

**STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE**

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Jillmy McLean
DIRECTOR OF TITLES
DIRECTRICE DES DROITS IMMOBILIERS



**LAND REGISTRATION REFORM ACT SET OF
STANDARD CHARGE TERMS (ONTARIO)**

The following set of Standard Charge Terms is deemed to be included in every charge in which the set is referred to by its filing number, including, without limitation, electronic documents submitted for registration under Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L. 4, as provided in Section 9 of the above Act.

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STANDARD CHARGE TERMS

1. CHARGE OF LANDS

For valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Borrower hereby grants, mortgages and charges its entire estate and interest in the Lands to the Bank, as security for the payment to the Bank of the Liabilities and performance, observance and compliance with the Liabilities. It is agreed by the Borrower and the Bank that the Charge will secure at any one time only that portion of the aggregate principal component of the Liabilities outstanding at such time which does not exceed the Principal Amount, together with interest or compound interest in the manner specified in the Charge accrued thereon at such time, and Costs and any other amounts to which the Bank is entitled under the Charge and Credit Agreements.

2. REDEMPTION PROVISION

This Charge, except for Section 12, shall, on written request from the Borrower to the Bank, be void upon payment in full by the Borrower to the Bank of the Liabilities, payment of any Taxes, and observance and performance of and compliance with all Liabilities, and when the Borrower has no further liability under any Credit Agreements, and when the Bank has no obligation to make any further advances under any Credit Agreements. The Charge secures or may secure a fluctuating account or accounts and shall not be deemed to have been satisfied or redeemed by any intermediate payment or performance of all or any part of the Liabilities or by reason only that any account or accounts of the Borrower with the Bank cease to be in debit.

3. COVENANTS REGARDING LIABILITIES AND CONTINUING SECURITY

The Borrower and the Bank agree as follows:

- (a) The Borrower covenants to pay to the Bank the outstanding amount of the Liabilities immediately on demand by the Bank, unless the terms of a Credit Agreement and the Charge provide otherwise, and observe, perform and comply with all of the other covenants, agreements and obligations forming part of the Liabilities or contained in the Charge in the manner provided for in the Charge and the Credit Agreements;
- (b) No part of the Liabilities (including any loans, lines of credit and advances) existing at the date of the Charge or incurred or arising thereafter shall be deemed to be unsecured by this Charge, and this Charge shall secure all Liabilities;
- (c) The Charge is and shall be a continuing security to the Bank for the payment, and performance and observance of and compliance with all of the Liabilities, as provided in the Charge, and shall be deemed to be taken as security for the Liabilities. Without limiting the generality of the foregoing, the Borrower will continue to be liable for all of the Liabilities, even if one or more of the following events occurs from time to time: (i) the balance of the Liabilities is from time to time reduced and subsequently increased or entirely extinguished and subsequently incurred again; (ii) the amount, nature or form of the Liabilities or any part thereof changes; (iii) any of the Credit Agreements or the Liabilities or any part thereof are renewed or extended; (iv) any of the Credit Agreements are amended or supplemented (for example, where any terms such as interest rate applicable to the Liabilities are changed, or the Bank increases or reduces the monetary amount of any credit available to the Borrower); (v) any of the Credit Agreements are replaced (including, without limitation, where any new Credit Agreement includes fewer or more Persons covenanting to pay the amount owed); or (vi) the Charge secures more than one type of loan, line of credit or other indebtedness contained in the Credit Agreements. The Bank may make advances and re-advances to the Borrower of all or any part of the Liabilities in one or more sums at any future dates;
- (d) The Charge does not in any way change, release, extinguish, supersede, discharge or prejudicially affect any Credit Agreements, Liabilities, or other security now or hereafter held by the Bank from the Borrower or any other Person or Persons for all or any part of the Liabilities, or the liability of the Borrower or any other Person or Persons under any Credit Agreements or such other security or any renewal or renewals thereof, nor shall the Bank's remedies in respect thereof or any other rights the Bank may have to enforce repayment or performance of the Liabilities be affected, prejudiced or delayed in any manner whatsoever by the taking of this Charge;
- (e) The Bank may at any time without notice to any Person or without the consent of any Person make any settlement, extension or variation in the terms of any Liabilities, grant time, renewals, extensions, indulgences, releases, discharges and variations to the Borrower and other Persons relating to the Liabilities, take, release or abstain from taking or perfecting securities or guarantees from the Borrower or any other Persons, and otherwise deal with the Borrower and all other Persons, as the Bank may see fit without in any way prejudicing, releasing or diminishing the rights of the Bank under this Charge;
- (f) If a judgment is obtained from a court concerning some or all of the Liabilities, the Borrower and Bank agree that the remaining Liabilities will not be extinguished, superseded or discharged and the Bank will not be prevented from exercising any of its remaining rights under any Credit Agreement, this Charge or applicable Laws; and

- (g) The Borrower has no right to prepay all or any part of the Liabilities except as otherwise agreed to in the Credit Agreements between the Bank and the Borrower from time to time.

4. **INTEREST**

- (a) **What Interest Applies to.** Interest is chargeable on and forms part of the Liabilities and is payable by the Borrower at the rate or rates, and with the frequency, and at the times, and otherwise, in accordance with the terms of a Credit Agreement and this Charge.
- (b) **Calculation of Interest.** Any interest that is chargeable on and forms part of the Liabilities is not payable in advance (unless a Credit Agreement provides otherwise), but is chargeable and payable at the rate or rates, and with the frequency, and at the times and otherwise as specified by the terms of a Credit Agreement and this Charge, both before and after any Default, any maturity of the Liabilities to which the interest relates and any judgment obtained with respect to the Liabilities to which the interest relates, until all such interest and the Liabilities to which the interest relates have been paid in full. Interest unpaid when due in accordance with the terms of a Credit Agreement and this Charge will be added to the Liabilities and bear compound interest at the rate or rates and with the frequency and at the times as specified by the terms of a Credit Agreement and this Charge. If the interest rate for any amount payable under this Charge is not specified by the terms of the Credit Agreements or otherwise under this Charge, then such interest will be payable at the rate and with the frequency and otherwise in accordance with applicable Laws.
- (c) **Maximum Interest.** If the interest rate or rates under the terms of a Credit Agreement and this Charge exceed the maximum rate permitted by applicable Laws, then, notwithstanding the terms of the Credit Agreements and this Charge, the interest rate will be deemed to be such maximum rate.
- (d) **Rate of interest on Registered Mortgage Form.** If a rate of interest is set out on the Registered Mortgage Form, the rate or rates of interest on the Liabilities will nonetheless be the rate or rates specified by the terms of a Credit Agreement and this set of standard charge terms, but if none are specified for any portion of the Liabilities, then the applicable rate of interest for such Liabilities will be that which is set out on the Registered Mortgage Form.
- (e) **Interest on Costs.** If Costs arise, the Borrower will pay interest on such Costs (and interest on overdue interest) from the time the Costs arise until the Costs are paid as follows: (i) if such Costs arise under a Credit Agreement, then the interest will be paid on such Costs at the rate and with the frequency, and otherwise, in accordance with such Credit Agreement; and (ii) if such Costs arise solely under this Charge, without regard to a particular Agreement, then the Bank will attribute such Costs to any Credit Agreement that the Bank chooses and interest on such Costs will be payable at the rate, with the frequency, at the times, and otherwise, in accordance with such Credit Agreement.

5. **NO OBLIGATION TO ADVANCE**

The Bank is not bound to advance or re-advance all or any part of the monies secured by the Charge, notwithstanding that the Charge has been prepared, executed or registered or the Borrower has authorized its registration, or that all or part of the principal monies secured by the Charge have been advanced. All advances are to be made in such manner, at such times and in such amounts as the Bank in its sole discretion may determine. The Bank may deduct from any advance any Taxes that are due, any interest that is due and payable on the date of the advance, any legal fees and disbursements (and all applicable taxes) for preparing and registering the Charge, Costs relating to the approval, preparation or registration of the Charge or Credit Agreements, Costs respecting appraisals, inspections, mortgage insurance and title insurance and any other Costs owing to the Bank by the Borrower. Even though the Bank has not advanced all or part of the monies secured by the Charge, this Charge takes effect immediately upon the Borrower signing the Charge, and all costs and expenses owing by the Borrower under the Charge and all Costs incurred or paid by the Bank shall be payable by the Borrower immediately on demand, and if unpaid shall bear interest as provided for in Section 4 of this set of standard charge terms, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.

6. **WITHHOLDING TAXES**

If the Borrower is not a Canadian resident for income tax purposes, the country where or in which the Borrower is a resident for income tax purposes may charge a withholding tax on the interest portion of the Borrower's payment to the Bank. The Bank must receive interest payments in full, free and clear of, and without deductions of, any withholding tax. The Borrower is responsible for paying any withholding tax. If the Borrower must pay withholding tax, the Borrower shall remit the withholding tax to the tax authority of the country requiring payment. The Borrower promises to give to the Bank the withholding tax receipt issued by the foreign tax authority as proof the Borrower paid the withholding tax. If the Borrower does not pay the withholding tax and the foreign tax authority requires the Bank to pay it, the Borrower promises to pay the withholding tax to the Bank immediately on demand and if the Borrower fails to do so, the amount will be included as Costs, bear interest as set out in Section 4, and, together with such interest, be added to the Liabilities and be secured by the Charge. In some circumstances, at the Bank's option, the Bank may advise the Borrower that the Bank will collect and remit the withholding tax on behalf of the Borrower. If the Bank so advises the Borrower, the Bank will remit the withholding tax to the foreign tax authority from the interest the Bank collects from the Borrower.

