

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

**WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP and
WINDSOR II LIMITED PARTNERSHIP**

Applicants

- and -

2352107 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED; AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**SUPPLEMENTAL REPORT TO THE SECOND
REPORT OF ALBERT GELMAN INC.
AS COURT-APPOINTED RECEIVER**

(Dated March 30, 2026)

I. INTRODUCTION

1. This report (the "**Supplemental Report**") is supplemental to the Receiver's Second Report to the Court dated March 23, 2026 (the "**Second Report**") and should be read in conjunction with the Second Report as certain details contained therein are not included herein to avoid unnecessary duplication.
2. This Supplemental Report is filed in connection with the Receiver's motion to be heard on March 31, 2026.
3. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Second Report.

II. PURPOSE OF THE SUPPLEMENTAL REPORT

4. The purpose of this Supplemental Report is to provide the Court with additional information in support of the Receiver's recommendation that this Honourable Court authorize the Receiver to make the proposed Interim Distributions, as set out in the Second Report.

III. SCOPE AND TERMS OF REFERENCE

5. In preparing this Supplemental Report, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Company's books, records and financial information, discussions with the Company's management, information obtained from other sources, and information provided by National Bank of Canada ("**NBC**").

6. While the Receiver has reviewed the various documents provided, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Canadian Accounting Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to CAS or otherwise with respect to such information except as expressly stated herein.

7. Unless otherwise noted, all monetary amounts referenced herein are expressed in Canadian dollars.

IV. CONSTRUCTION LIENS

8. As described in the Second Report, the following construction liens (collectively, the "**Construction Liens**") have been registered against all or part of the Real Property:

- (a) Elements Air Systems Inc. ("**Elements**") registered a construction lien in the amount of \$836,518.26 on December 11, 2025 against the Condo Units and perfected such lien on December 29, 2025;
- (b) McQueen Maintenance Inc. ("**McQueen**") registered a construction lien in the amount of \$98,762 on December 15, 2025 against the Real Property and perfected such lien on January 27, 2026; and
- (c) Paul Marques Architect Inc. ("**Paul Marques**") registered a construction lien in the amount of \$141,978.20 on January 23, 2026 against the Condo Units.

Copies of the registered Construction Liens are attached hereto as **Appendices "A", "B" and "C"**, respectively.

9. Based on the information set out in the registered Construction Liens, the Receiver understands that the contract prices under the contracts between the Company and each of the lien claimants are as follows:

- (a) Elements – \$1,589,064.00;
- (b) McQueen - \$332,077.50; and
- (c) Paul Marques - \$169,500.00.

10. By letter dated March 26, 2026, counsel to McQueen advised that McQueen opposes the proposed Interim Distributions on the basis that, among other things, (i) lien claimants have priority over building mortgages pursuant to section 78(2) of the *Construction Act* (Ontario), (ii) the current record does not permit a determination of priorities or the sufficiency of any holdback, and (iii) any interim distribution is premature pending a determination of lien claims and priorities. A copy of the letter is attached hereto as **Appendix “D”**.

NBC Credit Facilities

11. As set out in the Second Report, NBC advanced credit facilities to the Company pursuant to the NBC Credit Agreement, including a construction term loan facility (the **“NBC Term Loan”**), which was secured by, among other things, a first-ranking mortgage/charge on the Real Property (the **“NBC Charge”**). The NBC Term Loan was used to finance the construction and development of the Project. A copy of the NBC Credit Agreement is attached hereto as **Appendix “E”**.

12. Attached hereto as **Appendix “F”** are copies of the statements of accounts provided by NBC showing, among other things, the dates of advances made by the bank under the NBC Term Loan. Based on the Receiver’s review of the statements, the final advance under the NBC Term Loan in the amount of \$3.35 million was made on November 7, 2025.

13. The Construction Liens were registered subsequent to that date.

Construction Act

14. Section 78(2) of the *Construction Act* provides that where a mortgage is taken to finance an improvement, lien claimants have priority over that mortgage only to the extent of any deficiency in the statutory holdback required to be maintained.

15. Section 22(1) of the *Construction Act* provides that the statutory basic holdback is equal to 10% of the price of services or materials supplied to the improvement.

16. Given that it would appear that all advances under the NBC Term Loan were made prior to the registration of the Construction Liens and prior to the bank having notice of any of the Construction Liens, the Receiver is of the view that the priority of the Construction Liens as against the NBC Charge (and the security held by Windsor II as assignee of the NBC Term Loan) is limited to the statutory basic holdback amount.

Receiver’s Position

17. Applying the statutory holdback rate of 10% to the price of services or materials supplied by the lien claimants under the contracts, the Receiver estimates that the maximum holdback exposure in respect of the Construction Liens is \$209,064.10.

18. The Receiver has not yet vetted the Construction Liens to make a determination as to the validity or amount of the liens and therefore the holdback amounts.

19. In order to satisfy the priority claims of the construction lien claimants, the Receiver proposes to reserve \$250,000 from the Estate Funds in respect of such claims.

20. The Receiver is satisfied that this reserve is sufficient to address the holdback amounts that the lien claimants have priority for.

No Prejudice to the Construction Lien Claimants

21. In addition to the \$250,000 reserve, the Construction Liens remain registered against the remaining 10 unsold Condo Units, the Retail Plaza and, in the case of McQueen, also the Development Lands.

22. In these circumstances, the Receiver is of the view that permitting the proposed Interim Distributions do not result in any prejudice to the lien claimants who will remain fully secured for their holdback once the amount is determined.

V. CONCLUSION AND RECOMMENDATION

23. For the reasons set out herein and in the Second Report, the Receiver respectfully recommends that this Honourable Court grant the relief sought in the Receiver's Notice of Motion, including approval of the proposed Interim Distributions.

All of which is respectfully submitted,

**ALBERT GELMAN INC.,
solely in its capacity as Court-appointed of
both the Real Property and the Company and
not in its personal or corporate capacity
Per:**



Tom McElroy, *CIRP, LIT*

APPENDIX "A"

Properties

PIN 30132 - 0001 LT

Description UNIT 1, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0002 LT

Description UNIT 2, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0003 LT

Description UNIT 3, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0004 LT

Description UNIT 4, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0005 LT

Description UNIT 5, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0006 LT

Description UNIT 6, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0007 LT

Description UNIT 7, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0008 LT

Description UNIT 8, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0009 LT

Description UNIT 9, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0010 LT

Description UNIT 10, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0011 LT

Description UNIT 11, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

Properties

<i>PIN</i>	30132 - 0012 LT
<i>Description</i>	UNIT 12, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0013 LT
<i>Description</i>	UNIT 13, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0014 LT
<i>Description</i>	UNIT 14, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0015 LT
<i>Description</i>	UNIT 15, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0016 LT
<i>Description</i>	UNIT 16, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0017 LT
<i>Description</i>	UNIT 17, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0018 LT
<i>Description</i>	UNIT 18, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0019 LT
<i>Description</i>	UNIT 19, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0020 LT
<i>Description</i>	UNIT 20, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0021 LT
<i>Description</i>	UNIT 21, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA
<i>PIN</i>	30132 - 0022 LT
<i>Description</i>	UNIT 22, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA
<i>Address</i>	AURORA

Properties

PIN 30132 - 0023 LT

Description UNIT 23, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0024 LT

Description UNIT 24, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

Consideration

Consideration \$836,518.26

Claimant(s)

Name ELEMENTS AIR SYSTEMS INC.

Address for Service c/o The Solicitors of Record:
Drudi Alexiou Kuchar LLP
The Madison Centre
4950 Yonge Street, Suite 508
Toronto, Ontario M2N 6K1

I, Adrian Frano, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

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

Statements

Name and Address of Owner 2352107 ONTARIO INC. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5 Name and address of person to whom lien claimant supplied services or materials SEE SCHEDULE Time within which services or materials were supplied from 2024/05/01 to 2025/10/17 Short description of services or materials that have been supplied Supply and install mechanical, plumbing, HVAC and gas. Contract price or subcontract price \$1,589,064.00, inclusive of HST plus extras. Amount claimed as owing in respect of services or materials that have been supplied \$836,518.26, inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Name of Lien Claimant continued: 2352107 ONTARIO INC. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5 -and- HAVEN PROPERTY SERVICES CORP. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5

Signed By

Paola Cristina Scarcello 25 York Street, Suite 1100 acting for Signed 2025 12 11
Toronto Applicant(s)
M5J 2V5

Tel 647-660-6934

Email paola.scarcello@dyedurham.com

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

Submitted By

DYE & DURHAM CORPORATION 25 York Street, Suite 1100 2025 12 11
Toronto
M5J 2V5

Tel 647-660-6934

Email paola.scarcello@dyedurham.com

Fees/Taxes/Payment

Statutory Registration Fee \$71.55

Total Paid \$71.55

APPENDIX “B”

Properties

PIN 03620 - 1761 LT

Description BLOCK 3, PLAN 65M4790; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3537823; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2 PLAN 65R40569 AS IN YR3603990; SUBJECT TO AN EASEMENT AS IN YR3608232; TOWN OF AURORA

Address AURORA

PIN 03620 - 1762 LT

Description BLOCK 4, PLAN 65M4790; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3537823; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3 PLAN 65R40569 AS IN YR3603995; SUBJECT TO AN EASEMENT AS IN YR3608232; TOWN OF AURORA

Address AURORA

PIN 03620 - 1765 LT

Description BLOCK 7, PLAN 65M4790; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3537823; SUBJECT TO AN EASEMENT AS IN YR3608232; TOWN OF AURORA

Address AURORA

PIN 03620 - 1777 LT

Description BLOCK 1, PLAN 65M4790 EXCEPT PART 3, 65R40652; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3537823; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 PLAN 65R40569 AS IN YR3604003; SUBJECT TO AN EASEMENT AS IN YR3608232; TOWN OF AURORA

Address AURORA

PIN 03620 - 1779 LT

Description BLOCK 2, PLAN 65M4790 EXCEPT PART 4, 65R40652; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3537823; SUBJECT TO AN EASEMENT AS IN YR3608232; TOWN OF AURORA

Address AURORA

PIN 03620 - 1780 LT

Description PART OF BLOCK 1, PLAN 65M4790 DESIGNATED AS PART 3 ON PLAN 65R-40652 AND PART OF BLOCK 2, PLAN 65M4790 DESIGNATED AS PART 4 ON PLAN 65R-40652; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3537823; SUBJECT TO AN EASEMENT AS IN YR3608232, SUBJECT TO AN EASEMENT IN GROSS AS IN YR3718860; TOWN OF AURORA

Address AURORA

PIN 30132 - 0001 LT

Description UNIT 1, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0002 LT

Description UNIT 2, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0003 LT

Description UNIT 3, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0004 LT

Description UNIT 4, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0005 LT

Description UNIT 5, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND

Properties

ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0006 LT

Description UNIT 6, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0007 LT

Description UNIT 7, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0008 LT

Description UNIT 8, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0009 LT

Description UNIT 9, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0010 LT

Description UNIT 10, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0011 LT

Description UNIT 11, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0012 LT

Description UNIT 12, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0013 LT

Description UNIT 13, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0014 LT

Description UNIT 14, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0015 LT

Description UNIT 15, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0016 LT

Properties

Description UNIT 16, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0017 LT

Description UNIT 17, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0018 LT

Description UNIT 18, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0019 LT

Description UNIT 19, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0020 LT

Description UNIT 20, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0021 LT

Description UNIT 21, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0022 LT

Description UNIT 22, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0023 LT

Description UNIT 23, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0024 LT

Description UNIT 24, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

Consideration

Consideration \$98,762.00

Claimant(s)

Name MCQUEEN MAINTENANCE INC.

Address for Service Rousseau Mazzuca LLP
1000-65 Queen Street West
Toronto, ON
M5H 2M5

Claimant(s)

Attn: Jordan Routliff
jroutliff@rousseaumazzuca.com
Tel: 416-304-9899
Fax: 437-800-1453

I, Brian McQueen, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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

Statements

Name and Address of Owner SEE SCHEDULE "A". Name and address of person to whom lien claimant supplied services or materials Division I Services Inc., 39 Camborne Ave, North York, Ontario, M3M2P9, Canada. Time within which services or materials were supplied from 2023/10/02 to 2025/10/31 Short description of services or materials that have been supplied labour for construction related site servicing and maintenance including site preparation, cleaning, materials handling, installation of temporary structures, delivery and handling of materials, waste disposal, and the operation of construction tools and machinery. Contract price or subcontract price \$332,077.50. Amount claimed as owing in respect of services or materials that have been supplied \$98,762.00.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: See Schedules

Signed By

Jordan MacLean Dumas Routliff 65 Queen Street, Suite 1000 acting for Signed 2025 12 15
Toronto Applicant(s)
M5H 2M5

Tel 416-304-9899

Email jroutliff@rousseaumazzuca.com

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

Submitted By

ROUSSEAU MAZZUCA LLP 65 Queen Street, Suite 1000 2025 12 15
Toronto
M5H 2M5

Tel 416-304-9899

Email jroutliff@rousseaumazzuca.com

Fees/Taxes/Payment

Statutory Registration Fee \$71.55

Total Paid \$71.55

SCHEDULE "A"

SCHEDULE OF OWNER(S) AND/OR PERSON(S) WITH AN INTEREST:

2352107 ONTARIO INC. c.o.b. AURORA MILLS

48 Century Grove Blvd,
Vaughan, Ontario,
L4H 1V1, Canada

2352107 ONTARIO INC. c.o.b. AURORA MILLS BUSINESS PARK

48 Century Grove Blvd,
Vaughan, Ontario,
L4H 1V1, Canada

HAVEN PROPERTY DEVELOPMENT INC. c.o.b. HAVEN DEVELOPMENTS

1275 Finch Avenue West, Unit 803,
Toronto, Ontario,
M3J 2B1, Canada

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1600

175 Melvin Robson Avenue
Aurora, Ontario L4G 7B4

WPC GPI INC.

22 St. Clair Ave East, Suite 202,
Toronto, Ontario,
M4T 2S3, Canada

WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP

22 St. Clair Ave East, Suite 202,
Toronto, Ontario,
M4T 2S3, Canada

APPENDIX “C”

Properties

PIN 30132 - 0001 LT

Description UNIT 1, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0002 LT

Description UNIT 2, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0003 LT

Description UNIT 3, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0004 LT

Description UNIT 4, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0005 LT

Description UNIT 5, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0006 LT

Description UNIT 6, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0007 LT

Description UNIT 7, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0008 LT

Description UNIT 8, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0009 LT

Description UNIT 9, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0010 LT

Description UNIT 10, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0011 LT

Description UNIT 11, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

Properties

PIN 30132 - 0012 LT

Description UNIT 12, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0013 LT

Description UNIT 13, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0014 LT

Description UNIT 14, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0015 LT

Description UNIT 15, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0016 LT

Description UNIT 16, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0017 LT

Description UNIT 17, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0018 LT

Description UNIT 18, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0019 LT

Description UNIT 19, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0020 LT

Description UNIT 20, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0021 LT

Description UNIT 21, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0022 LT

Description UNIT 22, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

Properties

PIN 30132 - 0023 LT

Description UNIT 23, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

PIN 30132 - 0024 LT

Description UNIT 24, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1600 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR3868859; TOWN OF AURORA

Address AURORA

Consideration

Consideration \$141,978.20

Claimant(s)

Name PAUL MARQUES ARCHITECT INC.

Address for Service 2610 Weston Road, Suite 207
North York, Ontario
M9N 2B1

I, Paul Marques, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

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

Statements

Name and Address of Owner 2352107 ONTARIO INC. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5 Name and address of person to whom lien claimant supplied services or materials SEE SCHEDULE Time within which services or materials were supplied from 2021/07/30 to 2025/12/11 Short description of services or materials that have been supplied Architectural and Design Consulting Contract price or subcontract price \$169,500.00 inclusive of HST Amount claimed as owing in respect of services or materials that have been supplied \$141,978.20 inclusive of HST plus extras

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: 2352107 ONTARIO INC. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5 -and- HAVEN PROPERTY SERVICES CORP. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5 -and- HAVEN PROPERTY DEVELOPMENT INC. - 1275 Finch Avenue West, Suite 803, Toronto, Ontario M3J 2G5

Signed By

Flavio Battiston 202-1013 Wilson Avenue acting for Signed 2026 01 23
North York Applicant(s)
M3K 1G1

Tel 416-630-7151

Email

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

Submitted By

BATTISTON AND ASSOCIATES 202-1013 Wilson Avenue 2026 01 23
North York
M3K 1G1

Tel 416-630-7151

Email

Fees/Taxes/Payment

Statutory Registration Fee \$71.55

Total Paid \$71.55

APPENDIX “D”



March 26, 2026

VIA EMAIL (DIIm@chaitons.com)

CHAITONS LLP

5000 Yonge St, 10th floor
Toronto, ON M2N 7E9

Attention: David Im

RE: RECEIVERSHIP PROCEEDINGS

175 Melvin Robson Avenue, Aurora Ontario (the “**Property**”)
Motion Returnable on March 31, 2026
CL-26-00000005-0000

We are counsel for McQueen Maintenance Inc. (“**McQueen**”) and write with respect to the ongoing receivership proceedings regarding the Property and 2352107 Ontario Inc. (the “**Debtor**”). As you are aware, McQueen has a construction lien on the Property in the amount of \$98,762.00. This letter provides our preliminary position on the Receiver’s requested relief as stated in the Notice of Motion dated March 23, 2026 (the “**Notice of Motion**”).

The Notice of Motion provides that the Receiver has completed the sale of 14 of the 20 pre-sold Condo Units, and that the Receiver is currently holding approximately \$19.8 million in its estate trust account. This amount represents: (i) funds received from the Debtor’s accounts at National Bank of Canada (“**NBC**”); (ii) rent received from the Retail Plaza Tenants; (iii) occupancy fees collected from the Condo Unit purchasers; and (iv) proceeds from the sale of the 14 Condo Units, net of the Receiver’s costs and expenses incurred in administering the receivership proceedings and managing the Property. While we know what the sources of funds are, the record does not provide any clarification or documentation which confirms the exact proportion and amount of each funding source. McQueen is entitled to know this information.

The Notice of Motion also requests that the Receiver be permitted to make an interim distribution of the sale proceeds from the closing of the 14 Condo Units that have been sold. The Receiver’s proposed distribution is as follows:

- (a) Payment of the charges due under the Appointment Order, including the fees and disbursements of the Receiver and its counsel;
- (b) Payment of any amounts owing to the Town of Aurora in respect of unpaid property taxes;
- (c) Payment to NBC of the amount necessary to cash collateralize the LCs in an amount up to \$4,734,961.72; and
- (d) Payment to Windsor II as assignee of the NBC Term Loan and security, in an amount up to \$28,381,445.11, plus accruing interest and costs.



The Notice of Motion further states that “the Receiver intends to reserve sufficient funds in respect of the basic 10% holdback amount that the construction liens *may* have priority for over the registered mortgages and costs of these receivership proceedings”.

McQueen states, for the reasons expressed below, that the Receiver’s proposed interim distribution of funds is premature and should not be permitted to proceed. McQueen opposes the requested distribution.

(1) Priority of Interests

Section 78(2) of the *Construction Act*, RSO 1990, c C.30 (the “*Construction Act*”) provides the following:

Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, **the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage**, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered

Upon review of the Receivers materials, it is our understanding that the following mortgages registered on the Property are “building mortgages” within the meaning of the *Construction Act*. These interests are as follows (the “**Building Mortgages**”):

1. NBC loan in the amount of \$110,000,000;
2. Windsor Capital Ltd. Partnership loan in the amount of \$25,000,000; and
3. Windsor II Ltd. Partnership loan in the amount of \$3,000,000.

We are unsure as to the nature of the other mortgages registered on the Property, and whether these interests could be considered building mortgages or were mortgages taken out to repay the Building Mortgages in part. These interests are as follows:

1. Belmont Mortgage Administration Ltd. loan in the amount of \$16,000,000; and
2. Westmount Guarantee Services Inc. loan in the amount of \$40,000,000.

As the priorities of all the interests with respect to the Property have not been firmly established, McQueen states that it premature to distribute funds related to the sale of the 14 Condo Units. In addition, the *Construction Act* clearly states that the interest of lien claimants take priority over building mortgages to the extent that there is a deficiency in the holdbacks required to be retained. This means that McQueen has priority over the NBC, Windsor Capital Ltd. Partnership and Windsor II Ltd. Partnership loans. While the Receiver has advised it intends to retain “sufficient” funds with respect to holdback, it is unclear what this amount is. It is also unclear as to whether this amount will be equal to 10% of the total value of construction labour, materials and equipment supplied to the Property.



The record does not allow any of the lien claimants to confirm whether sufficient funds will, in fact, be retained.

Further to the above, holdback amounts constitute trust funds under the *Construction Act*. Section 8 of the *Construction Act* provides the following:

8 (1) All amounts,

(a) owing to a contractor or subcontractor, whether or not due or payable; or

(b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement, including any holdback amount that is owed to or received by the contractor or subcontractor, **constitute a trust fund** for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement, who are owed amounts by the contractor or subcontractor.

The holdback amounts do not form a part of the debtor's assets. The law has been settled on this issue, with the law being applied so as to place the lien claimants' right to the holdback before claims made by the Canada Revenue Agency. Therefore, these funds are not available for distribution among other general creditors. Accordingly, McQueen states that these funds should be distributed forthwith to the lien claimants in accordance with their respective entitlements.

(2) Additional Information Required by McQueen

As stated above, the current record does not provide sufficient information to determine the nature of the mortgages which are registered on the Property. Nor does the record disclose the principal and interest amounts which are still owing under the mortgages on the Property. But for the stay of proceedings, McQueen would be able to obtain some information in accordance with section 39 of the *Construction Act*.

Accordingly, McQueen requests that the receiver provides the following information/documents (which are requests that McQueen will reiterate at the pending hearing):

1. Sufficient details concerning any mortgages on the Property such that we may determine whether the mortgages were taken by the mortgagee for the purposes of financing the making of an improvement;
2. A statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in the payment of interest; and
3. A state of accounts between the debtor and any contractors containing the following information:
 - a. The price of the services or materials that have been supplied under the contracts;
 - b. The amounts paid under the contracts;



- c. The amount of the applicable holdbacks;
- d. The balance owed under the contracts;
- e. Any amount retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).

McQueen requests that the above information be provided by the Receiver by no later than **21 days** from the date of this correspondence.

(3) No Interim Distribution of Assets

McQueen states that the interim distribution of assets proposed by the Receiver is premature and improper. The *Bankruptcy and Insolvency Act* outlines the responsibilities of a court appointed Receiver. These responsibilities are that the Receiver shall deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner. It is McQueen's position that the interim distribution of condo sale proceeds is not "reasonable" in these circumstances, given the numerous competing interests and the absence of clarity with respect to priorities. Priorities must be determined before assets are distributed.

Given the above, McQueen will oppose any proposed distribution of assets by the Receiver at the Motion returnable on March 31, 2026.

We look forward to hearing from you.

ROUSSEAU MAZZUCA LLP

Jordan Routliff

cc. harvey@chaitons.com; bgelman@albertgelman.com

APPENDIX “E”

CREDIT AGREEMENT

DATED AS OF JULY 29, 2022

between

2352107 ONTARIO INC.

as Borrower

and

**HAVEN PROPERTY DEVELOPMENT INC. and
WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP**

as Corporate Guarantors

and

NATIONAL BANK OF CANADA

as Lender

and

SUCH OTHER LENDERS AS MAY BECOME PARTY HERETO

as Lenders

and

NATIONAL BANK OF CANADA

as Administrative Agent

and

NATIONAL BANK OF CANADA

as Lead Arranger and Sole Bookrunner

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 INTERPRETATION.....	2
1.01 Definitions	2
1.02 Financial Statements.....	21
1.03 Canadian Currency	21
1.04 Interest Act	21
1.05 Change in Rates	22
1.06 Headings and Table of Contents.....	22
1.07 References	22
1.08 Number and Gender.....	22
1.09 Maximum Interest Rate	22
1.10 Schedules	23
ARTICLE 2 CREDIT FACILITIES	24
2.01 Establishment of Term Facility	24
2.02 Swingline Advances	25
2.03 Establishment of L/C Facility.....	26
2.04 Purpose of the Credit Facilities	26
2.05 Restrictions on Borrowing.....	26
2.06 Non Revolving Feature of Term Facility	26
2.07 Limitations on Borrowings	26
2.08 Evidence of Indebtedness	27
2.09 Borrowings under the Credit Facilities.....	28
2.10 Manner of Borrowings.....	29
2.11 Illegality.....	29
ARTICLE 3 PROCEDURES APPLICABLE TO BORROWINGS	29
3.01 Draw Request	29
3.02 Provisions relating to Letters of Credit.....	31
3.03 Reliance on Oral Instructions	33
ARTICLE 4 PAYMENTS	34
4.01 Repayment	34
4.02 Mandatory Repayments	34
4.03 Voluntary Payments	36
4.04 Payments Generally	36
4.05 No Credit for Trust Funds	36
ARTICLE 5 INTEREST, FEES AND EXPENSES	36
5.01 Payment of Interest.....	36
5.02 Interest on Overdue Amounts.....	37
5.03 Letter of Credit Fees	37
5.04 Other Fees.....	38
5.05 Determination Conclusive	38
5.06 Debit Authorization	38
5.07 Additional Costs	38
ARTICLE 6 CONDITIONS PRECEDENT	38
6.01 Conditions - Initial Borrowings and L/C Facility.....	38

TABLE OF CONTENTS (continued)

	<u>Page</u>
6.02 Conditions - Segment 2	43
6.03 Conditions - All Borrowings	44
6.04 Initial Borrowings.....	48
6.05 Holdbacks	49
6.06 Advance of Holdback Amount.....	49
6.07 Waiver	49
ARTICLE 7 REPRESENTATIONS AND WARRANTIES.....	50
7.01 Representation and Warranties.....	50
7.02 Survival of Representations and Warranties	55
ARTICLE 8 COVENANTS	55
8.01 Positive Covenants	55
8.02 Negative Covenants	67
ARTICLE 9 SECURITY	71
9.01 Security.....	71
9.02 Further Assurances	73
9.03 Partial Discharges	73
9.04 Partial Releases of Security, etc.	73
ARTICLE 10 EVENTS OF DEFAULT AND REMEDIES	74
10.01 Events of Default	74
10.02 Remedies and Acceleration	77
10.03 Lenders May Waive.....	78
10.04 Remedies are Cumulative.....	78
10.05 Set-Off	78
10.06 Cash Collateral Accounts	78
ARTICLE 11 ENVIRONMENTAL MATTERS	79
11.01 Representations and Warranties	79
11.02 Environmental Covenants.....	80
11.03 Indemnity.....	81
11.04 Scope of Indemnity.....	82
11.05 Consultants, etc.....	82
11.06 Fees and Expenses	82
11.07 Interest	83
ARTICLE 12 THE AGENT AND THE LENDERS	83
12.01 Decision-Making	83
12.02 Security.....	84
12.03 Application of Proceeds of Realization	84
12.04 Payments by Agent.....	85
12.05 Protection of Agent.....	86
12.06 Duties of Agent.....	88
12.07 Lenders' Obligations Several; No Partnership	89
12.08 Sharing of Information	89
12.09 Acknowledgement by Credit Parties	89
12.10 Amendments to Article 12.....	89

TABLE OF CONTENTS (continued)

	<u>Page</u>
12.11 Deliveries.....	89
ARTICLE 13 CBA MODEL PROVISIONS.....	90
13.01 CBA Model Provisions Incorporated by Reference	90
13.02 Conflict with CBA Model Provisions	93
ARTICLE 14 GENERAL.....	93
14.01 Notices	93
14.02 Survival of Certain Obligations despite Termination of Agreement.....	94
14.03 Interest on Unpaid Costs and Expenses.....	94
14.04 Further Assurances	95
14.05 Waivers and Amendments.....	95
14.06 No Set-Off or Counterclaim	95
14.07 Tombstone Marketing.....	95
14.08 Severability	95
14.09 Time of Essence.....	95
14.10 Entire Agreement.....	96
14.11 Law Governing	96
14.12 Expenses of Agent and Lenders	96
14.13 Paramountcy/Conflict.....	96
14.14 Judgment Currency.....	97
14.15 Successors and Assigns	97

CREDIT AGREEMENT

THIS AGREEMENT dated as of July 29, 2022.

AMONG:

2352107 ONTARIO INC.,
as Borrower

- and –

**HAVEN PROPERTY DEVELOPMENT INC. and
WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP,**
as Corporate Guarantors

- and –

NATIONAL BANK OF CANADA,
as Lender

- and -

SUCH OTHER LENDERS AS MAY BECOME PARTY HERETO,
as Lenders

- and -

NATIONAL BANK OF CANADA,
as Administrative Agent

- and -

NATIONAL BANK OF CANADA,
as Lead Arranger and Sole Bookrunner

RECITALS:

- A. The Borrower is the nominee of the Project Lands in accordance with the Joint Venture Agreement.
- B. The Borrower has requested that the Lenders establish in its favour the Credit Facilities, for the purpose of financing the construction and development of the Project on the Project Lands.

- C. The Lenders have agreed to make available the Credit Facilities requested by the Borrower to be used only for the foregoing purpose upon the terms and conditions of this Agreement.
- D. The Agent has agreed to act as administrative agent for the Lenders in administering the Credit Facilities and the terms of this Agreement as more particularly set out herein.

NOW THEREFORE in consideration of the premises and the mutual agreements herein contained, the parties hereto hereby covenant and agree between and among themselves as follows:

ARTICLE 1 INTERPRETATION

1.01 Definitions

For the purposes of this Agreement, the following terms shall have the following meanings unless something in the subject matter or context is inconsistent therewith:

- (1) “**Additional Borrowing**” has the meaning ascribed thereto in Section 2.09(2).
- (2) “**Administrative Agent**” or “**Agent**” means National Bank of Canada, in its capacity as administrative agent under the Loan Documents, or such other financial institution as may be appointed as the successor Administrative Agent in the manner and to the extent described in this Agreement.
- (3) “**Advance**” means the advance of any Credit Facilities as the context may require.
- (4) “**Affiliate**” has the meaning ascribed thereto in the CBA Model Provisions.
- (5) “**Agent Branch of Account**” means the branch of the Agent located at 130 King Street West, 29th Floor, Toronto, ON, M5X 1J9, or such other branch or office of the Agent in Toronto, Ontario, Canada, as the Agent may, from time to time, advise the Borrower in writing.
- (6) “**Agreement**” means this Agreement and all schedules attached hereto, and includes all amendments and modifications hereto and thereto and all supplements, restatements and replacements hereof from time to time entered into.
- (7) “**Agreement of Purchase and Sale**” means an agreement of purchase and sale relating to sale of a Unit or Units.
- (8) “**Applicable Law**” has the meaning ascribed thereto in the CBA Model Provisions.
- (9) “**Appraisal**” means the report dated December 30, 2021 prepared by the Appraiser engaged in respect of the valuation of the Project based on a mandate

letter acceptable to the Agent and whose report is acceptable to the Agent and the Lenders, acting in a commercially reasonable manner.

- (10) “**Appraiser**” means Cushman Wakefield, or such other accredited Person acceptable to the Lenders who has been selected to perform an Appraisal.
- (11) “**Architect**” means an accredited architect retained by the Borrower for the Project and acceptable to the Lenders.
- (12) “**Associate**” shall have the meaning given to “**associate**” in the *Canada Business Corporations Act* (Canada) as amended or re-enacted from time to time.
- (13) “**Authorized Limit**” shall mean, with respect to a particular Lender under a particular Credit Facility, the aggregate of the authorized limits of such Lender in respect of such Credit Facility or all the Credit Facilities, as the case may be, as set out in the applicable column of the Authorized Limits Schedule, as adjusted from time to time. “**Authorized Limits of the Lenders**” under a particular Credit Facility shall mean the aggregate of the Authorized Limits of the individual Lenders in respect of such Credit Facility as set out in the applicable column of the Authorized Limits Schedule, as adjusted from time to time.
- (14) “**Authorized Limits Schedule**” means Schedule 1.01(14) hereto outlining the Authorized Limits of the Lenders.
- (15) “**Basis Point**” and “**bp**” means one one-hundredth of one percent (.01%).
- (16) “**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time.
- (17) “**Borrower**” means 2352107 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario and its successors and permitted assigns.
- (18) “**Borrower’s Equity**” means, at any time and from time to time, the equity of the Borrower in the Project comprising both the value of the Project Lands and cash injected into the Project.
- (19) “**Borrowing**” or “**Borrowings**” means a use of a Credit Facility.
- (20) “**Borrowing Date**” means a Business Day on which a Borrowing is made.
- (21) “**Budgeted Project Costs**” means the value ascribed to the Project Lands by the Borrower of \$10,118,375 and all budgeted Hard Costs and all Soft Costs described as a line item in the Project Budget, including any Contingency Amount in respect thereof, expended or to be expended to achieve Construction Completion in accordance with the Project Budget, the Plans and Specifications and the Construction Schedule.

- (22) “**Business Day**” means a day on which banks are open for business in Toronto, Ontario other than a Saturday, Sunday or Canadian legal holiday.
- (23) “**Canadian Dollars**”, “**Cdn. Dollars**”, “**Cdn. \$**” and “**\$**” each means lawful money of Canada.
- (24) “**Capital Stock**” means common shares, preferred shares or other equivalent equity interests (howsoever designated) of capital stock in a body corporate or partnership, membership or beneficial interests in a partnership, limited partnership, limited liability company or corporation, trust or other artificial commercial entity.
- (25) “**Cash Collateral**” means cash or any Cash Equivalent acceptable to the Agent in its sole discretion.
- (26) “**Cash Equivalents**” means:
 - (i) marketable direct obligations issued by, or unconditionally guaranteed by, the Canadian Government or issued by any agency thereof and backed by the full faith and credit of Canada in each case maturing within one year from the date of acquisition; or
 - (ii) term deposits, certificates of deposit or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender, any commercial bank listed on Schedule I to the *Bank Act* (Canada) or by any commercial bank organized under the laws of Canada having combined capital and surplus of not less than \$500,000,000.
- (27) “**CBA Model Provisions**” means the model credit agreement provisions attached hereto as Schedule 1.01(27), which have been revised under the direction of the Canadian Bankers’ Association Secondary Loan Market Specialist Group from provisions prepared by The Loan Syndications and Trading Association, Inc.
- (28) “**Certificate of Construction Completion**” means a certificate to be issued by the Architect and confirmed to the Agent by the Project Consultant certifying completion of Construction and that all construction deficiencies have been remedied and that such completion is, in all material respects, in accordance with the Plans and Specifications.
- (29) “**Certificate of Substantial Performance**” means a certificate to be issued by the Architect and confirmed to the Agent by the Project Consultant certifying that “substantial performance” of Construction in accordance with the *Construction Act* (Ontario) has occurred.
- (30) “**Change Order**” means any modification to the Plans and Specifications, or scope of work or the contract price pursuant to a contract relating to Construction, or any other modification or change pertaining to the Project which affects the Costs of Construction as reflected in the Project Budget.

