN DOLLARS (\$23,100,000.00) will be advanced hereunder, upon satisfaction of the terms and conditions set forth in the mortgage loan application agreement dated November 30, 2015, between, among others, Gross Capital Inc., on behalf of Maker, as borrower, and AIG Asset Management (U.S.), LLC on behalf of Holder and its co-lenders, American General Life Insurance Company ("**American General**") and The Variable Annuity Life Insurance Company ("**Variable**").

(b) The balance of principal outstanding from time to time under this Note shall bear interest at the rate of Four and Seventeen One Hundredths Percent (4.17%) per annum (the "**Interest Rate**"), based on a three hundred and sixty (360) day year composed of twelve (12) months of thirty (30) days each; provided, however, (i) interest for partial months shall be calculated by multiplying the principal balance of this Note by the Interest Rate, dividing the product by three hundred and sixty (360), and multiplying that result by the actual number of days elapsed (such calculation being referred to herein as an "**Actual/360 Calculation**"); and (ii) interest on any advance made by Holder to Maker on any day, other than the first day of a month, shall be calculated using the Actual/360 Calculation for the month in which such advance is made. For purposes of the *Interest Act* (Canada), the Interest Rate, which is calculated on the basis of a 360 day year, can be converted to an annual rate or percentage of interest by multiplying the Interest Rate by a fraction, the numerator of which is 365 and the denominator of which is 360.

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(c) Interest only shall be payable from and after the date the loan evidenced by this Note (the "Loan") is funded by Holder to and including February 1, 2016 (the "Stub Interest Period").

(d) Commencing on March 1, 2016, and on the first day of each month thereafter through and including the first day of the calendar month immediately preceding the Maturity Date (as hereinafter defined), combined payments of principal and interest shall be payable, in arrears, in the amount of One Hundred and Eighteen Thousand, Four Hundred and Fifty-Two CANADIAN DOLLARS and Sixty-One CANADIAN CENTS (\$118,452.61) each (such amount representing an amount sufficient to fully amortize the original principal amount of this Note over a three hundred and twenty-four (324) month period). Interest shall be payable at the Interest Rate both before and after maturity, default, demand and judgment.

(e) Any payment by Maker hereunder which is received by Holder after 1:00 p.m. (Toronto time) on any day shall be deemed to have been made by Maker and received by Holder on the next Business Day. Any payment due and payable hereunder by Maker on a day that is not a Business Day shall be deemed to be due and payable on the next Business Day.

(f) The entire outstanding principal balance of this Note, together with all accrued and unpaid interest and all other sums due hereunder, shall be due and payable in full on February 1, 2026 (the "Maturity Date").

## 2. Prepayment.

(a) Maker shall have no right to prepay all or any part of this Note before the date (the "Lockout Expiration Date") that is sixty (60) calendar months from and after the first day immediately following the Stub Interest Period.

(b) At any time on or after the Lockout Expiration Date, so long as no Event of Default shall have occurred and be continuing, but subject to clauses (i) through (iii) of this Section 2(b) and Section 2(c) hereof, Maker shall have the right to prepay the full (but not part) outstanding principal amount of this Note, all accrued and unpaid interest and all other sums due hereunder, provided that (i) Maker provides not less than thirty (30) days' prior written notice to Holder of Maker's election to prepay this Note, (ii) prior to one hundred and fourteen (114) calendar months from and after the first day immediately following the Stub Interest Period, Maker pays Yield Maintenance (as hereinafter defined) to Holder, and (iii) Maker simultaneously prepays the full principal amount, all accrued and unpaid interest and all other sums due under a promissory note (the "American General Note") in the original principal amount of \$30,800,000.00 made by Maker in favour of American General and under a promissory note (the "Variable Note") in the original principal amount of \$16,100,000.00 made by Maker in favour of Variable.

(c) Holder shall notify Maker of the amount and basis for determination of Yield Maintenance (if payable above). Maker may not prepay the Loan on a Friday or on any day preceding a public holiday, or the equivalent for banks generally under the laws in effect within the Province of Ontario, or on any day that is not a Business Day (as hereinafter defined).

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(d) Except for the application of insurance proceeds or condemnation awards by Holder to the principal balance of this Note (which shall only be deemed to have been paid hereunder after Holder's actual receipt thereof), as provided in the Mortgages, in no event shall Maker be permitted to make any partial prepayments of this Note.

(e) Except as expressly provided for in Subsection 2(b) above, if by operation of law or by acceleration of the principal sum hereunder by the Holder or for any other reason whatsoever, Maker shall become entitled or obligated, prior to the Maturity Date, to prepay, and does prepay the principal sum hereunder or any part thereof, then Maker shall also pay to Holder, in addition to all other amounts owing hereunder, Yield Maintenance.

(f) Maker acknowledges that Holder, in connection with the Loan, may execute one or more cross-currency swap agreements covering changes in exchange rates between the Canadian dollar and the United States dollar. Maker undertakes to indemnify and save harmless Holder from and against all foreign exchange losses and all losses, costs and expenses incurred by Holder resulting from the unwinding or amendment of such cross-currency swap agreements arising from prepayment of the Loan prior to the Maturity Date (whether voluntary, mandatory, by reason of acceleration or otherwise).

### 3. Business Days.

Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or public holiday or the equivalent for banks generally under the laws of the Province of Ontario (any other day being a "Business Day"), such payment shall be due on the next succeeding Business Day, but no additional interest or other payment shall be payable in respect of such delay.

### 4. Application of Payments.

All payments hereunder shall be applied first to the payment of overdue blended payments of principal and interest (with partial payments applied to principal and interest in proportion to the principal and interest amounts of the relevant blended payment), then to the payment of outstanding Yield Maintenance (if applicable), then to the payment of all outstanding sums advanced by Holder for the payment of insurance premiums, taxes and other similar charges pertaining to the Properties, then to the payment of all other costs and expenses incurred by Holder pursuant to the Loan Documents (as hereinafter defined) (including without limitation, all out-of-pocket enforcement costs, expenses and legal fees and disbursements on a substantial indemnity basis), then to the payment of additional interest on the above amounts, and then to the reduction of principal. Notwithstanding the foregoing, for so long as any Event of Default shall be continuing, Holder shall have the continuing exclusive right to apply any payments received by Holder from or on behalf of Maker as Holder may elect against the then due and owing obligations of Maker under this Note in such order of priority or in such allocation as Holder shall deem advisable in its sole, absolute and unfettered discretion.

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5. **Immediately Available Funds.**

Payments hereunder shall be payable in immediately available funds without setoff, counterclaim or deduction of any kind, and shall be made by electronic funds transfer from a bank account established and maintained by Maker for such purpose.

6. **Event of Default.**

Each of the following events shall constitute an event of default (an "Event of Default") under this Note:

(a) any failure of Maker to pay when due any sum under this Note and the continuance of such failure for a period of two (2) Business Days (it being acknowledged that the Holder shall have no obligation to provide notice of such failure to Maker); or

(b) the occurrence of any "Event of Default" under and as defined in the Mortgages.

7. **Acceleration.**

Upon the occurrence of an Event of Default which is continuing, the entire balance of principal, accrued and unpaid interest and all other sums due hereunder (including Yield Maintenance, if applicable) shall, at the option of Holder and upon notice to Maker, become immediately due and payable without further notice or demand.

8. **Certain Waivers and Consents.**

Maker and all parties now or hereafter liable for the payment hereof, primarily or secondarily, directly or indirectly, and whether as endorser, guarantor, surety or otherwise, hereby (a) waive presentment, demand, protest, notice of protest and/or dishonor, and all other demands or notices of any sort whatsoever with respect to this Note, excepting any notice of acceleration to be delivered as contemplated under Section 7 hereof, (b) consent to impairment or release of collateral, extensions of time for payment, and acceptance of partial payments before, at, or after maturity, (c) waive any right to require Holder to proceed against any security for this Note before proceeding hereunder, (d) waive diligence in the collection of this Note or in filing suit in respect of this Note, and (e) agree to pay all reasonable costs and expenses, including solicitors' fees on a substantial indemnity basis, which may be incurred in the collection of this Note or any part thereof or in preserving, securing possession of and/or realizing upon any security for this Note.

9. **Usury Savings Clause.**

The provisions of this Note and of all agreements between Maker and Holder are, whether now existing or hereinafter made, hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, prepayment, demand for payment or otherwise, shall the amount paid, or agreed to be paid, to Holder for the use, forbearance or detention of the principal hereof or interest hereon, which remains unpaid from time to time, exceed the maximum amount permitted to be paid under applicable law. If from any circumstance whatsoever, the performance or fulfillment of any provision hereof or of any

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other agreement between Maker and Holder shall, at the time performance or fulfillment of such provision is due, involve or purport to require any payment in excess of the limits prescribed by law, then the obligation to be performed or fulfilled is hereby reduced to the limit of such validity prescribed by law, and if from any circumstance whatsoever Holder should ever receive as interest or loan charges an amount which would exceed the highest lawful rate or maximum amount collectible, then the amount which would be excessive interest or loan charges shall be applied to the reduction of the principal balance owing hereunder and shall not constitute interest or loan charges.

#### 10. Defined Terms.

For purposes of this Note the following terms shall have the meanings indicated:

(a) **"Loan Documents"** shall mean this Note, the American General Note, the Variable Note, the guarantee from Mark Gross and Sheldon Gross, the Mortgages, the general assignments of leases and rents, the general security agreements, the assignments of contracts, the directions to nominee and acknowledgements, the environmental indemnities and all other documentation pertaining to the Loan;

(b) **"Mortgages"** shall mean the mortgages of the Properties from one or more of the parties comprising the Maker, in the original principal amount of \$70,000,000.00;

(c) **"Properties"** shall mean the properties municipally and legally described in Schedule "A" attached hereto; and

(d) **"Yield Maintenance"** shall mean, when used in connection with a prepayment of principal hereunder after the Lockout Expiration Date, compensation for the loss on the return of funds allocated to the principal sum being prepaid, which compensation shall be the greater of the two following amounts:

- (i) an amount equal to the amount by which:
  - (A) the sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the Maturity Date and the present value of the principal sum which would be payable on the Maturity Date (these present values shall be calculated using a discount rate as determined by the Holder one (1) week prior to the prepayment date, expressed as an annual rate of interest calculated semi-annually and not in advance, equal to (x) the yield to maturity of a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the Maturity Date and of a non-callable Government of Canada bond having a maturity closest to but following the Maturity Date);

exceeds

- 6 -

(B) the principal sum prepaid;

and

(ii) an amount equal to 1% of the then outstanding principal sum.

11. **Severability.**

If any provision hereof or of any other document securing or related to the indebtedness evidenced hereby is, for any reason and to any extent, invalid or unenforceable, then neither the remainder of the document in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other document referred to herein, shall be affected thereby, but instead shall be enforceable to the maximum extent permitted under law.

12. **Transfer of Note.**

Each provision of this Note shall be and remain in full force and effect notwithstanding any negotiation or transfer hereof and any interest herein to any other Holder or participant. Maker shall not assign part or all of its interest hereunder without Holder's prior written consent, which consent may be withheld in its sole, absolute and unfettered discretion.

13. **Governing Law.**

Regardless of the place of its execution, this Note shall be construed and enforced in accordance with the laws in effect within the Province of Ontario.

14. **Time of Essence.**

Time shall be of the essence with respect to all of Maker's obligations under this Note.

15. **Remedies Cumulative.**

The remedies provided to Holder in this Note, the Mortgages and the other Loan Documents are cumulative and concurrent and may be exercised singly, successively or together against Maker, one or more of the Properties, the other security or one or both of the entities comprising the Guarantor, at the sole, absolute and unfettered discretion of Holder.

16. **No Waiver.**

Holder shall not by any act or omission be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder and then only to the extent specifically set forth therein. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy granted to Holder hereunder in connection with a subsequent event.

- 7 -

17. **Administrative Fee.**

Holder shall be entitled to receive hereunder an administrative fee of \$250.00 for each monetary default of Maker and, for purposes of this Note, such sums shall be added to the outstanding principal sum.

18. **Securitization/Servicer.**

(a) Holder may, without notice to and without the consent of Maker, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Note, the Loan Documents and/or the Loan and any and all rights, title, benefits, remedies and obligations relating thereto to any Person (as defined in the Mortgages).

(b) Maker acknowledges that Holder may, at the reasonable cost and expense of Holder, retain the services of a servicer (the "Servicer") to service the Loan, including the collection of payments under this Note. Maker further acknowledges that the Servicer is not Holder and that the Servicer does not owe any obligations to Maker to advance funds under the Loan, or to continue to be the Servicer. All references to Holder following the advance of the Loan shall be deemed to include the Servicer, and, subject to the terms and conditions of the servicing agreement between Holder and the Servicer, the Servicer shall have and may exercise at all times and without restriction all of the rights and benefits of Holder under this Note and the other Loan Documents, provided, however, that Holder may replace the Servicer in its sole, absolute and unfettered discretion.

(c) Maker covenants, at the reasonable cost and expense of Holder, to execute all documentation and take all action that Holder, acting reasonably, deems necessary or useful in order to effect, perfect, complete or facilitate such assignment, provided that such documentation shall not modify the rights or obligations of Maker or Holder pursuant to this Note.

19. **Joint and Several Liability**

The obligations of the parties hereunder comprising the Maker shall be joint and several.

20. **Limited Recourse**

Notwithstanding any other provision of this Note, the Holder's full and unimpeded recourse to Maker's assets pursuant to this Note and pursuant to the Loan Documents shall be limited to the following:

(a) Maker's liability pursuant to the Environmental Indemnity;

(b) Maker's liability pursuant to the Covenant and Undertaking; and

(c) (i) all damages, losses and reasonable out-of-pocket costs (including, without limitation, reasonable legal fees and disbursements on a substantial indemnity basis) incurred by Holder as a result of waste on the Properties committed by Maker and/or its affiliates; (ii) any condemnation or insurance proceeds attributable to the Properties that were not paid to Holder or used to restore the Properties, in each case to the extent required to be so paid or used pursuant to the Mortgages; (iii) all rents, profits, advances, rebates, prepaid rents, lease termination payments



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and similar sums attributable to the Properties collected by Maker or its affiliates (A) following an Event of Default (as defined in the Mortgages) that is continuing, and not properly applied to the reasonable fixed and/or reasonable operating expenses of the Properties (including payments and other sums due under the Loan Documents), or (B) to the extent not deposited into the Properties bank account(s) as and when required pursuant to the Loan Documents; (iv) all security deposits collected by or for Maker (and/or its affiliates) under Properties leases and not applied in accordance with the relevant Properties leases; (v) all accrued realty taxes, assessments and utility charges affecting the Properties and all related interest and penalties (whether or not the same have been billed to Maker and/or its affiliates); (vi) all sums expended by Holder in fulfilling Maker's obligations pursuant to Properties leases; (vii) all losses suffered by Holder (that would otherwise be covered by insurance), resulting from Maker's or its affiliates' failure to maintain insurance pursuant to the Loan Documents and/or to pay any deductible thereunder; and (viii) all damages, losses and costs suffered, directly or indirectly, by Holder, as a result of any acts of fraud, misrepresentation, wilful misconduct and/or gross negligence committed by Maker and/or any Persons for whom it is liable under law, in connection, directly or indirectly, with the Properties.

Maker agrees to indemnify and save harmless Holder and its respective successors and assigns from and against all liabilities, obligations, losses, damages (including foreseeable and unforeseeable consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable solicitors' fees and disbursements on a substantial indemnity basis) of any kind or nature whatsoever, other than those arising from the gross negligence or wilful misconduct of Holder, that may at any time be incurred by, imposed on or asserted, directly or indirectly, against one or both of the entities comprising the Holder in connection with the subject-matter of (c) above.

*[balance of page intentionally left blank; signature page follows]*


IN WITNESS WHEREOF Maker has duly executed this Note as of the date first above written.

**CARRIAGE GATE GROUP INC.**

Per:   
President - Mark Gross

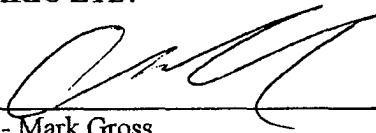
I have the authority to bind the Corporation.

**180 VINE INC.**

Per:   
President - Mark Gross

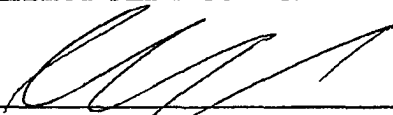
I have the authority to bind the Corporation.

**2478658 ONTARIO LTD.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

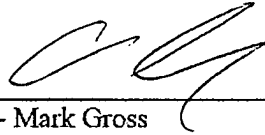
**2009 LONG LAKE HOLDINGS INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.


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**65 LARCH HOLDINGS INC.**

Per:   
President - Mark Gross

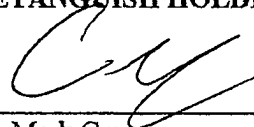
I have the authority to bind the Corporation.

**100 COLBORNE HOLDINGS INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**240 OLD PENETANGUISH HOLDINGS INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE A  
TO PROMISSORY NOTE**

**PROPERTIES**

**South Mount Medical Centre**

35 Upper Centennial Parkway, Hamilton

FIRSTLY: Part of Lot 25, Concession 8 Saltfleet, designated as Part 7 on Plan 62R-18917; Stoney Creek; together with an easement over Part of Lot 25, Concession 8 Saltfleet, designated as Parts 9, 11, 12 and 13 on Plan 62R-18917 as in WE749696; City of Hamilton

*being the whole of PIN 17088-0748(LT)*

SECONDLY: Part of Lot 25, Concession 8 Saltfleet, being Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917; subject to an easement over Part 3 on Plan 62R-18917 in favour of Parts 1-5 inclusive, 12-15 inclusive, 18, 21, 30, 31, 32, 36, 38, 42, 48 and 53 on Plan 62R-14684 as in LT562193; together with an easement over Parts 2, 4, 14, 21, 30, 31, 32, 36, 38 and 48 on Plan 62R-14684 as in LT562194; subject to an easement over Part 5 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 10 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 2 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 3 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; Stoney Creek; together with an easement over Parts 9, 11, 12 and 13 on Plan 62R-18917 as in WE749696; City of Hamilton

*being the whole of PIN 17088-0762(LT)*

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**Niagara Health Centre**180 Vine Street South, St. Catharines

Part of Lot 7, 9-10, Block D CY Plan 46 Grantham; Part of Block A CY Plan 79 Grantham; Part of Block A, B CY Plan 80 Grantham; Part Unnamed Street CY Plan 46 Grantham, closed by RO407053, Part 1 on Plan 30R-2209 except Part 1 on Plan 30R-3734, Part 1 on Plan 30R-6493 and Part 1 on Plan 30R-7456; St. Catharines

*being the whole of PIN 46272-0086(LT)*

**Alexander Medical Centre**849 Alexander Court, Peterborough

Part of Lots 3 and 4 on Plan 23Q, designated as Parts 1 and 2 on Plan 45R-647, North Monaghan; Peterborough

*being the whole of PIN 28061-0157(LT)*

**Four Corners**2009 Long Lake Road, Sudbury

FIRSTLY: Parcel 8259, Section SES; Part of Lot 6, Concession 1 McKim except LT52588, LT53059, LT109847, Part 7 on Plan 53R-4520 and Part 4 on Plan 53R-13501; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0102(LT)*

SECONDLY: Parcel 39445, Section SES; Part of Lot 6, Concession 1 McKim, designated as Parts 3 to 7 and 12 to 15 on Plan 53R-5036; Part of Lot 6, Concession 1 McKim, designated as Part 5 on Plan 53R-13501; subject to Parts 2 and 3 on Plan 53R-13501 as in LT717184; subject to LT25019, LT735739; Greater Sudbury

*being the whole of PIN 73595-0174(LT)*

THIRDLY: Parcel 39000, Section SES; designated as Part of Lot 6, Concession 1 McKim, designated as Parts 9 to 11 on Plan 53R-5036; together with a right-of-way over Parts 1 and 2 on Plan 53R-5036; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0333(LT)*

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**Sudbury Medical Centre**65 Larch Street, Sudbury

FIRSTLY: Lot 23, Block A, Plan 3SA McKim; Greater Sudbury

*being the whole of PIN 73584-0077(LT)*

SECONDLY: Lots 20-22, Block A, Plan 3SA McKim; Greater Sudbury

*being the whole of PIN 73584-0078(LT)*

THIRDLY: Part North Half of Lot 5, Concession 3 McKim as in S81426 (Secondly &amp; Thirdly); Greater Sudbury

*being the whole of PIN 73584-0097(LT)***Orillia Professional Centre**100 Colborne Street, Orillia

Part of Lots 10-15, 17, Block C, Plan 228 Orillia, designated as Parts 3, 4 and 5 on Plan 51R-10372; Orillia

*being the whole of PIN 58650-0115(LT)*77 Wyandotte Street, Orillia

Lot 16, Block G, Plan 228 Orillia; Part of Lot 15, Block G, Plan 228 Orillia as in RO1453448; Orillia

*being the whole of PIN 58644-0014(LT)***Huronian Medical Centre**240 Old Penetanguishene Road, Midland

Part East Half of Lot 106, Concession 1 WPR Tiny; Part of Lot 107, Concession 1 WPR Tiny, designated as Parts 3 and 4 on Plan 51R-18477 and Parts 4, 5, 6, 7 and 10 on Plan R1026 except 51R-3985; together with and subject to RO1045345; Midland

*being the whole of PIN 58454-0029(LT)*

PROMISSORY NOTE

Up to \$16,100,000.00 Canadian

January 25, 2016

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, CARRIAGE GATE GROUP INC., 180 VINE INC., 2478658 ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH HOLDINGS INC., 100 COLBORNE HOLDINGS INC. and 240 OLD PENETANGUISH HOLDINGS INC. (collectively, "Maker"), hereby promise to pay to the order of THE VARIABLE ANNUITY LIFE INSURANCE COMPANY (hereinafter referred to, together with each subsequent holder hereof, as "Holder"), c/o AIG Investments, 777 South Figueroa Street, 16th Floor, Los Angeles, California 90017-5800, or at such other address as may be designated from time to time hereafter by Holder, the maximum principal sum of **Sixteen Million, One Hundred Thousand CANADIAN DOLLARS (\$16,100,000.00)**, together with interest on the principal balance outstanding from time to time, as hereinafter provided.

Concurrently herewith, Maker is also entering into the American General Note (as defined in Section 2(b) hereof) and the Lexington Note (as defined in Section 2(b) hereof).

By its execution and delivery of this promissory note (this "Note"), Maker hereby covenants and agrees as follows:

1. Interest Rate and Blended Payments.

(a) Up to the maximum principal amount of Sixteen Million, One Hundred Thousand CANADIAN DOLLARS (\$16,100,000.00) will be advanced hereunder, upon satisfaction of the terms and conditions set forth in the mortgage loan application agreement dated November 30, 2015, between, among others, Gross Capital Inc., on behalf of Maker, as borrower, and AIG Asset Management (U.S.), LLC on behalf of Holder and its co-lenders, American General Life Insurance Company ("American General") and Lexington Insurance Company ("Lexington").

(b) The balance of principal outstanding from time to time under this Note shall bear interest at the rate of Four and Seventeen One Hundredths Percent (4.17%) per annum (the "Interest Rate"), based on a three hundred and sixty (360) day year composed of twelve (12) months of thirty (30) days each; provided, however, (i) interest for partial months shall be calculated by multiplying the principal balance of this Note by the Interest Rate, dividing the product by three hundred and sixty (360), and multiplying that result by the actual number of days elapsed (such calculation being referred to herein as an "Actual/360 Calculation"); and (ii) interest on any advance made by Holder to Maker on any day, other than the first day of a month, shall be calculated using the Actual/360 Calculation for the month in which such advance is made. For purposes of the *Interest Act* (Canada), the Interest Rate, which is calculated on the basis of a 360 day year, can be converted to an annual rate or percentage of interest by multiplying the Interest Rate by a fraction, the numerator of which is 365 and the denominator of which is 360.

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(c) Interest only shall be payable from and after the date the loan evidenced by this Note (the "**Loan**") is funded by Holder to and including February 1, 2016 (the "**Stub Interest Period**").

(d) Commencing on March 1, 2016, and on the first day of each month thereafter through and including the first day of the calendar month immediately preceding the Maturity Date (as hereinafter defined), combined payments of principal and interest shall be payable, in arrears, in the amount of Eighty-Two Thousand, Five Hundred and Fifty-Seven CANADIAN DOLLARS and Eighty-Eight CANADIAN CENTS (\$82,557.88) each (such amount representing an amount sufficient to fully amortize the original principal amount of this Note over a three hundred and twenty-four (324) month period). Interest shall be payable at the Interest Rate both before and after maturity, default, demand and judgment.

(e) Any payment by Maker hereunder which is received by Holder after 1:00 p.m. (Toronto time) on any day shall be deemed to have been made by Maker and received by Holder on the next Business Day. Any payment due and payable hereunder by Maker on a day that is not a Business Day shall be deemed to be due and payable on the next Business Day.

(f) The entire outstanding principal balance of this Note, together with all accrued and unpaid interest and all other sums due hereunder, shall be due and payable in full on February 1, 2026 (the "**Maturity Date**").

## 2. Prepayment.

(a) Maker shall have no right to prepay all or any part of this Note before the date (the "**Lockout Expiration Date**") that is sixty (60) calendar months from and after the first day immediately following the Stub Interest Period.

(b) At any time on or after the Lockout Expiration Date, so long as no Event of Default shall have occurred and be continuing, but subject to clauses (i) through (iii) of this Section 2(b) and Section 2(c) hereof, Maker shall have the right to prepay the full (but not part) outstanding principal amount of this Note, all accrued and unpaid interest and all other sums due hereunder, provided that (i) Maker provides not less than thirty (30) days' prior written notice to Holder of Maker's election to prepay this Note, (ii) prior to one hundred and fourteen (114) calendar months from and after the first day immediately following the Stub Interest Period, Maker pays Yield Maintenance (as hereinafter defined) to Holder, and (iii) Maker simultaneously prepays the full principal amount, all accrued and unpaid interest and all other sums due under a promissory note (the "**American General Note**") in the original principal amount of \$30,800,000.00 made by Maker in favour of American General and under a promissory note (the "**Lexington Note**") in the original principal amount of \$23,100,000.00 made by Maker in favour of Lexington.

(c) Holder shall notify Maker of the amount and basis for determination of Yield Maintenance (if payable above). Maker may not prepay the Loan on a Friday or on any day preceding a public holiday, or the equivalent for banks generally under the laws in effect within the Province of Ontario, or on any day that is not a Business Day (as hereinafter defined).



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(d) Except for the application of insurance proceeds or condemnation awards by Holder to the principal balance of this Note (which shall only be deemed to have been paid hereunder after Holder's actual receipt thereof), as provided in the Mortgages, in no event shall Maker be permitted to make any partial prepayments of this Note.

(e) Except as expressly provided for in Subsection 2(b) above, if by operation of law or by acceleration of the principal sum hereunder by the Holder or for any other reason whatsoever, Maker shall become entitled or obligated, prior to the Maturity Date, to prepay, and does prepay the principal sum hereunder or any part thereof, then Maker shall also pay to Holder, in addition to all other amounts owing hereunder, Yield Maintenance.

(f) Maker acknowledges that Holder, in connection with the Loan, may execute one or more cross-currency swap agreements covering changes in exchange rates between the Canadian dollar and the United States dollar. Maker undertakes to indemnify and save harmless Holder from and against all foreign exchange losses and all losses, costs and expenses incurred by Holder resulting from the unwinding or amendment of such cross-currency swap agreements arising from prepayment of the Loan prior to the Maturity Date (whether voluntary, mandatory, by reason of acceleration or otherwise).

### 3. Business Days.

Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or public holiday or the equivalent for banks generally under the laws of the Province of Ontario (any other day being a "Business Day"), such payment shall be due on the next succeeding Business Day, but no additional interest or other payment shall be payable in respect of such delay.

### 4. Application of Payments.

All payments hereunder shall be applied first to the payment of overdue blended payments of principal and interest (with partial payments applied to principal and interest in proportion to the principal and interest amounts of the relevant blended payment), then to the payment of outstanding Yield Maintenance (if applicable), then to the payment of all outstanding sums advanced by Holder for the payment of insurance premiums, taxes and other similar charges pertaining to the Properties, then to the payment of all other costs and expenses incurred by Holder pursuant to the Loan Documents (as hereinafter defined) (including without limitation, all out-of-pocket enforcement costs, expenses and legal fees and disbursements on a substantial indemnity basis), then to the payment of additional interest on the above amounts, and then to the reduction of principal. Notwithstanding the foregoing, for so long as any Event of Default shall be continuing, Holder shall have the continuing exclusive right to apply any payments received by Holder from or on behalf of Maker as Holder may elect against the then due and owing obligations of Maker under this Note in such order of priority or in such allocation as Holder shall deem advisable in its sole, absolute and unfettered discretion.

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5. **Immediately Available Funds.**

Payments hereunder shall be payable in immediately available funds without setoff, counterclaim or deduction of any kind, and shall be made by electronic funds transfer from a bank account established and maintained by Maker for such purpose.

6. **Event of Default.**

Each of the following events shall constitute an event of default (an "Event of Default") under this Note:

(a) any failure of Maker to pay when due any sum under this Note and the continuance of such failure for a period of two (2) Business Days (it being acknowledged that the Holder shall have no obligation to provide notice of such failure to Maker); or

(b) the occurrence of any "Event of Default" under and as defined in the Mortgages.

7. **Acceleration.**

Upon the occurrence of an Event of Default which is continuing, the entire balance of principal, accrued and unpaid interest and all other sums due hereunder (including Yield Maintenance, if applicable) shall, at the option of Holder and upon notice to Maker, become immediately due and payable without further notice or demand.

8. **Certain Waivers and Consents.**

Maker and all parties now or hereafter liable for the payment hereof, primarily or secondarily, directly or indirectly, and whether as endorser, guarantor, surety or otherwise, hereby (a) waive presentment, demand, protest, notice of protest and/or dishonor, and all other demands or notices of any sort whatsoever with respect to this Note, excepting any notice of acceleration to be delivered as contemplated under Section 7 hereof, (b) consent to impairment or release of collateral, extensions of time for payment, and acceptance of partial payments before, at, or after maturity, (c) waive any right to require Holder to proceed against any security for this Note before proceeding hereunder, (d) waive diligence in the collection of this Note or in filing suit in respect of this Note, and (e) agree to pay all reasonable costs and expenses, including solicitors' fees on a substantial indemnity basis, which may be incurred in the collection of this Note or any part thereof or in preserving, securing possession of and/or realizing upon any security for this Note.

9. **Usury Savings Clause.**

The provisions of this Note and of all agreements between Maker and Holder are, whether now existing or hereinafter made, hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, prepayment, demand for payment or otherwise, shall the amount paid, or agreed to be paid, to Holder for the use, forbearance or detention of the principal hereof or interest hereon, which remains unpaid from time to time, exceed the maximum amount permitted to be paid under applicable law. If from any circumstance whatsoever, the performance or fulfillment of any provision hereof or of any

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other agreement between Maker and Holder shall, at the time performance or fulfillment of such provision is due, involve or purport to require any payment in excess of the limits prescribed by law, then the obligation to be performed or fulfilled is hereby reduced to the limit of such validity prescribed by law, and if from any circumstance whatsoever Holder should ever receive as interest or loan charges an amount which would exceed the highest lawful rate or maximum amount collectible, then the amount which would be excessive interest or loan charges shall be applied to the reduction of the principal balance owing hereunder and shall not constitute interest or loan charges.

10. **Defined Terms.**

For purposes of this Note the following terms shall have the meanings indicated:

(a) **"Loan Documents"** shall mean this Note, the American General Note, the Lexington Note, the guarantee from Mark Gross and Sheldon Gross, the Mortgages, the general assignments of leases and rents, the general security agreements, the assignments of contracts, the directions to nominee and acknowledgements, the environmental indemnities and all other documentation pertaining to the Loan;

(b) **"Mortgages"** shall mean the mortgages of the Properties from one or more of the parties comprising the Maker, in the original principal amount of \$70,000,000.00;

(c) **"Properties"** shall mean the properties municipally and legally described in Schedule "A" attached hereto; and

(d) **"Yield Maintenance"** shall mean, when used in connection with a prepayment of principal hereunder after the Lockout Expiration Date, compensation for the loss on the return of funds allocated to the principal sum being prepaid, which compensation shall be the greater of the two following amounts:

(i) an amount equal to the amount by which:

(A) the sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the Maturity Date and the present value of the principal sum which would be payable on the Maturity Date (these present values shall be calculated using a discount rate as determined by the Holder one (1) week prior to the prepayment date, expressed as an annual rate of interest calculated semi-annually and not in advance, equal to (x) the yield to maturity of a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the Maturity Date and of a non-callable Government of Canada bond having a maturity closest to but following the Maturity Date);

exceeds

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(B) the principal sum prepaid;

and

(ii) an amount equal to 1% of the then outstanding principal sum.

11. **Severability.**

If any provision hereof or of any other document securing or related to the indebtedness evidenced hereby is, for any reason and to any extent, invalid or unenforceable, then neither the remainder of the document in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other document referred to herein, shall be affected thereby, but instead shall be enforceable to the maximum extent permitted under law.

12. **Transfer of Note.**

Each provision of this Note shall be and remain in full force and effect notwithstanding any negotiation or transfer hereof and any interest herein to any other Holder or participant. Maker shall not assign part or all of its interest hereunder without Holder's prior written consent, which consent may be withheld in its sole, absolute and unfettered discretion.

13. **Governing Law.**

Regardless of the place of its execution, this Note shall be construed and enforced in accordance with the laws in effect within the Province of Ontario.

14. **Time of Essence.**

Time shall be of the essence with respect to all of Maker's obligations under this Note.

15. **Remedies Cumulative.**

The remedies provided to Holder in this Note, the Mortgages and the other Loan Documents are cumulative and concurrent and may be exercised singly, successively or together against Maker, one or more of the Properties, the other security or one or both of the entities comprising the Guarantor, at the sole, absolute and unfettered discretion of Holder.

16. **No Waiver.**

Holder shall not by any act or omission be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder and then only to the extent specifically set forth therein. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy granted to Holder hereunder in connection with a subsequent event.

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17. **Administrative Fee.**

Holder shall be entitled to receive hereunder an administrative fee of \$250.00 for each monetary default of Maker and, for purposes of this Note, such sums shall be added to the outstanding principal sum.

18. **Securitization/Servicer.**

(a) Holder may, without notice to and without the consent of Maker, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Note, the Loan Documents and/or the Loan and any and all rights, title, benefits, remedies and obligations relating thereto to any Person (as defined in the Mortgages).

(b) Maker acknowledges that Holder may, at the reasonable cost and expense of Holder, retain the services of a servicer (the "Servicer") to service the Loan, including the collection of payments under this Note. Maker further acknowledges that the Servicer is not Holder and that the Servicer does not owe any obligations to Maker to advance funds under the Loan, or to continue to be the Servicer. All references to Holder following the advance of the Loan shall be deemed to include the Servicer, and, subject to the terms and conditions of the servicing agreement between Holder and the Servicer, the Servicer shall have and may exercise at all times and without restriction all of the rights and benefits of Holder under this Note and the other Loan Documents, provided, however, that Holder may replace the Servicer in its sole, absolute and unfettered discretion.

(c) Maker covenants, at the reasonable cost and expense of Holder, to execute all documentation and take all action that Holder, acting reasonably, deems necessary or useful in order to effect, perfect, complete or facilitate such assignment, provided that such documentation shall not modify the rights or obligations of Maker or Holder pursuant to this Note.

19. **Joint and Several Liability**

The obligations hereunder of the parties comprising the Maker shall be joint and several.

20. **Limited Recourse**

Notwithstanding any other provision of this Note, the Holder's full and unimpeded recourse to Maker's assets pursuant to this Note and pursuant to the Loan Documents shall be limited to the following:

- (a) Maker's liability pursuant to the Environmental Indemnity;
- (b) Maker's liability pursuant to the Covenant and Undertaking; and

(c) (i) all damages, losses and reasonable out-of-pocket costs (including, without limitation, reasonable legal fees and disbursements on a substantial indemnity basis) incurred by Holder as a result of waste on the Properties committed by Maker and/or its affiliates; (ii) any condemnation or insurance proceeds attributable to the Properties that were not paid to Holder or used to restore the Properties, in each case to the extent required to be so paid or used pursuant to the Mortgages; (iii) all rents, profits, advances, rebates, prepaid rents, lease termination payments

- 8 -

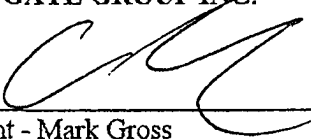
and similar sums attributable to the Properties collected by Maker or its affiliates (A) following an Event of Default (as defined in the Mortgages) that is continuing, and not properly applied to the reasonable fixed and/or reasonable operating expenses of the Properties (including payments and other sums due under the Loan Documents), or (B) to the extent not deposited into the Properties bank account(s) as and when required pursuant to the Loan Documents; (iv) all security deposits collected by or for Maker (and/or its affiliates) under Properties leases and not applied in accordance with the relevant Properties leases; (v) all accrued realty taxes, assessments and utility charges affecting the Properties and all related interest and penalties (whether or not the same have been billed to Maker and/or its affiliates); (vi) all sums expended by Holder in fulfilling Maker's obligations pursuant to Properties leases; (vii) all losses suffered by Holder (that would otherwise be covered by insurance), resulting from Maker's or its affiliates' failure to maintain insurance pursuant to the Loan Documents and/or to pay any deductible thereunder; and (viii) all damages, losses and costs suffered, directly or indirectly, by Holder, as a result of any acts of fraud, misrepresentation, wilful misconduct and/or gross negligence committed by Maker and/or any Persons for whom it is liable under law, in connection, directly or indirectly, with the Properties.

Maker agrees to indemnify and save harmless Holder and its respective successors and assigns from and against all liabilities, obligations, losses, damages (including foreseeable and unforeseeable consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable solicitors' fees and disbursements on a substantial indemnity basis) of any kind or nature whatsoever, other than those arising from the gross negligence or wilful misconduct of Holder, that may at any time be incurred by, imposed on or asserted, directly or indirectly, against one or both of the entities comprising the Holder in connection with the subject-matter of (c) above.

*[balance of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF Maker has duly executed this Note as of the date first above written.

**CARRIAGE GATE GROUP INC.**

Per:   
President - Mark Gross

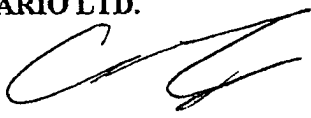
I have the authority to bind the Corporation.

**180 VINE INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**2478658 ONTARIO LTD.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**2009 LONG LAKE HOLDINGS INC.**

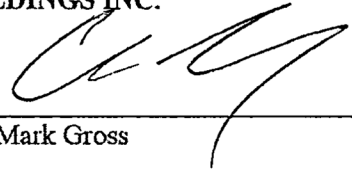
Per:   
President - Mark Gross

I have the authority to bind the Corporation.

- 10 -

**65 LARCH HOLDINGS INC.**

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

  
President - Mark Gross

I have the authority to bind the Corporation.

**100 COLBORNE HOLDINGS INC.**

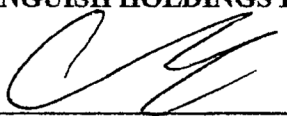
Per: \_\_\_\_\_

  
President - Mark Gross

I have the authority to bind the Corporation.

**240 OLD PENETANGUISH HOLDINGS INC.**

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

  
President - Mark Gross

I have the authority to bind the Corporation.



**SCHEDULE A  
TO PROMISSORY NOTE**

**PROPERTIES**

**South Mount Medical Centre**

**35 Upper Centennial Parkway, Hamilton**

FIRSTLY: Part of Lot 25, Concession 8 Saltfleet, designated as Part 7 on Plan 62R-18917; Stoney Creek; together with an easement over Part of Lot 25, Concession 8 Saltfleet, designated as Parts 9, 11, 12 and 13 on Plan 62R-18917 as in WE749696; City of Hamilton

*being the whole of PIN 17088-0748(LT)*

SECONDLY: Part of Lot 25, Concession 8 Saltfleet, being Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917; subject to an easement over Part 3 on Plan 62R-18917 in favour of Parts 1-5 inclusive, 12-15 inclusive, 18, 21, 30, 31, 32, 36, 38, 42, 48 and 53 on Plan 62R-14684 as in LT562193; together with an easement over Parts 2, 4, 14, 21, 30, 31, 32, 36, 38 and 48 on Plan 62R-14684 as in LT562194; subject to an easement over Part 5 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 10 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 2 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; subject to an easement over Part 3 on Plan 62R-18917 in favour of Part of Lot 25, Concession 8 Saltfleet, being Parts 3, 5 and 6 on Plan 62R-18292 and Parts 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 on Plan 62R-14684 save and except Parts 1, 2, 3, 4, 5 and 10 on Plan 62R-18917 as in WE749696; Stoney Creek; together with an easement over Parts 9, 11, 12 and 13 on Plan 62R-18917 as in WE749696; City of Hamilton

*being the whole of PIN 17088-0762(LT)*

- 2 -

**Niagara Health Centre**180 Vine Street South, St. Catharines

Part of Lot 7, 9-10, Block D CY Plan 46 Grantham; Part of Block A CY Plan 79 Grantham; Part of Block A, B CY Plan 80 Grantham; Part Unnamed Street CY Plan 46 Grantham, closed by RO407053, Part 1 on Plan 30R-2209 except Part 1 on Plan 30R-3734, Part 1 on Plan 30R-6493 and Part 1 on Plan 30R-7456; St. Catharines

*being the whole of PIN 46272-0086(LT)*

**Alexander Medical Centre**849 Alexander Court, Peterborough

Part of Lots 3 and 4 on Plan 23Q, designated as Parts 1 and 2 on Plan 45R-647, North Monaghan; Peterborough

*being the whole of PIN 28061-0157(LT)*

**Four Corners**2009 Long Lake Road, Sudbury

FIRSTLY: Parcel 8259, Section SES; Part of Lot 6, Concession 1 McKim except LT52588, LT53059, LT109847, Part 7 on Plan 53R-4520 and Part 4 on Plan 53R-13501; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0102(LT)*

SECONDLY: Parcel 39445, Section SES; Part of Lot 6, Concession 1 McKim, designated as Parts 3 to 7 and 12 to 15 on Plan 53R-5036; Part of Lot 6, Concession 1 McKim, designated as Part 5 on Plan 53R-13501; subject to Parts 2 and 3 on Plan 53R-13501 as in LT717184; subject to LT25019, LT735739; Greater Sudbury

*being the whole of PIN 73595-0174(LT)*

THIRDLY: Parcel 39000, Section SES; designated as Part of Lot 6, Concession 1 McKim, designated as Parts 9 to 11 on Plan 53R-5036; together with a right-of-way over Parts 1 and 2 on Plan 53R-5036; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0333(LT)*

- 3 -

**Sudbury Medical Centre**65 Larch Street, Sudbury

FIRSTLY: Lot 23, Block A, Plan 3SA McKim; Greater Sudbury

*being the whole of PIN 73584-0077(LT)*

SECONDLY: Lots 20-22, Block A, Plan 3SA McKim; Greater Sudbury

*being the whole of PIN 73584-0078(LT)*

THIRDLY: Part North Half of Lot 5, Concession 3 McKim as in S81426 (Secondly &amp; Thirdly); Greater Sudbury

*being the whole of PIN 73584-0097(LT)***Orillia Professional Centre**100 Colborne Street, Orillia

Part of Lots 10-15, 17, Block C, Plan 228 Orillia, designated as Parts 3, 4 and 5 on Plan 51R-10372; Orillia

*being the whole of PIN 58650-0115(LT)*77 Wyandotte Street, Orillia

Lot 16, Block G, Plan 228 Orillia; Part of Lot 15, Block G, Plan 228 Orillia as in RO1453448; Orillia

*being the whole of PIN 58644-0014(LT)***Huronian Medical Centre**240 Old Penetanguishene Road, Midland

Part East Half of Lot 106, Concession 1 WPR Tiny; Part of Lot 107, Concession 1 WPR Tiny, designated as Parts 3 and 4 on Plan 51R-18477 and Parts 4, 5, 6, 7 and 10 on Plan R1026 except 51R-3985; together with and subject to RO1045345; Midland

*being the whole of PIN 58454-0029(LT)*

This is **Exhibit "Q"** referred to in the  
Affidavit of Jacob Baron  
sworn before me by video conference  
this 18<sup>th</sup> day of June, 2021



---

A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.

**DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**TO:** 65 LARCH HOLDINGS INC.

**AND TO:** AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest

**RE:** AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest (collectively, the "Lender"), \$70,000,000 loan (the "Loan") to, among others, 65 LARCH HOLDINGS INC. (the "Nominee"), secured by, among other things, a first-ranking mortgage (the "Mortgage") against property municipally and legally described in Schedule "A" attached hereto (the "Property")

---

**WHEREAS** the Lender agreed to loan to the Nominee and others the sum of \$70,000,000.00 pursuant to a mortgage loan application agreement dated November 30, 2015 (such mortgage loan application agreement, as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Commitment");

**AND WHEREAS** pursuant to a nominee agreement dated January 21, 2016, between Gross Properties Inc. and 2413667 Ontario Inc. (together, the "Beneficial Owner"), as beneficial owner of the Property, and the Nominee, as title nominee/trustee (such nominee agreement, a copy of which is attached hereto as Schedule "B", as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Nominee Agreement"), the Beneficial Owner appointed the Nominee as nominee, for and on behalf of the Beneficial Owner, to hold legal title to the Property, to execute mortgages, encumbrances and other security in respect of the Property and to do all further and other acts, all as the Beneficial Owner shall direct, and the Nominee accepted the foregoing obligations imposed by the Beneficial Owner;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Beneficial Owner confirms that the beneficial owners of the Property are limited to the two entities listed above. The Beneficial Owner further confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably authorizes and directs the Nominee, in its capacity as holder of legal title to the Property, as nominee for and on behalf of the Beneficial Owner, to enter into, execute, deliver and perform the obligations contained in the Commitment, the Mortgage and all other Loan

- 2 -

- documentation including, without limitation, all agreements, certificates, indemnities, waivers, acknowledgements and declarations collateral to, or required in connection with, the Mortgage, and to do all things and perform all acts as the Beneficial Owner or its legal counsel shall reasonably require, in accordance with the terms of the Nominee Agreement.
2. The Beneficial Owner transfers, assigns, sets over, charges and grants a security interest to and in favour of the Lender in and to all of its right, title, estate and interest in the property, assets and undertaking (including the Property) subject to the Mortgage and Loan documentation, together with all proceeds thereof, which security shall be held by the Lender as general and continuing security for all Loan and Loan document obligations.
  3. The Beneficial Owner agrees to be bound by the Loan and the Loan document obligations.
  4. The Beneficial Owner postpones and subordinates all debts and liabilities of the Nominee owed to it, in favour of the Loan, the Mortgage and the Loan documentation.
  5. The Beneficial Owner confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
  6. The Beneficial Owner further confirms that it will not sell, assign, convey, transfer or otherwise dispose of its beneficial interest in the Property, any part thereof or any interest therein, except in accordance with and subject to the terms of the Mortgage including, without limitation, the Transfer Conditions (as defined in the Mortgage). Notwithstanding the foregoing and any other provision hereof, transfers (other than encumbrances), in the aggregate over the term of the Loan, of up to 25% of the direct and indirect ownership interests in the Nominee are permitted without the Lender's prior written consent, but subject to the Transfer Conditions.
  7. Notwithstanding any other provision hereof, the liability of the Beneficial Owner hereunder shall be limited to the Beneficial Owner's interest in the Property and the Lender's recourse against the Beneficial Owner hereunder shall be limited accordingly.

DATED as of this 25<sup>th</sup> day of January, 2016.

- 3 -

**GROSS PROPERTIES INC.**Per: \_\_\_\_\_  
Vice-President - Mark Gross

I have the authority to bind the Corporation.

**2413667 ONTARIO INC.**Per: \_\_\_\_\_  
President - Allen Greenspoon

I have the authority to bind the Corporation.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Nominee hereby confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably acknowledges the above authorization and direction of the Beneficial Owner and agrees to be bound thereby in accordance with the terms of the Nominee Agreement. The Nominee further confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.

DATED as of this 25<sup>th</sup> day of January, 2016.**65 LARCH HOLDINGS INC.**Per: \_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE "A"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**DESCRIPTION OF PROPERTY**

Municipal Address: 65 Larch Street, Sudbury, Ontario

Legal Description: **FIRSTLY: Lot 23, Block A, Plan 3SA McKim; Greater Sudbury**

*being the whole of PIN 73584-0077(LT)*

**SECONDLY: Lots 20-22, Block A, Plan 3SA McKim; Greater Sudbury**

*being the whole of PIN 73584-0078(LT)*

**THIRDLY: Part North Half of Lot 5, Concession 3 McKim as in S81426  
(Secondly & Thirdly); Greater Sudbury**

*being the whole of PIN 73584-0097(LT)*



**SCHEDULE "B"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**Nominee Agreement**  
**[copy to be attached]**

**NOMINEE AGREEMENT**

**THIS AGREEMENT** made effective as of the 21<sup>st</sup> day of January, 2016.

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

**GROSS PROPERTIES INC.**

**OF THE FIRST PART**

- and -

**2413667 ONTARIO INC.**

**OF THE SECOND PART**

- and -

**2009 LONG LAKE HOLDINGS INC.  
65 LARCH HOLDINGS INC.  
100 COLBORNE HOLDINGS INC.  
240 OLD PENETANGUISH HOLDINGS INC.  
249 ONTARIO STREET HOLDINGS INC.  
86 ANGELINE STREET HOLDINGS INC.  
(collectively, hereinafter called the "Nominees")**

**OF THE THIRD PART**

**WHEREAS:**

- A. The Nominees have or are about to acquire an interest in the lands and premises more particularly described in Schedule "A" attached hereto (the "**Property**") as a bare trustee only, and will hold its legal interest therein in trust for and on behalf of Gross Properties Inc. and 2413667 Ontario Inc. (hereinafter collectively referred to as the "**Owners**" and each individually an "**Owner**") in accordance with each of their respective beneficial interests as set out on Schedule "B" hereto (hereinafter collectively referred to as the "**Beneficial Interests**" and each individually a "**Beneficial Interest**"), on the terms and subject to the conditions hereinafter set forth; and
- B. The Nominees were not and are not required to advance any of the funds necessary to acquire, hold or maintain the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained the parties hereto do hereby agree as follows:

1. The Nominees hereby acknowledges and agrees that they will hold registered title to the Property solely as nominal title holders for the Owners and not for themselves, without any right, ownership or interest in and to the Property or in and to any mortgage

proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may have executed or may hereafter execute under direction of the Owners any contracts, notes, mortgages, leases or other agreements for the ownership and use of the Property by the occupants or users.

2. The Owners acknowledge that registered title to the Property shall, for the purpose of convenience in dealing with the Property for and on behalf of the Owners, remain in the name of the Nominees.
3. The Nominees shall remain the registered owners and hold legal title to the Property for the Owners; provided that when so requested by any of the Owners, the Nominees will convey registered title to the respective Beneficial Interest or Interests or any part or parts thereof, as applicable, to the respective Owner or Owners or their administrators, executors, successors or assigns by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest registered title to such Beneficial Interest or Interests in the name of the applicable Owner or Owners or their administrators, successors and assigns, all without expense to the Nominees in connection with such transfers of land.
4. The Nominees shall promptly remit to the Owners all rents, revenues and other receipts from the Property, and all funds that are received by the Nominees (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in connection with the Property). The obligation of the Nominees pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominees reasonably believe has a claim to all or any part of such funds. The Nominees shall incur no liability to any of the Owners for making any such remittance as the Nominee are directed to make pursuant to any notice received from any such creditor, mortgagee or other person, or pursuant to any standing or special instructions received from any of the Owners. The Nominees shall, at the expense and request of any of the Owners, account to any of the Owners for all funds received by the Nominees in connection with the Property.
5. The Nominees shall promptly transmit to the Owners copies of all directions, notices, claims, demands or other communications that the Nominees receive and which relate in any way to the Property. The Nominees shall promptly notify the Owners upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.
6. All costs and expenses incurred by the Nominees in connection with the performance of its duties and obligations hereunder, or in connection with the holding by the Nominees of the registered title to the Property, shall be borne by the Owners, in accordance with each of the Owner's proportionate Beneficial Interest.
7. No party dealing with the Nominees in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominees shall be obligated to investigate whether:

- (a) at the time of such dealings this Agreement was in full force and effect and was unamended;
  - (b) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;
  - (c) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and
  - (d) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.
8. In consideration of the Nominees accepting the responsibilities and obligations set out herein, each of the Owners hereby release the Nominees from any and all liability that the Nominees may incur in respect of any action taken by the Nominees either pursuant to the instructions of any of the Owners or pursuant to the terms of this Agreement. Each of the Owners hereby agrees to indemnify and save harmless the Nominees from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominees by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property.
9. There shall be no fee payable to the Nominees by the Owners.
10. The Nominees covenant and agree to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.
11. The Nominees shall not be obligated to file any income tax returns with respect to the Property, but each of the Owners shall file all such returns and pay all taxes on the earnings and avails of the Property growing out of their respective Beneficial Interests.
12. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of all of the Owners.
13. Each of the Owners acknowledges that the Nominees are acting as the bare nominee and trustee for each of the Owners, holding legal title to their respective Beneficial Interest, for and on behalf of each Owner.
14. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, addressed to any or all of the Owners, c/o Gross Capital Group, 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or any or all of the Nominees at 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or to such other address of which written notice is given. Each such notice, communication or delivery shall be deemed delivered on the date of delivery (if personally delivered) or

on the third business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service shall not be effective until actually received.


15. This Agreement may be amended, revoked or terminated only by written agreement executed by both parties hereto.
16. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed the within Agreement as of the date first written above.

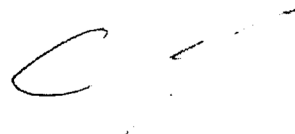
***[REMAINDER OF PAGE LEFT BLANK AND SIGNATURE PAGE TO FOLLOW]***

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto as at the 21<sup>st</sup> day of January, 2016.


**2009 LONG LAKE HOLDINGS INC.**  
(Nominee)

Per:   
\_\_\_\_\_  
Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

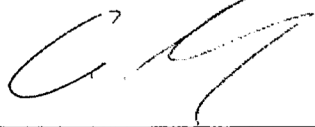
**65 LARCH HOLDINGS INC.**  
(Nominee)

Per:   
\_\_\_\_\_  
Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

**100 COLBORNE HOLDINGS INC.**  
(Nominee)

Per:   
\_\_\_\_\_  
Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

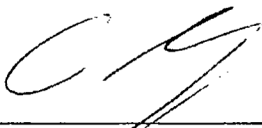
**240 OLD PENETANGUISII HOLDINGS  
INC.**  
(Nominee)

Per: 

---

Name: Mark C. Gross  
Title: President  
*I have the authority to bind the  
corporation*

**249 ONTARIO STREET HOLDINGS INC.**  
(Nominee)

Per: 

---

Name: Mark C. Gross  
Title: President  
*I have the authority to bind the  
corporation*

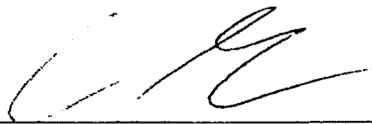
**86 ANGELINE STREET HOLDINGS INC.**  
(Nominee)

Per: 

---


Name: Mark C. Gross  
Title: President  
*I have the authority to bind the  
corporation*

**GROSS PROPERTIES INC.**

Per: 

\_\_\_\_\_  
Name: Mark C. Gross  
Title: Vice-President  
*I have the authority to bind the  
corporation*

**2413667 ONTARIO INC.**

Per: 

\_\_\_\_\_  
Name: Allen Greenspoon  
Title: President  
*I have the authority to bind the  
corporation*



**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

**1. Property 1:**

Municipal Address: 100 Colborne Street West and 77 Wyandotte Street, Orillia, ON

Legal Description:

Parcel 1: PIN 58650-0115 (LT)

PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA

Parcel 2: PIN 58644-0014 (LT)

LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN

RO1453448; ORILLIA

**2. Property 2**

Municipal Address: 65 Larch Street, Sudbury, ON

Legal Description:

Parcel 1: PIN 73584-0077 (LT)

LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 2: PIN 73584-0078 (LT)

LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 3: PIN 73584-0097 (LT)

PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER SUDBURY

**3. Property 3:**

Municipal Address: 240 Penetanguishene Road, Midland, ON

Legal Description: PIN 58454-0029 (LT)

PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT 3 & 4, 51R18477 & PT 4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345; MIDLAND

**4. Property 4:**

Municipal Address: 2009 Long Lake Road, Sudbury, ON

Legal Description:

Parcel 1: PIN 73595-0102 (LT)

PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY

Parcel 2: PIN 73595-0174 (LT)

PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY

Parcel 3: PIN 73595-0333 (LT)

PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

**5. Property 5:**

Municipal Address: 249 Ontario Street, Port Hope

Legal Description:

PIN: 51078 - 0317

LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE

**6. Property 6:**

Municipal Address: 86 Angeline Street South, Lindsay

Legal Description:

Parcel 1: PIN: 63236 - 0017

PT PARKLT A PL 8P AS IN R234666; CITY OF KAWARTHA LAKES

Parcel 2: PIN: 63236 - 0122

PT PARKLT A, PT PARKLT J PLAN 8P DESIGNATED PT 1 57R5672; EXCEPT PT 1 57R9230; CITY OF KAWARTHA LAKES

## SCHEDULE "B"

Nominee	Property	Beneficial Owner	Percentage of Investment and Beneficial Interest
2009 Long Lake Holdings Inc.	2009 Long Lake Road, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
65 Larch Holdings Inc.	65 Larch Street, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
100 Colborne Holdings Inc.	100 Colborne Street and 77 Wyandotte Street, Orillia, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
240 Pentanguishene Road, Midland, Ontario	240 Old Penetanguish Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
86 Angeline Street South, Lindsay, Ontario	86 Angeline Street Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
249 Ontario Street Holdings Inc.	249 Ontario Street, Port Hope, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%

**DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**TO:** 100 COLBORNE HOLDINGS INC.

**AND TO:** AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest

**RE:** AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest (collectively, the "Lender"), \$70,000,000 loan (the "Loan") to, among others, 100 COLBORNE HOLDINGS INC. (the "Nominee"), secured by, among other things, a first-ranking mortgage (the "Mortgage") against property municipally and legally described in Schedule "A" attached hereto (the "Property")

**WHEREAS** the Lender agreed to loan to the Nominee and others the sum of \$70,000,000.00 pursuant to a mortgage loan application agreement dated November 30, 2015 (such mortgage loan application agreement, as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Commitment");

**AND WHEREAS** pursuant to a nominee agreement dated January 21, 2016, between Gross Properties Inc. and 2413667 Ontario Inc. (together, the "Beneficial Owner"), as beneficial owner of the Property, and the Nominee, as title nominee/trustee (such nominee agreement, a copy of which is attached hereto as Schedule "B", as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Nominee Agreement"), the Beneficial Owner appointed the Nominee as nominee, for and on behalf of the Beneficial Owner, to hold legal title to the Property, to execute mortgages, encumbrances and other security in respect of the Property and to do all further and other acts, all as the Beneficial Owner shall direct, and the Nominee accepted the foregoing obligations imposed by the Beneficial Owner;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Beneficial Owner confirms that the beneficial owners of the Property are limited to the two entities listed above. The Beneficial Owner further confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably authorizes and directs the Nominee, in its capacity as holder of legal title to the Property, as nominee for and on behalf of the Beneficial Owner, to enter into, execute, deliver and

- 2 -

perform the obligations contained in the Commitment, the Mortgage and all other Loan documentation including, without limitation, all agreements, certificates, indemnities, waivers, acknowledgements and declarations collateral to, or required in connection with, the Mortgage, and to do all things and perform all acts as the Beneficial Owner or its legal counsel shall reasonably require, in accordance with the terms of the Nominee Agreement.

2. The Beneficial Owner transfers, assigns, sets over, charges and grants a security interest to and in favour of the Lender in and to all of its right, title, estate and interest in the property, assets and undertaking (including the Property) subject to the Mortgage and Loan documentation, together with all proceeds thereof, which security shall be held by the Lender as general and continuing security for all Loan and Loan document obligations.
3. The Beneficial Owner agrees to be bound by the Loan and the Loan document obligations.
4. The Beneficial Owner postpones and subordinates all debts and liabilities of the Nominee owed to it, in favour of the Loan, the Mortgage and the Loan documentation.
5. The Beneficial Owner confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
6. The Beneficial Owner further confirms that it will not sell, assign, convey, transfer or otherwise dispose of its beneficial interest in the Property, any part thereof or any interest therein, except in accordance with and subject to the terms of the Mortgage including, without limitation, the Transfer Conditions (as defined in the Mortgage). Notwithstanding the foregoing and any other provision hereof, transfers (other than encumbrances), in the aggregate over the term of the Loan, of up to 25% of the direct and indirect ownership interests in the Nominee are permitted without the Lender's prior written consent, but subject to the Transfer Conditions.
7. Notwithstanding any other provision hereof, the liability of the Beneficial Owner hereunder shall be limited to the Beneficial Owner's interest in the Property and the Lender's recourse against the Beneficial Owner hereunder shall be limited accordingly.

DATED as of this 25<sup>th</sup> day of January, 2016.

- 3 -

**GROSS PROPERTIES INC.**Per: 

Vice-President - Mark Gross

I have the authority to bind the Corporation.

**2413667 ONTARIO INC.**Per: 

President - Allen Greenspoon

I have the authority to bind the Corporation.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Nominee hereby confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably acknowledges the above authorization and direction of the Beneficial Owner and agrees to be bound thereby in accordance with the terms of the Nominee Agreement. The Nominee further confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.

DATED as of this 25<sup>th</sup> day of January, 2016.

**100 COLBORNE HOLDINGS INC.**Per: 

President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE "A"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**DESCRIPTION OF PROPERTY**

Municipal Address: 100 Colborne Street, Orillia, Ontario

Legal Description: Part of Lots 10-15, 17, Block C, Plan 228 Orillia, designated as Parts 3, 4 and 5 on Plan 51R-10372; Orillia

*being the whole of PIN 58650-0115(LT)*

Municipal Address: 77 Wyandotte Street, Orillia, Ontario

Legal Description: Lot 16, Block G, Plan 228 Orillia; Part of Lot 15, Block G, Plan 228 Orillia as in RO1453448; Orillia

*being the whole of PIN 58644-0014(LT)*

**SCHEDULE "B"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**Nominee Agreement**  
**[copy to be attached]**



**NOMINEE AGREEMENT**

THIS AGREEMENT made effective as of the 21<sup>st</sup> day of January, 2016.

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

**GROSS PROPERTIES INC.**

**OF THE FIRST PART**

- and -

**2413667 ONTARIO INC.**

**OF THE SECOND PART**

- and -

**2009 LONG LAKE HOLDINGS INC.  
65 LARCH HOLDINGS INC.  
100 COLBORNE HOLDINGS INC.  
240 OLD PENETANGUISH HOLDINGS INC.  
249 ONTARIO STREET HOLDINGS INC.  
86 ANGELINE STREET HOLDINGS INC.  
(collectively, hereinafter called the "Nominees")**

**OF THE THIRD PART**

**WHEREAS:**

- A. The Nominees have or are about to acquire an interest in the lands and premises more particularly described in Schedule "A" attached hereto (the "**Property**") as a bare trustee only, and will hold its legal interest therein in trust for and on behalf of Gross Properties Inc. and 2413667 Ontario Inc. (hereinafter collectively referred to as the "**Owners**" and each individually an "**Owner**") in accordance with each of their respective beneficial interests as set out on Schedule "B" hereto (hereinafter collectively referred to as the "**Beneficial Interests**" and each individually a "**Beneficial Interest**"), on the terms and subject to the conditions hereinafter set forth; and
- B. The Nominees were not and are not required to advance any of the funds necessary to acquire, hold or maintain the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained the parties hereto do hereby agree as follows:

1. The Nominees hereby acknowledges and agrees that they will hold registered title to the Property solely as nominal title holders for the Owners and not for themselves, without any right, ownership or interest in and to the Property or in and to any mortgage

proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may have executed or may hereafter execute under direction of the Owners any contracts, notes, mortgages, leases or other agreements for the ownership and use of the Property by the occupants or users.

2. The Owners acknowledge that registered title to the Property shall, for the purpose of convenience in dealing with the Property for and on behalf of the Owners, remain in the name of the Nominees.
3. The Nominees shall remain the registered owners and hold legal title to the Property for the Owners; provided that when so requested by any of the Owners, the Nominees will convey registered title to the respective Beneficial Interest or Interests or any part or parts thereof, as applicable, to the respective Owner or Owners or their administrators, executors, successors or assigns by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest registered title to such Beneficial Interest or Interests in the name of the applicable Owner or Owners or their administrators, successors and assigns, all without expense to the Nominees in connection with such transfers of land.
4. The Nominees shall promptly remit to the Owners all rents, revenues and other receipts from the Property, and all funds that are received by the Nominees (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in connection with the Property). The obligation of the Nominees pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominees reasonably believe has a claim to all or any part of such funds. The Nominees shall incur no liability to any of the Owners for making any such remittance as the Nominee are directed to make pursuant to any notice received from any such creditor, mortgagee or other person, or pursuant to any standing or special instructions received from any of the Owners. The Nominees shall, at the expense and request of any of the Owners, account to any of the Owners for all funds received by the Nominees in connection with the Property.
5. The Nominees shall promptly transmit to the Owners copies of all directions, notices, claims, demands or other communications that the Nominees receive and which relate in any way to the Property. The Nominees shall promptly notify the Owners upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.
6. All costs and expenses incurred by the Nominees in connection with the performance of its duties and obligations hereunder, or in connection with the holding by the Nominees of the registered title to the Property, shall be borne by the Owners, in accordance with each of the Owner's proportionate Beneficial Interest.
7. No party dealing with the Nominees in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominees shall be obligated to investigate whether:

- (a) at the time of such dealings this Agreement was in full force and effect and was unamended;
  - (b) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;
  - (c) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and
  - (d) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.
8. In consideration of the Nominees accepting the responsibilities and obligations set out herein, each of the Owners hereby release the Nominees from any and all liability that the Nominees may incur in respect of any action taken by the Nominees either pursuant to the instructions of any of the Owners or pursuant to the terms of this Agreement. Each of the Owners hereby agrees to indemnify and save harmless the Nominees from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominees by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property.
9. There shall be no fee payable to the Nominees by the Owners.
10. The Nominees covenant and agree to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.
11. The Nominees shall not be obligated to file any income tax returns with respect to the Property, but each of the Owners shall file all such returns and pay all taxes on the earnings and avails of the Property growing out of their respective Beneficial Interests.
12. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of all of the Owners.
13. Each of the Owners acknowledges that the Nominees are acting as the bare nominee and trustee for each of the Owners, holding legal title to their respective Beneficial Interest, for and on behalf of each Owner.
14. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, addressed to any or all of the Owners, c/o Gross Capital Group, 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or any or all of the Nominees at 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or to such other address of which written notice is given. Each such notice, communication or delivery shall be deemed delivered on the date of delivery (if personally delivered) or

on the third business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service shall not be effective until actually received.

15. This Agreement may be amended, revoked or terminated only by written agreement executed by both parties hereto.
16. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed the within Agreement as of the date first written above.

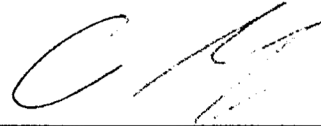
***[REMAINDER OF PAGE LEFT BLANK AND SIGNATURE PAGE TO FOLLOW]***

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto as at the 21<sup>st</sup> day of January, 2016.

**2009 LONG LAKE HOLDINGS INC.**

(Nominee)

Per:



\_\_\_\_\_  
Name: Mark C. Gross

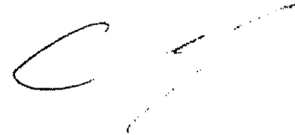
Title: President

*I have the authority to bind the corporation*

**65 LARCH HOLDINGS INC.**

(Nominee)

Per:



\_\_\_\_\_  
Name: Mark C. Gross

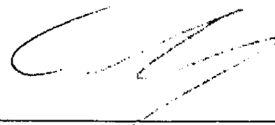
Title: President

*I have the authority to bind the corporation*

**100 COLBORNE HOLDINGS INC.**

(Nominee)

Per:



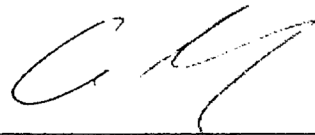
\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the corporation*

**240 OLD PENETANGUISII HOLDINGS  
INC.**  
(Nominee)

Per:



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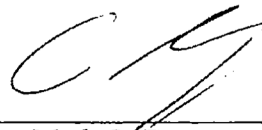
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**249 ONTARIO STREET HOLDINGS INC.**  
(Nominee)

Per:



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Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**86 ANGELINE STREET HOLDINGS INC.**  
(Nominee)

Per:



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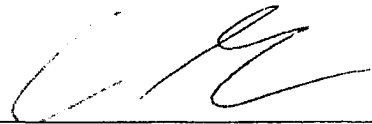
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**GROSS PROPERTIES INC.**

Per:



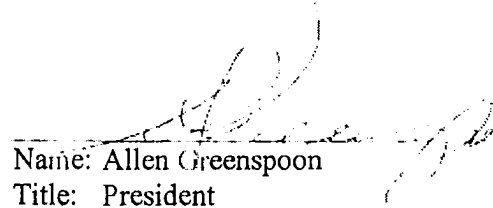
Name: Mark C. Gross

Title: Vice-President

*I have the authority to bind the corporation*

**2413667 ONTARIO INC.**

Per:



Name: Allen Greenspoon

Title: President

*I have the authority to bind the corporation*

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

**1. Property 1:**

Municipal Address: 100 Colborne Street West and 77 Wyandotte Street, Orillia, ON

Legal Description:

Parcel 1: PIN 58650-0115 (LT)

PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA

Parcel 2: PIN 58644-0014 (LT)

LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN  
RO1453448; ORILLIA

**2. Property 2**

Municipal Address: 65 Larch Street, Sudbury, ON

Legal Description:

Parcel 1: PIN 73584-0077 (LT)

LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 2: PIN 73584-0078 (LT)

LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 3: PIN 73584-0097 (LT)

PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER  
SUDBURY

**3. Property 3:**

Municipal Address: 240 Penetanguishene Road, Midland, ON

Legal Description: PIN 58454-0029 (LT)

PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT 3 & 4, 51R18477 & PT  
4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345; MIDLAND



**4. Property 4:**

Municipal Address: 2009 Long Lake Road, Sudbury, ON

Legal Description:

Parcel 1: PIN 73595-0102 (LT)

PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY

Parcel 2: PIN 73595-0174 (LT)

PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY

Parcel 3: PIN 73595-0333 (LT)

PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

**5. Property 5:**

Municipal Address: 249 Ontario Street, Port Hope

Legal Description:

PIN: 51078 - 0317

LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE

**6. Property 6:**

Municipal Address: 86 Angeline Street South, Lindsay

Legal Description:

Parcel 1: PIN: 63236 - 0017

PT PARKLT A PL 8P AS IN R234666; CITY OF KAWARTHA LAKES

Parcel 2: PIN: 63236 - 0122

PT PARKLT A, PT PARKLT J PLAN 8P DESIGNATED PT 1 57R5672; EXCEPT PT 1 57R9230; CITY OF KAWARTHA LAKES

## SCHEDULE "B"

Nominee	Property	Beneficial Owner	Percentage of Investment and Beneficial Interest
2009 Long Lake Holdings Inc.	2009 Long Lake Road, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
65 Larch Holdings Inc.	65 Larch Street, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
100 Colborne Holdings Inc.	100 Colborne Street and 77 Wyandotte Street, Orillia, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
240 Pentanguishene Road, Midland, Ontario	240 Old Penetanguish Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
86 Angeline Street South, Lindsay, Ontario	86 Angeline Street Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
249 Ontario Street Holdings Inc.	249 Ontario Street, Port Hope, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%

**DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**TO: 180 VINE INC.**

**AND TO: AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest**

**RE: AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest (collectively, the "Lender"), \$70,000,000 loan (the "Loan") to, among others, 180 VINE INC. (the "Nominee"), secured by, among other things, a first-ranking mortgage (the "Mortgage") against property municipally and legally described in Schedule "A" attached hereto (the "Property")**

**WHEREAS** the Lender agreed to loan to the Nominee and others the sum of \$70,000,000.00 pursuant to a mortgage loan application agreement dated November 30, 2015 (such mortgage loan application agreement, as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Commitment");

**AND WHEREAS** pursuant to a nominee agreement dated January 21, 2016, between 2413667 Ontario Inc. and 180 Vine Purchaser Inc. (together, the "Beneficial Owner"), as beneficial owner of the Property, and the Nominee, as title nominee/trustee (such nominee agreement, a copy of which is attached hereto as Schedule "B", as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Nominee Agreement"), the Beneficial Owner appointed the Nominee as nominee, for and on behalf of the Beneficial Owner, to hold legal title to the Property, to execute mortgages, encumbrances and other security in respect of the Property and to do all further and other acts, all as the Beneficial Owner shall direct, and the Nominee accepted the foregoing obligations imposed by the Beneficial Owner;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Beneficial Owner confirms that the beneficial owners of the Property are limited to the two entities listed above. The Beneficial Owner further confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably authorizes and directs the Nominee, in its capacity as holder of legal title to the Property, as nominee for and on behalf of the Beneficial Owner, to enter into, execute, deliver and perform the obligations contained in the Commitment, the Mortgage and all other Loan

- 2 -

documentation including, without limitation, all agreements, certificates, indemnities, waivers, acknowledgements and declarations collateral to, or required in connection with, the Mortgage, and to do all things and perform all acts as the Beneficial Owner or its legal counsel shall reasonably require, in accordance with the terms of the Nominee Agreement.

2. The Beneficial Owner transfers, assigns, sets over, charges and grants a security interest to and in favour of the Lender in and to all of its right, title, estate and interest in the property, assets and undertaking (including the Property) subject to the Mortgage and Loan documentation, together with all proceeds thereof, which security shall be held by the Lender as general and continuing security for all Loan and Loan document obligations.
3. The Beneficial Owner agrees to be bound by the Loan and the Loan document obligations.
4. The Beneficial Owner postpones and subordinates all debts and liabilities of the Nominee owed to it, in favour of the Loan, the Mortgage and the Loan documentation.
5. The Beneficial Owner confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
6. The Beneficial Owner further confirms that it will not sell, assign, convey, transfer or otherwise dispose of its beneficial interest in the Property, any part thereof or any interest therein, except in accordance with and subject to the terms of the Mortgage including, without limitation, the Transfer Conditions (as defined in the Mortgage). Notwithstanding the foregoing and any other provision hereof, transfers (other than encumbrances), in the aggregate over the term of the Loan, of up to 25% of the direct and indirect ownership interests in the Nominee are permitted without the Lender's prior written consent, but subject to the Transfer Conditions.
7. Notwithstanding any other provision hereof, the liability of the Beneficial Owner hereunder shall be limited to the Beneficial Owner's interest in the Property and the Lender's recourse against the Beneficial Owner hereunder shall be limited accordingly.

DATED as of this 25<sup>th</sup> day of January, 2016.

- 3 -

**2413667 ONTARIO INC.**

Per:   
 President - Allen Greenspoon

I have the authority to bind the Corporation.

**180 VINE PURCHASER INC.**


Per:   
 Secretary - Fausto Carnicelli

I have the authority to bind the Corporation.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Nominee hereby confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably acknowledges the above authorization and direction of the Beneficial Owner and agrees to be bound thereby in accordance with the terms of the Nominee Agreement. The Nominee further confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.

DATED as of this 25<sup>th</sup> day of January, 2016.

**180 VINE INC.**

Per:   
 President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE "A"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**DESCRIPTION OF PROPERTY**

**Municipal Address:** 180 Vine Street South, St. Catharines, Ontario

**Legal Description:** **PIN 46272-0086 (LT)**

PT LT 7, 9-10, BLK D CY PL 46 GRANTHAM;

PT BLK A CY PL 79 GRANTHAM;

PT BLK A, B CY PL 80 GRANTHAM;

PT UNNAMED ST CY PL 46 GRANTHAM, CLOSED BY RO407053,  
PT 1 3OR2209 EXCEPT PT 1 3OR3734, PT 1 3OR6493, & PT 1  
3OR7456; ST. CATHARINES

**SCHEDULE "B"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**Nominee Agreement**  
**[copy to be attached]**

**NOMINEE AGREEMENT**

THIS AGREEMENT made effective as of the 21<sup>st</sup> day of January, 2016.

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

2413667 ONTARIO INC.

**OF THE FIRST PART**

- and -

180 VINE PURCHASER INC.

**OF THE SECOND PART**

- and -

180 VINE INC.

(hereinafter called the "Nominee")

**OF THE THIRD PART**

**WHEREAS:**

- A. The Nominee has or is about to acquire an interest in the lands and premises municipally known as 180 Vine Street South, St. Catharines, Ontario and more particularly described in Schedule "A" attached hereto (the "**Property**") as a bare trustee only, and will hold its legal interest therein in trust for and on behalf of 2413667 Ontario Inc. and 180 Vine Purchaser Inc. (hereinafter collectively referred to as the "**Owners**" and each individually an "**Owner**") in accordance with each of their respective beneficial interests as set out on Schedule "B" hereto (hereinafter collectively referred to as the "**Beneficial Interests**" and each individually a "**Beneficial Interest**"), on the terms and subject to the conditions hereinafter set forth; and
- B. The Nominee was not and is not required to advance any of the funds necessary to acquire, hold or maintain the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained the parties hereto do hereby agree as follows:

- 1. The Nominee hereby acknowledges and agrees that it will hold registered title to the Property solely as nominal title holder for the Owners and not for itself, without any right, ownership or interest in and to the Property or in and to any mortgage proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may have executed or may hereafter execute under direction of the Owners any contracts, notes,



mortgages, leases or other agreements for the ownership and use of the Property by the occupants or users.

2. The Owners acknowledge that registered title to the Property shall, for the purpose of convenience in dealing with the Property for and on behalf of the Owners, remain in the name of the Nominee.
3. The Nominee shall remain the registered owner and hold legal title to the Property for the Owners; provided that when so requested by any of the Owners, the Nominee will convey registered title to the respective Beneficial Interest or Interests or any part or parts thereof, as applicable, to the respective Owner or Owners or their administrators, executors, successors or assigns by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest registered title to such Beneficial Interest or Interests in the name of the applicable Owner or Owners or their administrators, successors and assigns, all without expense to the Nominee in connection with such transfers of land.
4. The Nominee shall promptly remit to the Owners all rents, revenues and other receipts from the Property, and all funds that are received by the Nominee (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in connection with the Property). The obligation of the Nominee pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominee reasonably believes has a claim to all or any part of such funds. The Nominee shall incur no liability to any of the Owners for making any such remittance as the Nominee is directed to make pursuant to any notice received from any such creditor, mortgagee or other person, or pursuant to any standing or special instructions received from any of the Owners. The Nominee shall, at the expense and request of any of the Owners, account to any of the Owners for all funds received by the Nominee in connection with the Property.
5. The Nominee shall promptly transmit to the Owners copies of all directions, notices, claims, demands or other communications that the Nominee receives and which relate in any way to the Property. The Nominee shall promptly notify the Owners upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.
6. All costs and expenses incurred by the Nominee in connection with the performance of its duties and obligations hereunder, or in connection with the holding by the Nominee of the registered title to the Property, shall be borne by the Owners, in accordance with each of the Owner's proportionate Beneficial Interest.
7. No party dealing with the Nominee in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominee shall be obligated to investigate whether:

- (a) at the time of such dealings this Agreement was in full force and effect and was unamended;
  - (b) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;
  - (c) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and
  - (d) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.
8. In consideration of the Nominee accepting the responsibilities and obligations set out herein, each of the Owners hereby releases the Nominee from any and all liability that the Nominee may incur in respect of any action taken by the Nominee either pursuant to the instructions of any of the Owners or pursuant to the terms of this Agreement. Each of the Owners hereby agrees to indemnify and save harmless the Nominee from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominee by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property.
9. There shall be no fee payable to the Nominee by the Owners.
10. The Nominee covenants and agrees to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.
11. The Nominee shall not be obligated to file any income tax returns with respect to the Property, but each of the Owners shall file all such returns and pay all taxes on the earnings and avails of the Property growing out of their respective Beneficial Interests.
12. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of all of the Owners.
13. Each of the Owners acknowledges that the Nominee is acting as the bare nominee and trustee for each of the Owners, holding legal title to their respective Beneficial Interest, for and on behalf of each Owner.
14. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, addressed to any or all of the Owners, c/o Gross Capital Group, 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or the Nominee at 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or to such other address of which written notice is given. Each such notice, communication or delivery shall be deemed delivered on the date of delivery (if personally delivered) or on the third

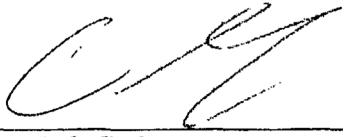
business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service shall not be effective until actually received.

15. This Agreement may be amended, revoked or terminated only by written agreement executed by both parties hereto.
16. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed the within Agreement as of the date first written above.

***[REMAINDER OF PAGE LEFT BLANK AND SIGNATURE PAGE TO FOLLOW]***

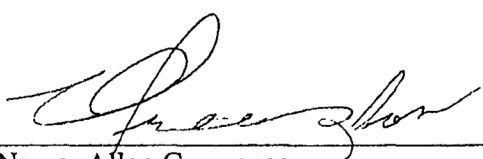
180 VINE INC.  
(Nominee)

Per: 

---

Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

2413667 ONTARIO INC.

Per: 

---

Name: Allen Greenspoon  
Title: President  
*I have the authority to bind the corporation*

180 VINE PURCHASER INC.

Per: 

---

Name: Fausto Carnicelli  
Title: Secretary  
*I have the authority to bind the corporation*

**SCHEDULE "A"****LEGAL DESCRIPTION**

MUNICIPAL ADDRESS: 180 Vine Street South, St. Catharines, Ontario

PIN: PIN 46272-0086 (LT)

LEGAL DESCRIPTION: PT LT 7, 9-10 BLK D CY PL 46 GRANTHAM; PT BLK A CY PL 79 GRANTHAM; PT BLK A, B CY PL 80 GRANTHAM; PT UNNAMED ST CY PL 46 GRANTHAM , CLOSED BY RO407053, PT 1 30R2209 EXCEPT PT 1 30R3734, PT 1 30R6493, & PT 1 30R7456; ST. CATHARINES

## SCHEDULE "B"

Name	Percentage of Investment and Beneficial Interest
2413667 ONTARIO INC.	50%
180 VINE PURCHASER INC.	50%
<b>Total</b>	100%

**DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**TO: 240 OLD PENETANGUISH HOLDINGS INC.**

**AND TO: AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest**

**RE: AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest (collectively, the "Lender"), \$70,000,000 loan (the "Loan") to, among others, 240 OLD PENETANGUISH HOLDINGS INC. (the "Nominee"), secured by, among other things, a first-ranking mortgage (the "Mortgage") against property municipally and legally described in Schedule "A" attached hereto (the "Property")**

**WHEREAS** the Lender agreed to loan to the Nominee and others the sum of \$70,000,000.00 pursuant to a mortgage loan application agreement dated November 30, 2015 (such mortgage loan application agreement, as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "**Commitment**");

**AND WHEREAS** pursuant to a nominee agreement dated January 21, 2016, between Gross Properties Inc. and 2413667 Ontario Inc. (together, the "**Beneficial Owner**"), as beneficial owner of the Property, and the Nominee, as title nominee/trustee (such nominee agreement, a copy of which is attached hereto as Schedule "B", as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "**Nominee Agreement**"), the Beneficial Owner appointed the Nominee as nominee, for and on behalf of the Beneficial Owner, to hold legal title to the Property, to execute mortgages, encumbrances and other security in respect of the Property and to do all further and other acts, all as the Beneficial Owner shall direct, and the Nominee accepted the foregoing obligations imposed by the Beneficial Owner;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Beneficial Owner confirms that the beneficial owners of the Property are limited to the two entities listed above. The Beneficial Owner further confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably authorizes and directs the Nominee, in its capacity as holder of legal title to the Property, as nominee for and on behalf of the Beneficial Owner, to enter into, execute, deliver and

- 2 -

- perform the obligations contained in the Commitment, the Mortgage and all other Loan documentation including, without limitation, all agreements, certificates, indemnities, waivers, acknowledgements and declarations collateral to, or required in connection with, the Mortgage, and to do all things and perform all acts as the Beneficial Owner or its legal counsel shall reasonably require, in accordance with the terms of the Nominee Agreement.
2. The Beneficial Owner transfers, assigns, sets over, charges and grants a security interest to and in favour of the Lender in and to all of its right, title, estate and interest in the property, assets and undertaking (including the Property) subject to the Mortgage and Loan documentation, together with all proceeds thereof, which security shall be held by the Lender as general and continuing security for all Loan and Loan document obligations.
  3. The Beneficial Owner agrees to be bound by the Loan and the Loan document obligations.
  4. The Beneficial Owner postpones and subordinates all debts and liabilities of the Nominee owed to it, in favour of the Loan, the Mortgage and the Loan documentation.
  5. The Beneficial Owner confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
  6. The Beneficial Owner further confirms that it will not sell, assign, convey, transfer or otherwise dispose of its beneficial interest in the Property, any part thereof or any interest therein, except in accordance with and subject to the terms of the Mortgage including, without limitation, the Transfer Conditions (as defined in the Mortgage). Notwithstanding the foregoing and any other provision hereof, transfers (other than encumbrances), in the aggregate over the term of the Loan, of up to 25% of the direct and indirect ownership interests in the Nominee are permitted without the Lender's prior written consent, but subject to the Transfer Conditions.
  7. Notwithstanding any other provision hereof, the liability of the Beneficial Owner hereunder shall be limited to the Beneficial Owner's interest in the Property and the Lender's recourse against the Beneficial Owner hereunder shall be limited accordingly.

DATED as of this 25<sup>th</sup> day of January, 2016.



- 3 -

**GROSS PROPERTIES INC.**Per: \_\_\_\_\_  
Vice-President - Mark Gross

I have the authority to bind the Corporation.

**2413667 ONTARIO INC.**Per: \_\_\_\_\_  
President - Allen Greenspoon

I have the authority to bind the Corporation.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Nominee hereby confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably acknowledges the above authorization and direction of the Beneficial Owner and agrees to be bound thereby in accordance with the terms of the Nominee Agreement. The Nominee further confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.

DATED as of this 25<sup>th</sup> day of January, 2016.

**240 OLD PENETANGUISH HOLDINGS  
INC.**Per: \_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE "A"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**DESCRIPTION OF PROPERTY**

Municipal Address: 240 Old Penetanguishene Road, Midland, Ontario

Legal Description: Part East Half of Lot 106, Concession 1 WPR Tiny; Part of Lot 107, Concession 1 WPR Tiny, designated as Parts 3 and 4 on Plan 51R-18477 and Parts 4, 5, 6, 7 and 10 on Plan R1026 except 51R-3985; together with and subject to RO1045345; Midland

*being the whole of PIN 58454-0029(LT)*

**SCHEDULE "B"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**Nominee Agreement**  
**[copy to be attached]**

**NOMINEE AGREEMENT**

THIS AGREEMENT made effective as of the 21<sup>st</sup> day of January, 2016.

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

**GROSS PROPERTIES INC.**

**OF THE FIRST PART**

- and -

**2413667 ONTARIO INC.**

**OF THE SECOND PART**

- and -

**2009 LONG LAKE HOLDINGS INC.  
65 LARCH HOLDINGS INC.  
100 COLBORNE HOLDINGS INC.  
240 OLD PENETANGUISH HOLDINGS INC.  
249 ONTARIO STREET HOLDINGS INC.  
86 ANGELINE STREET HOLDINGS INC.  
(collectively, hereinafter called the "Nominees")**

**OF THE THIRD PART**

**WHEREAS:**

- A. The Nominees have or are about to acquire an interest in the lands and premises more particularly described in Schedule "A" attached hereto (the "**Property**") as a bare trustee only, and will hold its legal interest therein in trust for and on behalf of Gross Properties Inc. and 2413667 Ontario Inc. (hereinafter collectively referred to as the "**Owners**" and each individually an "**Owner**") in accordance with each of their respective beneficial interests as set out on Schedule "B" hereto (hereinafter collectively referred to as the "**Beneficial Interests**" and each individually a "**Beneficial Interest**"), on the terms and subject to the conditions hereinafter set forth; and
- B. The Nominees were not and are not required to advance any of the funds necessary to acquire, hold or maintain the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained the parties hereto do hereby agree as follows:

1. The Nominees hereby acknowledges and agrees that they will hold registered title to the Property solely as nominal title holders for the Owners and not for themselves, without any right, ownership or interest in and to the Property or in and to any mortgage

proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may have executed or may hereafter execute under direction of the Owners any contracts, notes, mortgages, leases or other agreements for the ownership and use of the Property by the occupants or users.

