

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

ROY WONNACOTT

Respondent

APPLICATION RECORD
(Application Date: June 23, 2023)

LEE, BOWDEN, NIGHTINGALE LLP
Barristers & Solicitors
3700 Steeles Ave W
Suite 300
Vaughan ON
L4L 8K8

Gregory W. Bowden
LSO# 31765V
Email: GWB@LBNFIRM.COM
Tel: (905) 264-6678

Lawyers for the Applicant

TO: **ROY WONNACOTT**
15309 Nine Mile Road
RR #3
Ilderton, Ontario
N0M 2A0

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

ROY WONNACOTT

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location – Via Zoom through the London courthouse, 80 Dundas Street, London, Ontario, N6A 6K1 – Zoom details to be provided.

on **FRIDAY, JUNE 23, 2023**, at a time to be advised by the Court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

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

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

Date: ~~May 23, 2023~~
May 24th, 2023

Issued by: Cara L
Middleton Digitally signed by Cara L
Middleton
Date: 2023.05.24 09:07:26
+04'00'
Local Registrar

Address of court office: 80 Dundas Street
London, Ontario
N6A 6B3

TO: **ROY WONNACOTT**
15309 Nine Mile Road
RR #3
Ilderton, Ontario
N0M 2A0

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

- (a) An Order appointing **ALBERT GELMAN INC.** to be receiver of the property of the Respondent as described in Schedule “A” attached hereto, and of all personal property that may be found at that address;
- (b) Costs of this application on a substantial indemnity basis; and
- (c) Such further and other relief as this Honourable Court may deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) The Applicant sued the Respondent and his corporation on two debts and a mortgage, and obtained judgment by default;
- (b) The Applicant granted the Respondent a mortgage on 15309 Nine Mile Road, RR #3, Ilderton, Ontario, described in Schedule “A” attached hereto (“Mortgaged Property”). The mortgage provides that upon default the Applicant may appoint a Receiver;
- (c) The Respondent is indebted to the Applicant pursuant to a Loan, Security Agreement and Mortgage. The Respondent is in default of his obligations under the Loan, Security Agreement and Mortgage. On May 31, 2022 the Applicant made demand requiring the Respondent, Roy Wonnacott, pay the full amount outstanding under a Loan #5212780, which as of that date was \$73,435.29. On June 24, 2022 the Applicant made demands requiring that the Respondents pay the full amounts outstanding under the mortgage, which as of that date was \$138,585.70. No payments were made after the demand;
- (d) There are tax arrears on the Mortgaged Property;

- (e) The Respondent, Roy Wonnacott owns a property located in Ilderton, Ontario, more fully described in Schedule “A” attached hereto. The Applicant has registered a mortgage against the said property;
- (f) Section 101 of the *Courts of Justice Act* and s. 243 of the *Bankruptcy and Insolvency Act*;
- (g) Rule 41.02 of the *Rules of Civil Procedure*.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (a) Affidavit of Philip Hryniowski, sworn March 21, 2023;
- (b) Such further and other material as counsel may provide and this Honourable Court permit.

DATE OF ISSUE: May 23, 2023

LEE BOWDEN NIGHTINGALE LLP

Barristers & Solicitors
3700 Steeles Avenue West
Suite 300
Vaughan, Ontario
L4L 8K8

Gregory W. Bowden (LSO 31765V)

Email: gwb@lbnfirm.com
Tel (905) 264-6678

Lawyers for the Applicant

SCHEDULE "A"

PIN: 08148-0003 (LT)

DESCRIPTION: NORTH HALF LOT 8 CONCESSION 8; EXCEPT PART 1, 33R4576,
153399 MIDDLESEX CENTRE TWP/LONDON TWP

ADDRESS: 15309 Nine Mile Road, RR #3, Ilderton, Ontario, N0M 2A0

THE TORONTO-DOMINION BANK
Applicant

-and- **ROY WONNACOTT**
Respondent

Court File Number:

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT LONDON

NOTICE OF APPLICATION

LEE, BOWDEN, NIGHTINGALE LLP
Barristers & Solicitors
3700 Steeles Ave W
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L4L 8K8