- (31) “**Closing Date**” means August 5, 2022 or such other date as the Agent and the Borrower may mutually agree upon.
- (32) “**Co-Development Agreement**” means the Co-Development Agreement among, Windsor Private Capital Limited Partnership by its general partner WPC GP I Inc., the Borrower, 2372754 Ontario Limited and 2374563 Ontario Limited made as of August 2, 2022.
- (33) “**Compliance Certificate**” means a compliance certificate in the form provided for in Schedule 1.01(32).
- (34) “**Condominium Act**” means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended from time to time.
- (35) “**Construction**” means the design and construction of the Project in accordance with the Plans and Specifications.
- (36) “**Construction Completion**” means the date on which the last of the following shall occur: (i) Substantial Completion shall have been achieved, (ii) the Certificate of Construction Completion has been delivered to the Agent, and (iii) the Project Consultant has delivered a certificate to the Agent that the “completion” referred to in the Certificate of Construction Completion is, in all material respects, in accordance with the Plans and Specifications.
- (37) “**Construction Schedule**” means the construction schedule for the Project provided to and approved by the Project Consultant, as it may be amended from time to time pursuant to Section 8.02(22).
- (38) “**Contaminant**” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them that may: (i) impair the quality of the environment for any use that can be made of it, (ii) injure or damage property or plant or animal life, (iii) harm or materially discomfort any Person, (iv) adversely affect the health of any individual, (v) impair the safety of any individual, (vi) render any property or plant or animal life unfit for use by man, (vii) cause loss of enjoyment of normal use of property, or (viii) interfere with the normal course of business, and includes any “**contaminant**” within the meaning assigned to such term in any Environmental Laws, and includes any substance regulated by Environmental Laws.
- (39) “**Contingency Amount**” and “**Contingency Amounts**” means with respect to the Project Budget, the amount, if any, of any contingency provided in respect of the calculation of Project Costs.
- (40) “**Contractual Currency**” has the meaning ascribed thereto in Section 14.14.
- (41) “**Control**” has the meaning ascribed thereto in the CBA Model Provisions.

- (42) **“Corporate Guarantors”** means collectively (a) Haven Property Development Inc., a corporation incorporated under the laws of the Province of Ontario and its successors and permitted assigns and (b) Windsor Private Capital Limited Partnership, a limited partnership formed under the laws of the Province of Ontario and its successors and permitted assigns.
- (43) **“Cost Overrun”** means:
- (i) any amount by which any category of Hard Costs or Soft Costs in the Project Budget (subject to the permitted changes in Section 8.02(23)) exceeds the amount ascribed to such category in the Project Budget (subject to application of any available Contingency Amount), as well as;
 - (ii) any amount by which the aggregate costs in the Project Budget exceed \$40,160,000 (including land costs).
- (44) **“Cost to Complete”** means that amount established by the Project Consultant and approved by the Agent, which is the aggregate of:
- (i) the amount of all Project Costs not then incurred;
 - (ii) the amount of all Project Costs incurred, to the extent not paid in full; and
 - (iii) the amount of all Project Costs incurred and paid for by the Borrower and in respect of which the Borrower intends to request a Borrowing for reimbursement,
- as of such date.
- (45) **“Costs of Construction”** means the total Hard Costs and Soft Costs of construction of the Project substantially in accordance with the Plans and Specifications and general and administrative costs directly incurred by the Borrower, any fee payable to the Agent and/or Lenders, all associated fees, interest, carrying costs, operating costs and a contingency allowance as determined by the Project Consultant and approved by the Agent.
- (46) **“Credit Facilities”** means the Term Facility, the Swingline and the L/C Facility, and **“Credit Facility”** shall mean any of the Credit Facilities.
- (47) **“Credit Facility Limit”** means the Term Facility Limit, the Swingline Facility Limit or the L/C Facility Limit, as the context requires.
- (48) **“Credit Parties”** means, collectively, the Borrower and the Guarantors; and **“Credit Party”** means any one of them.
- (49) **“Demand”** means any communication of demand for payment of all or any portion of the Outstanding Obligations, whether made in writing or in electronic form, by the Agent.

- (50) “**Deposit Account**” has the meaning ascribed thereto in Section 8.01(29).
- (51) “**Deposit Availment**” means a utilization by the Borrower of Purchaser Deposits in accordance with Section 8.01(30).
- (52) “**Distribution**” means, in respect of any money, property or assets received by the Borrower from the Project or otherwise in connection with the Project, the direct or indirect declaration or making of any dividend payment or any other distribution of cash, property or assets, in respect of any trust units, partnership units, shares, Indebtedness or other securities of such Person (including, without limitation, any warrants, rights or options to acquire such trust units, partnership units, shares, Indebtedness or other securities) or the purchase, redemption, retirement or acquisition for value of any such trust units, partnership units, shares, Indebtedness or other securities (including, without limitation, any warrants, rights or options to acquire such trust units, partnership units, shares, Indebtedness or other securities) or the setting aside of cash, property or other assets for any of the foregoing.
- (53) “**Draw Request**” means a notice in the form provided for in Schedule 3.01 requesting a Borrowing to be given to the Agent in writing as described in Section 3.01 hereof.
- (54) “**CDI**” means deposit insurance as prescribed by the Condominium Act to permit the release of Purchaser Deposits from the trust account of the Escrow Agent for use in the Project.
- (55) “**Environmental Activity**” means any past, present or future activity, event or circumstance in respect of a Contaminant, including, without limitation, its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation or its Release into the natural environment including the movement through or in the air, soil, subsoil, surface water or groundwater.
- (56) “**Environmental Laws**” means any and all federal, provincial, municipal and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, licences, agreements or other governmental restrictions having the force of law relating to the environment, land use, occupational health and safety, health protection or any Environmental Activity.
- (57) “**Environmental Report**” means, collectively, the environmental studies, investigations, reports (including, without limitation, at least a phase 1 environmental site assessment) and, if applicable, remediation plans prepared by a reputable environmental consultant in respect of the Project Lands, and as may be required by the Agent, letter(s) executed by such environmental consultant(s) acceptable to the Lenders confirming the Agent and the Lenders may rely on same.

- (58) “**Escrow Agent**” refers to Torkin Manes LLP or such other firm of barristers and solicitors as the Borrower may designate and the Agent and the Lenders, acting reasonably, may approve from time to time.
- (59) “**Event of Default**” means any of the events specified in Section 10.01, provided that any requirement in connection with such event for the giving of notice, the lapse of time or both, has been satisfied or met.
- (60) “**Final Repayment Date**” means, with respect to the Credit Facilities, two (2) years from the date of the first advance of the Credit Facilities, subject to such earlier date as may result from any demand for repayment or the acceleration of the Outstanding Obligations pursuant to this Agreement.
- (61) “**Financial Year**” of an entity means the twelve (12) month period ending on the fiscal-year end of that entity in each year, being December 31 for the Borrower.
- (62) “**Fiscal Quarter**” of an entity means the three (3) month period ending on the third, sixth, ninth and twelfth month in each Financial Year of that entity.
- (63) “**Force Majeure**” means any of the following events which prevents or materially impairs the construction or operation of the Project and is not caused by and is beyond the reasonable control of the Borrower: acts of God, epidemics, pandemics and other health emergencies, floods, earthquakes, tidal waves, hurricanes, windstorms, severe weather conditions, lightning, fire, wars (whether declared or not), riots, insurrections, rebellions, civil commotions, sabotage, partial or entire failure of utilities, strikes, walkouts or other labour disruptions, delays in transportation, accidents, shortages of and inability to procure labour, materials and supplies (after all commercially reasonable efforts have been made by the Borrower to obtain replacement for such labour, materials and supplies) or orders, legislation, regulations and directives of any Governmental Authorities. For greater certainty, lack of funds, the state of the market for selling the units comprising the Project or any wilful or negligent act or omission on the part of the Borrower does not constitute Force Majeure.
- (64) “**GAAP**” means, for any entity created pursuant to the laws of Canada or a Province of Canada, generally accepted accounting principles which are in effect in Canada from time to time applied in a consistent manner from period to period.
- (65) “**Geotechnical Study**” means the geotechnical report prepared by a reputable geotechnical consultant in respect of the Project Lands confirming that the soil and bedrock conditions are suitable for purposes of the Project, and as may be required by the Agent, a letter executed by such consultant confirming that the Agent and the Lenders may rely on the geotechnical study.
- (66) “**Governmental Authority**” has the meaning ascribed thereto in the CBA Model Provisions.
- (67) “**Gross Sale Proceeds**” means the gross sale proceeds for a Unit (including HST).

- (68) **“Guarantee”** means, with respect to a Person, any absolute or contingent liability of that Person under any guarantee, agreement, endorsement (other than for collection or deposit in the ordinary course of business), discount with recourse or other obligation to pay, purchase, repurchase or otherwise be or become liable or obligated upon or in respect of any Indebtedness of any other Person, and including any absolute or contingent obligations to:
- (i) advance or supply funds for the payment or purchase of any Indebtedness of any other Person;
 - (ii) purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any other Person to make payment of Indebtedness or to assure the holder thereof against loss; or
 - (iii) indemnify or hold harmless any other Person from or against any losses, liabilities or damages, in circumstances intended to enable such other Person to incur or pay any Indebtedness or to comply with any agreement relating thereto or otherwise to assure or protect creditors against loss in respect of such Indebtedness.

The Guarantee shall be deemed to be in an amount equal to the amount of the Indebtedness in respect of which the Guarantee is given, unless the Guarantee is limited to a determinable amount in which case the amount of the Guarantee shall be deemed to be the lesser of the amount of the Indebtedness in respect of which the Guarantee is given and such determinable amount.

- (69) **“Guarantors”** means the Corporate Guarantors and **“Guarantor”** means any one of them.
- (70) **“Hard Costs”** means amounts expended or to be expended for work, services or materials done, performed, placed or furnished in the construction of the Project which would generally be subject to a Holdback.
- (71) **“Hazardous Material”** means any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance in such form and amount as is defined as **“hazardous”**, **“toxic”** or **“dangerous”** within the meaning of any applicable federal, provincial, local or other law, regulation having the force of law, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any such hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended.
- (72) **“Holdback”** or **“Holdbacks”** means any amount or amounts required to be retained by the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the *Construction Act* (Ontario) or will be required under the said Act to

retain from any payment currently due or about to become due pursuant to any contract related to Construction and for which a Borrowing has been requested.

- (73) “**Holdback Advance**” has the meaning ascribed thereto in Section 6.06.
- (74) “**HST**” means the harmonized sales tax (including the federal and provincial components thereof) and/or any other similar or replacement tax that is in force and applicable.
- (75) “**Indebtedness**” of a Person means, without duplication, the aggregate of:
- (i) all debts, liabilities and obligations, direct, indirect, liquidated, unliquidated, contingent and other, including principal, interest, charges and fees, which in accordance with GAAP would be classified upon the Person’s balance sheet as liabilities;
 - (ii) all obligations secured by any Security Interest, including principal, interest, charges and fees, existing on property owned or acquired by the Person subject to such Security Interest whether or not the Person has assumed or otherwise become liable for the payment of such obligations (in an amount equal to the fair market value of such property where such obligations have not been assumed); and
 - (iii) all liabilities of such Person under any Guarantee of Indebtedness granted by such Person.
- (76) “**Insolvency Event**” means, in respect of any Person, the occurrence of any one or more of the following events in respect of such Person: it commits an act of bankruptcy or becomes insolvent (such terms having the respective meanings ascribed thereto in the BIA); it makes an assignment for the benefit of creditors, makes a proposal under the BIA or commences any other proceeding under Insolvency Legislation; it is adjudicated insolvent or bankrupt; it consents to the appointment of any receiver, trustee or similar liquidator in respect of all or any material portion of its property; any receiver, trustee, manager, consultant, liquidator or similar party is appointed in respect of it or any of its property; it admits the material allegations of a petition or application filed with respect to it in any bankruptcy, reorganization or insolvency proceeding; it takes any corporate action for the purpose of effecting any of the foregoing; or any proceedings are commenced against it pursuant to Insolvency Legislation and are not diligently contested by it in good faith and on reasonable grounds.
- (77) “**Insolvency Legislation**” means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the BIA, the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any applicable corporations legislation, as each is amended from time to time.

- (78) “**Insurer**” means the insurer, approved by the Agent from time to time, providing CDI for the Project, which at the time of this Agreement is Aviva Insurance Company of Canada and Liberty Mutual Insurance Company through their agent, Westmount Guarantee Services Inc.
- (79) “**Insurer Charge**” means a second charge on the Project Lands, subordinate to the Security, securing the Borrower’s obligations to the Insurer.
- (80) “**Insurer Holdback**” means the holdback required by the *Construction Act* (Ontario) and pursuant to the requirements of the *Condominium Act*;
- (81) “**Interest Payment Date**” means: (i) in respect of Prime Rate Loans, the last day of each calendar month, and (ii) in respect of a Letter of Credit, if the term of such Letter of Credit is three months or less, the date which is the last day of the term of such Letter of Credit and, if the term of such Letter of Credit is longer than three months, the date which is at the end of each three-month period during such term and on the last day of such term.
- (82) “**Joint Venture Agreement**” means the joint venture agreement dated as of July 18, 2013, between amongst others, the Borrower and 2372754 Ontario Limited, with respect to the Project Lands, as same may be amended from time to time with the prior written consent of the Agent.
- (83) “**L/C Facility**” has the meaning ascribed thereto in Section 2.02.
- (84) “**L/C Facility Limit**” means the Total Authorized Limit of \$1,000,000 set out in Column 2 of the Authorized Limits Schedule (as such limit may be revised, adjusted or reduced from time to time pursuant to the provisions of this Agreement).
- (85) “**L/C Lender**” means National Bank of Canada and its successors and assigns and is referred to as the “**Issuing Bank**” in the CBA Model Provisions.
- (86) “**Lenders**” means, collectively, National Bank of Canada and, thereafter, all financial institutions which may become a lender under any or all of the Credit Facilities, and their successors and assigns and “**Lender**” means any one of the Lenders.
- (87) “**Lender Related Distress Event**” means, with respect to any Lender or any Person that directly or indirectly controls such Lender (each a “**Distressed Person**”), a voluntary or involuntary case with respect to such Distressed Person under any Insolvency Legislation or a custodian, conservator, receiver, receiver-manager or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person is subject to a forced liquidation, merger, sale or other change of control supported in whole or in part by guarantees or other support (including, without limitation, the nationalization or assumption of ownership or operating control by the government of Canada or other Governmental Authority), or such Distressed

Person makes a general assignment for the benefit of its creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent, bankrupt, or deficient in meeting any capital adequacy or liquidity standard of any such Governmental Authority.

- (88) “**Letter of Credit**” or “**Letters of Credit**” means, individually or collectively, as the case may be, any of the following:
- (i) a standby letter of credit in Canadian Dollars; and
 - (ii) a letter of guarantee in Canadian Dollars.
- (89) “**Letter of Credit Agreement**” means a Letter of Credit application, indemnity, service agreement, license agreement, electronic banking agreement or such other customary document as the L/C Lender may reasonably require from time to time from the Borrower or other Persons when asked to issue a Letter of Credit.
- (90) “**Letter of Credit Notice**” means a Draw Request requesting the issuance of a Letter of Credit to be given to the Agent.
- (91) “**Loan Document**” or “**Loan Documents**” means, individually or collectively, as the case may be, this Agreement, the Security and any other document, instrument, agreement or certificate in favour of the Agent or any Lender executed in connection with this Agreement (including the fee letter issued by the Borrower to the Agent dated the date hereof, as the same may be amended, restated, modified, supplemented or replaced from time to time), or contemplated under this Agreement and when used in relation to any Person and any other document which, pursuant to the provisions of this Agreement, is stated to be a Loan Document.
- (92) “**Major Sub-Trade**” means any trade whose contract is greater than 5% of Hard Costs of the Project.
- (93) “**Material Adverse Change**” means any change, event, violation, circumstance or effect, including, without limitation:
- (i) a loss by or failure of any Credit Party to maintain any material licences, permits, authorizations or other regulatory or statutory approvals required for the operation the Project and/or in the case of the Borrower, its business;
 - (ii) any material suit, claim, action or other proceeding, whether civil, criminal or administrative, against any Credit Party for which such Credit Party is not insured or otherwise indemnified;
 - (iii) a default by any Credit Party in the performance of any of its obligations under any material agreement which results, or could result, in the

acceleration of any payment obligation or in a claim against such Credit Party of more than \$100,000 where the action is identified as material by its accountants in the footnotes of its financial statements which, when considered individually or when aggregated with other changes, events, violations, circumstances or effects, is or would reasonably be expected to have a Material Adverse Effect.

- (94) “**Material Adverse Effect**” means a material adverse effect on: (i) the business, property, assets, liabilities, operations, condition (financial or otherwise), affairs or prospects of any Credit Party (including, without limitation, the Project); (ii) the Project’s continued viability; (iii) the ability of any Credit Party to perform their obligations under any of the Loan Documents; (iv) the ability of the Agent or the Lenders to enforce its rights and remedies under any of the Loan Documents; (v) the level of inherent risk in the financing; or (vi) the rank of the Security.
- (95) “**Material Project Agreements**” means, collectively (i) all agreements, contracts or subcontracts relating to Construction which involve aggregate payments in excess of \$750,000, and (ii) each other operating contract having a term of more than one year or which contemplates payments in excess of \$100,000 per annum.
- (96) “**Minimum Eligible Presales Requirement**” means the firm sale of Units, with projected Gross Sale Proceeds of \$32,000,000.00.
- (97) “**Net Proceeds**” means, in connection with the sale of any Unit, the Gross Sale Proceeds less HST, real estate commissions, deferred costs [if any] (as set out in the Project Budget), purchaser paid extras, Purchaser Deposits, legal fees, other normal closing costs and customary adjustments for the purchase and sale of newly constructed condominium units in the Town of Aurora.
- (98) “**Non-Funded Borrowing**” shall have the meaning ascribed thereto in Section 2.09(2).
- (99) “**Non-Funding Lender**” shall have the meaning ascribed thereto in Section 2.09(2).
- (100) “**Notice**” means any written citation, directive, Order, claim, litigation, inspection report, investigation report, complaint, proceeding or judgment from any Person including any Governmental Authority.
- (101) “**on a consolidated basis**” means, when used to describe the calculation of any amount relating to the Borrower, such amount relating to the Borrower and the Guarantors consolidated in accordance with GAAP.
- (102) “**Orders**” means any applicable orders, decisions, directives, declarations, decrees, injunctions, writs, judgments, rulings, awards, requests, or the like, rendered by any Governmental Authority having the force of law including, without limitation, those issued under or pursuant to any Environmental Laws.

- (103) **“Outstanding Borrowings”** means, at the time of determination, the aggregate of: (i) the outstanding principal amount of all Prime Rate Loans and (ii) the face amount of all outstanding Letters of Credit.
- (104) **“Outstanding Obligations”** means the aggregate of: (i) all Outstanding Borrowings, (ii) all unpaid interest and fees thereon as herein provided, and (iii) all other indebtedness, liabilities and obligations (including, without limitation, under any indemnities) and all other fees, charges and expenses required to be paid by any Credit Party to the Agent or any of the Lenders under this Agreement or pursuant to the Security or pursuant to any other written agreements relating to this Agreement now or hereafter entered into between any Credit Party and the Agent or any Lender.
- (105) **“Overall Project”** means the proposed development of a multi-phased mixed-use commercial development project known as Aurora Mills Business Park located at 1588 St. John’s Sideroad, Aurora, Ontario, with a combined total of 390,130 square feet of buildable space comprised of 5,177 square feet in retail space and 384,952 square feet of industrial condominium space spanning over 8 Blocks, including the Project.
- (106) **“Participant”** has the meaning ascribed thereto in the CBA Model Provisions.
- (107) **“Permits”** means all permits, consents, orders, waivers, applications, authorizations, licences, certificates, approvals, registrations, franchises, rights, privileges and exemptions or the like issued or granted by any Governmental Authority, or by any other third party with respect to the Project including, without limitation, any Permits pertaining to Environmental Laws.
- (108) **“Permitted Encumbrances”** means:
- (i) inchoate or statutory liens or trust claims for taxes, assessments and other governmental charges or levies which are not delinquent or the validity of which are currently being contested in good faith by appropriate proceedings, provided that there shall have been set aside a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto;
 - (ii) the right reserved to, or vested in, any Governmental Authority or by the terms of any lease, license, franchise, grant, or permit acquired by the Credit Parties or by any statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition of the continuance thereof;
 - (iii) inchoate or statutory liens of architects, contractors, subcontractors, mechanics, suppliers, materialmen and others in respect of construction, maintenance, repair or operation of assets or properties, or other like possessory liens and public utility liens provided none of the Lenders nor the Agent has notice of a claim under such lien and provided no such lien

is registered as an encumbrance against the title to the Project Lands or any personal property of the Credit Parties or, if initially registered, (a) is being contested actively and diligently in good faith by appropriate and timely proceedings and all enforcement proceedings have been stayed, and (b) has been discharged from title by virtue of payment in court or posting of a payment bond;

- (iv) security given by the Credit Parties to a public utility or other municipality or governmental or other public authority when required by such utility or municipality or other authority in connection with the operations of the Credit Parties in the ordinary course of business;
- (v) title defects, zoning restrictions, easements, licences, covenants and other restrictions which are of a minor nature and in the aggregate will not materially impair the value or the use of the Project Lands for the purposes for which it is held;
- (vi) subdivision, site plan, development or other municipal agreements and reciprocal easement agreements, provided such agreements are complied with and in the normal course of the Borrower's use of the Project Lands;
- (vii) Purchase-Money Security Interests incurred or assumed in connection with the purchase, leasing or acquisition of capital equipment in the ordinary course of business provided such lien is restricted to the same collateral (and the proceeds therefrom) for an amount not higher than the purchase price;
- (viii) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown;
- (ix) liens securing appeal bonds or similar liens arising in connection with court proceedings (including surety bonds, security for costs of litigation where required by law and letters of credit) or any other instrument serving a similar purpose;
- (x) the Security;
- (xi) Security Interests against title to the Project Lands existing on the date hereof identified in Schedule 1.01(108)(xi) to this Agreement;
- (xii) residential leases and notices of leases and interests therein or arising therein;
- (xiii) pledges and deposits of cash in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security;

- (xiv) a real property charge over the Project Lands in favour of the Insurer which is subject to the priority, postponement and standstill agreement referred to in Section 8.01(31); and
- (xv) Security Interests, other than those described in this Section, the existence of which have been disclosed in writing to the Agent in which the Agent and the Lenders have given their prior written consent.

Provided, however, that the designation of an encumbrance as a “**Permitted Encumbrance**” is not, and shall not be deemed to be, an acknowledgment by the Agent or any Lender that the encumbrance shall have priority over the claims of the Agent and the Lenders against the Borrower or any Guarantor or any of their respective assets.

- (109) “**Permitted Indebtedness**” means the following Indebtedness of the Credit Parties:
 - (i) the Outstanding Obligations;
 - (ii) any other Indebtedness specifically permitted hereunder or set out in Schedule 1.01(108) hereto;
 - (iii) any Indebtedness in favour of Windsor Private Capital Inc., First Mortgage Administration Corp. and/or Olympia Trust Company which is identified as a Permitted Encumbrance in this Agreement; and
 - (iv) all Indebtedness of the Borrower set forth or described in the Co-Development Agreement.
- (110) “**Person**” includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof and any other incorporated or unincorporated entity.
- (111) “**Plans and Specifications**” means the plans and specifications pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Project Consultant and the Agent, acting in a commercially reasonable manner.
- (112) “**Prime Rate**” means the greater of (i) the variable rate of interest per annum equal to the rate of interest determined by the Administrative Agent from time to time as its prime rate for Canadian dollar loans made by the Administrative Agent in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Administrative Agent calculated on the basis of a year of 365 days or 366 days in the case of a leap year.

- (113) “**Prime Rate Loan**” or “**Prime Rate Loans**” means any loan or loans in Canadian Dollars made by a Lender to the Borrower on which the interest rate is calculated with reference to the Prime Rate.
- (114) “**Priority Payables**” means, with respect to any Person at any time, the aggregate amount of such debts, liabilities and obligations payable by such Person at such time to any other Person or any Governmental Authority, employment insurance premiums, Canada Pension Plan contributions, vacation pay, withholding tax liabilities, goods and services tax, municipal taxes, all sales and consumption taxes, Harmonized Sales Tax and customs duties, to the extent that in a bankruptcy, receivership, winding-up, liquidation, realization or like proceeding the same would or could potentially rank in priority to the Outstanding Borrowings; provided, however, that for the purposes of Section 6.01 and Section 6.02, the words “**or could potentially**” shall be deemed to have been deleted.
- (115) “**Proceeds of Realization**” means all amounts received by the Agent and any Lender in connection with: (i) any realization in respect of the Security or any portion thereof, whether occurring as a result of enforcement or otherwise, (ii) any sale, expropriation, loss or damage or other disposition of any collateral secured by the Security or any portion thereof, and (iii) the dissolution, liquidation, bankruptcy or winding-up of any Credit Party, or any other distribution of its assets to creditors; together with all other amounts which are expressly deemed to constitute “Proceeds of Realization” in this Agreement.
- (116) “**Project**” means the proposed development in accordance with the Plans and Specifications and in accordance with the Project Budget on Blocks 1, 5 and 6 of Phase 1 of a multi-phased project known as Aurora Mills Business Park located at 1588 St. John’s Sideroad, Aurora, Ontario. Block 1 will be comprised of a small retail space (5,177 square feet), while Blocks 5 and 6 will be comprised of 25 industrial condominium units comprised of approximately 93,225 buildable square feet, with average unit sizes ranging from 3,582 square feet and up. The total combined buildable square feet for Phase 1 is 98,402 square feet.
- (117) “**Project Budget**” means the budget of all Project Costs which has specified a line by line itemization of Project Costs, including Contingency Amounts, incurred or to be incurred by the Borrower in connection with the Project, as prepared by the Borrower and approved by the Agent and the Project Consultant prior to the first Borrowing under the Term Facility, as amended from time to time with the prior written approval of the Agent, a summary of which, showing, *inter alia*, sources and uses, is attached as Schedule 1.01(117).
- (118) “**Project Consultant**” means C.B. Ross Partners, or such other replacement consultant or quantity surveyor appointed by the Agent.
- (119) “**Project Costs**” means the value ascribed to the Project Lands of \$10,118,375.00 plus all Hard Costs and all Soft Costs expended or to be expended to achieve

Construction Completion in accordance with the Plans and Specifications and Construction Schedule.

- (120) **“Project Lands”** means certain lands located at 1588 St. John’s Sideroad, Aurora, Ontario, as more particularly described on Schedule 1.01(120)
- (121) **“Project Operating Account”** means a bank account maintained by the Borrower at the Agent Branch of Account designated in writing by the Borrower and the Agent as the project operating account for the Project.
- (122) **“Pro Rata Share”** means:
- (i) at any particular time with respect to a particular Lender in respect of a Credit Facility, the ratio of: (x) the Authorized Limit of such Lender under such Credit Facility, to (y) the Total Authorized Limits of all Lenders under such Credit Facility; provided that for the purposes of Borrowings under the Term Facility other than under the Swingline Facility the applicable ratio is the ratio of: (x) the Authorized Limit of such Lender under the Term Facility determined without regard to the Swingline Facility Limit to (y) the total Authorized Limits of all Lenders under the Term Facility determined without regard to the Swingline Facility Limit; and provided further that, in all cases, if the Authorized Limits under such Credit Facility have terminated or expired, the ratio shall be based on outstanding Borrowings under such Credit Facility immediately following such termination or expiration, as the case may be; and
 - (ii) at any particular time with respect to a particular Lender in respect of all of the Credit Facilities, the ratio of: (x) the Authorized Limit of such Lender under all of the Credit Facilities, to (y) the Authorized Limits of all Lenders under all of the Credit Facilities; provided that if the Authorized Limit under any particular Credit Facility has terminated or expired, the ratio shall be calculated using the amount of the outstanding Borrowings under such Credit Facility immediately following such termination or expiration, as the case may be.
- (123) **“Purchase-Money Security Interests”** means (i) a lease of any property or asset which in substance, constitutes a security interest under the *Personal Property Security Act* (Ontario), or (ii) a lien on any property or asset which is created, issued or assumed to secure the unpaid purchase price thereof, provided that such lien is restricted to such property or asset and secures an amount not in excess of the purchase price thereof and any interest payable in respect thereof.
- (124) **“Purchaser Deposits”** means cash deposits made by purchasers pursuant to Agreements of Purchase and Sale relating to Units.
- (125) **“Qualified Sale”** shall have the meaning ascribed thereto in Section 6.01(13).

- (126) “**Release**” means discharge, spray, inject, deposit, spill, leak, seep, pour, emit, empty, dispose, dump, escape, leach, disperse, migrate or exhaust into the environment, and when used as a noun (as applicable) has a similar meaning.
- (127) “**Repayment**” means a repayment by the Borrower on account of the Outstanding Borrowings under all the Credit Facilities or a Credit Facility, as the context requires.
- (128) “**Repayment Notice**” means a notice delivered by the Borrower to the Agent committing the Borrower to make a Repayment in the form of Schedule 1.01(128).
- (129) “**Required Lenders**” means (i) in the case of only one (1) Lender with Authorized Limits under this Agreement, the one (1) Lender, (ii) in the case of only two (2) Lenders with Authorized Limits under this Agreement, both of the Lenders, and (iii) in the case of more than two (2) Lenders with Authorized Limits under this Agreement, two (2) or more Lenders with Authorized Limits in respect of the Credit Facilities under this Agreement of not less than 66.67% of the Total Authorized Limits of all the Credit Facilities, subject to Section 12.01.
- (130) “**Security**” means the security, monies and agreements described in Article 9 and any additional security issued from time to time by any Person in support of the liabilities and obligations hereunder, as amended, restated or replaced from time to time.
- (131) “**Security Interest**” means a mortgage, charge, floating charge, pledge, hypothec, assignment, lien, interest claim, encumbrance, conditional sale agreement or other title retention agreement or other security interest or arrangement of any kind or character intended to create a security interest in substance regardless of whether the Person creating the interest retains an equity of redemption, and any agreement to provide or enter into at any time or on the happening of any event such a security interest or arrangement.
- (132) “**Soft Costs**” means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, construction insurance, bonding costs, legal fees, promotion of the Project, financing costs including debt service costs relating to the Credit Facilities, capitalized interest to Substantial Completion, leasing, pre operating costs and all other costs related to the Project, except Hard Costs and the cost of acquisition of the Project Lands.
- (133) “**Standard Form Agreement of Purchase and Sale**” means the standard form Agreement of Purchase and Sale relating to Units to be utilized by the Borrower in the form approved in accordance with Section 6.01(17).
- (134) “**Subordinated Debt**” of the Borrower or the Guarantors means Indebtedness of the Borrower or the Guarantors, as the case may be (i) the primary terms of which including, without limitation, its amount, interest rate, payment schedule, maturity date and applicable acceleration rights and the proposed use of such funds, are all

satisfactory to the Agent and the Lenders, (ii) which has been validly postponed and subordinated in right of payment and collection to the repayment in full of the Outstanding Obligations to the satisfaction of the Agent and the Lenders, and (iii) all security, if any, held for such indebtedness has been fully subordinated to the Security to the satisfaction of the Agent and the Lenders or is unsecured.

- (135) “**Subsidiary**” means a body corporate which is a subsidiary of another body corporate within the meaning of that term as used in the *Canada Business Corporations Act* (Canada) as amended from time to time.
- (136) “**Substantial Completion**” means the date on which the last of the following shall occur: (a) the Certificate of Substantial Performance has been delivered, (b) the Project Consultant has delivered a certificate to the Agent certifying that substantial performance referenced in the Certificate of Substantial Performance is, in all material respects, in accordance with the Plans and Specifications, and (c) a letter or certificate or letters or certificates authorizing occupancy of the Project has been issued by the Town of Aurora or its successor.
- (137) “**Swingline**” shall have the meaning ascribed thereto in Section 2.01(4).
- (138) “**Swingline Facility Limit**” has the meaning ascribed thereto in Section 2.01(4).
- (139) “**Swingline Lender**” shall mean the National Bank of Canada and its successors and assigns.
- (140) “**Taxes**” has the meaning ascribed thereto in Section 13.01.
- (141) “**Term Authorized Limit**” means, with respect to a particular Lender under the Term Facility, the amount specified as such Lender’s “Term Authorized Limit” as set forth opposite such Lender’s name in Column 1 of the Authorized Limits Schedule, as adjusted from time to time, and “**Term Authorized Limits**” means the aggregate of the Term Authorized Limits of all of the Term Lenders.
- (142) “**Term Facility**” has the meaning specified in Section 2.01.
- (143) “**Term Facility Limit**” means the Total Authorized Limit set out in Column 1 of the Authorized Limits Schedule (as such limit may be revised, adjusted or reduced from time to time pursuant to the provisions of this Agreement, including pursuant to Section 2.01(1)).
- (144) “**Term Lenders**” means, at any time, collectively those Lenders with Authorized Limits or Borrowings outstanding under the Term Facility, and “**Term Lender**” means anyone of them.
- (145) “**Total Authorized Limit**” means the aggregate of the Authorized Limits of the Lenders under a particular Credit Facility, or under all Credit Facilities, as the context requires.

- (146) “**Trust Account Agreement**” means the commitment letter dated December 15, 2021 between the Borrower, as principal, and Westmount Guarantee Services Inc., as surety, which may be amended from time to time with the prior written consent of the Agent, pursuant to which the Escrow Agent shall hold all Purchaser Deposits in trust for the Insurer as collateral security for the payment of any indebtedness owing by the Borrower to the Insurer in connection with the issuance of surety bonds and CDI by the Insurer as set forth in Section 8.01(29).
- (147) “**Units**” means the condominium units of the Project which are offered for sale, including any respective locker and parking spaces, together with the common and exclusive rights appurtenant thereto and “**Unit**” means any one of them.
- (148) “**Unutilized Portion**” means, with respect to the Term Facility, at the date of determination:
- (i) the Term Facility Limit,
- minus
- (ii) the Outstanding Borrowings under the Term Facility at such date.
- (149) “**Warranties**” means those warranties and guarantees which are issued in connection with the Project, as contained in the Material Project Agreements.
- (150) “**written**” and “**in writing**” shall include printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception including telecopy, facsimile, pdf and electronic mail.

1.02 Financial Statements

All references in this Agreement to financial statements of a corporation, including the balance sheet and related statements of income, retained earnings and changes in financial position, mean accountant reviewed financial statements prepared by the corporation in accordance with GAAP, together with an accountant’s opinion that the statements fairly present the financial position of the corporation and the results of its operations for the Financial Year reported on in accordance with GAAP.

1.03 Canadian Currency

Unless otherwise specified herein, all amounts and values referred to in this Agreement shall be calculated in lawful money of Canada. Notwithstanding the foregoing, all payments made hereunder shall be made in the currency in respect of which the obligation requiring such payment arose.

1.04 Interest Act

- (1) Unless otherwise specified, all annual rates of interest and fees calculated on the basis of a percentage per annum referred to herein are based on a calendar year of

365 or 366 days, as the case may be. Where a rate of interest hereunder is calculated on the basis of a year (the “**Deemed Year**”) which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for the purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the Deemed Year.

- (2) For purposes of the *Interest Act* (Canada), the principle of deemed reinvestment of interest shall not apply to any interest rate calculation under this Agreement, and the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.05 Change in Rates

Any change in the Prime Rate is to be effective on the date such change is established whether or not the Borrower receives notice thereof.

1.06 Headings and Table of Contents

The division of this Agreement into Articles and Sections and the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

1.07 References

All references to Sections, Subsections, Paragraphs, Articles and Schedules are to Sections, Subsections, Paragraphs and Articles of and Schedules to this Agreement. The words “**hereto**”, “**herein**”, “**hereof**”, “**hereunder**”, “**this Agreement**” and similar expressions mean and refer to this Agreement.