2. The Owners acknowledge that registered title to the Property shall, for the purpose of convenience in dealing with the Property for and on behalf of the Owners, remain in the name of the Nominees.
3. The Nominees shall remain the registered owners and hold legal title to the Property for the Owners; provided that when so requested by any of the Owners, the Nominees will convey registered title to the respective Beneficial Interest or Interests or any part or parts thereof, as applicable, to the respective Owner or Owners or their administrators, executors, successors or assigns by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest registered title to such Beneficial Interest or Interests in the name of the applicable Owner or Owners or their administrators, successors and assigns, all without expense to the Nominees in connection with such transfers of land.
4. The Nominees shall promptly remit to the Owners all rents, revenues and other receipts from the Property, and all funds that are received by the Nominees (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in connection with the Property). The obligation of the Nominees pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominees reasonably believe has a claim to all or any part of such funds. The Nominees shall incur no liability to any of the Owners for making any such remittance as the Nominees are directed to make pursuant to any notice received from any such creditor, mortgagee or other person, or pursuant to any standing or special instructions received from any of the Owners. The Nominees shall, at the expense and request of any of the Owners, account to any of the Owners for all funds received by the Nominees in connection with the Property.
5. The Nominees shall promptly transmit to the Owners copies of all directions, notices, claims, demands or other communications that the Nominees receive and which relate in any way to the Property. The Nominees shall promptly notify the Owners upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.
6. All costs and expenses incurred by the Nominees in connection with the performance of its duties and obligations hereunder, or in connection with the holding by the Nominees of the registered title to the Property, shall be borne by the Owners, in accordance with each of the Owner's proportionate Beneficial Interest.
7. No party dealing with the Nominees in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominees shall be obligated to investigate whether:

- (a) at the time of such dealings this Agreement was in full force and effect and was unamended;
  - (b) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;
  - (c) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and
  - (d) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.
8. In consideration of the Nominees accepting the responsibilities and obligations set out herein, each of the Owners hereby release the Nominees from any and all liability that the Nominees may incur in respect of any action taken by the Nominees either pursuant to the instructions of any of the Owners or pursuant to the terms of this Agreement. Each of the Owners hereby agrees to indemnify and save harmless the Nominees from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominees by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property.
9. There shall be no fee payable to the Nominees by the Owners.
10. The Nominees covenant and agree to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.
11. The Nominees shall not be obligated to file any income tax returns with respect to the Property, but each of the Owners shall file all such returns and pay all taxes on the earnings and avails of the Property growing out of their respective Beneficial Interests.
12. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of all of the Owners.
13. Each of the Owners acknowledges that the Nominees are acting as the bare nominee and trustee for each of the Owners, holding legal title to their respective Beneficial Interest, for and on behalf of each Owner.
14. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, addressed to any or all of the Owners, c/o Gross Capital Group, 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or any or all of the Nominees at 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or to such other address of which written notice is given. Each such notice, communication or delivery shall be deemed delivered on the date of delivery (if personally delivered) or

on the third business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service shall not be effective until actually received.

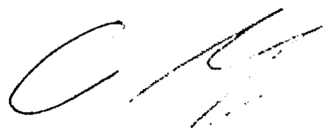
15. This Agreement may be amended, revoked or terminated only by written agreement executed by both parties hereto.
16. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed the within Agreement as of the date first written above.

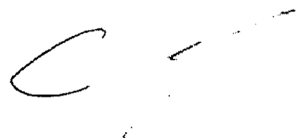
***[REMAINDER OF PAGE LEFT BLANK AND SIGNATURE PAGE TO FOLLOW]***

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto as at the 21<sup>st</sup> day of January, 2016.

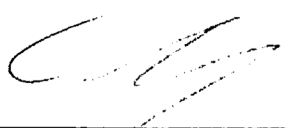
**2009 LONG LAKE HOLDINGS INC.**  
(Nominee)

Per:   
\_\_\_\_\_  
Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

**65 LARCH HOLDINGS INC.**  
(Nominee)

Per:   
\_\_\_\_\_  
Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

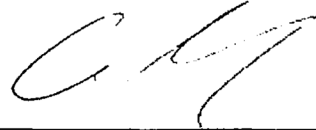
**100 COLBORNE HOLDINGS INC.**  
(Nominee)

Per:   
\_\_\_\_\_  
Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*



**240 OLD PENETANGUISS HOLDINGS  
INC.**  
(Nominee)

Per:



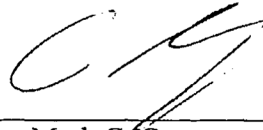
\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**249 ONTARIO STREET HOLDINGS INC.**  
(Nominee)

Per:



\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**86 ANGELINE STREET HOLDINGS INC.**  
(Nominee)

Per:

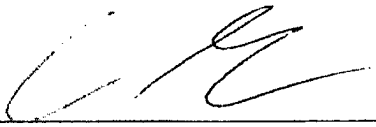


\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**GROSS PROPERTIES INC.**

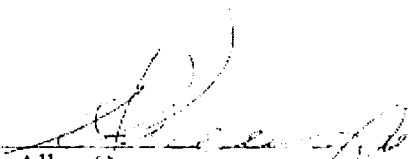
Per: 

Name: Mark C. Gross

Title: Vice-President

*I have the authority to bind the corporation*

**2413667 ONTARIO INC.**

Per: 

Name: Allen Greenspoon

Title: President

*I have the authority to bind the corporation*

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

**1. Property 1:**

Municipal Address: 100 Colborne Street West and 77 Wyandotte Street, Orillia, ON

Legal Description:

Parcel 1: PIN 58650-0115 (LT)

PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA

Parcel 2: PIN 58644-0014 (LT)

LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN  
RO1453448; ORILLIA

**2. Property 2**

Municipal Address: 65 Larch Street, Sudbury, ON

Legal Description:

Parcel 1: PIN 73584-0077 (LT)

LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 2: PIN 73584-0078 (LT)

LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 3: PIN 73584-0097 (LT)

PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER  
SUDBURY

**3. Property 3:**

Municipal Address: 240 Penetanguishene Road, Midland, ON

Legal Description: PIN 58454-0029 (LT)

PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT 3 & 4, 51R18477 & PT  
4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345; MIDLAND

**4. Property 4:**

Municipal Address: 2009 Long Lake Road, Sudbury, ON

Legal Description:

Parcel 1: PIN 73595-0102 (LT)

PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY

Parcel 2: PIN 73595-0174 (LT)

PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY

Parcel 3: PIN 73595-0333 (LT)

PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

**5. Property 5:**

Municipal Address: 249 Ontario Street, Port Hope

Legal Description:

PIN: 51078 - 0317

LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE

**6. Property 6:**

Municipal Address: 86 Angeline Street South, Lindsay

Legal Description:

Parcel 1: PIN: 63236 - 0017

PT PARKLT A PL 8P AS IN R234666; CITY OF KAWARTHA LAKES

Parcel 2: PIN: 63236 - 0122

PT PARKLT A, PT PARKLT J PLAN 8P DESIGNATED PT 1 57R5672; EXCEPT PT 1 57R9230; CITY OF KAWARTHA LAKES

## SCHEDULE "B"

Nominee	Property	Beneficial Owner	Percentage of Investment and Beneficial Interest
2009 Long Lake Holdings Inc.	2009 Long Lake Road, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
65 Larch Holdings Inc.	65 Larch Street, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
100 Colborne Holdings Inc.	100 Colborne Street and 77 Wyandotte Street, Orillia, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
240 Pentanguishene Road, Midland, Ontario	240 Old Penetanguish Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
86 Angeline Street South, Lindsay, Ontario	86 Angeline Street Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
249 Ontario Street Holdings Inc.	249 Ontario Street, Port Hope, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%

**DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**TO: 2478658 ONTARIO LTD.**

**AND TO: AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest**

**RE: AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest (collectively, the "Lender"), \$70,000,000 loan (the "Loan") to, among others, 2478658 ONTARIO LTD. (the "Nominee"), secured by, among other things, a first-ranking mortgage (the "Mortgage") against property municipally and legally described in Schedule "A" attached hereto (the "Property")**

**WHEREAS** the Lender agreed to loan to the Nominee and others the sum of \$70,000,000.00 pursuant to a mortgage loan application agreement dated November 30, 2015 (such mortgage loan application agreement, as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "**Commitment**");

**AND WHEREAS** pursuant to a nominee agreement dated September 22, 2015, between Gross Properties Inc. and 2413667 Ontario Inc. (together, the "**Beneficial Owner**"), as beneficial owner of the Property, and the Nominee, as title nominee/trustee (such nominee agreement, a copy of which is attached hereto as Schedule "B", as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "**Nominee Agreement**"), the Beneficial Owner appointed the Nominee as nominee, for and on behalf of the Beneficial Owner, to hold legal title to the Property, to execute mortgages, encumbrances and other security in respect of the Property and to do all further and other acts, all as the Beneficial Owner shall direct, and the Nominee accepted the foregoing obligations imposed by the Beneficial Owner;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Beneficial Owner confirms that the beneficial owners of the Property are limited to the two entities listed above. The Beneficial Owner further confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably authorizes and directs the Nominee, in its capacity as holder of legal title to the Property, as nominee for and on behalf of the Beneficial Owner, to enter into, execute, deliver and perform the obligations contained in the Commitment, the Mortgage and all other Loan

- 2 -

documentation including, without limitation, all agreements, certificates, indemnities, waivers, acknowledgements and declarations collateral to, or required in connection with, the Mortgage, and to do all things and perform all acts as the Beneficial Owner or its legal counsel shall reasonably require, in accordance with the terms of the Nominee Agreement.

2. The Beneficial Owner transfers, assigns, sets over, charges and grants a security interest to and in favour of the Lender in and to all of its right, title, estate and interest in the property, assets and undertaking (including the Property) subject to the Mortgage and Loan documentation, together with all proceeds thereof, which security shall be held by the Lender as general and continuing security for all Loan and Loan document obligations.
3. The Beneficial Owner agrees to be bound by the Loan and the Loan document obligations.
4. The Beneficial Owner postpones and subordinates all debts and liabilities of the Nominee owed to it, in favour of the Loan, the Mortgage and the Loan documentation.
5. The Beneficial Owner confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
6. The Beneficial Owner further confirms that it will not sell, assign, convey, transfer or otherwise dispose of its beneficial interest in the Property, any part thereof or any interest therein, except in accordance with and subject to the terms of the Mortgage including, without limitation, the Transfer Conditions (as defined in the Mortgage). Notwithstanding the foregoing and any other provision hereof, transfers (other than encumbrances), in the aggregate over the term of the Loan, of up to 25% of the direct and indirect ownership interests in the Nominee are permitted without the Lender's prior written consent, but subject to the Transfer Conditions.
7. Notwithstanding any other provision hereof, the liability of the Beneficial Owner hereunder shall be limited to the Beneficial Owner's interest in the Property and the Lender's recourse against the Beneficial Owner hereunder shall be limited accordingly.

DATED as of this 25<sup>th</sup> day of January, 2016.

- 3 -

**GROSS PROPERTIES INC.**Per: \_\_\_\_\_  
Vice-President - Mark Gross

I have the authority to bind the Corporation.

**2413667 ONTARIO INC.**Per: \_\_\_\_\_  
President - Allen Greenspoon

I have the authority to bind the Corporation.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Nominee hereby confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably acknowledges the above authorization and direction of the Beneficial Owner and agrees to be bound thereby in accordance with the terms of the Nominee Agreement. The Nominee further confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.

DATED as of this 25<sup>th</sup> day of January, 2016.

**2478658 ONTARIO LTD.**Per: \_\_\_\_\_  
President - Mark Gross

I have the authority to bind the Corporation.



**SCHEDULE "A"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**DESCRIPTION OF PROPERTY**

Municipal Address: 849 Alexander Court, Peterborough, Ontario

Legal Description: Part of Lots 3 and 4 on Plan 23Q, designated as Parts 1 and 2 on Plan 45R-647, North Monaghan; Peterborough

*being the whole of PIN 28061-0157(LT)*

**SCHEDULE "B"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**Nominee Agreement**  
**[copy to be attached]**

**NOMINEE AGREEMENT**

THIS AGREEMENT made effective as of the 22<sup>nd</sup> day of September, 2015.

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

**2413667 ONTARIO INC.**

**OF THE FIRST PART**

- and -

**GROSS PROPERTIES INC.**

**OF THE SECOND PART**

- and -

**2478658 ONTARIO LTD.**

(hereinafter called the "Nominee")

**OF THE THIRD PART**

**WHEREAS:**

- A. The Nominee has or is about to acquire an interest in the lands and premises municipally known as 849 Alexander, Peterborough, Ontario and more particularly described in Schedule "A" attached hereto (the "**Property**") as a bare trustee only, and will hold its legal interest therein in trust for and on behalf of 2413667 Ontario Inc. and Gross Properties Inc. (hereinafter collectively referred to as the "**Owners**" and each individually an "**Owner**") in accordance with each of their respective beneficial interests as set out on Schedule "B" hereto (hereinafter collectively referred to as the "**Beneficial Interests**" and each individually a "**Beneficial Interest**"), on the terms and subject to the conditions hereinafter set forth; and
- B. The Nominee was not and is not required to advance any of the funds necessary to acquire, hold or maintain the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained the parties hereto do hereby agree as follows:

- 1. The Nominee hereby acknowledges and agrees that it will hold registered title to the Property solely as nominal title holder for the Owners and not for itself, without any right, ownership or interest in and to the Property or in and to any mortgage proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may have executed or may hereafter execute under direction of the Owners any contracts, notes,

mortgages, leases or other agreements for the ownership and use of the Property by the occupants or users.

2. The Owners acknowledge that registered title to the Property shall, for the purpose of convenience in dealing with the Property for and on behalf of the Owners, remain in the name of the Nominee.
3. The Nominee shall remain the registered owner and hold legal title to the Property for the Owners; provided that when so requested by any of the Owners, the Nominee will convey registered title to the respective Beneficial Interest or Interests or any part or parts thereof, as applicable, to the respective Owner or Owners or their administrators, executors, successors or assigns by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest registered title to such Beneficial Interest or Interests in the name of the applicable Owner or Owners or their administrators, successors and assigns, all without expense to the Nominee in connection with such transfers of land.
4. The Nominee shall promptly remit to the Owners all rents, revenues and other receipts from the Property, and all funds that are received by the Nominee (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in connection with the Property). The obligation of the Nominee pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominee reasonably believes has a claim to all or any part of such funds. The Nominee shall incur no liability to any of the Owners for making any such remittance as the Nominee is directed to make pursuant to any notice received from any such creditor, mortgagee or other person, or pursuant to any standing or special instructions received from any of the Owners. The Nominee shall, at the expense and request of any of the Owners, account to any of the Owners for all funds received by the Nominee in connection with the Property.
5. The Nominee shall promptly transmit to the Owners copies of all directions, notices, claims, demands or other communications that the Nominee receives and which relate in any way to the Property. The Nominee shall promptly notify the Owners upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.
6. All costs and expenses incurred by the Nominee in connection with the performance of its duties and obligations hereunder, or in connection with the holding by the Nominee of the registered title to the Property, shall be borne by the Owners, in accordance with each of the Owner's proportionate Beneficial Interest.
7. No party dealing with the Nominee in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominee shall be obligated to investigate whether:

- (a) at the time of such dealings this Agreement was in full force and effect and was unamended;
  - (b) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;
  - (c) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and
  - (d) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.
8. In consideration of the Nominee accepting the responsibilities and obligations set out herein, each of the Owners hereby releases the Nominee from any and all liability that the Nominee may incur in respect of any action taken by the Nominee either pursuant to the instructions of any of the Owners or pursuant to the terms of this Agreement. Each of the Owners hereby agrees to indemnify and save harmless the Nominee from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominee by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property.
9. There shall be no fee payable to the Nominee by the Owners.
10. The Nominee covenants and agrees to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.
11. The Nominee shall not be obligated to file any income tax returns with respect to the Property, but each of the Owners shall file all such returns and pay all taxes on the earnings and avails of the Property growing out of their respective Beneficial Interests.
12. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of all of the Owners.
13. Each of the Owners acknowledges that the Nominee is acting as the bare nominee and trustee for each of the Owners, holding legal title to their respective Beneficial Interest, for and on behalf of each Owner.
14. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, addressed to any or all of the Owners, c/o Gross Capital Group, 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or the Nominee at 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or to such other address of which written notice is given. Each such notice, communication or delivery shall be deemed delivered on the date of delivery (if personally delivered) or on the third

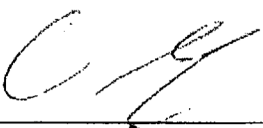
business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service shall not be effective until actually received.

15. This Agreement may be amended, revoked or terminated only by written agreement executed by both parties hereto.
16. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed the within Agreement as of the date first written above.

***[REMAINDER OF PAGE LEFT BLANK AND SIGNATURE PAGE TO FOLLOW]***

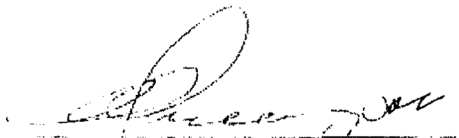
**2478658 ONTARIO LTD.**  
(Nominee)

Per: 

---

Name: Mark C. Gross  
Title: President  
*I have the authority to bind the corporation*

**2413667 ONTARIO INC.**

Per: 

---

Name: Allen Greenspoon  
Title: President  
*I have the authority to bind the corporation*

**GROSS PROPERTIES INC.**

Per: 

---

Name: Mark C. Gross  
Title: Vice-President  
*I have the authority to bind the corporation*

**SCHEDULE "A"****LEGAL DESCRIPTION**

MUNICIPAL ADDRESS: 849 Alexander, Peterborough, Ontario

PIN: PIN 28061-0157 (LT)

LEGAL DESCRIPTION: PT LTS 3 & 4, PL 23Q , PART 1&2 , 45R647 , NORTH  
MONAGHAN ; PETERBOROUGH



**SCHEDULE "B"**

<b>Name</b>	<b>Percentage of Investment and Beneficial Interest</b>
2413667 ONTARIO INC.	20%
GROSS PROPERTIES INC.	80%
<b>Total</b>	<b>100%</b>

**DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**TO:** 2009 LONG LAKE HOLDINGS INC.

**AND TO:** AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest

**RE:** AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest (collectively, the "Lender"), \$70,000,000 loan (the "Loan") to, among others, 2009 LONG LAKE HOLDINGS INC. (the "Nominee"), secured by, among other things, a first-ranking mortgage (the "Mortgage") against property municipally and legally described in Schedule "A" attached hereto (the "Property")

**WHEREAS** the Lender agreed to loan to the Nominee and others the sum of \$70,000,000.00 pursuant to a mortgage loan application agreement dated November 30, 2015 (such mortgage loan application agreement, as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "**Commitment**");

**AND WHEREAS** pursuant to a nominee agreement dated January 21, 2016, between Gross Properties Inc. and 2413667 Ontario Inc. (together, the "**Beneficial Owner**"), as beneficial owner of the Property, and the Nominee, as title nominee/trustee (such nominee agreement, a copy of which is attached hereto as Schedule "B", as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "**Nominee Agreement**"), the Beneficial Owner appointed the Nominee as nominee, for and on behalf of the Beneficial Owner, to hold legal title to the Property, to execute mortgages, encumbrances and other security in respect of the Property and to do all further and other acts, all as the Beneficial Owner shall direct, and the Nominee accepted the foregoing obligations imposed by the Beneficial Owner;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Beneficial Owner confirms that the beneficial owners of the Property are limited to the two entities listed above. The Beneficial Owner further confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably authorizes and directs the Nominee, in its capacity as holder of legal title to the Property, as nominee for and on behalf of the Beneficial Owner, to enter into, execute, deliver and perform the obligations contained in the Commitment, the Mortgage and all other Loan

- 2 -


documentation including, without limitation, all agreements, certificates, indemnities, waivers, acknowledgements and declarations collateral to, or required in connection with, the Mortgage, and to do all things and perform all acts as the Beneficial Owner or its legal counsel shall reasonably require, in accordance with the terms of the Nominee Agreement.

2. The Beneficial Owner transfers, assigns, sets over, charges and grants a security interest to and in favour of the Lender in and to all of its right, title, estate and interest in the property, assets and undertaking (including the Property) subject to the Mortgage and Loan documentation, together with all proceeds thereof, which security shall be held by the Lender as general and continuing security for all Loan and Loan document obligations.
3. The Beneficial Owner agrees to be bound by the Loan and the Loan document obligations.
4. The Beneficial Owner postpones and subordinates all debts and liabilities of the Nominee owed to it, in favour of the Loan, the Mortgage and the Loan documentation.
5. The Beneficial Owner confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
6. The Beneficial Owner further confirms that it will not sell, assign, convey, transfer or otherwise dispose of its beneficial interest in the Property, any part thereof or any interest therein, except in accordance with and subject to the terms of the Mortgage including, without limitation, the Transfer Conditions (as defined in the Mortgage). Notwithstanding the foregoing and any other provision hereof, transfers (other than encumbrances), in the aggregate over the term of the Loan, of up to 25% of the direct and indirect ownership interests in the Nominee are permitted without the Lender's prior written consent, but subject to the Transfer Conditions.
7. Notwithstanding any other provision hereof, the liability of the Beneficial Owner hereunder shall be limited to the Beneficial Owner's interest in the Property and the Lender's recourse against the Beneficial Owner hereunder shall be limited accordingly.

DATED as of this 25<sup>th</sup> day of January, 2016.


- 3 -

**GROSS PROPERTIES INC.**

Per:   
Vice-President - Mark Gross

I have the authority to bind the Corporation.

**2413667 ONTARIO INC.**

Per:   
President - Allen Greenspoon

I have the authority to bind the Corporation.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Nominee hereby confirms that the Nominee Agreement is in full force and effect, in good standing and unamended and irrevocably acknowledges the above authorization and direction of the Beneficial Owner and agrees to be bound thereby in accordance with the terms of the Nominee Agreement. The Nominee further confirms that it will not agree to or permit the amendment of the Nominee Agreement without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.

DATED as of this 25<sup>th</sup> day of January, 2016.

**2009 LONG LAKE HOLDINGS INC.**

Per:   
President - Mark Gross

I have the authority to bind the Corporation.

**SCHEDULE "A"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**DESCRIPTION OF PROPERTY**

**Municipal Address:** 2009 Long Lake Road, Sudbury, Ontario

**Legal Description:** FIRSTLY: Parcel 8259, Section SES; Part of Lot 6, Concession 1 McKim except LT52588, LT53059, LT109847, Part 7 on Plan 53R-4520 and Part 4 on Plan 53R-13501; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0102(LT)*

SECONDLY: Parcel 39445, Section SES; Part of Lot 6, Concession 1 McKim, designated as Parts 3 to 7 and 12 to 15 on Plan 53R-5036; Part of Lot 6, Concession 1 McKim, designated as Part 5 on Plan 53R-13501; subject to Parts 2 and 3 on Plan 53R-13501 as in LT717184; subject to LT25019, LT735739; Greater Sudbury

*being the whole of PIN 73595-0174(LT)*

THIRDLY: Parcel 39000, Section SES; designated as Part of Lot 6, Concession 1 McKim, designated as Parts 9 to 11 on Plan 53R-5036; together with a right-of-way over Parts 1 and 2 on Plan 53R-5036; subject to LT25019; Greater Sudbury

*being the whole of PIN 73595-0333(LT)*

**SCHEDULE "B"**  
**TO DIRECTION TO NOMINEE AND ACKNOWLEDGEMENT**

**Nominee Agreement**  
**[copy to be attached]**

**NOMINEE AGREEMENT**

**THIS AGREEMENT** made effective as of the 21<sup>st</sup> day of January, 2016.

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

**GROSS PROPERTIES INC.**

**OF THE FIRST PART**

- and -

**2413667 ONTARIO INC.**

**OF THE SECOND PART**

- and -

**2009 LONG LAKE HOLDINGS INC.  
65 LARCH HOLDINGS INC.  
100 COLBORNE HOLDINGS INC.  
240 OLD PENETANGUISH HOLDINGS INC.  
249 ONTARIO STREET HOLDINGS INC.  
86 ANGELINE STREET HOLDINGS INC.  
(collectively, hereinafter called the "Nominees")**

**OF THE THIRD PART**

**WHEREAS:**

- A. The Nominees have or are about to acquire an interest in the lands and premises more particularly described in Schedule "A" attached hereto (the "**Property**") as a bare trustee only, and will hold its legal interest therein in trust for and on behalf of Gross Properties Inc. and 2413667 Ontario Inc. (hereinafter collectively referred to as the "**Owners**" and each individually an "**Owner**") in accordance with each of their respective beneficial interests as set out on Schedule "B" hereto (hereinafter collectively referred to as the "**Beneficial Interests**" and each individually a "**Beneficial Interest**"), on the terms and subject to the conditions hereinafter set forth; and
- B. The Nominees were not and are not required to advance any of the funds necessary to acquire, hold or maintain the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained the parties hereto do hereby agree as follows:

1. The Nominees hereby acknowledges and agrees that they will hold registered title to the Property solely as nominal title holders for the Owners and not for themselves, without any right, ownership or interest in and to the Property or in and to any mortgage

proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may have executed or may hereafter execute under direction of the Owners any contracts, notes, mortgages, leases or other agreements for the ownership and use of the Property by the occupants or users.

2. The Owners acknowledge that registered title to the Property shall, for the purpose of convenience in dealing with the Property for and on behalf of the Owners, remain in the name of the Nominees.
3. The Nominees shall remain the registered owners and hold legal title to the Property for the Owners; provided that when so requested by any of the Owners, the Nominees will convey registered title to the respective Beneficial Interest or Interests or any part or parts thereof, as applicable, to the respective Owner or Owners or their administrators, executors, successors or assigns by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest registered title to such Beneficial Interest or Interests in the name of the applicable Owner or Owners or their administrators, successors and assigns, all without expense to the Nominees in connection with such transfers of land.
4. The Nominees shall promptly remit to the Owners all rents, revenues and other receipts from the Property, and all funds that are received by the Nominees (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in connection with the Property). The obligation of the Nominees pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominees reasonably believe has a claim to all or any part of such funds. The Nominees shall incur no liability to any of the Owners for making any such remittance as the Nominee are directed to make pursuant to any notice received from any such creditor, mortgagee or other person, or pursuant to any standing or special instructions received from any of the Owners. The Nominees shall, at the expense and request of any of the Owners, account to any of the Owners for all funds received by the Nominees in connection with the Property.
5. The Nominees shall promptly transmit to the Owners copies of all directions, notices, claims, demands or other communications that the Nominees receive and which relate in any way to the Property. The Nominees shall promptly notify the Owners upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.
6. All costs and expenses incurred by the Nominees in connection with the performance of its duties and obligations hereunder, or in connection with the holding by the Nominees of the registered title to the Property, shall be borne by the Owners, in accordance with each of the Owner's proportionate Beneficial Interest.
7. No party dealing with the Nominees in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominees shall be obligated to investigate whether:



- (a) at the time of such dealings this Agreement was in full force and effect and was unamended;
  - (b) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;
  - (c) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and
  - (d) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.
8. In consideration of the Nominees accepting the responsibilities and obligations set out herein, each of the Owners hereby release the Nominees from any and all liability that the Nominees may incur in respect of any action taken by the Nominees either pursuant to the instructions of any of the Owners or pursuant to the terms of this Agreement. Each of the Owners hereby agrees to indemnify and save harmless the Nominees from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominees by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property.
9. There shall be no fee payable to the Nominees by the Owners.
10. The Nominees covenant and agree to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.
11. The Nominees shall not be obligated to file any income tax returns with respect to the Property, but each of the Owners shall file all such returns and pay all taxes on the earnings and avails of the Property growing out of their respective Beneficial Interests.
12. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of all of the Owners.
13. Each of the Owners acknowledges that the Nominees are acting as the bare nominee and trustee for each of the Owners, holding legal title to their respective Beneficial Interest, for and on behalf of each Owner.
14. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, addressed to any or all of the Owners, c/o Gross Capital Group, 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or any or all of the Nominees at 200 Ronson Drive, Suite 103 Toronto, ON M9L 1R5 or to such other address of which written notice is given. Each such notice, communication or delivery shall be deemed delivered on the date of delivery (if personally delivered) or

on the third business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service shall not be effective until actually received.

15. This Agreement may be amended, revoked or terminated only by written agreement executed by both parties hereto.
16. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed the within Agreement as of the date first written above.

***[REMAINDER OF PAGE LEFT BLANK AND SIGNATURE PAGE TO FOLLOW]***

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto as at the 21<sup>st</sup> day of January, 2016.

**2009 LONG LAKE HOLDINGS INC.**  
(Nominee)

Per: 

\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**65 LARCH HOLDINGS INC.**  
(Nominee)

Per: 

\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**100 COLBORNE HOLDINGS INC.**  
(Nominee)

Per: 

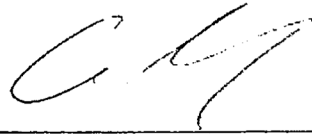
\_\_\_\_\_  
Name: Mark C. Gross

Title: President

*I have the authority to bind the  
corporation*

**240 OLD PENETANGUIH HOLDINGS  
INC.**  
(Nominee)

Per:

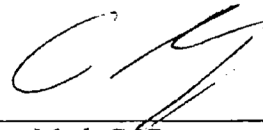


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Name: Mark C. Gross  
Title: President  
*I have the authority to bind the  
corporation*

**249 ONTARIO STREET HOLDINGS INC.**  
(Nominee)

Per:

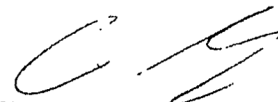


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Name: Mark C. Gross  
Title: President  
*I have the authority to bind the  
corporation*

**86 ANGELINE STREET HOLDINGS INC.**  
(Nominee)

Per:



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Name: Mark C. Gross  
Title: President  
*I have the authority to bind the  
corporation*

**GROSS PROPERTIES INC.**

Per:



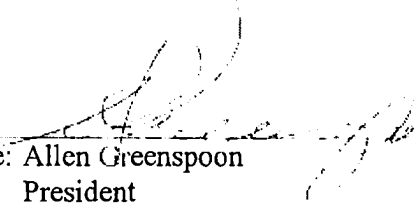
Name: Mark C. Gross

Title: Vice-President

*I have the authority to bind the corporation*

**2413667 ONTARIO INC.**

Per:



Name: Allen Greenspoon

Title: President

*I have the authority to bind the corporation*

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

**1. Property 1:**

Municipal Address: 100 Colborne Street West and 77 Wyandotte Street, Orillia, ON

Legal Description:

Parcel 1: PIN 58650-0115 (LT)

PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA

Parcel 2: PIN 58644-0014 (LT)

LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN  
RO1453448; ORILLIA

**2. Property 2**

Municipal Address: 65 Larch Street, Sudbury, ON

Legal Description:

Parcel 1: PIN 73584-0077 (LT)

LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 2: PIN 73584-0078 (LT)

LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY

Parcel 3: PIN 73584-0097 (LT)

PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER  
SUDBURY

**3. Property 3:**

Municipal Address: 240 Penetanguishene Road, Midland, ON

Legal Description: PIN 58454-0029 (LT)

PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT 3 & 4, 51R18477 & PT  
4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345; MIDLAND

**4. Property 4:**

Municipal Address: 2009 Long Lake Road, Sudbury, ON

Legal Description:

Parcel 1: PIN 73595-0102 (LT)

PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY

Parcel 2: PIN 73595-0174 (LT)

PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY

Parcel 3: PIN 73595-0333 (LT)

PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

**5. Property 5:**

Municipal Address: 249 Ontario Street, Port Hope

Legal Description:

PIN: 51078 - 0317

LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE

**6. Property 6:**

Municipal Address: 86 Angeline Street South, Lindsay

Legal Description:

Parcel 1: PIN: 63236 - 0017

PT PARKLT A PL 8P AS IN R234666; CITY OF KAWARTHA LAKES

Parcel 2: PIN: 63236 - 0122

PT PARKLT A, PT PARKLT J PLAN 8P DESIGNATED PT 1 57R5672; EXCEPT PT 1 57R9230; CITY OF KAWARTHA LAKES

## SCHEDULE "B"

Nominee	Property	Beneficial Owner	Percentage of Investment and Beneficial Interest
2009 Long Lake Holdings Inc.	2009 Long Lake Road, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
65 Larch Holdings Inc.	65 Larch Street, Sudbury, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
100 Colborne Holdings Inc.	100 Colborne Street and 77 Wyandotte Street, Orillia, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
240 Pentanguishene Road, Midland, Ontario	240 Old Penetanguish Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
86 Angeline Street South, Lindsay, Ontario	86 Angeline Street Holdings Inc.	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%
249 Ontario Street Holdings Inc.	249 Ontario Street, Port Hope, Ontario	Gross Properties Inc.	80%
		2413667 Ontario Inc.	20%



This is **Exhibit "R"** referred to in the  
Affidavit of Jacob Baron  
sworn before me by video conference  
this 18<sup>th</sup> day of June, 2021

  
A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,  
Province of Ontario, for Blake, Cassels & Graydon LLP,  
Barristers and Solicitors.  
Expires July 13, 2021.

LRO # 62 Charge/Mortgage

Received as WE1096059 on 2016 01 26 at 09:09

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

yyyy mm dd Page 1 of 36

**Properties**

<b>PIN</b>	17088 - 0748 LT	<b>Interest/Estate</b>	Fee Simple
<b>Description</b>	PT LT 25, CON 8 SALT FLEET, PART 7, PLAN 62R-18917; STONEY CREEK; TOGETHER WITH AN EASEMENT OVER PT LT 25, CON 8 SALT FLEET, PARTS 9, 11, 12 AND 13 ON 62R18917 AS IN WE749696; CITY OF HAMILTON		
<b>Address</b>	35 UPPER CENTENNIAL PARKWAY HAMILTON		
<b>PIN</b>	17088 - 0762 LT	<b>Interest/Estate</b>	Fee Simple
<b>Description</b>	PT LT 25 CON 8 SALT FLEET BEING PARTS 1, 2, 3, 4, 5 AND 10 ON 62R18917; S/T AN EASEMENT OVER PART 3 ON 62R18917 IN FAVOUR OF PARTS 1-5 INCL. 12-15 INCL. 18, 21, 30, 31, 32, 36, 38, 42, 48, 53 ON 62R14684 AS IN LT562193; T/W AN EASEMENT OVER PARTS 2, 4, 14, 21, 30, 31, 32, 36, 38, 48 ON 62R14684 AS IN LT562194; SUBJECT TO AN EASEMENT OVER PART 5 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALT FLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 10 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALT FLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 2 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALT FLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 3 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALT FLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; STONEY CREEK; TOGETHER WITH AN EASEMENT OVER PARTS 9, 11, 12 AND 13 ON 62R18917 AS IN WE749696; CITY OF HAMILTON		
<b>Address</b>	35 UPPER CENTENNIAL PARKWAY HAMILTON		

**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** CARRIAGE GATE GROUP INC.  
**Address for Service** 200 Ronson Drive  
Suite 300  
Toronto, ON M9L 1R5  
Attention: Mark Gross

I, Mark Gross, President, have the authority to bind the corporation.

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

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

<b>Name</b>	AMERICAN GENERAL LIFE INSURANCE COMPANY	as to an undivided 44% interest
<b>Address for Service</b>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 18th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	

LRO # 62 Charge/Mortgage

Received as WE1096059 on 2016 01 26 at 09:09

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

yyyy mm dd Page 2 of 36

<b>Chargee(s)</b>	<b>Capacity</b>	<b>Share</b>
<b>Name</b>	THE VARIABLE ANNUITY LIFE INSURANCE COMPANY	as to an undivided 23% interest
<b>Address for Service</b>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	
<b>Name</b>	LEXINGTON INSURANCE COMPANY	as to an undivided 33% interest
<b>Address for Service</b>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	

<b>Statements</b>
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Schedule: See Schedules

<b>Provisions</b>
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<b>Principal</b>	\$ 70,000,000.00	<b>Currency</b>	CDN
<b>Calculation Period</b>	See Schedule		
<b>Balance Due Date</b>	2026/02/01		
<b>Interest Rate</b>			
<b>Payments</b>			
<b>Interest Adjustment Date</b>			
<b>Payment Date</b>	See Schedule		
<b>First Payment Date</b>			
<b>Last Payment Date</b>			
<b>Standard Charge Terms</b>	N/A		
<b>Insurance Amount</b>	full insurable value		
<b>Guarantor</b>	GROSS, Mark and GROSS, Sheldon		

<b>Signed By</b>
------------------

Joanne Michelle Meadowcroft	333 Bay Street, Suite 2400, Bay Adelaide Centre Toronto M5H 2T6	acting for Chargor(s)	Signed	2016 01 25
<b>Tel</b>	416-366-8381			
<b>Fax</b>	416-364-7813			

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

LRO # 62 Charge/Mortgage

Received as WE1096059 on 2016 01 26 at 09:09

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

yyyy mm dd Page 3 of 36

**Submitted By**

FASKEN MARTINEAU DUMOULIN LLP

333 Bay Street, Suite 2400, Bay  
Adelaide Centre  
Toronto  
M5H 2T6

2016 01 26

Tel 416-366-8381

Fax 416-364-7813

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85

Total Paid \$62.85

**File Number**

Chargee Client File Number :

276968.00011

**CHARGE SCHEDULE**

**ARTICLE 1 - INTERPRETATION**

**Section 1.01 Definitions.** In this Charge, unless there is something in the subject matter or text inconsistent therewith:

- (a) **“Additional Security”** means the security constituted by Section 2.02 hereof;
- (b) **“affiliate”** shall have the meaning ascribed thereto in the *Canada Business Corporations Act*;
- (c) **“Borrower”** means Carriage Gate Group Inc., 180 Vine Inc., 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc. and 240 Old Penetanguish Holdings Inc. and their respective successors and permitted assigns;
- (d) **“Approved Lease”** shall have the meaning ascribed thereto in Section 9.01 hereof;
- (e) **“Buildings”** means the building municipally described as 35 Upper Centennial Parkway, Hamilton, Ontario, and located upon the Lands, and includes all other buildings, structures, facilities, fixtures and other improvements (including parking areas) located from time to time in, on and upon the Lands, including any and all alterations, reconstruction and expansions thereof and additions thereto and all repairs and replacements during the term of this Charge, and all fixed machinery, plant, equipment, apparatus and fittings and other fixtures incorporated, or now or hereafter erected or located therein or thereon, including all machines, motors, pumps, tanks, elevators, boilers, furnaces and air-conditioning units, other than fixtures removable by tenants or subtenants thereof pursuant to the Leases;
- (f) **“Business Day”** means a day, excluding Saturday and Sunday, on which banks are open for commercial business in Toronto, Ontario;
- (g) **“this Charge”, “these presents”, “hereto”, “herein”, “hereof”, “hereby”, “hereunder”** and any similar expressions refer to this Charge and not to any particular Article, Section or other portion hereof, and includes any and every instrument supplemental or ancillary hereto or in implementation hereof;
- (h) **“Charged Premises”** means all right, title and interest of the Chargor in the Lands, the Buildings, the Chattels and the Additional Security together with all additional real and personal property over which the Chargee is now or hereafter granted security in respect of the obligations hereby secured, and including any other interests in the Lands and the Buildings acquired by the Chargor from and after the date hereof;
- (i) **“Chargee”** means AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest, and their respective successors and assigns;
- (j) **“Chargor”** means CARRIAGE GATE GROUP INC. and its successors and permitted assigns;
- (k) **“Chattels”** means the goods, chattels and other personal property now or hereafter located in, on and upon the Charged Premises or used by the Chargor primarily in the management or operation of the Charged Premises (save and except only goods, chattels and other personal property owned by someone other than the Chargor or removable by tenants of the Charged Premises pursuant to the terms of the Leases, provided the same is not, either individually or in the aggregate, required for the operation of the Charged Premises or required to fulfil the obligations of the landlord under the Leases);
- (l) **“City”** means the town, city or other municipality in which the Lands are located;
- (m) **“Control”** or **“Controlled”** means, when used with respect to a specified Person, the power to direct the management, activities and policies of such Person directly or

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indirectly, whether through the ownership of voting securities or other interests, by contract or otherwise;

- (n) **"Counsel"** means any barrister and solicitor or firm of barristers and solicitors retained by the Chargee;
- (o) **"Default"** means any event, act or condition which, with the giving of notice and/or lapse of time and/or a determination being made under the relevant provisions, would constitute an Event of Default;
- (p) **"DSCR"** means the ratio in respect of the Secured Premises calculated by the Chargee, acting reasonably, on a cash flow basis, by dividing the Net Operating Income (for the preceding twelve (12) calendar months), by the annual Loan payments of principal and interest and any such payments pursuant to permitted subordinate financing;
- (q) **"due inquiry"** means internal inquiries only, and restricted to the persons specifically involved in the day-to-day management of the Charged Premises;
- (r) **"Environmental Indemnity"** means an indemnity of even date herewith executed by the Chargor and the Guarantor in favour of the Chargee;
- (s) **"Environmental Laws"** means all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance and operation of the Lands;
- (t) **"Equity Mortgage"** shall have the meaning ascribed thereto in Subsection 4.01(c) hereof;
- (u) **"Event of Default"** shall have the meaning ascribed thereto in Section 6.01 hereof and elsewhere in this Charge;
- (v) **"General Assignment of Leases and Rents"** means an assignment of even date herewith executed by the Chargor in favour of the Chargee;
- (w) **"Governmental Authority"** means any federal, provincial or municipal government, parliament, legislature, quasi-governmental or regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any court having jurisdiction in the relevant circumstances;
- (x) **"Guarantee"** means a guarantee of even date herewith executed by the Guarantor in favour of the Chargee, with limited recourse thereunder;
- (y) **"Guarantor"** means collectively, the Chargor, Mark Gross and Sheldon Gross and their respective successors and permitted assigns;
- (z) **"Hazardous Substances"** shall include, without limitation, all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to Environmental Laws and shall include "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances" (all as defined in, referred to and/or contemplated in Environmental Laws), and asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and products treated with polychlorinated biphenyls;
- (aa) **"Land Registry Office"** means the land registry office for the land titles division at which this Charge is properly registered;
- (bb) **"Lands"** means the lands and premises more particularly described in the Charge/Mortgage of Land to which this Schedule is attached;
- (cc) **"Leases"** and **"Lease"** means, respectively, all and any present and future leases, sub-leases, binding offers and agreements to lease or sub-lease the whole or any part of the Lands or the whole or any part of the Buildings, and all and any present and future

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licences, whereby the Chargor (or any authorized representative of the Chargor) gives any other Person the right to use or occupy the whole or any part of the Charged Premises, in each case for the time being in effect, and all amendments, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into, but does not include registered easements or rights in the nature of an easement;