7. **BORROWER'S COVENANTS**

The Borrower covenants and agrees with the Bank that:

- (a) the Borrower will pay all of the Liabilities to the Bank, and observe, perform and comply with all of the other covenants, agreements, undertakings and obligations comprising the Liabilities or contained in the Charge, and shall comply with all terms of the Charge and the Credit Agreements;
- (b) the Borrower has a good title in fee simple to the Lands and no other Person owns all or any part of the Lands;
- (c) the Borrower has the right to mortgage and charge the Lands and give this Charge to the Bank;
- (d) the Borrower's title to the Lands is subject only to those encumbrances registered against title to the Lands at the time the Borrower signed this Charge, which the Borrower has disclosed to the Bank in writing and the Bank has consented to in writing (in Subsections 7(d), 7(e) and 7(m), "**Permitted Encumbrances**"), and the Borrower has not done, omitted or permitted anything whereby the Lands or any part of the Lands are or may be encumbered, limited or restricted other than by Permitted Encumbrances and has no knowledge of any other claim against the Lands;
- (e) there are no limitations or restrictions on the Borrower's title to the Lands, or heritage designation under applicable Laws respecting the Lands or any part of the Lands, except for Permitted Encumbrances and except as disclosed to the Bank in writing and that the Bank has approved;
- (f) the Borrower will comply with all terms and conditions of any charge or encumbrance of the Lands that ranks ahead of the Charge, will not increase the principal amount secured under any such prior-ranking charge or encumbrance, and consents to the Bank disclosing to the holder of any such prior-ranking charge or encumbrance the terms of the Charge and Credit Agreements;
- (g) the Borrower shall pay when due all Taxes and any other money, which, if not paid, would result in a default under any charge, mortgage, lien or encumbrance, now existing or hereafter created or claimed upon or to arise upon or affecting the Lands or any part thereof, having or claiming priority over this Charge, or which might result in a reduction in the value of the Lands or the sale of the Lands;
- (h) the Borrower shall pay and cause to be discharged any mortgages, charges, liens, security interests, claims, interests or other encumbrances over the Lands that are not prior encumbrances permitted by the Bank under this Charge, or which the Bank is unwilling to have remain on the Lands;
- (i) the Borrower shall not do anything that will interfere with the Bank's charge upon the Borrower's interest in the Lands, or do or fail to do anything that has the effect of lowering the priority of the Charge and any other security in favour of the Bank or of reducing the value of the Lands;
- (j) the Borrower shall not further mortgage, charge, hypothecate or encumber the Lands in any manner without the prior written consent of the Bank;
- (k) the Borrower will, at its own expense, sign any other documents and take such further action as may be required by the Bank in order to ensure that the Borrower's entire estate and interest in the Lands has been charged to the Bank, the Liabilities are adequately secured by the Lands and the Charge, and the Charge has priority over any other security over the Lands, except as may otherwise be agreed to by the Bank;
- (l) the Borrower releases to the Bank all of the Borrower's claims upon the Lands subject to the redemption provision set out in Section 2 of this set of standard charge terms; and
- (m) on Default the Bank can, at its discretion, have quiet possession of the Lands free from any interference by the Borrower or anyone else occupying the Lands or any part of the Lands and free from all interests and encumbrances other than Permitted Encumbrances, limitations or restrictions which the Bank has consented to in writing; provided that until a Default occurs, the Borrower shall have quiet possession of the Lands.

8. **COMPLIANCE WITH LAWS**

The Borrower covenants to promptly observe, perform, execute and comply with, at all times and at its own expense, all applicable Laws and all permits, licenses and approvals issued thereunder, including, without limitation, those dealing with the condition, repair, use, zoning or occupation of the Lands or parking, historical designations, fire, access, environmental hazards, and all covenants and restrictions affecting the Lands or any part thereof. The Borrower covenants to take any and all steps and actions and make any and all improvements or alterations to the Lands, structural or otherwise, at its own expense, as may be required at any time under any applicable Laws. The Borrower covenants to provide to the Bank, from

time to time, upon request of the Bank, evidence of its observance and compliance with the provisions of this Section 8 and shall promptly report to the Bank any non-compliance thereunder involving the Lands.

9. **USE OF THE LANDS AND NO RENTAL WITHOUT CONSENT**

The Borrower covenants, represents and warrants that it occupies and uses and will occupy and use the Lands only as an owner-occupied residential property, that no part of the Lands is rented or occupied by a tenant and that the Borrower does not, and will not, rent, lease or enter into any form of lease or tenancy agreement covering all or any part of the Lands without the prior written consent of the Bank which the Bank may refuse in its sole discretion. The breach of any of the Borrower's covenants in this Section 9 shall be deemed to be a Default under this Charge and the Bank shall then be entitled to enforce the Bank's rights under this Charge. If the Lands or any part of the Lands is rented to a tenant, with or without the Bank's consent, at such time as the Bank is entitled to enforce its rights under this Charge by reason of the occurrence of a Default, the Bank may, at its option, pay any amount it thinks is necessary to any tenant, to obtain the co-operation of the tenant in selling the Lands, showing the Lands and obtaining possession of the Lands or any part of the Lands from the tenant, and any amount so paid to a tenant will be payable immediately by the Borrower to the Bank and if unpaid shall bear interest as set out in Section 4 of this set of standard charge terms and shall, with such interest, be added to the Liabilities and be a charge on the Lands. Nothing done by the Bank under this Section 9 will put it in possession, control or management of the Lands and it is not obliged to collect any rent or income from the Lands, or comply with any terms of any lease or tenancy agreement. If the Borrower rents all or any part of the Lands without the Bank's prior written approval, the Bank will have the same rights and remedies (in addition to its other rights and remedies) as if the Borrower had tried to discourage the Bank from taking possession of the Lands if the Borrower had defaulted under the Charge or adversely affected the value of the Lands within the meaning of Subsection 52(1) of the *Mortgages Act*. If the Borrower has rented the Lands or any part of the Lands to a tenant, and if the Bank so requests, the Borrower shall keep records of all rents received and of all expenses paid by the Borrower in connection with the Lands or any part of the Lands, and, at least annually, have a statement of revenue and expenses for the Lands prepared by a chartered accountant, and give a copy of the statement to the Bank. The provisions of Section 46 of this set of standard charge terms are without prejudice to the Borrower's obligations and covenants, and the Bank's rights and remedies, in this Section 9. The Borrower covenants that the Lands shall not be used for any purposes which are illegal, or which are not permitted under any present or future municipal by-laws, and any such use of the Lands or any part thereof shall, at the Bank's sole option, be deemed to be a Default under this Charge.

10. **REPAIR, WASTE AND VACANCY**

The Borrower covenants that it shall not commit or permit waste on the Lands, that it shall maintain or cause to be maintained the buildings, structures and improvements on the Lands in good condition, order and repair to the satisfaction of the Bank, that it shall carry out any repairs which are necessary or which the Bank may reasonably require, and that it shall not permit any such buildings to be or become vacant. The Borrower covenants and agrees that it will not do anything, or permit anyone else to do anything, which will diminish the value of the Lands. The Bank, in its sole discretion and at any reasonable time or times, may enter upon and inspect the Lands, and the cost of any such inspections shall be payable by the Borrower to the Bank immediately. If, as determined by the Bank in its sole discretion, the Borrower neglects to keep the Lands in good condition and repair, or commits or permits any act of waste on the Lands, or the Borrower or anyone else does anything that diminishes the value of the Lands, the Bank may, but shall not be obliged to, make any repairs, improvements and alterations as it considers necessary and the cost of such repairs, improvements and alterations incurred by the Bank shall be payable by the Borrower to the Bank immediately and be included as Costs. Any amounts which the Borrower fails to pay under this Section 10 shall bear interest as provided for in Section 4 and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands. In exercising its right to enter the Lands to inspect and repair, the Bank will not be considered to be a chargee or mortgagee in possession, or in possession or control of, or managing, the Lands.

11. **ALTERATIONS, ADDITIONS AND CONSTRUCTION LIENS**

The Borrower will not make or permit to be made any alterations, improvements, additions, replacements or demolition (collectively, "Alterations") to the Lands without the prior written approval of the Bank, and, if the Charge is insured by a Mortgage Insurer, of the Mortgage Insurer, which approval may be withheld, or subject to such conditions as the Bank or Mortgage Insurer may impose, in the sole discretion of each. Alterations, as approved, shall only be made in accordance with all applicable Laws and conditions imposed by the Bank, and, if the Charge is insured by a Mortgage Insurer, by the Mortgage Insurer. Alterations and the payment for same will be made by the Borrower in compliance with the *Construction Lien Act*, R.S.O. 1990, c. C.30 and the Borrower shall retain holdbacks as required by the said Act. The Bank may at its option withhold from any advances which the Borrower may otherwise be entitled to, such holdbacks as the Bank in its sole discretion considers appropriate to protect the Bank's priority under the provisions of the said Act. The Bank shall determine at its sole discretion the time and amount of payments by it for the Alterations, and the Borrower shall supply evidence satisfactory to the Bank of the costs to be incurred or already incurred for the Alterations, the progress thereof and holdbacks maintained. The Borrower shall immediately discharge all liens registered against the Lands and the Bank may discharge, pay into Court or settle all liens and complete any construction of the Alterations as and when the Bank determines in its sole and absolute discretion. All Costs of the Bank incurred with respect to any of the foregoing shall be paid immediately by the Borrower, and if unpaid shall bear interest as set out in Section 4 and, together with such interest, shall be added to the Liabilities secured by this Charge and form a charge on the Lands. The Borrower consents to disclosure of information pursuant to the said Act by the Bank to any Person entitled to such information under the said Act.

12. **ENVIRONMENT PROVISION**

The Borrower represents, warrants, covenants and agrees that: (a) to the best of its knowledge after making due and diligent inquiry, no Hazardous Substances are now, will in future be, or were prior to the Borrower's ownership, possession or control of the Lands, placed, stored, located or disposed of, manufactured or otherwise dealt with on, under or at the Lands, except in compliance with applicable Laws and disclosed to and approved by the Bank in writing; and (b) no order, direction, enforcement action or other governmental or regulatory action or notice, nor any action, suit or proceeding relating to any Hazardous Substance or the environment has been issued or is otherwise threatened or pending with respect to the Lands. The Borrower shall notify the Bank in writing immediately if the Borrower becomes aware of any contamination of the Lands with any Hazardous Substance, and the Borrower shall not permit any activities on the Lands which directly or indirectly could result in the Lands being contaminated with any Hazardous Substances. The Borrower shall pay immediately when due the cost of removal of any Hazardous Substances in, on, under or about the Lands, and if the Borrower fails to do so, the Bank may do so, and such cost shall be included as Costs and if unpaid shall bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands. The Bank may (but is not obligated to) require the Borrower, at the Borrower's expense, from time to time, to obtain an environmental audit of all or any part of the Lands, which environmental audit shall be satisfactory to the Bank, but such audit does not relieve the Borrower of its obligations under this Section 12.