1.08 Number and Gender

Where the context so requires, words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

1.09 Maximum Interest Rate

- (1) In the event that any provision of this Agreement would oblige the Borrower to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Agent, the Lenders, or any of them of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Agent, the Lenders, or any of them of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:

- (i) firstly, by reducing the amount or rate of interest required to be paid under Section 5.01 of this Agreement; and
 - (ii) thereafter, by reducing any fees, commissions, premiums and other amounts which would constitute interest for the purposes of Section 347 of the *Criminal Code* (Canada);
- (2) If, notwithstanding the provisions of Section 1.09(1) and after giving effect to all adjustments contemplated thereby, the Agent, the Lenders, or any of them shall have received an amount in excess of the maximum permitted by such clause, then such excess shall be applied by the Agent (on behalf of the Lenders) to the reduction of the principal balance of the Outstanding Borrowings and not to the payment of interest or if such excessive interest exceeds such principal balance, such excess shall be refunded to the Borrower; and
- (3) Any amount or rate of interest referred to in this Section shall be determined in accordance with generally accepted actuarial practices and principles at an effective annual rate of interest over the term of this Agreement on the assumption that any charges, fees or expenses that fall within the meaning of “**interest**” (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be prorated over that period of time and otherwise be prorated over the terms of this Agreement and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Agent (on behalf of the Lenders) shall be conclusive for the purposes of such determination.

1.10 Schedules

The Schedules forming part of this Agreement are as follows:

Schedule 1.01(14)	-	Lender Authorized Limits
Schedule 1.01(27)	-	CBA Model Provisions
Schedule 1.01(32)	-	Compliance Certificate
Schedule 1.01(108)(xi)	-	Permitted Encumbrances
Schedule 1.01(109)	-	Permitted Indebtedness
Schedule 1.01(117)	-	Project Budget
Schedule 1.01(120)	-	Legal Description of the Project Lands
Schedule 1.01(128)	-	Repayment Notice
Schedule 3.01	-	Draw Request

ARTICLE 2 CREDIT FACILITIES

2.01 Establishment of Term Facility

Subject to the terms and conditions of this Agreement, a non-revolving term construction loan facility (the “**Term Facility**”) is established in favour of the Borrower pursuant to which each Lender severally (and not jointly and severally) agrees to make available to the Borrower on a non-revolving term basis (except the Swingline), Borrowings by way of Prime Rate Loans in an aggregate principal amount equal to the aggregate amount of its Term Authorized Limit (subject to such repayments, prepayments, cancellations and terminations as otherwise required in accordance with this Agreement) provided that:

- (1) the aggregate Term Authorized Limits, and all Borrowings outstanding under the Term Facility, shall not, at any time, exceed the Term Facility Limit. The Term Facility Limit shall be \$25,765,000, subject to the following adjustments. To the extent Purchaser Deposits used in connection with the financing of the Project exceed \$6,075,061, the Term Facility Limit shall be reduced by an amount equal to such excess Purchaser Deposits. The Borrower agrees to give prompt written notice to the Agent of any such excess Purchaser Deposits;
- (2) the Term Facility shall be comprised of two (2) segments. The first segment (“**Segment 1**” or “**Initial Borrowings**”) shall consist of the first advance under the Term Facility which shall be to a maximum of \$8,000,000, subject to downward adjustment at the sole discretion of the Lenders if the applicable conditions precedent are not satisfied in accordance with Article 6 or the Agent determines in its sole discretion that the value of the Project Lands is less than \$16,000,000. The second segment (“**Segment 2**”) shall consist of the balance advanced under the Term Facility up to the Term Facility Limit;
- (3) all Borrowings outstanding under the Term Facility advanced by such Term Lender will not, at any time, exceed, such Lender’s Term Authorized Limit (as such Authorized Limit may be revised, adjusted or reduced from time to time pursuant to the provisions of this Agreement);
- (4) within the Term Facility, a revolving sub-facility (the “**Swingline**”) is available by way of Prime Rate Loans (on an overdraft basis only) provided:
 - (i) the amount outstanding under the Swingline will not, at any time, exceed \$1,000,000 (the “**Swingline Facility Limit**”); and
- (5) the amount of all Borrowings under the Swingline plus all Borrowings under the Term Facility made available by the Lenders will not, at any time, exceed \$26,765,000 and the total Borrowings made available by the Swingline Lender under the Term Facility and the Swingline Facility shall not exceed its Term Authorized Limit.

2.02 Swingline Advances

The Swingline shall be advanced as temporary Borrowings under the Term Facility by the Swingline Lender, but with the following additional specifications:

- (1) Provided that an Event of Default has not occurred which is continuing and no event which, with the giving of notice or the lapse of time or both would constitute an Event of Default, and the Swingline would otherwise be available for advance, the Swingline may be accessed by the issuance of cheques, electronic funds transfer and/or wire transfer, in a minimum amount of \$1,000 and in whole multiples of \$1,000 thereafter, which results in an overdraft in the account of the Borrower which overdraft shall be deemed to be a Borrowing in the same currency made pursuant to the Swingline, subject to the terms of the Term Facility, provided as a Canadian Prime Rate Loan.
- (2) The Swingline Lender may at any time, whether prior to or after an Event of Default and regardless of the aggregate amount of the Swingline advances then outstanding, deliver a written notice to the Agent (which in turn will provide notice, in accordance with the provisions of this Agreement, to each of the Lenders which has an Authorized Limit for the Term Facility) and to the Borrower, requiring repayment of all Swingline advances then outstanding. Such written notice from the Swingline Lender to the Agent shall be delivered not later than 11:00 a.m. (Toronto time) one Business Day prior to the proposed date of repayment of all Swingline advances then outstanding. The Borrower shall be deemed to have given at such time a Draw Request to the Agent requesting Prime Loans under the Term Facility in an amount equal to the repayment amount or amounts specified by the Swingline Lender in such notice and each of the Lenders which have the Authorized Limits for the Term Facility shall make such requested Borrowings, each in the amount of the relevant Lender's Pro Rata Share of the then outstanding amount of the Swingline advances, on the next Business Day and the Agent shall apply the proceeds thereof in repayment of the Swingline advances then outstanding. The Agent shall promptly notify the Borrower of any such Borrowings, and the Borrower acknowledges that it shall be indebted in respect of each such Borrowing and hereby irrevocably authorizes and directs the Agent to apply the proceeds thereof in payment of the Swingline as aforesaid. If, by reason of any stay of proceedings against the Borrower, or otherwise, the Swingline Lender is precluded from delivering such a notice requiring repayment of the then outstanding Swingline advances by the Borrower, each Lender having a Term Facility Authorized Limit shall, at the request of the Swingline Lender made through the Agent, purchase a participation from the Swingline Lender in the Swingline then outstanding in an amount equal to such Lender's Pro Rata Share of the then outstanding amount of the Swingline. Notwithstanding the foregoing, no Lender shall be obligated under this Section 2.02(2) to allow any Borrowing or purchase any participation in excess of its unfunded Term Facility Authorized Limit.

- (3) In all other respects the Swingline forms part of and is subject to the terms and conditions as to the Term Facility. The Swingline shall be repaid from the monthly draws under the Term Facility. The Swingline shall be completely paid out from the final Borrowing under the Term Facility and thereafter the Swingline shall be terminated and no further drawings permitted thereunder.

2.03 Establishment of L/C Facility

Subject to the terms and conditions of this Agreement, the L/C Lender agrees to make available to the Borrower for the account of the L/C Lender solely a non-revolving letter of credit facility (the “**L/C Facility**”) available by way of Letters of Credit. Outstanding Borrowings under the L/C Facility shall at no time exceed the L/C Facility Limit.

2.04 Purpose of the Credit Facilities

- (1) Borrowings under the Term Facility shall only be used to assist the Borrower to finance the construction and development of the Project.
- (2) Borrowings under the Swingline sub-facility shall only be used for interim working capital requirements and miscellaneous Project Costs (e.g., interest payments, HST remittances pending refund and minor holdback releases) pending the monthly Borrowing under the Term Facility.
- (3) Borrowings under the L/C Facility shall be used in connection with obligations specific to the Project for conditional building permits or otherwise owing to regional or municipal authorities or utilities, provided for in the Project Budget relating to the construction and development of the Project.

The Borrower confirms the Credit Facilities and the related loan accounts will be used for the Borrower’s own business and business transactions associated therewith.

2.05 Restrictions on Borrowing

The Borrower shall not request a Borrowing if the result thereof would create or cause a breach of any term, representation, warranty or covenant hereof.

2.06 Non Revolving Feature of Term Facility

No amount repaid or prepaid (whether scheduled, voluntary or mandatory) by the Borrower under the Term Facility may be reborrowed except in connection with the Swingline.

2.07 Limitations on Borrowings

Subject to Article 6, the obligation of the Lenders to make available a Borrowing is subject to the following limitations, any of which may, in the Lenders’ sole discretion be waived by the Lenders:

- (1) after making the requested Borrowing, the aggregate principal amount of all Borrowings will not exceed 100% of:
 - (i) the value of the Project Lands provided for in the Project Budget (being \$10,118,375);
 - (ii) **plus** Hard Costs (including HST payable) incurred in respect of work in place for the Project, less the applicable Holdbacks and trade payables incurred but not being paid and not due until after the next Borrowing and after the next monthly report date, in each case as at the date of the Borrowing in question;
 - (iii) **plus** Soft Costs (including HST payable) incurred less the trade payables applicable thereto, incurred but not being paid and not due until after the next Borrowing and after the next monthly report date, in each case, as at the date of the Borrowing in question;
 - (iv) **plus** debt service costs relating to the Credit Facilities; and
 - (v) **less** the Borrower's Equity in the Project of \$6,691,434, Holdbacks, HST refunds received, interim occupancy fees recovered, and Deposit Availments to date used to fund Costs of Construction; and
- (2) all Cost Overruns and other amounts owing under Section 8.01(26) existing as at the date of the Borrowing in question shall have been paid by the Borrower from its own resources; and
- (3) after making the requested Borrowing, the then unadvanced aggregate principal amount available under the Term Facility shall be sufficient to cover the Cost to Complete plus Holdbacks.

2.08 Evidence of Indebtedness

- (1) The Agent shall open and maintain on its books control accounts evidencing Borrowings made by each Lender hereunder and all other amounts owed by the Borrower to each such Lender hereunder.
- (2) Each Lender shall maintain accounts and records evidencing the Outstanding Obligations of the Borrower to each such Lender hereunder. The Lender's accounts and records shall constitute *prima facie* evidence of such Outstanding Obligations to each such Lender hereunder in the absence of manifest error. The Borrower acknowledges, confirms and agrees that all such records kept by each such Lender shall constitute *prima facie* evidence of the matters referred to above; provided, however, that the failure of any Lender to make any entry or recording in any such records shall not limit or otherwise affect the Outstanding Obligations of the Borrower owed to any Lender.

- (3) The L/C Lender will maintain records evidencing: (i) the indebtedness and obligations of the Borrower to the L/C Lender under this Agreement in respect of outstanding Borrowings by way of Letters of Credit under the L/C Facility and accrued interest thereon, fees in respect thereof and other amounts payable in connection with any of the foregoing under this Agreement; and (ii) the amounts from time to time paid by the Borrower to the L/C Lender under this Agreement on account of such Borrowings, interest, fees and other amounts. The Borrower acknowledges, confirms and agrees that all such records kept by the L/C Lender shall constitute *prima facie* evidence of the matters referred to above, absent manifest error; provided, however, that the failure of the L/C Lender to make any entry or recording in any such records shall not limit or otherwise affect the obligations of the Borrower under this Agreement or with respect to any such Borrowings, interest, fees or other amounts owed to the L/C Lender.

2.09 Borrowings under the Credit Facilities

Except as otherwise specifically stated in this Agreement:

- (1) **Term Facility.** Each Borrowing by the Borrower under the Term Facility will be:
 - (i) made available to the Borrower by the Term Lenders simultaneously and in their respective Pro Rata Shares under the Term Facility; and
 - (ii) comprised of the same type or types of Borrowing, with identical maturity dates, if applicable, from each Term Lender.
- (2) **Non-Funding Lenders/Non-Funded Borrowings.** Subject to the provisions of this Agreement, each Lender agrees to make available its Pro Rata Share of each Borrowing to the Borrower. No Lender will be responsible for any default by any other Lender in its obligation to make Borrowings available to the Borrower nor will the Authorized Limit of any Lender under any Credit Facility be increased as a result of any such default, except as provided in this subsection. If any Lender fails to make available any Borrowings under a Credit Facility when required under its Authorized Limit (the “**Non-Funding Lender**”) relative to such Credit Facility, the Agent will promptly notify the other Lenders that have Authorized Limits under such Credit Facility of such failure, and any Lender that has an Authorized Limit under such Credit Facility, upon notice to the Borrower, the Agent and the other Lenders that have Authorized Limits under such Credit Facility, may make available (the “**Additional Borrowing**”) to the Borrower within five (5) Business Days after the applicable Borrowing Date the amount (or if more than one Lender so elects, its Pro Rata Share under such Credit Facility, of that portion as nearly as practicable in the opinion of the Agent) of the Borrowing not funded by the Non-Funding Lender (the “**Non-Funded Borrowing**”). The Lenders, the Borrower and the Agent shall thereupon enter into documentation, in form and substance satisfactory to the Agent, as may be appropriate to evidence the adjustment of the Authorized Limits relative to such Credit Facility, necessitated by such Additional Borrowing made by any Lender.

Nothing in this subsection shall be deemed to relieve any Lender of its obligation to make any Borrowings available when required to do so under this Agreement, or to prejudice any rights which the Borrower, the Agent or any other Lender may have against the Non-Funding Lender.

2.10 Manner of Borrowings

- (1) Except for Borrowings under the Swingline, each Lender shall transfer to the Agent Branch of Account for value prior to 11:00 a.m. (Toronto time) on each applicable Borrowing Date in immediately available Cdn. Dollars, its Pro Rata Share of:
 - (i) any Prime Rate Loan to be made on such Borrowing Date in an aggregate amount equal to the amount set out in the Draw Request.
- (2) The Agent may designate such other accounts and offices as it sees fit for the purposes referred to in Section 2.10(1).
- (3) Subject to any direction given to the Agent by the Borrower, the Agent shall make all amounts received by it from the Lenders pursuant to Section 2.10(1) available to the Borrower by depositing the same for value prior to 3:00 p.m. (Toronto time) or as soon thereafter as practicable on the applicable Borrowing Date to the Project Operating Account.

2.11 Illegality

If the introduction of or any change in any Applicable Law or in the interpretation or application thereof by any court or by any Governmental Authority charged with the administration thereof, makes it unlawful or prohibited for a Lender to make, to fund or to maintain its Authorized Limit or any portion thereof or to perform any of its obligations under this Agreement, such Lender may, by ten (10) days prior written notice to the Agent and the Borrower (unless the provision of the Applicable Law requires earlier prepayment in which case the notice period shall be such shorter period as required to comply with the Applicable Law), terminate its obligations under this Agreement (or those which are unlawful or prohibited as the case may be) and in such event, subject to the right of any Lender to assume the obligations of the terminating Lender the Borrower shall (to the extent required) prepay such Borrowings forthwith (or at the end of such period as the terminating Lender in its discretion agrees), without notice or penalty, together with all accrued but unpaid interest and fees as may be applicable to the date of payment, or such Lender may, at its option and by written notice to the Borrower, convert such Borrowings forthwith into another basis of Borrowing available under this Agreement.

ARTICLE 3 PROCEDURES APPLICABLE TO BORROWINGS

3.01 Draw Request

- (1) The Borrower will deliver a Draw Request to the Agent not later than 10:00 a.m. (Toronto Time) at least five (5) Business Days before the respective Borrowing

Date for each Borrowing in an amount greater than \$100,000, and at least five (5) Business Days before the respective Borrowing Date for each Borrowing in an amount less than \$100,000 and, in the case of a Letter of Credit to be issued by the L/C Lender, also to the L/C Lender. Borrowings under the Term Facility, other than the Swingline, shall be no more frequently than monthly. Deposit Availments shall be in conjunction with a Borrowing. Each such notice of a Borrowing (a “**Draw Request**”) shall be in the form as attached as Schedule 3.01 of this Agreement and shall specify therein or include therewith the requested date of such Borrowing, the requested Credit Facility under which such Borrowing is being made, the aggregate amount of such Borrowing and all documentation to be provided to the Agent in connection with a Borrowing including, but not limited to, the reports or documents referred to in Sections 6.03(13) and 6.01(12) and 6.03(16).

- (2) Each Draw Request shall be irrevocable and binding on the Borrower and shall be in amounts not less than \$100,000. The following procedures shall apply to each Draw Request:
 - (i) Upon receipt of a Draw Request, the Agent shall promptly notify each Lender of the contents thereof and such Lender’s Pro Rata Share of the requested Borrowing. On or before noon (Toronto Time) on such Business Day the Agent shall notify the Borrower and the Lenders as to whether all applicable conditions precedent to such Borrowing have been satisfied, in which event each Lender shall make available its Pro Rata Share of such Borrowing to the Agent by 11:00 a.m. (Toronto Time) on the Borrowing Date, subject to Section 3.01(2)(ii) below. The Agent shall thereafter make the requested Borrowing by funding the Project Operating Account on or before 3pm (Toronto Time) on the Borrowing Date, subject to having received a satisfactory title subsearch on the Borrowing Date in respect of the Project Lands (for so long as the Security is registered against same) from the Agent’s solicitor pursuant to Section 6.03(10).
 - (ii) For greater certainty, if the Required Lenders determine that all applicable conditions precedent to any Borrowing under this Agreement have been satisfied, each Lender acknowledges and agrees that it shall be obliged to make available its Pro Rata Share of such Borrowing. Notwithstanding the foregoing, however, no Lender shall be obliged to make available its Pro Rata Share of any Borrowing if an Event of Default has occurred and is continuing at such time, or would occur as a result of such Borrowing. For greater certainty however, an Event of Default which has been waived in writing by the Required Lenders is not an Event of Default.
 - (iii) Notwithstanding anything else in this Agreement, each Borrowing shall be made in the form of a Prime Rate Loan.
 - (iv) The Borrower shall indemnify each Lender against any loss or expense incurred by a Lender as a result of any failure to fulfill on or before the

date specified for such Borrowing the applicable conditions set forth in Section 6.01 and Section 6.02, including, without limitation, any loss or expense incurred by reason of the liquidation or re-employment of deposits or other funds acquired by any Lender to fund any loan to be made by such Lender as part of such Borrowing if such loan, as a result of such failure, is not made on such date.

- (3) Each advance will be funded on a cost-to-complete basis, net of Purchaser Deposits and Holdbacks less prorated land debt (based on total saleable front footage), against monthly Draw Requests prepared and reviewed by the Project Consultant, satisfactory to the Agent and supported by the following:
 - (i) Progress appraisal provided by the Project Consultant to confirm the work in progress / percentage of completion at the Initial Borrowings and on a monthly basis thereafter;
 - (ii) Site visits are to be performed by the Project Consultant for each draw;
 - (iii) Compliance Certificate signed by the Borrower; and
 - (iv) Declaration from a director or officer of the Borrower confirming compliance with the *Construction Act* (Ontario), all applicable tax legislation and the terms and conditions of this Agreement.

3.02 Provisions relating to Letters of Credit

- (1) Borrowings by way of Letters of Credit shall not exceed the L/C Facility Limit at any time, except with the prior written consent of the L/C Lender and the other Lenders pursuant to Section 12.01.
- (2) Subject to Section 4.01(2), all Letters of Credit issued hereunder shall mature on a Business Day and shall expire not later than the earlier of (i) 364 days from the date of issuance and each renewal thereof or (ii) the Final Repayment Date.
- (3) Whenever the Borrower requires the issuance of a Letter of Credit, it shall deliver to the Agent (who will forward same to the L/C Lender for the L/C Lender's own account) a duly executed Letter of Credit Agreement, together with such other supporting documentation as the L/C Lender may reasonably require, not less than five (5) Business Days prior to the anticipated date of issuance.
- (4) The Borrower may at any time on or after the Closing Date, subject to the conditions set out in Section 6.02, request a Letter of Credit subject to compliance by the Borrower with all Applicable Laws in respect of such Letter of Credit.
- (5) Upon the honouring of payment by the L/C Lender to any Person named therein, of any amount under the terms of a Letter of Credit, the Borrower agrees to immediately reimburse the Agent for the account of the L/C Lender in an amount equal to the aggregate of (i) the amount of such payment and (ii) any costs and

expenses incurred by the L/C Lender in connection therewith, with interest thereon payable at the same rate and in the same manner as a Prime Rate Loan under the Term Facility.

- (6) Until the honouring of payment by the L/C Lender of a Letter of Credit, at which time Section 3.02(5) shall govern, the issuance by the L/C Lender of a Letter of Credit shall be deemed to be a use of the L/C Facility for the account of the L/C Lender in an amount equal to the face amount of the Letter of Credit for the purpose of determining (i) the portion of the L/C Facility remaining available for drawdown and (ii) the maximum level of Borrowings permitted to be outstanding thereunder.
- (7) Upon receipt of demand for payment under any Letter of Credit, the L/C Lender shall be under no obligation whatsoever to inquire or investigate the merits or appropriateness of such demand, provided compliance with the Letter of Credit requirements is made on its face. The Borrower shall fully and immediately indemnify and save harmless the Agent and the L/C Lender from any and all debts, liabilities and obligations or causes of action in respect of making any payment under a Letter of Credit except as a result from the gross negligence or wilful misconduct of the Agent or L/C Lender.
- (8) If a Letter of Credit is outstanding at any time that all of the Outstanding Obligations under the L/C Facility become payable or a demand is made under Article 10, the Borrower shall forthwith pay to the Agent, for the account of the L/C Lender, an amount equal to the face amount of such Letter of Credit. The proceeds of such payment shall be held by the Agent for set-off against the liability of the Borrower to the L/C Lender in respect of such Letter of Credit. The Agent shall credit the Borrower with interest on such proceeds at the prevailing rate for comparative term deposits maturing on the date which is the earlier of the date: (i) that payment is made by the L/C Lender to any Person named in such Letter of Credit, and (ii) of expiry of such Letter of Credit.
- (9) If a Letter of Credit is outstanding at a time that all of the Outstanding Obligations under the Term Facility have been repaid, then all repayments referred to in Section 4.02 subsequently received shall be deposited to and retained in an account to be maintained by the Agent as collateral security for Outstanding Obligations in connection with all outstanding Letters of Credit until such time as there are sufficient funds in such account to match the said Outstanding Obligations on a dollar for dollar basis. Monies may be released to the extent there are funds in the said collateral account in excess of the aforesaid Outstanding Obligations under the outstanding Letters of Credit on a dollar for dollar basis. The Agent shall credit the Borrower with interest on the amount in the said account at the rates of the Agent as may be applicable in respect of other deposits of similar amounts for similar terms.
- (10) Letters of Credit will reduce at the option of the respective beneficiaries. Reductions and/or demands for payment will be considered permanent reductions.

Any demands for payment under Letters of Credit will be liquidated by the Borrower's own resources.

- (11) Outstanding Letters of Credit are to be cancelled or cash collateralized on a dollar for dollar basis on or prior to the Final Repayment Date.
- (12) Before 11:00 a.m. three (3) Business Days prior to the maturity date of any Letter of Credit without an automatic renewal clause, the Borrower shall notify the L/C Lender if it wishes to apply to extend the Letter of Credit on the maturity date. If the Borrower fails to provide the foregoing notice, the maturing Letter of Credit shall expire on its maturity date. For any Letter of Credit with an automatic renewal clause, the L/C Lender reserves its right provided for in the Letter of Credit Agreement to not extend the Letter of Credit past the current expiry date in effect. Should the L/C Lender decide that the Letter of Credit should not be extended, it will do so by issuing a notice of non-renewal as required in the Letter of Credit Agreement. Should the Borrower wish that the Letter of Credit with an automatic renewal clause not extend past the current expiry date in effect, the Borrower must ensure that the L/C Lender receives a request to issue the notice of non-renewal at least fifteen (15) days prior to the notice period as required in the Letter of Credit Agreement.
- (13) Each Letter of Credit shall be issued in accordance with the "Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600" or in accordance with "The International Standby Practices - ISP98, International Chamber of Commerce Publication No. 590" or any updated version to replace these versions.
- (14) Issuing fees are payable at the time of issue and/or renewal and may be revised from time to time by the L/C Lender upon giving thirty (30) days' prior written notice to the Borrower.
- (15) The amount of the Credit Facilities available shall be reduced by the face value of all the Letters of Credit when issued and 100% of the amount of the Letters of Credit shall be added to the amount of the advances for the purposes of the financing conditions set out in Section 3.02, upon payment, they become floating-rate advances under the Credit Facility affected by the drawdown.
- (16) The approval of each Letter of Credit issuance or renewal request is subject to the L/C Lender's discretion.

3.03 Reliance on Oral Instructions

The Agent and the Lenders shall be entitled to act upon the oral and electronically-generated instructions of any Person whom the Agent and the Lenders believe is a Person the Borrower has identified as being a Person authorized to give instructions regarding matters contemplated by this Agreement, including, without limiting the generality of the foregoing, the Credit Facilities. Neither the Agent nor the Lenders shall be responsible for any error or omission relating to such instructions. Oral and electronically-generated instructions shall, at the request of the Agent or

any Lender, be immediately confirmed in writing by the Borrower. The Borrower may revoke the authority of any authorized Person by notifying the Agent in writing, which notice shall be effective on the second Business Day immediately following the date of its actual receipt by the Agent and all of the Lenders.

ARTICLE 4 PAYMENTS

4.01 Repayment

- (1) **Term Facility.** Unless a Demand is made by the Agent on behalf of the Lenders for payment and the right of the Borrower to obtain further Borrowings under the Term Facility is terminated as a result thereof, Outstanding Borrowings under the Term Facility, together with all accrued and unpaid interest thereon and all other fees and charges payable in connection therewith, shall be repaid on the Final Repayment Date without the Agent (on behalf of the Lenders) or any Lender having to make Demand thereof.
 - (i) The Final Repayment Date may be extended at the option of the Borrower for an additional six (6) months, but with the prior written consent of the Agent, upon terms satisfactory to the Agent in its sole discretion, and upon payment to the Agent on its own account as well as for the account of the Lenders, as applicable, of an extension fee of \$38,647.50.
- (2) **L/C Facility.** All Outstanding Obligations of the Borrower to the L/C Lender arising pursuant to Letters of Credit shall be repaid in accordance with the terms of the applicable Letter of Credit Agreement provided that all such Outstanding Obligations shall be repaid on or before the Final Repayment Date.
- (3) **Credit Facilities.** Unless repaid earlier in accordance with the terms of this Agreement, the Credit Facilities are to be repaid immediately upon Demand. Further, notwithstanding any provision to the contrary herein, the Borrower agrees and acknowledges that (i) the credit facilities payable on demand in this Agreement constitute demand credits and are therefore payable at any time at the Agent's sole discretion and (ii) the Agent may, at any time, before or after a request for reimbursement, terminate the Credit Facilities and cease making new advances, without delay or notice to the Borrower.

4.02 Mandatory Repayments

- (1) **Unit Sales.** The Borrower shall repay to the Agent Outstanding Borrowings in an aggregate principal amount equal to the Net Proceeds of the sale of all Units within the Project and the sale of any retail/commercial component of the Project (if applicable), within two (2) Business Days of the closing of such sale or sales.
- (2) **Purchaser Deposits.** The Borrower shall repay to the Agent Outstanding Borrowings in an aggregate principal amount equal to any Purchaser Deposits

received and not used as a source of funding in the Project, in excess of \$6,075,061.

- (3) **Debt Financing.** The Borrower shall repay to the Agent Outstanding Borrowings in an aggregate principal amount equal to 100% of the net cash proceeds of any debt financing (including a term mortgage financing intended to take out the construction credit facilities provided for hereunder) or other issuance of Indebtedness (other than Permitted Indebtedness) undertaken by the Borrower concurrently with the closing of the debt financing.
- (4) **Project Lands Sale.** The Borrower shall repay Outstanding Borrowings in an aggregate principal amount equal to 100% of the proceeds of any sale of the Project Lands and/or the Project or any part thereof to the Agent concurrently with the closing of such sale.
- (5) **Allocation to Lenders.** Each mandatory repayment of Outstanding Borrowings under the Term Facility pursuant to this Section 4.02 shall be allocated:
 - (i) first, to the Term Lenders on the basis of their respective Pro Rata Shares under the Term Facility; and
 - (ii) second, as provided in Section 3.02(9).
- (6) **Permanent Reduction.** Each mandatory repayment of Outstanding Borrowings under the Term Facility shall be a permanent reduction of the Term Facility.
- (7) **Insurance Proceeds.** The Borrower shall prepay Outstanding Borrowings in an aggregate principal amount equal to 100% of the net cash proceeds from any insurance claim (other than liability insurance) in respect of, relating to or in connection with the Project Lands and/or Project, made or settled by the Borrower to the Agent forthwith and no later than two (2) Business Days following receipt by the Borrower unless the Agent and all the Lenders shall have unanimously agreed to permit the Borrower to repair, rebuild or repair the damage or destruction in respect of which the insurance proceeds are payable. The Agent and the Lenders will only consider providing such consent (but shall not be required to provide such consent) upon receipt by the Agent of:
 - (i) an Officer's Certificate of the Borrower confirming that (i) the proceeds of such insurance together with other funds held or arranged by the Borrower are sufficient to fully repair, rebuild or replace the damage or destruction to the Project Lands and/or Project in respect of which the insurance proceeds are payable, and (ii) no Event of Default has occurred and is continuing and no event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default;
 - (ii) a letter of undertaking of the Borrower to fully repair, rebuild and replace in accordance with the Plans and Specifications the damage or destruction

to the Project Lands and/or Project in respect of which the insurance proceeds are payable; and

- (iii) an opinion of the Project Consultant that the proceeds of insurance together with the other funds held or arranged by the Borrower will be sufficient to repair, replace or rebuild in accordance with the Plans and Specifications the damage or destruction to the Project Lands and/or Project in respect of which the insurance proceeds are payable.

4.03 Voluntary Payments

The Borrower may repay the Term Facility at any time provided, other than in the case of the Swingline, it shall deliver to the Agent a Repayment Notice respecting the Repayment not later than 10:00 a.m. (Toronto Time) on the date which is a minimum fifteen (15) days and a maximum of three (3) months preceding the date of any voluntary Repayment. Any such repayment shall be a permanent reduction of the Term Facility.

4.04 Payments Generally

Each payment under this Agreement shall be made for value at or before 1:00 p.m. (Toronto Time) on the day such payment is due, provided that, if any such day is not a Business Day, such payment shall be deemed for all purposes of this Agreement to be due on the Business Day next following such day (and any such extension shall be taken into account for purposes of the computation of interest and fees payable under this Agreement). All payments shall be made to the Agent (for the account of the Lenders) at the Agent Branch of Account.

4.05 No Credit for Trust Funds

For greater certainty, payments of any nature whatsoever made by the Borrower or the Guarantors to the Agent or any Lender which the recipient is required to pay to any Person, by reason of any trust imposed by law or by any Person upon amounts received by the recipient from the Borrower, shall not be credited against, or deemed to be payment on account of, all or any portion of the Outstanding Obligations. All costs and expenses incurred by the Agent or any Lender, their agents, representatives and solicitors in connection with the repayment of such monies to any Person shall be for the account of the Borrower and payable on demand. Interest shall accrue on these costs and expenses, until paid, at a rate equal to the interest rate otherwise then applicable to the Credit Facility, and shall be calculated in accordance with Section 5.01(2).

ARTICLE 5 INTEREST, FEES AND EXPENSES

5.01 Payment of Interest

- (1) **Rate.** Interest shall accrue from day to day from the date of each Borrowing. The Borrower shall be liable for and pay interest to the Agent (on behalf of the Lenders), both before and after the Final Repayment Date, demand, default and judgment, as follows:

- (i) on Prime Rate Loans advanced under the Term Facility at the Prime Rate plus 1.25% per annum.

Each change in the fluctuating interest rate for a Prime Rate Loan shall take place simultaneously with the corresponding change in the Prime Rate.

- (2) **Calculation and Payment – Prime Rate Loans.** Interest on Prime Rate Loans shall be payable monthly in arrears on each Interest Payment Date for the period from and including the Borrowing Date or previous Interest Payment Date, as applicable, to but excluding the first mentioned Interest Payment Date. Such interest shall accrue on a daily basis on the principal amount remaining unpaid from time to time and shall be calculated on the basis of the actual number of days elapsed and a year of 365 or 366 days, as applicable. Interest on Prime Rate Loans shall be paid in Canadian Dollars. The first interest payment shall be made on the first Interest Payment Date following the Initial Borrowings under the Credit Facilities. If the last day of a month is not a Business Day, the interest payment due on such day shall be made on the next Business Day, and interest shall continue to accrue on the said principal amount and shall also be paid on such next Business Day.

5.02 Interest on Overdue Amounts

Upon a failure to pay principal, interest or other amount due under this Agreement, the Borrower shall pay interest on such overdue amount both before and after judgment at a rate per annum equal to the rate applicable prior to default. Such interest shall be payable by the Borrower upon demand by the Agent and shall be compounded on each Interest Payment Date.

5.03 Letter of Credit Fees

The Borrower shall pay to the L/C Lender on the date of issuance, amendment or renewal of any Letter of Credit at the request of the Borrower and annually thereafter, the following amounts in the currency of such Letter of Credit:

- (1) if not cash collateralized, an issuance fee payable to the L/C Lender in an amount calculated at the rate per annum equal to 1.75%, calculated on the basis of 365 days, on the basis of the maximum amount of such Letter of Credit for the period of a year or portion thereof during which such Letter of Credit is outstanding, which issuance fee shall be payable on the first Business Day of each fiscal quarter;
- (2) if cash collateralized, an issuance fee payable to the L/C Lender in an amount calculated at the rate per annum equal to 1.25%, calculated on the basis of 365 days, on the basis of the maximum amount of such Letter of Credit for the period of a year or portion thereof during which such Letter of Credit is outstanding, which issuance fee shall be payable on the first Business Day of each fiscal quarter; and

- (3) all out of pocket expenses incurred by the L/C Lender in relation to the issuance, amendment, or delivering of a requested Letter of Credit.

5.04 Other Fees

- (1) **Partial Discharge and Document Fees.** The Borrower shall pay to the Agent (for its own account), \$10,000 at the time of the first Unit closing and a partial discharge fee of \$50 per Unit on closings. For all other documents to be executed by the Agent, a fee of \$50 per document shall apply, to be paid to the Agent (for its own account).
- (2) **Other Fees/Expenses.** The Borrower shall pay to the Agent and the Lenders all reasonable legal and other fees, out-of-pocket costs and expenses (including, without limitation, for appraisals, engineering reports and sub-searches) of the Agent and the Lenders associated with the creation, documentation, syndication, publication, management, amendment, collection and enforcement of the Loan Documents.

5.05 Determination Conclusive

Each determination by the Agent or any Lender of any rate or fee payable in accordance with this Agreement shall, in the absence of manifest error, be final, conclusive and binding on the Borrower.

5.06 Debit Authorization

The Borrower hereby authorizes and directs the Agent to debit on the respective due dates all amounts payable by the Borrower under this Article 5, together with all amounts to be reimbursed to the Agent or any Lender by the Borrower under the CBA Model Provisions and otherwise in connection with the Credit Facilities, from the Project Operating Account or any other account of the Borrower.

5.07 Additional Costs

The Borrower undertakes to pay the Agent for the following costs, as determined by the Agent:

- (1) Should a statute, regulation, or administrative policy or order have the effect of increasing the costs of the Credit Facilities for the Lenders (namely as a result of the imposition of any reserves, taxes or capital adequacy requirements for the Lenders), the Borrower shall pay this additional cost on demand; and
- (2) All taxes or additional costs that may arise from the application of any federal, provincial or municipal legislation.