- (dd) **"Liabilities"** shall have the meaning ascribed thereto in Section 11.05 hereof;
- (ee) **"Loan"** means the loan from the Chargee to the Borrower pursuant to three (3) promissory notes of even date herewith;
- (ff) **"Loan Documents"** means this Charge, other charges, the General Assignment of Leases and Rents, other general assignments of leases and rents, the Direction to Nominee and Acknowledgement, other directions to nominee and acknowledgements, the Environmental Indemnity, other environmental indemnities, the Guarantee and all other Security, instruments and documents executed in connection with the Loan, provided that the Mortgage Loan Application shall not constitute a Loan Document;
- (gg) **"Loan-to-Value Ratio"** means the ratio in respect of the Charged Premises calculated by the Chargee, acting reasonably, by dividing the sum of the outstanding Loan (including principal, interest and other charges thereunder) and any permitted subordinate financing (including principal, interest and other charges thereunder), by the fair market value of the Charged Premises (at the Chargee's option, such fair market value shall be determined by an appraiser selected and retained by the Chargee);
- (hh) **"Maturity Date"** means the earlier of February 1, 2026, and the date of full repayment of the Loan to the Chargee and satisfaction of the Obligations Secured;
- (ii) **"Mortgage Loan Application"** means the mortgage loan application agreement dated November 30, 2015, between the Chargee, as lender, the Borrower, as borrower, and the Guarantors, as guarantors, as it may have been amended, modified, renewed, replaced, extended, supplemented and/or restated prior to the date hereof;
- (jj) **"Mortgage Rate"** means the nominal rate of interest of twenty-five per cent (25%) per annum, calculated semi-annually not in advance, as well as after as before demand, and as well after as before default or judgment, with interest on overdue interest at the same rate, calculated and compounded in the same manner, until paid;
- (kk) **"Net Operating Income"** means all gross revenues generated by the Secured Premises (excluding loans or contributions to capital), less operating expenses (excluding Loan debt service payments), as determined on a cash basis of accounting, adjusted however, so that (i) operating expenses shall be deemed to include a management fee equal to the greater of the annual property management fee payable to the Property Manager and 4% of gross revenues, together with a tenant improvement, leasing commission and capital reserve equal to \$0.25 per leaseable square foot; (ii) payment of operating expenses (including realty taxes and insurance expenses but excluding extraordinary items) are to be spread out over the period during which they accrued and adjusted for all known future changes thereto; (iii) prepaid rents and other prepaid amounts are to be spread out over the periods during which they are earned or applicable; (iv) security deposits shall not be included until duly applied or earned; (v) gross revenues shall be based on Leases in place as determined pursuant to standard underwriting criteria, consistently applied, and excluding extraordinary items; and (vi) all refunds/rebates of operating expenses shall be credited against operating expenses for the period in which such operating expenses were incurred;
- (ll) **"Notice"** shall have the meaning ascribed thereto in Section 13.01 hereof;
- (mm) **"Obligations Secured"** shall have the meaning ascribed thereto in Section 2.04 hereof;
- (nn) **"Permitted Encumbrances"** means:
  - (i) applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing or industrial agreements, utility agreements,

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airport zoning regulations and other similar agreements with governmental authorities or private or public utilities and building restrictions provided same are in compliance and do not materially adversely affect the use or value of the Lands;

- (ii) any easements, servitudes, rights-of-way, licences, restrictions that run with the Lands and other minor encumbrances (including easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables) which do not materially adversely affect the use or value of the Lands;
- (iii) defects, discrepancies, encroachments or irregularities in title to the Lands which are of a minor nature and do not in the aggregate materially adversely affect the use or value of the Lands;
- (iv) inchoate liens for Taxes, assessments, governmental charges or levies accrued but not yet due and payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings (but from which there is no possibility of seizure/sale by the municipality);
- (v) inchoate liens for public utilities accrued but not yet due and payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings (but from which there is no possibility of seizure/sale by the utility);
- (vi) undetermined or inchoate liens incidental to construction, renovation or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Chargor pursuant to the *Construction Lien Act* (Ontario), and in respect of any of the foregoing cases, the Chargor, where applicable, has complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom and to preserve the priority of the lien of this Charge;
- (vii) the reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other Person;
- (viii) encroachments by the Lands over neighbouring lands, or by neighbouring lands over the Lands, which are of a minor nature and do not in the aggregate materially adversely affect the use or value of the Lands;
- (ix) any notices in respect of existing Leases and future Leases entered into in accordance with the provisions hereof;
- (x) Unregistered Agreements existing as of the date hereof in respect of which the Chargee has been given actual notice, and any others approved of by the Chargee from time to time, acting reasonably;
- (xi) purchase money security interests in personal property or fixed equipment located at the Lands given in the ordinary course of the Chargor's business up to a maximum of \$50,000.00;
- (xii) the Security; and
- (xiii) any encumbrance or lien consented to, in writing, by the Chargee from time to time (including all encumbrances registered against the Lands as of the date hereof);
- (oo) "Person" means an individual, corporation, association, partnership, trust (including a real estate investment trust) or other entity, any group of individuals, corporations, associations, partnerships, trusts or other entities, or any other combination thereof;
- (pp) "Principal Sum" means the amount of principal money outstanding from time to time and secured by this Charge;



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- (qq) **“Property Manager”** means Gross Capital Inc.;
- (rr) **“Related Entities”** means Persons who are or which are:
- (i) affiliates; or
  - (ii) considered or deemed to be within the group of “related persons” or “affiliated persons”, as such terms are defined in Sections 251 and 251.1 of the *Income Tax Act* (Canada) in effect as of the date hereof; or
  - (iii) considered or deemed to be within the group of “affiliated entities” as such term is defined in Rules adopted under the *Securities Act* (Ontario) in effect as of the date hereof; or
  - (iv) with respect to any Person, any other Person which, directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, such Person; or
  - (v) a trust in respect of which the trustees and the beneficiaries holding a majority of the interests in such trust (other than any charitable beneficiaries) are Controlled by the transferor or any one or more Related Entities of the transferor;
- (ss) **“Replacement Cost”** means the gross cost of repairing, replacing and/or reinstating any item of property with materials of like kind, quantity and quality on the same or a similar site, including municipal by-laws extension if applicable and without deduction for physical, accounting or other depreciation, and provided that the Replacement Cost of the Charged Premises shall be deemed to be not less than the Principal Sum;
- (tt) **“required works”** shall have the meaning ascribed thereto in Section 5.05(e) hereof;
- (uu) **“Secured Premises”** means the Charged Premises together with all other real property secured by the Security;
- (vv) **“Security”** means the documents creating a lien in favour of, or any collateral or guarantee held from time to time by, the Chargee, in each case securing or intended to secure repayment and performance of the obligations of the Chargor under this Charge including the Obligations Secured;
- (ww) **“Servicer”** means Largo Real Estate Advisors, Inc. or any replacement thereof appointed by the Chargee;
- (xx) **“Taxes”** means all taxes, duties, rates, imposts, assessments and other similar charges, municipal, local, parliamentary and otherwise, general and special, ordinary and extraordinary, foreseen and unforeseen, and all related interest, penalties and fines, which now are or may hereafter be imposed, charged or levied upon the Charged Premises or the Lands;
- (yy) **“Termination Fees”** has the meaning ascribed thereto in Section 9.01 hereof;
- (zz) **“Transfer”** has the meaning ascribed thereto in 0 hereof;
- (aaa) **“Transfer Conditions”** mean all of the following: (a) no Default or Event of Default shall have occurred and be continuing; (b) after the proposed transfer, Mark Gross and Sheldon Gross shall continue, directly or indirectly, to Control the Chargor and own, directly or indirectly, not less than 51% of the controlling voting interests in the Chargor; (c) the Chargor shall deliver to the Chargee not less than ninety (90) days’ prior written notice of the proposed transfer, together with organizational charts illustrating the ownership structure before and the ownership structure after the proposed change in ownership, which organizational charts shall set forth the Chargor’s direct and indirect upstream ownership and percentage interests held by each upstream Person (individually an **“Organizational Chart”**); (d) within thirty (30) days after the transfer has occurred, the Chargor shall deliver to the Chargee a final Organizational Chart confirming the new ownership structure; (e) the Chargor shall pay all costs, fees and expenses (including legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee in connection with reviewing the proposed transfer, whether or not the transfer is

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consummated; (f) the proposed transferee and its Related Entities (i) are not then identified by the Office of Foreign Assets Control or Department of Treasury (United States) as subject to trade restrictions under United States law including, but not limited to, the *International Emergency Economic Powers Act*, the *Trading with the Enemy Act* and any Executive Orders or regulations promulgated thereunder (as such laws and regulations have been or may hereafter be renewed, extended, amended or replaced), with the result that such proposed transferee and its constituent members are in violation of law and/or the transaction of business with such parties is prohibited by law, (ii) are not in violation of any applicable laws relating to terrorism or money laundering including, without limitation, those relating to transacting business with persons identified in clause (i) above, the requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001 (as such laws and regulations promulgated thereunder have been or may hereafter be renewed, extended, amended or replaced), and (iii) if the Chargee requests, sign a certificate in form and substance satisfactory to the Chargee evidencing such compliance and identifying the transferees with sufficient information to enable the Chargee to perform searches confirming the foregoing (except that identifying information need not be provided for any transfers made in the ordinary course of business over a national securities exchange); and (g) concurrently with delivery of the notice required in clause (d) above, the Chargor shall pay the Chargee an administrative review fee; and

(bbb) “**Unregistered Agreements**” means those unregistered agreements (and all amendments thereof) in connection with the Charged Premises approved by the Chargee, acting reasonably.

For purposes of calculating all ratios pursuant to this Charge and calculating all other amounts hereunder (including without limitation, Net Operating Income), the Loan payments paid by the Borrower shall be deemed to be paid by the Chargor.

**Section 1.02 Headings.** The headings of all Articles and Sections hereof are inserted for convenience of reference only and shall not affect the construction or interpretation of this Charge.

**Section 1.03 References.** Whenever in this Charge a particular Article, Section or other portion thereof is referred to then such reference, unless otherwise indicated, shall pertain to an Article, Section or portion thereof contained herein.

**Section 1.04 Currency.** All dollar amounts expressed herein are expressed as being lawful money of Canada.

**Section 1.05 Governing Law.** This Charge shall be governed by and construed in accordance with the laws in effect in the Province of Ontario and, by execution and delivery of this Charge, the Chargor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Chargor hereby waives, and agrees not to assert, by way of motion, as a defence or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in or nearby the City, that the action or proceeding is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Charge or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

**Section 1.06 Numbers and Gender.** This Charge shall be construed with all changes in number and gender required by the circumstances. All wording applicable to a person shall be construed to apply to a Person.

## ARTICLE 2 - SECURITY AND REPAYMENT

**Section 2.01 Charge.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Chargor, the Chargor does hereby charge unto the Chargee and its successors and assigns, as and by way of a first fixed and specific mortgage and charge, all of the right, title and interest of the Chargor in and to the Charged Premises, to have and to hold such Charged Premises, this Charge and all rights conferred hereunder, unto the

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Chargee, as security for the Obligations Secured, with the powers and authorities herein expressed, but subject to the provisions contained herein.

**Section 2.02 Additional Security.** Subject to Section 8.01 and for the consideration described in Section 2.01, as additional security for the Obligations Secured and the performance and observance of all covenants herein to be performed and observed by the Chargor, the Chargor does hereby assign, transfer and set over unto the Chargee and its successors and assigns all of the Chargor's right, title and interest in and to the following (collectively the "Additional Security"):

- (a) all moneys received by the Chargor from any tenancy, use or occupation of any part of the Charged Premises (including all rents and other sums payable to the Chargor pursuant to the Leases);
- (b) all benefits, advantages and powers to be derived by the Chargor from the Leases and all security provided by tenants in connection therewith, with full power and authority to demand, sue for, recover, receive and give receipts for all rents and all other moneys payable to the Chargor thereunder and otherwise to enforce the rights of the landlord thereunder in the name of the Chargor;
- (c) the benefit of all guarantees of and indemnities with respect to any Leases and the performance of all obligations thereunder;
- (d) the benefit of all insurance indemnities pertaining to the Leases including, without limitation, those covering rents and other income derived thereunder; and
- (e) all bank accounts maintained in respect of the Chargor and/or the Charged Premises and the moneys deposited therein from time to time.

Provided that, until the Chargee is in possession or becomes the owner of the Charged Premises, the Chargor shall and hereby agrees to indemnify and save harmless the Chargee from and against any and all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses, howsoever arising, in connection with the Leases other than those arising from the gross negligence or wilful misconduct of the Chargee.

**Section 2.03 Principal Sum.** The Chargor hereby acknowledges itself indebted and covenants and promises to pay to the Chargee, upon demand, all amounts now or hereafter owing by the Chargor to the Chargee, up to the maximum principal amount of Seventy Million Dollars (\$70,000,000.00) in lawful money of Canada, and to pay interest thereon, from and including the date hereof to and including the date of payment, at the Mortgage Rate.

**Section 2.04 Payment and Performance Obligations.** This Charge secures payment by the Chargor to the Chargee of all debts and liabilities, present and future, direct and indirect, absolute and contingent and matured and not matured, at any time owing by the Chargor to the Chargee pursuant to the Guarantee, this Mortgage and/or the Loan Documents, whether arising from dealings between the Chargor and the Chargee or from any other dealings or proceedings relating to such obligations of the Chargor under or pursuant to such documentation, and wherever incurred, and whether incurred by the Chargor alone or with another or others and whether as principal or surety, and all legal and other costs, charges and expenses (the "Obligations Secured").

**Section 2.05 Lien in Effect.** The lien and charge created by this Charge shall take effect forthwith upon the execution of these presents by the Chargor, and in any event whether any part of the Loan shall or shall not be advanced, the costs and expenses (legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee including, without limitation, in the examination of title to the Lands, the preparation of this Charge and other Loan Documents, the registration of this Charge and other registered Security and the valuation and inspection charges in respect thereof, shall be a charge upon the Charged Premises, shall bear interest at the Mortgage Rate and shall be payable forthwith, and in default of payment for five (5) Business Days following receipt by the Chargor of notice in writing from the Chargee shall constitute an Event of Default herein.

**Section 2.06 Performance by Chargee.** If the Chargor shall fail to perform any covenant on its part herein contained following the occurrence and during the continuance of an Event of

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Default, the Chargee may, in its sole, absolute and unfettered discretion, but shall not be obligated to, perform such covenant capable of being performed by it and, if such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds, acting reasonably, but shall be under no obligation to do so; and all such payments and expenditures shall be at once payable by the Chargor and shall bear interest at the Mortgage Rate, and shall be secured hereby, but no such performance or payment shall be deemed to relieve the Chargor from any Event of Default hereunder.

**Section 2.07 Payment by Electronic Funds Transfer.** All payments due under this Charge shall be made by the Chargor by electronic funds transfer from a bank account established and maintained by the Chargor for such purpose. The Chargor shall establish and maintain such an account until all amounts secured hereunder are fully paid.

### ARTICLE 3 - CHARGOR'S COVENANTS AND REPRESENTATIONS AND WARRANTIES

**Section 3.01 Covenants.** The Chargor hereby covenants:

- (a) **Payment.** to pay or cause to be paid to the Chargee all sums payable hereunder on the days, at the times and in the manner provided for in this Charge;
- (b) **Performance of Other Obligations.** to perform and comply with all other covenants, conditions and prohibitions required of the Chargor by the terms of the Loan Documents;
- (c) **Performance under Encumbrances.** to perform all of its obligations under the Permitted Encumbrances, the Leases and the Unregistered Agreements;
- (d) **Maintenance and Repair of Charged Premises.** to repair or cause to be repaired and keep or cause to be kept in good order and repair the Charged Premises from time to time in accordance with the standards of a prudent owner of similar real property in the circumstances; complete or cause the prompt and reasonable completion of all Buildings which are at any time in the process of construction; maintain access to and supply for the Charged Premises of all public utility services (including, without limitation, water supply, storm and sanitary sewer facilities, and natural gas, electric, telephone and cable television services) necessary or desirable for the operation of the Charged Premises for its intended purposes; and shall at all reasonable times, during business hours and upon not less than 48 hours prior written notice, but subject to the provisions of the Leases and the rights of the tenants thereunder, to allow the Chargee and its duly authorized representatives access to the Charged Premises in order to view the state and condition thereof;
- (e) **Leases.** to timely pay and perform, in all material respects, its obligations under the Leases, and pay such sums and take such commercially reasonable action as shall be necessary or required in order to maintain each of the Leases in full force and effect in accordance with its terms; to provide to the Chargee within 45 days following the end of each fiscal year of the Chargor and otherwise upon reasonable demand therefor, copies of all new Leases, amendments thereof and agreements regarding Lease termination, surrender or assignment entered into by the Chargor subsequent to the date hereof, together with a rent roll with the names of each tenant, rental area, term and rent (basic rent, additional rent and percentage rent) and details of any monetary defaults which are continuing; to promptly furnish to the Chargor copies of all notices given to the Chargor by the tenant under any Lease, alleging landlord default, extending the term of any Lease, requiring or demanding the expenditure of any sum by the Chargor, demanding the taking of any action by the Chargor or relating to any other material obligation of the Chargor under such Lease and all subsequent communications in connection therewith; the Chargee may, in its sole, absolute and unfettered discretion, advance any sum or take any action necessary to maintain the Leases in full force and effect, and all sums advanced and costs and expenses incurred by the Chargee in connection therewith shall be due and payable, upon demand, shall bear interest at the Mortgage Rate and shall be fully secured hereunder;
- (f) **Payment of Claims Against Charged Premises.** to pay or cause to be paid, as and when the same become due and payable, all liens, charges, encumbrances and claims which are or may become charges or claims against the Charged Premises, or any part thereof

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including, without limitation, all bills or accounts relating to the supply of public utility services and other services of a similar nature; the Chargee is hereby authorized by the Chargor to obtain from all suppliers of services and from all other fiscal/governmental authorities, any information which such suppliers or authorities may have with respect to the Charged Premises and the amounts which may be due or owing by the Chargor to any of them;

- (g) **Parking.** to provide, or cause to be provided, from time to time and at all times in, on or upon the Charged Premises sufficient parking to comply with all requirements of all laws, regulations and by-laws regulating parking (including any parking which constitutes a legal non-conforming use pursuant to such laws and/or by-laws), together with such additional parking spaces as may be required under any Leases or other agreements to which the Chargor is bound;
- (h) **Condominium.** not to register or cause to be registered the Charged Premises pursuant to the *Condominium Act* (Ontario);
- (i) **Information.** to forthwith provide to the Chargee all information and documentation pertaining to the Charged Premises reasonably requested by the Chargee from time to time (including, without limitation, evidence of payment of Taxes, insurance premiums and debts which, with the passage of time, could constitute a lien against the Charged Premises);
- (j) **Claims of Invalidity.** not to take any step, action or proceeding or make any claim which denies, impairs, delays, diminishes or challenges the binding nature, validity and/or enforceability of this Charge and/or other Loan Documents;
- (k) **Oppose Claims Against Charged Premises.** to diligently oppose all material claims against the Chargor and/or the Charged Premises and to diligently prosecute all claims initiated by the Chargor;
- (l) **Books of Account and Records.** to keep and maintain proper books of account and records accurately covering all aspects of the business and affairs of the Chargor relating to the Charged Premises and to make available from time to time, upon reasonable notice and during regular business hours, all of such records and books of account in connection with the Charged Premises; upon request, the Chargor shall deliver to the Chargee copies of all plans, specifications and drawings (including as-built plans and working drawings and other specifications) relating to the Charged Premises and all improvements thereon which are in the possession or control of the Chargor together with all related architectural, structural, electrical and mechanical drawings which are in the possession or control of the Chargor;
- (m) **Management.** to manage or cause to be managed the Charged Premises as would a prudent owner of similar real property, with a view to preserving and protecting the Charged Premises and the revenues and profits therefrom;
- (n) **Property Manager.** cause the Charged Premises to be managed by the Property Manager pursuant to a property management agreement and all amendments thereof approved by the Chargee, acting reasonably; no management fee shall be paid to a manager of the Charged Premises which exceeds the market rate without the prior written authorization of the Chargee, acting reasonably;
- (o) **Death of Individual Guarantor.** within thirty (30) days after the death of an individual Guarantor, notify the Chargee in writing of such death and provide to the Chargee the names and current financial statements of one or more substitute guarantors acceptable to the Chargee, acting reasonably, whose net worth and financial condition, as determined by the Chargee, acting reasonably, is equal to or greater than that of the deceased Guarantor; within sixty (60) days after the death of the individual Guarantor, the substitute guarantor(s) shall: (i) deliver to the Chargee the financial reports and statements required in Section 3.04 hereof and in the Guarantee; and (ii) execute and deliver to the Chargee a guarantee and an environmental indemnity in substantially the same form as the Guarantee and Environmental Indemnity and such other instruments as the Chargee may request, acting reasonably; and

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- (p) **Possession upon Event of Default.** that, from and after the occurrence of an Event of Default which is continuing, subject to the provisions of Article 7, the Chargee shall be lawfully entitled to peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy the Charged Premises without hindrance, interruption or denial by the Chargor or any other Person, subject only to the Leases and the rights of the tenants thereunder and the Permitted Encumbrances.

**Section 3.02 Representations and Warranties.** The Chargor hereby represents and warrants that:

- (a) **Title.** at the time of the execution and delivery of this Charge, the Chargor is the sole legal owner of the Charged Premises, with good and marketable title thereto, free and clear of all liens, charges, encumbrances, easements, restrictions, trusts, reservations, limitations, provisos and conditions whatsoever, except the Permitted Encumbrances;
- (b) **Encumbrances.** it has not previously assigned, charged or encumbered in any manner the Charged Premises, except for the Permitted Encumbrances;
- (c) **Authority.** it is duly organized, validly existing and in good standing pursuant to the relevant laws and has good right, full power and lawful authority to charge the Charged Premises in favour of the Chargee as contemplated hereunder, conduct its business, own its property (including the Charged Premises), comply with its obligations hereunder and pursuant to the Security and that, except as provided by the Chargor prior to any advance hereunder, no consents or approvals are required in connection with the execution, delivery, registration and enforcement of this Charge and related Security pursuant to the Permitted Encumbrances and/or the Unregistered Agreements;
- (d) **Impairment of Title.** at the time of the execution and delivery of this Charge, it has not committed, executed or willfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Charged Premises, or any part thereof, is or shall or may be in any way impaired, charged, affected or encumbered in title, estate or otherwise, except for the Permitted Encumbrances;
- (e) **Compliance with Law.** except as previously disclosed in writing to the Chargee and to the best of its knowledge, information and belief, after making due inquiry, that the Charged Premises comply in all material respects with all laws, statutes, regulations, ordinances, orders, directives and any other instrument having the force of law including, without limitation, all applicable building, zoning, planning, development, construction, construction lien, environmental, fire code, occupation and land use laws; to the best of its knowledge, information and belief, after making due inquiry, that the Charged Premises are being used for retail and office purposes only;
- (f) **Disclosure.** to the best of its knowledge, information and belief, after making due inquiry, all material information pertaining to the market value and operation of the Charged Premises and the Chargor's financial condition is true and accurate and has been fully disclosed in writing to the Chargee; that there is no legal action or other proceedings instituted, pending or threatened or judgment or order issued, against the Chargor and/or the Charged Premises nor any part thereof which would have a material adverse effect on the Charged Premises or the Security; that the Chargor has received no notice of any material work orders, deficiency notices or notices of violation pertaining to the Charged Premises or any part thereof; to the best of its knowledge and belief, that the Buildings and all other structures located on the Lands have been built in accordance with plans and specifications approved by all required municipal authorities, in a good and workmanlike manner and do not contain urea formaldehyde foam insulation, polychlorinated biphenyls or asbestos, in any form;
- (g) **No Construction Financing.** the Principal Sum is not intended to be utilized for the purposes of securing the financing of any improvements whatsoever with regard to the Charged Premises, nor for the purposes of repaying any financing, charge or otherwise which was utilized or intended to be utilized for the financing of any improvements with regard to the Charged Premises, and accordingly, it is not the intention for the security to be taken hereunder to be a "Building Mortgage", as contemplated in Subsection 78(2) of the *Construction Lien Act* (Ontario), or a charge taken out to repay such a "Building Mortgage";

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- (h) **Accuracy of Deliveries.** all materials, agreements, documents, plans, drawings and written information relating to the Charged Premises and/or the Chargor and delivered to the Chargee up to and including the date hereof in connection with this Charge are, to the best of the Chargor's knowledge, information and belief, after due inquiry, complete and accurate in all respects;
- (i) **No Claims.** to the best of its knowledge, information and belief, after making due inquiry, it has not received notice of and is not otherwise aware of any claim by a third party against the Chargor and/or the Charged Premises except as disclosed to the Chargee prior to the date hereof;
- (j) **No Default or Event of Default.** no Default and/or Event of Default has occurred and is continuing;
- (k) **Residency.** it is not now and at all times prior to the Maturity Date it will not be a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (l) **Leases.** except as set out in the Leases or as disclosed by the Chargor to the Chargee prior to the date hereof, all tenants under existing Leases as of the date hereof are occupying their premises in the Charged Premises pursuant to an arm's-length, executed, fully net lease, are paying rent as required under their respective Leases (without any future rent-free periods), are not claiming any deduction or set-off from the rent payable (without future tenant improvement allowance payments or landlord improvement obligations), have not prepaid more than two (2) months' rent, are in occupancy and operating their business and have accepted the state and condition of their respective leased space; and
- (m) **Designated/Blocked Person.** none of the Chargor, the Guarantor, a Related Entity of the Chargor or a Related Entity of the Guarantor is: (i) a designated/blocked Person by the United States Treasury; or (ii) an agent for or Controlled by a designated/blocked Person; or (iii) a Person, entity, foreign country or regime subject to or in violation of United States sanctions; or (iv) charged with, convicted of or incurred civil penalties or seizure or forfeiture for United States money laundering, drug trafficking, terrorist-related activities or economic sanctions.

The Chargor represents and warrants that the representations and warranties set out in this Charge are true and correct as at the date hereof and covenants and agrees that such representations and warranties will continue to be true and correct until repayment of all amounts secured hereunder. For greater certainty, such representations and warranties shall be deemed to be repeated on each day during the term of the Loan until repayment of all such amounts.

**Section 3.03 No Approval or Release.** Acceptance by the Chargee of payments from any transferee of the Charged Premises or any interest therein and not approved by the Chargee in accordance with this Charge, shall not be deemed to constitute the Chargee's approval or acceptance of such transferee. Furthermore, the Chargee's approval or consent to any Transfer of the Charged Premises or any interest therein shall not release or otherwise affect the liability of the Chargor hereunder to pay all sums secured hereby or affect the application of this Section 3.03 to all further approved Transfers.

**Section 3.04 Financial Statements etc.** The Chargor shall furnish or cause to be furnished to the Chargee, not later than one hundred and twenty (120) days following the relevant fiscal year, the following:

- (a) audited financial statements in respect of the Chargor, prepared by a firm of chartered accountant(s) in accordance with generally accepted accounting principles, consistent with previous years and including all appropriate documents, explanatory notes and additional information;
- (b) certified financial statements in respect of each of the parties comprising the Guarantor, prepared by a firm of chartered accountant(s) in accordance with generally accepted accounting principles, consistent with previous years and including all appropriate documents, explanatory notes and additional information; and

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- (c) a copy of the most recent year-end rent roll for the Buildings, a copy of the operating statement for the Buildings, a tenant arrears report for the current fiscal year, a budget for the current fiscal year, and detail of capital expenditures for the previous year and a capital budget for the ensuing fiscal year.

In addition, the Chargor shall supply or cause to be supplied to the Chargee: (i) within 45 days following the end of each calendar quarter during the term of this Charge, a copy of a tax receipt or other independent verification of payment of Taxes for the Lands; (ii) within thirty (30) days following each calendar quarter and year-end, (A) a certified rent roll for the Charged Premises signed and dated by the Chargor as of the last day of the preceding calendar quarter identifying all of the Leases by tenant, term, renewal options, space occupied, rents and charges required to be paid, and (B) monthly and year-to-date operating statements for the Charged Premises (including comparables to the relevant budget and the previous year), which shall include an itemization of actual capital expenditures during applicable periods, prepared in accordance with generally accepted accounting principles, consistently applied; (iii) immediate notification of the occurrence of any Default or Event of Default; (iv) notification of any material damage or destruction to the Charged Premises immediately following the occurrence of such damage or destruction; (v) immediate notification of any material default under a Lease, (vi) from time to time, upon reasonable request, any further financial information then still undisclosed, pertaining to the Chargor, each of the parties comprising the Guarantor and/or the Charged Premises; and (vii) such documentation and information, including identification, as the Chargee may require to ensure compliance with the principles of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) legislation.

The Chargor shall provide the Chargee, upon request of the Chargee, acting reasonably, with a certificate of an officer of the Chargor or other reasonable evidence confirming compliance by the Chargor with all statutory requirements for the collection and remittance of goods and services or harmonized sales tax, provincial sales taxes, payroll deductions and all other amounts which can form a lien in priority to the Security, for any and all periods covered by the above-described financial statements.

The Chargee reserves the right to disclose to third parties, financial information provided to the Chargee in connection with the Loan, provided that such right shall be limited to potential assignees of part or all of the Charge, the Chargee's auditors, the Chargee's solicitors, the Chargee's bankers, the Chargee's accountants, the Chargee's other advisers, rating agencies, investors and Persons to whom/which such information is ordinarily disclosed by the Chargee pursuant to its disclosure policy. For those parties reviewing information which is more extensive than that which may be disclosed publicly in a prospectus for mortgage securitization purposes, the Chargee shall ensure that the parties having access to such information sign confidentiality agreements.

In addition, at all times, the Chargee may disclose, privately or publicly, the name of the Chargor, the name of the Chargor's affiliates, the name and nature of the project, if any, located on the Charged Premises and the amount of the outstanding balance of loan secured by this Charge, and the Chargor irrevocably waives all rights it may have to prohibit such disclosure including, without limitation, any right of privacy.

The Chargor and Guarantor may disclose to third parties information concerning the Loan, provided that such right shall be limited to their auditors, solicitors, bankers, accountants and other advisors. For those parties reviewing information which is more extensive than that disclosed in the Land Registry Office, the Chargor and Guarantor shall ensure that the parties having access to such information sign confidentiality agreements.

**Section 3.05 Further Assurances.** Notwithstanding the execution, delivery and/or registration of this Charge and/or the advance of funds hereunder, the Chargee reserves the right to require and the Chargor covenants to provide to the Chargee such additional security instruments (including specific assignments of Leases), assurances and support documents as the Chargee may, from time to time, acting reasonably, deem necessary or advisable to give effect to this Charge and the transaction contemplated hereby.



#### ARTICLE 4 – CHARGOR'S NEGATIVE COVENANTS

##### Section 4.01 Negative Covenants. The Chargor hereby covenants:

- (a) **Waste.** not to permit waste to be committed or suffered on the Charged Premises and not to remove or attempt to remove the Buildings, or any part thereof, from the Lands (other than tenant's improvements removable by a tenant in accordance with its Lease or as contemplated in Section 4.01(b), Section 4.01(f) or Section 5.05(e)) and to refrain from doing anything or allowing anything to be done which would result in a material impairment or diminution of the market value of the Charged Premises and to operate the Charged Premises at all times in accordance, in all material respects, with all applicable laws and ordinances, whether municipal, county, provincial or federal, including compliance in all material respects with any legislation and regulation in respect of the accommodation of handicapped persons and environmental protection, to the extent applicable to the Charged Premises;
- (b) **Alterations.** except as otherwise provided in the Leases or in another Loan Document, not to undertake any material change, expansion or alteration of the Buildings or access thereto without the prior written approval of the Chargee, which approval shall not be unreasonably withheld or delayed; and, in connection with any such material change, expansion or alteration of the Buildings and all other supplies of materials and services to the Charged Premises, to comply in all respects with the provisions of the *Construction Lien Act* (Ontario) and to vacate or discharge any construction, repairer's or other lien filed against all or any part of the Charged Premises within ten (10) Business Days following the date on which the Chargor receives notice thereof; upon request, to provide the Chargee with reasonable evidence of its compliance with such legislation;
- (c) **Encumbrances.** except as otherwise expressly permitted under this Charge and except for Permitted Encumbrances, not to charge or otherwise encumber the Charged Premises nor to permit, allow or suffer the Charged Premises or any part thereof or interest therein or any interest, direct or indirect, in the Chargor, to be pledged, charged or otherwise encumbered in favour of any other creditor without the prior written consent of the Chargee, which may be withheld in the Chargee's sole, absolute and unfettered discretion;

notwithstanding any other provision contained in this Charge, the Property may be mortgaged (an "Equity Mortgage") in favour of one or more shareholders in the capital of the Chargor, subject to the following:

- (i) the shareholder shall own (as registered and beneficial owner) not less than 51% of the capital in the Chargor;
- (ii) the Equity Mortgage shall, at all times, be subordinated and postponed in favour of this Charge;
- (iii) all amounts received pursuant to the Equity Mortgage (which shall include all dividends and other funds received as shareholders of the Chargor after the occurrence of an Event of Default which is continuing) shall be received, in trust, for the Chargee pursuant to this Charge, until this Charge is fully paid and discharged;
- (iv) the Equity Mortgage lender shall be entitled to receive notice of an Event of Default and an opportunity to rectify, but doing so shall not entitle the Equity Mortgage lender to benefit from, hold and/or enforce any rights pursuant to this Charge;
- (v) in the event of an Equity Mortgage default, the Equity Mortgage lender shall not exercise any remedy unless this Charge has first been fully paid, satisfied and discharged or unless the Chargee, in its sole, absolute and unfettered discretion, authorizes such exercise;
- (vi) until this Charge has been fully paid, satisfied and discharged, the Equity Mortgage lender may not assign or otherwise convey part or all of its interest in the Equity Mortgage; and

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- (vii) in the event of a Borrower bankruptcy/insolvency, the Chargee shall act as the Equity Mortgage lender's agent in all voting and related matters.
- (d) **Transfers.** except as otherwise expressly permitted under this Charge, or except with the prior written approval of the Chargee, which may be withheld in its sole, absolute and unfettered discretion, not to:
  - (i) sell, assign, convey, transfer, lease in its entirety or otherwise dispose of legal ownership or title to the Charged Premises or any part thereof or interest therein; or
  - (ii) permit any changes of beneficial ownership of the Charged Premises

(each of the above being a "Transfer");

notwithstanding any other provision contained in this Charge, the Chargor's failure to comply with or the occurrence of one or both of the above shall constitute an Event of Default for which all rectification periods therefor shall be deemed to have passed/expired and the Chargee may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan and this Charge, in full, together with all accrued interest and all other amounts secured hereby; in either of the events above, the Chargee may, in its sole, absolute and unfettered discretion, deny such consent or may require as one of the terms for giving consent that the purchaser/transferee shall execute an assumption agreement in favour of the Chargee by which it shall agree to be bound by this Charge and all of the related Security and Loan Documents (to the extent applicable);

notwithstanding the above, the Chargor shall be permitted to effect a Transfer without the consent of the Chargee, provided that such Transfer (i) occurs between Related Entities, or (ii) results from the amalgamation or merger of the Chargor with a Related Entity; and

further, notwithstanding the above, provided that no Transfer, individually or collectively, has more than a de minimus adverse effect on the value of the remainder of the Lands, the consent of the Chargee shall also not be required to any conveyance by the Chargor to any municipality, region or province (or any government agency thereof), or to any conservation authority or water resources commission, or to any public or private utility, including, without limitation, any one-foot reserves, parklands, walkways, road widenings or roads, that are completed by the Chargor, acting reasonably, and the Chargee shall grant a partial discharge of this Charge in respect of any of the foregoing;

- (e) **Change of Control.** except as otherwise expressly provided hereunder, not to make or permit to be made any changes to its capital structure or constating documents which would result in a change of Control, without the prior written consent of the Chargee (which consent may be withheld in the Chargee's sole, absolute and unfettered discretion); and
- (f) **Transfer or Removal of Personal Property.** not to remove or destroy and not to permit to be removed or destroyed any of the personal property which is owned by the Chargor and is located at the Charged Premises, without the prior written approval of the Chargee, such approval not to be unreasonably withheld or delayed; provided approval shall not be required and nothing herein shall prevent the removal of any such personal property in the ordinary course of the Chargor's business or from one part of the Charged Premises to another or the temporary removal of any such personal property for purposes of repair; and provided further that the Chargor may remove, dismantle, sell, exchange or otherwise dispose of any personal property which has become obsolete, worn out, unserviceable or unnecessary for use in the conduct of the business on the Charged Premises if such personal property is replaced by personal property of at least equal value or if such personal property so dealt with in one transaction and not so replaced does not materially adversely affect the value of the Charged Premises by its removal.

**Section 4.02 Permitted Transfers of Chargor Shares.** Notwithstanding Section 4.01 hereof, and provided that the Transfer Conditions are satisfied at the time of each permitted transfer, up to 25% in the aggregate of: (a) the outstanding shares in the capital of the Chargor; and (b) registered/beneficial title in the Charged Premises, may be transferred during the term of the Loan without the Chargee's consent.

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**Section 4.03 Permitted Transfers - Beneficial Ownership of Charged Premises.** Notwithstanding Section 4.01 hereof and all other provisions of this Agreement, the Chargor may transfer its beneficial interest therein or any part thereof once during the term of the Loan without the Chargee's consent, provided that the following conditions are then satisfied: (a) no Default or Event of Default shall have occurred; (b) the Chargor shall have paid to the Chargee an assumption fee of one per cent (1%) of the then outstanding Obligations Secured; (c) the Chargee shall have received and had a reasonable opportunity to review and approve acting reasonably all organizational documentation of the proposed transferee including, without limitation, articles of incorporation, partnership and operating agreements, bylaws, certificates of good standing and authorizing resolutions and to review and approve all other documents and agreements relating to the proposed transfer; (d) the non-economic terms (being those terms other than interest rate, payment schedule, principal balance and non-recourse nature) of the Loan Documents shall have been modified as the Chargee shall have requested, acting reasonably; (e) the proposed transferee shall have assumed all of the Chargor's obligations under the Loan Documents; (f) the Chargee shall have received not less than thirty (30) days' prior written notice of the proposed transfer; (g) the proposed transferee (including, if applicable, its general partners) shall have, as determined by the Chargee, acting reasonably, a net worth equal to that of the Chargor as of the date hereof or otherwise satisfactory to the Chargee and a satisfactory history of owning, operating and leasing property similar to the Property; (h) the proposed transferee (including, if applicable, its general partners) shall have, as determined by the Chargee, acting reasonably, a satisfactory credit history and professional reputation; (i) the DSCR shall not be less than 1.50 and the Chargee shall have received satisfactory evidence that such ratio will be maintained for the following twelve (12) month period; (j) the Loan-to-Value Ratio shall not exceed 65%; (k) the Chargor shall pay all costs, fees and expenses incurred by the Chargee in connection with such transfer including, without limitation, all legal (being fees and disbursements on a substantial indemnity basis), processing, accounting, title insurance and appraisal fees, whether or not such transfer is consummated; (l) the principals of the proposed transferee (which transferee is acceptable to the Chargee in its sole, absolute and unfettered discretion) shall have executed and delivered a guarantee agreement in the form of the Guarantee and an environmental indemnity in the form of the Environmental Indemnity; (m) the proposed transferee's counsel shall have delivered to the Chargee a corporate existence, authority, due execution and enforceability opinion regarding the Loan Documents and the proposed transferee's assumption thereof; (n) the proposed transferee and its Related Entities shall not be in violation of any laws relating to terrorism or money laundering including, without limitation, *Executive Order No. 13224 on Terrorist Financing, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism*, the *Bank Secrecy Act* and the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (as such laws have been or may hereafter be, renewed, extended, amended or replaced); (p) the transfer documents and post-transfer co-ownership and management documentation shall have been approved by the Chargee, acting reasonably. Upon satisfaction of the foregoing conditions and the execution of all documentation satisfactory to the Chargee, the Chargee shall release the Chargor and the Guarantor from all liability under the Loan Documents except liability that arose prior to the effective date of the assumption.

#### ARTICLE 5 - TAXES AND INSURANCE

**Section 5.01 Taxes.** It is agreed with respect to Taxes that:

- (a) the Chargor shall remit to the Chargee in addition to and at the same time(s) and in the same manner as the amounts payable pursuant to Section 2.04 hereof, monthly instalments for Taxes in an amount determined from time to time by the Chargee, to be sufficient to allow the Chargee to accumulate in a reserve fund all amounts necessary for the full payment of all Taxes affecting the Charged Premises or the Lands on the date such Taxes become due; the sums thereby accumulated shall bear interest at a rate which is equivalent to one half of the Bank of Canada Discount Rate quoted on the first day of each and every month, calculated on the monthly minimum balance accumulated in such reserve fund and which interest shall be credited to the Chargor every month; all sums accumulated in such reserve fund, including interest thereon, shall be held as security for the obligations secured hereby; so long as the Chargor is not in default under this Charge or any additional security held by the Chargee from time to time, the Chargee shall apply the funds in the reserve and all monthly tax instalments paid by the Chargor towards the payment of Taxes as they fall due or at such earlier date as the Chargee deems

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- appropriate; the Chargee shall not be responsible for any late payment of Taxes and any penalties or interest charged by the taxing authority as a result thereof;
- (b) the Chargee reserves the right to adjust from time to time the estimated monthly Tax amount based on the Taxes actually levied against the Charged Premises and the Lands; the Chargor shall transmit to the Chargee all Tax bills and other notices relative to the imposition of Taxes on the Charged Premises and the Lands forthwith after receipt thereof;
  - (c) any debit balance from time to time in the reserve fund shall bear interest at the Mortgage Rate and such obligations (to pay the debit balance and corresponding interest) shall be secured by this Charge;
  - (d) the above-described debit balance and corresponding interest shall be payable by the Chargor on the earlier of demand by the Chargee and the date on which the next payment of principal and interest pursuant to Section 2.04 hereof shall become due;
  - (e) when making advances from time to time of the Principal Sum or any part thereof, the Chargee may, and is hereby authorized and directed to, deduct and pay out of any such advances any amount that shall have become due and payable with respect to Taxes;
  - (f) the Chargor hereby expressly authorizes the Chargee to request and obtain from any and all competent authorities all information relating to Taxes;
  - (g) upon the occurrence of an Event of Default that is continuing, the Chargee shall have the right to set off any amount accumulated in any tax reserve against any amount due to the Chargee under this Charge; and
  - (h) notwithstanding any other provision of this Charge, so long as the Chargor and the Charged Premises are enrolled in the municipal tax instalment payment plan, then the Chargor shall not be required to make monthly instalments for Taxes (as in Subsection 5.01(a) above) until after the occurrence of a Default or an Event of Default.

**Section 5.02 Insurance Coverage.** The Chargor shall obtain and maintain with respect to the Charged Premises during the entire period that any of the Principal Sum, interest and/or other charges secured hereunder shall remain outstanding:

- (a) a broad form "all risks" insurance policy, including flood, earthquake, sewage back-up discharge, windstorm, tsunami, pollution coverage, terrorism and all other risks and perils that are customarily included in such policies, without having an exclusion for riot, containing the coverage contemplated in paragraph (d) below, if such coverage is not offered in a separate insurance policy, for an amount equal to the Replacement Cost of all buildings and improvements installed on the Lands with a "stated amount" clause (such Replacement Cost with a "stated amount" shall be deemed not to be less than the amount of the Loan), the whole to the satisfaction of the Chargee, acting reasonably; covers incidental renovation, repairs and additions to the Charged Premises; the proceeds payable under such policy shall be payable to the Chargee as first-ranking mortgage creditor, pursuant to a standard, non-reporting, non-contributing mortgage clause approved by the Insurance Bureau of Canada;
- (b) a boiler and machinery insurance policy covering all losses and damages caused by (i) explosion/breakdown of boilers, of pressure vessels, of the air conditioning/heating/ventilation equipment, including electrical and mechanical equipment and installations, and (ii) the leakages of the fire protection system including sprinklers, the whole for an amount equal to the Replacement Cost of all buildings and improvements installed on the Lands; such policy shall include rental income (business interruption) insurance mentioned below if such coverage is not offered in a separate insurance policy and shall contain a standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters Association, with proceeds payable thereunder to the Chargee as first-ranking mortgage creditor; if the "all risks" insurance policy and the boiler and machinery insurance policy are not covered by a single policy, then each policy shall contain a joint loss agreement between the two policies;

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- (c) general liability insurance covering damages and injury arising at the Lands or in the vicinity of the Lands, in an amount satisfactory to the Chargee, acting reasonably, but in any event not less than \$6,250,000.00 per annum (or \$25,000,000.00 per annum, as part of a blanket policy); the Chargee will be added as an additional insured to such policy; the Chargor covenants to cause all contractors, subcontractors and other service providers working or providing services on the Charged Premises to maintain commercial general liability insurance of not less than \$1,250,000.00 per occurrence and to maintain all insurance for employees required under law;
- (d) rental income insurance in an amount of not less than one hundred per cent (100%) of the gross annual rents (or the net annual rents plus operating costs) for a period of twelve (12) months; the proceeds payable under such policy shall be payable to the Chargee as first-ranking mortgage creditor;
- (e) stand alone builder's risk policy for "ground-up" construction and major renovations (otherwise such coverage may be an extension of the "all risks" policy, limited to minor renovations); and
- (f) all required insurance shall be issued by insurance companies approved by the Chargee, acting reasonably; the insurance companies must each have a rating of not less than AX in Best's Key Rating Guide, be licenced/authorized to provide insurance in the Province of Ontario and be in good standing thereunder; the deductible under each policy may not exceed the sum of \$31,250.00 unless required under law, approved by the Chargee or related to specific catastrophic perils; none of the above coverage may be adversely effected by any act, error or omission of the Chargor.