The Borrower shall indemnify and hold harmless the Bank and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, costs and expenses of every nature and kind whatsoever (including, without limitation legal costs on a full indemnification basis) which at any time or from time to time may be paid or incurred by or asserted against any of them as a direct or indirect result of: (a) a breach of any of the representations, warranties or covenants set out in this Section 12; (b) the presence of any Hazardous Substance in, on, under or about the Lands as well as any lien or priority asserted with respect thereto; (c) the discharge, emission, spill or disposal of any Hazardous Substance from the Lands into or upon any land, the atmosphere, any watercourse, body of water or wetland; or (d) any claim due to the Borrower's breach of any Law relating to the protection of the environment. The provisions of all representations, warranties, covenants and indemnifications set out in this Section 12 shall survive the release and discharge of this Charge.

13. **INSPECTION**

The Bank and, if this Charge is insured, the Mortgage Insurer, and their respective agents may, at any reasonable time or times and for any purpose they deem necessary or appropriate, enter on and inspect the Lands or have the Lands appraised from time to time. In addition, the Bank or the Mortgage Insurer, or their respective agents, may conduct at any reasonable time or times any investigations, audits and inspections of or with respect to the Lands, including but not limited to environmental testing, soil tests, site assessment, investigation or study, that the Bank or any Mortgage Insurer thinks is necessary, and the costs, charges and expenses incurred in connection therewith shall be paid by the Borrower immediately on request by the Bank and shall be included as Costs and if unpaid shall bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands. If the Bank or the Mortgage Insurer does conduct an inspection, it will not be considered to be a chargee or mortgagee in possession, or in possession or control of, or managing, the Lands.

14. **TAXES**

With respect to Taxes, the Borrower covenants and agrees with the Bank as follows:

- (a) The Bank may deduct from any advance of any monies secured by this Charge an amount sufficient to pay all Taxes which have become due and payable during any calendar year.
- (b) The Borrower covenants to pay all Taxes when they are due. Without restricting or limiting the immediately preceding covenant of the Borrower, the Bank may at its sole option estimate the amount of the Taxes payable in each year and the Borrower shall immediately upon demand of the Bank pay to the Bank, on the 1st day of each and every month or such other date as the Bank may agree to commencing with the 1st day of the first full month after registration of this Charge, such sums as the Bank shall compute to be required to provide a fund sufficient to pay in full the annual Taxes as and when such Taxes become or each instalment becomes due and payable. The amount of each monthly payment of Taxes may change, at the Bank's option to reflect changes in the annual Taxes on the Lands. The Bank may at its option apply such payments to the Taxes so long as no Default has occurred, but nothing contained in this Section 14 shall obligate the Bank to apply such payments on account of Taxes more often than yearly, and the Bank need not hold any monies received from the Borrower under this Section 14 in trust or pay interest on any such monies. Provided however, that if the Borrower shall pay any sum or sums to the Bank to apply on account of Taxes, and if before such payments have been so applied by the Bank, there shall be default by the Borrower in respect of any payment of principal or interest as provided in this Charge, the Bank may at its option apply such sum or sums in or towards payment of the principal and interest in default. If the Borrower desires to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Borrower may pay to the Bank such additional amounts as are required for that purpose.

- (c) If the Taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Bank as aforesaid, the Borrower shall pay to the Bank, on demand, the amount required to make up the deficiency. The Bank may at its option increase the monthly payment of Taxes to cover this amount. The Bank may at its option, pay any of the Taxes when payable, either before or after they are due, without notice, or may make advances therefore in excess of the then amount of credit held by the Bank for Taxes. Any excess amount advanced by the Bank shall be payable immediately by the Borrower, and if unpaid shall be included as Costs and bear interest as provided for in Section 4, and such amount together with interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.
- (d) The Borrower shall transmit to the Bank all assessment notices, tax bills and other notices pertaining to the imposition of Taxes immediately after receipt thereof, failing which the Bank may obtain such documentation and the Borrower will immediately repay to the Bank the cost of the Bank obtaining same and such amount if unpaid shall be included as Costs and bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.
- (e) The Borrower shall pay to the Bank, in addition to any other amounts required to be paid under this Section 14, the amount required by the Bank in its sole discretion for a reserve on account of future liability for Taxes.
- (f) In no event shall the Bank be liable for any interest on any amount paid to it on account of Taxes and the monies so received may be held with its own funds pending payment or application thereof as provided in this Section 14; provided that in the event that the Bank does not utilize the funds received on account of Taxes in any calendar year, such amount or amounts may be held by the Bank on account of any pre-estimate of Taxes required for the next succeeding calendar year, or at the Bank's option the Bank may repay such amount to the Borrower without any interest.
- (g) The Borrower shall in all instances be responsible for the payment of any and all penalties resulting from any arrears of Taxes or any late payment of current instalments; and at no time shall such penalties be the responsibility of the Bank.
- (h) If the Bank does not collect payments on account of Taxes as aforesaid, the Borrower shall deliver to the Bank, immediately on request by the Bank, and in any event on or before December 31st in each calendar year, receipted tax bills or other written evidence from all taxing authorities having jurisdiction to the effect that all Taxes for the then current calendar year and any preceding calendar years have been paid in full, failing which, the Bank shall be entitled to charge a servicing fee for each written inquiry directed by the Bank to such taxing authorities or the Borrower for the purpose of ascertaining the status of the Taxes together with any costs payable to such taxing authorities for such information, and such servicing fee and costs shall be payable by the Borrower to the Bank immediately on demand by the Bank, and if unpaid shall be included as Costs and bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.

15. **UTILITIES**

The Borrower covenants that it will pay all utility and fuel and gas charges related to the Lands as and when they are due and that the Borrower will not allow or cause the supply of utilities, fuel or gas to the Lands to be interrupted or discontinued and that, if the supply of fuel, gas or utilities is interrupted or discontinued, the Borrower will take all steps that are necessary to ensure that the supply of utilities, fuel or gas is restored immediately. It is specifically agreed that the failure to pay all fuel, gas and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel, gas or utilities to the Lands shall be deemed to be a Default by the Borrower under this Charge and in addition to all other remedies provided for in this Charge, the Liabilities shall, at the sole option of the Bank, immediately become due and payable.

16. **INSURANCE**

The Borrower shall immediately insure and keep insured, at the Borrower's expense, until the Charge is discharged, all buildings, structures, Fixtures and improvements on the Lands (now or hereafter erected, and both during any construction and afterwards) (referred to together in this Section 16 as the "Buildings"), for not less than the full insurable value in lawful money of Canada on a replacement cost basis, against: (i) loss or damage by or from fire, extended perils, and all other risks, hazards and perils customarily provided in standard extended coverage insurance policies and insurance policies providing "all risks" coverage; (ii) where appropriate or required by the Bank, against loss and damage to plate glass or by explosion of, or caused by, any boiler, pressure vessel, oil or gas burner, coal blower, stoker or other similar apparatus or by any sprinkler system; (iii) where appropriate or required by the Bank, against loss from damage to or destruction of the Buildings resulting in interruption to or loss of revenue or rental income from the Buildings; and (iv) against loss or damage by or from any other risks, hazards and perils which the Bank may, in its sole discretion, from time to time require. All such insurance policies shall be provided by licensed insurance companies approved by the Bank, provide that any loss shall be payable to the Bank as its interest may appear, contain the standard mortgage clauses approved by the Insurance Bureau of Canada or the Bank, contain no co-insurance provisions, and be in amounts and in form and on terms as are satisfactory to the Bank in its sole discretion. Each policy of insurance shall contain an undertaking by the insurer to notify the Bank in

writing, not less than 30 days prior to any material change, cancellation, proposed cancellation, failure to renew, or termination thereof.

The Borrower shall pay when due all premiums and other amounts necessary to keep all such insurance policies in force, and shall deliver to the Bank: (i) prior to any advance, a copy of all insurance policies evidencing that coverage has been initiated for at least one year; (ii) upon request by the Bank, a copy of any insurance policy, satisfactory evidence that the insurance required under this Section 16 is in place and proof that all premiums for such insurance have been paid for in full; and (iii) at least 30 days before expiration or termination of any insurance policy, satisfactory evidence of the renewal or replacement of such insurance policy.

If the Borrower is in breach of any of the covenants in this Section 16, the Bank may, but is not required to, obtain insurance for the Lands or any part thereof, with no duty to account for the proceeds thereof, and if the Bank pays any premiums or amounts for such purpose the amount of such payment shall be immediately payable to the Bank by the Borrower, shall be included as Costs and if unpaid shall bear interest as provided for in Section 4, and together with such interest shall be added to the Liabilities secured by the Charge and shall form a charge on the Lands.

The Bank may at any time require such insurance to be cancelled and new insurance effected with a company acceptable to the Bank, and also may, of its own accord, effect or maintain any insurance provided for in this Section 16, and any amount paid by the Bank therefore shall be immediately payable by the Borrower to the Bank, shall be included as Costs and if unpaid shall bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.

If evidence of continuation of such insurance as required in this Section 16 has not been delivered to the Bank within the required time, the Bank shall be entitled to a servicing fee, payable by the Borrower immediately on request, for each written inquiry which the Bank makes to the insurer or the Borrower pertaining to such renewal (or resulting from the Borrower's non-performance of its covenants in this Section 16). If the Bank pursuant to this Section 16 arranges insurance coverage with respect to the Lands, the Bank, in addition to the servicing fee referred to in the immediately preceding sentence, shall be entitled to a further servicing fee, payable by the Borrower immediately on request, for arranging the necessary insurance coverage.

In the event of any loss or damage to all or any part of the Lands, the Borrower shall immediately notify the Bank in writing and shall immediately, at the Borrower's expense, provide all necessary proofs of claim to the Bank, do all necessary acts to enable the Bank to obtain payment of the insurance proceeds, and comply fully with the terms of the policy or policies of insurance. The Bank providing a copy of the Charge will be sufficient authority for any insurance company to pay the Bank any such loss related to the insurance policy or to accept instructions from the Bank dealing with the loss.

Notwithstanding any other provision to the contrary, statutory or otherwise, all insurance proceeds received may to the extent permitted by Law, in whole or in part and at the Bank's option, be applied to rebuild or repair the damaged Buildings, or applied, at the Bank's sole discretion, to reduce any part of the Liabilities, whether due or not yet due (but the Bank shall not be bound to accept the said monies in payment of any principal not yet due), or paid to the Borrower or any other Person appearing by the records of the applicable Land Registry Office to be or to have been the owner of the Lands. No damage may be repaired nor any reconstruction effected by the Borrower without the prior written approval of the Bank.