ARTICLE 6 CONDITIONS PRECEDENT

6.01 Conditions - Initial Borrowings and L/C Facility

The obligation of the Lenders to make available the Initial Borrowings and the L/C Facility under this Agreement is subject to the terms and conditions of this Agreement and is conditional upon satisfactory evidence being given to the Agent, the Required Lenders and their legal counsel (to their satisfaction and in their sole discretion) as to compliance with the following conditions:

- (1) **Resolutions and Certificates.** The Agent shall have received, duly executed and in form and substance satisfactory to it:
 - (i) copies of all applicable constating documents, limited partnership agreements, partnership agreements and by-laws of the Borrower and the Corporate Guarantors (and all amendments thereto) and copies of the resolutions of the board of directors of the Borrower and Corporate Guarantors (or its general partner(s), as applicable) authorizing the execution, delivery and performance of the Loan Documents, certified in each case by a senior officer of the Borrower and the Corporate Guarantors (or its general partner(s)), as applicable;
 - (ii) a certificate of incumbency for each of the Borrower and Corporate Guarantors (or its general partner(s), as applicable) showing the names and offices of the officers who will execute the Loan Documents;
 - (iii) a certificate of status for each of the Borrower and Corporate Guarantors or its equivalent from its jurisdiction of organization;
 - (iv) organizational charts for the Borrower and the Corporate Guarantors certified by an officer of each respective entity;
 - (v) such additional supporting documents as the Agent or its counsel may reasonably request.
- (2) **Delivery of this Agreement.** Each Credit Party shall have executed and unconditionally delivered this Agreement to the Agent.
- (3) **Delivery of Security and other Loan Documents.** The Agent and the Lenders shall have received the Security and the other Loan Documents (including any necessary consents or subordinations of third parties as may be required by the Agent) duly executed by the issuer thereof and in form and substance satisfactory to the Agent and its counsel as well as evidence satisfactory to the Agent and the Lenders that the Loan Documents constitute legal, valid and binding obligations of each Credit Party enforceable in accordance with their respective terms.
- (4) **Registration.** The Security has been registered, recorded or filed in all jurisdictions deemed necessary or advisable by the Agent and its counsel.
- (5) **Security Interests.** All Security Interests registered against title to the Project Lands have been discharged other than Security Interests in favour of the Agent and the Lenders and Permitted Encumbrances.

- (6) **Legal Opinions.** The Agent and the Lenders shall have received a favourable legal opinion from counsel to the Credit Parties in form and content acceptable to the Agent, the Lenders and their legal counsel including, without limitation, the due authorization, execution and delivery of the Loan Documents.
- (7) **Priority Payables.** There are no Priority Payables with respect to the Project Lands outstanding in respect of which payments are overdue.
- (8) **Fees and Disbursements.** The Agent and the Lenders shall have received an executed direction regarding funds from the Borrower authorizing the Agent to pay an appropriate portion of the Initial Borrowings to itself and each Lender, as applicable, as payment in full of: (i) all fees due and payable pursuant to the terms of this Agreement and pursuant to the fee letter dated as of the date hereof from the Borrower and the Guarantors to the Agent including, without limitation, any agency fees, upfront fees and arrangement fees (as the same may be amended, restated, modified, supplemented or replaced from time to time), and (ii) all out-of-pocket expenses paid by or incurred by the Agent or any Lender on or before the date of the first Borrowing (including third party and consultant fees and reasonable fees and expenses of legal counsel to the Agent and the Lenders).
- (9) **Guarantor Financial Statements.** The Agent and the Lenders shall have received satisfactory updated financial statements of the Guarantors for the last three (3) years as well as confirmation of assets.
- (10) **Insurance.** The Agent shall have received a satisfactory certificate of insurance issued by the Borrower's insurance broker confirming insurance coverage in respect of the Project Lands pursuant to the terms of this Agreement and which lists the Agent, on behalf of the Lenders, as an additional insured and first mortgagee and loss payee, as applicable.
- (11) **Receipt of Funds.** The Agent shall have received satisfactory evidence that the Borrower has invested equity in the Overall Project equal to an amount of not less than \$38,985,303 (as such amount may be increased as provided for in Section 6.02(1) and Section 8.01(26) or such other amount as is required hereunder or the Project Consultant certifies is required), from cash sources (not including any land lift).
- (12) **Receipt of Documents.** The Agent and the Lenders or the Project Consultant, as the case may be, shall have received, in each case in form and content satisfactory to them, copies of the following documents prior to, or at the time of receipt of, the Draw Request relating to the Initial Borrowings:
 - (i) feasibility report for the Overall Project from the Project Consultant, including confirmation that the Overall Project budget will not exceed the aggregate of \$151,938,239;

- (ii) feasibility report for the Project from the Project Consultant, including confirmation that the budget for the Project will not exceed the aggregate of \$40,160,000;
 - (iii) management prepared income statement for the Project outlining the total costs then incurred to date;
 - (iv) the Material Project Agreements;
 - (v) copies of construction contracts satisfactory to the Agent, which shall include either a fixed price contract, with a general contractor acceptable to the Agent, or a construction management agreement, with a project manager acceptable to the Agent, and sub-contracts with Major Sub-Trades, which if required by the Agent, shall be 50% bonded for materials and labour and up to 50% bonded for performance.
 - (vi) the Geotechnical Study, if deemed applicable by the Agent;
 - (vii) the Environmental Report;
 - (viii) an appraisal confirming, at a minimum, that the market value of the Project, is not less than \$44,192,000, together with a reliance letter addressed to and satisfactory to the Agent;
 - (ix) confirmation, satisfactory to the Agent, that the Project can be completed within a timeframe satisfactory to the Agent;
- (13) **Qualified Sale.** The Agent shall have been satisfied with its review of each Qualified Sale. For the purposes of this Agreement, the term “**Qualified Sale**” or “**Qualified Sales**” shall be defined as the sale of a Unit pursuant to an Agreement of Purchase and Sale where:
- (A) *Non Canadian Buyers.* Purchasers must be Canadian residents;
 - (B) *Deposits.* Agreements of Purchase and Sale require Purchaser Deposits of not less than 20% of the gross purchase price (net of any incentives, upgrades, including HST), which funds are to be received by the Escrow Agent and deposited with National Bank of Canada prior to occupancy, with a minimum of 10% of the gross purchase price (net of any incentives, upgrades, including HST) to be received by the Escrow Agent and deposited with National Bank of Canada prior to the first advance under Segment 2;
 - (C) *Bulk Unit Sales.* Purchasers may not buy more than three (3) Units each;
 - (D) *Mortgage Commitments.* In respect of Unit sales representing a minimum 80% of all Qualified Sales, the Agent shall receive

evidence acceptable in form and content to the Agent of a valid mortgage commitment/approval in the name of the applicable purchasers or other evidence demonstrating the purchasers' ability to close;

- (E) the Agreement of Purchase and Sale has been provided to the Agent and is in the form of the Standard Form Agreement of Purchase and Sale, duly signed by the purchaser, without amendment, contingencies or conditions on the part of the purchaser, is enforceable and in full force and effect and may not be assigned by the purchaser except in accordance with the applicable assignment provisions of the Standard Form Agreement of Purchase and Sale;
 - (F) the period in which any right of rescission or right to claim a return of a deposit by a purchaser under such Agreement of Purchase and Sale and pursuant to the provisions of Applicable Laws shall have expired;
 - (G) the purchaser is arm's length with the Borrower and the Guarantors. For the purposes of this requirement, sales to management, employees or owners of the Borrower or the Guarantors, or to advisors, real estate agents for the Project and any spouse or related person of any of the foregoing are not considered arm's length, and must be approved by the Agent; and
 - (H) all required Purchaser Deposits must be received by the Escrow Agent and placed on deposit with National Bank of Canada in accordance with this Agreement.
- (14) **Section 2.07 and Section 8.01(6).** All limitations on Borrowings set out in Section 2.07 shall have been complied with and the most recent monthly project status report which is to be provided in accordance with Section 8.01(6) shall have been provided in accordance with the provisions of the said Section.
- (15) **Bank Accounts.** The Borrower shall have established with the Agent all appropriate operating and deposit bank accounts relating to the Project.
- (16) **Prior Indebtedness.** All indebtedness and obligations in connection with prior charges/mortgages registered on title to the Property, shall have been satisfied in full.
- (17) **Agreements of Purchase and Sale.** The Agent and the Lenders shall have approved the Borrower's form of Agreement of Purchase and Sale (including all addendums and amendments thereto) which may not include a provision for lease back or a cash flow rental guarantee but shall include a provision that the purchaser's rights under the Agreement of Purchase and Sale shall be subordinate

to any construction financing arranged by the Borrower and all security in support of same.

- (18) **Insurance Consultant Report.** The Agent and the Lenders shall have received a report of an insurance consultant acceptable to the Agent confirming compliance with Section 8.01(32) and advising the Agent generally as to the sufficiency of the insurance coverage in place.
- (19) **Know Your Customer Documents.** Each Lender shall have received, and be satisfied with, all standard documents required to be completed by the Credit Parties in connection with such Lender's "Know Your Customer" and anti-money laundering policies.
- (20) **Constating Documents.** The Agent and the Lenders shall have received copies of the constating documents for all Credit Parties that are business entities (not individuals), which shall be in form and substance satisfactory to the Agent and its solicitor.
- (21) **Joint Venture Agreement.** The Agent and the Lenders shall have received a copy of the Joint Venture Agreement, which shall be in form and substance satisfactory to the Agent and its solicitor.
- (22) **Other Information.** The Borrower and the Guarantors shall have provided the Agent with such other information accompanied by supporting documents or material as the Agent may reasonably request.

6.02 Conditions - Segment 2

The obligation of the Lenders to make available any Borrowings under this Agreement after the Initial Borrowings, is conditional upon compliance with the following conditions to the satisfaction of the Agent and the Required Lenders in their sole discretion:

- (1) **Sales Summary Report.** The Agent and the Lenders shall have received prior to, or at the time of receipt of, the Draw Request relating to Segment 2, a sales summary report, acceptable in form and content to the Agent and certified by a senior officer of the Borrower, confirming Qualified Sales which satisfy the Minimum Eligible Presales Requirement (excluding charges for upgrades, alternations and recoveries of development charges).
- (2) **Condominium Documents.** Copies of the preliminary condominium documentation, including the draft declaration, by-laws, disclosure statements, and any cost sharing and reciprocal rights agreements.
- (3) **Site Plan Approval.** Site plan approval and the conditions thereof to be satisfactory to the Project Consultant and the Agent.
- (4) **Construction Contracts.** Fixed price contracts, or letters of intent, for a minimum of 75% of the Hard Costs of the Project (excluding contingencies).

- (5) **Deposit Insurance.** The Agent shall have received a commitment letter from a surety company acceptable to the Agent, confirming that deposit insurance respecting deposits relating to the Project, on terms and conditions acceptable to the Agent, has been arranged and put in place by the Borrower in respect of the Project together with written confirmation from the surety that it will continue to release Purchaser Deposits to fund construction costs in accordance with the ratio contained in its agreement, not to be greater than 1:1.
- (6) **Inter-Creditor Agreements and Trust Account Agreement.** The Agent shall have entered into inter-creditor agreements satisfactory to it with the Insurer provided for in Section 8.01(31). The Agent shall have received an executed copy of the Trust Account Agreement satisfactory to it.
- (7) **Survey.** Not later than 90 days following construction of the Project progressing above grade, a current survey of the Project Lands prepared by an accredited Ontario Land Surveyor showing the boundaries of the Project Lands and, for any building or improvement, showing the location of the buildings and improvements situate thereon and that the location of such buildings and improvements comply with all rules, regulations and bylaws of applicable Governmental Authorities, including all setback, easements, zoning and height restrictions;
- (8) **Drawings.** A satisfactory set of architectural drawings and specifications shall have been received and held by the Project Consultant.
- (9) **Permits.** The Agent shall have received:
 - (i) evidence of the availability of building permits; and
 - (ii) a certificate signed by the Borrower confirming that staged building permits and all other necessary approvals are in place for the Project, and that all zoning by-laws and restrictive covenants have been complied with.
- (10) **Co-Development Agreement.** Copy of a Co-Development Agreement satisfactory to the Agent, if deemed applicable by the Agent.
- (11) **First Segment 2 Advance.** The first advance under Segment 2 shall occur within twelve (12) months of the Initial Borrowings. If the first advance of Segment 2 does not occur within twelve (12) months of the Initial Borrowings, at the Lenders' discretion, the Credit Facilities are to be repaid immediately upon Demand.

6.03 Conditions - All Borrowings

The obligation of the Lenders to make available any Borrowings under this Agreement, including the initial Borrowing and all subsequent Borrowings (provided, however, Sections 6.03(10) to 6.03(18), both inclusive, are not applicable to Swingline or Letter of Credit availments if they are not the initial Borrowing hereunder) is conditional upon satisfactory

evidence being given to the Agent and the Required Lenders as to compliance with the following conditions to their satisfaction and in their sole discretion:

- (1) **Representations and Warranties True.** The representations and warranties contained in Section 7.01 are and shall continue to be true and correct in every material respect as if made by each of the Credit Parties contemporaneously with any Borrowing (except where expressed to be given only as of a specified date, and except for such qualifications to such representations and warranties which have been both disclosed to the Agent in writing after the Closing Date and accepted by the Agent and the Required Lenders).
- (2) **Covenants.** The Borrower and the Guarantors are in compliance with their respective covenants contained in Sections 8.01 and 8.02.
- (3) **Indebtedness.** Except for the Permitted Indebtedness, neither the Borrower nor the Guarantors shall have any other Indebtedness in respect of the Project or the Project Lands.
- (4) **No Breach.** No breach and no event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, has occurred and is continuing under any of the Loan Documents.
- (5) **Notice of Liens.** The Agent shall not have received written notice of any lien, judgement, claim, trust, charge or encumbrance affecting the Project Lands or other assets charged by the Security or an execution (other than the Permitted Encumbrances).
- (6) **Real Property Taxes.** The Agent shall have received confirmation that all real property taxes relating to the Project Lands which are due and owing are paid and are up to date.
- (7) **Material Adverse Change.** A Material Adverse Change that has given rise to a Material Adverse Effect shall not have occurred.
- (8) **Letter of Credit Agreement.** Where the Borrowing contemplates the issuance of a Letter of Credit, the Agent (who will forward same to the L/C Lender) shall have received from the Borrower a duly executed Letter of Credit Agreement in respect of each Letter of Credit requested.
- (9) **Conditions Precedent to Initial Borrowings.** The conditions and deliveries set out in Section 6.01 shall be satisfied and delivered, as the case may be, in respect of such Borrowing.
- (10) **Sub-search of Title.** The Agent shall have received an opinion from the Agent's legal counsel, and a copy of the Land Titles Office sub-search and writ certificate, confirming that no Security Interest or other encumbrances have been registered against the Project Lands since the date of the prior Borrowing other than

Permitted Encumbrances and no writ has been filed in the sheriff's office in which the Project is located against the Borrower or any of the Guarantors.

- (11) **Permits.** The Agent, the Lenders and the Project Consultant shall have received evidence that all Permits necessary for Construction which relate to: (i) Construction in respect of which the Borrowing is made, and (ii) all prior Construction, have been granted at the time of the Borrowing and all terms and conditions of such Permits have been complied with in all respects.
- (12) **Approvals.** The Agent shall have received satisfactory evidence that all required applicable government approvals have been obtained or will be available at the applicable stage of construction for the Project, including but not limited to zoning approvals, site plan approvals, development permits and/or building permits, required at the respective stages of excavation, foundation, and superstructure (collectively the "**Applicable Approvals**").
- (13) **Report from Project Consultant.** The Agent and the Lenders shall have received a report from the Project Consultant prior to, or at the time of receipt of, a Draw Request relating to an Advance and based on the latest Plans and Specifications confirming: (i) that the Project can be completed in accordance with the Construction Schedule; (ii) that the Project can be completed in accordance with the Project Budget and shall not exceed \$40,160,000; (iii) the acceptability of the cash flow statement relating to construction of the Project; (iv) all contingencies accrued under the Project Budget and that such contingencies accrued are reasonable given the nature and scope of the Project; and (v) all Applicable Approvals are in place.
- (14) **Material Project Agreements.** If any new Material Project Agreements have been entered into since the previous Borrowing, the Agent shall:
 - (i) have received a copy of each such new Material Project Agreements;
 - (ii) have received an assignment of each such new Material Project Agreements together with all third party consents in respect thereof which the Agent reasonably requires, in form satisfactory to the Agent; and
 - (iii) be satisfied, acting reasonably, with the terms and conditions of each such new Material Project Agreements.
- (15) **Draw Request.** The Agent shall have received a Draw Request from the Borrower in accordance with the notice requirements of Section 3.01 which shall, *inter alia*, certify compliance with the terms and provisions of this Agreement, that the representations and warranties thereunder remain true at the time of the certificate, and that there is no Material Adverse Change in the financial position of the Borrower, and shall further certify:

- (i) the amount of the Costs of Construction incurred and to be incurred in respect of the Project to date on a line by line basis with comparison against the Project Budget;
 - (ii) the amount of work completed since the last Borrowing, if any, and estimating the Cost to Complete in respect of the Project;
 - (iii) the amount of Holdbacks and that all accounts payable in connection with the Project are paid and up to date;
 - (iv) the dollar amount of Qualified Sales in place; and
 - (v) such other information accompanied by supporting documents or material as the Agent may reasonably request, including a list of the applicable invoices.
- (16) **Project Consultant's Report.** The Agent and the Lenders shall have received the Project Consultant's certification as to the following prior to, or at the time of receipt of, a Draw Request (which certification may be supported by certificates of the Architect or Engineer retained in connection with the Project where appropriate or required):
- (i) the Borrowing is in compliance with Section 2.07 of this Agreement;
 - (ii) the Draw Request and Deposit Availment and the amounts thereof represent work completed on the Project and Costs of Construction which have been incurred since the prior Borrowing and Deposit Availment, if any;
 - (iii) the Costs of Construction incurred in respect of the Project to date and to be incurred on a line by line basis with comparison against the Project Budget (Hard Costs are to be certified by the Architect or Engineer retained in connection with the Project);
 - (iv) the amount of work completed since the last Borrowing and estimate of the Cost to Complete in respect of the Project;
 - (v) the amount of the applicable Holdback;
 - (vi) adherence to the Construction Schedule to date and estimated date for Substantial Completion;
 - (vii) all construction work to date is substantially in accordance with the Plans and Specifications and in compliance with the applicable zoning by-laws and building codes and the supporting certificates confirm that the quality of the workmanship and materials to date is satisfactory;

- (viii) receipt of clear certificates from the Workplace Safety and Insurance Board;
 - (ix) the accuracy of the updated sales summary report delivered pursuant to Section 6.02(1) including a reconciliation to (A) the activity in the Deposit Account based on a certified copy of a report from the Escrow Agent setting out the debits and credits to the Deposit Account, and (B) its review of the executed Agreements of Purchase and Sale for Units sold that constitute Qualified Sales;
 - (x) if applicable to the particular advance, confirmation that the Credit Parties have contributed the required Borrower's Equity;
 - (xi) confirming that, in its opinion, the conditions set out herein with respect to entitlement to a Borrowing for payment of Hard Costs and Soft Costs have been satisfied;
 - (xii) confirming the percentage of the Project that has been completed;
 - (xiii) confirming that all the funds from prior advances have been utilized only in the Project;
 - (xiv) confirming that, in its opinion, that the Project Budget remains adequate to complete the Project; and
 - (xv) such other matters as the Lenders and the Agent may request of the Project Consultant.
- (17) **Insurer Concurrence or Authorization.** The Insurer shall have provided the concurrence or authorization provided for in Section 8.01(30) in connection with the release of any Deposit Availments.
- (18) **Updated Sales Summary Report.** The Agent and the Lenders shall have received an updated sales summary report as required under Section 6.02(1), acceptable in form and content to the Agent and certified by a senior officer of the Borrower.
- (19) **Other.** The Agent and the Lenders shall have received and approved such other documents, consents, acknowledgments, opinions and agreements as the Agent, the Lenders or their legal counsel may reasonably request.

6.04 Initial Borrowings

All terms and conditions under this Agreement and all conditions precedent must be approved by the Lenders and the Initial Borrowings under the Credit Facilities made by August 31, 2022, failing which the Lenders shall not be obliged to advance any Borrowings.

6.05 Holdbacks

The Agent shall be entitled to deduct from Borrowings all Holdbacks to the extent not already held back by the Agent, and to hold back and not advance the amount so deducted until such time as the provisions of Section 6.06 have been complied with or the Agent is satisfied that all applicable lien periods have expired and that no claim for lien has been made or filed with respect to work or material for the Project.

6.06 Advance of Holdback Amount

Subject to compliance with the provisions of Sections 6.01 and 6.02 and there being no claims for lien registered against the Project which have not been vacated or discharged in accordance with the *Construction Act* (Ontario), the Agent will, as requested from time to time, advance to the Borrower the appropriate portion of any Holdback (herein referred to as a “**Holdback Advance**”) in respect of any construction contract on the first Business Day after the earliest to occur of the following:

- (1) the 61st day after the date on which a declaration or a certificate of substantial performance (in the form of Form 6 under the *Construction Act* (Ontario)) in respect of such contract is published in accordance with Section 32 of the *Construction Act* (Ontario) provided that evidence, in form satisfactory to the Agent, of publication of such declaration or certificate and a copy of the published declaration or certificate is supplied to the Agent at the time any request for Borrowing is made with respect to the Holdbacks or any part thereof;
- (2) the date on which the lien of the contractor under such contract has been satisfied, discharged, vacated, or provided for under Section 44 of the *Construction Act* (Ontario) provided that evidence of such event in form satisfactory to the Agent shall be supplied to the Agent at the time any request for Borrowing is made with respect to the Holdbacks or any part thereof; and
- (3) the date on which the Agent receives a lien release from the applicable contractor in form acceptable to the Agent.

The Lenders will also make Holdback Advances in respect of completed subcontracts where the Borrower has provided the Agent with evidence satisfactory to it, acting reasonably, establishing that the provisions of Section 25 of the *Construction Act* (Ontario) have been complied with in respect of the amount requested.

Notwithstanding the foregoing, the Lenders will not make a Holdback Advance for any amounts subject to a notice of non-payment issued by the Borrower to a contractor and/or subcontractor under the *Construction Act* (Ontario).

6.07 Waiver

The terms and conditions stated in this Article 6 are inserted for the sole benefit of the Agent and the Lenders and may be waived by it in whole or in part and with or without terms or conditions

in respect of all or any Borrowings, but waiver by them of any such term or condition shall not constitute a waiver of such term or condition for any future Borrowing.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.01 Representation and Warranties

Each of the Credit Parties severally represents and warrants to the Agent and the Lenders, as applicable to itself only, as and where applicable, that:

- (1) **Due Incorporation / Formation.** Each of the Credit Parties is duly organized or formed and validly subsisting under the laws of the jurisdiction of its organization or formation. Each of the Credit Parties holds all necessary permits and has all necessary corporate power and authority to own or lease its properties and assets and to carry on its business as now conducted in accordance in all material respects with all Applicable Laws and is or will be duly licensed or registered or otherwise qualified in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary.
- (2) **Power.** Each of the Credit Parties has full corporate power and capacity to enter into, deliver and perform its obligations under each of the Loan Documents to which it is a party.
- (3) **Due Authorization.** The execution, delivery and performance by each of the Credit Parties of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, have been duly authorized by all necessary corporate, limited partnership or trust action or otherwise.
- (4) **No Conflict.** The execution, delivery and performance by each of the Credit Parties of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby:
 - (i) do not and will not conflict with, result in any breach or violation of, or constitute a default under its constating documents or by-laws;
 - (ii) do not and will not conflict with any Applicable Laws, or any judgment, order, award, writ, injunction or decree of any court;
 - (iii) do not require the consent or approval (other than those consents or approvals already obtained or those Permits not required or obtainable until a later stage of Construction or until Substantial Completion) of, or registration or filing with, any other Person (including shareholders of the Borrower or the Corporate Guarantors) or any Governmental Authority;

- (iv) do not and will not result in a breach of, or constitute a default under, any Material Project Agreement, commitment, agreement or other instrument to which it is now a party or is otherwise bound; and
 - (v) do not and will not create a Security Interest upon or with respect to any of its the properties or assets (other than the Security).
- (5) **Valid and Enforceable Obligations.** The Loan Documents constitute, and when executed and delivered to the Agent will constitute, legal, valid and binding obligations of each Credit Party enforceable in accordance with their respective terms.
- (6) **Title.** The Borrower has good and marketable title to its personal property, free and clear of all Security Interests other than Permitted Encumbrances. The Borrower is, and will remain, the sole registered owner of the Project Lands and all personal property associated therewith for the beneficial ownership of the beneficial owners set out in the Joint Venture Agreement. The Borrower holds, and will continue to hold, good and valid title in fee simple to the Project Lands and is, and will remain, lawfully possessed thereof, free and clear of all Security Interests other than Permitted Encumbrances.
- (7) **Validity and Priority of Security.** To the best of their knowledge and belief, the Security constitutes assignments, fixed and specific mortgages and charges, floating charges or other Security Interests, as applicable, on the undertaking, property and assets of the Borrower (including, without limitation, the Project Lands) purported to be assigned, mortgaged, charged or subjected to a Security Interest thereby, and ranks as a first mortgage and charge in priority to any other Security Interests upon such undertaking, property and assets other than Permitted Encumbrances.
- (8) **No Actions.** There are no material actions, suits, proceedings, inquiries or investigations existing, pending or, to any Credit Party's knowledge, threatened, affecting it in any court or before or by any federal, provincial, state or municipal or other governmental department, commission, board, tribunal, bureau or agency, Canadian or foreign.
- (9) **Financial Information.** Subject to any limitations stated therein, the financial statements and projections of the Borrower and the Guarantors furnished to the Agent and the Lenders under this Agreement, or which were furnished to the Agent and the Lenders by them to induce them to enter into this Agreement, or otherwise furnished in connection with this Agreement, are true and accurate in all material respects as of their respective dates and fairly present the financial condition and prospects of the Borrower and the Guarantors as at the date hereof.
- (10) **No Breach.** No breach and no event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, has occurred and is continuing with respect to any Credit Party.

- (11) **Compliance with Law.** No Credit Party is in material violation of any terms of its constating documents or by-laws or of any Applicable Law, regulation, rule, order, judgment, writ, injunction, decree, determination or award presently in effect and applicable to it.
- (12) **Taxes.** Each Credit Party has filed, or caused to be filed, all federal, provincial, state, municipal, local and other tax returns which are required to be filed and has paid all Taxes due pursuant to such returns or pursuant to any assessment or statement received by it except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. Notwithstanding the above, all Taxes which if unpaid could result in a lien against the Project Lands have been paid including any interest and penalties. The charges, accruals and reserves on its books in respect of any Taxes or other governmental charges are adequate. The charges, accruals and reserves on the books of each Credit Party in respect of any Taxes or other governmental charges payable for the current or prior year which are not yet due are adequate to the extent that each Credit Party is aware of them. No tax returns of any Credit Party are currently being audited by any applicable Government Authority and there are no assessments or threatened assessments otherwise outstanding. No Credit Party has received any notice of assessment of additional taxes or any other claim of notice of any nature whatsoever that any Tax or additional Tax is due which has not been paid or otherwise finally settled or satisfied. There are no matters involving any Credit Party under discussion with any Governmental Authority relating to any Taxes asserted by any such body. Each Credit Party has executed or filed with any Governmental Authority any agreement, waiver or other document extending or having the effect of extending the period for assessment, reassessment or collection of any Taxes or the filing of any tax returns.
- (13) **Insolvency.** Each Credit Party: (i) has not committed any act of bankruptcy, (ii) is not insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (iii) has not made any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound up, taken any proceeding to have a receiver appointed of any part of its assets, has had any encumbrancer take possession of any of its property, or (iv) has not had an execution or distress become enforceable or become levied on any of its undertaking, property and assets.
- (14) **Principal Place of Business.** The “chief executive office”, “place of business” and “chief place of business” (within the meaning of Section 7(4) of the *Personal Property Security Act* (Ontario)) of each Credit Party is located in the Province of Ontario.
- (15) **Withholdings.** The Borrower has withheld from its employees, customers and other applicable payees (and timely paid to the applicable Governmental Authority) the proper and accurate amount of all Taxes and other amounts

required to be withheld or collected and remitted in compliance with all Applicable Laws. There are no liens for Taxes on the assets or property of any of the Credit Parties (including, without limitation, the Project Lands) except for liens arising under Applicable Law, that are unregistered or otherwise unperfected, for Taxes not yet due.

- (16) **Indebtedness.** The Borrower does not have any Indebtedness other than Permitted Indebtedness in respect of the Project and the Project Lands.
- (17) **Accuracy of Information.** To the best of their knowledge, all factual information previously or contemporaneously furnished by, or on behalf of the Borrower or the Guarantors in writing for purposes of or in connection with this Agreement or the Project is true and accurate in every material respect, as of the date so provided or specified therein, and such information is not incomplete by the omission of any material fact necessary to make such information not misleading. There is no fact known to the Borrower or the Guarantors which the Borrower or the Guarantors has not disclosed to the Agent or the Lenders which materially adversely affects, or so far as it can now reasonably foresee, will result in a Material Adverse Change, or materially adversely affect the Project or the ability of the Borrower or the Guarantors to fulfill its obligations under the Loan Documents to which it is a party.
- (18) **Notice of Liens.** No Credit Party has received notice of any lien, trust, charge or encumbrance affecting the Project Lands or other assets charged by the Security or an execution (other than the Permitted Encumbrances).
- (19) **Material Project Agreements.** As at the date hereof, there are no agreements material to the Project in existence other than the Material Project Agreements. As of the date hereof, each Material Project Agreement is in full force and effect and no notice or claim of a default or breach thereunder, or of the occurrence of any condition entitling any party to terminate its obligations thereunder, has been delivered to any Credit Party. At the date hereof, no default or event which with the passing of time and/or giving of notice and/or a determination being made under the relevant provision would constitute a material event of default on the part of any Credit Party exists under any Material Project Agreement. To each Credit Party's knowledge after due inquiry, no default or event which with the passing of time and/or giving of notice and/or a determination being made under the relevant provision would constitute a material event of default on the part of any of the other contracting parties to the Material Project Agreement exists under any Material Project Agreement.
- (20) **Order and Notices.** There are no outstanding Orders or Notices issued or, to any Credit Party's knowledge after due inquiry, threatened by any Governmental Authority or Person which would likely have a Material Adverse Effect or materially affect the Project or its construction or completion and there are no matters under discussion with any such authorities relating to such Orders or Notices.

- (21) **Permits.** All material Permits from third parties and Governmental Authorities have been obtained other than those Permits not required or able to be obtained until a later stage of Construction or until Substantial Completion and those not obtained may be reasonably expected to be received in the ordinary course of business prior to date when required to permit the Borrower to complete the transactions provided for in the Material Project Agreements and to construct and operate the Project and to carry on the Borrower's business as now contemplated.
- (22) **Zoning.** The Project Lands are zoned to permit construction and operation of the Project in accordance with the Plans and Specifications.
- (23) **Access.** The Project Lands are contiguous to publicly dedicated streets, roads or highways and vehicular egress and ingress thereto and therefrom is legally permitted and available or the Project Lands enjoy the benefit of an easement in perpetuity which permits ingress and egress thereto and therefrom (vehicular and otherwise).
- (24) **Applicable Laws.** To each Credit Party's knowledge after due inquiry, the Project is in compliance in all material respects with all Applicable Laws including, without limitation, all Environmental Laws. There are no facts known or which ought reasonably to be known, in either case after due enquiry by each Credit Party, which could give rise to a Notice of non-compliance with any Applicable Laws.
- (25) **Changes to Applicable Laws.** INTENTIONALLY DELETED.
- (26) **Insurance.** Each Credit Party is in compliance with all insurance requirements under this Credit Agreement and all insurance policies have been issued in respect thereof.
- (27) **No Infringement.** To each Credit Party's knowledge after due enquiry, the design, construction, and operation of the Project does not infringe and will not infringe upon any patents, trademarks, trade names, service marks, or copyrights, domestic or foreign, or any other industrial property or intellectual property of any other Person.
- (28) **Location of Building.** The location of any buildings on the Project Lands are, to the extent they have been constructed, within the boundary lines of the Project Lands and are in compliance with all applicable setback requirements.
- (29) **Real Property.** The only property interests necessary for the Project are the property interests comprising the Project Lands and any easements, interests or rights appurtenant thereto currently in existence, as well as easements, interests or rights appurtenant to the Project Lands to be created in the future. For certainty, the Project is entirely within the boundaries of the Project Lands.

- (30) **Project Budget.** The Project Budget submitted to the Agent by the Borrower has been prepared in good faith using reasonable assumptions and fairly represents the matters dealt with therein in all material respects.

7.02 Survival of Representations and Warranties

The representations and warranties contained in this Article 7 shall survive the execution and delivery of this Agreement and the making of Borrowings hereunder until all Outstanding Obligations have been paid in full, regardless of any investigation or examination made by the Agent, the Lenders or their legal counsel, and the Agent and the Lenders shall be deemed to have relied upon each of such representations and warranties in making available each Borrowing hereunder.

ARTICLE 8 COVENANTS

8.01 Positive Covenants

From the date hereof and until the Outstanding Obligations are repaid in full, each of the Borrower and the Guarantors severally confirm, as applicable to itself only, as and where applicable, that it will observe and perform, or will cause the observance and performance of each of the following covenants, unless compliance therewith shall have been waived in writing by the Agent and by the Required Lenders:

- (1) **Existence.** Each of the Borrower and Corporate Guarantors shall preserve and maintain in full force and effect its existence in good standing and preserve and maintain in full force and effect all requisite capacity (corporate, limited partnership or otherwise), power and authority to become and remain duly qualified, registered and licensed in all material respects to ensure that it has at all times the right and is duly qualified to conduct its businesses and to obtain and maintain all rights, privileges, licences, approvals, consents and franchises necessary for the conduct of its business.
- (2) **Conduct of Business.** The Borrower and Corporate Guarantors will maintain, operate and use its property and assets (including, without limitation, the Project Lands), and will carry on and conduct its business in a proper and efficient manner so as to preserve and protect the property and assets (including, without limitation, the Project Lands) and business and the profits thereof and shall pay all of its liabilities as they become due.
- (3) **Payment of Principal, Interest and Expenses.** The Borrower will duly and punctually pay or cause to be paid to the Agent and the Lenders the Outstanding Obligations at the times and places and in the manner provided for in the Loan Documents.
- (4) **Payment of Taxes and Claims.** Each Credit Party will pay and discharge promptly when due all Priority Payables and all Taxes, assessments and other governmental charges or levies imposed upon it or upon its properties or assets or

upon any part thereof, as well as all claims of any kind (including claims for labour, materials and supplies) which, if unpaid, would by law become a lien, charge, trust or other claim upon any such properties or assets; but no Credit Party shall be required to pay any such Tax, assessment, charge or levy or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Credit Party shall have set aside on its books a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto.