Gregory W. Bowden
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Tel. (905) 264-6678 x26
GWB@LBNFIRM.COM
Lawyers for the Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

ROY WONNACOTT

Respondent

AFFIDAVIT OF PHILIP HRYNIOWSKI

I, **PHILIP HRYNIOWSKI**, employed in the City of Markham, in the Regional Municipality of York, **MAKE OATH AND SAY:**

1. I am an employee of The Toronto-Dominion Bank ("TD"), with carriage of this mater, and as such have knowledge of the following facts.

2. The Applicant sued the Respondent and his corporation on two debts and a mortgage, and obtained judgment by default, a true copy of which is attached to this affidavit and marked as **Exhibit "A"**.

3. The aforementioned mortgage is on a property located at 15309 Nine Mile Road., RR 3, Ilderton, Ontario, N0M 2A0, and legally described as:

NORTH HALF LOT 8 CONCESSION 8; EXCEPT PART 1, 33R4576, 153399
MIDDLESEX CENTRE TWP/LONDON TWP
PIN # 08148-0003 (LT)

4. Attached to this affidavit and marked as **Exhibit "B"** is a true copy of the parcel register for the Property, and at **Exhibit "C"** is a true copy of the standard charge terms applicable to the said mortgage.

5. Section 8 of the standard charge terms grant the Applicant the right to appoint a receiver.

6. The mortgage remains in default, and the Applicant has received no payments on the mortgage. The outstanding balance is: \$224,029.65 as at February 6, 2023.

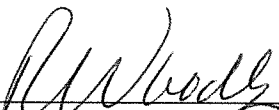
STATUS OF PROPERTY

7. The Applicant has not yet taken possession of the Property, and to the best of my knowledge, the Respondent is in possession.

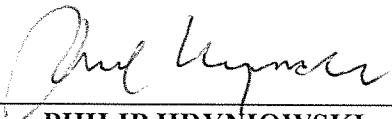
8. Attached to this affidavit and marked as **Exhibit "D"** is a true copy of the report received from Lisa Aitchison, an employee of the property manager I hired, Appledale Property Management Inc. The report advises that the property is used for a trucking company and also for the Respondent's work as a truck mechanic. This gives me a concern that there could be environmental issues with the property, and it is for this reason that the Applicant has not yet sought to take possession of the property.

9. The Applicant requests that this court appoint Albert Gelman Inc. as receiver of the Respondent for the purpose of taking over, managing and selling the mortgaged property. Albert Gelman Inc. has consented to being appointed receiver, and a true copy of the consent is attached to this affidavit and marked as **Exhibit "E"**.

SWORN BEFORE ME at the City of Markham, in the Regional Municipality of York on March ~~20~~²¹, 2023.



Commissioner for Taking Affidavits
(or as may be)



PHILIP HRYNIOWSKI

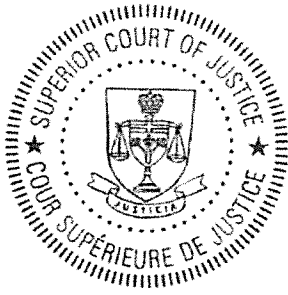
Rita Woodley,
a Commissioner, etc., Province of Ontario,
for The Toronto-Dominion Bank.
Expires October 22, 2024.

***This is Exhibit "A" referred to in the Affidavit of Philip
Hryniowski, sworn before me this²¹.....
day of March, 2023.***



A Commissioner for Taking Affidavits, Etc.

Rita Woodley,
a Commissioner, etc., Province of Ontario,
for The Toronto-Dominion Bank.
Expires October 22, 2024



Court File No. CV-22-00000995-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

PLAINTIFF

- and -

ROY WONNACOTT TRUCKING LIMITED and ROY WONNACOTT

DEFENDANTS

JUDGMENT

ON READING the Statement of Claim in this action and proof of service of the Statement of Claim on the Defendants, filed, and the Defendants having been noted in default.