If all or any part of the Lands is or becomes a Unit, the Borrower shall, or shall cause the Condominium Corporation to, observe and perform all covenants required to be observed and performed by the Borrower in this Section 16, and shall:

- (a) immediately on the happening of any loss or damage to the Lands or part of the Lands, comply fully with the terms of the policy or policies of insurance and, without limiting the generality of the obligation of the Borrower under Section 44 of this set of standard charge terms, with the insurance provisions relating to the condominium building of which the Lands form a part;
- (b) cause any insurance monies to be made payable to the Condominium Corporation or, if any insurance trustees are designated by the by-laws, to named insurance trustees, and to be made payable firstly to the Bank in the event that the Condominium Corporation resolves not to repair or replace the damaged Unit, buildings, common property, common facilities and other insurable improvements in respect thereof as provided in the *Condominium Act*;
- (c) cause all applicable policies of insurance to contain an Insurance Bureau of Canada approved standard mortgage clause or other mortgage clause acceptable to the Bank to be effective in the event that the Condominium Corporation resolves not to repair or replace the damaged Unit, buildings, common property, common facilities and insurable improvements in respect thereof; and
- (d) if, in the reasonable opinion of the Bank, the insurance carried by the Condominium Corporation is deemed inadequate, at the Bank's request, carry a separate policy of insurance on each Unit forming part of the Lands at the Borrower's own cost.

17. **APPLICATION OF PAYMENTS**

Prior to the occurrence of a Default, each payment will be applied as set out in the applicable Credit Agreement. If a Credit Agreement does not specify the manner in which payments will be applied, each payment will be applied as follows: first in payment of amounts payable under the Charge or any Credit Agreement other than money borrowed and the interest; secondly in payment of interest; and thirdly in payment of the money borrowed. If a Default occurs, the Bank may apply any payments received in whatever order and amounts the Bank may elect, in its discretion, as between any one or more loan, line of credit or other indebtedness contained in the Credit Agreement, principal, interest, Taxes, insurance premiums, repairs, Costs or any other Liabilities.

18. **RECEIPT OF PAYMENTS**

Any payment received after 2:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) on any date shall be deemed, for the purpose of calculation of interest to have been made and received on the next Business Day. Any payment that is due on a day that is not a Business Day must be made on the Business Day immediately preceding the due date.

19. **EXPROPRIATION**

The Borrower agrees that if the Lands or any part thereof are expropriated, the Liabilities (including interest) secured by the Charge, together with any loss of interest, shall at the option of the Bank immediately become due and payable, and in any event all the proceeds of any expropriation shall be paid to the Bank at its sole option in priority to the claims of any other party and shall be credited by the Bank to such part of the Liabilities as it deems appropriate in its sole discretion. The Bank, its agents or employees may order a survey and/or property valuation of the Lands in order to ascertain the value of the expropriated Lands and the remaining Lands. Any and all reasonable costs, charges, and expenses for such survey and/or property valuation shall be paid by the Borrower immediately on demand, shall be included as Costs and if unpaid shall bear interest as provided for in Section 4 of this set of standard charge terms, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.

20. **SALE OF LANDS OR CHANGE OF CORPORATE CONTROL**

In the event that:

- (a) the Lands or any part of the Lands or any interest in the Lands (including without limitation any beneficial interest) is sold, conveyed, transferred, assigned, leased, or otherwise disposed of, either directly or indirectly, or the Borrower enters into any agreement to effect any of the foregoing (each such event being referred to in this Section 20 as a "Transfer"), to any Person (in this Section 20 a "Purchaser") without the Bank's prior written approval which may be withheld in the Bank's sole and unqualified discretion; or
- (b) an approved Purchaser fails to: (i) personally assume all of the obligations of the Borrower under the Charge; (ii) execute an assumption agreement in the form required by the Bank; and (iii) comply with all other conditions of approval; or
- (c) if the Borrower is a corporation, there is a change in the Person or Persons having effective voting control of the Borrower or the Borrower enters into an amalgamation, merger or similar arrangement, without the prior written consent of the Bank which may be refused in the sole and unqualified discretion of the Bank,

then at the option of the Bank the Borrower shall be deemed to be in default under the Charge and all Liabilities secured by the Charge shall become immediately due and payable.

The rights of the Bank pursuant to this Section 20 shall not be affected or limited in any way by the acceptance of payments due under this Charge or any Credit Agreement from the Borrower or from any Purchaser (even if the Bank has not approved the Purchaser), or by any agreement between the Bank and the Purchaser. The rights of the Bank under the Charge shall continue without diminution for any reason whatsoever until such time as the Bank has consented in writing as required by this Section 20.

No Transfer or purported Transfer or agreement between the Bank and any Purchaser shall in any way change the liability of the Borrower, Guarantor or any other Person liable for the payment or performance of the Liabilities or any part of the Liabilities or the observance of all of the other terms, conditions and provisions in the Charge and Credit Agreements or in any way alter the rights of the Bank as against the Borrower, Guarantor or other such Person.

21. **ASSIGNMENT AND DISCLOSURE**

The Borrower agrees that the Bank may, at its option, sell, transfer, assign, grant security interests in, pledge or otherwise dispose of the Charge, or all or some of the Liabilities, without consent or notice, and in any such case this Charge shall

continue to secure all Liabilities existing at the time of or arising after any such sale, transfer, assignment, grant of security interest, pledge or other disposition. The Borrower irrevocably agrees that the Bank may collect, use and disclose all personal information included in or relevant to the Charge, Liabilities and any Credit Agreement (including credit and default information) with respect to the Borrower, the Guarantor or any Person who assumes or becomes responsible for payment of any amounts secured by the Charge, to anyone to whom the Bank sells, transfers, assigns, grants security interests in, pledges or otherwise disposes of its rights. The Bank may delegate the exercise of its rights or the performance of its obligations to another Person, and in that event the Bank may furnish that Person with any information it may have concerning the Borrower, Guarantor, Charge, Liabilities and Lands. The Bank may also disclose information about the Borrower, Guarantor, Charge, Liabilities and Lands in connection with collection or enforcement proceedings in respect of the Charge or to an insurer or other third party from whom the Bank may obtain benefits that protect its security. The Borrower consents to insurers and other third parties that provide benefits or services to the Bank for the Charge obtaining information about the Borrower from credit bureaus and other lenders to evaluate the Borrower and the Charge.

For clarity, and in addition to the rights granted to the Bank in this Section 21, the Bank shall have the right, both before and after the advance of the Principal Amount, without notice to the Borrower and without their consent, to sell, assign, syndicate, or securitize into the secondary market, the Credit Agreement, the Liabilities, this Charge and all other security for the Liabilities, in whole or in part, to any other party or parties (each a "Holder"), and the Holder(s) shall thereafter have all the rights herein of the Bank, including the right to so sell or assign in turn, without any effect on the interest rate or terms of the Liabilities.

The Bank may from time to time, in connection with the sale, assignment, syndication or securitization of the Liabilities, or otherwise, appoint or designate a custodian or agent for the Liabilities, which custodian or agent may be the registered mortgagee. The Borrower and each Guarantor, if any, acknowledges that such custodian or agent will have no liability whatsoever to the Borrower or Guarantor(s), if any, in connection with the Liabilities, being merely custodian or agent for the Bank and/or Holders.

The Bank shall have the unrestricted right from time to time to appoint a third party to service or administer the Liabilities, and to deal with the Borrower and Guarantor(s), if any, in place of the Bank, provided that until the Bank gives notice of such appointment to the Borrower, the Borrower and Guarantor(s), if any, shall continue to deal with the Bank in matters pertaining to the servicing or administration of the Liabilities.

22. DEFAULT

A default (each, a "Default") occurs under this Charge if:

- (a) the Borrower does not make a payment of or under the Liabilities or any part of the Liabilities at the time and in the manner required by the terms of the Charge or any Credit Agreement;
- (b) the Borrower breaches or is in default in performing, observing or complying with all or any part of the Liabilities at the time and in the manner required by the terms of the Charge or a Credit Agreement, or the Borrower or any other Person breaches any covenant, promise, condition or agreement in this Charge or any Credit Agreement;
- (c) any statement, certification, representation, covenant or agreement by the Borrower or a Guarantor given in the Charge or otherwise to the Bank in connection with any Liabilities is incorrect or misleading;
- (d) the Borrower fails to pay when due any amounts secured by, or is in default in the observance or performance of any other covenant or obligation contained in, any mortgage, charge, or other encumbrance affecting the Lands, whether or not it has priority over this Charge, or in any security collateral to the Charge or any agreement to which the Borrower and Bank are parties;
- (e) the Borrower further encumbers the Lands without the express prior written consent of the Bank;
- (f) any buildings, additions, alterations or improvements being constructed on the Lands or any part thereof, remain unfinished or without any work being done on them for a period of 15 consecutive days;
- (g) the Borrower neglects to keep the Lands in good condition and repair or the Borrower or anyone else does anything that diminishes the value of the Lands or commits or permits any act of waste on the Lands (as determined by the Bank in its sole discretion);
- (h) any type of lien whatsoever, such as a mechanic's, builder's, or construction lien, judgment, execution, conditional sale agreement, notice of security interest or any other similar encumbrance is registered against the Borrower or the Lands or any part thereof, or the Bank receives notice that a lien, judgment or execution will be obtained, unless prior written consent is obtained from the Bank for each instance of lien, judgment, execution or encumbrance;
- (i) the Lands are abandoned or left unoccupied for 30 or more consecutive days;

- (j) all or any part of the Lands are expropriated or condemned under the provisions of any Law applicable with respect to the Lands;
- (k) any Hazardous Substance is discovered in, on or under the Lands or any part thereof and not completely removed therefrom to the entire satisfaction of the Bank at the Borrower's expense within 14 days after demand by the Bank;
- (l) the Borrower commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or becomes bankrupt or insolvent or if a petition in bankruptcy is filed against the Borrower, or any authorized assignment for the benefit of creditors is made by the Borrower, or if the Borrower becomes subject to reorganization, arrangement or other similar proceedings affecting the rights of any creditor;
- (m) the Lands are subject to foreclosure proceedings or judicial sale, or are otherwise seized by another mortgagee, encumbrancer, writ holder, receiver or any agent of one of those, or any other Person performing similar functions;
- (n) the Borrower sells, grants an option to purchase, leases, conveys or transfers title to all or any part of the Lands, or agrees to do any of the foregoing, or there is a change in the Person or Persons having effective voting control of the Borrower or the Borrower enters into an amalgamation, merger or similar arrangement, without the express prior written consent of the Bank;
- (o) all or any part of the Lands are used for an illegal purpose by any Person, or if any illegal business is conducted in, on or about the Lands, or if equipment believed by the Bank to be related to an illegal business is installed in, on or about the Lands;
- (p) the Borrower is in default under any lease of the Lands;
- (q) any damage or destruction occurs to any building or buildings on the Lands which in the Bank's sole opinion is substantial; or
- (r) an event or occurrence occurs which is stated or deemed to be a default under the Charge or any Credit Agreement.