- (5) **Annual Financial Information.** As soon as practicable and in any event within 120 days of the end of each Financial Year of each of the Borrower and Corporate Guarantors, the Borrower and Corporate Guarantors shall deliver to the Agent copies of its Notice to Reader financial statements prepared by its accountants. Any required additional updated financial information respecting the Guarantors shall be provided in connection with the Lenders' annual review of the Credit Facilities.
- (6) **Monthly Project Status Report.** The Borrower shall deliver, or cause to be delivered, to the Agent, not later than 45 days within the end of each month, a Project status report prepared by the Project Consultant outlining, in detail: (i) an update to the original Project Budget together with any comments on any material variances from the original Project Budget or Construction Schedule; (ii) the Budgeted Project Costs; (iii) revised costs incurred to date and costs paid to date; (iv) estimates of the Cost to Complete and accounts payable; (v) a listing of aged accounts payable and outstanding cheques relating to Project Costs; (vi) details of Holdbacks, all in a form approved by the Agent; and (vii) an updated sales summary report confirming (A) the number of Units sold that constitute Qualified Sales, together with copies of the executed Agreements of Purchase and Sale for Units sold that month, if not already provided to the Agent, (B) the amount of Gross Sale Proceeds in respect of Units together with the amount of contractual deposits and Purchaser Deposits received, and (C) if there have been any amendments or assignments or purported terminations of any existing Agreements of Purchase and Sale.
- (7) **Realty Taxes.** The Borrower shall provide to the Agent annually, or promptly upon request from time to time, municipal tax certificates indicating all realty taxes applicable to the Project Lands are paid and up to date.
- (8) **Other Information.** The Borrower and the Guarantors shall furnish, or cause to be furnished, to the Agent promptly on request such other information in their possession (or the possession of any other Person) respecting their financial condition and their business and operations and the Project as the Agent or the Lenders may from time to time reasonably require.
- (9) **Use of Proceeds.** The Borrower shall use the proceeds of all Borrowings for the purposes contemplated hereunder.

- (10) **Reserves.** The Borrower will maintain appropriate reserves for Taxes and other contingent expenses or liabilities in accordance with GAAP and/or the requirements of the Project Consultant, as applicable.
- (11) **Books and Records.** Each of the Borrower and the Guarantors will at all times maintain proper records and books of account and therein make true and correct entries of all dealings and transactions relating to its business and, if requested by the Agent or any Lender, will make the same available for inspection by the Agent or any Lender or any agent of the Agent or any Lender at all reasonable times.
- (12) **Cooperate with Agent and Lenders.** The Credit Parties shall cooperate fully with the Agent and the Lenders with respect to any proceedings before any court, board or other Governmental Authority which may in any way materially and adversely affect the rights of the Agent and the Lenders hereunder or any rights obtained by the Agent and the Lenders under any of the other Loan Documents. The Credit Parties shall cooperate with the Agent and the Lenders in obtaining for the Agent and the Lenders the benefits of any insurance proceeds lawfully or equitably payable in connection with the Project to the extent that the Agent or any Lender is entitled to the same under the terms of this Agreement, and the Agent or any Lender shall be reimbursed for any actual out-of-pocket expenses incurred in connection therewith (including, without limitation, reasonable legal fees and disbursements, and the payment by the Borrower of the expense of an appraisal on behalf of the Agent and the Lenders in case of a fire or other casualty affecting the Project or any part thereof) out of such insurance proceeds.
- (13) **Access.** The Credit Parties shall permit the Agent (and the Lenders may accompany the Agent if they so choose), through their respective officers or employees, the Project Consultant or through any other consultants retained by it, upon request, to have reasonable access at any reasonable time during normal office hours and from time to time, to any of the Borrower's or the Guarantors' property and premises (including, without limitation, the Project and Project Lands) and to any records, information or data in their possession so as to enable the Agent (on behalf of the Lenders) to inspect, conduct testing, measurements and surveys, and ascertain the state of Construction, compliance with this Agreement and of the Borrower's financial condition, property or operations (including, without limitation, the Project and Project Lands), and will permit the Agent to make copies of and abstracts from such records, information or data, and will upon request of the Agent deliver to the Agent and the Lenders copies of such records, information or data. Any such visit, inspection, examination, discussion or tests shall not be deemed to be supervision, charge, management, control or occupation by the Agent or the Lenders for purposes of any environmental or other liabilities.
- (14) **Registration of Security.** The Credit Parties will provide the Agent with such assistance and do such things as the Agent or the Lenders may from time to time request so that the Security and any other instruments of conveyance or

assignment effected pursuant to this Agreement will be and remain registered, recorded or filed from time to time in such manner and in such places as may in the opinion of the Agent and its counsel be necessary or advisable in perfecting the Security Interests constituted thereby.

- (15) **Signage.** The Borrower shall erect, or shall cause to be erected, a sign or signs to be provided by the Agent at the expense of the Borrower (the size and content of which shall be acceptable to the Borrower, acting reasonably) to be located at a prominent place upon the Project Lands announcing the project financing contemplated herein.
- (16) **Material Project Agreements.** The Borrower shall comply in all material respects with all of its covenants, agreements and obligations in, and diligently enforce all its rights under, all Material Project Agreements to which it is a party.
- (17) **New Material Project Agreements.** The Borrower shall not enter into any new Material Project Agreements (or any amendment to an existing Material Project Agreement) without the prior written consent of the Agent. Upon request by the Agent, the Borrower shall: (a) assign its interest in any new or amended Material Project Agreement to the Agent as further Security, and (b) obtain all third party consents as may be reasonably required to complete the assignment of such agreements to the Agent.
- (18) **Compliance with Laws.** The Borrower and the Guarantors shall comply in all material respects with all Applicable Laws, including Environmental Laws.
- (19) **Good Repair.** The Borrower will keep all of the assets and property used or useful in the conduct of its business in good repair, working order and condition, ordinary wear and tear excepted and from time to time shall make, or cause to be made, all needful and proper repairs, renewals and replacements, betterments and improvements thereto, all as in the reasonable judgment of the Borrower may be necessary so that the business carried on by the Borrower may be properly advantageously conducted at all times having regard to the intended construction and development of the Project Lands and the Project.
- (20) **Notices.** The Borrower and the Guarantors shall give to the Agent (who shall advise the Lenders) prompt written notice upon becoming aware of each of the following:
 - (i) any breach, or any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, as soon as the Borrower or any Guarantor becomes aware of same;
 - (ii) any Material Adverse Change which would reasonably be expected to have a Material Adverse Effect;

- (iii) any action, suit, litigation, or other proceeding involving a claim in excess of \$100,000 which is commenced or threatened in writing against the Borrower or any Guarantor;
 - (iv) any circumstance which the Borrower or any Guarantor has notice of, or is aware or has knowledge of, which could result in a material breach of, default or non-performance by any party under the Material Project Agreements or under any Permits;
 - (v) any dispute which may exist between the Borrower and any Governmental Authority or of any requirement of any Governmental Authority which, in each case, could have a Material Adverse Effect;
 - (vi) the occurrence of any event which the Borrower or any Guarantor has notice of, or is aware or has knowledge of, which could materially delay or change the construction of the Project;
 - (vii) the occurrence of an event of Force Majeure (together with a description in reasonable detail of the effects of such event on the operations of the Project, the action which the Borrower intends to take to remedy such event (provided any such action can be taken by the Borrower) and the estimated date when the event of Force Majeure will be remedied, if capable of being estimated, and will cease to impair Construction or operation of the Project) and the cessation of such Force Majeure; and
 - (viii) any notice of non-payment related to the Project that is delivered or received pursuant to the terms of the *Construction Act* (Ontario).
- (21) **Construction Act.** The Borrower shall comply with the provisions of the *Construction Act* (Ontario) including, without limitation, payments into and administration of all Holdback accounts. Further, in the event that a construction lien or any other lien is registered on title to the Project Lands after the Initial Borrowings, the Borrower shall have such lien(s) vacated, deleted or discharged within ten (10) days of registration of each lien.
- (22) **HST Refunds.** The Borrower shall file on a monthly basis all returns and other documents necessary to obtain the refund of harmonized sales tax paid under the *Excise Tax Act* (Canada) in respect of the Project and apply the amount of any such refund to payment of Project Costs.
- (23) **Management and Control of Project.** The Borrower shall manage or cause to be managed the development and construction of, and shall complete and operate, the Project in accordance with: (a) prudent industry practice; (b) the Material Project Agreements; (c) the Project Budget; (d) the Warranties; (e) the Plans and Specifications; and (f) the Construction Schedule. Subject to Force Majeure, it shall not abandon (for a single period of 20 days or more), and shall ensure that there is no abandonment of, the Project or cease, and shall ensure that there is no cessation of, Construction for such period of time as would reasonably be

expected to affect the ability to reach Construction Completion by the date set forth in the Construction Schedule, as such date may be extended due to any Force Majeure which has then occurred but in any event no later than the Final Repayment Date of the Term Facility.

- (24) **Sale of Units.** The Borrower shall use all commercially reasonable efforts to sell the Units in accordance with prudent industry standards and with a view to preserving and protecting the Project and maximizing the revenue to be generated therefrom. The Borrower shall deliver copies of each Agreement of Purchase and Sale to the Agent within 15 days of execution and acceptance, together with, where the sale of more than one Unit is contemplated in an Agreement of Purchase and Sale or where sales of multiple Units will be made to a single purchaser or, to the Borrower's knowledge, related purchasers, information as to the creditworthiness of the purchasers satisfactory to the Lenders, acting reasonably. If any purchaser purports to terminate its Agreement of Purchase and Sale, the Borrower will vigorously contest such action and advise the Agent of the details thereof. The Borrower shall use its reasonable efforts to direct mortgage business resulting from the sale of the Units to the National Bank of Canada, and, National Bank of Canada is to be granted access to existing purchasers and prospective purchasers of Units for the purpose of providing end user mortgages for any Units in the Project.
- (25) **Information to be Provided.** The Borrower shall give to the Agent any amended Agreements of Purchase and Sale forthwith after being entered into (subject to compliance with Section 8.02(17)), advise the Agent of any change in deposit payments made by a purchaser under an Agreement of Purchase and Sale or arrears of same, and provide copies of Deposit Account balances and summaries as requested by the Agent. No later than within 15 days of each month end the Agent shall receive a report detailing all Purchaser Deposits received to date in respect of each Unit, any Units where payment of Purchaser Deposits are in default, any Purchaser Deposits to be received in the future and any amendments to the provisions of any Agreement of Purchase and Sale relating to any Purchaser Deposits.
- (26) **Borrower's Equity and Cost Overruns.** The Borrower shall maintain at all times Borrower's Equity of not less than \$6,691,434 from cash sources (not including any land lift). Upon any Cost Overrun being identified by the Project Consultant, or upon any determination that the undrawn balance of the Term Facility (taking into account any Contingency Amounts) shall not be sufficient to complete the Project in accordance with the Project Budget, the Project Costs and the Plans and Specifications, and upon the Agent providing written notice to the Borrower, the Borrower and the Guarantors shall be jointly and severally liable to immediately (and prior to any additional Borrowing) fund any Cost Overruns, any amounts needed to ensure sufficient monies to complete the Project, or any additional equity contributions required under this Agreement. In the event Qualified Sales of Units are not sufficient to meet the requirements of Section 6.02(1), the Borrower shall inject cash as Borrower's Equity into the Project to

cover any such shortfall prior to any subsequent Borrowing, provided the aforesaid Borrower's Equity may be withdrawn once additional Qualified Sales are in place such that the requirements of Section 6.02(1) are complied with. To the extent Purchaser Deposits from firm presales (received and contractually owing) net of the Insurer's holdback requirements are less than \$6,075,061, the Borrower shall inject cash as Borrower's Equity in the amount of such shortfall, provided the aforesaid additional Borrower's Equity may be withdrawn once additional deposits from further firm presales are received or contractually owing.

(27) **Project Consultant.** The Agent, on the instructions from the Lenders, shall be permitted to, both (i) prior to the date on which Construction Completion occurs; and (ii) thereafter, to appoint and remove one or more Project Consultant for the purposes of:

- (i) reviewing the Project Budget (including the adequacy of the Contingency Amount);
- (ii) issuing progress certificates required with respect to Borrowings;
- (iii) issuing the reports provided for in Section 6.03(13) and issuing or reviewing the monthly Project status reports provided for in Section 8.01(6);
- (iv) certifying to the Agent and the Lenders the achievement of Substantial Completion and Construction Completion;
- (v) from time to time reviewing the operations of the Project (including payment of accounts and review of cheque payments) and some or all of the Material Project Agreements, the Agreements of Purchase and Sale (and related mortgage commitments), reports and Draw Requests required by this Agreement or the other Loan Documents;
- (vi) from time to time projecting the Cost to Complete;
- (vii) performing such additional functions as the Agent shall from time to time reasonably request; or
- (viii) advising the Agent and the Lenders as to whether the Project is being constructed and operated in accordance with (a) prudent industry practice, (b) all Applicable Laws, and (c) the Project Budget, the Plans and Specifications, the Construction Schedule and the other Material Project Agreements.

The Borrower shall pay all reasonable fees, costs and expenses of such Project Consultant.

(28) **Location of Operating and Trust Accounts.** The Borrower shall maintain or cause to be maintained all operating accounts and trust accounts relating to the

Project (including all deposits and withdrawals in connection therewith) or its business with the Agent during the term of this Agreement.

- (29) **Purchaser Deposits.** All Purchaser Deposits shall be deposited in a trust account with National Bank of Canada in the name of the Escrow Agent (“**Deposit Account**”). The Escrow Agent shall sign an acknowledgement and undertaking pertaining to the Deposit Account in form satisfactory to the Agent and shall have exclusive signing authority for the Deposit Account in accordance with the terms of the Trust Account Agreement. All monies held from time to time in the Deposit Account shall be subject to a first security interest/pledge in favour of the Insurer subject to the obligations, if any, imposed by law pursuant to the *Condominium Act*.
- (30) **Deposit Insurance.** The Borrower and the Insurer have entered into arrangements to provide the Borrower with CDI contemplated by the *Condominium Act* such that the Borrower, with the concurrence or authorization of the Insurer, shall be legally entitled to apply the full amount of Purchaser Deposits on deposit in the Deposit Account at any time or times as Deposit Availments towards the payment of the Costs of Construction. Notwithstanding the foregoing and subject to the provisions of Section 8.01(29), the Insurer shall be entitled to require National Bank of Canada to maintain a balance equal to the Insurer Holdback in the Deposit Account as security for the Borrower’s obligations under the Insurer Charge. Accordingly, until the CDI policies are cancelled, the Insurer shall not be required to allow any release of monies from the Deposit Account at any time or times if the balance in the Deposit Account is less than the Insurer Holdback or would be less than the Insurer Holdback if the monies were released. Upon cancellation of the CDI policies, the balance of monies in the Deposit Account shall be released, paid to the Agent as repayment of the Outstanding Obligations remaining unpaid, and otherwise to the Borrower.
- (31) **Postponement and Subordination of Insurer Charge.** The Insurer shall enter into a priority, postponement and standstill agreement with the Agent which is satisfactory to the Lenders and pursuant to which the Insurer shall agree to postpone and standstill on any payments or enforcement rights while the Credit Facilities remain outstanding subject to the Insurer retaining a first charge on the Purchaser Deposits to the extent that they remain in the Deposit Account.
- (32) **Insurance Coverage.** The Borrower shall insure and keep insured, or cause to be insured and kept insured, the Project as follows:
- (i) **Insurance During Construction**
- During construction of the Project on the Project Lands, the Borrower shall insure or cause to be insured the Project against such perils and in such amounts as may be required by the Agent and the Lenders and without limiting the generality of the foregoing, shall provide the Agent for the Lenders with evidence of insurance as follows:

- (A) "all risks" (including the perils of earthquake, flood, testing and commissioning, sewer backup, water damage windstorm and collapse) builders risk insurance on a replacement cost (with no restriction to repair or replace on the same or an adjacent site), no co-insurance basis. The limit under the builders risk insurance covering physical loss or damage will represent not less than 100% of total hard construction costs, plus not less than 25% of the total soft construction costs. The builders risk insurance will include equipment breakdown coverage (or separate equipment breakdown insurance will be maintained on a comprehensive repair or replacement cost basis to cover physical loss or damage to the same limit as provided under the builders risk insurance); coverage for property in transit and property stored off site; a permission to occupy clause; debris removal (including windstorm debris); a by-laws endorsement to cover increased cost of construction and cost of demolition of the undamaged portion of the Project; expediting expense and extra expense coverage; and coverage for resultant damage from faulty workmanship, faulty materials, and faulty design to adequate minimum levels;
- (B) such other forms of insurance as may be required under any Material Project Agreements, or which are customarily maintained by prudent owners/developers of property under construction similar to the Project as the Agent and the Lenders may require;

The Agent shall be first mortgagee and loss payee under the builders risk insurance and equipment breakdown insurance. The Borrower, and any other entities registered on title to the Project Lands, or as may be required under any Material Project Agreements, will be named insureds or additional named insureds under the builders risk insurance and the equipment breakdown insurance. The builders risk insurance and the equipment breakdown insurance shall provide the Agent with at least 60 days' prior written notice of cancellation (except for cancellation due to non-payment of premium for which statutory 15 days' notice by mail would apply, and 5 days' notice if hand delivered, may apply) and the builders risk insurance and the equipment breakdown insurance shall be subject to a standard mortgage clause. The builders risk insurance and the equipment breakdown insurance shall provide a waiver of the insurer(s)' rights of subrogation in favour of the Agent and the Lenders. All policies shall be in form acceptable to the Agent and shall be permitted to contain reasonable deductibles acceptable to the Agent.

(ii) **Insurance After Completion of Construction**

Once construction of the Project is substantially complete and so long as any amounts are owing to the Lenders under the Credit Facilities, the Borrower shall insure, or cause to be insured, the Project against such

perils and in such amounts as may be required by the Lenders, and without limiting the generality of the foregoing, shall provide the Agent for the Lenders with evidence of insurance as follows.

- (A) "all risks" (including the perils of earthquake, flood, sewer back up, water damage, windstorm and collapse) property insurance in an amount not less than the full replacement cost of the Project (including foundations and footings). The property insurance shall be written on a replacement cost, stated amount (or no co-insurance) basis. The property insurance shall include: by-laws extensions to cover increased cost of construction and cost of demolition of the undamaged portion of the Project, and debris removal expense (including removal of debris of uninsured property located on the Project Lands as the result of windstorm);
- (B) equipment breakdown insurance on a comprehensive repair or replacement cost basis and including by-laws extensions to cover increased cost of construction and cost of demolition of the undamaged portion of the Project covering all heating, mechanical, electrical and other insurable objects forming part of the Project;
- (C) commercial general liability insurance with a limit of not less than \$10,000,000 per occurrence and in the aggregate for products and completed operations liability, or such other limit as acceptable to the Agent and the Lenders. The commercial general liability insurance shall include contractual liability and shall be subject to a severability of interests/cross liability clause.
- (D) such other forms of insurance as may be required under any Material Project Agreements, or which are customarily maintained by prudent owners/developers of property similar to the Project as the Lenders may require.

The Borrower will be a named insured or additional named insured under the property insurance, the equipment breakdown insurance and the commercial general liability insurance. The Agent shall be named as mortgagee and loss payee as their interest may appear under the property insurance and the equipment breakdown insurance and as an additional insured under the commercial general liability insurance. The property insurance, the equipment breakdown insurance and the commercial general liability insurance shall provide the Agent for the Lenders with at least 30 days' prior written notice of cancellation (except for cancellation due to non-payment of premium for which the statutory 15 days' notice by mail, with 5 days' notice if hand delivered, may apply). The property insurance and the equipment breakdown insurance shall be subject to a standard mortgage clause. All policies shall be in form acceptable to the Lenders and shall be permitted to contain reasonable deductibles approved

by the Lenders. All policies shall include a waiver of the insurer's rights of subrogation in favour of the Agent for the Lenders and the Lenders.

If a condominium corporation has been created and has obtained the property insurance and the equipment breakdown insurance covering damage to the condominium building and general liability insurance covering the lands and building common areas in accordance with the condominium corporation's bylaws, this insurance maintained by the condominium corporation shall be acceptable. If the Borrower owns any units within the condominium building, the Borrower shall provide evidence of its general liability insurance for a limit of not less than \$5,000,000 per occurrence covering liability arising out of its owned units. If the Borrower's owned units within the Project include any improvements and/or betterments (or personal property owned by the Borrower), the Borrower will provide evidence of the property insurance covering the improvements and/or betterments and/or personal property. The insurance maintained by the Borrower on its owned units shall name the Borrower as a named insured, name the Agent as first loss payee under the property insurance and as an additional insured under the general liability insurance and provide the Agent with not less than 30 days prior notice of cancellation (excepting cancellation for the non-payment of premium for which statutory 15 days' notice by mail, and five days' notice if hand delivered, may apply).

(iii) **General Covenants Regarding Insurance**

(A) The required insurance shall be effected and maintained with such insurers with a financial rating by AM Best & Company of not less than A VIII or by Standard & Poor's of not less than A, or such other rating as approved by the Agent, or by insurer(s) acceptable to the Agent and the Lenders.

(B) Detailed certificates or binders of insurance (signed by the insurers or by an authorized representative of the insurers), shall be provided to the Agent as evidence of the insurance required to be maintained hereunder; with complete, certified policy copies to be provided to the Agent (if requested by the Agent). The Borrower shall, thirty (30) days prior to the expiry and/or cancellation of any insurance policy required under this Agreement, deliver to the Agent a detailed certificate or binder of insurance or certified copy of such renewal or replacement insurance policy and will deal with all such policies and contracts of insurance and renewals and binders in such places and manner as the Agent and the Lenders may from time to time require and will keep the Agent informed of any change or alteration in the property of the Borrower material to the insurance coverage and will furnish the Agent with particulars of all insurance covering the Project or any part thereof. Should the

Borrower fail to effect such insurance and make the same payable to the Agent as herein provided and to keep the same in force or to exhibit or to deliver any such policies, certificates or binders of insurance, the Agent or any other person or persons acting through the Agent may effect such insurance, in which case the Borrower shall immediately repay the Agent the amount expended plus the expenses of the Agent and the Lenders. For greater certainty, neither the Agent nor the Lenders shall be under any duty or obligation to effect or maintain insurance or notify any person of the failure of the Borrower to insure, and neither the Agent nor the Lenders shall be responsible for any loss by reason of want or insufficiency of insurance or because of the failure of insurers with which the insurance is carried to pay the full amount of any loss or any portion of such full amount.

- (C) The Borrower shall pay, or cause to be paid, all premiums and other sums of money payable for maintaining the insurance policies listed hereunder, and shall furnish to the Agent evidence of such payment and further shall cause the insurance money under all policies required hereunder to be made payable to the Agent as its interests may appear, or shall otherwise deal with such policies and contracts of insurance in such a manner as to enable the insurance monies on all losses to be collected by the Agent and applied by them pursuant to the terms of this Agreement.
- (D) With the exception of property insurance and equipment breakdown insurance maintained by a condominium corporation covering the completed condominium building, the Borrower shall cause the insurance proceeds under all policies required hereunder covering physical loss or damage to be made payable to the Agent as its interests may appear, or shall otherwise deal with such policies and contracts of insurance in such a manner as to enable the insurance proceeds for all losses of physical loss or damage to the Project to be paid to the Agent to be applied pursuant to the terms of this Agreement. The Borrower shall from time to time do, sign, execute or endorse all transfers, assignments, cheques, loss claims, receipts, writings and things necessary or desirable for the purposes aforesaid; and for such purposes, the Borrower hereby irrevocably appoints the Agent (or its attorney) to do, sign, execute and endorse such transfers, assignments, cheques, loss claims, receipts, writings and things in the name of the Borrower and on its behalf as the Agent acting on instructions from the Lenders may deem necessary or advisable.
- (E) The Agent and the Lenders may retain, in their discretion and at the expense of the Borrower, an independent insurance consultant to confirm compliance with this Section 8.01(32) and from time to

time to advise the Agent and the Lenders generally as to the sufficiency of the insurance coverage in place or which the Borrower should be maintaining

- (33) **Further Encumbrances.** The Borrower shall ensure that the Project Lands are not encumbered except for Permitted Encumbrances without the prior written consent of the Agent.
- (34) **Costs.** The Borrower shall pay to the Agent and the Lenders all out-of-pocket costs and expenses of the Agent and the Lenders associated with the preparation, registration and amendment (from time to time) of the Loan Documents.
- (35) **Ownership.** The Borrower shall ensure that it does not take part in any consolidation, amalgamation, merger, winding-up, dissolution, capital or corporate reorganization or similar proceeding or arrangement or amendment to articles or other constating documents without the prior written consent of the Agent.
- (36) The Borrower shall provide a certificate, executed by a senior officer(s) of the Borrower, with each Draw Request and/or within twenty-five (25) days of each month end, for the prior period, commencing on the Closing Date, certifying that the Credit Parties have complied with all of their obligations pursuant to this Credit Agreement.
- (37) The Borrower shall provide a certificate, executed by a senior officer(s) of the Borrower, by April 30th of each calendar year, certifying that the Credit Parties have complied with all of their obligations pursuant to this Credit Agreement.

8.02 Negative Covenants

From the date hereof and until the Outstanding Obligations are paid in full and this Agreement is terminated, each of the Borrower and the Guarantors severally confirm, as applicable to itself only, as and where applicable, that it shall adhere to each of the following covenants unless waived in writing by the Agent and the Required Lenders:

- (1) **Not to Amalgamate; No Dissolution.** The Borrower and/or the Corporate Guarantors shall not enter into any transaction or series of related transactions (whether by way of amalgamation, merger, winding-up, liquidation, dissolution, consolidation, reorganization, reconstruction, continuance, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, properties, rights or assets would become the property of any other Person or, in the case of amalgamation or continuance, of the continuing corporation resulting therefrom or result in a change in Control of the Borrower and/or the Corporate Guarantors.
- (2) **Negative Pledge.** The Borrower shall not create, assume, incur or suffer to exist any Security Interest in or upon the Project or the Project Lands, except for Permitted Encumbrances and Permitted Indebtedness.

- (3) **Indebtedness.** The Borrower shall not create, incur, assume, or become liable upon, any Indebtedness in respect of the Project or the Project Lands, other than Permitted Indebtedness.
- (4) **No Guarantees.** The Borrower shall not be or become liable, directly or indirectly, contingently or otherwise, for any obligation of any other Person by Guarantee in respect of the Project or the Project Lands, other than as expressly permitted hereunder.
- (5) **Location of Assets.** The Borrower shall not locate or permit to be situated any of its property or assets (including its chief executive office or principal place of business) in any jurisdiction other than the Province of Ontario.
- (6) **Distributions.** The Borrower shall not make any Distribution of any kind whatsoever to any director, officer, shareholder, Affiliate or Associate of any Credit Party or other Person without the prior written consent of the Lenders.
- (7) **Dispositions.** The Borrower will not sell, assign, transfer, convey, lease (as lessor), contribute or otherwise dispose of, or grant options, warrants or other rights with respect to, the Project, the Project Lands or any assets of the Borrower related to or used in respect of the Project or the Project Lands, except for Unit sales in the ordinary course of the Project and except for such conveyances to any governmental authority and/or utility and services providers as may be required by the terms of any applicable subdivision and/or development agreements in connection with the development of the Project or the Overall Project in accordance with the Plans and Specifications.
- (8) **Investments.** The Borrower shall not lend money to or invest money in any Person whether by way of loan, acquisition of shares, acquisition of debt obligations, or in any matter whatsoever.
- (9) **Payments of Subordinated Debt.** The Borrower shall not be entitled to make any payments or prepayments of principal, interest, fees or costs on account of any Subordinated Debt other than as permitted under the associated subordination agreement to which the Agent and the Lenders are a party.
- (10) **Transactions with Related Parties.** The Borrower shall not enter into any transactions with any existing or future Subsidiaries, Affiliates or associates for goods or services unless such goods and services are provided on commercially reasonable terms. Notwithstanding the foregoing, the Agent and the Lenders acknowledge and accept that the development manager for the Overall Project is a Subsidiary, Affiliate or associate of one or more of the Credit Parties and/or beneficial owners and that goods and services relating to the Overall Project may be provided and/or performed by additional Subsidiaries, Affiliates and/or associates of one or more of the Credit Parties and/or beneficial owners on commercially reasonable terms.

- (11) **Issuance of Shares.** The Borrower shall not issue or agree to issue any shares of any class of its capital stock, nor grant any options, warrants, special warrants or other rights whereby the grantee thereof or any other Person could acquire any shares or other equity interests in the corporation.
- (12) **Change in Financial Year or Business.** Neither the Borrower nor the Corporate Guarantors shall (i) change its Financial Year end, (ii) change the nature, form or substance of its business or lines of business which it now conducts, or (iii) commence carrying on any other business.
- (13) **Constating Documents; Change of Name.** Neither the Borrower nor the Corporate Guarantors shall (i) amend its constating documents, or (ii) change its name, in each case, without the prior written consent of the Agent and the Lenders.
- (14) **Limitations on Hedging.** The Borrower shall not enter into any interest rate, foreign exchange or other hedging programs.
- (15) **Material Project Agreements.** The Borrower shall not: (i) cancel or terminate any Material Project Agreement; (ii) materially amend or otherwise modify any Material Project Agreement; (iii) waive any default or breach under any other Material Project Agreement; or (iv) take any other action in connection with any other Material Project Agreement without the prior written approval of the Agent, such approval not to be unreasonably or arbitrarily withheld or delayed.
- (16) **No Vendor Take Back Mortgages or Cash Flow Rental Guarantees.** No Agreement of Purchase and Sale shall be entered into which contains a provision allowing for partial or full payment of the purchase price payable thereunder by way of a vendor take back mortgage or other debt instrument in favour of the vendor (the intent being that all Net Proceeds of the sale of Units shall be in the form of money) or any cash flow rental guarantees.
- (17) **Amendment of Agreements of Purchase and Sale.** No Agreement of Purchase and Sale shall be entered into relating to a Unit other than in that form approved pursuant to Section 6.01(17) without the prior written authorization of the Agent, not to be unreasonably or arbitrarily withheld or delayed. No Agreement of Purchase and Sale shall be amended in any material respect or which has the effect of the Unit ceasing to be a Qualified Sale without the prior written authorization of the Agent. The Borrower shall forward copies of any amendments to Agreements of Purchase and Sale forthwith following the entering into of same.
- (18) **Equity Withdrawals.** The Borrower shall not withdraw, distribute or in any way reduce any Borrower's Equity except as permitted pursuant to Section 8.01(26).
- (19) **Amendment of Project Budget.** The Borrower shall not revise, change or amend the Project Budget (including, without limitation, any reallocation of Hard Costs and Soft Costs) in any respect in excess of \$500,000 without the prior

written consent of the Agent and the Required Lenders, and provided which consent shall not be granted unless:

- (i) the Contingency Amount is fully utilized;
- (ii) the revised aggregate budget items do not cause the Credit Facilities to exceed their existing limits, require increases in the said limits to complete the Project or result in the Borrowings permitted under Section 2.06 to be increased; and
- (iii) a statutory declaration from the contractor/trade that all costs associated with a specific budget item have been paid for and the relevant work fully completed;

except the Borrower shall be permitted to revise the Project Budget without the consent of the Agent where it is able to apply any budget saving to any other budget item and the net effect would be neutral or result in savings to the overall Project Budget.

- (20) **Application of Contingency Amounts in Project Budget.** The Borrower shall not use any portion of the Contingency Amount to pay any management or other fees of the Borrower or the Guarantors without the prior written consent of the Agent and the Required Lenders.
- (21) **Amendment of Plans and Specifications.** The Borrower shall not revise, change or amend the Plans and Specifications in any material respect except with the prior written consent of the Agent and the Required Lenders, and provided the amended Plans and Specifications comply with Applicable Laws and the Borrower can demonstrate that it has received additional Borrower's Equity sufficient to cover any increased Budgeted Project Costs arising in connection therewith. Upon any revision of the Plans and Specifications, as approved by the Agent and the Required Lenders, the Borrower shall forthwith provide a copy to the Agent.
- (22) **Amendment of Construction Schedule or Contracts.** The Borrower shall not revise, change or amend the Construction Schedule in any material respect or amend any fixed price contract in any material respect except with the prior written consent of the Agent and the Required Lenders, and provided: (i) purchasers of Units do not have the benefit of any increased rights by virtue of the amended Construction Schedule; and (ii) the Borrower can demonstrate that it has received additional Borrower's Equity sufficient to cover any increased Budgeted Project Costs arising in connection therewith. Upon any revision of the Construction Schedule, as approved by the Agent and the Required Lenders, the Borrower shall forthwith provide a copy to the Agent.
- (23) **Change Orders.** The Borrower shall not approve or permit any Change Order unless:

- (i) Such Change Order has been reviewed by the Project Consultant and the Borrower has received the prior written consent of the Agent and the Required Lenders;
- (ii) The Contingency Amount has been fully utilized;
- (iii) The revised budget does not cause the Credit Facility Limit to exceed \$25,765,000; and
- (iv) The Borrower has delivered to the Agent a statutory declaration from the contractor or trades person that all costs associated with a specific budget item has been paid for and the work fully completed;

except the Borrower shall be permitted to execute a Change Order or Change Orders without the consent of the Agent where the net effect of the Change Order(s) would be neutral or result in savings to the overall Project Budget.

- (24) **Permitted Encumbrances.** The Borrower shall not permit any encumbrance to be registered against title to the Project Lands other than Permitted Encumbrances or the Insurer Charge, as approved by the Agent, without the Agent's prior written consent.
- (25) **Property Use.** The Borrower shall not create, incur, assume or suffer to exist any lease or easement on or affecting the Project or the Project Lands, that would restrict the use of the Project Lands, without the prior written consent of the Agent, such consent not to be unreasonably withheld, save and except for exclusivity restrictions the Borrower may grant in favour of commercial tenants of portions of Block 1 forming part of the Project Lands in the ordinary course of business on commercially reasonable terms.
- (26) **Amendment of Joint Venture Agreement.** The Borrower shall not amend the Joint Venture Agreement without the prior written consent of the Agent, which consent shall not be unreasonably withheld.

ARTICLE 9 SECURITY

9.01 Security

The Borrower and the Guarantors shall execute and deliver to, or shall cause to be executed and delivered to the Agent, on behalf of the Lenders, in form and substance satisfactory to the Agent and the Lenders, documents to secure all debts, liabilities and obligations of the Borrower and the Guarantors to the Agent and the Lenders including, without limitation, the Outstanding Obligations as follows:

- (1) a demand collateral mortgage in the principal amount of \$110,000,000 (the "**Mortgage**") issued by the Borrower providing a first ranking (subject to Permitted Encumbrances) fixed and specific charge against the Project Lands;

- (2) a site specific security agreement executed by the Borrower in favour of the Agent creating a first ranking Security Interest in all present and after-acquired personal property of the Borrower in respect of the Project Lands;
- (3) a general assignment of rents and leases with respect to the Project Lands;
- (4) an assignment of Material Project Agreements, Plans and Specifications and permits in favour of the Agent accompanied by the consents of third parties to such Material Project Agreements, as may be required by the Agent, in form and substance satisfactory to the Agent;
- (5) an assignment of the Agreements of Purchase and Sale;
- (6) an assignment of the development management agreement for the Project;
- (7) an assignment of insurance policies and proceeds thereof in favour of the Agent;
- (8) a joint and several cost overrun and completion agreement executed by the Borrower and the Guarantors;
- (9) an environmental indemnity executed by the Borrower and the Guarantors;
- (10) letters of indemnity issued by the Borrower respecting all issued Letters of Credit;
- (11) a priorities agreement, satisfactory to the Agent, with the Insurer with respect to any security granted in favour of the Insurer regarding CDI for the Project;
- (12) a guarantee from Haven Property Developments Inc. in favour of the Agent in respect of Outstanding Obligations of the Borrower limited to the principal amount of \$17,176,668;
- (13) a guarantee from Windsor Private Capital Limited Partnership in favour of the Agent in respect of Outstanding Obligations of the Borrower limited to the principal amount of \$8,588,334;
- (14) a subordination, postponement and standstill agreement, satisfactory to the Agent, with Windsor Private Capital Inc. (as lender) with respect to existing related party loan(s) pursuant to which Windsor Private Capital Inc. shall agree to postpone and standstill on any payments or enforcement rights while the Credit Facilities remain outstanding and Postponement(s) of Interest registered on title to the Project Lands, as required by the Agent;
- (15) a subordination, postponement and standstill agreement, satisfactory to the Agent, with First Mortgage Administration Corp. and Olympia Trust Company (as lenders) with respect to existing related party loan(s) pursuant to which First Mortgage Administration Corp. and Olympia Trust Company shall agree to postpone and standstill on any payments or enforcement rights while the Credit

Facilities remain outstanding and Postponement(s) of Interest registered on title to the Project Lands, as required by the Agent;

- (16) an assignment of Cash Collateral and security agreement with respect to Purchaser Deposits;
- (17) if applicable, a trust declaration and authorization agreement from the beneficial owners of the Project Lands and the Borrower evidencing beneficial ownership and authorizing the Borrowings and delivery of the Loan Documents by the Borrower;
- (18) at the Agent's option, a lender's policy of title insurance satisfactory to the Agent; and
- (19) all such other security, certificates, opinions or other agreements from the Borrower, the Guarantors or their respective counsel, which the Agent or any Lender may reasonably require.