1. IT IS ORDERED AND ADJUDGED that the Defendants pay to the Plaintiff the sum of \$139,538.70.
2. IT IS ORDERED AND ADJUDGED that the Defendant, Roy Wonnacott, pay to the Plaintiff the sum of \$73,102.16.
3. IT IS ORDERED AND ADJUDGED that the Defendants, Roy Wonnacott Trucking Limited and Roy Wonnacott, deliver to the Plaintiff possession of the lands described in Schedule "A" attached hereto;
4. IT IS ORDERED AND ADJUDGED that the Defendants pay to the Plaintiff costs of this action fixed at \$ \$1,146.00

THIS JUDGMENT BEARS INTEREST at the at the Plaintiff's prime rate plus 3.6 per cent per annum on the sum of \$139,538.70, interest at the Plaintiff's prime rate plus 3 per cent per annum on the sum of \$73,102.16, and 2 per cent per annum on the costs from its date.

August 16 2022

Riley

Digitally signed by Riley
McGregor

McGregor

Date: 2022.08.16 14:46:04
-04'00'

(Signature of judge, officer or registrar)

Address of Court Office:

London court
80 Dundas Street
London, ON
N6A 6A3

SCHEDULE "A"

NORTH HALF LOT 8 CONCESSION 8; EXCEPT PART 1, 33R4576, 153399 MIDDLESEX
CENTRE TWP/LONDON TWP

PIN # 08148-0003 (LT)

Municipally known as:

15309 Nine Mile Road, RR 3, Ilderton, Ontario, N0M 2A0

THE TORONTO-DOMINION BANK and

ROY WONNACOTT TRUCKING LIMITED et al

PLAINTIFF

DEFENDANTS

(Short title of proceeding)

Court File # CV-22-00000995-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at London

JUDGMENT

(Form 11B under the Rules)

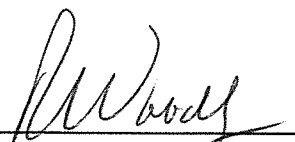
Name, address and telephone number of solicitor or party

LEE, BOWDEN, NIGHTINGALE LLP
Barristers & Solicitors
3700 Steeles Ave. West
Suite 300
Vaughan, Ontario
L4L 8K8

H. Stephen Lee
HSL@LBNFIRM.COM
LSUC #32942N
Tel. (905) 264-6678
Fax. (905) 264-6679

Solicitors for the Plaintiff

This is Exhibit "B" referred to in the Affidavit of Philip Hryniowski, sworn before me this ...21..... day of March, 2023.



A Commissioner for Taking Affidavits, Etc.

Rita Woodley,
a Commissioner, etc. Province of Ontario,
for The Toronto-Dominion Bank.
Expires October 22 2024

08148-0003 (LT)

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

PROPERTY DESCRIPTION: NORTH HALF LOT 8 CONCESSION 8; EXCEPT PART 1, 33R4576, 153399 MIDDLESEX CENTRE TWP/LONDON TWP

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
FIRST CONVERSION FROM BOOK 629

PIN CREATION DATE:
1989/12/11

OWNER'S NAMES:
WONNACOTT, ROY

CAPACITY SHARE:
BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
EFFECTIVE	2000/07/29	THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1989/12/11 ON THIS PIN				
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1989/12/11						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1988/08/17 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 1989/12/11 **						
118887	1959/04/09	BYLAW				
CORRECTIONS: 'THIS INSTRUMENT' WAS DELETED FROM PROPERTY 08072-0175 IN ERROR AND WAS RE-INSTATED ON 1992/03/17 BY BRUCE BURT.						
450772	1976/05/27	TRANSFER	*** COMPLETELY DELETED ***		WONNACOTT, JOHN HAYWARD WONNACOTT, ELIZABETH TREERY	
632604	1983/02/17	CHARGE	*** COMPLETELY DELETED ***		THE TORONTO-DOMINION BANK	
699689	1985/05/06	CHARGE	*** COMPLETELY DELETED ***		THE TORONTO-DOMINION BANK	
LT378447	1995/03/22	APL OF SURV-LAND	*** COMPLETELY DELETED *** WONNACOTT, JOHN HAYWARD		WONNACOTT, JOHN HAYWARD	C