The Bank, in its sole discretion, shall determine whether any Default has occurred.

23. **ENFORCEMENT PROVISIONS**

If a Default occurs, the Bank, where and to the extent permitted by applicable Laws, at its option, and in any order the Bank chooses, may do any one or more of the following:

- (a) demand immediate payment of all or any part of the Liabilities, in which case such Liabilities will become immediately due and payable;
- (b) demand immediate performance of all or any part of the Liabilities, in which case the performance of such Liabilities will become immediately due;
- (c) sue the Borrower, Guarantor or any other Person liable for money that is due in respect of the Liabilities or the performance or observance of Liabilities, or both;
- (d) take any and all proceedings and any other legal steps which the Bank in its absolute discretion deems necessary to compel the Borrower to pay, satisfy, observe or perform the Liabilities;
- (e) enter upon and take possession of the Lands, and take the rents, issues and profits from the Lands or any part of the Lands and, whether in or out of possession, make such lease or leases of the Lands or any part of the Lands, on any terms, as the Bank thinks fit;
- (f) if Default has continued for at least 15 days, on at least 35 days' prior written notice, sell or lease the Lands or any part or parts of the Lands. The following provisions shall apply, where applicable, with respect to the sale or lease of the Lands by the Bank:
 - (i) Such notice shall be given to such Persons and in such manner and form and within such time as provided by applicable Laws. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice (at the Bank's option) may be effectually given by leaving it with a grown-up person on the Lands, if occupied, or by placing it on some portion of the Lands if unoccupied, or at the option of the

Bank, by mailing it by registered mail addressed to the Borrower at the Borrower's last known address; and such notice shall be sufficient although not addressed to any Person or Persons by name or designation; and notwithstanding that any Person to be affected thereby may be unknown, unascertained, or under disability; and if there be legal personal representatives of the Borrower on the death of the Borrower, such notice may, at the option of the Bank, be given in any of the above modes or by personal service upon such representatives;

- (ii) The Bank may sell the whole or any part or parts of the Lands by public auction or private contract, or partly one or partly the other, and the Bank may convey and assure the same when so sold to the purchaser or purchasers thereof as the purchaser shall direct and may give and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid;
- (iii) The proceeds of sale under the Charge may be applied in payment of any costs, charges and expenses incurred in taking, recovering, keeping possession of, leasing or selling the Lands or by reason of non-payment or procuring payment of monies, secured hereby or otherwise;
- (iv) The proceeds of any such sale or lease under the Charge will be applied, in such order as the Bank determines in compliance with applicable Laws, to pay: (i) any amounts required to be paid to any party with a higher right in the Lands than the Bank; (ii) any auctioneer's fees or real estate agent's commission; (iii) all adjustments usually made on the sale of property; (iv) all Costs incurred by the Bank in enforcing the Charge, exercising any of its rights under the Charge, taking, recovering and keeping possession of the Lands, repairing or improving the Lands and selling or leasing or attempting to sell or lease the Lands and all other Costs incurred by the Bank to protect its interests; (v) the Liabilities; (vi) any amounts owed to any party holding a mortgage, lien or other security on the Lands with a lower priority to the Charge; (vii) any other amounts the Bank is required by applicable Laws to pay from such proceeds; and (viii) any surplus to the Borrower;
- (v) The Bank may sell all or any part of the Lands on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefore and may make any stipulations as to title or evidence or commencement of title or otherwise as it shall deem proper, and if the net proceeds of any sale or lease do not pay all of the Liabilities the Borrower must immediately on demand pay the Bank the difference;
- (vi) The Bank may buy in or rescind or vary any contract for the sale of the whole or any part of the Lands and resell without being answerable for loss occasioned thereby;
- (vii) In the case of a sale on credit or part for cash and part for credit, the Bank shall be bound to pay the Borrower only such monies as have been actually received from purchasers after the satisfaction of the claims of the Bank and for any of said purposes may make and execute all agreements and assurances as it shall think fit;
- (viii) Any purchaser or lessee shall not be bound to enquire into the legality, propriety or regularity of any sale or lease or be affected by notice of any impropriety or irregularity or that any sale or lease is improper and no want of express notice or publication if required by this Section 23 shall invalidate any sale or lease under the Charge, and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been unauthorized or improperly or irregularly exercised, or that such notice had not been given in compliance with the *Mortgages Act* or had been given improperly, but any Person suffering damages by an unauthorized, improper or irregular exercise of the power shall have his remedy against the Person exercising the power in damages only;
- (ix) The Bank may sell Fixtures, fill, deposits, crops and standing or fallen trees apart from the Lands, and the purchaser as well as the Bank shall have all necessary access for securing, cutting and removal;
- (x) It is agreed between the parties to the Charge that nothing in this Section 23 contained shall prejudice or diminish any other rights and remedies and powers of the Bank in the Charge contained or existing at law by virtue thereof;
- (xi) The Bank shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by reason of its willful neglect or default;

- (xii) Wherever a power of sale is hereby conferred upon the Bank, all provisions of this Section 23 relating to exercising such power, including, without in any way limiting the generality of the foregoing, the Persons to whom notice of exercising such power shall be given and the manner of giving such notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no such conflict, the provisions of this Charge shall remain unchanged.
- (g) enter the Lands and distraint against any goods owned by the Borrower to repay all or any part of the Liabilities;
- (h) enter upon the Lands at such time or times as the Bank may deem necessary and without notice to or concurrence of any Person, and, without limiting the generality of the foregoing, make such arrangements for completing the construction of, repairing or putting in order any buildings, structures, Fixtures or other improvements on the Lands, or for inspecting, taking care of, leasing, collecting the rents of, generally managing the Lands, or taking any other action permitted under the Charge or by law, as the Bank may deem expedient and no action taken by the Bank pursuant to this Subsection 23(h) will make the Bank a chargee or mortgagee in possession or responsible for maintaining or preserving the Lands;
- (i) take whatever action is necessary to take, recover and keep possession of the Lands and realize on the security created by the Charge, including applying to a court of competent jurisdiction for an order foreclosing the Borrower's interest in the Lands or an order that the Lands be sold on terms approved by such court. If the Bank obtains a final order of foreclosure, the Borrower's interest in the Lands will belong to the Bank and the Borrower will have no further interest in the Lands;
- (j) appoint a Receiver of the Lands, or any part thereof, in accordance with Section 24; or
- (k) generally take any and all other legal steps and court proceedings available to a mortgagee at law and in equity.

If the Bank takes possession of the Lands, the Borrower will not interfere with the Bank's possession, with the possession by any Receiver the Bank may appoint or with the possession by any Person to whom the Lands are leased or sold, and the Borrower will not make any claim against any Person to whom the Lands may be leased or sold.

24. APPOINTMENT OF RECEIVER

Upon Default, the Bank may, with or without entering into possession of the Lands or any part thereof, by instrument in writing appoint, or by application to a court of competent jurisdiction obtain an order for the appointment of a Receiver of the Lands, or any part thereof, and of the rents and profits thereof, and with or without security, and may from time to time, when the appointment of the Receiver is by instrument in writing, by similar writing remove any such Receiver and appoint another in its place and stead, and in making such appointment or removal, the Bank shall be deemed to be acting as the agent or attorney for the Borrower, but no such appointment shall be revocable by the Borrower. Upon the appointment of any such Receiver from time to time the following provisions apply:

- (a) The Receiver shall have unlimited access to the Lands (which right of access shall not be revocable by the Borrower) and shall have full power and unlimited authority to:
 - (i) collect all rents and profits falling due in respect of the Lands, or any part thereof;
 - (ii) lease or sublease any portion of the Lands on such terms and conditions as the Receiver considers advisable and enter into and execute any leases of the Lands or any part thereof, and accept surrenders of and terminate any such leases;
 - (iii) complete any unfinished construction upon the Lands, including construction of any building or buildings or other structures, improvements or Fixtures, and take possession of and use any materials, supplies, plans, tools or equipment on the Lands;
 - (iv) manage, operate, alter, repair, maintain in good condition, or extend the Lands or any part thereof;
 - (v) sell or grant options to purchase the Lands, or any part thereof, by public auction or private sale, on such terms as to credit or otherwise and with or without security as shall appear most advantageous to the Receiver;
 - (vi) rescind or vary any contract or agreement of sale or lease of the Lands;

- (vii) borrow such sum or sums as will, in the opinion of the Receiver, be required for the purposes of carrying out the Receiver's duties;
- (viii) employ such assistants as the Receiver may consider necessary for carrying out the Receiver's duties; and
- (ix) perform such other acts and duties and incur any other expense that, in the Receiver's opinion, will maintain, preserve or increase the value or income potential of the Lands or that is authorized by a court order appointing the Receiver.

The Borrower undertakes to ratify and confirm whatever the Receiver may do in respect of the Lands.