**Section 5.03 Additional Insurance Requirements.** The insurance policies referred to in Section 5.02 shall also be subject to the following terms and conditions or as may otherwise be approved by the Chargee:

- (a) no co-insurance is permitted;
- (b) replacement cost wording which will not restrict replacement to the "same or adjacent site" (or deletion from the policy of any provision requiring same);
- (c) by-laws extension providing additional cost of reconstruction or demolition of the undamaged portion of the Charged Premises and resultant loss of income resulting from the enforcement of then current building by-laws and regulations;
- (d) save for the general liability insurance policy identified in Section 5.02(c), each policy shall contain a waiver by the insurer of all rights of subrogation or indemnity against the Chargee and each policy shall contain a breach of conditions clause;
- (e) the general liability insurance policy identified in Section 5.02(c) above shall contain a cross-liability clause and a severability of interests clause;
- (f) each policy must specify the Charged Premises as an insured location and that the relevant coverage is not contributory, participatory or constitute excess coverage without the Chargee's prior written consent (in its sole, absolute and unfettered discretion);
- (g) a re-insurance "cut-through" provision may be required, at the Chargee's option (in its sole, absolute and unfettered discretion); and
- (h) if any policies are subject to exhaustion of limits after a loss, then Chargor shall use reasonable commercial efforts to obtain the right to have the coverage and policy limits reinstated to amounts not less than those set out in Subsections 5.02(a) and (b) above.

**Section 5.04 Additional Insurance Coverage Upon Request.** In addition to the insurance which the Chargor is required to maintain pursuant to Section 5.02, the Chargee shall be entitled to require coverage from time to time with respect to the Charged Premises and the Lands for such other risks and perils, in such amounts and in such form or forms of insurance that the Chargee or its advisors consider to be reasonable and prudent and which coverage is reasonably commercially available and typical of coverage purchased by owners of similar type buildings in the City.

**Section 5.05 Insurance Covenants.**

- (a) The Chargor shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining all insurance required to be obtained and maintained pursuant to Section 5.02 and Section 5.04, shall cause the Chargee to be added to the policies of insurance required in Section 5.02 (save and except Section 5.02(c)) and Section 5.04 as "first mortgagee and loss payee" as its interest may appear pursuant to an Insurance Bureau of Canada approved mortgage clause and shall cause the Chargee to be added to the policies of insurance required under Section 5.02(c) as an "additional insured with respect to claims arising out of the operations of the insured". Upon the occurrence of loss or damage to the Charged Premises or the Lands or any other property forming part of the security of the Chargee, the Chargor agrees to supply all proof of loss and take all necessary measures in order that the Chargee may receive the indemnities payable under each of the policies covering the loss. Upon the occurrence of a Default or Event of Default, the Chargee may require that the Chargor remit to the Chargee in addition to and at the same time(s) and in the same manner as the amounts payable pursuant to Section 2.04 hereof, monthly instalments for insurance policy premiums in an amount determined by the Chargee, to be sufficient to allow the Chargee to accumulate in a reserve fund (which fund shall be governed by the same rules as the reserve fund hereunder for Taxes) all amounts necessary for the full payment of all insurance policy premiums affecting the Charged Premises on the date such insurance policy premiums become due.
- (b) Every policy of insurance shall be effected on such terms and with such insurers as may be approved by the Chargee, which approval shall not be unreasonably withheld or delayed. In addition, each policy of insurance contemplated hereunder shall require not less than fifteen (15) days' prior written notice to the Chargee of any cancellation, material alteration or non-renewal thereof (not less than ten (10) days if the cancellation etc. is attributable to the failure to pay insurance policy premiums).
- (c) In the event of failure on the part of the Chargor to maintain or cause to be maintained any insurance required by Section 5.02 and/or Section 5.04, the Chargee may effect such insurance and the Chargor covenants to repay to the Chargee all of the premiums paid by the Chargee, the amount thereof to be added to the Principal Sum, to bear interest at the Mortgage Rate from the time of payment by the Chargee and to be payable at the time of the then next ensuing monthly payment of interest, or interest and principal, pursuant to Section 2.04.
- (d) The Chargor shall deposit with the Chargee (whether or not a request has been made) certificates of insurance evidencing the insurance required hereunder. The Chargor shall maintain the original copies of all such policies at the Chargor's address according to Section 13.01 and the Chargee or its authorized representatives shall be entitled during normal business hours upon prior written notice to have access thereto for the purpose of reviewing such policies and making extracts therefrom or copies thereof. The Chargor shall, without request, provide the Chargee with renewal or replacement certificates prior to the expiry or cancellation of any policy. The Chargor hereby authorizes the Chargee to communicate directly with any insurer, broker, agent, underwriter, adjuster or other Person in relation to the insurance required to be maintained by the Chargor and to request and obtain any information or documentation pertaining thereto, it being understood that the Chargee shall be under no obligation to do so.
- (e) All proceeds of insurance (from insurance policies) above the sum of \$200,000.00, other than liability insurance, shall be paid to the Chargee directly and, at the option of the Chargee, in its sole, absolute and unfettered discretion, may either be applied on account of the Loan indebtedness, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by it as part of the Security and, so long as there is then no Event of Default which is continuing, may be subject to withdrawal by the Chargor in instalments, on a cost to complete basis, as the repair or replacement progresses, subject to the Chargee's receipt of appropriate certificates, opinions and other documents which may include, without limitation, cost consultant reports, evidence of payment to suppliers and contractors, as required by the Chargee, provided that:

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- (i) the proceeds of insurance together with other funds held or arranged by the Chargor will be sufficient to pay the work required for the reconstruction or repair of the Charged Premises (the "required works"), the whole in accordance with plans and specifications and a construction budget and construction schedule approved by the Chargee, acting reasonably, after having received written advice by an architect acceptable to the Chargee, acting reasonably;
- (ii) the required work will start as soon as practical after the casualty and shall be completed diligently;
- (iii) except as otherwise provided in the Leases, all Leases then in place (or replacement Leases satisfactory to the Chargee, acting reasonably) shall remain in full force and effect for the balance of their term, under the same contractual terms and conditions, following completion of the required work;
- (iv) the cost of such restoration shall not exceed \$25,000.00, and such restoration can be completed, in the Chargee's judgment, acting reasonably, not less than ninety (90) days prior to the Maturity Date; and
- (v) any additional security required by the Chargee to guarantee cost overruns of the required work shall have been obtained by the Chargee.

If any of the conditions above are not fulfilled, the Chargee shall have the right to apply the proceeds of insurance to the payment of the Loan in whole or in part.

**Section 5.06 Chargee's Insurance Expenses.** The Chargor shall pay to the Chargee, on receipt of an invoice therefor, the reasonable out-of-pocket expenses of the Chargee, including legal fees and disbursements on a substantial indemnity basis, with respect to the administration of insurance proceeds.

**Section 5.07 Notice of Damage/Destruction.** The Chargor covenants to provide the Chargee with prompt Notice of all damage/destruction sustained at the Charged Premises. The Chargor covenants and agrees that if during the term hereof the Buildings, or any part or parts thereof, are totally or partially damaged or destroyed by any cause whatsoever, the Chargor shall, promptly after any such damage or destruction, provide the Chargee with written notice thereof.

**Section 5.08 Insurance Proceeds.** Upon receipt of any insurance proceeds the Chargee may, in its sole, absolute and unfettered discretion, either apply such proceeds on account of the indebtedness secured hereunder, whether or not such indebtedness shall then be due and payable, or hold such proceeds as further security for such indebtedness and, so long as no Event of Default shall have occurred and be continuing, permit the Chargor to withdraw the proceeds on a cost-to-complete basis, as the repair/replacement progresses, subject to the Chargee's receipt of such certificates, opinions, cost-consultant reports, proof of payments and lien waivers as shall be required by the Chargee, acting reasonably.

#### ARTICLE 6 - EVENTS OF DEFAULT

**Section 6.01 Events of Default.** In this Charge, "Event of Default" means, without limitation, each and every one of the following events:

- (a) **Failure to Pay.** if the Chargor shall fail to make any payment of the Principal Sum or interest payable hereunder, or any portion thereof or any blended payment thereof or of any other amount due pursuant to this Charge when the same shall become due pursuant to the provisions hereof and such failure shall continue for a period of two (2) Business Days (it being acknowledged that the Chargee shall have no obligation to provide notice of such failure to the Chargor); or
- (b) **Transfers.** if the Chargor shall transfer, assign or abandon the Charged Premises, any part thereof and/or interest therein, or if the Chargor shall, directly or indirectly, transfer its beneficial ownership (in whole or in part), except in accordance with the express provisions therefor contained in this Charge or except with the Chargee's prior express written consent (which may be withheld in the Chargee's sole, absolute and unfettered discretion); or

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- (c) **Encumbrances.** if the Chargor shall charge or otherwise encumber the Charged Premises, any part thereof and/or interest therein, or shall permit any lien, charge or encumbrance to be issued against the Charged Premises, except for Permitted Encumbrances, except as expressly permitted under this Charge and/or except for any construction lien which is discharged from title within ten (10) Business Days following the date on which the Chargor receives notice thereof; or
- (d) **Failure to Pay Taxes.** if the Chargor shall default in the payment of Taxes when due, in the payment to the Chargee of any amount payable to the Chargee in respect of Taxes under the terms hereof (save and except when the validity thereof is, in good faith, being contested by the Chargor and it has given security for payment thereof in full) and any such default continues either for a period of fifteen (15) days after such payment becomes due or for such shorter period as is necessary to avoid forfeiture or sale; or
- (e) **Failure to Maintain Insurance.** if the Chargor shall default in observing or performing any covenant contained in Article 5 of this Charge and, after notice in writing has been given by the Chargee to the Chargor specifying in reasonable detail such default and requiring the Chargor to rectify same, the Chargor fails to rectify such default within a period of fifteen (15) days; or
- (f) **Bankruptcy/Insolvency.** if the Chargor and/or the Guarantor shall become insolvent or bankrupt or a trustee in bankruptcy shall be appointed in respect of the Chargor and/or the Guarantor; or if the Chargor and/or the Guarantor shall do any act or any other Person shall do any act to dissolve or facilitate the dissolution process in respect of the Chargor and/or the Guarantor; or if the Chargor and/or the Guarantor shall make a general assignment for the benefit of creditors or shall go into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or otherwise acknowledge insolvency, unless, in the case of either an involuntary appointment of a trustee in bankruptcy, a liquidation order or an act to facilitate an involuntary or a voluntary dissolution, the Chargor is contesting such appointment, order or act, in good faith, and such appointment, order or act is quashed or set aside within a period of fifteen (15) days; or
- (g) **Compliance with Laws.** if the Charged Premises shall at any time during the term hereof fail to comply with all applicable building, zoning and other municipal by-laws and all relevant statutes and regulations (save and except any non-compliance which is, in good faith, being contested by the Chargor with the City or other governmental body having jurisdiction, until the final disposition thereof against the Chargor); provided that if, but only if, such default is capable of being remedied and provided also that such default is not caused by the non-payment of money, such default shall not constitute an Event of Default if such default has been remedied within fifteen (15) days after notice thereof has been given in writing to the Chargor; provided further that if:
  - (i) such default does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any additional Security held by the Chargee;
  - (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not materially adversely affected and the Charged Premises and the market value thereof are not materially adversely affected;
  - (iii) such default is incapable of being remedied within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
  - (iv) the Chargor has commenced to remedy such default promptly upon becoming aware of such default and the Chargor at all times continues to diligently use its reasonable commercial efforts to remedy such default,

the Chargor shall have such further period within which to remedy such default as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days); provided that a legal non-conforming use shall be deemed to comply with applicable building, zoning and other municipal by-laws and all relevant statutes and regulations; or



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- (h) **Rezoning.** if the Chargor, a representative of the Chargor or any tenant of the Charged Premises applies to rezone the Lands or any part thereof, without the prior written approval of the Chargee, unless in the case of an application by a Person other than the Chargor, the Chargor is diligently contesting such application and such application has not been granted; or
- (i) **Misrepresentation.** if any of the Chargor's representations and warranties contained in this Charge and/or any Security/agreement/certificate now or hereafter given to the Chargee in connection with this Charge (save and except defaults under securities/agreements/certificates which constitute Events of Default under one or more other subsections of this Section 6.01) are untrue or inaccurate when given or made or deemed to have been given, made or repeated and the Chargor fails to remedy such default within fifteen (15) days following receipt of written notice thereof from the Chargee; for purposes of this subsection, statements of fact set out in corporate certificates shall be deemed to be representations and warranties; or
- (j) **Failure to Perform Permitted Encumbrances Obligations.** if the Chargor fails to observe or perform its obligations contained in the Permitted Encumbrances and/or in any other agreements relating to the Charged Premises and such failure to observe or perform has not been remedied within the cure period specified in such encumbrance or agreement; or
- (k) **Failure to Perform Management Obligations.** if the Charged Premises is not managed in accordance with the management obligations contained in this Charge and the Chargor fails to remedy such default within thirty (30) days of written notice from the Chargee; or
- (l) **Default Under Subsequent-Ranking Mortgages.** if the Chargor shall default or another event shall occur pursuant to subsequent-ranking mortgage security which, as a result thereof, such subsequent-ranking mortgage security shall have become enforceable, except where the holder of such subsequent-ranking mortgage security is exercising remedies expressly permitted pursuant to an agreement between the Chargee, the Chargor and the subsequent-ranking mortgage security holder, and all relevant rectification periods under the subsequent-ranking mortgage security shall have expired (in such event the Chargor shall not receive the benefit of any rectification period hereunder and the Chargor shall be deemed to be in default under this Section 6.01(l), notwithstanding any obligation of the subsequent-ranking mortgage security holder to give notice to the Chargee and notwithstanding whether such notice is, in fact, given); or
- (m) **Failure to Perform Covenants.** if the Chargor shall be in default of any of its covenants contained in this Charge (other than the covenants referred to elsewhere in this Section 6.01); provided that if, but only if, such default is capable of being remedied and provided also that such default is not caused by the non-payment of money, such default shall not constitute an Event of Default if such default has been remedied within fifteen (15) days after notice thereof has been given in writing to the Chargor; provided further that if:
  - (i) such default does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any additional Security held by the Chargee;
  - (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not materially adversely affected and the Charged Premises and the market value thereof are not materially adversely affected;
  - (iii) such default is incapable of being remedied within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
  - (iv) the Chargor has commenced to remedy such default promptly upon becoming aware of such default and the Chargor at all times continues to diligently use its reasonable commercial efforts to remedy such default,

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the Chargor shall have such further period within which to remedy such default as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days); or

- (n) **Default Under Other Loan Documents.** if the Chargor shall be in default under any Security or other Loan Document now or hereafter given to the Chargee in connection with this Charge, save and except defaults under securities and agreements which constitute Events of Default under one or more other subsections of this Section 6.01; provided that if, but only if, such default is capable of being remedied and provided also that such default is not caused by the non-payment of money, such default shall not constitute an Event of Default if such default has been remedied within fifteen (15) days after notice thereof has been given in writing to the Chargor; provided further that if:
- (i) such default does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any additional Security held by the Chargee;
  - (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not materially adversely affected and the Charged Premises and the market value thereof are not materially adversely affected;
  - (iii) such default is incapable of being remedied within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
  - (iv) the Chargor has commenced to remedy such default promptly upon becoming aware of such default and the Chargor at all times continues to diligently use its reasonable commercial efforts to remedy such default,

the Chargor shall have such further period within which to remedy such default as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days); or

- (o) **Material Adverse Change.** if an event shall occur at or with respect to the Charged Premises which, in the opinion of the Chargee, acting reasonably, could materially adversely affect the market value of the Charged Premises; provided that if, and only if, the result of such event can be remediated and provided also that such event is not caused by the non-payment of money, such event shall not constitute an Event of Default if such event has been remediated within fifteen (15) days following written notice thereof to the Chargor; provided further that if:
- (i) such event does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any other Security held by the Chargee;
  - (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not adversely affected;
  - (iii) such event is incapable of remediation within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
  - (iv) the Chargor has commenced to remediate such event promptly upon becoming aware of such event and the Chargor at all times continues to diligently use its reasonable commercial efforts to remediate such event,

the Chargor shall have such further period within which to remediate such event as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days).

**Section 6.02 Compound Interest.** If and so long as the Chargor defaults in the payment of any sum of money due and payable to the Chargee pursuant to any provision hereof, the Chargor shall, so long as the amount so in default or any part thereof remains in default, pay to the Chargee, in addition to any and all other sums of money payable hereunder, compound interest on the amount so in default or on so much thereof as may from time to time remain unpaid,

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computed from the time of such default at the Mortgage Rate and to become due and be paid on demand, and any interest which is payable under or by virtue of this Section 6.02 shall be secured by this Charge and shall be a charge upon the Charged Premises until paid.

#### ARTICLE 7 - REMEDIES IN CASE OF DEFAULT

**Section 7.01 Acceleration.** Upon the occurrence of an Event of Default which is continuing the Chargee may, in its sole, absolute and unfettered discretion and in addition to any remedy set forth in Section 7.03 hereof, declare the Principal Sum, together with all interest thereon and all other moneys (if any) owing hereunder, to become immediately due and payable to the Chargee, all without notice (except the declaration referred to above), presentment, protest, demand, notice of dishonour or any other demand/notice (all of which are hereby expressly waived) and the Chargor shall and will pay forthwith to the Chargee all the Principal Sum, interest thereon and all other moneys owing hereunder, with interest on overdue interest as herein provided until payment is received by the Chargee, and such payment when made shall be deemed to have been made on account of the moneys due and owing under this Charge.

**Section 7.02 Waiver.** The Chargee may, in writing, at any time or times waive an Event of Default after the occurrence thereof upon such terms and conditions as it shall determine, in its sole, absolute and unfettered discretion, provided that any such waiver shall apply only to the particular Event of Default waived and shall not operate as a waiver of any other or future Event of Default.

**Section 7.03 Remedies.** Upon the occurrence of an Event of Default which is continuing the Chargee may, in its sole, absolute and unfettered discretion:

- (a) **Possession etc.** take possession of all or any part(s) of the Charged Premises with power to: exclude the Chargor and its agents and servants therefrom; complete and/or preserve and maintain the Charged Premises and make such repairs, replacements, improvements and additions thereto as the Chargee may determine; receive the rents, incomes and profits thereof of any kind whatsoever and pay therefrom all expenses of maintaining, preserving, protecting and operating the Charged Premises and all charges against the Charged Premises ranking in priority to this Charge or payment of which may be necessary to preserve or protect the Charged Premises, and pay out the remainder of the moneys so received and not required for any of the purposes provided for in this Section 7.03, in accordance with the provisions of Section 8.01; in accordance with prudent real estate practice, lease any vacant space in the Charged Premises and renew or amend from time to time any or all of the Leases; and enjoy and exercise all powers necessary to the performance of all functions provided for in this Section 7.03(a) including, without limitation, the power to purchase on credit, borrow money, advance its own moneys at such rates of interest as shall be reasonable and to enter into contracts and undertake obligations for the foregoing purposes upon the security of the Charged Premises; provided that the Chargee shall, upon all Events of Default being made good or rectified, or waived as herein provided, restore the Charged Premises to the Chargor subject to the charge created by this Charge as if no Event of Default had occurred; and/or
- (b) **Completion and Repairs.** take all such steps as the Chargee may consider necessary or desirable for the purposes of completing the Charged Premises and/or any repairs, replacements, improvements and additions thereto and for such purposes shall enter into all such contracts and undertake all such obligations as the Chargee may determine, in its sole, absolute and unfettered discretion, and shall give security therefor upon the Charged Premises; provided that the Chargee shall not be under any obligation to complete the Buildings and/or any repairs, replacements, improvements and/or additions thereto; and/or
- (c) **Court-Appointed Receiver.** apply to a court of competent jurisdiction for the appointment of a receiver or receiver and manager to take possession of all or such part or parts of the Charged Premises as the Chargee shall designate, with such duties, powers and obligations as the court making the appointment shall confer; and the Chargor hereby consents to the appointment of such receiver or receiver and manager; and/or
- (d) **Chargee-Appointed Receiver.** with or without entering into possession of the Charged Premises or any part thereof, by writing duly executed by the Chargee, appoint a receiver

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(such term shall include a receiver and manager) of the Charged Premises or any part thereof and of the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any receiver and appoint another in his stead (and the Chargor hereby consents to such appointments and removals) and upon the appointment of any such receiver or receivers from time to time the following provisions shall apply:

- (i) every such receiver shall, to the extent permitted by law, be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect of the Charged Premises or any part thereof, whether in respect of any tenancies created in priority to this Charge or subsequent thereto;
- (ii) every such receiver may, as determined by the Chargee and confirmed in writing, be vested with any or all of the powers of the Chargee hereunder;
- (iii) the Chargee may from time to time by such writing fix the reasonable remuneration of every such receiver who shall be entitled to deduct the same out of the receipts from the Charged Premises or the proceeds thereof;
- (iv) every such receiver shall, so far as concerns the responsibility of his acts or omissions, be deemed the agent or attorney of the Chargor and in no event the agent of the Chargee;
- (v) the appointment of every such receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Premises or any part thereof;
- (vi) every such receiver shall from time to time have the power to lease, in accordance with prudent real estate practice, any portion of the Charged Premises for such term and subject to such provisions as he may deem advisable or expedient and in so doing every such receiver shall act as the attorney or agent of the Chargor and he shall have authority to execute any Lease 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 Charged Premises;
- (vii) every such receiver shall have full power to manage, operate, improve, modify, repair, alter, complete or extend the Charged Premises or any part thereof in the name of the Chargor for the purpose of securing the payment of the Principal Sum and interest thereon;
- (viii) no such receiver shall be liable to the Chargor to account for moneys or damages other than cash received by it in respect of the Charged Premises or any part thereof and every such receiver shall apply such cash so received to pay in the following order:
  - (A) its reasonable remuneration as aforesaid;
  - (B) all expenses properly made or incurred by it in connection with the management, operation, improvement, modification, repair, alteration or extension of the Charged Premises or any part thereof;
  - (C) moneys which may from time to time be or become charged upon the Charged Premises in priority to this Charge, and all Taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Charged Premises or any part thereof;
  - (D) all interest due or falling due, other moneys (if any) on account of proper expenditures made or incurred by or for the Chargee, the outstanding balance of the Principal Sum and all other amounts due to the Chargee pursuant to this Charge; and

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- (E) thereafter any surplus remaining in the hands of every such receiver to the Chargor or its successors or assigns; and
- (ix) the Chargee may at any time and from time to time terminate any such receivership by notice in writing, duly executed by the Chargee, to the Chargor and to any such receiver; and/or
- (e) **Sale of Charged Premises.** subject to the provisions of all applicable legislation, with or without entering into possession, sell all or part of the Charged Premises either as a whole or in separate parcels, at public auction or by public tender or by private sale, at such time and places, subject to adjournment from time to time by the Chargee, on such reasonable terms and conditions (including reserve bids, price and payment) as the Chargee shall determine; and/or
- (f) **Realize on Security.** realize all or any part or parts of the security hereby constituted by any other means of any nature or kind whatsoever that a court of competent jurisdiction shall approve as being just and expedient in the circumstances, having regard to the nature of the operations carried on in the Charged Premises, including any other action, suit, remedy or proceeding authorized or permitted by this Charge or by law or in equity, and not to be limited to forms of realization which a court is given jurisdiction to approve under statute; and/or
- (g) **Enforce Leases.** with or without taking possession, take any action or proceeding to enforce the performance of any covenant contained in any of the Leases; and/or
- (h) **Action/Proceeding.** take any action or proceeding to enforce payment of the Principal Sum and interest and other moneys secured hereunder or performance of any other covenant contained herein, or to enforce the security hereby constituted or exercise any of the rights of the Chargee under the Charge or any other Security held by the Chargee, and to bring to sale the Charged Premises or any part or parts thereof under a judgment or decree of a court or courts of competent jurisdiction or by the enforcement of any other legal remedy which the Chargee shall deem most effectual to protect and enforce any of its rights hereunder; and/or
- (i) **Other Remedies.** exercise or pursue any other remedy authorized or permitted hereby, by law and/or in equity.

**Section 7.04 Cumulative and Non-Exclusive Remedies.** No remedy herein conferred upon or reserved to the Chargee is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any additional or ancillary Security now or hereafter held by the Chargee, or now existing or hereafter to exist by law or by statute as modified herein. Without limiting the generality of the foregoing, the taking of judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the right of the Chargee to interest as provided in Section 2.04.

**Section 7.05 Liability.** Save and except as to claims at law or in equity to an accounting, the Chargee shall not, nor shall any receiver or receiver and manager appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by them, for damages to Persons or property or for salaries or non-fulfillment of contracts during any period wherein the Chargee or such receiver or receiver and manager shall manage the Charged Premises or any part thereof upon or after entry, as herein provided, and the Chargee shall not be bound to do, observe or perform or to see to the observance or performance by the Chargor of any of the obligations herein imposed upon the Chargor, nor in any other way to supervise or interfere with the conduct of the Chargor's operation of the Charged Premises.

**Section 7.06 Judgment.** In any judicial or other proceeding to enforce the security hereby created, judgment may be rendered against the Chargor in favour of the Chargee for any amount which may remain due in respect of the Principal Sum, interest thereon and all other moneys owing hereunder after the application to the payment thereof of the proceeds of any sale of the Charged Premises or any part thereof.

**Section 7.07 Chargor Cooperation.** In the case of any sale hereunder, whether by the Chargee, or by a receiver or receiver and manager, or under judicial proceedings, the Chargor

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hereby covenants that, unless it is otherwise contesting such sale, it shall, 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 secured property sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such receiver or receiver and manager may execute and deliver to the purchaser of the secured property, or any part thereof, such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the same, for and in the name of the Chargor, as its attorney.

**Section 7.08 Chargee Authority.** No Person dealing with the Chargee or its agents shall be concerned to inquire whether the powers which the Chargee or such agents are purporting to exercise have become exercisable, or whether any money remains due upon the security of this Charge, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Chargee with the Charged Premises or to see to the application of any money paid to the Chargee; and in the absence of fraud on the part of such Person, such dealings shall be deemed, insofar as regards the safety and protection of such Person, to be within the powers hereby conferred and to be valid and effectual accordingly.

**Section 7.09 Chargee Right to Pay Claims and Encumbrances.** It is hereby agreed that the Chargee may pay the amount of any encumbrance, lien claim or charge now or hereafter existing, arising or claimed upon or against the Charged Premises having priority, or purporting to have priority, over the Charge, including any Taxes, and may pay all related costs, charges and expenses (including all legal fees and disbursements of Counsel on a substantial indemnity basis), whether or not any action or any proceeding is taken, which may be incurred in taking, recovering, protecting and keeping possession of the Charged Premises and/or collecting any overdue interest, principal, insurance premiums or any other moneys whatsoever payable by the Chargor hereunder or for the enforcement of any other covenant or obligation of the Chargor hereunder and all costs incurred in preserving the priority of the Chargee hereunder and in defending all claims against the Chargee's priority including all amounts, costs, charges and expenses incurred by the Chargee as a consequence of the Chargor's default hereunder, and all such amounts, costs, charges and expenses so paid shall be added to the debt hereby secured and be a charge on the Charged Premises and shall bear interest at the Mortgage Rate and shall be payable forthwith by the Chargor to the Chargee. In the event of the Chargee paying the amount of any such encumbrance, lien, claim, charge or Taxes, either out of the moneys advanced under the Charge or otherwise, it shall be entitled and subrogated to all the rights, equities and securities of the Person so paid, without the necessity of a formal assignment, and the Chargee is hereby authorized to retain any discharge thereof, without registration, if it thinks proper to do so.

#### ARTICLE 8 - APPLICATION OF MONEYS

**Section 8.01 Application of Moneys.** Except as otherwise expressly provided in this Charge, the moneys arising from the possession by the Chargee of the Charged Premises or any part thereof, or from any sale or realization of the whole or any part of the Charged Premises (except by foreclosure), pursuant to any actions or proceedings based upon an Event of Default hereunder, whether under sale by the Chargee or by judicial proceedings or otherwise, shall be applied: first, to reimburse the Chargee for all costs, charges, expenses and advances incurred in taking, recovering and keeping possession of the Charged Premises or in any other proceedings taken hereunder in connection with or to realize upon the security granted to the Chargee under this Charge or under any additional Security now or hereafter held by the Chargee for the obligations hereby secured, with interest thereon at the Mortgage Rate; second, to pay all Taxes and other charges ranking in priority to the security of this Charge; third, to pay all accrued and unpaid interest (including interest on interest); fourth, to pay the Principal Sum outstanding pursuant to this Charge; fifth, to pay all other charges secured by this Charge; and sixth, to return the surplus of moneys (if any) to the Chargor; the Chargee may, in its sole, absolute and unfettered discretion, vary the above priorities by written notice, in which event the moneys shall be distributed in accordance with the notice.

#### ARTICLE 9 - LEASES

**Section 9.01 Termination Fees.** Without limiting the generality of the foregoing, whether or not the Chargee's consent to the cancellation or surrender of any Lease is required hereunder, (a) the Chargor shall notify the Chargee, in writing, of any cancellation penalties or other

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consideration payable to the Chargor in connection with such cancellation or surrender (the "Termination Fees"), which written notice must be delivered to the Chargee prior to the payment by the applicable tenant of any such Termination Fees to the Chargor, and (b) at the Chargee's sole option, the Chargee may (i) require that the Chargor deposit such Termination Fees into a reserve held by the Chargee or the Servicer, and (ii) impose such restrictions and conditions on the release of the Termination Fees from such reserve as the Chargee shall determine, acting reasonably, including, without limitation (A) requiring that such vacant space be relet to a tenant and under a Lease acceptable to the Chargee, acting reasonably (an "Approved Lease"), (B) the tenant under the Approved Lease shall be in occupancy of its leased premises and paying rent, (C) the Chargor shall provide to the Chargee an estoppel certificate from the tenant under the Approved Lease in a form acceptable to the Chargee, acting reasonably, and (D) the Chargor shall provide to the Chargee evidence acceptable to the Chargee, acting reasonably, that all improvements to the Charged Premises required by the Approved Lease have been completed.

**Section 9.02 No Set-Off.** Subject to the provisions of the existing Leases, no Lease shall contain a provision whereby the tenant thereof may, under any circumstances, other than the abatement in the event of damage and repair to the leased premises, deduct from, abate or set-off against any rent payable under a Lease.

**Section 9.03 Non-Disturbance Agreements.** The Chargee covenants to provide to each tenant, upon the Chargor's request and at the Chargor's cost, a non-disturbance and attornment agreement on the Chargee's standard form with such amendments as may be requested by a tenant and accepted by the Chargee, acting reasonably, provided the tenant is not then in default of its lease obligations, the lease was entered into in compliance with the terms of the Security and such tenant has entered into an attornment agreement with the Chargee in a form acceptable to the Chargee, acting reasonably.

#### ARTICLE 10 - EXPROPRIATION/CONDEMNATION

**Section 10.01 Expropriation/Condemnation.** If all or any part of the Charged Premises is expropriated, condemned or otherwise taken by any governmental authority or threatened to be so taken, the Chargor shall notify the Chargee promptly of the time and place of all meetings, hearings, trials and other proceedings relating to such action; the Chargee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment which may be due as a result of such taking or damage, and may, in the Chargee's discretion, acting reasonably, compromise or settle, in the names of both the Chargor and the Chargee, any claim for any such award or payment; any such award or payment shall be paid to the Chargee, and applied first to reimburse the Chargee for all costs and expenses (including solicitors' legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee in connection therewith; the balance, if any, of such award or payment may, in the Chargee's sole, absolute and unfettered discretion, either (a) be retained by the Chargee and applied toward the Principal Sum, or (b) be paid over, in whole or in part and subject to such conditions as the Chargee may impose, to the Chargor for the purpose of restoring, repairing or rebuilding any part of the Charged Premises affected by the taking or damage; notwithstanding the preceding sentence, if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) the proceeds received by the Chargee (together with any other funds delivered by the Chargor to the Chargee for such purpose) shall be sufficient, in the Chargee's judgment, acting reasonably, to pay for any restoration necessitated by the taking or damage, (iii) the cost of such restoration shall not exceed \$250,000.00, (iv) such restoration can be completed, in the Chargee's judgment, acting reasonably, not less than ninety (90) days prior to the Maturity Date, and (v) the remaining portion of the Charged Premises shall constitute, in the Chargee's sole, absolute and unfettered discretion, adequate security for all sums payable hereunder, then the Chargee shall apply such proceeds as provided in clause (b) of the preceding sentence.

#### ARTICLE 11 - ENVIRONMENTAL

**Section 11.01 Environmental Representations and Warranties.** The Chargor represents and warrants to the Chargee that, to the best of its knowledge after due inquiry, except as disclosed in the Phase I environmental report for the Lands delivered to the Chargee as a condition to the advance of the Loan, the Lands and its existing and prior uses comply in all material respects with all Environmental Laws and, without limiting the generality of the foregoing:

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- (a) the Lands have never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks or otherwise;
- (b) all Hazardous Substances used in connection with the business conducted at the Lands have at all times been received, handled, used, stored, treated, shipped and disposed of in strict compliance with all Environmental Laws;
- (c) the Chargor has complied with all reporting and inspection requirements pursuant to Environmental Laws in respect of the Charged Premises and the operations and business conducted thereat;
- (d) all pollution control equipment forming part of the Charged Premises is effective in meeting current applicable emission limits and effluent and pretreatment standards;
- (e) all operating records, files and reports, including environmental monitoring and reporting records, have been maintained in accordance with all applicable Environmental Laws;
- (f) the Chargor has obtained all licences, permits and other environmental approvals and authorizations necessary pursuant to Environmental Laws for the conduct of the operations and business at the Charged Premises;
- (g) no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, from or on the Lands, nor have migrated from the Lands, as a result of the conduct of business on the Lands or otherwise, in each case other than in compliance with all Environmental Laws in all material respects; and
- (h) no notices of violation of any Environmental Laws have been received by the Chargor in respect of the Lands and there are no outstanding directions, writs, injunctions, orders or judgments issued pursuant to Environmental Laws in respect of the Lands.

**Section 11.02 Compliance with Environmental Laws.** The Chargor shall strictly comply with the requirements of applicable Environmental Laws (including, but not limited to, obtaining any permits, licences or similar authorizations to construct, occupy, operate or use the Charged Premises or any fixtures or equipment located on the Lands by reason of applicable Environmental Laws) and shall notify the Chargee promptly in the event of any spill or location of Hazardous Substances upon the Lands that would require reporting under applicable Environmental Laws, and shall promptly forward to the Chargee copies of all orders, notices, permits, applications and other communications and reports in connection with any spill or other matters relating to applicable Environmental Laws, as they may affect the Charged Premises.

**Section 11.03 Removal of Hazardous Substances.** The Chargor shall, if required by applicable Environmental Laws, promptly remove from the Lands, at its sole expense, any Hazardous Substances upon discovery.

**Section 11.04 Liens.** The Chargor shall, at its sole cost and expense, prevent the imposition of any lien against the Charged Premises for the cleanup of any Hazardous Substances, and shall comply and cause:

- (a) all tenants under any Lease; and
- (b) any other Person on or occupying the Charged Premises,

to comply with all Environmental Laws applicable to the Charged Premises. Subject to the Leases and the rights of the tenants thereunder, the Chargor hereby grants to the Chargee and its agents, employees, consultants and contractors, an irrevocable licence to enter upon the Charged Premises upon prior notice, during business hours, to perform such tests on the Charged Premises as are reasonably necessary to conduct an investigation and/or review for compliance with the provisions of this Article 11. Furthermore, if deemed necessary by the Chargee, acting reasonably, the Chargee reserves the right to request that, from time to time, an environmental audit of the Charged Premises be performed, at the expense of the Chargor.

**Section 11.05 Indemnification.** The Chargor hereby agrees to indemnify and save harmless the Chargee (its officers, agents, trustees, employees, contractors, invitees) from and against all losses, demands, claims, liabilities, damages, costs (including, without limitation, all reasonable



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legal fees), actions, penalties, obligations and expenses (collectively the “**Liabilities**”), directly or indirectly, arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Lands or migrating from the Lands of any Hazardous Substances. Subject to Section 11.06 below, the indemnity contained in this Section 11.05 and shall expire 18 months after complete repayment of the Principal Sum and all interest and other amounts secured hereby and the discharge of this Charge and all ancillary Security documentation.

**Section 11.06 Survival.** The provisions of each of Section 11.05 and Section 12.22 hereof are separate and distinct obligations hereunder and shall survive:

- (a) the termination or expiration of this Charge;
- (b) the transfer of the Charged Premises (including pursuant to foreclosure and a sale in lieu of foreclosure);
- (c) the complete repayment of the Principal Sum and all interest and other amounts secured hereby and the fulfillment of all of the Chargor’s obligations pursuant to this Charge;
- (d) the discharge of this Charge and all ancillary Security documentation; and
- (e) the exercise of any remedies available to the Chargee pursuant to this Charge and/or ancillary Security documents, at law, in equity or otherwise.

#### ARTICLE 12 - GENERAL

**Section 12.01 Partial Releases.** The Chargee may, in its sole, absolute and unfettered discretion, at all times release any part or parts of the Charged Premises or any other Security, either with or without sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the Charged Premises or any Person from this Charge or from any of the covenants herein contained, it being expressly agreed that each and every portion into which the Charged Premises is or may hereafter be divided does and shall stay charged with the Principal Sum and no Person shall have the right to require the Principal Sum to be apportioned and the Chargee shall not be accountable to the Chargor for the value thereof or for any moneys except those actually received by the Chargee.

**Section 12.02 Quiet Possession.** Until the occurrence of an Event of Default and while same is continuing, or until the exercise by the Chargee of any of the rights, remedies and powers conferred upon it under this Charge or under any additional or ancillary Security for the obligations of the Chargor under this Charge, the Chargor shall peaceably and quietly have, hold, use, occupy, possess and enjoy the Charged Premises and manage and operate the same and, provided no Event of Default shall have occurred which is continuing or until the exercise by the Chargee of any of the rights, remedies and powers conferred upon it under this Charge or under any additional or ancillary Security for the obligations of the Chargor under this Charge, the Chargor shall collect the rents, revenues and other profits thereof, for its own use and benefit without hindrance, interruption or denial of or by the Chargee or by any other Person or Persons whomsoever claiming by, from or under the Chargee, provided that such rents, revenues and other profits as are collected by the Chargor together with all proceeds therefrom and the Chargor’s interest therein shall nonetheless continue to be subject to the present assignment if and to the extent that such rents or the proceeds therefrom remain the property of the Chargor or the Chargor maintains an interest therein.

**Section 12.03 No Partnership/Joint Venture.** Nothing in this Charge shall be deemed in any way or for any purpose to constitute the Chargor and Chargee as partners or joint venturers in the conduct of business or otherwise.

**Section 12.04 Acknowledgement of Receipt.** The Chargor acknowledges receipt of a true copy of this Charge.

**Section 12.05 Discharge and Release.** The Chargee shall, at the written request and expense of the Chargor, promptly cancel and discharge this Charge and promptly execute and deliver to the Chargor such instruments as shall be requisite to discharge this Charge and to promptly release or reconvey to the Chargor all property subject to the lien hereof and to promptly settle and discharge to the Chargor all additional Security given with respect to this Charge relating to the

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Leases or otherwise, provided that the Chargor shall have first paid to the Chargee the full Principal Sum, all interest due hereunder and all other moneys payable hereunder by the Chargor; and provided further that the Principal Sum shall have matured either by effluxion of time or otherwise pursuant to this Charge or the Chargor is, or has become, legally entitled to pay the Principal Sum secured under this Charge.

**Section 12.06 Credit Information.** For purposes of managing, administering, reporting, selling, assigning, granting participations in or otherwise in connection with the transaction contemplated hereunder, the Chargor irrevocably authorizes the Chargee, to the extent that authorization is necessary, to collect and obtain at any time any credit or other personal information and/or materials of a financial nature relating to the Chargor from financial institutions, prior creditors, credit verification bureaus and any other Person that, in the Chargee's opinion, in its sole, absolute and unfettered discretion, is relevant to the credit approval and/or performance of the transactions hereunder, and such financial institutions, prior creditors, credit verification bureaus and other Persons are authorized to communicate such information/materials at the Chargee's request.

**Section 12.07 Chargee Not Bound.** The Chargee shall not be bound to do, observe or perform or to see to the observance or performance by the Chargor of any of the obligations herein imposed upon the Chargor, nor in any other way to supervise or interfere with the conduct of the Chargor's operation of the Charged Premises.

**Section 12.08 Conduct.** No extension of time given by the Chargee to the Chargor, or anyone claiming under the Chargor, or any other dealing by the Chargee with the Chargor, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other Person liable for the payment of sums secured hereby.

**Section 12.09 Mortgage Loan Application.** The Mortgage Loan Application shall not be merged into and superseded by this Charge.

**Section 12.10 Impact of Judgment.** The obtaining of a judgment or judgments on any covenant(s) contained in this Charge shall not operate as a merger of such covenant(s) or affect the Chargee's right to interest at the Mortgage Rate.

**Section 12.11 Demand Receipt of Payments.** Any payment by the Chargor hereunder which is received by the Chargee after 1:00 p.m. on any day shall be deemed to have been made by the Chargor and received by the Chargee on the next Business Day. Any payment due and payable hereunder by the Chargor on a day that is not a Business Day shall be deemed due and payable on the next Business Day.

**Section 12.12 Amendments in Writing.** The terms of this Charge may not be waived or varied orally or by the course of conduct of any officer, employee or agent of the Chargee. All amendments of this Charge shall be in writing and signed by a duly authorized officer of each of the Chargee and the Chargor.

**Section 12.13 Invalidity.** If any obligation contained in this Charge or the application thereof to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Charge and the application of such obligation to Persons or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each obligation contained in this Charge shall be separately valid and enforceable to the fullest extent permitted by law.

**Section 12.14 Non-Exclusivity of Remedies.** In the event that the Chargee, in addition to the Charged Premises secured hereunder, holds any further Security in respect of the indebtedness secured pursuant to this Charge, then no single or partial exercise by the Chargee of any of the remedies specified in Article 7 hereof or under any of such further Security shall preclude any other and further exercise of any other right, power or remedy pursuant to this Charge or pursuant to any of such further Security. The Chargee shall at all times have the right to proceed against all or any portion of the Charged Premises or such further Security in such order and in such manner as it shall, in its sole, absolute and unfettered discretion, deem fit without waiving any rights which the Chargee may have with respect to any and all of such Security, and the exercise of any such powers or remedies from time to time shall in no way affect any other powers or remedies which the Chargee may have pursuant to this Charge, any such further Security, or in law or in equity.

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**Section 12.15 Advances by Chargee.** In the event that the Chargee is at any time or from time to time during the term of this Charge required to make a payment to defeat or honour the priority of a lien claimant, any such payment or payments, and the reasonable out-of-pocket expenses of the Chargee, including legal fees and disbursements on a substantial indemnity basis, shall be payable by the Chargor forthwith, shall bear interest at the Mortgage Rate and shall be secured by this Charge.

**Section 12.16 Multiple Chargors.** In the event that the term "Chargor" includes more than one Person, each of them shall be jointly and severally liable to the Chargee for all of the Chargor's obligations hereunder.

**Section 12.17 Excluded Covenants.** In accordance with Subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by Subsection 7(1) of the said *Land Registration Reform Act* are hereby expressly excluded from this Charge.