9.02 Further Assurances

Each Credit Party shall deliver or shall cause to be delivered to the Agent, on behalf of the Lenders, from time to time duly executed documents in form and substance reasonably satisfactory to the Agent, the Lenders and their counsel as may be reasonably requested by the Agent for the purpose of giving effect to this Agreement or the Security, or for the purpose of establishing compliance with the representations, warranties and conditions of this Agreement.

9.03 Partial Discharges

Provided no Event of Default has occurred and is continuing, the Borrower shall be entitled to a partial discharge of the Security as it relates to each of the Units in the Project, upon payment to the Agent of 100% of the Net Proceeds of such Unit. Any payments received by the Agent pursuant to this Section shall be applied towards: first, repayment or cash collateralization of any Outstanding Obligations under the Term Facility, second, cash collateralization for any Letters of Credit outstanding, and third, towards any other amounts payable hereunder. The Agent shall execute such releases of the Security in respect of any Unit in respect of which a partial discharge is sought in form and substance as the Borrower may reasonably require and shall deliver same to the Borrower's legal counsel upon delivery to the Agent of the amount set forth in this Section or an acceptable undertaking by the Borrower's legal counsel to remit the amounts described in this Section forthwith after the closing of such sale. The Agent shall also execute and deliver to the Borrower and its legal counsel an undertaking addressed to the Borrower, its legal counsel, all purchasers of Units and their legal counsel to provide partial discharges of the Units in accordance with the terms of this Section.

9.04 Partial Releases of Security, etc.

Prior to the occurrence of an Event of Default which is continuing, the Borrower may from time to time, to the extent contemplated in all applicable Plans and Specifications reviewed and approved by the Required Lenders: (i) convey any portion of the Project Lands, or provide an

easement or right-of-way over any portion of the Project Lands, required for municipal, governmental, utilities, servicing or other purposes required to facilitate the development and construction of the Overall Project (without limiting the generality of the foregoing, for such public purposes as roads, road widenings, walkways and municipal reserves or for the provision of utilities and/or other services) provided the conveyance and the remaining lands are in compliance with Applicable Laws and the conveyance does not negatively impact the Project; (ii) enter into development, servicing, subdivision and similar agreements with Governmental Authorities in respect of the Project Lands; and (iii) register condominium plans and by-laws in respect of the Project Lands, provided same are satisfactory to the Agent, acting reasonably. The Agent agrees to promptly execute and deliver from time to time upon request by the Borrower all partial discharges, postponements and consents in respect of the Security as may be required in connection with the foregoing (subject to receipt by the Agent of any Net Proceeds); and the Agent shall have no obligation to notify the Lenders or obtain their consent in connection therewith.

ARTICLE 10 EVENTS OF DEFAULT AND REMEDIES

10.01 Events of Default

An “Event of Default” shall occur, unless expressly waived in writing by the Required Lenders, if any of the following defaults, breaches, failures, events, states or conditions occurs or exists at any time:

- (1) **Failure to Pay Principal.** If the Borrower fails to make punctual payment of any principal payable under this Agreement and if such payment is not made within five (5) days of the day on which such payment is due;
- (2) **Failure to Pay Interest.** If the Borrower fails to make punctual payment of any interest or Letter of Credit fee payable under this Agreement and if such payment is not made within five (5) days of the day on which such payment is due;
- (3) **Failure to Pay Other Amounts.** If the Borrower fails to make punctual payment when due of any amount payable hereunder (other than principal or interest) and if such payment is not made within five days of the day on which such payment is due;
- (4) **False Representations, Etc.** If any representation or warranty made or given herein, in any certificate or other document delivered pursuant hereto, or in any financial statements delivered pursuant hereto, is false or erroneous in any material respect when made, given or delivered and remains false or erroneous in any material respect for more than fifteen (15) days from the day on which such representation or warranty is made, given or delivered;
- (5) **Cross-Default.** If the Borrower defaults in the payment, when due, of any Indebtedness in the principal amount of greater than \$250,000, and such default has not been waived by such Person(s) within the applicable cure period, or if

such Indebtedness is accelerated or otherwise becomes due and payable prior to the stated maturity thereof;

- (6) **Default in Other Covenants.** If, other than in respect of any covenant to pay, there is any default or failure in the observance or performance of any other act required to be done under the Loan Documents or any other covenant or condition required to be observed or performed under the Loan Documents by any Credit Party, and the default or failure continues for fifteen (15) days after notice by the Agent or any Lender to the applicable Credit Party specifying such default or failure;
- (7) **Change in Control.** If, without the prior written consent of the Agent and the Lenders (i) a Change in Control shall occur or (ii) the direct or indirect legal or beneficial ownership of the Capital Stock of the Borrower or the voting rights attaching thereto changes on or after the date hereof;
- (8) **Insolvency.** If the Borrower or any Guarantor is unable to pay debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- (9) **Voluntary Proceedings.** If the Borrower or any Guarantor makes a general assignment for the benefit of creditors; or any proceeding or filing is instituted or made by the Borrower or any Guarantor seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any similar law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties or assets; or the Borrower or any Guarantor takes any corporate action to authorize any of the actions set forth in this Subsection;
- (10) **Involuntary Proceedings.** If any notice of intention is filed or any proceeding or filing is instituted or made against the Borrower or any Guarantor in any jurisdiction seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its properties or assets or seeking possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or a substantial part of the assets of the Borrower or any Guarantor unless the same is being contested actively and diligently in good faith by appropriate and timely proceedings and is dismissed, vacated or stayed within thirty (30) days of institution thereof;
- (11) **Receiver, etc.** If a receiver, liquidator, trustee, sequestration or other officer with like powers is appointed with respect to, or an encumbrancer pursuant to an

encumbrance or otherwise takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over any of the properties or assets of (i) the Borrower having a fair market value in excess of \$250,000 (in the aggregate) or; (ii) any Guarantor having a fair market value in excess of \$500,000 (in the aggregate), or in either case gives a Notice of Intention to Enforce Security under the *Bankruptcy and Insolvency Act* (Canada);

- (12) **Execution, Distress.** If any writ, attachment, execution, sequestration, extent, distress or any other similar process becomes enforceable against the Borrower or any Guarantor or if a distress or any analogous process is levied against the Project Lands, or any other of the properties or assets of (i) the Borrower having a fair market value in excess of \$250,000 (in the aggregate) or; (ii) any other Credit Party having a fair market value in excess of \$500,000 (in the aggregate), except, in either case, where the same is being contested actively and diligently in good faith by appropriate and timely proceedings and the enforcement or levy has been stayed;
- (13) **Suspension or Cessation of Business.** If the Borrower or any Guarantor suspends or ceases or threatens to suspend or cease its business;
- (14) **Sale.** If the Borrower sells or otherwise disposes of, or agrees to sell or otherwise dispose of, all or a material part of the Project Lands other than the sale of Units or the sale of any freehold component of the Project in the ordinary course of the Project, without the prior written consent of the Agent;
- (15) **Validity.** If any material provision of any Loan Document or any Loan Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms or the Borrower or any of the Guarantors shall so assert in writing; or any material encumbrance created under any Loan Document shall cease to be a valid and perfected encumbrance having, subject to the provisions hereof, the first priority in any of the collateral purported to be covered thereby other than, in the case of an encumbrance ceasing to be a perfected encumbrance, because of any action taken or omission to act by the Agent or any Lender, in each case unless replaced or reinstated to the Agent or such Lender's satisfaction within ten (10) Business Days after such event;
- (16) **Assignment.** If the Borrower assigns any of its rights under this Agreement or any of the other documents relating to the Credit Facilities or any interest herein or therein to a third party in contravention of the Credit Facilities;
- (17) **Revocation of Guarantee.** If any guarantee of the Outstanding Obligations shall be terminated, revoked or declared void or invalid, without the prior written consent of the Agent;
- (18) **Adverse Judgments.** If one or more final judgments for the payment of money aggregating in excess of (i) \$250,000 in the case of the Borrower; and (ii) \$500,000 in the case of any Guarantor, in either case (whether or not covered by

insurance) shall be rendered against the Borrower or any Guarantor (as applicable) and the Borrower or such Guarantor shall fail to discharge or stay enforcement of the same within thirty (30) days from the date of notice of entry thereof;

- (19) **Material Adverse Change/Effect.** If at any time there occurs an event or circumstance which, in the opinion of the Agent and the Lenders, acting reasonably, represents a Material Adverse Change which has a Material Adverse Effect or represents a Material Adverse Effect;
- (20) **Construction.** If at any time, Construction ceases for a single period of twenty (20) days or more, except as the result of Force Majeure;
- (21) **Material Project Agreements.** If there is a default by the Borrower under any Material Project Agreement which results in a Material Adverse Effect; and
- (22) **Possession of the Project Lands.** If an encumbrancer or lienholder takes possession of the Project Lands, or a material part thereof or interest therein (other than possession deriving from a tenant's interest under a lease), or if execution or other similar process is enforced against the Project Lands, or a material part thereof or interest therein, which remains unsatisfied for five (5) days, or has not been withdrawn, released, vacated or stayed within such period as would permit such property to be sold thereunder.

10.02 Remedies and Acceleration

Upon the occurrence of an Event of Default, the Security shall become enforceable and the Agent may, or at the direction of the Required Lenders shall, do one or more of the following:

- (1) declare the whole or any item or part of the Borrowings or unutilized portion of any Credit Facility to be cancelled, terminated or reduced, whereupon the right of the Borrower to obtain further Borrowings with respect thereto shall cease and the Lenders shall have no obligation to honour any cheques or other orders for payment, or make any further Borrowings available hereunder in respect thereto;
- (2) accelerate the maturity of all or any item or part of the Outstanding Obligations and declare them to be payable on demand or immediately due and payable, whereupon they shall be so accelerated and become immediately due and payable to the Agent (on behalf of the Lenders) and the Agent and the Lenders may without notice to the Borrower apply any amounts outstanding to the credit of the Borrower to repayment of the Outstanding Obligations;
- (3) enforce any Security;
- (4) take any other action, commence and prosecute any proceeding or exercise or suspend any rights of any Credit Party under any Loan Document, whereupon such rights shall be so suspended;

- (5) demand payment by any guarantor of any Outstanding Obligations owing by such Guarantor;
- (6) take any other action, commence and prosecute any proceeding or exercise such other rights as may be permitted by Applicable Law (whether or not provided for in any Loan Document) as such times and in such manner as the Agent may consider expedient.

10.03 Lenders May Waive

The Lenders may at any time waive any Default or Event of Default which may have occurred, provided that no such waiver shall extend to or be taken in any manner whatsoever to affect any subsequent Default or Event of Default or the rights or remedies resulting therefrom. No such waiver shall be effective unless given by the Agent in writing.

10.04 Remedies are Cumulative

For greater certainty, the rights and remedies of the Agent and the Lenders under this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; and any single or partial exercise by the Agent or the Lenders of any right or remedy for a Default or Event of Default or breach of any term, covenant, condition or agreement contained in any of the Loan Documents shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy to which the Agent or the Lenders may be lawfully entitled for the same default or breach, and any waiver by the Agent or the Lenders of the strict observance, performance or compliance with any term, covenant, condition or agreement contained in any of the Loan Documents and any indulgence granted by the Agent or the Lenders shall be deemed not to be a waiver of that or any subsequent default.

10.05 Set-Off

The Lenders shall be entitled at any time or from time to time after the occurrence of an Event of Default which is continuing, without notice to set-off, consolidate and to apply any or all deposits and any other indebtedness at any time held by or owing by such Lender to the Borrower against and on account of the debts, liabilities or obligations of the Borrower to such Lender, whether or not due and payable.

10.06 Cash Collateral Accounts

Following the occurrence of an Event of Default which is continuing and in addition to any other rights or remedies of the Agent and the Lenders hereunder, the Agent (on behalf of the Lenders) shall be entitled to deposit and retain in the Borrower's account(s) controlled by the Agent (on behalf of the Lenders) and by way of collateral security (bearing interest at the rates of the Agent as may be applicable in respect of other deposits of similar amounts for similar terms) amounts which are received by the Agent from the Borrower hereunder or as proceeds of realization of any Security and apply such amounts to satisfy any Outstanding Obligations.

ARTICLE 11 ENVIRONMENTAL MATTERS

11.01 Representations and Warranties

The Borrower and the Guarantors hereby represent and warrant to the Agent and the Lenders that:

- (1) The Project and the business of the Borrower have been operated in compliance in all material respects with all applicable Environmental Laws and with all permits, licenses and authorizations issued to them pursuant to Environmental Laws.
- (2) There are no claims, investigations, litigation, administrative proceedings, pending or, to the knowledge of the Borrower, threatened relating to any Hazardous Material, Releases or other forms of pollution or alleged violation of applicable Environmental Laws (collectively “**Environmental Matters**”) in respect of the Project Lands or the business of the Borrower. The Borrower has not assumed any material liability of any other Person for response, removal, remediation, investigation, clean up, compliance or required capital expenditures in connection with any Environmental Matters arising prior to the date hereof.
- (3) There are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under the Project Lands or any other real property now or previously owned or leased by the Borrower, the presence of which could reasonably be expected to have a Material Adverse Effect.
- (4) There are no conditions that directly or indirectly relate to Environmental Matters or the condition of the soil, air, surface and ground water or any combination thereof that likely have or may have a Material Adverse Effect (whether on or below the Project Lands or any adjoining properties) including, without limitation, being located within an environmentally sensitive area or a wetland area, as determined by any Governmental Authority.
- (5) There are no conditions that exist at, on or under the Project Lands which, with the passage of time, or the giving of notice or both, could give rise to liability under any Environmental Laws.
- (6) Since acquiring the Project Lands, the Borrower has not used the Project Lands, or permitted the Project Lands to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process any Hazardous Material except in compliance in all material respects with all Environmental Laws. Other than as disclosed in the Environmental Report, the Project Lands (including, the soil, subsoil, bedrock, surface water, groundwater, sediments and improvements) contain no Hazardous Material, except in amounts permitted under Environmental Laws. The Project Lands have not been used for, and have not been designated as, a waste disposal site.

- (7) In connection with the Project, the Borrower has not caused or permitted the Release of any Hazardous Material on or off site of the Project Lands except in compliance in all material respects with Environmental Laws. To the best of the Borrower's knowledge after due inquiry, other than as disclosed in the Environmental Report, Hazardous Material has not been and is not being Released on or from or migrating through property adjoining or in the vicinity of the Project Lands that might migrate to or affect the Project Lands.
- (8) In connection with the Project, all Hazardous Material and other materials and wastes that are not by their nature hazardous, disposed of, treated or stored or otherwise Released on real property owned or occupied it, whether on or off site of such properties, have been disposed of, treated, stored or otherwise Released in compliance in all material respects with all Environmental Laws.

11.02 Environmental Covenants

The Borrower and the Guarantors covenant with the Agent and the Lenders as follows:

- (1) **Compliance.** The Borrower shall comply in all material respects with the requirements of any Environmental Laws (including, without limitation, obtaining any Permits) applicable to it or the Project.
- (2) **Copies.** The Borrower shall promptly forward to the Agent copies of all material orders, notices, permits, applications or other communications and reports in connection with any Environmental Laws affecting or relating to the Project or the operations and activities of the Borrower.
- (3) **Notification.** The Borrower shall immediately notify the Agent of any notice received by or relating to the Borrower of (i) any violation of any Environmental Laws, (ii) any administrative or judicial complaint or order filed alleging violations of any Environmental Laws, or (iii) any liability for clean-up costs associated with a Release of a Hazardous Material or waste into the environment not in compliance with Environmental Laws or for any damages resulting from such Release.
- (4) **Hazardous Substances.** The Borrower shall not bring onto or use on the Project or any other real property (whether owned, leased or otherwise occupied by it) any Hazardous Material or waste other than in strict compliance with Environmental Laws and prudent industrial standards.
- (5) **Production of Hazardous Substances.** The Borrower shall not use the Project, or permit the Project to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process any Hazardous Material except in compliance with all Environmental Laws.
- (6) **Information.** Upon request by the Agent or any Lender, the Borrower shall promptly forward to the Agent all environmental reports and assessments in the possession or under the control of the Borrower.

11.03 Indemnity

The Borrower and the Guarantors hereby jointly and severally, at all times, indemnify and hold the Agent, the Lenders, their officers, directors, employees, agents and shareholders harmless against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever (including, without limitation, all legal fees and disbursements) suffered or incurred by the Agent or any Lender (other than as a result of its own gross negligence or wilful misconduct), whether upon realization of the Security, or as lender to the Borrower, or as successor to or assignee of any right or interest of the Borrower or the Guarantors, or as a result of any order, investigation or action by any Governmental Authority relating to the Borrower or its business or property or as privileged or hypothecary creditor or mortgagee in possession of property or as successor or successor-in-interest to the Borrower as a result of any taking of possession of all or any of the Project Lands or by foreclosure deed or deed in lieu of foreclosure or by any other means relating to the Borrower, directly or indirectly, under or on account of any breach of any Environmental Laws which occurred prior to or during the time that the Borrower had control or possession of the Project Lands, with respect to:

- (1) the Release of a Contaminant, the threat of the Release of any Contaminant, or the presence of any Contaminant affecting the Project Lands, whether or not the same originates or emanates from the Project Lands or any contiguous real or immovable property located thereon, including any loss of value of the Project Lands as a result of any of the foregoing;
- (2) the Release of a Contaminant owned by, or under the charge, management or control of the Borrower, or any predecessor or assignor of the Borrower;
- (3) any costs incurred by any Governmental Authority or any other Person or damages from injury to, destruction of, or loss of natural resources in relation to, the Project Lands or elsewhere, including reasonable costs of assessing such injury, destruction or loss incurred under any Environmental Laws;
- (4) liability for personal injury or property damage arising by reason of any civil law offenses or quasi-offenses or under any statutory or common law tort or similar theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of a dangerous activity at, near, or with respect to the Project Lands or elsewhere; and/or
- (5) the use, production, storage, treatment or presence in or on the Project Lands of any Contaminant or any environmental matter affecting the Project Lands or the operations and activities of the Borrower within the jurisdiction of any federal, provincial, municipal, state or local environmental agency.

The obligations of the Borrower and the Guarantors under this Section 11.03 shall arise upon the discovery of the presence or Release of any Contaminant at, upon, under, over, within or with respect to the Project Lands, whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Contaminant.

11.04 Scope of Indemnity

The Borrower and the Guarantors acknowledge that the Lenders have agreed to make the Borrowings available in reliance upon their representations, warranties, and covenants in this Article. For this reason, it is the intention of the Borrower, the Guarantors, the Agent and the Lenders that the provisions of this Article shall supersede any other provisions in this Agreement, or the Security which in any way limit the liability of the Borrower or the Guarantors, and the Borrower and the Guarantors shall be liable for any obligations arising under or in connection with this Article even if the amount of the liability incurred exceeds the Outstanding Obligations. The obligations of the Borrower and the Guarantors arising under this Article are absolute and unconditional and shall not be affected by any act, omission or circumstance whatsoever, except in respect of the gross negligence or wilful misconduct by the Agent or any Lender. The obligations of the Borrower arising under this Article shall survive the repayment of the Outstanding Obligations and shall survive the transfer of any or all right, title and interest in and to any property by the Borrower to any Person.

11.05 Consultants, etc.

Any time after the occurrence and during the continuance of an Event of Default, the Agent (on behalf of the Lenders) may employ lawyers, engineers, scientists, or consultants of the Lenders' choice. Any engineer, scientist, or consultant so engaged by the Agent may upon reasonable notice to the Borrower and the Guarantors enter on to the Project Lands for the purpose of any inquiry and may make any necessary excavation or bore holes and take samples of any material or substance, and record or copy any information by any method. The Agent shall ensure that any such Person employed by or acting on behalf of the Agent shall conduct itself and any inquiry or other activity on or in respect of the Project Lands in a manner which does not unreasonably disrupt the business of the Borrower or which results in a breach of any Environmental Laws. The Borrower and the Guarantors hereby consent to any inquiries by the Agent or any lawyers, engineers, scientists, or consultants engaged on its behalf under any freedom of access or freedom of information legislation and agrees to execute such further consents or documents as may be necessary to give effect to this Section 11.05. Until the occurrence of an Event of Default, the Agent and the Lenders shall not disclose to any Person (other than to the Agent, any Lender or any of their officers, directors, employees, advisors or representatives) any of the information obtained as a result of the foregoing without the prior written consent of the Borrower or the Guarantors unless disclosure is required by law, in which case the Agent shall notify the Borrower and the Guarantors and provide the Borrower and the Guarantors with a reasonable opportunity to disclose such information.

11.06 Fees and Expenses

If the Agent (on behalf of the Lenders) retains the services of any lawyer, engineer, scientist, or consultant in connection with the subject of this Article, the Borrower and the Guarantors shall jointly and severally pay the reasonable out-of-pocket costs and fees thereby incurred if retained and applicable to such party as a result of any breach of Environmental Laws or in connection with any inquiry or investigation by a Governmental Authority in connection with Environmental Laws, or if the services performed are reasonably necessary for the performance

of the functions of the Agent or the Lenders under this Agreement or for the preservation or protection of the Security.

11.07 Interest

If the Agent or the Lenders incurs any obligations, costs or expenses under this Article or in respect of any Environmental Activity covered by this Article, the Borrower and the Guarantors shall pay the same to the Agent (for retention by the Agent or distribution to the Lenders, as the case may be) immediately on demand in respect of such party's obligations, and if such payment is not received within ten (10) days, such amount will be treated as a Prime Rate Loan and the Borrower will pay interest thereon at a rate equal to the Prime Rate plus three percent (3%) per annum, which shall accrue from the date of expiry of such ten (10) day period to the date of payment.

ARTICLE 12 THE AGENT AND THE LENDERS

12.01 Decision-Making

- (1) Any amendment to this Agreement relating to the following matters shall be effective only if agreed between the Borrower and the Lenders acting unanimously:
 - (i) changes in interest rates and fees in respect of the Credit Facilities;
 - (ii) increases in the maximum amount of credit available under any Credit Facility;
 - (iii) extensions of the scheduled dates or the scheduled amounts for Repayments hereunder;
 - (iv) releases of all or any portion of the Security except as provided in Section 9.04;
 - (v) the definition of "**Required Lenders**" or "**Pro Rata Share**" in Section 1.01;
 - (vi) the provisions of Article 4, Article 6, Article 10 or Section 11.03; and
 - (vii) this Section 12.01.
- (2) Except for the matters described in Section 12.01(1) above, any amendment to this Agreement shall be effective if made between the Borrower and the Required Lenders, and for greater certainty any such amendment which is agreed to by the Required Lenders shall be final and binding upon all Lenders.
- (3) Except for the matters which require the unanimous consent of the Lenders as set out above, and except as otherwise expressly provided in this Agreement, any

action to be taken or decision to be made by the Lenders pursuant to this Agreement (specifically including for greater certainty any decision regarding compliance with Article 6, the issuance of written notice to the Borrower of the occurrence of an Event of Default, the issuance of a demand for payment of the Outstanding Obligations, the provision of any waiver in respect of an Event of Default, the waiver of any condition precedent to a Borrowing, or the issuance of any consent) shall be effective if approved by the Required Lenders; and any such decision or action shall be final and binding upon all the Lenders.

- (4) Any action to be taken or decision to be made by the Lenders pursuant to this Agreement which is required to be unanimous shall be made at a meeting of the Lenders called by the Agent pursuant to Section 12.06(11) or by a written instrument executed by all of the Lenders. Any action to be taken or decision to be made by the Lenders pursuant to this Agreement which is required to be made by the Required Lenders shall be made at a meeting of the Lenders called by the Agent pursuant to Section 12.06(11) or by a written instrument executed by the Required Lenders. Any such instrument may be executed by fax or pdf and in counterparts. The Credit Parties shall be entitled to rely upon each such written instrument as *prima facie* evidence of authorization for such action or decision, as the case may be, without any requirement for independent inquiry.

12.02 Security

- (1) Except to the extent provided in Section 12.02(2), the Security shall be granted in favour of and held by the Agent for and on behalf of the Lenders in accordance with the provisions of this Agreement. The Agent shall, in accordance with its usual practices in effect from time to time, take all steps required to perfect and maintain the Security, including: filing renewals and change notices in respect of such Security; and ensuring that the name of the Agent is noted on all property insurance policies covering the Security to the extent required herein. If the Agent becomes aware of any matter concerning the Security which it considers to be material, it shall promptly inform the Lenders. The Agent shall comply with all instructions provided by the Lenders in connection with the enforcement or release of the Security which it holds. The Agent agrees to permit each Lender to review and make photocopies of the original documents comprising the Security from time to time upon reasonable notice.
- (2) If the Borrower has provided security in favour of any Lender directly, except for Purchase-Money Security Interests, such Lender agrees to pay to the Agent all amounts received by it in connection with the enforcement of such security, and all such amounts shall be deemed to constitute Proceeds of Realization and shall be dealt with as provided in Section 12.03.

12.03 Application of Proceeds of Realization

Notwithstanding any other provision of this Agreement, the Proceeds of Realization of the Security or any portion thereof shall be distributed in the following order:

- (1) firstly, in payment of all costs and expenses incurred by the Agent and the Lenders in connection with such realization, including legal, accounting and receivers' fees and disbursements;
- (2) secondly, against the Outstanding Obligations, each Lender being entitled to receive its Pro Rata Share thereof, provided if the applicable Outstanding Obligations arise from a Letter of Credit the said proceeds shall be held by the L/C Lender for set off against the liability of the Borrower to the L/C Lender in respect of the applicable Letter of Credit. The L/C Lender shall credit the Borrower with interest on such proceeds at the prevailing rate for comparative term deposits maturing on the date which is the earlier of the date (i) that payment is made by the L/C Lender to any Person named in such Letter of Credit, and (ii) the expiry of such Letter of Credit. Upon the expiry of such Letter of Credit with no claim being made thereunder, proceeds which had been held as collateral security shall be applied against any remaining Outstanding Obligations, each Lender being entitled to receive its Pro Rata Share thereof; and
- (3) thirdly, if all obligations of the Borrower listed above have been paid and satisfied in full, then, subject to Applicable Law, any surplus Proceeds of Realization shall be paid to the Borrower.

12.04 Payments by Agent

- (1) The following provisions shall apply to all payments made by the Agent to the Lenders hereunder:
 - (i) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower;
 - (ii) if the Agent receives a payment of principal, interest, fees or other amount owing by the Borrower under a Credit Facility which is less than the full amount of any such payment due, the Agent shall distribute such amount received among the Lenders under such Facility in each Lender's Pro Rata Share of such Facility;
 - (iii) if the Agent receives payments in respect of principal, interest, fees or other amounts owing by the Borrower under more than one Credit Facility which are due on the same day, and if the amounts received are insufficient to satisfy all payments required under such Credit Facilities on such day, the Agent shall distribute such amounts received among the Lenders under such Credit Facilities in each Lender's Pro Rata Share of such Facilities;
 - (iv) if any Lender has advanced more or less than its Pro Rata Share of its Authorized Limit under a Credit Facility, such Lender's entitlement to

such payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;

- (v) if a Lender's Pro Rata Share of a Borrowing under a Credit Facility has been advanced for less than the full period to which any payment by the Borrower relates, such Lender's entitlement to receive a portion of any payment of interest or fees shall be reduced in proportion to the length of time such Lender's Pro Rata Share has actually been outstanding (unless such Lender has paid all interest required to have been paid by it to the Agent pursuant to the CBA Model Provisions);
 - (vi) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall be deemed to be *prima facie* correct;
 - (vii) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein;
 - (viii) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set out herein unless notice to the contrary is received by the Agent from such Lender; and
 - (ix) if the Agent has received a payment from the Borrower on a Business Day (not later than the time required for the receipt of such payment as set out in this Agreement) and fails to remit such payment to any Lender entitled to receive its Pro Rata Share of such payment on such Business Day, the Agent agrees to pay interest on such late payment at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation.
- (2) The Borrower hereby irrevocably authorizes the Agent and the Lenders to debit any account maintained by it with the Agent or the Lenders in order to make payments to the Lenders as contemplated herein, if the Borrower has not paid such amount within one (1) Business Day after receipt from the Agent of a written request for such payment.
- (3) The Agent may in its discretion from time to time make adjustments in respect of any Lender's share of a Borrowing or Repayment under a Credit Facility in order that the Outstanding Borrowings due to such Lender under such Facility shall be approximately in accordance with such Lender's Pro Rata Share of the Facility.

12.05 Protection of Agent

- (1) Unless the Agent has actual knowledge or actual notice to the contrary, it may assume that each Lender's address set out in Section 14.01 is correct, unless and until it has received from such Lender a notice designating a different address.

- (2) The Agent may engage and pay reasonable amounts for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained (and to the extent that such costs are not recovered from the Borrower pursuant to this Agreement, each Lender agrees to reimburse the Agent in such Lender's Applicable Percentage of such costs).
- (3) Unless the Agent has actual knowledge or actual notice to the contrary, it may rely as to matters of fact which might reasonably be expected to be within the knowledge of the Borrower upon a statement contained in any Loan Document.
- (4) Unless the Agent has actual knowledge or actual notice to the contrary, it may rely upon any communication or document believed by it to be genuine.
- (5) The Agent may refrain from exercising any right, power or discretion vested in it under this Agreement unless and until instructed by the Required Lenders as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised (provided that such instructions shall be required to be provided by all of the Lenders in respect of any matter for which the unanimous consent of the Lenders is required as set out herein).
- (6) The Agent may refrain from exercising any right, power or discretion vested in it which would or might in its opinion in its sole discretion be contrary to any law of any jurisdiction or any directive or otherwise render it liable to any Person, and may do anything which is in its opinion in its sole discretion necessary to comply with any such law or directive.
- (7) The Agent may delegate to such other Person, such duties and responsibilities of the Agent hereunder as it shall determine to be appropriate in respect of dealings with or relating to the Borrower or any other Person.
- (8) The Agent may refrain from acting in accordance with any instructions of the Required Lenders to begin any legal action or proceeding arising out of or in connection with this Agreement or take any steps to enforce or realize upon any Security, until it shall have received such security as it may reasonably require (whether by way of payment in advance or otherwise) against all costs, claims, expenses (including legal fees) and liabilities which it will or may expend or incur in complying with such instructions.
- (9) The Agent shall not be bound to disclose to any Person any information relating to the Borrower if such disclosure would or might in its opinion in its sole discretion constitute a breach of any law or regulation or be otherwise actionable at the suit of any Person.
- (10) The Agent shall not accept any responsibility for the accuracy and/or completeness of any information supplied in connection herewith or for the legality, validity, effectiveness, adequacy or enforceability of any Loan Document

and shall not be under any liability to any Lender as a result of taking or omitting to take any action in relation to any Loan Document except in the case of the Agent's negligence or wilful misconduct.

12.06 Duties of Agent

The Agent shall:

- (1) hold and maintain the Security to the extent provided in Section 12.02;
- (2) provide to each Lender copies of all financial information received from the Borrower promptly after receipt thereof, and copies of any Draw Requests, Repayment Notices and other notices received by the Agent from the Borrower upon request by any Lender;
- (3) promptly advise each Lender of Borrowings required to be made by it hereunder and disburse all Repayments to the Lenders hereunder in accordance with the terms of this Agreement;
- (4) promptly notify each Lender of the occurrence of any Event of Default of which the Agent has actual knowledge or actual notice;
- (5) at the time of engaging any agent, receiver, receiver-manager, consultant, monitor or other party in connection with the Security or the enforcement thereof, obtain the agreement of such party to comply with the applicable terms of this Agreement in carrying out any such enforcement activities and dealing with any Proceeds of Realization;
- (6) account for any monies received by it in connection with this Agreement, the Security and any other agreement delivered in connection herewith or therewith;
- (7) each time the Borrower requests the written consent of the Lenders in connection with any matter, use its best efforts to obtain and communicate to the Borrower the response of the Lenders in a reasonably prompt and timely manner having due regard to the nature and circumstances of the request;
- (8) give written notice to the Borrower in respect of any other matter in respect of which notice is required in accordance with or pursuant to this Agreement, promptly or promptly after receiving the consent of the Lenders, if required under the terms of this Agreement;
- (9) except as otherwise provided in this Agreement, act in accordance with any instructions given to it by the Required Lenders;
- (10) if so instructed by the Required Lenders, refrain from exercising any right, power or discretion vested in it under this Agreement or any document incidental thereto; and

- (11) call a meeting of the Lenders at any time not earlier than five (5) days and not later than thirty (30) days after receipt of a written request for a meeting provided by any Lender or at its own behest.

12.07 Lenders' Obligations Several; No Partnership

The obligations of each Lender under this Agreement are several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders of any of their respective obligations hereunder. No Lender shall be responsible for the obligations of any other Lender hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership. Each Lender may lend money to and have business dealings with the Borrower and its Affiliates outside the scope of this Agreement, provided that any security held by such Lender in respect of the assets of the Borrower shall be held by such Lender in trust for the Agent and any proceeds from the realization of such security shall constitute Proceeds of Realization as provided herein.

12.08 Sharing of Information

The Agent and the Lenders may share among themselves any information they may have from time to time concerning the Credit Parties whether or not such information is confidential; but shall have no obligation to do so (except for any obligations of the Agent to provide information to the extent required in this Agreement).

12.09 Acknowledgement by Credit Parties

Each Credit Party hereby acknowledges notice of the terms of the provisions of this Article 12 and agrees to be bound hereby to the extent of its obligations hereunder, and further agrees not to make any payments, take any action or omit to take any action which would result in the non-compliance by the Agent or any Lender with its obligations hereunder.

12.10 Amendments to Article 12

The Agent and the Lenders may amend any provision in this Article 12 without prior notice to or the consent of the Borrower, and the Agent shall provide a copy of any such amendment to the Borrower reasonably promptly thereafter; provided however if any such amendment would materially adversely affect any rights, entitlements, obligations or liabilities of the Borrower, such amendment shall not be effective until the Borrower has received written notice thereof and has provided its written consent thereto, such consent not to be unreasonably withheld or arbitrarily delayed.

12.11 Deliveries

As between the Borrower on the one hand, and the Agent and the Lenders on the other hand:

- (1) all statements, certificates, consents and other documents which the Agent purports to deliver to the Borrower on behalf of the Lenders shall be binding on each of the Lenders, and the Borrower shall not be required to ascertain or confirm the authority of the Agent in delivering such documents;

- (2) all certificates, statements, notices and other documents which are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each of the Lenders; and
- (3) all payments which are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each of the Lenders.