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

08148-0003 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
LT380427	1995/04/13	TRANSFER		*** COMPLETELY DELETED *** WONNACOTT, JOHN HAYWARD	WONNACOTT, ROY	
LT380430	1995/04/13	TRANSFER		*** COMPLETELY DELETED *** WONNACOTT, ROY	WONNACOTT, JOANNE WONNACOTT, ROY	
LT380431	1995/04/13	CHARGE		*** COMPLETELY DELETED *** WONNACOTT, JOANNE WONNACOTT, ROY	THE TORONTO-DOMINION BANK	
LT383736	1995/05/23	DISCH OF CHARGE		*** COMPLETELY DELETED ***		
LT383737	1995/05/23	DISCH OF CHARGE		*** COMPLETELY DELETED ***		
LT524462	1998/06/18	CHARGE	\$250,000	WONNACOTT, JOANNE WONNACOTT, ROY	THE TORONTO-DOMINION BANK	C
LT524517	1998/06/18	CHARGE		*** COMPLETELY DELETED *** WONNACOTT, JOANNE WONNACOTT, ROY	ARDLER FARMS INC.	
LT528530	1998/07/15	TRANSFER		WONNACOTT, JOANNE WONNACOTT, ROY	WONNACOTT, ROY	C
LT528605	1998/07/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
ER31517	1999/09/17	CHARGE		*** COMPLETELY DELETED *** WONNACOTT, ROY	WONNACOTT, JOANNE MARIE	
ER32995	1999/09/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** ARDLER FARMS INC.		
ER380151	2005/06/31	DISCH OF CHARGE		*** COMPLETELY DELETED *** WONNACOTT, ROY THOMAS		

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

This is Exhibit "C" referred to in the Affidavit of Philip Hryniowski, sworn before me this 21st day of March, 2023.



A Commissioner for Taking Affidavits, Etc.

Rita Woodley,
a Commissioner, etc., Province of Ontario,
for The Toronto-Dominion Bank.
Expires October 22, 2024

This set of **STANDARD CHARGE TERMS** shall be deemed to be included in every Charge in which the set is referred to by its filing number, as provided in section 9 of the above Act.

1. Definitions

In this set of Standard Charge Terms:

- (a) **Bank** means The Toronto-Dominion Bank.
- (b) **Charge** means this Charge/Mortgage of Land made pursuant to the Land Registration Reform Act, 1984 and any amendments thereto, to which the Chargor and the Chargee are parties and which is dated as of the Date of Signature of the first named Chargor who signs the Charge.
- (c) **Chargee** means the Bank.
- (d) **Chargor** means each Chargor described in this Charge.
- (e) **Costs** means the fees, costs, charges and expenses of the Bank of and incidental to:
 - (i) the preparation, execution and registration of the Charge and any other instruments connected herewith;
 - (ii) the collection, enforcement, realization of the security herein contained;
 - (iii) procuring payment of the Indebtedness due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Bank or any other party;
 - (iv) any inspection required to be made of the Property;
 - (v) all necessary repairs required to be made to the Property;
 - (vi) the Bank's having to go into possession of the Property and secure, complete and equip the building or buildings in any way in connection therewith;
 - (vii) the Bank's renewal of any leasehold interest;
 - (viii) the exercise of any of the powers of a receiver contained herein; and
 - (ix) all solicitor's costs, costs and expenses of any necessary examination of the title to and of valuation of the Property.