**Section 12.18 Time of Essence.** Time shall be of the essence hereof.

**Section 12.19 Reimbursement.** The Chargor shall reimburse the Chargee for its reasonable out-of-pocket costs incurred by the Chargee in the reasonable belief, acting as a prudent lender, that such costs are necessary for the protection of its Security or the value of the Charged Premises, provided such costs shall not include costs incurred by the Chargee in connection with any assignment, syndication or securitization transaction.

**Section 12.20 Successors and Assigns.** This Charge shall enure to the benefit of and be binding upon the successors and assigns of the Chargee and the successors and permitted assigns of the Chargor.

**Section 12.21 Delays and Waiver.** Subject to applicable law, the Chargee shall not be liable or accountable for any failure to exercise its rights and remedies hereunder. No delay or failure to exercise any right or remedy by the Chargee or any receiver or receiver-manager appointed by the Chargee shall impair any such right or remedy or shall be construed to be a waiver of an Event of Default or acquiescence therein.

**Section 12.22 Indemnification of Chargee.** The Chargor hereby agrees to indemnify and save harmless the Chargee and its directors, officers, agents, trustees, employees, contractors, licencees and invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature and kind whatsoever and howsoever arising out of the provisions of the Loan Documents, any letters of credit or letters of guarantee issued, the sale or lease of the Lands and/or the use or occupation of the Lands including, without limitation, those arising from the right to enter the Lands from time to time and to carry out the various tests, inspections, management and other activities permitted by the Loan Documents.

**Section 12.23 Survival.** The covenants, indemnities and agreements of the Chargor set forth in this Charge:

- (a) are separate and distinct obligations from the Chargor's other obligations;
- (b) shall, in the case of the indemnities, survive the payment and satisfaction of the Chargor's obligations and the discharge of the Security from time to time taken as security therefor, provided that, with the exception of the indemnities contained in Section 11.05 and Section 12.22 hereof which shall continue if the Chargee has been in possession or control of the Lands at any time prior to the discharge of the Security, such indemnities shall expire 18 months after repayment in full of the Loan and discharge of the Security; and
- (c) with the exception of any covenants relating to the repayment of the Loan and any other indebtedness secured hereby, are not discharged or satisfied by power of sale, judicial sale or foreclosure of the charges created by any of the Security.

**Section 12.24 No Agents/Brokers.** Notwithstanding any other provision of this Charge, any agent, broker and/or consultant engaged with respect to the Charge and/or the Loan Documents and/or the transaction contemplated thereunder shall, at all times, be deemed to be the agent of the Chargor and not the agent of the Chargee, and that no representations, statements and/or

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other acts of any such agent, broker and/or consultant shall be binding upon the Chargee unless expressly authorized by the Chargee, in writing.

**Section 12.25 Postponements.** The Chargee shall use reasonable commercial efforts, within ten (10) Business Days of submission to it, and without payment of principal hereunder, but subject to reimbursement of all of the Chargee's related out of pocket costs and expenses (including legal fees on a substantial indemnity basis) and payment of the Chargee's reasonable processing fee, to execute all postponements required by the Chargor, acting reasonably, to any Permitted Encumbrance set out in Section 1.01 or to any other similar lien or encumbrance to which the Chargee has consented.

#### ARTICLE 13 - NOTICE

**Section 13.01 Notices.** All notices (each being a "Notice") required or permitted to be given by the Chargee or Chargor under this Charge shall be in writing and shall be deemed given (a) upon personal delivery, (b) on the first Business Day after receipted delivery to a courier service which guarantees next - Business Day delivery, or (c) on the third Business Day after mailing, by registered mail, postage prepaid (unless there is a general interruption in Canadian postal service, in which case all Notices shall be personally delivered or couriered), in any case to the appropriate party at its address set forth below:

If to the Chargor:

200 Ronson Drive, Suite 300  
Toronto, Ontario M9L 1R5  
Attention: Mark Gross

If to the Chargee:

c/o Largo Real Estate Advisors, Inc.  
2420 North Forest Road  
Getzville, New York 14068  
Attention: Stephanie Vogel

with a copy to each of:

AIG Investments  
777 South Figueroa Street, 16th Floor  
Los Angeles, California 90017-5800  
Attention: Vice President, Servicing-Commercial Mortgage Lending

Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400, Bay Adelaide Centre  
Toronto, Ontario M5H 2T6  
Attention: Mark Brennan

Each party may, from time to time, change its address for Notices by giving Notice thereof, to the other parties in accordance with this Section.

#### ARTICLE 14 - CHARGEES' ASSIGNMENT

**Section 14.01 Securitization.** The Chargee may, without notice to and without the consent of the Chargor, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Charge, the Loan Documents, the Loan or the Security and any and all rights, title, benefits, remedies and obligations relating thereto.

**Section 14.02 Servicer.** The Chargor acknowledges that the Chargee may retain the services of a servicer (the "Servicer") to service the Loan, including the collection of payments under this Charge. The Chargor further acknowledges that the Servicer is not the Chargee and the Servicer does not owe any obligations to the Chargor to advance funds under the Loan, or continue to be the Servicer. All references to the Chargee following the advance of the Loan shall be deemed to include the Servicer, and, subject to the terms and conditions of the servicing agreement between the Chargee and the Servicer, the Servicer shall have and may exercise at all times and without

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restriction all of the rights and benefits of the Chargee under this Charge, the Security and the other Loan Documents, provided, however, the Chargee may replace the Servicer in its sole, absolute and unfettered discretion.

**Section 14.03 Cooperation.** The Chargor covenants to execute all documentation and take all action that the Chargee, acting reasonably, deems necessary or useful in order to effect, perfect, complete or facilitate such assignment, provided that such documentation shall not modify the obligations of the Chargor pursuant to this Charge.

#### ARTICLE 15 - LIABILITY

**Section 15.01 Chargee Liability.** Except as the Chargee shall expressly agree in writing and except as the Chargee shall be obligated at law, nothing herein contained shall render the Chargee, its officers, employees, agents or any Person(s) for whom the Chargee is in law responsible, liable to any Person for the fulfillment or non-fulfillment of the obligations of the Chargor under the Leases and/or any other agreement/Security relating, directly or indirectly, to the Charged Premises.

#### ARTICLE 16 - POWER OF ATTORNEY

**Section 16.01 Power of Attorney.** The Chargee, as attorney/agent of the Chargor and in the Chargor's name, may, at any time and from time to time after an Event of Default shall have occurred and be continuing, exercise any of the Chargor's rights, powers, authority and/or discretion relating, directly or indirectly, to the Charged Premises. The Chargor acknowledges that this power of attorney is a power coupled with an interest.

LRO # 53 Charge/Mortgage

Received as SD309725 on 2016 01 26 at 09:40

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

yyyy mm dd Page 1 of 35

**Properties**

<i>PIN</i>	73584 - 0077 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY		
<i>Address</i>	65 LARCH STREET SUDBURY		
<i>PIN</i>	73584 - 0078 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY		
<i>Address</i>	65 LARCH STREET SUDBURY		
<i>PIN</i>	73584 - 0097 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER SUDBURY		
<i>Address</i>	65 LARCH STREET SUDBURY		

**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* 65 LARCH HOLDINGS INC.  
*Address for Service* 200 Ronson Drive  
 Suite 300  
 Toronto, ON M9L 1R5  
 Attention: Mark Gross

I, Mark Gross, President, have the authority to bind the corporation.

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

**Chargee(s)**

	<i>Capacity</i>	<i>Share</i>
<i>Name</i>	AMERICAN GENERAL LIFE INSURANCE COMPANY	as to an undivided 44% interest
<i>Address for Service</i>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	
<i>Name</i>	THE VARIABLE ANNUITY LIFE INSURANCE COMPANY	as to an undivided 23% interest
<i>Address for Service</i>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	
<i>Name</i>	LEXINGTON INSURANCE COMPANY	as to an undivided 33% interest
<i>Address for Service</i>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	

LRO # 53 Charge/Mortgage

Received as SD309725 on 2016 01 26 at 09:40

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

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**Statements**

Schedule: See Schedules

**Provisions**

<i>Principal</i>	\$ 70,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	See Schedule		
<i>Balance Due Date</i>	2028/02/01		
<i>Interest Rate</i>	See Schedule		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>	See Schedule		
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>	N/A		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>	GROSS, Mark and GROSS, Sheldon		

**Signed By**

Joanne Michelle Meadowcroft	333 Bay Street, Suite 2400, Bay Adelaide Centre Toronto M5H 2T6	acting for Chargor(s)	Signed	2016 01 25
Tel	416-366-8381			
Fax	416-364-7813			

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

**Submitted By**

FASKEN MARTINEAU DUMOULIN LLP	333 Bay Street, Suite 2400, Bay Adelaide Centre Toronto M5H 2T6			2016 01 26
Tel	416-366-8381			
Fax	416-364-7813			

**Fees/Taxes/Payment**

<i>Statutory Registration Fee</i>	\$62.85
<i>Total Paid</i>	\$62.85

**File Number**

Chargee Client File Number : 276968.00011

CHARGE SCHEDULE

ARTICLE 1 - INTERPRETATION

**Section 1.01 Definitions.** In this Charge, unless there is something in the subject matter or text inconsistent therewith:

- (a) **"Additional Security"** means the security constituted by Section 2.02 hereof;
- (b) **"affiliate"** shall have the meaning ascribed thereto in the *Canada Business Corporations Act*;
- (c) **"Beneficial Owners"** means Gross Properties Inc. and 2413667 Ontario Inc. and their respective successors and permitted assigns;
- (d) **"Borrower"** means Carriage Gate Group Inc., 180 Vine Inc., 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc. and 240 Old Penetanguish Holdings Inc. and their respective successors and permitted assigns;
- (e) **"Approved Lease"** shall have the meaning ascribed thereto in Section 9.01 hereof;
- (f) **"Buildings"** means the building municipally described as 65 Larch Street, Sudbury, Ontario, and located upon the Lands, and includes all other buildings, structures, facilities, fixtures and other improvements (including parking areas) located from time to time in, on and upon the Lands, including any and all alterations, reconstruction and expansions thereof and additions thereto and all repairs and replacements during the term of this Charge, and all fixed machinery, plant, equipment, apparatus and fittings and other fixtures incorporated, or now or hereafter erected or located therein or thereon, including all machines, motors, pumps, tanks, elevators, boilers, furnaces and air-conditioning units, other than fixtures removable by tenants or subtenants thereof pursuant to the Leases;
- (g) **"Business Day"** means a day, excluding Saturday and Sunday, on which banks are open for commercial business in Toronto, Ontario;
- (h) **"this Charge", "these presents", "hereto", "herein", "hereof", "hereby", "hereunder"** and any similar expressions refer to this Charge and not to any particular Article, Section or other portion hereof, and includes any and every instrument supplemental or ancillary hereto or in implementation hereof;
- (i) **"Charged Premises"** means all right, title and interest of the Chargor in the Lands, the Buildings, the Chattels and the Additional Security together with all additional real and personal property over which the Chargee is now or hereafter granted security in respect of the obligations hereby secured, and including any other interests in the Lands and the Buildings acquired by the Chargor from and after the date hereof;
- (j) **"Chargee"** means AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest, and their respective successors and assigns;
- (k) **"Chargor"** means 65 LARCH HOLDINGS INC. and its successors and permitted assigns;
- (l) **"Chattels"** means the goods, chattels and other personal property now or hereafter located in, on and upon the Charged Premises or used by the Chargor primarily in the management or operation of the Charged Premises (save and except only goods, chattels and other personal property owned by someone other than the Chargor or removable by tenants of the Charged Premises pursuant to the terms of the Leases, provided the same is not, either individually or in the aggregate, required for the operation of the Charged Premises or required to fulfil the obligations of the landlord under the Leases);
- (m) **"City"** means the town, city or other municipality in which the Lands are located;



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- (n) **“Control” or “Controlled”** means, when used with respect to a specified Person, the power to direct the management, activities and policies of such Person directly or indirectly, whether through the ownership of voting securities or other interests, by contract or otherwise;
- (o) **“Counsel”** means any barrister and solicitor or firm of barristers and solicitors retained by the Chargee;
- (p) **“Default”** means any event, act or condition which, with the giving of notice and/or lapse of time and/or a determination being made under the relevant provisions, would constitute an Event of Default;
- (q) **“Direction to Nominee and Acknowledgement”** means a direction to nominee of even date herewith executed by the Beneficial Owners, and duly acknowledged by the Chargor;
- (r) **“DSCR”** means the ratio in respect of the Secured Premises calculated by the Chargee, acting reasonably, on a cash flow basis, by dividing the Net Operating Income (for the preceding twelve (12) calendar months), by the annual Loan payments of principal and interest and any such payments pursuant to permitted subordinate financing;
- (s) **“due inquiry”** means internal inquiries only, and restricted to the persons specifically involved in the day-to-day management of the Charged Premises;
- (t) **“Environmental Indemnity”** means an indemnity of even date herewith executed by the Chargor and the Guarantor in favour of the Chargee;
- (u) **“Environmental Laws”** means all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance and operation of the Lands;
- (v) **“Equity Mortgage”** shall have the meaning ascribed thereto in Subsection 4.01(c) hereof;
- (w) **“Event of Default”** shall have the meaning ascribed thereto in Section 6.01 hereof and elsewhere in this Charge;
- (x) **“General Assignment of Leases and Rents”** means an assignment of even date herewith executed by the Chargor in favour of the Chargee;
- (y) **“Governmental Authority”** means any federal, provincial or municipal government, parliament, legislature, quasi-governmental or regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any court having jurisdiction in the relevant circumstances;
- (z) **“Guarantee”** means a guarantee of even date herewith executed by the Guarantor in favour of the Chargee, with limited recourse thereunder;
- (aa) **“Guarantor”** means collectively, the Chargor, Mark Gross and Sheldon Gross and their respective successors and permitted assigns;
- (bb) **“Hazardous Substances”** shall include, without limitation, all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to Environmental Laws and shall include “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances” (all as defined in, referred to and/or contemplated in Environmental Laws), and asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and products treated with polychlorinated biphenyls;
- (cc) **“Land Registry Office”** means the land registry office for the land titles division at which this Charge is properly registered;

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- (dd) **"Lands"** means the lands and premises more particularly described in the Charge/Mortgage of Land to which this Schedule is attached;
- (ee) **"Leases"** and **"Lease"** means, respectively, all and any present and future leases, sub-leases, binding offers and agreements to lease or sub-lease the whole or any part of the Lands or the whole or any part of the Buildings, and all and any present and future licences, whereby the Chargor (or any authorized representative of the Chargor) gives any other Person the right to use or occupy the whole or any part of the Charged Premises, in each case for the time being in effect, and all amendments, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into, but does not include registered easements or rights in the nature of an easement;
- (ff) **"Liabilities"** shall have the meaning ascribed thereto in Section 11.05 hereof;
- (gg) **"Loan"** means the loan from the Chargee to the Borrower pursuant to three (3) promissory notes of even date herewith;
- (hh) **"Loan Documents"** means this Charge, other charges, the General Assignment of Leases and Rents, other general assignments of leases and rents, the Direction to Nominee and Acknowledgement, other directions to nominee and acknowledgements, the Environmental Indemnity, other environmental indemnities, the Guarantee and all other Security, instruments and documents executed in connection with the Loan, provided that the Mortgage Loan Application shall not constitute a Loan Document;
- (ii) **"Loan-to-Value Ratio"** means the ratio in respect of the Charged Premises calculated by the Chargee, acting reasonably, by dividing the sum of the outstanding Loan (including principal, interest and other charges thereunder) and any permitted subordinate financing (including principal, interest and other charges thereunder), by the fair market value of the Charged Premises (at the Chargee's option, such fair market value shall be determined by an appraiser selected and retained by the Chargee);
- (jj) **"Maturity Date"** means the earlier of February 1, 2026, and the date of full repayment of the Loan to the Chargee and satisfaction of the Obligations Secured;
- (kk) **"Mortgage Loan Application"** means the mortgage loan application agreement dated November 30, 2015, between the Chargee, as lender, the Borrower, as borrower, and the Guarantors, as guarantors, as it may have been amended, modified, renewed, replaced, extended, supplemented and/or restated prior to the date hereof;
- (ll) **"Mortgage Rate"** means the nominal rate of interest of twenty-five per cent (25%) per annum, calculated semi-annually not in advance, as well as after as before demand, and as well after as before default or judgment, with interest on overdue interest at the same rate, calculated and compounded in the same manner, until paid;
- (mm) **"Net Operating Income"** means all gross revenues generated by the Secured Premises (excluding loans or contributions to capital), less operating expenses (excluding Loan debt service payments), as determined on a cash basis of accounting, adjusted however, so that (i) operating expenses shall be deemed to include a management fee equal to the greater of the annual property management fee payable to the Property Manager and 4% of gross revenues, together with a tenant improvement, leasing commission and capital reserve equal to \$0.25 per leaseable square foot; (ii) payment of operating expenses (including realty taxes and insurance expenses but excluding extraordinary items) are to be spread out over the period during which they accrued and adjusted for all known future changes thereto; (iii) prepaid rents and other prepaid amounts are to be spread out over the periods during which they are earned or applicable; (iv) security deposits shall not be included until duly applied or earned; (v) gross revenues shall be based on Leases in place as determined pursuant to standard underwriting criteria, consistently applied, and excluding extraordinary items; and (vi) all refunds/rebates of operating expenses shall be credited against operating expenses for the period in which such operating expenses were incurred;
- (nn) **"Notice"** shall have the meaning ascribed thereto in Section 13.01 hereof;

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- (oo) "Obligations Secured" shall have the meaning ascribed thereto in Section 2.04 hereof;
- (pp) "Permitted Encumbrances" means:
- (i) applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with governmental authorities or private or public utilities and building restrictions provided same are in compliance and do not materially adversely affect the use or value of the Lands;
  - (ii) any easements, servitudes, rights-of-way, licences, restrictions that run with the Lands and other minor encumbrances (including easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables) which do not materially adversely affect the use or value of the Lands;
  - (iii) defects, discrepancies, encroachments or irregularities in title to the Lands which are of a minor nature and do not in the aggregate materially adversely affect the use or value of the Lands;
  - (iv) inchoate liens for Taxes, assessments, governmental charges or levies accrued but not yet due and payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings (but from which there is no possibility of seizure/sale by the municipality);
  - (v) inchoate liens for public utilities accrued but not yet due and payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings (but from which there is no possibility of seizure/sale by the utility);
  - (vi) undetermined or inchoate liens incidental to construction, renovation or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Chargor pursuant to the *Construction Lien Act* (Ontario), and in respect of any of the foregoing cases, the Chargor, where applicable, has complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom and to preserve the priority of the lien of this Charge;
  - (vii) the reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other Person;
  - (viii) encroachments by the Lands over neighbouring lands, or by neighbouring lands over the Lands, which are of a minor nature and do not in the aggregate materially adversely affect the use or value of the Lands;
  - (ix) any notices in respect of existing Leases and future Leases entered into in accordance with the provisions hereof;
  - (x) Unregistered Agreements existing as of the date hereof in respect of which the Chargee has been given actual notice, and any others approved of by the Chargee from time to time, acting reasonably;
  - (xi) purchase money security interests in personal property or fixed equipment located at the Lands given in the ordinary course of the Chargor's business up to a maximum of \$50,000.00;
  - (xii) the Security; and
  - (xiii) any encumbrance or lien consented to, in writing, by the Chargee from time to time (including all encumbrances registered against the Lands as of the date hereof);

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- (qq) **"Person"** means an individual, corporation, association, partnership, trust (including a real estate investment trust) or other entity, any group of individuals, corporations, associations, partnerships, trusts or other entities, or any other combination thereof;
- (rr) **"Principal Sum"** means the amount of principal money outstanding from time to time and secured by this Charge;
- (ss) **"Property Manager"** means Gross Capital Inc.;
- (tt) **"Related Entities"** means Persons who are or which are:
- (i) affiliates; or
  - (ii) considered or deemed to be within the group of "related persons" or "affiliated persons", as such terms are defined in Sections 251 and 251.1 of the *Income Tax Act* (Canada) in effect as of the date hereof; or
  - (iii) considered or deemed to be within the group of "affiliated entities" as such term is defined in Rules adopted under the *Securities Act* (Ontario) in effect as of the date hereof; or
  - (iv) with respect to any Person, any other Person which, directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, such Person; or
  - (v) a trust in respect of which the trustees and the beneficiaries holding a majority of the interests in such trust (other than any charitable beneficiaries) are Controlled by the transferor or any one or more Related Entities of the transferor;
- (uu) **"Replacement Cost"** means the gross cost of repairing, replacing and/or reinstating any item of property with materials of like kind, quantity and quality on the same or a similar site, including municipal by-laws extension if applicable and without deduction for physical, accounting or other depreciation, and provided that the Replacement Cost of the Charged Premises shall be deemed to be not less than the Principal Sum;
- (vv) **"required works"** shall have the meaning ascribed thereto in Section 5.05(c) hereof;
- (ww) **"Secured Premises"** means the Charged Premises together with all other real property secured by the Security;
- (xx) **"Security"** means the documents creating a lien in favour of, or any collateral or guarantee held from time to time by, the Chargee, in each case securing or intended to secure repayment and performance of the obligations of the Chargor under this Charge including the Obligations Secured;
- (yy) **"Servicer"** means Largo Real Estate Advisors, Inc. or any replacement thereof appointed by the Chargee;
- (zz) **"Taxes"** means all taxes, duties, rates, imposts, assessments and other similar charges, municipal, local, parliamentary and otherwise, general and special, ordinary and extraordinary, foreseen and unforeseen, and all related interest, penalties and fines, which now are or may hereafter be imposed, charged or levied upon the Charged Premises or the Lands;
- (aaa) **"Termination Fees"** has the meaning ascribed thereto in Section 9.01 hereof;
- (bbb) **"Transfer"** has the meaning ascribed thereto in 0 hereof;
- (ccc) **"Transfer Conditions"** mean all of the following: (a) no Default or Event of Default shall have occurred and be continuing; (b) after the proposed transfer, Mark Gross and Sheldon Gross shall continue, directly or indirectly, to Control the Chargor and own, directly or indirectly, not less than 51% of the controlling voting interests in the Chargor; (c) the Chargor shall deliver to the Chargee not less than ninety (90) days' prior written notice of the proposed transfer, together with organizational charts illustrating the ownership structure before and the ownership structure after the proposed change in

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ownership, which organizational charts shall set forth the Chargor's direct and indirect upstream ownership and percentage interests held by each upstream Person (individually an "Organizational Chart"); (d) within thirty (30) days after the transfer has occurred, the Chargor shall deliver to the Chargee a final Organizational Chart confirming the new ownership structure; (e) the Chargor shall pay all costs, fees and expenses (including legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee in connection with reviewing the proposed transfer, whether or not the transfer is consummated; (f) the proposed transferee and its Related Entities (i) are not then identified by the Office of Foreign Assets Control or Department of Treasury (United States) as subject to trade restrictions under United States law including, but not limited to, the *International Emergency Economic Powers Act*, the *Trading with the Enemy Act* and any Executive Orders or regulations promulgated thereunder (as such laws and regulations have been or may hereafter be renewed, extended, amended or replaced), with the result that such proposed transferee and its constituent members are in violation of law and/or the transaction of business with such parties is prohibited by law, (ii) are not in violation of any applicable laws relating to terrorism or money laundering including, without limitation, those relating to transacting business with persons identified in clause (i) above, the requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (as such laws and regulations promulgated thereunder have been or may hereafter be renewed, extended, amended or replaced), and (iii) if the Chargee requests, sign a certificate in form and substance satisfactory to the Chargee evidencing such compliance and identifying the transferees with sufficient information to enable the Chargee to perform searches confirming the foregoing (except that identifying information need not be provided for any transfers made in the ordinary course of business over a national securities exchange); and (g) concurrently with delivery of the notice required in clause (d) above, the Chargor shall pay the Chargee an administrative review fee; and

(ddd) "Unregistered Agreements" means those unregistered agreements (and all amendments thereof) in connection with the Charged Premises approved by the Chargee, acting reasonably.

For purposes of calculating all ratios pursuant to this Charge and calculating all other amounts hereunder (including without limitation, Net Operating Income), the Loan payments paid by the Borrower shall be deemed to be paid by the Chargor.

**Section 1.02 Headings.** The headings of all Articles and Sections hereof are inserted for convenience of reference only and shall not affect the construction or interpretation of this Charge.

**Section 1.03 References.** Whenever in this Charge a particular Article, Section or other portion thereof is referred to then such reference, unless otherwise indicated, shall pertain to an Article, Section or portion thereof contained herein.

**Section 1.04 Currency.** All dollar amounts expressed herein are expressed as being lawful money of Canada.

**Section 1.05 Governing Law.** This Charge shall be governed by and construed in accordance with the laws in effect in the Province of Ontario and, by execution and delivery of this Charge, the Chargor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Chargor hereby waives, and agrees not to assert, by way of motion, as a defence or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in or nearby the City, that the action or proceeding is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Charge or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

**Section 1.06 Numbers and Gender.** This Charge shall be construed with all changes in number and gender required by the circumstances. All wording applicable to a person shall be construed to apply to a Person.

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## ARTICLE 2 - SECURITY AND REPAYMENT

**Section 2.01 Charge.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Chargor, the Chargor does hereby charge unto the Chargee and its successors and assigns, as and by way of a first fixed and specific mortgage and charge, all of the right, title and interest of the Chargor in and to the Charged Premises, to have and to hold such Charged Premises, this Charge and all rights conferred hereunder, unto the Chargee, as security for the Obligations Secured, with the powers and authorities herein expressed, but subject to the provisions contained herein.

**Section 2.02 Additional Security.** Subject to Section 8.01 and for the consideration described in Section 2.01, as additional security for the Obligations Secured and the performance and observance of all covenants herein to be performed and observed by the Chargor, the Chargor does hereby assign, transfer and set over unto the Chargee and its successors and assigns all of the Chargor's right, title and interest in and to the following (collectively the "Additional Security"):

- (a) all moneys received by the Chargor from any tenancy, use or occupation of any part of the Charged Premises (including all rents and other sums payable to the Chargor pursuant to the Leases);
- (b) all benefits, advantages and powers to be derived by the Chargor from the Leases and all security provided by tenants in connection therewith, with full power and authority to demand, sue for, recover, receive and give receipts for all rents and all other moneys payable to the Chargor thereunder and otherwise to enforce the rights of the landlord thereunder in the name of the Chargor;
- (c) the benefit of all guarantees of and indemnities with respect to any Leases and the performance of all obligations thereunder;
- (d) the benefit of all insurance indemnities pertaining to the Leases including, without limitation, those covering rents and other income derived thereunder; and
- (e) all bank accounts maintained in respect of the Chargor and/or the Charged Premises and the moneys deposited therein from time to time.

Provided that, until the Chargee is in possession or becomes the owner of the Charged Premises, the Chargor shall and hereby agrees to indemnify and save harmless the Chargee from and against any and all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses, howsoever arising, in connection with the Leases other than those arising from the gross negligence or wilful misconduct of the Chargee.

**Section 2.03 Principal Sum.** The Chargor hereby acknowledges itself indebted and covenants and promises to pay to the Chargee, upon demand, all amounts now or hereafter owing by the Chargor to the Chargee, up to the maximum principal amount of Seventy Million Dollars (\$70,000,000.00) in lawful money of Canada, and to pay interest thereon, from and including the date hereof to and including the date of payment, at the Mortgage Rate.

**Section 2.04 Payment and Performance Obligations.** This Charge secures payment by the Chargor to the Chargee of all debts and liabilities, present and future, direct and indirect, absolute and contingent and matured and not matured, at any time owing by the Chargor to the Chargee pursuant to the Guarantee, this Mortgage and/or the Loan Documents, whether arising from dealings between the Chargor and the Chargee or from any other dealings or proceedings relating to such obligations of the Chargor under or pursuant to such documentation, and wherever incurred, and whether incurred by the Chargor alone or with another or others and whether as principal or surety, and all legal and other costs, charges and expenses (the "Obligations Secured").

**Section 2.05 Lien in Effect.** The lien and charge created by this Charge shall take effect forthwith upon the execution of these presents by the Chargor, and in any event whether any part of the Loan shall or shall not be advanced, the costs and expenses (legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee including, without limitation, in the examination of title to the Lands, the preparation of this Charge and other Loan Documents, the registration of this Charge and other registered Security and the valuation and inspection charges

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in respect thereof, shall be a charge upon the Charged Premises, shall bear interest at the Mortgage Rate and shall be payable forthwith, and in default of payment for five (5) Business Days following receipt by the Chargor of notice in writing from the Chargee shall constitute an Event of Default herein.

**Section 2.06 Performance by Chargee.** If the Chargor shall fail to perform any covenant on its part herein contained following the occurrence and during the continuance of an Event of Default, the Chargee may, in its sole, absolute and unfettered discretion, but shall not be obligated to, perform such covenant capable of being performed by it and, if such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds, acting reasonably, but shall be under no obligation to do so; and all such payments and expenditures shall be at once payable by the Chargor and shall bear interest at the Mortgage Rate, and shall be secured hereby, but no such performance or payment shall be deemed to relieve the Chargor from any Event of Default hereunder.

**Section 2.07 Payment by Electronic Funds Transfer.** All payments due under this Charge shall be made by the Chargor by electronic funds transfer from a bank account established and maintained by the Chargor for such purpose. The Chargor shall establish and maintain such an account until all amounts secured hereunder are fully paid.

### ARTICLE 3 - CHARGOR'S COVENANTS AND REPRESENTATIONS AND WARRANTIES

**Section 3.01 Covenants.** The Chargor hereby covenants:

- (a) **Payment.** to pay or cause to be paid to the Chargee all sums payable hereunder on the days, at the times and in the manner provided for in this Charge;
- (b) **Performance of Other Obligations.** to perform and comply with all other covenants, conditions and prohibitions required of the Chargor by the terms of the Loan Documents;
- (c) **Performance under Encumbrances.** to perform all of its obligations under the Permitted Encumbrances, the Leases and the Unregistered Agreements;
- (d) **Maintenance and Repair of Charged Premises.** to repair or cause to be repaired and keep or cause to be kept in good order and repair the Charged Premises from time to time in accordance with the standards of a prudent owner of similar real property in the circumstances; complete or cause the prompt and reasonable completion of all Buildings which are at any time in the process of construction; maintain access to and supply for the Charged Premises of all public utility services (including, without limitation, water supply, storm and sanitary sewer facilities, and natural gas, electric, telephone and cable television services) necessary or desirable for the operation of the Charged Premises for its intended purposes; and shall at all reasonable times, during business hours and upon not less than 48 hours prior written notice, but subject to the provisions of the Leases and the rights of the tenants thereunder, to allow the Chargee and its duly authorized representatives access to the Charged Premises in order to view the state and condition thereof;
- (e) **Leases.** to timely pay and perform, in all material respects, its obligations under the Leases, and pay such sums and take such commercially reasonable action as shall be necessary or required in order to maintain each of the Leases in full force and effect in accordance with its terms; to provide to the Chargee within 45 days following the end of each fiscal year of the Chargor and otherwise upon reasonable demand therefor, copies of all new Leases, amendments thereof and agreements regarding Lease termination, surrender or assignment entered into by the Chargor subsequent to the date hereof, together with a rent roll with the names of each tenant, rental area, term and rent (basic rent, additional rent and percentage rent) and details of any monetary defaults which are continuing; to promptly furnish to the Chargor copies of all notices given to the Chargor by the tenant under any Lease, alleging landlord default, extending the term of any Lease, requiring or demanding the expenditure of any sum by the Chargor, demanding the taking of any action by the Chargor or relating to any other material obligation of the Chargor under such Lease and all subsequent communications in connection therewith; the Chargee may, in its sole, absolute and unfettered discretion, advance any sum or take any action necessary to maintain the Leases in full force and effect, and all sums advanced

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and costs and expenses incurred by the Chargee in connection therewith shall be due and payable, upon demand, shall bear interest at the Mortgage Rate and shall be fully secured hereunder;

- (f) **Payment of Claims Against Charged Premises.** to pay or cause to be paid, as and when the same become due and payable, all liens, charges, encumbrances and claims which are or may become charges or claims against the Charged Premises, or any part thereof including, without limitation, all bills or accounts relating to the supply of public utility services and other services of a similar nature; the Chargee is hereby authorized by the Chargor to obtain from all suppliers of services and from all other fiscal/governmental authorities, any information which such suppliers or authorities may have with respect to the Charged Premises and the amounts which may be due or owing by the Chargor to any of them;
- (g) **Parking.** to provide, or cause to be provided, from time to time and at all times in, on or upon the Charged Premises sufficient parking to comply with all requirements of all laws, regulations and by-laws regulating parking (including any parking which constitutes a legal non-conforming use pursuant to such laws and/or by-laws), together with such additional parking spaces as may be required under any Leases or other agreements to which the Chargor is bound;
- (h) **Condominium.** not to register or cause to be registered the Charged Premises pursuant to the *Condominium Act* (Ontario);
- (i) **Information.** to forthwith provide to the Chargee all information and documentation pertaining to the Charged Premises reasonably requested by the Chargee from time to time (including, without limitation, evidence of payment of Taxes, insurance premiums and debts which, with the passage of time, could constitute a lien against the Charged Premises);
- (j) **Claims of Invalidity.** not to take any step, action or proceeding or make any claim which denies, impairs, delays, diminishes or challenges the binding nature, validity and/or enforceability of this Charge and/or other Loan Documents;
- (k) **Oppose Claims Against Charged Premises.** to diligently oppose all material claims against the Chargor and/or the Charged Premises and to diligently prosecute all claims initiated by the Chargor;
- (l) **Books of Account and Records.** to keep and maintain proper books of account and records accurately covering all aspects of the business and affairs of the Chargor relating to the Charged Premises and to make available from time to time, upon reasonable notice and during regular business hours, all of such records and books of account in connection with the Charged Premises; upon request, the Chargor shall deliver to the Chargee copies of all plans, specifications and drawings (including as-built plans and working drawings and other specifications) relating to the Charged Premises and all improvements thereon which are in the possession or control of the Chargor together with all related architectural, structural, electrical and mechanical drawings which are in the possession or control of the Chargor;
- (m) **Management.** to manage or cause to be managed the Charged Premises as would a prudent owner of similar real property, with a view to preserving and protecting the Charged Premises and the revenues and profits therefrom;
- (n) **Property Manager.** cause the Charged Premises to be managed by the Property Manager pursuant to a property management agreement and all amendments thereof approved by the Chargee, acting reasonably; no management fee shall be paid to a manager of the Charged Premises which exceeds the market rate without the prior written authorization of the Chargee, acting reasonably;
- (o) **Death of Individual Guarantor.** within thirty (30) days after the death of an individual Guarantor, notify the Chargee in writing of such death and provide to the Chargee the names and current financial statements of one or more substitute guarantors acceptable to the Chargee, acting reasonably, whose net worth and financial condition, as determined by the Chargee, acting reasonably, is equal to or greater than that of the deceased



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Guarantor; within sixty (60) days after the death of the individual Guarantor, the substitute guarantor(s) shall: (i) deliver to the Chargee the financial reports and statements required in Section 3.04 hereof and in the Guarantee; and (ii) execute and deliver to the Chargee a guarantee and an environmental indemnity in substantially the same form as the Guarantee and Environmental Indemnity and such other instruments as the Chargee may request, acting reasonably; and

- (p) **Possession upon Event of Default.** that, from and after the occurrence of an Event of Default which is continuing, subject to the provisions of Article 7, the Chargee shall be lawfully entitled to peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy the Charged Premises without hindrance, interruption or denial by the Chargor or any other Person, subject only to the Leases and the rights of the tenants thereunder and the Permitted Encumbrances.

**Section 3.02 Representations and Warranties.** The Chargor hereby represents and warrants that:

- (a) **Title.** at the time of the execution and delivery of this Charge, the Chargor is the sole legal owner of the Charged Premises, with good and marketable title thereto, free and clear of all liens, charges, encumbrances, easements, restrictions, trusts, reservations, limitations, provisos and conditions whatsoever, except the Permitted Encumbrances;
- (b) **Encumbrances.** it has not previously assigned, charged or encumbered in any manner the Charged Premises, except for the Permitted Encumbrances;
- (c) **Authority.** it is duly organized, validly existing and in good standing pursuant to the relevant laws and has good right, full power and lawful authority to charge the Charged Premises in favour of the Chargee as contemplated hereunder, conduct its business, own its property (including the Charged Premises), comply with its obligations hereunder and pursuant to the Security and that, except as provided by the Chargor prior to any advance hereunder, no consents or approvals are required in connection with the execution, delivery, registration and enforcement of this Charge and related Security pursuant to the Permitted Encumbrances and/or the Unregistered Agreements;
- (d) **Impairment of Title.** at the time of the execution and delivery of this Charge, it has not committed, executed or willfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Charged Premises, or any part thereof, is or shall or may be in any way impaired, charged, affected or encumbered in title, estate or otherwise, except for the Permitted Encumbrances;
- (e) **Compliance with Law.** except as previously disclosed in writing to the Chargee and to the best of its knowledge, information and belief, after making due inquiry, that the Charged Premises comply in all material respects with all laws, statutes, regulations, ordinances, orders, directives and any other instrument having the force of law including, without limitation, all applicable building, zoning, planning, development, construction, construction lien, environmental, fire code, occupation and land use laws; to the best of its knowledge, information and belief, after making due inquiry, that the Charged Premises are being used for retail and office purposes only;
- (f) **Disclosure.** to the best of its knowledge, information and belief, after making due inquiry, all material information pertaining to the market value and operation of the Charged Premises and the Chargor's financial condition is true and accurate and has been fully disclosed in writing to the Chargee; that there is no legal action or other proceedings instituted, pending or threatened or judgment or order issued, against the Chargor and/or the Charged Premises nor any part thereof which would have a material adverse effect on the Charged Premises or the Security; that the Chargor has received no notice of any material work orders, deficiency notices or notices of violation pertaining to the Charged Premises or any part thereof; to the best of its knowledge and belief, that the Buildings and all other structures located on the Lands have been built in accordance with plans and specifications approved by all required municipal authorities, in a good and workmanlike manner and do not contain urea formaldehyde foam insulation, polychlorinated biphenyls or asbestos, in any form;

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- (g) **No Construction Financing.** the Principal Sum is not intended to be utilized for the purposes of securing the financing of any improvements whatsoever with regard to the Charged Premises, nor for the purposes of repaying any financing, charge or otherwise which was utilized or intended to be utilized for the financing of any improvements with regard to the Charged Premises, and accordingly, it is not the intention for the security to be taken hereunder to be a "Building Mortgage", as contemplated in Subsection 78(2) of the *Construction Lien Act* (Ontario), or a charge taken out to repay such a "Building Mortgage";
- (h) **Accuracy of Deliveries.** all materials, agreements, documents, plans, drawings and written information relating to the Charged Premises and/or the Chargor and delivered to the Chargee up to and including the date hereof in connection with this Charge are, to the best of the Chargor's knowledge, information and belief, after due inquiry, complete and accurate in all respects;
- (i) **No Claims.** to the best of its knowledge, information and belief, after making due inquiry, it has not received notice of and is not otherwise aware of any claim by a third party against the Chargor and/or the Charged Premises except as disclosed to the Chargee prior to the date hereof;
- (j) **No Default or Event of Default.** no Default and/or Event of Default has occurred and is continuing;
- (k) **Residency.** it is not now and at all times prior to the Maturity Date it will not be a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (l) **Leases.** except as set out in the Leases or as disclosed by the Chargor to the Chargee prior to the date hereof, all tenants under existing Leases as of the date hereof are occupying their premises in the Charged Premises pursuant to an arm's-length, executed, fully net lease, are paying rent as required under their respective Leases (without any future rent-free periods), are not claiming any deduction or set-off from the rent payable (without future tenant improvement allowance payments or landlord improvement obligations), have not prepaid more than two (2) months' rent, are in occupancy and operating their business and have accepted the state and condition of their respective leased space; and
- (m) **Designated/Blocked Person.** none of the Chargor, the Guarantor, a Related Entity of the Chargor or a Related Entity of the Guarantor is: (i) a designated/blocked Person by the United States Treasury; or (ii) an agent for or Controlled by a designated/blocked Person; or (iii) a Person, entity, foreign country or regime subject to or in violation of United States sanctions; or (iv) charged with, convicted of or incurred civil penalties or seizure or forfeiture for United States money laundering, drug trafficking, terrorist-related activities or economic sanctions.

The Chargor represents and warrants that the representations and warranties set out in this Charge are true and correct as at the date hereof and covenants and agrees that such representations and warranties will continue to be true and correct until repayment of all amounts secured hereunder. For greater certainty, such representations and warranties shall be deemed to be repeated on each day during the term of the Loan until repayment of all such amounts.

**Section 3.03 No Approval or Release.** Acceptance by the Chargee of payments from any transferee of the Charged Premises or any interest therein and not approved by the Chargee in accordance with this Charge, shall not be deemed to constitute the Chargee's approval or acceptance of such transferee. Furthermore, the Chargee's approval or consent to any Transfer of the Charged Premises or any interest therein shall not release or otherwise affect the liability of the Chargor hereunder to pay all sums secured hereby or affect the application of this Section 3.03 to all further approved Transfers.

**Section 3.04 Financial Statements etc.** The Chargor shall furnish or cause to be furnished to the Chargee, not later than one hundred and twenty (120) days following the relevant fiscal year, the following:

- (a) audited financial statements in respect of the Chargor, prepared by a firm of chartered accountant(s) in accordance with generally accepted accounting principles, consistent

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with previous years and including all appropriate documents, explanatory notes and additional information;

- (b) certified financial statements in respect of each of the parties comprising the Guarantor, prepared by a firm of chartered accountant(s) in accordance with generally accepted accounting principles, consistent with previous years and including all appropriate documents, explanatory notes and additional information; and
- (c) a copy of the most recent year-end rent roll for the Buildings, a copy of the operating statement for the Buildings, a tenant arrears report for the current fiscal year, a budget for the current fiscal year, and detail of capital expenditures for the previous year and a capital budget for the ensuing fiscal year.

In addition, the Chargor shall supply or cause to be supplied to the Chargee: (i) within 45 days following the end of each calendar quarter during the term of this Charge, a copy of a tax receipt or other independent verification of payment of Taxes for the Lands; (ii) within thirty (30) days following each calendar quarter and year-end, (A) a certified rent roll for the Charged Premises signed and dated by the Chargor as of the last day of the preceding calendar quarter identifying all of the Leases by tenant, term, renewal options, space occupied, rents and charges required to be paid, and (B) monthly and year-to-date operating statements for the Charged Premises (including comparables to the relevant budget and the previous year), which shall include an itemization of actual capital expenditures during applicable periods, prepared in accordance with generally accepted accounting principles, consistently applied; (iii) immediate notification of the occurrence of any Default or Event of Default; (iv) notification of any material damage or destruction to the Charged Premises immediately following the occurrence of such damage or destruction; (v) immediate notification of any material default under a Lease, (vi) from time to time, upon reasonable request, any further financial information then still undisclosed, pertaining to the Chargor, each of the parties comprising the Guarantor and/or the Charged Premises; and (vii) such documentation and information, including identification, as the Chargee may require to ensure compliance with the principles of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) legislation.

The Chargor shall provide the Chargee, upon request of the Chargee, acting reasonably, with a certificate of an officer of the Chargor or other reasonable evidence confirming compliance by the Chargor with all statutory requirements for the collection and remittance of goods and services or harmonized sales tax, provincial sales taxes, payroll deductions and all other amounts which can form a lien in priority to the Security, for any and all periods covered by the above-described financial statements.

The Chargee reserves the right to disclose to third parties, financial information provided to the Chargee in connection with the Loan, provided that such right shall be limited to potential assignees of part or all of the Charge, the Chargee's auditors, the Chargee's solicitors, the Chargee's bankers, the Chargee's accountants, the Chargee's other advisers, rating agencies, investors and Persons to whom/which such information is ordinarily disclosed by the Chargee pursuant to its disclosure policy. For those parties reviewing information which is more extensive than that which may be disclosed publicly in a prospectus for mortgage securitization purposes, the Chargee shall ensure that the parties having access to such information sign confidentiality agreements.

In addition, at all times, the Chargee may disclose, privately or publicly, the name of the Chargor, the name of the Chargor's affiliates, the name and nature of the project, if any, located on the Charged Premises and the amount of the outstanding balance of loan secured by this Charge, and the Chargor irrevocably waives all rights it may have to prohibit such disclosure including, without limitation, any right of privacy.