ARTICLE 13 CBA MODEL PROVISIONS

13.01 CBA Model Provisions Incorporated by Reference

The CBA Model Provisions (except for the footnotes contained therein) form part of this Agreement and are incorporated herein by reference, subject to the following variations:

- (1) Each term set out below which is used as a defined term in the CBA Model Provisions shall be deemed to have been replaced as set out below; and for greater certainty the said replacement term shall have the meaning ascribed thereto in Section 1.01 of this Agreement:
 - (i) “**Commitment**” shall be replaced by “**Authorized Limit**”;
 - (ii) “**Loans**” shall be replaced by “**Borrowings**”;
 - (iii) “**Obligors**” shall be replaced by “**Credit Parties**” (and all necessary changes required by the context shall be deemed to have been made); and
 - (iv) “**Provisions**” shall be replaced by “**CBA Model Provisions**”.
- (2) The definitions of the following terms in the CBA Model Provisions shall be replaced with the definitions set out below:
 - (i) “**Agreement**” means this credit agreement and the schedules hereto, and any amendments or supplements to or restatements of this credit agreement or the schedules at any time and from time to time.
 - (ii) “**Applicable Percentage**” means “**Pro Rata Share**” as defined in Subsection 1.01(122).
 - (iii) “**Default**” means any of the events described in Section 10.01 of this Agreement regardless of whether any requirement in connection with such event for the giving of notice, the lapse of time, or both, has been satisfied or met.
 - (iv) “**Issuing Bank**” means the L/C Lender which is issuing Letters of Credit on its own behalf and not on behalf of other Lenders.

- (v) “**Persons**” includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof and any other incorporated or unincorporated entity.
 - (vi) “**Related Parties**” means, with respect to any Person, such Person’s Affiliates and associates, and the directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates and associates (the term “**associate**” having the meaning ascribed thereto in the *Canada Business Corporations Act*).
 - (vii) “**Taxes**” includes all present and future income, corporation, capital gains, capital, value-added, goods and services taxes and other taxes, levies, imposts, stamp taxes, duties, charges to tax, fees, deductions, withholdings and all penalties, interests and other payments on or in respect thereof.
- (3) Subclause 3.2(f) of the CBA Model Provisions is hereby deleted.
- (4) Subclause 3.5 of the CBA Model Provisions is hereby deleted and replaced with the following:

3.5 Inability to Determine Rates Etc.

- (a) If the Administrative Agent or Lenders determine that for any reason a market for Bankers’ Acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell Bankers’ Acceptances or perform their other obligations under this Agreement with respect to Bankers’ Acceptances, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the Borrower’s right to request the acceptance of Bankers’ Acceptances shall be and remain suspended until the Lenders determine and the Administrative Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. Any notice of drawdown or rollover in respect of a Bankers’ Acceptance which is outstanding shall be cancelled and any outstanding notice of conversion to convert a Prime Rate Loan into a Bankers’ Acceptance shall be cancelled and the request for a drawdown or rollover by means of Bankers’ Acceptance shall be deemed to be a request for a drawdown of, or rollover to, a Prime Rate Loan in the face amount of the requested Bankers’ Acceptance.
- (b) If a Market Disruption Event occurs for the Required Lenders, which Lenders shall have aggregate Authorized Limits representing at least 66.7% of the total Authorized Limit (the “**Requisite Disruption Lenders**”), in relation to a Prime Rate Loan, or Bankers’ Acceptance for any period, then the rate of interest on such Prime Rate Loan or Bankers’ Acceptance for such period (which, in any event, will not commence prior to the date the Borrower is notified in writing of such Market Disruption

Event) for such Requisite Disruption Lenders shall be the rate per annum which is the sum of:

- (i) the applicable rate set in Article 5 hereof for such Prime Rate Loan or Bankers' Acceptance or such period; plus
- (ii) the rate notified by such Requisite Disruption Lenders to the Borrower as soon as practicable and, in any event, before interest is due to be paid in respect of that period, to be that which expresses as a percentage rate per annum the cost to such Lenders of funding the Prime Rate Loan or Bankers' Acceptance from whatever source they may reasonably select.

If a Market Disruption Event occurs with respect to Requisite Disruption Lenders and such Requisite Disruption Lenders, the Administrative Agent or the Borrower so requires, such Requisite Disruption Lenders, the Borrower and the Administrative Agent shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing on a substitute basis for determining the rate of interest applicable in respect of such Requisite Disruption Lenders. Any alternative basis agreed pursuant to this Section 3.5(b) for such Requisite Disruption Lenders shall be binding on all such parties, it being agreed that such alternative basis shall apply only to such Requisite Disruption Lenders. In the absence of such agreement, the rate of interest applicable to any such Lender shall be the rate provided for above in this Section 3.5(b). If a Market Disruption Event occurs with respect to Requisite Disruption Lenders at any time, the Borrower may request that any outstanding notice of drawdown by way of, or rollover of Bankers' Acceptance be deemed to be a request for a drawdown of, or conversion to, a Prime Rate Loan and that any outstanding notice of conversion to convert a Prime Rate Loan into a Bankers' Acceptance shall be cancelled.

- (5) Subclause 5.3(y) of the CBA Model Provisions is hereby deleted.
- (6) The consultation rights of the Borrower in subclause 7.7(a) are hereby deleted.
- (7) The reference in subclause 10.2(d) of the CBA Model Provisions to "**Administrative Agent**" is deleted and replaced by "**Required Lenders**".
- (8) The parties hereby acknowledge and agree that
 - (i) the indemnity contained in clause 9.2(iii) of the CBA Model Provisions is in addition to and not in substitution for the environmental indemnity contained herein, and
 - (ii) the processing and recording fee payable to the Agent pursuant to clause 10.2(f) shall be deemed to be \$5,000 per each such assignment.

13.02 Conflict with CBA Model Provisions

If there is any conflict or inconsistency between the CBA Model Provisions and the other terms of this Agreement, the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

ARTICLE 14 GENERAL

14.01 Notices

Any notice, request or other communication hereunder to any of the parties hereto shall be issued in accordance with the CBA Model Provisions to the respective address or by facsimile to the number and to the attention of the person set forth below:

- (1) In the case of the Borrower:

2352107 Ontario Inc.
1275 Finch Avenue West, Suite 803
Toronto, ON, M3J 2B1

Attention: Jordan Teperman
E-Mail: jordan.teperman@havendevelopments.ca

with a copy to:

Torkin Manes LLP
1500-151 Yonge St.
Toronto, Ontario M5C 2W7

Attention: Aaron English
Facsimile: 416 643 8811
E-Mail: aenglish@torkinmanes.com

- (2) In the case of the Corporate Guarantors:

Haven Property Development Inc.
1275 Finch Avenue West, Suite 803
Toronto, ON, M3J 2B1

Attention: Jordan Teperman
E-Mail: jordan.teperman@havendevelopments.ca

Windsor Private Capital Limited Partnership
28 Hazelton Avenue, Suite 200

Toronto, Ontario M5R 2E2

Attention: John Cundari
E-Mail: john.cundari@windsorgp.com

- (3) In the case of the Agent:
National Bank of Canada, as Agent
130 King Street West, 29th Floor
Toronto, ON, M5X 1J9

Attention: Commercial Banking, Real Estate Financing
Facsimile: 416-864-1111

with a copy to:

Schneider Ruggiero Spencer Milburn LLP
120 Adelaide Street West, Suite 1000
Toronto, ON M5H 3V1

Attention: David Markowitz
Facsimile: (416) 363-0645

- (4) In the case of any Lender, at its address noted in Schedule 1.01(14).

14.02 Survival of Certain Obligations despite Termination of Agreement

The termination of this Agreement shall not relieve the Borrower from its obligations to the Agent and the Lenders arising prior to such termination, such as obligations arising as a result of or in connection with any breach of this Agreement, any failure to comply with this Agreement or the inaccuracy of any representations and warranties made or deemed to have been made prior to such termination, and obligations arising pursuant to all indemnity obligations contained herein. Without limiting the generality of the foregoing, the obligations of the Borrower to the Agent and the Lenders arising under or in connection with Section 11.03 herein and Sections 3, 7.5 and 9 of the CBA Model Provisions shall continue in full force and effect despite any termination of this Agreement.

14.03 Interest on Unpaid Costs and Expenses

If the Borrower fails to pay when due any amount in respect of costs or expenses incurred by the Agent or any other amount incurred by the Agent and required to be paid by it hereunder (other than principal or interest in respect of any Borrowing), the Borrower agrees to pay interest on such unpaid amount from the time such amount is due until paid at the rate equal to the highest rate of interest then applicable under the Credit Facilities.

14.04 Further Assurances

The Borrower shall from time to time, at its expense, promptly execute and deliver or cause to be executed and delivered to the Agent upon request, acting reasonably, all such other and further documents, promissory notes, agreements, opinions, certificates and instruments in compliance with this Agreement, or if necessary or desirable to more fully record or evidence the obligations intended to be entered into herein, or to make any recording, file any notice or obtain any consent.

14.05 Waivers and Amendments

Subject to Section 12.01(2) and Section 12.10, no provision of this Agreement, or any other document or instrument in existence among the parties may be modified, waived or terminated except by an instrument in writing executed by the party against whom such modification, waiver or termination is sought to be enforced.

14.06 No Set-Off or Counterclaim

The obligations of the Borrower and the Guarantors to make payments hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, compensation, counterclaim, recoupment, defence or other right which the Borrower or the Guarantors may have against the Agent or any Lender.

14.07 Tombstone Marketing

For the purpose of “tombstone marketing”, the Borrower hereby authorizes and consents to the reproduction, disclosure and use by the Lenders and the Agent of its name, identifying logo and the Facilities to enable the Lenders to publish promotional “tombstones”. The Borrower acknowledges and agrees: that the Lenders shall be entitled to determine, in their discretion, whether to use such information; that no compensation will be payable by the Lenders or the Agent in connection therewith; and that the Lenders and the Agent shall have no liability whatsoever to it or any of its employees, officers, directors, affiliates or shareholders in obtaining and using such information as contemplated herein.

14.08 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Further, if any provision hereof is determined to be void, voidable or unenforceable in whole or in part, such provision shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it is determined to be void, voidable or unenforceable.

14.09 Time of Essence

Time shall, in all respects, be of the essence of this Agreement.

14.10 Entire Agreement

This Agreement, together with any Security or other instrument contemplated hereby, constitutes the entire agreement between the parties with respect to the matters covered hereby and supersedes any other prior agreements or representations.

14.11 Law Governing

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

14.12 Expenses of Agent and Lenders

Whether or not the transactions contemplated by this Agreement are completed or any Borrowing has been advanced, the Borrower hereby agrees to pay within five (5) Business Days of written demand (which demand shall enclose a copy of the applicable invoice or shall set forth such charges, expenses or other amounts payable in reasonable detail) by the Agent from time to time all reasonable costs, expenses or other amounts incurred by the Agent or any Lender in connection with this Agreement, any other Loan Document and all documents contemplated hereby, specifically including: (i) expenses incurred by the Agent and the Lenders in respect of due diligence, appraisals, insurance consultations, credit reporting and responding to demands of any Governmental Authority, (ii) all reasonable legal costs and expenses in connection with the preparation and interpretation of this Agreement, any other Loan Document and the administration of the Credit Facilities generally (including the preparation of waivers and partial discharges of any Security Interests created under the Security), and (iii) all reasonable expenses of advisors and consultants to the Agent or Lenders (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of the Security or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Credit Party or any of its Affiliates, in each of the foregoing events whether under any Insolvency Legislation. The Borrower hereby authorizes the Agent to debit its accounts in order to pay any such costs, expenses or other amounts if such amount is not paid in full when due.

14.13 Paramountcy/Conflict

In the event that there is any inconsistency or conflict between the provisions contained in this Agreement and the provisions contained in any Loan Document, the provisions of this Agreement shall have priority over and shall override the provisions contained in the other document to the extent of the inconsistency or conflict. The terms and provisions of any Discussion Paper issued by the National Bank of Canada to the Borrower are superseded entirely by the terms and conditions of this Agreement and the said Discussion Paper is of no further force or effect. No Loan Document shall be required by the Lender except as contemplated in this Agreement, no assignment of the Credit Facilities shall be permitted except as contemplated in this Agreement and the interest rate(s) payable under the Loan Documents shall not exceed the interest rate(s) payable under this Agreement. Provided, however, that the existence of a

particular representation, warranty, covenant or other provision in a Loan Document which is not contained in this Agreement shall not be deemed to be an inconsistency or conflict. In the event that there is any inconsistency or conflict between the various provisions contained in this Agreement, the Agent shall determine in its sole discretion which provisions shall prevail.

14.14 Judgment Currency

The obligations of the Borrower and the Guarantors pursuant to this Agreement to make payments in a specific currency (the “**Contractual Currency**”) shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any other currency except to the extent to which such tender or recovery shall result in the effective receipt by the Agent of the full amount of the Contractual Currency payable or expressed to be payable under this Agreement. Accordingly, the obligations of the Borrower shall be enforceable as an alternative or additional cause of action for the purpose of recovering the other currency of the amount (if any) by which such effective receipt shall fall short of the Contractual Currency payable or expressed to be payable under this Agreement and shall not be effected by judgment being offered for any other sum due under this Agreement.

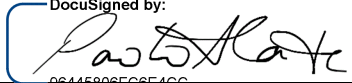
14.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns; and “successor” includes any corporation resulting from the amalgamation of any party with any other corporation.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

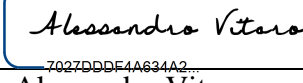
IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

2352107 ONTARIO INC.

Per: 
DocuSigned by: 96445806FC8E4CC...

Name: Paolo Abate

Title: Secretary

Per: 
DocuSigned by: 7027DDDF4A634A2...

Name: Alessandro Vitaro

Title: President

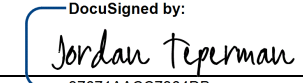
I/We have authority to bind the corporation

HAVEN PROPERTY DEVELOPMENT INC.

Per: 
DocuSigned by: 196445806FC8E4CC...

Name: Paolo Abate

Title: Chief Executive Officer

Per: 
DocuSigned by: 376711ACC7364DB

Name: Jordan Teperman

Title: Executive Vice President

I/We have authority to bind the corporation

**WPC GP I INC., IN ITS CAPACITY AS
GENERAL PARTNER, ON BEHALF OF
WINDSOR PRIVATE CAPITAL LIMITED
PARTNERSHIP**

Per: 
DocuSigned by: 3E8064E8CA3D43E

Name: Jordan Kupinsky

Title: Vice-President

I have authority to bind the above

**NATIONAL BANK OF CANADA, in its
capacity as administrative agent for the
Lenders**

Per:

DocuSigned by:



2ED550E3AA004F3...

Name:

David Patel

Title:

Director, Commercial Banking Real Estate Finance

DocuSigned by:



9FB4DBAFE16D499...

Name:

Paul Robin


Title:

Senior Manager, Commercial Banking Real Estate
Finance

I/We have authority to bind the Bank.

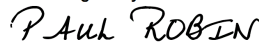
NATIONAL BANK OF CANADA, as a Lender

Per:

DocuSigned by:


Name: 2ED550E3AA004F3... David Patel

Title: Director, Commercial Banking Real Estate Finance

DocuSigned by:


Name: 9FB4DBAFE16D499... Paul Robin

Title: Senior Manager, Commercial Banking Real Estate Finance

I/We have authority to bind the Bank.

**CBA MODEL PROVISIONS, INCLUDING EXHIBITS ATTACHED THERETO:
EXHIBIT A - FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
EXHIBIT B
- INFORMATION TO BE GIVEN TO LOAN PRICING CORPORATION**

The attached model credit agreement provisions, which have been revised under the direction of the Canadian Bankers' Association Secondary Loan Market Specialist Group from provisions prepared by The Loan Syndications and Trading Association, Inc., form part of this Agreement, except for the footnotes to the model credit agreement provisions, if any.

MODEL CREDIT AGREEMENT PROVISIONS

1. Definitions

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agreement**” means the credit agreement of which these Provisions form part.

“**Applicable Law**” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

“**Applicable Percentage**” means with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be the percentage of the total outstanding Loans and participations in respect of Letters of Credit represented by such Lender's outstanding Loans and participations in respect of Letters of Credit.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of EXHIBIT A or any other form approved by the Administrative Agent.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have corresponding meanings.

“Default” means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

“Eligible Assignee” means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor), in respect of which any consent that is required by Section 10.2 has been obtained.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located and (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Borrower under Section 3.3(b), (ii) an assignee pursuant to an Assignment and Assumption made when an Event of Default has occurred and is continuing or (iii) any other assignee to the extent that the Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is not imposed or assessed in respect of a Loan that was made on the premise that an exemption from such withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Loan Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 3.2(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from an Obligor with respect to such withholding tax pursuant to Section 3.2(a). For greater certainty, for purposes of item (c) above, a withholding tax includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the *Income Tax Act* (Canada) or any successor provision thereto.

“Foreign Lender” means any Lender that is not organized under the laws of the jurisdiction in which the Borrower is resident for tax purposes and that is not otherwise

considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Governmental Authority” means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Issuing Bank” means the Person named elsewhere in this Agreement as the issuer of Letters of Credit on the basis that it is “fronting” for other Lenders and not on the basis that it is the attorney of other Lenders to sign Letters of Credit on their behalf, or any successor issuer of Letters of Credit. For greater certainty, where the context requires, references to “Lenders” in these Provisions include the Issuing Bank.

“Loan” means any extension of credit by a Lender under this Agreement, including by way of bankers’ acceptance or LIBO Rate Loan, except for any Letter of Credit or participation in a Letter of Credit.

“Obligors” means, collectively, the Borrower and each of the guarantors of the Borrower’s obligations that are identified elsewhere in this Agreement.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning assigned to such term in Section 10.4.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Provisions” means these model credit agreement provisions.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

2. Terms Generally

2.1 The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in these Provisions to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, these Provisions, but all such references elsewhere in this Agreement shall be construed to refer to this Agreement apart from these Provisions, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

2.2 If there is any conflict or inconsistency between these Provisions and the other terms of this Agreement, the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

3. Yield Protection

3.1 Increased Costs

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets

of, deposits with or for the account of, or credit extended or participated in by, any Lender;

- (ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 3.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or
- (iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then upon request of such Lender the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

- (b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.
- (c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.
- (d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not

be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

3.2 Taxes

- (a) Payments Subject to Taxes. If any Obligor, the Administrative Agent, or any Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Obligor shall make any such deductions required to be made by it under Applicable Law and (iii) the Obligor shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.
- (b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.
- (c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.
- (d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

- (e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, (a) any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements, and (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) or any successor provision thereto shall within five days thereof notify the Borrower and the Administrative Agent in writing.
- (f) Treatment of Certain Refunds and Tax Reductions. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

3.3 Mitigation Obligations: Replacement of Lenders

- (a) Designation of a Different lending office. If any Lender requests compensation under Section 3.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to

Section 3.2, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

- (b) Replacement of Lenders. If any Lender requests compensation under Section 3.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, if any Lender's obligations are suspended pursuant to Section 3.4 or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon 10 days' notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10), all of its interests, rights and obligations under this Agreement and the related other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:
- (i) the Borrower pays the Administrative Agent the assignment fee specified in Section 10.2(f);
 - (ii) the assigning Lender receives payment of an amount equal to the outstanding principal of its Loans and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
 - (iii) in the case of any such assignment resulting from a claim for compensation under Section 3.1 or payments required to be made pursuant to Section 3.2, such assignment will result in a reduction in such compensation or payments thereafter; and
 - (iv) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3.4 Illegality

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make or maintain any Loan (or to maintain its obligation to make any Loan), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Loans, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

3.5 Inability to Determine Rates Etc.

If the Required Lenders determine that for any reason a market for bankers' acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell bankers' acceptances or perform their other obligations under this Agreement with respect to bankers' acceptances, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the Borrower's right to request the acceptance of bankers' acceptances shall be and remain suspended until the Required Lenders determine and the Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or that the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

4. Right of Set off

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any

demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmaturing or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 4, it shall share the benefit received in accordance with Section 5 as if the benefit had been received by the Lender of which it is an Affiliate.

5. Sharing of Payments by Lenders

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Loans and accrued interest thereon or other obligations hereunder greater than its pro rata share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that

- 5.1 if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest,
- 5.2 the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and
- 5.3 the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Obligor rights of setoff and counterclaim and similar rights of Lenders with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

6. Administrative Agent's Clawback

6.1 Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Administrative Agent such Lender's share of such advance, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such advance. If the Lender does not do so forthwith, the Borrower shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Administrative Agent.

6.2 Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation.

7. Agency

- 7.1 Appointment and Authority. Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Person identified elsewhere in this Agreement as the Administrative Agent to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Obligor shall have rights as a third party beneficiary of any of such provisions.
- 7.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent and without any duty to account to the Lenders.
- 7.3 Exculpatory Provisions
- (a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:
- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
 - (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and
 - (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its

Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.

- (b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Administrative Agent by the Borrower or a Lender.
- (c) Except as otherwise expressly specified in this Agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

7.4 Reliance by Administrative Agent

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

7.5 Indemnification of Administrative Agent

Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not

jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

7.6 Delegation of Duties

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent from among the Lenders (including the Person serving as Administrative Agent) and their respective Affiliates. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Administrative Agent shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

7.7 Replacement of Administrative Agent

- (a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario, or an Affiliate of any such Lender with an office in Toronto. The Administrative Agent may also be removed at any time by the Required Lenders upon 30 days' notice to the Administrative Agent and the Borrower as long as the Required Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, or an Affiliate of any such Lender with an office in Toronto.
- (b) If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in Section (a), provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders

under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in the preceding subsection.

- (c) Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding subsection). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Section 7 and of Section 9 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

7.8 Non-Reliance on Administrative Agent and Other Lenders

Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

7.9 Collective Action of the Lenders

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the

Administrative Agent with the prior written agreement of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

7.10 No Other Duties. etc.

Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

8. Notices: Effectiveness; Electronic Communication

8.1 Notices Generally

Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 8.2 below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 8.2 below, shall be effective as provided in said Section 8.2.

8.2 Electronic Communications

Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender of Loans to be made or Letters of Credit to be issued if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing subsection (i) of notification that such notice or communication is available and identifying the website address therefor.

8.3 Change of Address, Etc.

Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

9. Expenses; Indemnity; Damage Waiver

9.1 Costs and Expenses

The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

9.2 Indemnification by the Borrower

The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation

or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Sections 3.1, 3.2 and 9.1.

9.3 Reimbursement by Lenders

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Section 9.1 or 9.2 to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Bank in connection with such capacity. The obligations of the Lenders under this Section 9.3 are subject to the other provisions of this Agreement concerning several liability of the Lenders.

9.4 Waiver of Consequential Damages, Etc.

To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

9.5 Payments

All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Administrative Agent or a Lender setting forth the amount or amounts owing to the Administrative Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

10. Successors and Assigns

10.1 Successors and Assigns Generally

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.2, (ii) by way of participation in accordance with the provisions of Section 10.4, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.6 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.4 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

10.2 Assignments by Lenders

Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that:

- (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of a revolving facility, or \$1,000,000, in the case of any assignment in respect of a term facility, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise

consent to a lower amount (each such consent not to be unreasonably withheld or delayed);

- (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this subsection (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-pro rata basis;
- (c) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Bank (such approval not to be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;
- (d) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:
 - (i) in the case of an assignment of a Commitment relating to a revolving credit, the proposed assignee is itself already a Lender with the same type of Commitment,
 - (ii) no Event of Default has occurred and is continuing, and the assignment is of a Commitment relating to a non-revolving credit that is fully advanced, or
 - (iii) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's Investor Services Inc., Standard & Poor's, a division of The McGraw-Hill Companies, Inc. and Dominion Bond Rating Service Limited, respectively;
- (e) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender with the same type of Commitment or a Default has occurred and is continuing; and
- (f) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified elsewhere in this Agreement and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.3, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and

Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3 and 9, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.4. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

10.3 Register

The Administrative Agent shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

10.4 Participations

Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, an Obligor or any Affiliate of an Obligor) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

Subject to Section 10.5, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.2. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4 as though it were a Lender, provided such Participant agrees to be subject to Section 5 as though it were a Lender.

10.5 Limitations upon Participant Rights

A Participant shall not be entitled to receive any greater payment under Sections 3.1 and 3.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.2 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.2(a) as though it were a Lender.

10.6 Certain Pledges

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11. Governing Law: Jurisdiction: Etc.

11.1 Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the Province specified elsewhere in this Agreement and the laws of Canada applicable in that Province.

11.2 Submission to Jurisdiction

Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province specified elsewhere in this Agreement, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.

11.3 Waiver of Venue

Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 11.2. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

12. Waiver of Jury Trial

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. Counterparts: Integration: Effectiveness: Electronic Execution

13.1 Counterparts, Integration: Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in the conditions precedent Section(s) of this Agreement, this Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

13.2 Electronic Execution of Assignments

The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

14. Treatment of Certain Information: Confidentiality

- 14.1 Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than an Obligor.
- 14.2 For purposes of this Section, "Information" means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.
- 14.3 In addition, and notwithstanding anything herein to the contrary, the Administrative Agent may provide the information described on EXHIBIT B concerning the Borrower and the credit facilities established herein to Loan

Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market. EXHIBIT B

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [**Insert name of Assignor**] (the “**Assignor**”) and [**Insert name of Assignee**] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to subsection (i) above (the rights and obligations sold and assigned pursuant to subsection (i) and (ii) above being referred to herein collectively as, the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____

[and is an Affiliate/Approved Fund of [identify Lender]]

3. Borrower(s): _____

4. Administrative Agent: _____, as the administrative agent under the Credit Agreement

5. Credit Agreement: [The [amount] Credit Agreement dated as of _____ among [name of Borrower(s)], the Lenders parties thereto, [name of Administrative Agent], as Administrative Agent, and the other agents parties thereto]

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans	CUSIP Number
	\$	\$	%	
	\$	\$	%	
	\$	\$	%	

7. [Trade Date: _____]

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Title:

[Consented to and] Accepted:

[NAME OF ADMINISTRATIVE AGENT], as Administrative Agent

By: _____
Title:

[Consented to:]

[NAME OF RELEVANT PARTY]

By: _____
Title:

[_____]

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section ___ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan

Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments

From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. General Provisions

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

LOAN MARKET DATA TEMPLATE

Recommended Data Fields - At Close

The items highlighted in bold are those that Loan Pricing Corporation (LPC) deem essential. The remaining items are those that LPC has seen become more prominent over time as transparency has increased in the U.S. Loan Market.

Company Level		Deal Specific	Facility Specific
Issuer Name		Currency/Amount	Currency/Amount
Location		Date	Type
SIC (Cdn)		Purpose	Purpose
Identification Number(s)		Sponsor	Tenor
Revenue		Financial Covenants	Term Out Option
			Expiration Date
		Target Company	Facility Signing Date
Measurement of Risk*		Assignment Language	Pricing
S&P Sr. Debt		Law Firms	Base
S&P Issuer		MAC Clause	Rate(s) Spread(s)/BA/LIBOR
Moody's Sr. Debt		Springing lien	Initial Pricing Level
Moody's Issuer		Cash Dominion	Pricing Grid (tied to, levels)
Fitch Sr. Debt		Mandatory Prepays	Grid Effective Date
Fitch Issuer		Restre'd Payments (Neg Covs)	Fees
S&P Implied (Internal assessment)		Other Restrictions	Participation Fee (tiered also)
DBRS			Commitment Fee
Other Ratings*			Annual Fee
*Industry Classification			Utilization Fee
Moody's Industry			LC Fee(s)
S&P Industry			BA Fee
Parent			Prepayment Fee
Financial Ratios			Other Fees to Market
			Security
			Security/Unsecured
			Collateral and Seniority of Claim
			Collateral Value
			Guarantors
			Lenders Names/Titles
			Lender Commitment(s)
			Committed/Uncommitted

		Distribution method
		Amortization Schedule
		Borrowing Base/Advance Rates
		New Money Amount
		Country of Syndication
		Facility Rating (Loss given default)
		S&P Bank Loan
		Moody's Bank Loan
		Fitch Bank Loan
		DBRS
		Other Ratings

* These items would be considered useful to capture from an analytical perspective

SCHEDULE 1.01(14)

LENDER AUTHORIZED LIMITS

			Column 1	Column 2	Column 3
	Lender	Address for Lender	Term Facility Authorized Limit	L/C Facility Authorized Limit	TOTAL
1.	National Bank of Canada	130 King Street West, 29 th Floor Toronto, ON, M5X 1J9 Attention: Commercial Banking, Real Estate Financing Facsimile: 416-864-1111	\$25,765,000	\$1,000,000	\$26,765,000
Total Authorized Limit:			\$25,765,000	\$1,000,000	\$26,765,000

SCHEDULE 1.01(32)
FORM OF COMPLIANCE CERTIFICATE

TO: National Bank of Canada, as Administrative Agent

Fax: 416-864-1111

Attention: Commercial Banking, Real Estate Financing

Dear Sirs:

I, _____ being the _____ of 2352107 Ontario Inc. (the “**Corporation**”), as borrower, do hereby certify to the Agent and the Lenders, solely in such capacity and without personal liability, the following:

1. This Certificate is delivered pursuant to a credit agreement dated as of July 29, 2022 between the Corporation, as borrower (the “**Borrower**”), Haven Property Development Inc. and Windsor Private Capital Limited Partnership, as guarantors, the National Bank of Canada, as administrative agent (the “**Agent**”), National Bank of Canada and such other lenders as may become parties thereto from time to time, as lenders (collectively, the “**Lenders**”) (as amended, modified, supplemented, restated or replaced from time to time, the “**Credit Agreement**”). Unless otherwise defined herein, all capitalized terms appearing in this Certificate shall have the meaning as are ascribed thereto in the Credit Agreement.
2. I am familiar with and have examined the provisions of the Credit Agreement (including, without limitation, the representations, warranties and other covenants set forth in the Credit Agreement) and have made all appropriate investigations of the records and inquiries of the Senior Officers of the Corporation and the other Credit Parties as I have deemed necessary or useful to allow me to give this Certificate knowledgeably.
3. The attached Financial Statements for the Fiscal Year ending _____ (the “**Reporting Period**”) for the Borrower, present fairly and in all material respects the financial condition of the Borrower and the results of the operations of the Borrower for the Reporting Period, all in accordance with GAAP consistently applied (subject to normal year-end adjustments).
4. With reference to, without limitation, the Financial Statements of the Borrower for the Reporting Period, copies of which have been delivered to the Agent:
 - (a) As at the end of the Reporting Period, the Borrower has duly observed and performed all of its covenants and other agreements and has satisfied every condition in the Credit Agreement and the Loan Documents, to be observed, performed or satisfied by it.
 - (b) The representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in every material respect with the

same effect as if such representations and warranties had been made on and as of the date of this Compliance Certificate (except where stated in the Credit Agreement to be made only as of the Closing Date).

- (c) As at the end of the Reporting Period, [**except to the extent noted in SCHEDULE I attached hereto,**] no Default or Event of Default had occurred and is continuing.
- 5. The information and disclosures provided in all of the schedules to the Credit Agreement or any other Loan Document, as previously updated or corrected, are true and complete in all material respects [, **except to the extent noted in SCHEDULE I attached hereto**].
- 6. Since delivery of the last Compliance Certificate to the date hereof, there has been no Material Adverse Change.

Dated: _____, _____.

Yours truly,

Name:

Title:

SCHEDULE I TO COMPLIANCE CERTIFICATE



SCHEDULE 1.01(108)(XI)

PERMITTED ENCUMBRANCES

General

1. The reservations in the original grant or grants from the Crown, statutory exceptions to title and liens for provincial and municipal taxes, charges, rates and assessments not yet due and payable or which are being contested in good faith by the Borrower.
2. Undetermined or inchoate liens and charges incidental to current construction or current operations which have not been filed or registered according to applicable law against the Borrower or the property and which relate to obligations neither due nor delinquent.
3. Registered utility easements and such other easements, rights of way and other similar rights so long as the use of the property is not materially and adversely affected thereby.
4. Registered agreements with municipalities or public utility or hydro commissions including, without limitation, development agreements, site plan agreements, subdivision agreements and other similar agreements provided same have been complied with.
5. Airport Zoning Regulations, provided same are complied with.
6. Subdivision control by-laws.

PIN 03620-1755(LT):

1. Instrument No. YR3357183, registered on December 16, 2021, being a Transfer for the purpose of transferring the property from The Regional Municipality of York to 2352107 Ontario Inc.

PIN 03620-1756(LT):

1. Instrument No. YR3357183, registered on December 16, 2021, being a Transfer for the purpose of transferring the property from The Regional Municipality of York to 2352107 Ontario Inc.
2. Instrument No. 65R39928, registered on June 23, 2022, being a Plan Reference.
3. Instrument No. YR3443264, registered on June 23, 2022, being an Application for Absolute Title.

PIN 03620-1757(LT):

1. Instrument No. YR3357183, registered on December 16, 2021, being a Transfer for the purpose of transferring the property from The Regional Municipality of York to 2352107 Ontario Inc.
2. Instrument No. YR3357185, registered on December 16, 2021, being a Transfer Easement in favour of The Regional Municipality of York, for the purpose of, amongst other things, granting access to the property for the construction, installation, maintenance, alteration, inspection, repair and operation of a drainage ditch and drainage system.
3. Instrument No. 65R39928, registered on June 23, 2022, being a Plan Reference.
4. Instrument No. YR3443264, registered on June 23, 2022, being an Application for Absolute Title.