Costs shall:

- (i) extend to and include legal costs incurred by the Bank as between solicitor and his own client;
 - (ii) be payable forthwith by the Chargor; and
 - (iii) be a charge on the Property.
- (f) **Fixtures** include, but are not limited to, furnaces, boilers, oil burners, stokers, water heaters, electric light fixtures, screen and storm doors and windows, air conditioning, plumbing, cooling and heating equipment and all apparatus and equipment appurtenant to the Property.
 - (g) **Indebtedness** means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, wheresoever or howsoever incurred from or by the Chargor, as principal or surety, whether alone or jointly with any other person and in whatever name style or firm, whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.
 - (h) **Interest Rate** means the Interest Rate set out in Schedule I to this Charge.
 - (i) **Principal Amount** means the Principal Amount in lawful money of Canada set out in this Charge.
 - (j) **Property** means the property identified in this Charge by the Property Identifier(s) and described in the Description therein and in a Schedule to this Charge, if required, and includes all buildings, Fixtures and improvements now or hereafter brought or erected thereon.

- (k) **Spouse of Chargor** means each Spouse of Chargor described in this Charge.
- (l) **Taxes** means all taxes, rates and assessments, municipal, local, parliamentary or otherwise.

If the Property is a condominium unit, the following definitions apply:

- (m) **Condominium Corporation** means the Condominium Corporation which was created by the registration of the Declaration and the description relating thereto of which the Property hereby charged constitutes a part.
- (n) **Common Expenses** means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Condominium Act (Ontario), as amended from time to time or in the Declaration.
- (o) **Declaration** means the Declaration which, together with a description, was registered pursuant to the Condominium Act, to create the Condominium Corporation.

2. Charge of Property

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor,

- (a) if the Property is a freehold property, hereby charges the Property to the Bank; or
- (b) if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all of the obligations of the Chargor in the manner provided by this Charge.

3. Covenants of the Chargor

The Chargor hereby covenants with the Bank that:

- (a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;
- (b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;
- (c) The Chargor has the right to charge the Property to the Bank;
- (d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;
- (e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;
- (f) The Chargor will insure the Property to an amount of not less than the Principal Amount PROVIDED that if and whenever such amount be greater than the insurable value of the buildings, fixtures and improvements now or hereafter brought or erected upon the Property, such insurance shall not be required in any greater amount than such insurable value and if and whenever the same shall be less than the insurable value the Bank may require such insurance to the full replacement value. It is further agreed that the Bank may require any insurance hereunder to be cancelled and new insurance effected by an insurer to be approved by it and also may of its own accord effect or maintain any insurance herein provided for and any amount paid by the Bank therefor shall be payable forthwith to the Bank with interest at the Interest Rate by the Chargor and shall be a charge upon the Property;
- (g) The Chargor will in each year within ten (10) days after the Taxes become due and payable produce to and leave with the Bank the duly receipted tax bills for that year covering the Property;
- (h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and
- (i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

4. Additional Covenants if Property is a Leasehold Interest

The Chargor covenants with the Bank that:

- (a) The Chargor has a good leasehold title to the Property;
- (b) The Chargor has a right to charge and sublet the leasehold title to the Property to the Bank in the manner herein provided, and, if required, has obtained the lessor's consent to this Charge;
- (c) Neither the Chargor nor any other person has heretofore made, done, committed or suffered any act to encumber the lease or any part thereof;
- (d) The lease is a good, valid and subsisting lease and not surrendered, forfeited, amended or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Chargor up to the Date of Signature of the Chargor;
- (e) During the continuance of this Charge, the Chargor will not amend, surrender or modify the lease without the written consent of the Bank and will pay the rent reserved by the lease and perform and observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Bank indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto; and
- (f) The Chargor will stand possessed of the Property for the last day of the term or any renewal term granted by the lease in trust for the Bank, and will assign and dispose thereof as the Bank may direct, but subject to the same right of redemption and other rights as are hereby given to the Chargor with respect to the derivative term hereby granted.

5. Repair and Maintenance of Property

The Chargor covenants with the Bank that the Chargor will keep the Property in good condition and repair. The Bank may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Chargor shall pay the Costs associated therewith. If the Chargor or anyone claiming under him neglects to keep the Property in good condition and repair or commits any act of waste on the Property or does anything by which the value of the Property shall be diminished, as to all of which the Bank shall be sole judge, or makes default as to any of the covenants or provisos herein contained, the Indebtedness shall, at the option of the Bank, forthwith become due and payable. In default of payment thereof the powers of entering upon and leasing or selling hereby given may be exercised forthwith, and the Bank may make such repairs as it deems necessary and the Costs thereof shall be paid by the Chargor.