- (b) The Bank at its discretion may vest the Receiver with all or any of the rights and powers of the Bank.
- (c) The Bank may fix the remuneration of the Receiver and such remuneration, together with all costs, charges and expenses of the Receiver and the Receiver's borrowings, if any, required for the purposes of carrying out the Receiver's duties under this Charge, shall be payable immediately on demand by the Borrower, be added to the monies secured by the Charge, bear interest as set out in Section 4 of this set of standard charge terms and, together with such interest, form a charge on the Lands.
- (d) In all instances, the Receiver shall be deemed to be the attorney or agent of the Borrower and not of the Bank and the Bank shall not be responsible for the acts and omissions of the Receiver.
- (e) The appointment of any Receiver by the Bank shall not result in or create any liability or obligation on the part of the Bank to the Receiver or the Borrower or to any other Person in any respect, including, without limitation, for the Receiver's remuneration, costs, charges and expenses and no appointment or removal of a Receiver and no actions of a Receiver shall render the Bank a chargee or mortgagee in possession of the Lands;
- (f) The Bank shall not be accountable for any monies received by the Receiver except to the extent the Bank actually receives the monies. No Receiver shall be liable to the Borrower to account for monies other than monies actually received by the Receiver in respect of the Lands or any part thereof and out of such monies so received every Receiver shall, subject to applicable Laws, pay in the following order:
 - (i) all the Receiver's remuneration;
 - (ii) all costs, charges and expenses of every nature and kind incurred by the Receiver in connection with the management, operation, repair, alteration or extension of the Lands or any part thereof;
 - (iii) all amounts required to keep any encumbrances ranking in priority to the Charge in good standing, and all Taxes, insurance premiums and other proper expenditures made or incurred by the Receiver in respect of the Lands or any part thereof;
 - (iv) the Liabilities, whether due or not, to be paid in such order as the Bank in its sole discretion shall determine; and
 - (v) any surplus, subject to the rights of other creditors, to the Borrower.
- (g) Save as to claims for accounting under Subsection 24(f), the Borrower hereby releases and discharges the Bank and every Receiver from every claim of every nature which may arise or be caused to the Borrower or any Person claiming through or under the Charge by reason or as a result of anything done by the Bank or Receiver under the provisions of this Section 24, unless such claim is the direct and proximate result of dishonesty or fraud.
- (h) The statutory declaration of an officer or agent of the Bank as to default under the provisions of the Charge and as to the due appointment of the Receiver pursuant to the Charge shall be sufficient proof thereof for the purposes of any Person dealing with a Receiver and such dealing shall be deemed to be valid and effectual notwithstanding any contrary assertion by the Borrower.
- (i) The rights and powers conferred in the Charge in respect of the Receiver are in addition to and not in substitution of any other rights and powers which the Bank may have.

25. **BANK NOT TO BE DEEMED TO BE CHARGE IN POSSESSION**

It is agreed between the Borrower and the Bank that the Bank will not become a chargee or mortgagee in possession by exercising any of the rights given to the Bank under this Charge.

26. **COSTS AND EXPENSES**

The Bank may, at any time and from time to time as the Bank shall determine at its sole option and in its sole discretion, incur or pay any and all Costs. The Borrower covenants that it will pay to the Bank immediately on demand all Costs incurred, charged or paid by the Bank, together with all other costs, expenses, charges and other amounts of and incidental to the Charge and all other documents or security required in connection with or collateral to the Charge, and all servicing and administration fees and other amounts payable by the Borrower pursuant to this Charge and the Credit Agreements. If unpaid by the Borrower, all such Costs and other amounts shall bear interest as provided for in Section 4 of this set of standard charge terms, and together with such interest shall be added to and form part of the Liabilities and will be secured by the Charge, in the same priority. "Costs" means all of the costs, charges, expenses, commissions and fees, of every nature and kind whatsoever, of, for or relating to:

- (a) preparing and registering any Credit Agreements, the Charge, any document or notice relating to the Charge and any amendment, discharge or assignment of the Charge, investigating title, appraising the Lands, inspecting the Lands, reporting to the Bank, any mortgage insurance or title insurance, and all costs of the Bank in negotiating the loans, lines of credit and other debts secured by the Charge;
- (b) all amounts which pursuant to this Charge or any Credit Agreements the Bank may pay, incur, or charge the Borrower or may be added to the monies secured by the Charge; and all costs and expenses incurred or paid by the Bank in performing the Borrower's obligations under the Charge or any Credit Agreements;
- (c) all costs, charges, and expenses incidental to, arising out of or in any way relating to the Charge or enforcing or protecting the Bank's security or any of its rights, title and interest under the Charge or any Credit Agreements, including without limitation collecting payment or enforcing performance or observance of all or any part of the Liabilities; taking, recovering, keeping possession of, preserving or protecting the Lands or any other security held by the Bank; preserving and maintaining the enforceability and priority of this Charge and any such other security and generally taking any steps or proceedings of every nature and kind (whether or not completed) to realize on the security of the Charge or any other security for the Liabilities, whether by sale, lease or otherwise; and the costs of any Receiver;
- (d) repairing, maintaining, inspecting, securing, appraising, completing the construction or renovation of, and managing the Lands or any part of the Lands, maintaining in good standing any policies of insurance in respect of the Lands, and complying with any requirements of applicable Laws in respect of the Lands;
- (e) environmental testing, site assessment, investigation, study or inspection of the Lands, or any other assessments of the condition of the Lands;
- (f) any expenses incurred in removing a construction lien from title to the Lands, obtaining a discharge of or vacating a construction lien or defending a construction lien action relating to the Lands, whether or not priority is claimed over the Charge; and
- (g) legal fees and disbursements (on a full indemnity basis) in connection with any of the foregoing.

27. **BANK MAY FULFILL BORROWER OBLIGATIONS**

The Bank may, but is not obliged to, fulfill any of the obligations of the Borrower under the terms of a Credit Agreement, this Charge or the Liabilities, and spend any money to perform any such obligations. Any amounts so paid by the Bank shall be immediately due and payable to the Bank, and will bear interest as set out in Section 4 from the date paid, and until fully paid such amounts and interest will be added to and form part of the Liabilities secured by the Charge and be a charge on the Lands, with the same priority.

28. **OTHER CHARGES**

The Bank may, at any time and from time to time as the Bank shall determine at its sole option and in its sole discretion, pay off the claims of other creditors who have an interest in the Lands. These may include construction liens and other liens, government claims, security interests, Taxes, charges, mortgages, utilities, common expenses and any other encumbrance, liability, charge or interest in the Lands which shall from time to time fall due and be unpaid in respect of the Lands, which might if not paid result in damage to or a reduction in the value of the Lands or a sale of the Lands, or which is capable of constituting a lien upon the Lands ranking equal with or in priority to this Charge.

who is liable under the Charge or any Guarantor. If, in addition to the Lands charged by the Charge, the Bank holds further security on account of the Liabilities, it is agreed that no single or partial exercise of any of the Bank's powers under the Charge or under any of such security (collectively called the "security" hereafter in this Section 34), shall preclude any other and further exercise of any other right, power or remedy pursuant to any of such security. The Bank shall at all times have the right to proceed against all, any, or any portion of such security in such order and in such manner as it shall in its sole discretion deem fit, without waiving any rights which the Bank may have with respect to any and all of such security, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Borrower under the remaining security. Any judgment or recovery under any security held by the Bank for, among other things, the Liabilities shall not affect the right of the Bank to realize upon any other security.

35. **CROSS DEFAULT**

If the Borrower at any time has given or assumed any other mortgages outstanding with the Bank, whether on the Lands or other lands and premises, including any that pre-date this Charge, then at the option of the Bank, default under any such other mortgages shall be deemed default under this Charge and conversely default under this Charge shall be deemed default under such other mortgages.

36. **CONSOLIDATION WITH OTHER MORTGAGES**

The Bank's right of consolidation applies to the Charge and to any other mortgages given by the Borrower to the Bank. The Bank is entitled to treat this Charge as one with any other mortgages given now or in the future by the Borrower to the Bank, so that the Bank can require that the requirements of all such mortgages, and this Charge, must be satisfied in full before the Bank will be obligated to give a discharge of any of those mortgages or this Charge.

37. **TAKING OF JUDGMENT NOT A MERGER**

The taking of a judgment or judgments in respect of some or all of the Liabilities shall not operate as a merger of any of the Liabilities, nor affect or prejudice any rights or remedies given to the Bank by the terms of the Charge. The Bank shall continue to be entitled to receive interest on the Liabilities, in accordance with and in the manner provided for such interest under the terms of a Credit Agreement and this Charge, until the judgment and Liabilities are paid in full.

38. **NO PREJUDICE FROM FAILURE TO ENFORCE RIGHTS**

No failure to enforce or delay in enforcing at any time or from time to time any of the rights of the Bank under the Charge shall prejudice such rights or any other rights of the Bank against the Borrower, the Guarantor or any other Person liable for payment, performance or observance of the Liabilities. No performance or payment by the Bank in respect of any breach or Default under the Charge by the Borrower shall relieve the Borrower from any Default under the Charge.

39. **NO WAIVER OF RIGHTS**

The Bank, at its sole option, may in writing at any time or times after Default waive such Default. Any such waiver shall apply only to the particular Default waived and shall not operate as a waiver of any other or future Default or prejudice any rights of the Bank in respect of any future Default or breach. No waiver shall be effective or binding on the Bank unless made in writing.

40. **APPLICATION OF PROCEEDS**

Any payments made of Liabilities from monies or other proceeds realized from the sale of any securities held in respect of such Liabilities, including proceeds realized under this Charge, may be applied and reapplied notwithstanding any previous application on such part or parts of the Liabilities as the Bank decides or may be held unappropriated in a separate collateral account for such time as the Bank decides.

41. **CONSENT OF BANK**

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

42. **DISCHARGE**

The Bank shall have a reasonable time after the Borrower becomes entitled to a discharge of this Charge and request by the Borrower within which to prepare and sign a discharge of this Charge or to authorize the electronic registration of a discharge (or in either case an assignment if requested by the Borrower and consented to by the Bank); and interest as

provided in Section 4 shall continue to run and accrue until actual payment in full has been received by the Bank. The Borrower shall pay the Bank's then current standard administration fee, if applicable, for preparing, reviewing or signing a discharge or assignment, and all legal and other expenses, whether the discharge or assignment is prepared by the Bank, the Borrower or any other Person. The discharge or assignment shall be prepared and executed by such Person or Persons as are specifically authorized by the Bank and the Bank shall not be obligated to execute any discharge or assignment other than a discharge or assignment which has been so authorized. The Borrower is responsible for registering the discharge or assignment and for the costs of registering any discharge or assignment on title (whether incurred by the Borrower or the Bank). If electronic registration is available in respect of the Lands, the Bank may at its option register the discharge or assignment on the Borrower's behalf and at the Borrower's expense and upon request provide the Borrower with confirmation of registration. The indemnity contained in Section 12 shall continue notwithstanding a discharge or assignment of the Charge.