The Chargor and Guarantor may disclose to third parties information concerning the Loan, provided that such right shall be limited to their auditors, solicitors, bankers, accountants and other advisors. For those parties reviewing information which is more extensive than that disclosed in the Land Registry Office, the Chargor and Guarantor shall ensure that the parties having access to such information sign confidentiality agreements.

**Section 3.05 Further Assurances.** Notwithstanding the execution, delivery and/or registration of this Charge and/or the advance of funds hereunder, the Chargee reserves the right to require and the Chargor covenants to provide to the Chargee such additional security instruments

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(including specific assignments of Leases), assurances and support documents as the Chargee may, from time to time, acting reasonably, deem necessary or advisable to give effect to this Charge and the transaction contemplated hereby.

#### ARTICLE 4 – CHARGOR'S NEGATIVE COVENANTS

**Section 4.01 Negative Covenants.** The Chargor hereby covenants:

- (a) **Waste.** not to permit waste to be committed or suffered on the Charged Premises and not to remove or attempt to remove the Buildings, or any part thereof, from the Lands (other than tenant's improvements removable by a tenant in accordance with its Lease or as contemplated in Section 4.01(b), Section 4.01(f) or Section 5.05(e)) and to refrain from doing anything or allowing anything to be done which would result in a material impairment or diminution of the market value of the Charged Premises and to operate the Charged Premises at all times in accordance, in all material respects, with all applicable laws and ordinances, whether municipal, county, provincial or federal, including compliance in all material respects with any legislation and regulation in respect of the accommodation of handicapped persons and environmental protection, to the extent applicable to the Charged Premises;
- (b) **Alterations.** except as otherwise provided in the Leases or in another Loan Document, not to undertake any material change, expansion or alteration of the Buildings or access thereto without the prior written approval of the Chargee, which approval shall not be unreasonably withheld or delayed; and, in connection with any such material change, expansion or alteration of the Buildings and all other supplies of materials and services to the Charged Premises, to comply in all respects with the provisions of the *Construction Lien Act* (Ontario) and to vacate or discharge any construction, repairer's or other lien filed against all or any part of the Charged Premises within ten (10) Business Days following the date on which the Chargor receives notice thereof; upon request, to provide the Chargee with reasonable evidence of its compliance with such legislation;
- (c) **Encumbrances.** except as otherwise expressly permitted under this Charge and except for Permitted Encumbrances, not to charge or otherwise encumber the Charged Premises nor to permit, allow or suffer the Charged Premises or any part thereof or interest therein or any interest, direct or indirect, in the Chargor, to be pledged, charged or otherwise encumbered in favour of any other creditor without the prior written consent of the Chargee, which may be withheld in the Chargee's sole, absolute and unfettered discretion;

notwithstanding any other provision contained in this Charge, the Property may be mortgaged (an "Equity Mortgage") in favour of one or more shareholders in the capital of one or both of the Beneficial Owners, subject to the following:

- (i) the shareholder shall own (as registered and beneficial owner) not less than 51% of the capital in the relevant Beneficial Owner(s);
- (ii) the Equity Mortgage shall, at all times, be subordinated and postponed in favour of this Charge;
- (iii) all amounts received pursuant to the Equity Mortgage (which shall include all dividends and other funds received as shareholders of the Beneficial Owners after the occurrence of an Event of Default which is continuing) shall be received, in trust, for the Chargee pursuant to this Charge, until this Charge is fully paid and discharged;
- (iv) the Equity Mortgage lender shall be entitled to receive notice of an Event of Default and an opportunity to rectify, but doing so shall not entitle the Equity Mortgage lender to benefit from, hold and/or enforce any rights pursuant to this Charge;
- (v) in the event of an Equity Mortgage default, the Equity Mortgage lender shall not exercise any remedy unless this Charge has first been fully paid, satisfied and discharged or unless the Chargee, in its sole, absolute and unfettered discretion, authorizes such exercise;

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- (vi) until this Charge has been fully paid, satisfied and discharged, the Equity Mortgage lender may not assign or otherwise convey part or all of its interest in the Equity Mortgage; and
  - (vii) in the event of a Borrower bankruptcy/insolvency, the Chargee shall act as the Equity Mortgage lender's agent in all voting and related matters.
- (d) **Transfers.** except as otherwise expressly permitted under this Charge, or except with the prior written approval of the Chargee, which may be withheld in its sole, absolute and unfettered discretion, not to:
- (i) sell, assign, convey, transfer, lease in its entirety or otherwise dispose of legal ownership or title to the Charged Premises or any part thereof or interest therein; or
  - (ii) permit any changes of beneficial ownership of the Charged Premises
- (each of the above being a "Transfer");

notwithstanding any other provision contained in this Charge, the Chargor's failure to comply with or the occurrence of one or both of the above shall constitute an Event of Default for which all rectification periods therefor shall be deemed to have passed/expired and the Chargee may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan and this Charge, in full, together with all accrued interest and all other amounts secured hereby; in either of the events above, the Chargee may, in its sole, absolute and unfettered discretion, deny such consent or may require as one of the terms for giving consent that the purchaser/transferee shall execute an assumption agreement in favour of the Chargee by which it shall agree to be bound by this Charge and all of the related Security and Loan Documents (to the extent applicable);

notwithstanding the above, the Chargor shall be permitted to effect a Transfer without the consent of the Chargee, provided that such Transfer (i) occurs between Related Entities, or (ii) results from the amalgamation or merger of the Chargor with a Related Entity; and

further, notwithstanding the above, provided that no Transfer, individually or collectively, has more than a de minimus adverse effect on the value of the remainder of the Lands, the consent of the Chargee shall also not be required to any conveyance by the Chargor to any municipality, region or province (or any government agency thereof), or to any conservation authority or water resources commission, or to any public or private utility, including, without limitation, any one-foot reserves, parklands, walkways, road widenings or roads, that are completed by the Chargor, acting reasonably, and the Chargee shall grant a partial discharge of this Charge in respect of any of the foregoing;

- (e) **Change of Control.** except as otherwise expressly provided hereunder, not to make or permit to be made any changes to its capital structure or constating documents which would result in a change of Control, without the prior written consent of the Chargee (which consent may be withheld in the Chargee's sole, absolute and unfettered discretion); and
- (f) **Transfer or Removal of Personal Property.** not to remove or destroy and not to permit to be removed or destroyed any of the personal property which is owned by the Chargor and is located at the Charged Premises, without the prior written approval of the Chargee, such approval not to be unreasonably withheld or delayed; provided approval shall not be required and nothing herein shall prevent the removal of any such personal property in the ordinary course of the Chargor's business or from one part of the Charged Premises to another or the temporary removal of any such personal property for purposes of repair; and provided further that the Chargor may remove, dismantle, sell, exchange or otherwise dispose of any personal property which has become obsolete, worn out, unserviceable or unnecessary for use in the conduct of the business on the Charged Premises if such personal property is replaced by personal property of at least equal value or if such personal property so dealt with in one transaction and not so replaced does not materially adversely affect the value of the Charged Premises by its removal.

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**Section 4.02 Permitted Transfers of Chargor Shares.** Notwithstanding Section 4.01 hereof, and provided that the Transfer Conditions are satisfied at the time of each permitted transfer, up to 25% in the aggregate of: (a) the outstanding shares in the capital of the Chargor; and (b) registered/beneficial title in the Charged Premises, may be transferred during the term of the Loan without the Chargee's consent.

**Section 4.03 Permitted Transfers - Beneficial Ownership of Charged Premises.** Notwithstanding Section 4.01 hereof and all other provisions of this Agreement, the Beneficial Owners may transfer their beneficial interest therein or any part thereof once during the term of the Loan without the Chargee's consent, provided that the following conditions are then satisfied: (a) no Default or Event of Default shall have occurred; (b) the Chargor shall have paid to the Chargee an assumption fee of one per cent (1%) of the then outstanding Obligations Secured; (c) the Chargee shall have received and had a reasonable opportunity to review and approve acting reasonably all organizational documentation of the proposed transferee including, without limitation, articles of incorporation, partnership and operating agreements, bylaws, certificates of good standing and authorizing resolutions and to review and approve all other documents and agreements relating to the proposed transfer; (d) the non-economic terms (being those terms other than interest rate, payment schedule, principal balance and non-recourse nature) of the Loan Documents shall have been modified as the Chargee shall have requested, acting reasonably; (e) the proposed transferee shall have assumed all of the Chargor's obligations under the Loan Documents; (f) the Chargee shall have received not less than thirty (30) days' prior written notice of the proposed transfer; (g) the proposed transferee (including, if applicable, its general partners) shall have, as determined by the Chargee, acting reasonably, a net worth equal to that of the Chargor as of the date hereof or otherwise satisfactory to the Chargee and a satisfactory history of owning, operating and leasing property similar to the Property; (h) the proposed transferee (including, if applicable, its general partners) shall have, as determined by the Chargee, acting reasonably, a satisfactory credit history and professional reputation; (i) the DSCR shall not be less than 1.50 and the Chargee shall have received satisfactory evidence that such ratio will be maintained for the following twelve (12) month period; (j) the Loan-to-Value Ratio shall not exceed 65%; (k) the Chargor shall pay all costs, fees and expenses incurred by the Chargee in connection with such transfer including, without limitation, all legal (being fees and disbursements on a substantial indemnity basis), processing, accounting, title insurance and appraisal fees, whether or not such transfer is consummated; (l) the principals of the proposed transferee (which transferee is acceptable to the Chargee in its sole, absolute and unfettered discretion) shall have executed and delivered a guarantee agreement in the form of the Guarantee and an environmental indemnity in the form of the Environmental Indemnity; (n) the proposed transferee's counsel shall have delivered to the Chargee a corporate existence, authority, due execution and enforceability opinion regarding the Loan Documents and the proposed transferee's assumption thereof; (o) the proposed transferee and its Related Entities shall not be in violation of any laws relating to terrorism or money laundering including, without limitation, *Executive Order No. 13224* on Terrorist Financing, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism*, the *Bank Secrecy Act* and the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (as such laws have been or may hereafter be, renewed, extended, amended or replaced); (p) the transfer documents and post-transfer co-ownership and management documentation shall have been approved by the Chargee, acting reasonably. Upon satisfaction of the foregoing conditions and the execution of all documentation satisfactory to the Chargee, the Chargee shall release the Chargor and the Guarantor from all liability under the Loan Documents except liability that arose prior to the effective date of the assumption.

#### ARTICLE 5 - TAXES AND INSURANCE

**Section 5.01 Taxes.** It is agreed with respect to Taxes that:

- (a) the Chargor shall remit to the Chargee in addition to and at the same time(s) and in the same manner as the amounts payable pursuant to Section 2.04 hereof, monthly instalments for Taxes in an amount determined from time to time by the Chargee, to be sufficient to allow the Chargee to accumulate in a reserve fund all amounts necessary for the full payment of all Taxes affecting the Charged Premises or the Lands on the date such Taxes become due; the sums thereby accumulated shall bear interest at a rate which is equivalent to one half of the Bank of Canada Discount Rate quoted on the first day of each and every month, calculated on the monthly minimum balance accumulated in such

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reserve fund and which interest shall be credited to the Chargor every month; all sums accumulated in such reserve fund, including interest thereon, shall be held as security for the obligations secured hereby; so long as the Chargor is not in default under this Charge or any additional security held by the Chargee from time to time, the Chargee shall apply the funds in the reserve and all monthly tax instalments paid by the Chargor towards the payment of Taxes as they fall due or at such earlier date as the Chargee deems appropriate; the Chargee shall not be responsible for any late payment of Taxes and any penalties or interest charged by the taxing authority as a result thereof;

- (b) the Chargee reserves the right to adjust from time to time the estimated monthly Tax amount based on the Taxes actually levied against the Charged Premises and the Lands; the Chargor shall transmit to the Chargee all Tax bills and other notices relative to the imposition of Taxes on the Charged Premises and the Lands forthwith after receipt thereof;
- (c) any debit balance from time to time in the reserve fund shall bear interest at the Mortgage Rate and such obligations (to pay the debit balance and corresponding interest) shall be secured by this Charge;
- (d) the above-described debit balance and corresponding interest shall be payable by the Chargor on the earlier of demand by the Chargee and the date on which the next payment of principal and interest pursuant to Section 2.04 hereof shall become due;
- (e) when making advances from time to time of the Principal Sum or any part thereof, the Chargee may, and is hereby authorized and directed to, deduct and pay out of any such advances any amount that shall have become due and payable with respect to Taxes;
- (f) the Chargor hereby expressly authorizes the Chargee to request and obtain from any and all competent authorities all information relating to Taxes;
- (g) upon the occurrence of an Event of Default that is continuing, the Chargee shall have the right to set off any amount accumulated in any tax reserve against any amount due to the Chargee under this Charge; and
- (h) notwithstanding any other provision of this Charge, so long as the Chargor and the Charged Premises are enrolled in the municipal tax instalment payment plan, then the Chargor shall not be required to make monthly instalments for Taxes (as in Subsection 5.01(a) above) until after the occurrence of a Default or an Event of Default.

**Section 5.02 Insurance Coverage.** The Chargor shall obtain and maintain with respect to the Charged Premises during the entire period that any of the Principal Sum, interest and/or other charges secured hereunder shall remain outstanding:

- (a) a broad form "all risks" insurance policy, including flood, earthquake, sewage back-up discharge, windstorm, tsunami, pollution coverage, terrorism and all other risks and perils that are customarily included in such policies, without having an exclusion for riot, containing the coverage contemplated in paragraph (d) below, if such coverage is not offered in a separate insurance policy, for an amount equal to the Replacement Cost of all buildings and improvements installed on the Lands with a "stated amount" clause (such Replacement Cost with a "stated amount" shall be deemed not to be less than the amount of the Loan), the whole to the satisfaction of the Chargee, acting reasonably; covers incidental renovation, repairs and additions to the Charged Premises; the proceeds payable under such policy shall be payable to the Chargee as first-ranking mortgage creditor, pursuant to a standard, non-reporting, non-contributing mortgage clause approved by the Insurance Bureau of Canada;
- (b) a boiler and machinery insurance policy covering all losses and damages caused by (i) explosion/breakdown of boilers, of pressure vessels, of the air conditioning/heating/ventilation equipment, including electrical and mechanical equipment and installations, and (ii) the leakages of the fire protection system including sprinklers, the whole for an amount equal to the Replacement Cost of all buildings and improvements installed on the Lands; such policy shall include rental income (business interruption) insurance mentioned below if such coverage is not offered in a separate insurance policy and shall contain a standard mortgage clause approved by the Canadian Boiler and Machinery

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Underwriters Association, with proceeds payable thereunder to the Chargee as first-ranking mortgage creditor; if the "all risks" insurance policy and the boiler and machinery insurance policy are not covered by a single policy, then each policy shall contain a joint loss agreement between the two policies;

- (c) general liability insurance covering damages and injury arising at the Lands or in the vicinity of the Lands, in an amount satisfactory to the Chargee, acting reasonably, but in any event not less than \$6,250,000.00 per annum (or \$25,000,000.00 per annum, as part of a blanket policy); the Chargee will be added as an additional insured to such policy; the Chargor covenants to cause all contractors, subcontractors and other service providers working or providing services on the Charged Premises to maintain commercial general liability insurance of not less than \$1,250,000.00 per occurrence and to maintain all insurance for employees required under law;
- (d) rental income insurance in an amount of not less than one hundred per cent (100%) of the gross annual rents (or the net annual rents plus operating costs) for a period of twelve (12) months; the proceeds payable under such policy shall be payable to the Chargee as first-ranking mortgage creditor;
- (e) stand alone builder's risk policy for "ground-up" construction and major renovations (otherwise such coverage may be an extension of the "all risks" policy, limited to minor renovations); and
- (f) all required insurance shall be issued by insurance companies approved by the Chargee, acting reasonably; the insurance companies must each have a rating of not less than AX in Best's Key Rating Guide, be licenced/authorized to provide insurance in the Province of Ontario and be in good standing thereunder; the deductible under each policy may not exceed the sum of \$31,250.00 unless required under law, approved by the Chargee or related to specific catastrophic perils; none of the above coverage may be adversely effected by any act, error or omission of the Chargor.

**Section 5.03 Additional Insurance Requirements.** The insurance policies referred to in Section 5.02 shall also be subject to the following terms and conditions or as may otherwise be approved by the Chargee:

- (a) no co-insurance is permitted;
- (b) replacement cost wording which will not restrict replacement to the "same or adjacent site" (or deletion from the policy of any provision requiring same);
- (c) by-laws extension providing additional cost of reconstruction or demolition of the undamaged portion of the Charged Premises and resultant loss of income resulting from the enforcement of then current building by-laws and regulations;
- (d) save for the general liability insurance policy identified in Section 5.02(c), each policy shall contain a waiver by the insurer of all rights of subrogation or indemnity against the Chargee and each policy shall contain a breach of conditions clause;
- (e) the general liability insurance policy identified in Section 5.02(c) above shall contain a cross-liability clause and a severability of interests clause;
- (f) each policy must specify the Charged Premises as an insured location and that the relevant coverage is not contributory, participatory or constitute excess coverage without the Chargee's prior written consent (in its sole, absolute and unfettered discretion);
- (g) a re-insurance "cut-through" provision may be required, at the Chargee's option (in its sole, absolute and unfettered discretion); and
- (h) if any policies are subject to exhaustion of limits after a loss, then Chargor shall use reasonable commercial efforts to obtain the right to have the coverage and policy limits reinstated to amounts not less than those set out in Subsections 5.02(a) and (b) above.

**Section 5.04 Additional Insurance Coverage Upon Request.** In addition to the insurance which the Chargor is required to maintain pursuant to Section 5.02, the Chargee shall be entitled



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to require coverage from time to time with respect to the Charged Premises and the Lands for such other risks and perils, in such amounts and in such form or forms of insurance that the Chargee or its advisors consider to be reasonable and prudent and which coverage is reasonably commercially available and typical of coverage purchased by owners of similar type buildings in the City.

**Section 5.05 Insurance Covenants.**

- (a) The Chargor shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining all insurance required to be obtained and maintained pursuant to Section 5.02 and Section 5.04, shall cause the Chargee to be added to the policies of insurance required in Section 5.02 (save and except Section 5.02(c)) and Section 5.04 as "first mortgagee and loss payee" as its interest may appear pursuant to an Insurance Bureau of Canada approved mortgage clause and shall cause the Chargee to be added to the policies of insurance required under Section 5.02(c) as an "additional insured with respect to claims arising out of the operations of the insured". Upon the occurrence of loss or damage to the Charged Premises or the Lands or any other property forming part of the security of the Chargee, the Chargor agrees to supply all proof of loss and take all necessary measures in order that the Chargee may receive the indemnities payable under each of the policies covering the loss. Upon the occurrence of a Default or Event of Default, the Chargee may require that the Chargor remit to the Chargee in addition to and at the same time(s) and in the same manner as the amounts payable pursuant to Section 2.04 hereof, monthly instalments for insurance policy premiums in an amount determined by the Chargee, to be sufficient to allow the Chargee to accumulate in a reserve fund (which fund shall be governed by the same rules as the reserve fund hereunder for Taxes) all amounts necessary for the full payment of all insurance policy premiums affecting the Charged Premises on the date such insurance policy premiums become due.
- (b) Every policy of insurance shall be effected on such terms and with such insurers as may be approved by the Chargee, which approval shall not be unreasonably withheld or delayed. In addition, each policy of insurance contemplated hereunder shall require not less than fifteen (15) days' prior written notice to the Chargee of any cancellation, material alteration or non-renewal thereof (not less than ten (10) days if the cancellation etc. is attributable to the failure to pay insurance policy premiums).
- (c) In the event of failure on the part of the Chargor to maintain or cause to be maintained any insurance required by Section 5.02 and/or Section 5.04, the Chargee may effect such insurance and the Chargor covenants to repay to the Chargee all of the premiums paid by the Chargee, the amount thereof to be added to the Principal Sum, to bear interest at the Mortgage Rate from the time of payment by the Chargee and to be payable at the time of the then next ensuing monthly payment of interest, or interest and principal, pursuant to Section 2.04.
- (d) The Chargor shall deposit with the Chargee (whether or not a request has been made) certificates of insurance evidencing the insurance required hereunder. The Chargor shall maintain the original copies of all such policies at the Chargor's address according to Section 13.01 and the Chargee or its authorized representatives shall be entitled during normal business hours upon prior written notice to have access thereto for the purpose of reviewing such policies and making extracts therefrom or copies thereof. The Chargor shall, without request, provide the Chargee with renewal or replacement certificates prior to the expiry or cancellation of any policy. The Chargor hereby authorizes the Chargee to communicate directly with any insurer, broker, agent, underwriter, adjuster or other Person in relation to the insurance required to be maintained by the Chargor and to request and obtain any information or documentation pertaining thereto, it being understood that the Chargee shall be under no obligation to do so.
- (e) All proceeds of insurance (from insurance policies) above the sum of \$200,000.00, other than liability insurance, shall be paid to the Chargee directly and, at the option of the Chargee, in its sole, absolute and unfettered discretion, may either be applied on account of the Loan indebtedness, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by it as part of the Security and, so long as there is then no Event of Default which is continuing, may be subject to

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withdrawal by the Chargor in instalments, on a cost to complete basis, as the repair or replacement progresses, subject to the Chargee's receipt of appropriate certificates, opinions and other documents which may include, without limitation, cost consultant reports, evidence of payment to suppliers and contractors, as required by the Chargee, provided that:

- (i) the proceeds of insurance together with other funds held or arranged by the Chargor will be sufficient to pay the work required for the reconstruction or repair of the Charged Premises (the "required works"), the whole in accordance with plans and specifications and a construction budget and construction schedule approved by the Chargee, acting reasonably, after having received written advice by an architect acceptable to the Chargee, acting reasonably;
- (ii) the required work will start as soon as practical after the casualty and shall be completed diligently;
- (iii) except as otherwise provided in the Leases, all Leases then in place (or replacement Leases satisfactory to the Chargee, acting reasonably) shall remain in full force and effect for the balance of their term, under the same contractual terms and conditions, following completion of the required work;
- (iv) the cost of such restoration shall not exceed \$25,000.00, and such restoration can be completed, in the Chargee's judgment, acting reasonably, not less than ninety (90) days prior to the Maturity Date; and
- (v) any additional security required by the Chargee to guarantee cost overruns of the required work shall have been obtained by the Chargee.

If any of the conditions above are not fulfilled, the Chargee shall have the right to apply the proceeds of insurance to the payment of the Loan in whole or in part.

**Section 5.06 Chargee's Insurance Expenses.** The Chargor shall pay to the Chargee, on receipt of an invoice therefor, the reasonable out-of-pocket expenses of the Chargee, including legal fees and disbursements on a substantial indemnity basis, with respect to the administration of insurance proceeds.

**Section 5.07 Notice of Damage/Destruction.** The Chargor covenants to provide the Chargee with prompt Notice of all damage/destruction sustained at the Charged Premises. The Chargor covenants and agrees that if during the term hereof the Buildings, or any part or parts thereof, are totally or partially damaged or destroyed by any cause whatsoever, the Chargor shall, promptly after any such damage or destruction, provide the Chargee with written notice thereof.

**Section 5.08 Insurance Proceeds.** Upon receipt of any insurance proceeds the Chargee may, in its sole, absolute and unfettered discretion, either apply such proceeds on account of the indebtedness secured hereunder, whether or not such indebtedness shall then be due and payable, or hold such proceeds as further security for such indebtedness and, so long as no Event of Default shall have occurred and be continuing, permit the Chargor to withdraw the proceeds on a cost-to-complete basis, as the repair/replacement progresses, subject to the Chargee's receipt of such certificates, opinions, cost-consultant reports, proof of payments and lien waivers as shall be required by the Chargee, acting reasonably.

#### ARTICLE 6 - EVENTS OF DEFAULT

**Section 6.01 Events of Default.** In this Charge, "Event of Default" means, without limitation, each and every one of the following events:

- (a) **Failure to Pay.** if the Chargor shall fail to make any payment of the Principal Sum or interest payable hereunder, or any portion thereof or any blended payment thereof or of any other amount due pursuant to this Charge when the same shall become due pursuant to the provisions hereof and such failure shall continue for a period of two (2) Business Days (it being acknowledged that the Chargee shall have no obligation to provide notice of such failure to the Chargor); or

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- (b) **Transfers.** if the Chargor shall transfer, assign or abandon the Charged Premises, any part thereof and/or interest therein, or if a Beneficial Owner shall, directly or indirectly, transfer its beneficial ownership (in whole or in part), except in accordance with the express provisions thereof contained in this Charge or except with the Chargee's prior express written consent (which may be withheld in the Chargee's sole, absolute and unfettered discretion); or
- (c) **Encumbrances.** if the Chargor shall charge or otherwise encumber the Charged Premises, any part thereof and/or interest therein, or shall permit any lien, charge or encumbrance to be issued against the Charged Premises, except for Permitted Encumbrances, except as expressly permitted under this Charge and/or except for any construction lien which is discharged from title within ten (10) Business Days following the date on which the Chargor receives notice thereof; or
- (d) **Failure to Pay Taxes.** if the Chargor shall default in the payment of Taxes when due, in the payment to the Chargee of any amount payable to the Chargee in respect of Taxes under the terms hereof (save and except when the validity thereof is, in good faith, being contested by the Chargor and it has given security for payment thereof in full) and any such default continues either for a period of fifteen (15) days after such payment becomes due or for such shorter period as is necessary to avoid forfeiture or sale; or
- (e) **Failure to Maintain Insurance.** if the Chargor shall default in observing or performing any covenant contained in Article 5 of this Charge and, after notice in writing has been given by the Chargee to the Chargor specifying in reasonable detail such default and requiring the Chargor to rectify same, the Chargor fails to rectify such default within a period of fifteen (15) days; or
- (f) **Bankruptcy/Insolvency.** if the Chargor and/or the Guarantor shall become insolvent or bankrupt or a trustee in bankruptcy shall be appointed in respect of the Chargor and/or the Guarantor; or if the Chargor and/or the Guarantor shall do any act or any other Person shall do any act to dissolve or facilitate the dissolution process in respect of the Chargor and/or the Guarantor; or if the Chargor and/or the Guarantor shall make a general assignment for the benefit of creditors or shall go into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or otherwise acknowledge insolvency, unless, in the case of either an involuntary appointment of a trustee in bankruptcy, a liquidation order or an act to facilitate an involuntary or a voluntary dissolution, the Chargor is contesting such appointment, order or act, in good faith, and such appointment, order or act is quashed or set aside within a period of fifteen (15) days; or
- (g) **Compliance with Laws.** if the Charged Premises shall at any time during the term hereof fail to comply with all applicable building, zoning and other municipal by-laws and all relevant statutes and regulations (save and except any non-compliance which is, in good faith, being contested by the Chargor with the City or other governmental body having jurisdiction, until the final disposition thereof against the Chargor); provided that if, but only if, such default is capable of being remedied and provided also that such default is not caused by the non-payment of money, such default shall not constitute an Event of Default if such default has been remedied within fifteen (15) days after notice thereof has been given in writing to the Chargor; provided further that if:
- (i) such default does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any additional Security held by the Chargee;
  - (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not materially adversely affected and the Charged Premises and the market value thereof are not materially adversely affected;
  - (iii) such default is incapable of being remedied within such fifteen (15) day period, despite the diligent efforts of the Chargor; and

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- (iv) the Chargor has commenced to remedy such default promptly upon becoming aware of such default and the Chargor at all times continues to diligently use its reasonable commercial efforts to remedy such default,

the Chargor shall have such further period within which to remedy such default as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days); provided that a legal non-conforming use shall be deemed to comply with applicable building, zoning and other municipal by-laws and all relevant statutes and regulations; or

- (h) **Rezoning.** if the Chargor, a representative of the Chargor or any tenant of the Charged Premises applies to rezone the Lands or any part thereof, without the prior written approval of the Chargee, unless in the case of an application by a Person other than the Chargor, the Chargor is diligently contesting such application and such application has not been granted; or
- (i) **Misrepresentation.** if any of the Chargor's representations and warranties contained in this Charge and/or any Security/agreement/certificate now or hereafter given to the Chargee in connection with this Charge (save and except defaults under securities/agreements/certificates which constitute Events of Default under one or more other subsections of this Section 6.01) are untrue or inaccurate when given or made or deemed to have been given, made or repeated and the Chargor fails to remedy such default within fifteen (15) days following receipt of written notice thereof from the Chargee; for purposes of this subsection, statements of fact set out in corporate certificates shall be deemed to be representations and warranties; or
- (j) **Failure to Perform Permitted Encumbrances Obligations.** if the Chargor fails to observe or perform its obligations contained in the Permitted Encumbrances and/or in any other agreements relating to the Charged Premises and such failure to observe or perform has not been remedied within the cure period specified in such encumbrance or agreement; or
- (k) **Failure to Perform Management Obligations.** if the Charged Premises is not managed in accordance with the management obligations contained in this Charge and the Chargor fails to remedy such default within thirty (30) days of written notice from the Chargee; or
- (l) **Default Under Subsequent-Ranking Mortgages.** if the Chargor shall default or another event shall occur pursuant to subsequent-ranking mortgage security which, as a result thereof, such subsequent-ranking mortgage security shall have become enforceable, except where the holder of such subsequent-ranking mortgage security is exercising remedies expressly permitted pursuant to an agreement between the Chargee, the Chargor and the subsequent-ranking mortgage security holder, and all relevant rectification periods under the subsequent-ranking mortgage security shall have expired (in such event the Chargor shall not receive the benefit of any rectification period hereunder and the Chargor shall be deemed to be in default under this Section 6.01(l), notwithstanding any obligation of the subsequent-ranking mortgage security holder to give notice to the Chargee and notwithstanding whether such notice is, in fact, given); or
- (m) **Failure to Perform Covenants.** if the Chargor shall be in default of any of its covenants contained in this Charge (other than the covenants referred to elsewhere in this Section 6.01); provided that if, but only if, such default is capable of being remedied and provided also that such default is not caused by the non-payment of money, such default shall not constitute an Event of Default if such default has been remedied within fifteen (15) days after notice thereof has been given in writing to the Chargor; provided further that if:
- (i) such default does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any additional Security held by the Chargee;
  - (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not materially adversely affected and the Charged Premises and the market value thereof are not materially adversely affected;

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- (iii) such default is incapable of being remedied within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
- (iv) the Chargor has commenced to remedy such default promptly upon becoming aware of such default and the Chargor at all times continues to diligently use its reasonable commercial efforts to remedy such default,

the Chargor shall have such further period within which to remedy such default as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days); or

- (n) **Default Under Other Loan Documents.** if the Chargor shall be in default under any Security or other Loan Document now or hereafter given to the Chargee in connection with this Charge, save and except defaults under securities and agreements which constitute Events of Default under one or more other subsections of this Section 6.01; provided that if, but only if, such default is capable of being remedied and provided also that such default is not caused by the non-payment of money, such default shall not constitute an Event of Default if such default has been remedied within fifteen (15) days after notice thereof has been given in writing to the Chargor; provided further that if:

- (i) such default does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any additional Security held by the Chargee;
- (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not materially adversely affected and the Charged Premises and the market value thereof are not materially adversely affected;
- (iii) such default is incapable of being remedied within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
- (iv) the Chargor has commenced to remedy such default promptly upon becoming aware of such default and the Chargor at all times continues to diligently use its reasonable commercial efforts to remedy such default,

the Chargor shall have such further period within which to remedy such default as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days); or

- (o) **Material Adverse Change.** if an event shall occur at or with respect to the Charged Premises which, in the opinion of the Chargee, acting reasonably, could materially adversely affect the market value of the Charged Premises; provided that if, and only if, the result of such event can be remediated and provided also that such event is not caused by the non-payment of money, such event shall not constitute an Event of Default if such event has been remediated within fifteen (15) days following written notice thereof to the Chargor; provided further that if:

- (i) such event does not relate to an obligation the date for performance of which was specified in advance under the Charge or in any other Security held by the Chargee;
- (ii) in the opinion of the Chargee, acting reasonably, the Security held by the Chargee and the Chargee's rights and remedies thereunder are not adversely affected;
- (iii) such event is incapable of remediation within such fifteen (15) day period, despite the diligent efforts of the Chargor; and
- (iv) the Chargor has commenced to remediate such event promptly upon becoming aware of such event and the Chargor at all times continues to diligently use its reasonable commercial efforts to remediate such event,

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the Chargor shall have such further period within which to remediate such event as may be reasonably required in the circumstances (not to exceed a maximum of thirty (30) days).

**Section 6.02 Compound Interest.** If and so long as the Chargor defaults in the payment of any sum of money due and payable to the Chargee pursuant to any provision hereof, the Chargor shall, so long as the amount so in default or any part thereof remains in default, pay to the Chargee, in addition to any and all other sums of money payable hereunder, compound interest on the amount so in default or on so much thereof as may from time to time remain unpaid, computed from the time of such default at the Mortgage Rate and to become due and be paid on demand, and any interest which is payable under or by virtue of this Section 6.02 shall be secured by this Charge and shall be a charge upon the Charged Premises until paid.

#### ARTICLE 7 - REMEDIES IN CASE OF DEFAULT

**Section 7.01 Acceleration.** Upon the occurrence of an Event of Default which is continuing the Chargee may, in its sole, absolute and unfettered discretion and in addition to any remedy set forth in Section 7.03 hereof, declare the Principal Sum, together with all interest thereon and all other moneys (if any) owing hereunder, to become immediately due and payable to the Chargee, all without notice (except the declaration referred to above), presentment, protest, demand, notice of dishonour or any other demand/notice (all of which are hereby expressly waived) and the Chargor shall and will pay forthwith to the Chargee all the Principal Sum, interest thereon and all other moneys owing hereunder, with interest on overdue interest as herein provided until payment is received by the Chargee, and such payment when made shall be deemed to have been made on account of the moneys due and owing under this Charge.

**Section 7.02 Waiver.** The Chargee may, in writing, at any time or times waive an Event of Default after the occurrence thereof upon such terms and conditions as it shall determine, in its sole, absolute and unfettered discretion, provided that any such waiver shall apply only to the particular Event of Default waived and shall not operate as a waiver of any other or future Event of Default.

**Section 7.03 Remedies.** Upon the occurrence of an Event of Default which is continuing the Chargee may, in its sole, absolute and unfettered discretion:

- (a) **Possession etc.** take possession of all or any part(s) of the Charged Premises with power to: exclude the Chargor and its agents and servants therefrom; complete and/or preserve and maintain the Charged Premises and make such repairs, replacements, improvements and additions thereto as the Chargee may determine; receive the rents, incomes and profits thereof of any kind whatsoever and pay therefrom all expenses of maintaining, preserving, protecting and operating the Charged Premises and all charges against the Charged Premises ranking in priority to this Charge or payment of which may be necessary to preserve or protect the Charged Premises, and pay out the remainder of the moneys so received and not required for any of the purposes provided for in this Section 7.03, in accordance with the provisions of Section 8.01; in accordance with prudent real estate practice, lease any vacant space in the Charged Premises and renew or amend from time to time any or all of the Leases; and enjoy and exercise all powers necessary to the performance of all functions provided for in this Section 7.03(a) including, without limitation, the power to purchase on credit, borrow money, advance its own moneys at such rates of interest as shall be reasonable and to enter into contracts and undertake obligations for the foregoing purposes upon the security of the Charged Premises; provided that the Chargee shall, upon all Events of Default being made good or rectified, or waived as herein provided, restore the Charged Premises to the Chargor subject to the charge created by this Charge as if no Event of Default had occurred; and/or
- (b) **Completion and Repairs.** take all such steps as the Chargee may consider necessary or desirable for the purposes of completing the Charged Premises and/or any repairs, replacements, improvements and additions thereto and for such purposes shall enter into all such contracts and undertake all such obligations as the Chargee may determine, in its sole, absolute and unfettered discretion, and shall give security therefor upon the Charged Premises; provided that the Chargee shall not be under any obligation to complete the Buildings and/or any repairs, replacements, improvements and/or additions thereto; and/or

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- (c) **Court-Appointed Receiver.** apply to a court of competent jurisdiction for the appointment of a receiver or receiver and manager to take possession of all or such part or parts of the Charged Premises as the Chargee shall designate, with such duties, powers and obligations as the court making the appointment shall confer; and the Chargor hereby consents to the appointment of such receiver or receiver and manager; and/or
- (d) **Chargee-Appointed Receiver.** with or without entering into possession of the Charged Premises or any part thereof, by writing duly executed by the Chargee, appoint a receiver (such term shall include a receiver and manager) of the Charged Premises or any part thereof and of the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any receiver and appoint another in his stead (and the Chargor hereby consents to such appointments and removals) and upon the appointment of any such receiver or receivers from time to time the following provisions shall apply:
- (i) every such receiver shall, to the extent permitted by law, be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect of the Charged Premises or any part thereof, whether in respect of any tenancies created in priority to this Charge or subsequent thereto;
  - (ii) every such receiver may, as determined by the Chargee and confirmed in writing, be vested with any or all of the powers of the Chargee hereunder;
  - (iii) the Chargee may from time to time by such writing fix the reasonable remuneration of every such receiver who shall be entitled to deduct the same out of the receipts from the Charged Premises or the proceeds thereof;
  - (iv) every such receiver shall, so far as concerns the responsibility of his acts or omissions, be deemed the agent or attorney of the Chargor and in no event the agent of the Chargee;
  - (v) the appointment of every such receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Premises or any part thereof;
  - (vi) every such receiver shall from time to time have the power to lease, in accordance with prudent real estate practice, any portion of the Charged Premises for such term and subject to such provisions as he may deem advisable or expedient and in so doing every such receiver shall act as the attorney or agent of the Chargor and he shall have authority to execute any Lease 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 Charged Premises;
  - (vii) every such receiver shall have full power to manage, operate, improve, modify, repair, alter, complete or extend the Charged Premises or any part thereof in the name of the Chargor for the purpose of securing the payment of the Principal Sum and interest thereon;
  - (viii) no such receiver shall be liable to the Chargor to account for moneys or damages other than cash received by it in respect of the Charged Premises or any part thereof and every such receiver shall apply such cash so received to pay in the following order:
    - (A) its reasonable remuneration as aforesaid;
    - (B) all expenses properly made or incurred by it in connection with the management, operation, improvement, modification, repair, alteration or extension of the Charged Premises or any part thereof;
    - (C) moneys which may from time to time be or become charged upon the Charged Premises in priority to this Charge, and all Taxes, insurance

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premiums and every other proper expenditure made or incurred by it in respect to the Charged Premises or any part thereof;

- (D) all interest due or falling due, other moneys (if any) on account of proper expenditures made or incurred by or for the Chargee, the outstanding balance of the Principal Sum and all other amounts due to the Chargee pursuant to this Charge; and
- (E) thereafter any surplus remaining in the hands of every such receiver to the Chargor or its successors or assigns; and
- (ix) the Chargee may at any time and from time to time terminate any such receivership by notice in writing, duly executed by the Chargee, to the Chargor and to any such receiver; and/or
- (e) **Sale of Charged Premises.** subject to the provisions of all applicable legislation, with or without entering into possession, sell all or part of the Charged Premises either as a whole or in separate parcels, at public auction or by public tender or by private sale, at such time and places, subject to adjournment from time to time by the Chargee, on such reasonable terms and conditions (including reserve bids, price and payment) as the Chargee shall determine; and/or
- (f) **Realize on Security.** realize all or any part or parts of the security hereby constituted by any other means of any nature or kind whatsoever that a court of competent jurisdiction shall approve as being just and expedient in the circumstances, having regard to the nature of the operations carried on in the Charged Premises, including any other action, suit, remedy or proceeding authorized or permitted by this Charge or by law or in equity, and not to be limited to forms of realization which a court is given jurisdiction to approve under statute; and/or
- (g) **Enforce Leases.** with or without taking possession, take any action or proceeding to enforce the performance of any covenant contained in any of the Leases; and/or
- (h) **Action/Proceeding.** take any action or proceeding to enforce payment of the Principal Sum and interest and other moneys secured hereunder or performance of any other covenant contained herein, or to enforce the security hereby constituted or exercise any of the rights of the Chargee under the Charge or any other Security held by the Chargee, and to bring to sale the Charged Premises or any part or parts thereof under a judgment or decree of a court or courts of competent jurisdiction or by the enforcement of any other legal remedy which the Chargee shall deem most effectual to protect and enforce any of its rights hereunder; and/or
- (i) **Other Remedies.** exercise or pursue any other remedy authorized or permitted hereby, by law and/or in equity.

**Section 7.04 Cumulative and Non-Exclusive Remedies.** No remedy herein conferred upon or reserved to the Chargee is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any additional or ancillary Security now or hereafter held by the Chargee, or now existing or hereafter to exist by law or by statute as modified herein. Without limiting the generality of the foregoing, the taking of judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the right of the Chargee to interest as provided in Section 2.04.

**Section 7.05 Liability.** Save and except as to claims at law or in equity to an accounting, the Chargee shall not, nor shall any receiver or receiver and manager appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by them, for damages to Persons or property or for salaries or non-fulfillment of contracts during any period wherein the Chargee or such receiver or receiver and manager shall manage the Charged Premises or any part thereof upon or after entry, as herein provided, and the Chargee shall not be bound to do, observe or perform or to see to the observance or performance by the Chargor of any of the obligations herein imposed upon the Chargor, nor in any other way to supervise or interfere with the conduct of the Chargor's operation of the Charged Premises.



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**Section 7.06 Judgment.** In any judicial or other proceeding to enforce the security hereby created, judgment may be rendered against the Chargor in favour of the Chargee for any amount which may remain due in respect of the Principal Sum, interest thereon and all other moneys owing hereunder after the application to the payment thereof of the proceeds of any sale of the Charged Premises or any part thereof.

**Section 7.07 Chargor Cooperation.** In the case of any sale hereunder, whether by the Chargee, or by a receiver or receiver and manager, or under judicial proceedings, the Chargor hereby covenants that, unless it is otherwise contesting such sale, it shall, 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 secured property sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such receiver or receiver and manager may execute and deliver to the purchaser of the secured property, or any part thereof, such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the same, for and in the name of the Chargor, as its attorney.

**Section 7.08 Chargee Authority.** No Person dealing with the Chargee or its agents shall be concerned to inquire whether the powers which the Chargee or such agents are purporting to exercise have become exercisable, or whether any money remains due upon the security of this Charge, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Chargee with the Charged Premises or to see to the application of any money paid to the Chargee; and in the absence of fraud on the part of such Person, such dealings shall be deemed, insofar as regards the safety and protection of such Person, to be within the powers hereby conferred and to be valid and effectual accordingly.

**Section 7.09 Chargee Right to Pay Claims and Encumbrances.** It is hereby agreed that the Chargee may pay the amount of any encumbrance, lien claim or charge now or hereafter existing, arising or claimed upon or against the Charged Premises having priority, or purporting to have priority, over the Charge, including any Taxes, and may pay all related costs, charges and expenses (including all legal fees and disbursements of Counsel on a substantial indemnity basis), whether or not any action or any proceeding is taken, which may be incurred in taking, recovering, protecting and keeping possession of the Charged Premises and/or collecting any overdue interest, principal, insurance premiums or any other moneys whatsoever payable by the Chargor hereunder or for the enforcement of any other covenant or obligation of the Chargor hereunder and all costs incurred in preserving the priority of the Chargee hereunder and in defending all claims against the Chargee's priority including all amounts, costs, charges and expenses incurred by the Chargee as a consequence of the Chargor's default hereunder, and all such amounts, costs, charges and expenses so paid shall be added to the debt hereby secured and be a charge on the Charged Premises and shall bear interest at the Mortgage Rate and shall be payable forthwith by the Chargor to the Chargee. In the event of the Chargee paying the amount of any such encumbrance, lien, claim, charge or Taxes, either out of the moneys advanced under the Charge or otherwise, it shall be entitled and subrogated to all the rights, equities and securities of the Person so paid, without the necessity of a formal assignment, and the Chargee is hereby authorized to retain any discharge thereof, without registration, if it thinks proper to do so.