PIN 03620-1632(LT):

1. Instrument No. A35401A, registered on November 20, 1959, being a Bylaw regarding Sub-Division Control.
2. Instrument No. YR2007771, registered on July 22, 2013, being a Transfer for the purpose of transferring the property from John Carlisle and Madiana Carlisle to 2352107 Ontario Inc.
3. Instrument No. YR2201826, registered on October 16, 2014, being a Plan Expropriation.
4. Instrument No. YR2892624, registered on November 1, 2018, being a Notice of Vegetation Management Agreement.
5. Instrument No. 65R38199, registered on December 11, 2018, being a Plan Reference.
6. Instrument No. YR2908976, registered on December 11, 2018, being an Application for Absolute Title.
7. Instrument No. YR3305966, registered on August 31, 2021, being a Notice of Pre-Servicing Agreement.
8. The following instruments which shall be postponed to the Charge/Mortgage and Assignment of Rents-General in favour of the Agent as detailed herein and is subject to the priority, postponement and standstill agreement referred to in Section 9.01(14) hereof:
 - (a) Charge/Mortgage registered as Instrument No. YR2719065 in favour of Windsor Private Capital Inc. and the following related instruments:

- i. Postponement of Interest registered as Instrument No. YR2719423 in favour of Windsor Private Capital Inc.;
 - ii. Notice registered as Instrument No. YR2859711 in favour of Windsor Private Capital Inc.;
 - iii. Postponement of Interest registered as Instrument No. YR2859712 in favour of Windsor Private Capital Inc.;
 - iv. Postponement of Interest registered as Instrument No. YR2892626 in favour of The Corporation of the Town of Aurora; and
 - v. Postponement of Interest registered as Instrument No. YR3305968, in favour of The Corporation of the Town of Aurora.
9. The following instruments which shall be postponed to the Charge/Mortgage and Assignment of Rents-General in favour of the Agent as detailed herein and is subject to the priority, postponement and standstill agreement referred to in Section 9.01(15) hereof:
- (a) Charge/Mortgage registered as Instrument No. YR2007795 in favour of Belmont Mortgage Administration Limited, John Carlisle and Madiana Carlisle and the following related instruments:
 - i. Notice of General Assignment of Rents registered as Instrument No. YR2007796 in favour of Belmont Mortgage Administration Limited, John Carlisle and Madiana Carlisle;
 - ii. Transfer of Charge registered as Instrument No. YR2016742 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
 - iii. Notice of General Assignment of Rents registered as Instrument No. YR2016750 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
 - iv. Transfer of Charge registered as Instrument No. YR2022111 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
 - v. Notice of General Assignment of Rents registered as Instrument No. YR2022115 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;

- vi. Transfer of Charge registered as Instrument No. YR2045565 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- vii. Notice of General Assignment of Rents registered as Instrument No. YR2045567 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- viii. Transfer of Charge registered as Instrument No. YR2058634 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- ix. Notice of General Assignment of Rents registered as Instrument No. YR2058636 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- x. Transfer of Charge registered as Instrument No. YR2069587 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xi. Notice of General Assignment of Rents registered as Instrument No. YR2069608; in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xii. Transfer of Charge registered as Instrument No. YR2074608 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xiii. Notice of General Assignment of Rents registered as Instrument No. YR2074612 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xiv. Transfer of Charge registered as Instrument No. YR2086496 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xv. Notice of General Assignment of Rents registered as Instrument No. YR2086499 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xvi. Transfer of Charge registered as Instrument No. YR2096487 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;

- xvii. Notice of General Assignment of Rents registered as Instrument No. YR2096488 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xviii. Transfer of Charge registered as Instrument No. YR2106474 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xix. Notice of General Assignment of Rents registered as Instrument No. YR2106482 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xx. Transfer of Charge registered as Instrument No. YR2114745 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxi. Notice of General Assignment of Rents registered as Instrument No. YR2114749 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxii. Transfer of Charge registered as Instrument No. YR2123188 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxiii. Notice of General Assignment of Rents registered as Instrument No. YR2123192 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxiv. Transfer of Charge registered as Instrument No. YR2127449 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxv. Notice of General Assignment of Rents registered as Instrument No. YR2127453 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxvi. Transfer of Charge registered as Instrument No. YR2135735 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxvii. Notice of General Assignment of Rents registered as Instrument No. YR2135738 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;

- xxviii. Transfer of Charge registered as Instrument No. YR2158541 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxix. Notice of General Assignment of Rents registered as Instrument No. YR2158542 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxx. Transfer of Charge registered as Instrument No. YR2185413 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxxi. Notice of General Assignment of Rents registered as Instrument No. YR2185419 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxxii. Transfer of Charge registered as Instrument No. YR2196761 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxxiii. Notice of General Assignment of Rents registered as Instrument No. YR2196767 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxxiv. Transfer of Charge registered as Instrument No. YR2707266 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxxv. Notice of General Assignment of Rents registered as Instrument No. YR2707267 in favour of Belmont Mortgage Administration Limited, John Carlisle, Madiana Carlisle and Olympia Trust Company;
- xxxvi. Transfer of Charge registered as Instrument No. YR2719412, in favour of Belmont Mortgage Administration Limited and Olympia Trust Company;
- xxxvii. Notice of Assignment of Rents registered as Instrument No. YR2719413 in favour of Belmont Mortgage Administration Limited and Olympia Trust Company;
- xxxviii. Postponement of Interest registered as Instrument No. YR2719423 in favour of Windsor Private Capital Inc.;
- xxxix. Transfer of Charge registered as Instrument No. YR2759211 in favour of Belmont Mortgage Administration Limited and Olympia Trust Company;

- xl. Notice of General Assignment of Rents registered as Instrument No. YR2759212 in favour of Belmont Mortgage Administration Limited and Olympia Trust Company;
- xli. Postponement of Interest registered as Instrument No. YR2859712 in favour of Windsor Private Capital Inc.;
- xlii. Postponement of Interest registered as Instrument No. YR2892625 in favour of The Corporation of the Town of Aurora;
- xliii. Application Change Name Institution registered as Instrument No. YR3245775 in favour of First Mortgage Administration Corp.;
- xliv. Application Change Name Institution registered as Instrument No. YR3245776 in favour of First Mortgage Administration Corp.; and
- xlv. Postponement of Interest registered as Instrument No. YR3305967 in favour of The Corporation of the Town of Aurora.

SCHEDULE 1.01(109)

PERMITTED INDEBTEDNESS

N/A

SCHEDULE 1.01(117)

PROJECT BUDGET SUMMARY

PROJECT BUDGET	\$	\$/u	\$/sq.ft.	%TC	SOURCES OF FUNDS	\$	%TC
Land	10,118,375	389,168	93.63	25%	NBC Loan	25,765,000	64.2%
Hard costs	22,021,334	846,974	203.78	55%	Purchaser Deposits	6,075,061	15.1%
Soft costs	8,020,291	308,473	74.22	20%	Deferred Costs	1,628,505	4.1%
TOTAL COSTS	40,160,000	1,544,615	371.62	100%	Cash Equity	6,691,434	16.7%
Contingency	624,043	24,002	5.77	1.6%	Land Lift	0	0.0%
Sales	41,051,936	1,576,921	439.71	102%			
Projected Profit	891,936	34,305	68.08	2%	TOTAL	40,160,000	100.0%

SCHEDULE 1.01(120)

LEGAL DESCRIPTION OF THE PROJECT LANDS

Certain lands and premises located in the Town of Aurora, Province of Ontario, and legally described as follows:

PIN 03620-1632(LT)

PART LOT 26 CONCESSION 3 WHITCHURCH, PARTS 1 & 2 PLAN 65R38199; TOGETHER WITH AN EASEMENT OVER PART LOT 26, CONCESSION 3 WHITCHURCH, PARTS 3 & 4, PLAN 65R38199 AS IN R408949; TOWN OF AURORA

PIN 03620-1755(LT)

PART LOT 26 CONCESSION 3 WHITCHURCH, PARTS 1, 2, 3 & 4 ON EXPROPRIATION PLAN YR2201826 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5 & 6, 65R38655; TOWN OF AURORA

PIN 03620-1756(LT)

PART LOT 26 CONCESSION 3 WHITCHURCH PART 1 65R39928; TOWN OF AURORA

PIN 03620-1757(LT)

PART LOT 26 CONCESSION 3 WHICHURCH PART 2 65R39928; SUBJECT TO AN EASEMENT IN GROSS AS IN YR3357185; TOWN OF AURORA

SCHEDULE 1.01(128)

REPAYMENT NOTICE

TO: NATIONAL BANK OF CANADA, as administrative agent for the Lenders (the “Agent”)

FROM: 2352107 ONTARIO INC. (the “Borrower”)

RE: Credit agreement dated as of July 29, 2022 between the Borrower, as borrower, Haven Property Development Inc. and Windsor Private Capital Limited Partnership, as guarantors, the Agent, as administrative agent, National Bank of Canada and such other lenders as may become parties thereto from time to time, as lenders (collectively, the “Lenders”) (as amended, modified, supplemented, restated or replaced from time to time, the “Credit Agreement”)

This Repayment Notice is delivered to you pursuant to the provisions of the Credit Agreement. All defined terms set forth in this Repayment Notice shall have the respective meanings set forth in the Credit Agreement.

1. The Borrower hereby irrevocably commits to make a Repayment as follows:

- (a) Credit Facility: _____
- (b) Date of Repayment: _____
- (c) Amount of Repayment: _____
- (d) Type of Borrowing to be repaid: _____

[signature page follows]

[Repayment Notice]

Dated this _____ day of _____, _____.

2352107 ONTARIO INC.

Per:

Name:

Title:

Name:

Title:

I/We have authority to bind the corporation.

SCHEDULE 3.01

DRAW REQUEST

TO: NATIONAL BANK OF CANADA, as administrative agent for the Lenders (the “Agent”)

FROM: 2352107 ONTARIO INC. (the “Borrower”)

RE: Credit agreement dated as of July 29, 2022 between the Borrower, as borrower, Haven Property Development Inc. and Windsor Private Capital Limited Partnership, as guarantors, the Agent, as administrative agent, National Bank of Canada and such other lenders as may become parties thereto from time to time, as lenders (collectively, the “Lenders”) (as amended, modified, supplemented, restated or replaced from time to time, the “Credit Agreement”)

This Draw Request is delivered to you pursuant to the provisions of the Credit Agreement. All defined terms set forth in this Draw Request shall have the respective meanings set forth in the Credit Agreement.

1. The Borrower hereby requests a Borrowing (to be deposited into the Project Operating Account) as follows:
 - (a) Credit Facility: _____
 - (b) Date of Borrowing: _____
 - (c) Amount of Borrowing: _____
 - (d) Type of Borrowing: _____
 - (e) If Letter of Credit requested, schedule setting out requested terms is attached.
2. The Credit Parties hereby jointly and severally certify that as at the date hereof:
 - (a) the representations and warranties in the Credit Agreement are true and correct in all material respects as if made on the date hereof;
 - (b) no Material Adverse Change has occurred and is continuing, nor shall the making of the Borrowing result in the occurrence of a Material Adverse Change; and
 - (c) the Borrower has complied with all of its obligations pursuant to the Credit Agreement.
3. Immediately after such Borrowing, the aggregate amount of the Outstanding Borrowings under all the Credit Facilities will be \$ _____ .

4. (i) The construction progress and work in place, (ii) the Costs of Construction incurred to date in respect of the Project with a line by line comparison against the Project Budget, and (iii) HST paid and rebated to date are attached as Exhibit I.
5. The Hard Costs and the Soft Costs incurred and paid by the Borrower in respect of the Project from _____, 20____ to _____, 20____, are \$_____ and \$_____ respectively and \$_____ in the aggregate as evidenced by supporting documentation attached to this Draw Request.
6. The Cost to Complete in respect of the Project (including hold backs and accounts payable incurred but not being paid out of the requested draw and not due until after next Borrowing) in accordance with the Project Budget and the approved Plans and Specifications is approximately \$_____, which amount does not exceed \$_____, being the aggregate of the undrawn balance of the Term Facility (\$_____) plus any other monies (\$_____) of the Borrower then held by it in cash which the Borrower has confirmed in writing are unconditionally committed for use in paying Project Costs but which have not yet been paid.
7. Holdbacks currently retained in respect of the Project total \$_____.
8. Any Cost Overruns in respect of the Project, including appropriate allowances for ongoing financing charges based on then prevailing financing rates, are less than the contingency amounts set out in the Project Budget.
9. Construction of the Project to the date hereof has been completed in accordance with the Project Budget and in compliance with all material Permits and all applicable zoning and building laws and ordinances and the Plans and Specifications relating to the Project; and all of the work, materials and fixtures customarily furnished and installed at the current stage of construction have been furnished and installed and are of acceptable quality.
10. All accounts payable are paid up to date in connection with the Project.
11. All subcontractors and all other Persons who have supplied materials and services in connection with the Project have received payment in full (except for any permitted holdbacks); and the Borrower has received no notice (verbal or written) of any construction lien or other Security Interest (except a Permitted Encumbrance) claimed or registered against title to the Property.
12. All of the condition precedents to the Borrowing requested in this Draw Request, as specified in Article 6 of the Credit Agreement, have been satisfied including, but not limited to, those reports and documents described therein which are either enclosed or have been delivered separately to the Agent.

[Draw Request]

Dated this _____ day of _____, _____.

2352107 ONTARIO INC.

Per:

Name:

Title:

Name:

Title:

I/We have authority to bind the corporation.

APPENDIX “F”



Rapport Transaction / Transaction report

2352107 ONTARIO INC.

Date de début / Start Date 2022-09-01

Date de fin / End Date 2026-02-28

Facility No / No. Facilité	Facility Name / Nom Facilité	Loan Id / No. Prêt	Option Type / Type Option	Currency / Devise	Calculation Basis / Base de Calcul	Début facturation / Billing Start
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2022-09-09
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2022-10-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2022-10-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2022-11-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2022-12-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2022-12-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-01-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-01-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-02-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-03-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-04-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-05-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-06-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-06-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-07-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-07-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-08-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-09-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-10-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-10-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-11-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-12-01
06001432	CONSTRUCTION LOA	0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2023-12-01

06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-04-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-05-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-06-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-07-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-08-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-09-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-09-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-10-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-10-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-11-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-11-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-11-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-12-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2026-01-01
06001432	CONSTRUCTION LOA 0010044599	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2026-01-01

Fin facturation / Billing End	Début / Start	Fin / End	Days / Jours	Balance / Solde	Variation / Variation	Rate / Taux	Interest / Intérêt
2022-09-30	2022-09-09	2022-09-30	22	8,000,000.00		6.70000000%	32,306.85
2022-10-31	2022-10-01	2022-10-26	26	8,000,000.00	0.00	6.70000000%	38,180.82
2022-10-31	2022-10-27	2022-10-31	5	8,000,000.00	0.00	7.20000000%	7,890.41
2022-11-30	2022-11-01	2022-11-30	30	8,000,000.00	0.00	7.20000000%	47,342.47
2022-12-31	2022-12-01	2022-12-07	7	8,000,000.00	0.00	7.20000000%	11,046.58
2022-12-31	2022-12-08	2022-12-31	24	8,000,000.00	0.00	7.70000000%	40,504.10
2023-01-31	2023-01-01	2023-01-25	25	8,000,000.00	0.00	7.70000000%	42,191.78
2023-01-31	2023-01-26	2023-01-31	6	8,000,000.00	0.00	7.95000000%	10,454.80
2023-02-28	2023-02-01	2023-02-28	28	8,000,000.00	0.00	7.95000000%	48,789.04
2023-03-31	2023-03-01	2023-03-31	31	8,000,000.00	0.00	7.95000000%	54,016.44
2023-04-30	2023-04-01	2023-04-30	30	8,000,000.00	0.00	7.95000000%	52,273.97
2023-05-31	2023-05-01	2023-05-31	31	8,000,000.00	0.00	7.95000000%	54,016.44
2023-06-30	2023-06-01	2023-06-07	7	8,000,000.00	0.00	7.95000000%	12,197.26
2023-06-30	2023-06-08	2023-06-30	23	8,000,000.00	0.00	8.20000000%	41,336.99
2023-07-31	2023-07-01	2023-07-12	12	8,000,000.00	0.00	8.20000000%	21,567.12
2023-07-31	2023-07-13	2023-07-31	19	8,000,000.00	0.00	8.45000000%	35,189.04
2023-08-31	2023-08-01	2023-08-31	31	8,000,000.00	0.00	8.45000000%	57,413.70
2023-09-30	2023-09-01	2023-09-30	30	8,000,000.00	0.00	8.45000000%	55,561.64
2023-10-31	2023-10-01	2023-10-19	19	8,000,000.00	0.00	8.45000000%	35,189.04
2023-10-31	2023-10-20	2023-10-31	12	8,966,216.00	966,216.00	8.45000000%	24,908.89
2023-11-30	2023-11-01	2023-11-30	30	8,966,216.00	0.00	8.45000000%	62,272.21
2023-12-31	2023-12-01	2023-12-07	7	8,966,216.00	0.00	8.45000000%	14,530.18
2023-12-31	2023-12-08	2023-12-27	20	9,209,798.00	243,582.00	8.45000000%	42,642.63

2023-12-31	2023-12-28	2023-12-31	4	12,372,027.00	3,162,229.00	8.45000000%	11,456.84
2024-01-31	2024-01-01	2024-01-28	28	12,372,027.00	0.00	8.45000000%	79,978.73
2024-01-31	2024-01-29	2024-01-31	3	13,124,856.00	752,829.00	8.45000000%	9,090.58
2024-02-29	2024-02-01	2024-02-29	29	13,124,856.00	0.00	8.45000000%	87,875.57
2024-03-31	2024-03-01	2024-03-31	31	13,124,856.00	0.00	8.45000000%	93,935.96
2024-04-30	2024-04-01	2024-04-30	30	13,124,856.00	0.00	8.45000000%	90,905.76
2024-05-31	2024-05-01	2024-05-31	31	13,124,856.00	0.00	8.45000000%	93,935.96
2024-06-30	2024-06-01	2024-06-05	5	13,124,856.00	0.00	8.45000000%	15,150.96
2024-06-30	2024-06-06	2024-06-13	8	13,124,856.00	0.00	8.20000000%	23,524.33
2024-06-30	2024-06-14	2024-06-30	17	13,524,819.00	399,963.00	8.20000000%	51,512.56
2024-07-31	2024-07-01	2024-07-10	10	13,524,819.00	0.00	8.20000000%	30,301.51
2024-07-31	2024-07-11	2024-07-24	14	14,405,695.00	880,876.00	8.20000000%	45,185.08
2024-07-31	2024-07-25	2024-07-31	7	14,405,695.00	0.00	7.95000000%	21,903.73
2024-08-31	2024-08-01	2024-08-05	5	14,405,695.00	0.00	7.95000000%	15,645.53
2024-08-31	2024-08-06	2024-08-27	22	16,445,979.00	2,040,284.00	7.95000000%	78,590.21
2024-08-31	2024-08-28	2024-08-31	4	17,033,392.00	587,413.00	7.95000000%	14,799.51
2024-09-30	2024-09-01	2024-09-04	4	17,033,392.00	0.00	7.95000000%	14,799.50
2024-09-30	2024-09-05	2024-09-30	26	17,033,392.00	0.00	7.70000000%	93,171.73
2024-10-31	2024-10-01	2024-10-10	10	17,033,392.00	0.00	7.70000000%	35,835.28
2024-10-31	2024-10-11	2024-10-23	13	17,712,876.00	679,484.00	7.70000000%	48,444.23
2024-10-31	2024-10-24	2024-10-31	8	17,712,876.00	0.00	7.20000000%	27,876.00
2024-11-30	2024-11-01	2024-11-03	3	17,712,876.00	0.00	7.20000000%	10,453.50
2024-11-30	2024-11-04	2024-11-30	27	18,245,916.00	533,040.00	7.20000000%	96,912.73
2024-12-31	2024-12-01	2024-12-11	11	18,245,916.00	0.00	7.20000000%	39,482.97
2024-12-31	2024-12-12	2024-12-17	6	18,245,916.00	0.00	6.70000000%	20,040.60
2024-12-31	2024-12-18	2024-12-31	14	19,509,352.00	1,263,436.00	6.70000000%	49,999.37
2025-01-31	2025-01-01	2025-01-27	27	19,509,352.00	0.00	6.70000000%	96,691.56
2025-01-31	2025-01-28	2025-01-29	2	20,753,133.00	1,243,781.00	6.70000000%	7,618.96
2025-01-31	2025-01-30	2025-01-31	2	20,753,133.00	0.00	6.45000000%	7,334.66
2025-02-28	2025-02-01	2025-02-28	28	20,753,133.00	0.00	6.45000000%	102,685.36
2025-03-31	2025-03-01	2025-03-12	12	20,753,133.00	0.00	6.45000000%	44,008.01
2025-03-31	2025-03-13	2025-03-31	19	20,753,133.00	0.00	6.20000000%	66,978.61
2025-04-30	2025-04-01	2025-04-10	10	20,753,133.00	0.00	6.20000000%	35,251.90

2025-04-30	2025-04-11	2025-04-30	20	23,459,068.00	2,705,935.00	6.20000000%	79,696.56
2025-05-31	2025-05-01	2025-05-31	31	23,459,068.00	0.00	6.20000000%	123,529.67
2025-06-30	2025-06-01	2025-06-30	30	23,459,068.00	0.00	6.20000000%	119,544.84
2025-07-31	2025-07-01	2025-07-31	31	23,459,068.00	0.00	6.20000000%	123,529.67
2025-08-31	2025-08-01	2025-08-31	31	23,459,068.00	0.00	6.20000000%	123,529.67
2025-09-30	2025-09-01	2025-09-17	17	23,459,068.00	0.00	6.20000000%	67,742.08
2025-09-30	2025-09-18	2025-09-30	13	23,459,068.00	0.00	5.95000000%	49,713.94
2025-10-31	2025-10-01	2025-10-29	29	23,459,068.00	0.00	5.95000000%	110,900.33
2025-10-31	2025-10-30	2025-10-31	2	23,459,068.00	0.00	5.70000000%	7,326.95
2025-11-30	2025-11-01	2025-11-04	4	23,459,068.00	0.00	5.70000000%	14,653.88
2025-11-30	2025-11-05	2025-11-06	2	20,459,068.00	-3,000,000.00	5.70000000%	6,389.96
2025-11-30	2025-11-07	2025-11-30	24	23,809,068.00	3,350,000.00	5.70000000%	89,235.08
2025-12-31	2025-12-01	2025-12-31	31	23,809,068.00	0.00	5.70000000%	115,261.98
2026-01-31	2026-01-01	2026-01-14	14	23,809,068.00	0.00	5.70000000%	52,053.80
2026-01-31	2026-01-15	2026-01-30	16	0.00	-23,809,068.00	0.00000000%	0.00

SEPARATOR PAGE

06001433	SWINGLINE	0010086241	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-12-31
06001433	SWINGLINE	0010086241	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-12-31
06001433	SWINGLINE	0010086241	PRET TAUX BNC / NBC RATE LOAN	CAD	Actual/365/366	2025-12-31

Fin facturation /				Variation /		Rate / Taux	Interest / Intérêt
Billing End	Début / Start	Fin / End	Days / Jours	Balance / Solde	Variation		
2023-11-30	2023-11-02	2023-11-19	18	500,000.00		8.45000000%	2,083.56
2023-11-30	2023-11-20	2023-11-20	1	223,766.24	-276,233.76	8.45000000%	51.80
2023-11-30	2023-11-21	2023-11-21	1	224,222.48	456.24	8.45000000%	51.91
2023-11-30	2023-11-22	2023-11-23	2	229,222.40	4,999.92	8.45000000%	106.13
2023-11-30	2023-11-24	2023-11-26	3	229,228.53	6.13	8.45000000%	159.20
2023-11-30	2023-11-27	2023-11-29	3	198,609.98	-30,618.55	8.45000000%	137.94
2023-11-30	2023-11-30	2023-11-30	1	277,770.96	79,160.98	8.45000000%	64.32
2023-12-31	2023-12-01	2023-12-03	3	310,157.67	32,386.71	8.45000000%	215.41
2023-12-31	2023-12-04	2023-12-04	1	393,943.00	83,785.33	8.45000000%	91.20
2023-12-31	2023-12-05	2023-12-06	2	587,860.21	193,917.21	8.45000000%	272.19
2023-12-31	2023-12-07	2023-12-07	1	589,894.21	2,034.00	8.45000000%	136.56
2023-12-31	2023-12-08	2023-12-11	4	346,312.21	-243,582.00	8.45000000%	320.69
2023-12-31	2023-12-12	2023-12-18	7	430,448.36	84,136.15	8.45000000%	697.56
2023-12-31	2023-12-19	2023-12-20	2	430,766.41	318.05	8.45000000%	199.45
2023-12-31	2023-12-21	2023-12-27	7	463,536.41	32,770.00	8.45000000%	751.19
2023-12-31	2023-12-28	2023-12-31	4	0.00	-463,536.41	0.00000000%	0.00
2024-01-31	2024-01-01	2024-01-15	15	0.00	0.00	0.00000000%	0.00
2024-01-31	2024-01-16	2024-01-16	1	75,850.48	75,850.48	8.45000000%	17.51
2024-01-31	2024-01-17	2024-01-17	1	77,183.88	1,333.40	8.45000000%	17.82
2024-01-31	2024-01-18	2024-01-18	1	79,151.92	1,968.04	8.45000000%	18.27
2024-01-31	2024-01-19	2024-01-21	3	89,205.53	10,053.61	8.45000000%	61.79
2024-01-31	2024-01-22	2024-01-28	7	105,982.30	16,776.77	8.45000000%	171.28
2024-01-31	2024-01-29	2024-01-31	3	0.00	-105,982.30	0.00000000%	0.00

2024-02-29	2024-02-01	2024-02-06	6	0.00	0.00	0.00000000%	0.00
2024-02-29	2024-02-07	2024-02-13	7	400,000.00	400,000.00	8.45000000%	646.45
2024-02-29	2024-02-14	2024-02-29	16	925,000.00	525,000.00	8.45000000%	3,416.94
2024-03-31	2024-03-01	2024-03-05	5	925,000.00	0.00	8.45000000%	1,067.79
2024-03-31	2024-03-06	2024-03-31	26	975,000.00	50,000.00	8.45000000%	5,852.67
2024-04-30	2024-04-01	2024-04-30	30	975,000.00	0.00	8.45000000%	6,753.07
2024-05-30	2024-05-01	2024-05-30	30	975,000.00	0.00	8.45000000%	6,753.07
2024-06-29	2024-05-31	2024-06-05	6	975,000.00	0.00	8.45000000%	1,350.61
2024-06-29	2024-06-06	2024-06-13	8	975,000.00	0.00	8.20000000%	1,747.54
2024-06-29	2024-06-14	2024-06-19	6	575,037.00	-399,963.00	8.20000000%	773.00
2024-06-29	2024-06-20	2024-06-23	4	577,729.15	2,692.15	8.20000000%	517.75
2024-06-29	2024-06-24	2024-06-29	6	967,729.15	390,000.00	8.20000000%	1,300.88
2024-07-30	2024-06-30	2024-07-03	4	967,729.15	0.00	8.20000000%	867.25
2024-07-30	2024-07-04	2024-07-04	1	999,909.84	32,180.69	8.20000000%	224.02
2024-07-30	2024-07-05	2024-07-10	6	1,000,000.00	90.16	8.20000000%	1,344.26
2024-07-30	2024-07-11	2024-07-14	4	119,124.00	-880,876.00	8.20000000%	106.76
2024-07-30	2024-07-15	2024-07-17	3	207,970.95	88,846.95	8.20000000%	139.78
2024-07-30	2024-07-18	2024-07-18	1	250,383.16	42,412.21	8.20000000%	56.10
2024-07-30	2024-07-19	2024-07-24	6	800,383.16	550,000.00	8.20000000%	1,075.92
2024-07-30	2024-07-25	2024-07-30	6	800,383.16	0.00	7.95000000%	1,043.13
2024-08-30	2024-07-31	2024-08-05	6	800,383.16	0.00	7.95000000%	1,043.12
2024-08-30	2024-08-06	2024-08-14	9	0.00	-800,383.16	0.00000000%	0.00
2024-08-30	2024-08-15	2024-08-15	1	58,390.59	58,390.59	7.95000000%	12.68
2024-08-30	2024-08-16	2024-08-18	3	220,002.98	161,612.39	7.95000000%	143.36
2024-08-30	2024-08-19	2024-08-27	9	770,002.98	550,000.00	7.95000000%	1,505.29
2024-08-30	2024-08-28	2024-08-30	3	182,589.98	-587,413.00	7.95000000%	118.99
2024-09-29	2024-08-31	2024-09-04	5	182,589.98	0.00	7.95000000%	198.30
2024-09-29	2024-09-05	2024-09-05	1	182,589.98	0.00	7.70000000%	38.41
2024-09-29	2024-09-06	2024-09-08	3	231,214.23	48,624.25	7.70000000%	145.93
2024-09-29	2024-09-09	2024-09-09	1	346,927.78	115,713.55	7.70000000%	72.99
2024-09-29	2024-09-10	2024-09-10	1	349,751.22	2,823.44	7.70000000%	73.58
2024-09-29	2024-09-11	2024-09-11	1	350,866.53	1,115.31	7.70000000%	73.82
2024-09-29	2024-09-12	2024-09-29	18	850,866.53	500,000.00	7.70000000%	3,222.14

2024-10-30	2024-09-30	2024-10-03	4	850,866.53	0.00	7.70000000%	716.03
2024-10-30	2024-10-04	2024-10-06	3	897,160.06	46,293.53	7.70000000%	566.24
2024-10-30	2024-10-07	2024-10-07	1	923,205.43	26,045.37	7.70000000%	194.23
2024-10-30	2024-10-08	2024-10-10	3	923,360.97	155.54	7.70000000%	582.78
2024-10-30	2024-10-11	2024-10-14	4	412,459.22	-510,901.75	7.70000000%	347.10
2024-10-30	2024-10-15	2024-10-23	9	416,587.10	4,127.88	7.70000000%	788.78
2024-10-30	2024-10-24	2024-10-30	7	416,587.10	0.00	7.20000000%	573.65
2024-11-29	2024-10-31	2024-10-31	1	416,587.10	0.00	7.20000000%	81.95
2024-11-29	2024-11-01	2024-11-03	3	654,177.09	237,589.99	7.20000000%	386.07
2024-11-29	2024-11-04	2024-11-04	1	247,666.48	-406,510.61	7.20000000%	48.72
2024-11-29	2024-11-05	2024-11-05	1	296,466.24	48,799.76	7.20000000%	58.32
2024-11-29	2024-11-06	2024-11-07	2	296,650.05	183.81	7.20000000%	116.71
2024-11-29	2024-11-08	2024-11-11	4	301,219.22	4,569.17	7.20000000%	237.02
2024-11-29	2024-11-12	2024-11-12	1	452,746.49	151,527.27	7.20000000%	89.06
2024-11-29	2024-11-13	2024-11-29	17	877,746.49	425,000.00	7.20000000%	2,935.43
2024-12-30	2024-11-30	2024-12-08	9	877,746.49	0.00	7.20000000%	1,554.04
2024-12-30	2024-12-09	2024-12-09	1	914,589.88	36,843.39	7.20000000%	179.92
2024-12-30	2024-12-10	2024-12-11	2	994,589.88	80,000.00	7.20000000%	391.31
2024-12-30	2024-12-12	2024-12-16	5	994,589.88	0.00	6.70000000%	910.35
2024-12-30	2024-12-17	2024-12-17	1	1,000,000.00	5,410.12	6.70000000%	183.06
2024-12-30	2024-12-18	2024-12-18	1	519,301.24	-480,698.76	6.70000000%	95.06
2024-12-30	2024-12-19	2024-12-22	4	522,670.17	3,368.93	6.70000000%	382.72
2024-12-30	2024-12-23	2024-12-30	8	593,261.87	70,591.70	6.70000000%	868.83
2025-01-30	2024-12-31	2024-12-31	1	593,261.87	0.00	6.70000000%	108.60
2025-01-30	2025-01-01	2025-01-12	12	593,261.87	0.00	6.70000000%	1,306.80
2025-01-30	2025-01-13	2025-01-13	1	613,483.03	20,221.16	6.70000000%	112.61
2025-01-30	2025-01-14	2025-01-16	3	614,004.22	521.19	6.70000000%	338.12
2025-01-30	2025-01-17	2025-01-19	3	770,260.84	156,256.62	6.70000000%	424.17
2025-01-30	2025-01-20	2025-01-22	3	781,221.84	10,961.00	6.70000000%	430.21
2025-01-30	2025-01-23	2025-01-26	4	956,221.84	175,000.00	6.70000000%	702.10
2025-01-30	2025-01-27	2025-01-27	1	1,000,000.00	43,778.16	6.70000000%	183.56
2025-01-30	2025-01-28	2025-01-28	1	43,778.16	-956,221.84	6.70000000%	8.04
2025-01-30	2025-01-29	2025-01-29	1	338,342.18	294,564.02	6.70000000%	62.11

2025-01-30	2025-01-30	2025-01-30	1	420,464.93	82,122.75	6.45000000%	74.31
2025-02-27	2025-01-31	2025-02-05	6	423,335.13	2,870.20	6.45000000%	448.85
2025-02-27	2025-02-06	2025-02-06	1	533,652.00	110,316.87	6.45000000%	94.30
2025-02-27	2025-02-07	2025-02-09	3	630,838.05	97,186.05	6.45000000%	334.43
2025-02-27	2025-02-10	2025-02-10	1	659,979.95	29,141.90	6.45000000%	116.63
2025-02-27	2025-02-11	2025-02-11	1	716,177.85	56,197.90	6.45000000%	126.56
2025-02-27	2025-02-12	2025-02-12	1	741,793.85	25,616.00	6.45000000%	131.08
2025-02-27	2025-02-13	2025-02-13	1	747,509.18	5,715.33	6.45000000%	132.09
2025-02-27	2025-02-14	2025-02-27	14	921,759.04	174,249.86	6.45000000%	2,280.41
2025-03-30	2025-02-28	2025-03-02	3	932,473.43	10,714.39	6.45000000%	494.34
2025-03-30	2025-03-03	2025-03-03	1	961,241.51	28,768.08	6.45000000%	169.86
2025-03-30	2025-03-04	2025-03-12	9	1,000,000.00	38,758.49	6.45000000%	1,590.41
2025-03-30	2025-03-13	2025-03-30	18	1,000,000.00	0.00	6.20000000%	3,057.54
2025-04-29	2025-03-31	2025-04-10	11	1,000,000.00	0.00	6.20000000%	1,868.49
2025-04-29	2025-04-11	2025-04-16	6	109,577.10	-890,422.90	6.20000000%	111.68
2025-04-29	2025-04-17	2025-04-20	4	162,744.28	53,167.18	6.20000000%	110.58
2025-04-29	2025-04-21	2025-04-21	1	487,469.84	324,725.56	6.20000000%	82.80
2025-04-29	2025-04-22	2025-04-22	1	640,295.88	152,826.04	6.20000000%	108.76
2025-04-29	2025-04-23	2025-04-23	1	659,370.94	19,075.06	6.20000000%	112.00
2025-04-29	2025-04-24	2025-04-24	1	691,707.62	32,336.68	6.20000000%	117.50
2025-04-29	2025-04-25	2025-04-29	5	790,397.20	98,689.58	6.20000000%	671.30
2025-05-30	2025-04-30	2025-04-30	1	802,722.72	12,325.52	6.20000000%	136.35
2025-05-30	2025-05-01	2025-05-04	4	932,061.38	129,338.66	6.20000000%	633.29
2025-05-30	2025-05-05	2025-05-30	26	1,000,000.00	67,938.62	6.20000000%	4,416.44
2025-06-29	2025-05-31	2025-06-29	30	1,000,000.00	0.00	6.20000000%	5,095.89
2025-07-30	2025-06-30	2025-07-30	31	1,000,000.00	0.00	6.20000000%	5,265.75
2025-08-30	2025-07-31	2025-08-30	31	1,000,000.00	0.00	6.20000000%	5,265.75
2025-09-29	2025-08-31	2025-09-17	18	1,000,000.00	0.00	6.20000000%	3,057.53
2025-09-29	2025-09-18	2025-09-29	12	1,000,000.00	0.00	5.95000000%	1,956.17
2025-10-30	2025-09-30	2025-10-29	30	1,000,000.00	0.00	5.95000000%	4,890.41
2025-10-30	2025-10-30	2025-10-30	1	1,000,000.00	0.00	5.70000000%	156.17
2025-11-29	2025-10-31	2025-11-29	30	1,000,000.00	0.00	5.70000000%	4,684.93
2025-12-30	2025-11-30	2025-12-30	31	1,000,000.00	0.00	5.70000000%	4,841.10

2026-01-30	2025-12-31	2025-12-31	1	1,000,000.00	0.00	5.70000000%	156.16
2026-01-30	2026-01-01	2026-01-14	14	1,000,000.00	0.00	5.70000000%	2,186.31
2026-01-30	2026-01-15	2026-01-30	16	0.00	-1,000,000.00	0.00000000%	0.00

Applicant

Respondent

Court File No.: CL-26-000000005-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTAL REPORT TO THE SECOND REPORT OF THE
RECEIVER**

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

Tel: (416) 218-1129

Email: harvey@chaitons.com

David Im (LSO No. 89765G)

Tel: (416) 218-1124

Email: djim@chaitons.com

**Lawyers for the Albert Gelman Inc., in its capacity as Court-
Appointed Receiver**