43. AMENDMENTS

The Bank may from time to time enter into one or more written agreements with the Borrower (or with anyone to whom the Lands are transferred) to amend the Charge or any Credit Agreements. Without limiting the generality of the foregoing, such agreements may include provisions which increase or decrease the interest rate, renew or extend the term for payment or change the frequency of payments both before and after Default in respect of all or any part of the Liabilities. Any such agreement may, but need not, be registered on title to the Lands and whether or not so registered, the Charge, as amended, shall rank in priority to any and all instruments and interests registered against the Lands subsequent to the Charge for the full amount of the Liabilities.

Any agreement to make material changes to the Charge will not only apply to those who agree to the changes in writing, but to any Person, such as the Spouse (if any), who signed the Registered Mortgage Form.

No extension of time given by the Bank to the Borrower, or anyone claiming under the Borrower, or any other dealing with the owner of the equity of redemption of the Lands shall in any way affect or prejudice the rights of the Bank against the Borrower, the Guarantor or any other Person liable for the payment, performance or observance of the Liabilities or any part of the Liabilities.

Nothing contained in this Section 43 shall confer any right of renewal or extension upon the Borrower.

44. CONDOMINIUM PROVISIONS

If the Lands or any part thereof are or become one or more Units in a condominium, the following provisions apply:

- (a) The Borrower shall at all times and from time to time observe and perform all duties and obligations imposed on the Borrower by the *Condominium Act* and by the declaration, and any by-laws, rules and regulations, as amended from time to time, of the Condominium Corporation. Any breach of such duties and obligations shall, at the option of the Bank, be deemed a default under the Charge, entitling the Bank to demand repayment of all monies secured by the Charge with accrued interest thereon, or exercise any of its other rights and remedies.
- (b) Without limiting the generality of the foregoing, the Borrower shall pay when due any contribution to common expenses required of the Borrower as an owner of the Lands and assessments and any other amounts levied by the Condominium Corporation in respect of the Lands. In the event of the Borrower failing to do so, the Bank, at its option, may make any and all such payments on behalf of the Borrower, and any monies so paid shall be payable immediately, and shall be added to the monies secured by the Charge, bear interest as set out in Section 4 and, together with such interest, form a charge on the Lands.
- (c) The Borrower hereby irrevocably assigns to the Bank all of the Borrower's rights under the *Condominium Act*, the declaration and any by-laws, rules and regulations, as amended from time to time, of the Condominium Corporation.
- (d) The Borrower irrevocably authorizes and empowers the Bank to exercise the right of the Borrower as an owner of the Lands to vote or to consent in all matters relating to the affairs of the Condominium Corporation provided that:
 - (i) the Bank may at any time or from time to time give notice in writing to the Borrower and the Condominium Corporation that the Bank does not intend to exercise the right to vote or consent and in that event until the Bank revokes the notice the Borrower may exercise the right to vote or consent.
 - (ii) Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter;

- (iii) the Bank shall not by virtue of the assignment to the Bank of the right to vote or consent be under any obligation to vote or consent or to protect the interests of the Borrower.
- (e) At the Bank's request, the Borrower shall deliver to the Bank such proxies or other instruments as may be considered requisite by the Bank to confer such power of voting upon the Bank.
- (f) The Borrower hereby irrevocably authorizes the Bank as the authorized agent of the Borrower at any time, and from time to time, to apply to the Condominium Corporation for copies of by-laws, financial statements, notices, minutes, information relating to levies and assessments and any other information or certificates available under the *Condominium Act* related to the Lands.
- (g) The Borrower covenants and agrees to advise the Condominium Corporation to send all notices which would be sent to the Borrower by the Condominium Corporation to the Bank and to notify the Bank of any breaches by the Condominium Corporation that come to the attention of the Borrower in order that the Bank is kept fully informed.
- (h) No action taken by the Bank under this Section 44 will make the Bank a mortgagee in possession.
- (i) At the Bank's option, this Charge shall be deemed to be in default and the Liabilities or such part of the Liabilities as the Bank specifies will become due and payable immediately if:
 - (i) government of the property of the Condominium Corporation under the *Condominium Act* is terminated;
 - (ii) a vote of the Unit owners authorizes the sale of the property of the Condominium Corporation or of a part of its common elements;
 - (iii) the Condominium Corporation fails to comply with the *Condominium Act*, declaration, by-laws or rules and regulations;
 - (iv) the Condominium Corporation fails to insure the Units and common elements against destruction or damage by fire and other perils usually insured against for full replacement cost;
 - (v) the Condominium Corporation fails, in the Bank's opinion, to manage or cause to be managed the condominium property and assets in a careful way or to maintain its assets in good repair; or
 - (vi) the Condominium Corporation fails to insure all the condominium Units and common elements according to Law and any additional requirements the Bank may have or fails to do all that is necessary to collect insurance proceeds.

45. **GUARANTOR**

In consideration of the Bank making a loan or loans to the Borrower and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Guarantor hereby covenants, promises and agrees to and with the Bank as principal debtor and not as surety that the Guarantor shall pay or cause to be paid to the Bank, on demand, the Liabilities (including, without limitation, all principal, interest (including compound interest), whether or not the interest rate is changed, and all Costs and other charges now or hereafter due and payable by the Borrower to the Bank), as and when such monies fall due, and shall comply with, observe and perform all of the Liabilities by and on the part of the Borrower to be observed, performed and complied with. Each Guarantor, if there is more than one, is jointly and individually liable with the Borrower and with each other Guarantor for complying with all obligations under the Charge. All obligations of any Guarantor shall also be those of that Guarantor's heirs, executors, personal representatives, successors and assigns, and will not be altered by the bankruptcy of the Borrower or any Guarantor. The Bank shall not be bound to proceed against or exhaust its recourse against the Borrower or any other Guarantor or other party or under any other security it may hold before being entitled to payment, performance or observance from the Guarantor of the Liabilities.

The Guarantor further covenants and agrees that the Bank may, at any time or times and from time to time, without the consent of or notice to any Guarantor:

- (a) grant any time, indulgences, waivers, extensions of the time for payment or performance, or renewals of the term for payment of any or all of the monies secured by the Charge or performance or observance of any of the covenants, agreements and obligations forming part of the Liabilities, whether on the same or different interest rate, terms and conditions;

- (b) refrain from enforcing payments of any monies or performance or observance of any Liabilities secured by this Charge;
- (c) amend or supplement the terms or conditions of the Charge or any Credit Agreements, alter any term or time of payment of any of the Liabilities or any interest thereon, or alter, vary, increase or *decrease* any interest rate, or alter the amortization period applicable to any Liabilities;
- (d) release, discharge or otherwise deal with all or any part of the Lands or one or more of the Borrower, Guarantors, any subsequent legal or beneficial owner of the Lands, or any other Person liable on any covenant or any other security, collateral or otherwise;
- (e) otherwise deal with the Charge, the Borrower or any Guarantor and all matters affecting the Charge, Credit Agreements and obligations of the Borrower, as the Bank sees fit from time to time, including, without limitation, realizing on, releasing, accepting substitutions for or replacing any of the security for the Charge;

and none of the foregoing actions shall in any way lessen, limit or affect the guarantee or the obligations of any Guarantor under the Charge, regardless of the effect of any action, and the liability of the Guarantor under the Charge shall extend to and include the obligations of the Borrower under the Charge as so amended, renewed, extended or otherwise varied (including the obligation of the Borrower to pay interest at such increased or altered rate) and the Charge as so increased, expanded or otherwise altered, without further action on the part of the Bank or the consent or concurrence of the Guarantor.

The Guarantor hereby agrees to indemnify, save, hold and keep the Bank harmless from any and all claims, losses, damages, costs and expenses resulting from the non-payment to the Bank of any and all Liabilities and the breach of or failure to perform, observe or comply with any and all Liabilities, and the liability of the Guarantor shall not be released, discharged, extinguished or diminished by any act whatsoever of the Borrower or any loss, avoidance, termination by operation of law or otherwise of the obligations of the Borrower, any other Guarantor or any other Person, including, without limitation, any act of bankruptcy or insolvency, or any other act, matter or thing whatsoever, save only full payment in cash of all Liabilities, full performance and observance of and compliance with all Liabilities, the Credit Agreements and all security documents related thereto, registration of a discharge of this Charge, and written consent of the Bank. Notwithstanding any of the foregoing provisions of this Section 45, the Guarantor's representations, warranties, covenants and indemnifications in this Section 45 are not released in respect of Section 12 of this set of standard charge terms but shall survive the release and discharge of the Charge.

46. ASSIGNMENT OF LEASES AND RENTS

As additional and separate security for the Liabilities, the Borrower hereby transfers and assigns to the Bank all present and future oral or written leases, lease agreements, sub-leases, offers to lease, tenancies and other agreements for the use or occupancy of the whole or any part of the Lands and all extensions and renewals thereof (collectively the "Leases" and individually a "Lease") granted to any and all tenants, licensees and other occupiers thereof (collectively, the "Tenants" and individually a "Tenant"); all rents, income, profits, money and other benefits and advantages now or hereafter payable or arising under the terms of all Leases (in this Section 46, "Rents"); and all of the Borrower's rights under such Leases; and in furtherance thereof, the Borrower hereby covenants and agrees as follows.