#### ARTICLE 8 - APPLICATION OF MONEYS

**Section 8.01 Application of Moneys.** Except as otherwise expressly provided in this Charge, the moneys arising from the possession by the Chargee of the Charged Premises or any part thereof, or from any sale or realization of the whole or any part of the Charged Premises (except by foreclosure), pursuant to any actions or proceedings based upon an Event of Default hereunder, whether under sale by the Chargee or by judicial proceedings or otherwise, shall be applied: first, to reimburse the Chargee for all costs, charges, expenses and advances incurred in taking, recovering and keeping possession of the Charged Premises or in any other proceedings taken hereunder in connection with or to realize upon the security granted to the Chargee under this Charge or under any additional Security now or hereafter held by the Chargee for the obligations hereby secured, with interest thereon at the Mortgage Rate; second, to pay all Taxes and other charges ranking in priority to the security of this Charge; third, to pay all accrued and unpaid interest (including interest on interest); fourth, to pay the Principal Sum outstanding pursuant to this Charge; fifth, to pay all other charges secured by this Charge; and sixth, to return the surplus of moneys (if any) to the Chargor; the Chargee may, in its sole, absolute and

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unfettered discretion, vary the above priorities by written notice, in which event the moneys shall be distributed in accordance with the notice.

#### ARTICLE 9 - LEASES

**Section 9.01 Termination Fees.** Without limiting the generality of the foregoing, whether or not the Chargee's consent to the cancellation or surrender of any Lease is required hereunder, (a) the Chargor shall notify the Chargee, in writing, of any cancellation penalties or other consideration payable to the Chargor in connection with such cancellation or surrender (the "Termination Fees"), which written notice must be delivered to the Chargee prior to the payment by the applicable tenant of any such Termination Fees to the Chargor, and (b) at the Chargee's sole option, the Chargee may (i) require that the Chargor deposit such Termination Fees into a reserve held by the Chargee or the Servicer, and (ii) impose such restrictions and conditions on the release of the Termination Fees from such reserve as the Chargee shall determine, acting reasonably, including, without limitation (A) requiring that such vacant space be relet to a tenant and under a Lease acceptable to the Chargee, acting reasonably (an "Approved Lease"), (B) the tenant under the Approved Lease shall be in occupancy of its leased premises and paying rent, (C) the Chargor shall provide to the Chargee an estoppel certificate from the tenant under the Approved Lease in a form acceptable to the Chargee, acting reasonably, and (D) the Chargor shall provide to the Chargee evidence acceptable to the Chargee, acting reasonably, that all improvements to the Charged Premises required by the Approved Lease have been completed.

**Section 9.02 No Set-Off.** Subject to the provisions of the existing Leases, no Lease shall contain a provision whereby the tenant thereof may, under any circumstances, other than the abatement in the event of damage and repair to the leased premises, deduct from, abate or set-off against any rent payable under a Lease.

**Section 9.03 Non-Disturbance Agreements.** The Chargee covenants to provide to each tenant, upon the Chargor's request and at the Chargor's cost, a non-disturbance and attornment agreement on the Chargee's standard form with such amendments as may be requested by a tenant and accepted by the Chargee, acting reasonably, provided the tenant is not then in default of its lease obligations, the lease was entered into in compliance with the terms of the Security and such tenant has entered into an attornment agreement with the Chargee in a form acceptable to the Chargee, acting reasonably.

#### ARTICLE 10 - EXPROPRIATION/CONDEMNATION

**Section 10.01 Expropriation/Condemnation.** If all or any part of the Charged Premises is expropriated, condemned or otherwise taken by any governmental authority or threatened to be so taken, the Chargor shall notify the Chargee promptly of the time and place of all meetings, hearings, trials and other proceedings relating to such action; the Chargee may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment which may be due as a result of such taking or damage, and may, in the Chargee's discretion, acting reasonably, compromise or settle, in the names of both the Chargor and the Chargee, any claim for any such award or payment; any such award or payment shall be paid to the Chargee, and applied first to reimburse the Chargee for all costs and expenses (including solicitors' legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee in connection therewith; the balance, if any, of such award or payment may, in the Chargee's sole, absolute and unfettered discretion, either (a) be retained by the Chargee and applied toward the Principal Sum, or (b) be paid over, in whole or in part and subject to such conditions as the Chargee may impose, to the Chargor for the purpose of restoring, repairing or rebuilding any part of the Charged Premises affected by the taking or damage; notwithstanding the preceding sentence, if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) the proceeds received by the Chargee (together with any other funds delivered by the Chargor to the Chargee for such purpose) shall be sufficient, in the Chargee's judgment, acting reasonably, to pay for any restoration necessitated by the taking or damage, (iii) the cost of such restoration shall not exceed \$250,000.00, (iv) such restoration can be completed, in the Chargee's judgment, acting reasonably, not less than ninety (90) days prior to the Maturity Date, and (v) the remaining portion of the Charged Premises shall constitute, in the Chargee's sole, absolute and unfettered discretion, adequate security for all sums payable hereunder, then the Chargee shall apply such proceeds as provided in clause (b) of the preceding sentence.

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**ARTICLE 11 - ENVIRONMENTAL**

**Section 11.01 Environmental Representations and Warranties.** The Chargor represents and warrants to the Chargee that, to the best of its knowledge after due inquiry, except as disclosed in the Phase I environmental report for the Lands delivered to the Chargee as a condition to the advance of the Loan, the Lands and its existing and prior uses comply in all material respects with all Environmental Laws and, without limiting the generality of the foregoing:

- (a) the Lands have never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks or otherwise;
- (b) all Hazardous Substances used in connection with the business conducted at the Lands have at all times been received, handled, used, stored, treated, shipped and disposed of in strict compliance with all Environmental Laws;
- (c) the Chargor has complied with all reporting and inspection requirements pursuant to Environmental Laws in respect of the Charged Premises and the operations and business conducted thereat;
- (d) all pollution control equipment forming part of the Charged Premises is effective in meeting current applicable emission limits and effluent and pretreatment standards;
- (e) all operating records, files and reports, including environmental monitoring and reporting records, have been maintained in accordance with all applicable Environmental Laws;
- (f) the Chargor has obtained all licences, permits and other environmental approvals and authorizations necessary pursuant to Environmental Laws for the conduct of the operations and business at the Charged Premises;
- (g) no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, from or on the Lands, nor have migrated from the Lands, as a result of the conduct of business on the Lands or otherwise, in each case other than in compliance with all Environmental Laws in all material respects; and
- (h) no notices of violation of any Environmental Laws have been received by the Chargor in respect of the Lands and there are no outstanding directions, writs, injunctions, orders or judgments issued pursuant to Environmental Laws in respect of the Lands.

**Section 11.02 Compliance with Environmental Laws.** The Chargor shall strictly comply with the requirements of applicable Environmental Laws (including, but not limited to, obtaining any permits, licences or similar authorizations to construct, occupy, operate or use the Charged Premises or any fixtures or equipment located on the Lands by reason of applicable Environmental Laws) and shall notify the Chargee promptly in the event of any spill or location of Hazardous Substances upon the Lands that would require reporting under applicable Environmental Laws, and shall promptly forward to the Chargee copies of all orders, notices, permits, applications and other communications and reports in connection with any spill or other matters relating to applicable Environmental Laws, as they may affect the Charged Premises.

**Section 11.03 Removal of Hazardous Substances.** The Chargor shall, if required by applicable Environmental Laws, promptly remove from the Lands, at its sole expense, any Hazardous Substances upon discovery.

**Section 11.04 Liens.** The Chargor shall, at its sole cost and expense, prevent the imposition of any lien against the Charged Premises for the cleanup of any Hazardous Substances, and shall comply and cause:

- (a) all tenants under any Lease; and
- (b) any other Person on or occupying the Charged Premises,

to comply with all Environmental Laws applicable to the Charged Premises. Subject to the Leases and the rights of the tenants thereunder, the Chargor hereby grants to the Chargee and its agents, employees, consultants and contractors, an irrevocable licence to enter upon the Charged Premises upon prior notice, during business hours, to perform such tests on the Charged Premises as are reasonably necessary to conduct an investigation and/or review for compliance

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with the provisions of this Article 11. Furthermore, if deemed necessary by the Chargee, acting reasonably, the Chargee reserves the right to request that, from time to time, an environmental audit of the Charged Premises be performed, at the expense of the Chargor.

**Section 11.05 Indemnification.** The Chargor hereby agrees to indemnify and save harmless the Chargee (its officers, agents, trustees, employees, contractors, invitees) from and against all losses, demands, claims, liabilities, damages, costs (including, without limitation, all reasonable legal fees), actions, penalties, obligations and expenses (collectively the "Liabilities"), directly or indirectly, arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Lands or migrating from the Lands of any Hazardous Substances. Subject to Section 11.06 below, the indemnity contained in this Section 11.05 and shall expire 18 months after complete repayment of the Principal Sum and all interest and other amounts secured hereby and the discharge of this Charge and all ancillary Security documentation.

**Section 11.06 Survival.** The provisions of each of Section 11.05 and Section 12.22 hereof are separate and distinct obligations hereunder and shall survive:

- (a) the termination or expiration of this Charge;
- (b) the transfer of the Charged Premises (including pursuant to foreclosure and a sale in lieu of foreclosure);
- (c) the complete repayment of the Principal Sum and all interest and other amounts secured hereby and the fulfillment of all of the Chargor's obligations pursuant to this Charge;
- (d) the discharge of this Charge and all ancillary Security documentation; and
- (e) the exercise of any remedies available to the Chargee pursuant to this Charge and/or ancillary Security documents, at law, in equity or otherwise.

#### ARTICLE 12 - GENERAL

**Section 12.01 Partial Releases.** The Chargee may, in its sole, absolute and unfettered discretion, at all times release any part or parts of the Charged Premises or any other Security, either with or without sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the Charged Premises or any Person from this Charge or from any of the covenants herein contained, it being expressly agreed that each and every portion into which the Charged Premises is or may hereafter be divided does and shall stay charged with the Principal Sum and no Person shall have the right to require the Principal Sum to be apportioned and the Chargee shall not be accountable to the Chargor for the value thereof or for any moneys except those actually received by the Chargee.

**Section 12.02 Quiet Possession.** Until the occurrence of an Event of Default and while same is continuing, or until the exercise by the Chargee of any of the rights, remedies and powers conferred upon it under this Charge or under any additional or ancillary Security for the obligations of the Chargor under this Charge, the Chargor shall peaceably and quietly have, hold, use, occupy, possess and enjoy the Charged Premises and manage and operate the same and, provided no Event of Default shall have occurred which is continuing or until the exercise by the Chargee of any of the rights, remedies and powers conferred upon it under this Charge or under any additional or ancillary Security for the obligations of the Chargor under this Charge, the Chargor shall collect the rents, revenues and other profits thereof, for its own use and benefit without hindrance, interruption or denial of or by the Chargee or by any other Person or Persons whomsoever claiming by, from or under the Chargee, provided that such rents, revenues and other profits as are collected by the Chargor together with all proceeds therefrom and the Chargor's interest therein shall nonetheless continue to be subject to the present assignment if and to the extent that such rents or the proceeds therefrom remain the property of the Chargor or the Chargor maintains an interest therein.

**Section 12.03 No Partnership/Joint Venture.** Nothing in this Charge shall be deemed in any way or for any purpose to constitute the Chargor and Chargee as partners or joint venturers in the conduct of business or otherwise.

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**Section 12.04 Acknowledgement of Receipt.** The Chargor acknowledges receipt of a true copy of this Charge.

**Section 12.05 Discharge and Release.** The Chargee shall, at the written request and expense of the Chargor, promptly cancel and discharge this Charge and promptly execute and deliver to the Chargor such instruments as shall be requisite to discharge this Charge and to promptly release or reconvey to the Chargor all property subject to the lien hereof and to promptly settle and discharge to the Chargor all additional Security given with respect to this Charge relating to the Leases or otherwise, provided that the Chargor shall have first paid to the Chargee the full Principal Sum, all interest due hereunder and all other moneys payable hereunder by the Chargor; and provided further that the Principal Sum shall have matured either by effluxion of time or otherwise pursuant to this Charge or the Chargor is, or has become, legally entitled to pay the Principal Sum secured under this Charge.

**Section 12.06 Credit Information.** For purposes of managing, administering, reporting, selling, assigning, granting participations in or otherwise in connection with the transaction contemplated hereunder, the Chargor irrevocably authorizes the Chargee, to the extent that authorization is necessary, to collect and obtain at any time any credit or other personal information and/or materials of a financial nature relating to the Chargor from financial institutions, prior creditors, credit verification bureaus and any other Person that, in the Chargee's opinion, in its sole, absolute and unfettered discretion, is relevant to the credit approval and/or performance of the transactions hereunder, and such financial institutions, prior creditors, credit verification bureaus and other Persons are authorized to communicate such information/materials at the Chargee's request.

**Section 12.07 Chargee Not Bound.** The Chargee shall not be bound to do, observe or perform or to see to the observance or performance by the Chargor of any of the obligations herein imposed upon the Chargor, nor in any other way to supervise or interfere with the conduct of the Chargor's operation of the Charged Premises.

**Section 12.08 Conduct.** No extension of time given by the Chargee to the Chargor, or anyone claiming under the Chargor, or any other dealing by the Chargee with the Chargor, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other Person liable for the payment of sums secured hereby.

**Section 12.09 Mortgage Loan Application.** The Mortgage Loan Application shall not be merged into and superseded by this Charge.

**Section 12.10 Impact of Judgment.** The obtaining of a judgment or judgments on any covenant(s) contained in this Charge shall not operate as a merger of such covenant(s) or affect the Chargee's right to interest at the Mortgage Rate.

**Section 12.11 Demand Receipt of Payments.** Any payment by the Chargor hereunder which is received by the Chargee after 1:00 p.m. on any day shall be deemed to have been made by the Chargor and received by the Chargee on the next Business Day. Any payment due and payable hereunder by the Chargor on a day that is not a Business Day shall be deemed due and payable on the next Business Day.

**Section 12.12 Amendments in Writing.** The terms of this Charge may not be waived or varied orally or by the course of conduct of any officer, employee or agent of the Chargee. All amendments of this Charge shall be in writing and signed by a duly authorized officer of each of the Chargee and the Chargor.

**Section 12.13 Invalidity.** If any obligation contained in this Charge or the application thereof to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Charge and the application of such obligation to Persons or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each obligation contained in this Charge shall be separately valid and enforceable to the fullest extent permitted by law.

**Section 12.14 Non-Exclusivity of Remedies.** In the event that the Chargee, in addition to the Charged Premises secured hereunder, holds any further Security in respect of the indebtedness secured pursuant to this Charge, then no single or partial exercise by the Chargee of any of the remedies specified in Article 7 hereof or under any of such further Security shall preclude any

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other and further exercise of any other right, power or remedy pursuant to this Charge or pursuant to any of such further Security. The Chargee shall at all times have the right to proceed against all or any portion of the Charged Premises or such further Security in such order and in such manner as it shall, in its sole, absolute and unfettered discretion, deem fit without waiving any rights which the Chargee may have with respect to any and all of such Security, and the exercise of any such powers or remedies from time to time shall in no way affect any other powers or remedies which the Chargee may have pursuant to this Charge, any such further Security, or in law or in equity.

**Section 12.15 Advances by Chargee.** In the event that the Chargee is at any time or from time to time during the term of this Charge required to make a payment to defeat or honour the priority of a lien claimant, any such payment or payments, and the reasonable out-of-pocket expenses of the Chargee, including legal fees and disbursements on a substantial indemnity basis, shall be payable by the Chargor forthwith, shall bear interest at the Mortgage Rate and shall be secured by this Charge.

**Section 12.16 Multiple Chargors.** In the event that the term "Chargor" includes more than one Person, each of them shall be jointly and severally liable to the Chargee for all of the Chargor's obligations hereunder.

**Section 12.17 Excluded Covenants.** In accordance with Subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by Subsection 7(1) of the said *Land Registration Reform Act* are hereby expressly excluded from this Charge.

**Section 12.18 Time of Essence.** Time shall be of the essence hereof.

**Section 12.19 Reimbursement.** The Chargor shall reimburse the Chargee for its reasonable out-of-pocket costs incurred by the Chargee in the reasonable belief, acting as a prudent lender, that such costs are necessary for the protection of its Security or the value of the Charged Premises, provided such costs shall not include costs incurred by the Chargee in connection with any assignment, syndication or securitization transaction.

**Section 12.20 Successors and Assigns.** This Charge shall enure to the benefit of and be binding upon the successors and assigns of the Chargee and the successors and permitted assigns of the Chargor.

**Section 12.21 Delays and Waiver.** Subject to applicable law, the Chargee shall not be liable or accountable for any failure to exercise its rights and remedies hereunder. No delay or failure to exercise any right or remedy by the Chargee or any receiver or receiver-manager appointed by the Chargee shall impair any such right or remedy or shall be construed to be a waiver of an Event of Default or acquiescence therein.

**Section 12.22 Indemnification of Chargee.** The Chargor hereby agrees to indemnify and save harmless the Chargee and its directors, officers, agents, trustees, employees, contractors, licencees and invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature and kind whatsoever and howsoever arising out of the provisions of the Loan Documents, any letters of credit or letters of guarantee issued, the sale or lease of the Lands and/or the use or occupation of the Lands including, without limitation, those arising from the right to enter the Lands from time to time and to carry out the various tests, inspections, management and other activities permitted by the Loan Documents.

**Section 12.23 Survival.** The covenants, indemnities and agreements of the Chargor set forth in this Charge:

- (a) are separate and distinct obligations from the Chargor's other obligations;
- (b) shall, in the case of the indemnities, survive the payment and satisfaction of the Chargor's obligations and the discharge of the Security from time to time taken as security therefor, provided that, with the exception of the indemnities contained in Section 11.05 and Section 12.22 hereof which shall continue if the Chargee has been in possession or control of the Lands at any time prior to the discharge of the Security, such indemnities shall expire 18 months after repayment in full of the Loan and discharge of the Security; and

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- (c) with the exception of any covenants relating to the repayment of the Loan and any other indebtedness secured hereby, are not discharged or satisfied by power of sale, judicial sale or foreclosure of the charges created by any of the Security.

**Section 12.24 No Agents/Brokers.** Notwithstanding any other provision of this Charge, any agent, broker and/or consultant engaged with respect to the Charge and/or the Loan Documents and/or the transaction contemplated thereunder shall, at all times, be deemed to be the agent of the Chargor and not the agent of the Chargee, and that no representations, statements and/or other acts of any such agent, broker and/or consultant shall be binding upon the Chargee unless expressly authorized by the Chargee, in writing.

**Section 12.25 Postponements.** The Chargee shall use reasonable commercial efforts, within ten (10) Business Days of submission to it, and without payment of principal hereunder, but subject to reimbursement of all of the Chargee's related out of pocket costs and expenses (including legal fees on a substantial indemnity basis) and payment of the Chargee's reasonable processing fee, to execute all postponements required by the Chargor, acting reasonably, to any Permitted Encumbrance set out in Section 1.01 or to any other similar lien or encumbrance to which the Chargee has consented.

#### ARTICLE 13 - NOTICE

**Section 13.01 Notices.** All notices (each being a "Notice") required or permitted to be given by the Chargee or Chargor under this Charge shall be in writing and shall be deemed given (a) upon personal delivery, (b) on the first Business Day after receipted delivery to a courier service which guarantees next - Business Day delivery, or (c) on the third Business Day after mailing, by registered mail, postage prepaid (unless there is a general interruption in Canadian postal service, in which case all Notices shall be personally delivered or couriered), in any case to the appropriate party at its address set forth below:

If to the Chargor:

200 Ronson Drive, Suite 300  
Toronto, Ontario M9L 1R5  
Attention: Mark Gross

If to the Chargee:

c/o Largo Real Estate Advisors, Inc.  
2420 North Forest Road  
Getzville, New York 14068  
Attention: Stephanie Vogel

with a copy to each of:

AIG Investments  
777 South Figueroa Street, 16th Floor  
Los Angeles, California 90017-5800  
Attention: Vice President, Servicing-Commercial Mortgage Lending

Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400, Bay Adelaide Centre  
Toronto, Ontario M5H 2T6  
Attention: Mark Brennan

Each party may, from time to time, change its address for Notices by giving Notice thereof, to the other parties in accordance with this Section.

#### ARTICLE 14 - CHARGEES ASSIGNMENT

**Section 14.01 Securitization.** The Chargee may, without notice to and without the consent of the Chargor, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Charge, the Loan Documents, the Loan or the Security and any and all rights, title, benefits, remedies and obligations relating thereto.

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**Section 14.02 Servicer.** The Chargor acknowledges that the Chargee may retain the services of a servicer (the "Servicer") to service the Loan, including the collection of payments under this Charge. The Chargor further acknowledges that the Servicer is not the Chargee and the Servicer does not owe any obligations to the Chargor to advance funds under the Loan, or continue to be the Servicer. All references to the Chargee following the advance of the Loan shall be deemed to include the Servicer, and, subject to the terms and conditions of the servicing agreement between the Chargee and the Servicer, the Servicer shall have and may exercise at all times and without restriction all of the rights and benefits of the Chargee under this Charge, the Security and the other Loan Documents, provided, however, the Chargee may replace the Servicer in its sole, absolute and unfettered discretion.

**Section 14.03 Cooperation.** The Chargor covenants to execute all documentation and take all action that the Chargee, acting reasonably, deems necessary or useful in order to effect, perfect, complete or facilitate such assignment, provided that such documentation shall not modify the obligations of the Chargor pursuant to this Charge.

#### ARTICLE 15 - LIABILITY

**Section 15.01 Chargee Liability.** Except as the Chargee shall expressly agree in writing and except as the Chargee shall be obligated at law, nothing herein contained shall render the Chargee, its officers, employees, agents or any Person(s) for whom the Chargee is in law responsible, liable to any Person for the fulfillment or non-fulfillment of the obligations of the Chargor under the Leases and/or any other agreement/Security relating, directly or indirectly, to the Charged Premises.

#### ARTICLE 16 - POWER OF ATTORNEY

**Section 16.01 Power of Attorney.** The Chargee, as attorney/agent of the Chargor and in the Chargor's name, may, at any time and from time to time after an Event of Default shall have occurred and be continuing, exercise any of the Chargor's rights, powers, authority and/or discretion relating, directly or indirectly, to the Charged Premises. The Chargor acknowledges that this power of attorney is a power coupled with an interest.



LRO # 51 Charge/Mortgage

Received as SC1278217 on 2016 01 26 at 09:24

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

yyyy mm dd Page 1 of 35

**Properties**

*PIN* 58650 - 0115 LT *Interest/Estate* Fee Simple  
*Description* PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA  
*Address* 100 COLBORNE ST W  
ORILLIA

*PIN* 58644 - 0014 LT *Interest/Estate* Fee Simple  
*Description* LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN RO1453448;  
ORILLIA  
*Address* 77 WYANDOTTE STREET  
ORILLIA

**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* 100 COLBORNE HOLDINGS INC.  
*Address for Service* 200 Ronson Drive  
Suite 300  
Toronto, ON M9L 1R5  
Attention: Mark Gross

I, Mark Gross, President, have the authority to bind the corporation.

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

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

<i>Name</i>	AMERICAN GENERAL LIFE INSURANCE COMPANY	as to an undivided 44% interest
<i>Address for Service</i>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	
<i>Name</i>	THE VARIABLE LIFE ANNUITY INSURANCE COMPANY	as to an undivided 23% interest
<i>Address for Service</i>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	
<i>Name</i>	LEXINGTON INSURANCE COMPANY	as to an undivided 33% interest
<i>Address for Service</i>	c/o Largo Real Estate Advisors, Inc. 2420 North Forest Road Getzville, NY 14068 - Attn Stephanie Vogel with a copy to: AIG Investments, 777 South Figueroa Street, 16th Floor Los Angeles, CA 90017-5800 Attn VP, Servicing-Commercial Mortgage Lending	

**Statements**

Schedule: See Schedules

LRO # 51 Charge/Mortgage

Received as SC1278217 on 2016 01 26 at 09:24

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

yyyy mm dd Page 2 of 35

**Provisions**

<i>Principal</i>	\$ 70,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	See Schedule		
<i>Balance Due Date</i>	2026/02/01		
<i>Interest Rate</i>	See Schedule		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>	See Schedule		
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>	N/A		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>	GROSS, Mark and GROSS, Sheldon		

**Signed By**

Joanne Michelle Meadowcroft	333 Bay Street, Suite 2400, Bay Adelaide Centre Toronto M5H 2T6	acting for Chargor(s)	Signed	2016 01 25
Tel	416-366-8381			
Fax	416-364-7813			

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

**Submitted By**

FASKEN MARTINEAU DUMOULIN LLP	333 Bay Street, Suite 2400, Bay Adelaide Centre Toronto M5H 2T6	2016 01 26
Tel	416-366-8381	
Fax	416-364-7813	

**Fees/Taxes/Payment**

<i>Statutory Registration Fee</i>	\$62.85
<i>Total Paid</i>	\$62.85

**File Number**

Chargee Client File Number : 276968.00011

CHARGE SCHEDULE

**ARTICLE 1 - INTERPRETATION**

**Section 1.01 Definitions.** In this Charge, unless there is something in the subject matter or text inconsistent therewith:

- (a) **"Additional Security"** means the security constituted by Section 2.02 hereof;
- (b) **"affiliate"** shall have the meaning ascribed thereto in the *Canada Business Corporations Act*;
- (c) **"Beneficial Owners"** means Gross Properties Inc. and 2413667 Ontario Inc. and their respective successors and permitted assigns;
- (d) **"Borrower"** means Carriage Gate Group Inc., 180 Vine Inc., 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc. and 240 Old Penetanguish Holdings Inc. and their respective successors and permitted assigns;
- (e) **"Approved Lease"** shall have the meaning ascribed thereto in Section 9.01 hereof;
- (f) **"Buildings"** means the building municipally described as 100 Colborne Street and 77 Wyandotte Street, Orillia, Ontario, and located upon the Lands, and includes all other buildings, structures, facilities, fixtures and other improvements (including parking areas) located from time to time in, on and upon the Lands, including any and all alterations, reconstruction and expansions thereof and additions thereto and all repairs and replacements during the term of this Charge, and all fixed machinery, plant, equipment, apparatus and fittings and other fixtures incorporated, or now or hereafter erected or located therein or thereon, including all machines, motors, pumps, tanks, elevators, boilers, furnaces and air-conditioning units, other than fixtures removable by tenants or subtenants thereof pursuant to the Leases;
- (g) **"Business Day"** means a day, excluding Saturday and Sunday, on which banks are open for commercial business in Toronto, Ontario;
- (h) **"this Charge", "these presents", "hereto", "herein", "hereof", "hereby", "hereunder"** and any similar expressions refer to this Charge and not to any particular Article, Section or other portion hereof, and includes any and every instrument supplemental or ancillary hereto or in implementation hereof;
- (i) **"Charged Premises"** means all right, title and interest of the Chargor in the Lands, the Buildings, the Chattels and the Additional Security together with all additional real and personal property over which the Chargee is now or hereafter granted security in respect of the obligations hereby secured, and including any other interests in the Lands and the Buildings acquired by the Chargor from and after the date hereof;
- (j) **"Chargee"** means AMERICAN GENERAL LIFE INSURANCE COMPANY, as to an undivided 44% interest, THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, as to an undivided 23% interest, and LEXINGTON INSURANCE COMPANY, as to an undivided 33% interest, and their respective successors and assigns;
- (k) **"Chargor"** means 100 COLBORNE HOLDINGS INC. and its successors and permitted assigns;
- (l) **"Chattels"** means the goods, chattels and other personal property now or hereafter located in, on and upon the Charged Premises or used by the Chargor primarily in the management or operation of the Charged Premises (save and except only goods, chattels and other personal property owned by someone other than the Chargor or removable by tenants of the Charged Premises pursuant to the terms of the Leases, provided the same is not, either individually or in the aggregate, required for the operation of the Charged Premises or required to fulfil the obligations of the landlord under the Leases);
- (m) **"City"** means the town, city or other municipality in which the Lands are located;

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- (n) "Control" or "Controlled" means, when used with respect to a specified Person, the power to direct the management, activities and policies of such Person directly or indirectly, whether through the ownership of voting securities or other interests, by contract or otherwise;
- (o) "Counsel" means any barrister and solicitor or firm of barristers and solicitors retained by the Chargee;
- (p) "Default" means any event, act or condition which, with the giving of notice and/or lapse of time and/or a determination being made under the relevant provisions, would constitute an Event of Default;
- (q) "Direction to Nominee and Acknowledgement" means a direction to nominee of even date herewith executed by the Beneficial Owners, and duly acknowledged by the Chargor;
- (r) "DSCR" means the ratio in respect of the Secured Premises calculated by the Chargee, acting reasonably, on a cash flow basis, by dividing the Net Operating Income (for the preceding twelve (12) calendar months), by the annual Loan payments of principal and interest and any such payments pursuant to permitted subordinate financing;
- (s) "due inquiry" means internal inquiries only, and restricted to the persons specifically involved in the day-to-day management of the Charged Premises;
- (t) "Environmental Indemnity" means an indemnity of even date herewith executed by the Chargor and the Guarantor in favour of the Chargee;
- (u) "Environmental Laws" means all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance and operation of the Lands;
- (v) "Equity Mortgage" shall have the meaning ascribed thereto in Subsection 4.01(c) hereof;
- (w) "Event of Default" shall have the meaning ascribed thereto in Section 6.01 hereof and elsewhere in this Charge;
- (x) "General Assignment of Leases and Rents" means an assignment of even date herewith executed by the Chargor in favour of the Chargee;
- (y) "Governmental Authority" means any federal, provincial or municipal government, parliament, legislature, quasi-governmental or regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any court having jurisdiction in the relevant circumstances;
- (z) "Guarantee" means a guarantee of even date herewith executed by the Guarantor in favour of the Chargee, with limited recourse thereunder;
- (aa) "Guarantor" means collectively, the Chargor, Mark Gross and Sheldon Gross and their respective successors and permitted assigns;
- (bb) "Hazardous Substances" shall include, without limitation, all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to Environmental Laws and shall include "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances" (all as defined in, referred to and/or contemplated in Environmental Laws), and asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and products treated with polychlorinated biphenyls;
- (cc) "Land Registry Office" means the land registry office for the land titles division at which this Charge is properly registered;

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- (dd) **"Lands"** means the lands and premises more particularly described in the Charge/Mortgage of Land to which this Schedule is attached;
- (ee) **"Leases"** and **"Lease"** means, respectively, all and any present and future leases, sub-leases, binding offers and agreements to lease or sub-lease the whole or any part of the Lands or the whole or any part of the Buildings, and all and any present and future licences, whereby the Chargor (or any authorized representative of the Chargor) gives any other Person the right to use or occupy the whole or any part of the Charged Premises, in each case for the time being in effect, and all amendments, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into, but does not include registered easements or rights in the nature of an easement;
- (ff) **"Liabilities"** shall have the meaning ascribed thereto in Section 11.05 hereof;
- (gg) **"Loan"** means the loan from the Chargee to the Borrower pursuant to three (3) promissory notes of even date herewith;
- (hh) **"Loan Documents"** means this Charge, other charges, the General Assignment of Leases and Rents, other general assignments of leases and rents, the Direction to Nominee and Acknowledgement, other directions to nominee and acknowledgements, the Environmental Indemnity, other environmental indemnities, the Guarantee and all other Security, instruments and documents executed in connection with the Loan, provided that the Mortgage Loan Application shall not constitute a Loan Document;
- (ii) **"Loan-to-Value Ratio"** means the ratio in respect of the Charged Premises calculated by the Chargee, acting reasonably, by dividing the sum of the outstanding Loan (including principal, interest and other charges thereunder) and any permitted subordinate financing (including principal, interest and other charges thereunder), by the fair market value of the Charged Premises (at the Chargee's option, such fair market value shall be determined by an appraiser selected and retained by the Chargee);
- (jj) **"Maturity Date"** means the earlier of February 1, 2026, and the date of full repayment of the Loan to the Chargee and satisfaction of the Obligations Secured;
- (kk) **"Mortgage Loan Application"** means the mortgage loan application agreement dated November 30, 2015, between the Chargee, as lender, the Borrower, as borrower, and the Guarantors, as guarantors, as it may have been amended, modified, renewed, replaced, extended, supplemented and/or restated prior to the date hereof;
- (ll) **"Mortgage Rate"** means the nominal rate of interest of twenty-five per cent (25%) per annum, calculated semi-annually not in advance, as well as after as before demand, and as well after as before default or judgment, with interest on overdue interest at the same rate, calculated and compounded in the same manner, until paid;
- (mm) **"Net Operating Income"** means all gross revenues generated by the Secured Premises (excluding loans or contributions to capital), less operating expenses (excluding Loan debt service payments), as determined on a cash basis of accounting, adjusted however, so that (i) operating expenses shall be deemed to include a management fee equal to the greater of the annual property management fee payable to the Property Manager and 4% of gross revenues, together with a tenant improvement, leasing commission and capital reserve equal to \$0.25 per leaseable square foot; (ii) payment of operating expenses (including realty taxes and insurance expenses but excluding extraordinary items) are to be spread out over the period during which they accrued and adjusted for all known future changes thereto; (iii) prepaid rents and other prepaid amounts are to be spread out over the periods during which they are earned or applicable; (iv) security deposits shall not be included until duly applied or earned; (v) gross revenues shall be based on Leases in place as determined pursuant to standard underwriting criteria, consistently applied, and excluding extraordinary items; and (vi) all refunds/rebates of operating expenses shall be credited against operating expenses for the period in which such operating expenses were incurred;
- (nn) **"Notice"** shall have the meaning ascribed thereto in Section 13.01 hereof;

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- (oo) "Obligations Secured" shall have the meaning ascribed thereto in Section 2.04 hereof;
- (pp) "Permitted Encumbrances" means:
- (i) applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing or industrial agreements, utility agreements, airport zoning regulations and other similar agreements with governmental authorities or private or public utilities and building restrictions provided same are in compliance and do not materially adversely affect the use or value of the Lands;
  - (ii) any easements, servitudes, rights-of-way, licences, restrictions that run with the Lands and other minor encumbrances (including easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables) which do not materially adversely affect the use or value of the Lands;
  - (iii) defects, discrepancies, encroachments or irregularities in title to the Lands which are of a minor nature and do not in the aggregate materially adversely affect the use or value of the Lands;
  - (iv) inchoate liens for Taxes, assessments, governmental charges or levies accrued but not yet due and payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings (but from which there is no possibility of seizure/sale by the municipality);
  - (v) inchoate liens for public utilities accrued but not yet due and payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings (but from which there is no possibility of seizure/sale by the utility);
  - (vi) undetermined or inchoate liens incidental to construction, renovation or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Chargor pursuant to the *Construction Lien Act* (Ontario), and in respect of any of the foregoing cases, the Chargor, where applicable, has complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom and to preserve the priority of the lien of this Charge;
  - (vii) the reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other Person;
  - (viii) encroachments by the Lands over neighbouring lands, or by neighbouring lands over the Lands, which are of a minor nature and do not in the aggregate materially adversely affect the use or value of the Lands;
  - (ix) any notices in respect of existing Leases and future Leases entered into in accordance with the provisions hereof;
  - (x) Unregistered Agreements existing as of the date hereof in respect of which the Chargee has been given actual notice, and any others approved of by the Chargee from time to time, acting reasonably;
  - (xi) purchase money security interests in personal property or fixed equipment located at the Lands given in the ordinary course of the Chargor's business up to a maximum of \$50,000.00;
  - (xii) the Security; and
  - (xiii) any encumbrance or lien consented to, in writing, by the Chargee from time to time (including all encumbrances registered against the Lands as of the date hereof);

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- (qq) "Person" means an individual, corporation, association, partnership, trust (including a real estate investment trust) or other entity, any group of individuals, corporations, associations, partnerships, trusts or other entities, or any other combination thereof;
- (rr) "Principal Sum" means the amount of principal money outstanding from time to time and secured by this Charge;
- (ss) "Property Manager" means Gross Capital Inc.;
- (tt) "Related Entities" means Persons who are or which are:
  - (i) affiliates; or
  - (ii) considered or deemed to be within the group of "related persons" or "affiliated persons", as such terms are defined in Sections 251 and 251.1 of the *Income Tax Act* (Canada) in effect as of the date hereof; or
  - (iii) considered or deemed to be within the group of "affiliated entities" as such term is defined in Rules adopted under the *Securities Act* (Ontario) in effect as of the date hereof; or
  - (iv) with respect to any Person, any other Person which, directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, such Person; or
  - (v) a trust in respect of which the trustees and the beneficiaries holding a majority of the interests in such trust (other than any charitable beneficiaries) are Controlled by the transferor or any one or more Related Entities of the transferor;
- (uu) "Replacement Cost" means the gross cost of repairing, replacing and/or reinstating any item of property with materials of like kind, quantity and quality on the same or a similar site, including municipal by-laws extension if applicable and without deduction for physical, accounting or other depreciation, and provided that the Replacement Cost of the Charged Premises shall be deemed to be not less than the Principal Sum;
- (vv) "required works" shall have the meaning ascribed thereto in Section 5.05(e) hereof;
- (ww) "Secured Premises" means the Charged Premises together with all other real property secured by the Security;
- (xx) "Security" means the documents creating a lien in favour of, or any collateral or guarantee held from time to time by, the Chargee, in each case securing or intended to secure repayment and performance of the obligations of the Chargor under this Charge including the Obligations Secured;
- (yy) "Servicer" means Largo Real Estate Advisors, Inc. or any replacement thereof appointed by the Chargee;
- (zz) "Taxes" means all taxes, duties, rates, imposts, assessments and other similar charges, municipal, local, parliamentary and otherwise, general and special, ordinary and extraordinary, foreseen and unforeseen, and all related interest, penalties and fines, which now are or may hereafter be imposed, charged or levied upon the Charged Premises or the Lands;
- (aaa) "Termination Fees" has the meaning ascribed thereto in Section 9.01 hereof;
- (bbb) "Transfer" has the meaning ascribed thereto in 0 hereof;
- (ccc) "Transfer Conditions" mean all of the following: (a) no Default or Event of Default shall have occurred and be continuing; (b) after the proposed transfer, Mark Gross and Sheldon Gross shall continue, directly or indirectly, to Control the Chargor and own, directly or indirectly, not less than 51% of the controlling voting interests in the Chargor; (c) the Chargor shall deliver to the Chargee not less than ninety (90) days' prior written notice of the proposed transfer, together with organizational charts illustrating the ownership structure before and the ownership structure after the proposed change in

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ownership, which organizational charts shall set forth the Chargor's direct and indirect upstream ownership and percentage interests held by each upstream Person (individually an "Organizational Chart"); (d) within thirty (30) days after the transfer has occurred, the Chargor shall deliver to the Chargee a final Organizational Chart confirming the new ownership structure; (e) the Chargor shall pay all costs, fees and expenses (including legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee in connection with reviewing the proposed transfer, whether or not the transfer is consummated; (f) the proposed transferee and its Related Entities (i) are not then identified by the Office of Foreign Assets Control or Department of Treasury (United States) as subject to trade restrictions under United States law including, but not limited to, the *International Emergency Economic Powers Act*, the *Trading with the Enemy Act* and any Executive Orders or regulations promulgated thereunder (as such laws and regulations have been or may hereafter be renewed, extended, amended or replaced), with the result that such proposed transferee and its constituent members are in violation of law and/or the transaction of business with such parties is prohibited by law, (ii) are not in violation of any applicable laws relating to terrorism or money laundering including, without limitation, those relating to transacting business with persons identified in clause (i) above, the requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001 (as such laws and regulations promulgated thereunder have been or may hereafter be renewed, extended, amended or replaced), and (iii) if the Chargee requests, sign a certificate in form and substance satisfactory to the Chargee evidencing such compliance and identifying the transferees with sufficient information to enable the Chargee to perform searches confirming the foregoing (except that identifying information need not be provided for any transfers made in the ordinary course of business over a national securities exchange); and (g) concurrently with delivery of the notice required in clause (d) above, the Chargor shall pay the Chargee an administrative review fee; and

(ddd) "Unregistered Agreements" means those unregistered agreements (and all amendments thereof) in connection with the Charged Premises approved by the Chargee, acting reasonably.

For purposes of calculating all ratios pursuant to this Charge and calculating all other amounts hereunder (including without limitation, Net Operating Income), the Loan payments paid by the Borrower shall be deemed to be paid by the Chargor.

**Section 1.02 Headings.** The headings of all Articles and Sections hereof are inserted for convenience of reference only and shall not affect the construction or interpretation of this Charge.

**Section 1.03 References.** Whenever in this Charge a particular Article, Section or other portion thereof is referred to then such reference, unless otherwise indicated, shall pertain to an Article, Section or portion thereof contained herein.

**Section 1.04 Currency.** All dollar amounts expressed herein are expressed as being lawful money of Canada.

**Section 1.05 Governing Law.** This Charge shall be governed by and construed in accordance with the laws in effect in the Province of Ontario and, by execution and delivery of this Charge, the Chargor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Chargor hereby waives, and agrees not to assert, by way of motion, as a defence or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in or nearby the City, that the action or proceeding is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Charge or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

**Section 1.06 Numbers and Gender.** This Charge shall be construed with all changes in number and gender required by the circumstances. All wording applicable to a person shall be construed to apply to a Person.



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## ARTICLE 2 - SECURITY AND REPAYMENT

**Section 2.01 Charge.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Chargor, the Chargor does hereby charge unto the Chargee and its successors and assigns, as and by way of a first fixed and specific mortgage and charge, all of the right, title and interest of the Chargor in and to the Charged Premises, to have and to hold such Charged Premises, this Charge and all rights conferred hereunder, unto the Chargee, as security for the Obligations Secured, with the powers and authorities herein expressed, but subject to the provisions contained herein.

**Section 2.02 Additional Security.** Subject to Section 8.01 and for the consideration described in Section 2.01, as additional security for the Obligations Secured and the performance and observance of all covenants herein to be performed and observed by the Chargor, the Chargor does hereby assign, transfer and set over unto the Chargee and its successors and assigns all of the Chargor's right, title and interest in and to the following (collectively the "Additional Security"):

- (a) all moneys received by the Chargor from any tenancy, use or occupation of any part of the Charged Premises (including all rents and other sums payable to the Chargor pursuant to the Leases);
- (b) all benefits, advantages and powers to be derived by the Chargor from the Leases and all security provided by tenants in connection therewith, with full power and authority to demand, sue for, recover, receive and give receipts for all rents and all other moneys payable to the Chargor thereunder and otherwise to enforce the rights of the landlord thereunder in the name of the Chargor;
- (c) the benefit of all guarantees of and indemnities with respect to any Leases and the performance of all obligations thereunder;
- (d) the benefit of all insurance indemnities pertaining to the Leases including, without limitation, those covering rents and other income derived thereunder; and
- (e) all bank accounts maintained in respect of the Chargor and/or the Charged Premises and the moneys deposited therein from time to time.

Provided that, until the Chargee is in possession or becomes the owner of the Charged Premises, the Chargor shall and hereby agrees to indemnify and save harmless the Chargee from and against any and all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses, howsoever arising, in connection with the Leases other than those arising from the gross negligence or wilful misconduct of the Chargee.

**Section 2.03 Principal Sum.** The Chargor hereby acknowledges itself indebted and covenants and promises to pay to the Chargee, upon demand, all amounts now or hereafter owing by the Chargor to the Chargee, up to the maximum principal amount of Seventy Million Dollars (\$70,000,000.00) in lawful money of Canada, and to pay interest thereon, from and including the date hereof to and including the date of payment, at the Mortgage Rate.

**Section 2.04 Payment and Performance Obligations.** This Charge secures payment by the Chargor to the Chargee of all debts and liabilities, present and future, direct and indirect, absolute and contingent and matured and not matured, at any time owing by the Chargor to the Chargee pursuant to the Guarantee, this Mortgage and/or the Loan Documents, whether arising from dealings between the Chargor and the Chargee or from any other dealings or proceedings relating to such obligations of the Chargor under or pursuant to such documentation, and wherever incurred, and whether incurred by the Chargor alone or with another or others and whether as principal or surety, and all legal and other costs, charges and expenses (the "Obligations Secured").

**Section 2.05 Lien in Effect.** The lien and charge created by this Charge shall take effect forthwith upon the execution of these presents by the Chargor, and in any event whether any part of the Loan shall or shall not be advanced, the costs and expenses (legal fees and disbursements on a substantial indemnity basis) incurred by the Chargee including, without limitation, in the examination of title to the Lands, the preparation of this Charge and other Loan Documents, the registration of this Charge and other registered Security and the valuation and inspection charges