6. Obligation to Build Diligently

The Chargor covenants with the Bank that if the Chargor fails at any time for a period of ten days to diligently carry on the work of construction of any building or buildings being or to be erected on the Property or, without the consent in writing of the Bank, departs in such construction from any plans and specifications thereof which must be approved by the Bank or from the generally accepted standards of construction in the locality of the Property, or permits any construction or other lien to be registered against the Property for any period exceeding thirty days, the Bank at its option at any time thereafter through its agents or contractors may enter the Property and have exclusive possession thereof and of all materials, plant, gear and equipment thereon free of interference from or by the Chargor and complete the construction of the building or buildings either according to the said plans and specifications or according to other plans, specifications or design as the Bank in its absolute discretion shall elect. All Costs in connection therewith shall be payable by the Chargor.

7. Remedies on Default of Chargor

It is hereby provided that:

(a) Power to Lease or Sell Property

The Bank on default of payment of the Indebtedness or any portion thereof for the minimum default period on giving the minimum notice, according to applicable law, may enter on, lease or sell the Property. Provided further that on default of payment for the minimum default period, according to applicable law, the foregoing power of entry, leasing and selling may be exercised by the Bank without any notice whatsoever.

(b) Rights of Bank in Sale of Property

- (i) The Bank in the event of default by the Chargor in payment of the Indebtedness or any portion thereof may sell the Property or any part thereof or, if the Property is a leasehold interest, sell the unexpired term of years demised by the lease or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor and on such terms as to credit and otherwise and with such conditions of sale as it shall in its discretion deem proper, and in the event of any sale on credit or for cash or for part cash and part credit, the Bank shall not be accountable for or be charged with any monies until actually received by it. The Bank may rescind or vary any contract or sale and may buy in and re-sell the Property or any part thereof without being answerable for loss occasioned thereby; and no purchaser shall be bound to enquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale hereunder, but the Bank alone shall be responsible. The Bank may sell without entering into actual possession of the Property and while in possession shall be accountable only for monies which are actually received by it and sales may be made by it from time to time of parts of the Property to satisfy any portion of the Indebtedness, leaving the residue thereof secured hereunder on the remainder of the Property, or may take proceedings to sell and may sell the Property or any portion of the Property subject to the balance of the Indebtedness not yet due at the time of the said sale.

- (ii) Disposition of Leasehold Property - If the Property is a leasehold interest, the Chargor hereby irrevocably appoints the Bank as the Chargor's substitute to be the Chargor's attorney during the continuance of this security. In the event of default and on giving the notice contemplated herein to the Chargor for and on behalf of the Chargor, the Bank may assign the lease and convey the Property and the last day of the term granted by the lease as the Bank shall at any time direct, and in particular, upon any sale made by the Bank under the statutory power or power of sale herein contained, to assign the lease and convey the Property and the said reversion to the purchaser. It is hereby declared that the Bank or other person for the time being entitled to the Indebtedness may at any time, by deed, remove the Chargor or any other person from being a trustee of the lease under the declaration of trust hereinbefore declared and on the removal of the Chargor or any future trustee of the lease, appoint a new trustee or trustees in the Chargor's place.
- (iii) If the Property is a leasehold interest, the Chargor will, with respect to the lease, at the request of the Bank, but at the cost, charge and expense of the Chargor, grant and assign unto the Bank, or the person whom it may appoint, the last day of the said term hereinbefore excepted or any renewal or substituted term; and further, in the event of the Bank making any sale under the power of sale herein contained the Chargor shall stand seized and possessed of the Property for the last day of the said term hereinbefore excepted, and of any renewal or substituted term, and of all rights of renewal in trust for the purchaser or purchasers, his or their heirs, executors, administrators, successors and assigns.

(c) **Costs of Sale of Property**

The Costs of any sale proceedings hereunder, whether such sale proves abortive or not, incurred in taking, recovering or keeping possession of the Property or in enforcing the personal remedies under this Charge or by reason of non-payment or in procuring payment of the Indebtedness shall be payable by the Chargor whether any action or proceeding has commenced or not.

8. Appointment of Receiver

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank a mortgagee in possession or responsible as such;
- (c) All monies received by the receiver, after providing for payment and charges ranking prior to this Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;
- (d) The receiver so appointed shall have power to:
 - (i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;
 - (ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and
 - (iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;
- (e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.

9. Taking Possession of Personal Property

The Bank may distrain for arrears of any portion of the Indebtedness. The Chargor hereby waives the right to claim exemption and agrees that the Bank shall not be limited to the amount for which it may distrain.

10. Quiet Possession

Until default of payment the Chargor shall have quiet possession of the Property.

11. Release of Property by Bank

It is hereby agreed by the Chargor that the Bank may at its discretion at all times release any part or parts of the Property or any other security or any surety for the Indebtedness or any portion thereof either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the Property or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Bank, it being expressly agreed that every part or lot into which the Property is or may hereafter be divided does and shall stand charged with the whole of the Indebtedness.

No extension of time given by the Bank to the Chargor, or any one claiming under the Chargor or any other dealing by the Bank with the owner or owners of the Property or of any part thereof shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable for the payment of the Indebtedness or any portion thereof.

12. Payment of Other Charges and Performance of Other Obligations by Bank

The Chargor hereby agrees that:

- (a) The Bank may satisfy any charge now or hereafter existing or to arise or be claimed upon the Property and the amount so paid shall be added to the Indebtedness and bear interest at the Interest Rate and shall be payable forthwith by the Chargor to the Bank and in default of payment, the Indebtedness shall become payable and the powers of sale hereby given may be exercised forthwith without any notice. And in the event of the Bank satisfying any such charge or claim, it shall be entitled to all equities and securities of the person or persons so satisfied and it may retain any discharge or cessation of charge unregistered until paid; and
- (b) If the Property is a leasehold interest, and if the Chargor shall refuse or neglect to renew the lease or any renewals thereof granted hereafter, then, and as often as it shall happen, the Bank may, effect such renewals in its own name or otherwise, and every renewal of the lease and the Property thereby demised shall remain and be security to the Bank for the Indebtedness. All Costs in connection therewith shall be payable by the Chargor.

13. Sale or Transfer of Property by Chargor

The Chargor covenants and agrees with the Bank that:

- (a) The Chargor will not without the prior consent in writing of the Bank, sell, transfer or otherwise dispose of the Property or any portion thereof or any interest therein; and, in the event of such sale, transfer or other disposition, without the consent of the Bank, the Indebtedness hereby secured shall, at the option of the Bank, forthwith become due and payable; and
- (b) If the Property is a leasehold interest, no sale or other dealing by the Chargor with the lease or the Property or any part thereof or any other dealing by the Bank with the lease or the Property or any part thereof, shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable to repay the Indebtedness hereby secured.

14. Charge Not a Substitute For Any Other Security

It is hereby expressly agreed by the Chargor that this Charge shall not create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Bank, whether from the Chargor or any other party or parties whomsoever and this Charge shall not in any way affect any security held or which may hereafter be held by the Bank for the Indebtedness or any portion or portions thereof or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Bank for or on account of the Indebtedness or any portion or portions thereof nor shall the remedies of the Bank in respect thereof be affected in any manner whatsoever.

15. Judgments

The taking of a judgment or judgments against the Chargor on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Bank's rights to interest on the Indebtedness at the Interest Rate, and further that any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment shall have been fully paid and satisfied.

16. Bank May Appropriate Payments to Any Debt

It is hereby agreed that the Bank shall have the right at any time to appropriate any payment made as a temporary or permanent reduction of any portion of the Indebtedness whether the same be represented by open account, overdraft or by any bills, notes or other instruments and whether then due or to become due and may from time to time revoke or alter such appropriation and appropriate such payment as a temporary or permanent reduction of any other portion of the Indebtedness as in its sole and uncontrolled discretion it may see fit.

17. Charge Continuing Security

It is hereby agreed that this Charge may secure a current or running account and shall stand as a continuing security to the Bank for the payment of the Indebtedness and all interest, damages and Costs which may become due or payable to the Bank notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the bills, notes or other obligations now or hereafter representing the same or any portion thereof or in the names of the parties to the said bills, notes or obligations or any of them.

18. Additional Covenants if Property is a Condominium Unit

The Chargor covenants with the Bank that:

- (a) The Chargor will promptly observe and perform all obligations imposed on the Chargor by the Condominium Act as enacted from time to time, and by the Declaration, the By-laws and the Rules, as amended from time to time, of the Condominium Corporation, by virtue of the Chargor's ownership of the Property. Any breach of the said duties and obligations shall constitute a breach of covenant under this Charge;
- (b) Without in any way limiting or restricting the generality of the foregoing:
 - (i) The Chargor will pay promptly when due any contributions to Common Expenses required of the Chargor as an owner of the Property;
 - (ii) The Chargor will transmit to the Bank forthwith upon the demand of the Bank satisfactory proof that all Common Expenses assessed against or in respect of the said Property have been paid as assessed;
 - (iii) The Bank may put out of and deduct from any advance of the Principal Amount secured hereunder all contributions to the Common Expenses assessed against or in respect of the said Property which have become due and payable and are unpaid at the date of such advance; and
 - (iv) Whenever and so long as the Bank so requires the Chargor shall on or before the date when any sum becomes payable by the Chargor in respect of Common Expenses pay such sum to the Bank. The Bank shall forthwith on receipt thereof remit all such sums to the Condominium Corporation on behalf of the Chargor or as the Condominium Corporation may from time to time direct;
- (c) The Bank by accepting delivery of and registering this Charge authorizes and empowers the Chargor to vote or consent or not to consent respecting all matters relating to the affairs of the relevant Condominium Corporation provided that:
 - (i) The Bank may at any time upon written notice to the Chargor and the Condominium Corporation revoke this authorization;
 - (ii) The Bank shall not be under any obligation to vote or consent or not to consent as aforesaid to protect the interest of the Chargor; and
 - (iii) The exercise by the Bank of its right to vote or consent or not to consent as aforesaid shall not constitute the Bank a mortgagee in possession.

19. Assignment of Rents

The Chargor hereby agrees with the Bank as follows:

- (a) The Chargor hereby assigns and sets over to the Bank all rents payable from time to time under all leases of the Property or any part thereof, whether presently existing or arising in the future, together with the benefit of all covenants, agreements and provisos contained in the said leases, in favour of the Bank;
- (b) Forthwith after making any lease of the Property or any part thereof the Chargor will execute and deliver to the Bank an assignment in registrable form in the Bank's usual form of all rents payable under such lease, the benefit of all covenants, agreements and provisos therein contained on the part of the tenant to be observed and performed and the reversion of such lease, and will also execute and deliver to the Bank all such notices and other documents as may be required in order to render such assignment effectual in law;
- (c) Nothing herein contained shall make the Bank responsible for the collection of rents payable under any lease of the Property or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease;
- (d) The Bank shall not by virtue of these presents be deemed a mortgagee in possession of the Property;
- (e) The Bank shall be liable to account for only such rents as actually come into its hands less reasonable collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness; and
- (f) Notwithstanding anything herein contained no lease of the Property or any part thereof made by the Chargor without the consent in writing of the Bank shall have priority over this Charge.

20. Interpretation and Headings

It is hereby agreed that wherever in this Charge the word "Chargor" is used the same shall extend to and include the heirs, executors, administrators, successors and assigns of the Chargor, and wherever in this Charge the word "Bank" is used the same shall extend to and include the successors and assigns of the Bank and wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this document and have been inserted for convenience of reference only.

21. Condominium Act

If the Property is a condominium unit, this Charge is made pursuant to the Condominium Act.