- (a) the Borrower shall deliver to the Bank copies of all Leases and will provide any and all information related to the Rents promptly on the Bank's request. The Leases which have been provided by the Borrower to the Bank are in full force and effect and have not been assigned or pledged to any other party except as approved in advance by the Bank in writing;
- (b) except with the prior written consent of the Bank, the Borrower shall not amend, terminate, release or accept a surrender of any Lease or any guarantee thereof or waive, release, reduce, discount, discharge or otherwise compromise any Rents assigned under this Charge, and any attempt to do any of the foregoing without such prior written consent shall be deemed a default under this Charge and shall be null and void as against the Bank;
- (c) except for the last month's rent and any security deposit, the Borrower has not received and shall not accept payment of any Rents more than 30 days in advance;
- (d) except with the prior written consent of the Bank, the Borrower shall not further assign the Rents, the Leases or any interest therein or consent or agree to any postponement or subordination of the same in favour of any mortgage or other encumbrance now or hereafter affecting the Lands;
- (e) except with the prior written consent of the Bank, the Borrower shall not consent to or permit any assignment or subletting of the interest of any Tenant under any Lease or exercise any right of election thereunder which would in any way lessen the liability of any Tenant or shorten the stated term of any Lease;
- (f) the Borrower shall diligently and in good faith observe and perform all of the landlord's covenants contained in the Leases and shall likewise require that the Tenants and other parties to the Leases fully observe and

perform the covenants and agreements imposed upon them by the Leases, failing which the Bank may, at its option, require the same at the expense and in the name of the Borrower, and all such expenses incurred by the Bank shall be paid by the Borrower to the Bank immediately upon demand, be included as Costs and bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands;

- (g) the Borrower shall give prompt written notice to the Bank of default by any Tenant and any notice of default received from any Tenant, including a copy of such notice;
- (h) all of the Leases are and shall be bona fide and at rental rates and upon terms which are reasonable and consistent with comparable space in the municipality within which the Lands are situate;
- (i) the Borrower shall, at its own expense, execute and deliver to the Bank all such further assurances and assignments with respect to the Rents and the Leases, and enforce and do all other acts with respect to the Leases as may be required from time to time by the Bank.

Notwithstanding the foregoing provisions of this Section 46, the Bank will allow the Borrower to receive the Rents as long as the Borrower is not in Default. If the Bank withdraws this privilege, the Bank may at its option collect such Rents and will be entitled to a payment from the same of an administration fee equal to 5% of the gross amount of Rents collected, and the Borrower acknowledges and agrees that such administration fee is just and equitable having regard to the circumstances.

The Bank shall not by virtue of the provisions of this Section 46 or its receipt of any Rents become or be deemed to be a chargee or mortgagee in possession and the Bank shall not be obligated to collect any Rents or perform or discharge any obligation or liability under the Leases, and the Borrower agrees to save and hold harmless the Bank of and from any and all actions, proceedings, claims, demands, liabilities, damages, costs or expenses which the Bank may incur under or by reason of the Leases or the assignment contained in this Section 46; and all costs and expenses incurred by the Bank in connection with such assignment shall be paid by the Borrower to the Bank immediately upon demand and be included as Costs and, in unpaid, shall bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands. The giving of this assignment of Rents and Leases is by way of additional and collateral security for all monies secured by the Charge and not in substitution for any other security and will not in any way diminish, novate or otherwise affect any other security and such other security will not diminish, novate or otherwise affect this assignment of Rents and Leases. Any right or remedy under this assignment of Rents and Leases may be taken either independently or in conjunction with any other rights or remedies of the Bank under the Charge.

47. **FAMILY LAW ACT**

The Borrower represents and warrants that the statements as to the Borrower's marital status made by the Borrower in the Registered Mortgage Form are completely truthful and accurate under Part II of the *Family Law Act*. The Borrower agrees to advise the Bank immediately after any change or event affecting any of the following matters and to provide to the Bank full particulars thereof (a) the spousal status of the Borrower; (b) the name of the Borrower's Spouse; (c) the qualification of the Lands or any part thereof as a matrimonial home or family residence within the meaning of the *Family Law Act*; (d) the legal or beneficial ownership of the Lands or any part thereof; and (e) a shareholder of the Borrower obtaining rights to occupy the Lands or any part thereof by virtue of shareholding within the meaning of Subsection 18(2) of the *Family Law Act* or any successor provision thereof. The Borrower shall keep the Bank fully informed of the names and addresses of the owner or owners for the time being of the Lands and of any Spouse who is not an owner but who has a right of possession in the Lands by virtue of Section 19 of the *Family Law Act* or any successor provision thereof. The Borrower agrees to provide to the Bank such evidence in connection with any of such matters as the Bank may from time to time require, immediately on request, and any failure to do so shall be deemed to be a default under this Charge.

48. **SPOUSE'S CONSENT**

The Spouse of the Borrower named in the Registered Mortgage Form, by signing the Registered Mortgage Form, consents to the transaction evidenced by the Charge and releases all claim or interest that such Spouse has or may have in the Lands to the extent necessary to give effect to the rights of the Bank under the Charge, and agrees that the Bank may, without further notice, deal with the Lands and the charge created by the Charge as the Bank may see fit.

49. **INDEPENDENT LEGAL ADVICE**

Each of the Borrower, Spouse and all Guarantors acknowledges that it has full knowledge of the purpose and essence of this transaction, and that it has been appropriately and independently legally advised in that regard or has been advised of its right to independent legal advice and has declined same. Each such party agrees to provide to the Bank a certificate of independent legal advice as and when such certificate may be required by the Bank, regarding its knowledge and understanding of this transaction.

50. **ONTARIO NEW HOME WARRANTIES PLAN ACT**

If the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31 ("ONHWA") applies to the Lands, the Borrower agrees to comply with its requirements and to reimburse the Bank immediately for any costs or expenses of any nature or kind which the Bank incurs in complying with or enforcing the Borrower's rights on the Borrower's behalf if the Borrower fails to do so, and all such costs and expenses shall be included as Costs and if unpaid shall bear interest as provided for in Section 4, and together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands.

51. **EXCLUSION OF STATUTORY COVENANTS**

The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* shall be and are hereby expressly excluded and replaced by the terms of this Charge which are covenants by the Borrower, for and on behalf of the Borrower, with the Bank.

52. **STATUTE REFERENCES**

Unless expressly stipulated or otherwise required by the context, all references in this Charge to any statute shall be deemed to be a reference to such statute and any and all regulations from time to time made under such statute and to such statute and regulations as amended, re-enacted or replaced from time to time. Any references in the Charge to a specific section or sections, paragraph or clause of any statute or regulations shall be deemed to include a reference to any corresponding provision of future law.

53. **WHO IS BOUND**

The expressions "Borrower" and "Bank" wherever used in the Charge shall include the heirs, executors, personal representatives, administrators, successors and assigns of the Borrower and Bank respectively. All covenants, liabilities, and obligations of the Borrower under the Charge shall be equally binding upon his, her, its or their respective heirs, executors, personal administrators, successors and assigns, and any Person or Persons to whom the Lands are transferred, and all covenants, liabilities, advantages, privileges, immunities, powers and things hereby secured to the Bank shall be equally secured to and exercisable by its successors and assigns. If the Borrower or Guarantor is comprised of more than one Person, the covenants on the part of the Borrower and the Guarantor, respectively, contained in this Charge are and shall be joint and several.

54. **NOTICES**

Notices by the Bank. Unless otherwise stated in the Charge, if the Charge allows or requires the Bank to make a demand on, give a notice or consent to or make a request of any Person (including the Borrower), the Bank may make the demand, give the notice or consent or make the request, in any one or more of the following ways, at the Bank's sole discretion: (i) by delivering it personally to the Person (if the Person is a corporation, by delivering it personally to a director, officer or employee of the corporation); (ii) by transmitting it by facsimile to the Person; (iii) by transmitting it by e-mail to the Person (if the Person is a corporation, by transmitting it by e-mail to a director, officer or employee of the corporation); (iv) by mailing it by prepaid registered mail addressed to the Person at the Person's last known address; or (v) by transmitting it by any other means as the Bank approves in writing in advance. Unless otherwise stated in the Charge, any such notice by the Bank will be regarded as received: (i) when it is personally delivered to the Person or to the director, officer or employee of the corporation; (ii) on the day of the facsimile transmission or, if that day is not a Business Day, on the first Business Day after the facsimile transmission; (iii) on the first Business Day after the e-mail to the Person or to the director, officer or employee of the corporation; (iv) 5 days after the date of mailing, whether the Person receives it or not; or (v) on any other date as the Bank advises the Borrower when it advises the Borrower of an alternative method of notice pursuant to this Section 54.

Notices by the Borrower. Unless otherwise stated in the Charge, any notice that the Borrower gives the Bank must be by one of the following methods: (i) registered mail, postage prepaid to the address on the Charge; (ii) personal delivery to the manager of the branch of the Bank that administers the Charge; or (iii) any other method that the Bank approves in writing in advance. Unless otherwise agreed to by the Borrower and the Bank notice will be deemed to be received: (i) 5 days after mailing by registered mail; (ii) when personally delivered to the branch manager of the Bank; or (iii) on any other date the Bank advises the Borrower of when it advises the Borrower of an alternative method of notice.

55. **ELECTRONIC, WRITTEN AND ORAL COMMUNICATIONS**

If more than one Person signs the Charge as Borrower, the Bank can rely on communications the Bank receives from any one of the Borrowers, whether these communications are received electronically, in writing, orally or otherwise and such communications from any one of the Borrowers will be considered to be communication from all of the Borrowers. Cheques written by any one of the Borrowers will be considered to have been authorized by all of the Borrowers. In addition, communications from the Bank to any one of the Borrowers, whether these communications are delivered electronically, in writing, orally or otherwise, will be considered to be communication to all of the Borrowers.

56. **HEADINGS**

Headings in this Charge do not form part of this Charge and are not intended to have any legal effect, but are used only for easy and convenient reference.

57. **PARTIAL INVALIDITY**

If any provision in the Charge is found to be void, invalid or unenforceable for any reason, it shall be severed from the remaining provisions of the Charge, and the remaining provisions will not be affected and shall remain in full force and effect.

58. **NUMBER AND GENDER**

Unless the context requires otherwise, words in the singular include the plural, and vice versa, and words specifying a gender include all genders.

59. **GOVERNING LAW**

The Charge shall be governed by and construed according to the laws of the Province of Ontario and the applicable federal laws of Canada. The Borrower agrees to submit and attorn to the jurisdiction of the courts of Ontario with respect to the Charge.

60. **CONFLICT**

If there is a conflict between any provision of this Charge and any provision of the Credit Agreement, the Bank, in its sole discretion, shall determine which provision shall prevail to the extent of the conflict. Otherwise, the Bank shall have the rights granted in the Credit Agreement and the Charge. There will be no conflict if the terms and conditions of the Charge should enlarge or clarify the terms and conditions of the Credit Agreement or if the said Charge or the Credit Agreement remains silent on any one of the provisions of the other.

61. **NATIONAL HOUSING ACT**

If the Charge secures a loan which is insured by CMHC or another loan insurer or is securitized in accordance with Section 21 above (the "Insured Loan"), the following provisions shall apply notwithstanding any other provision contained in the Charge or any Credit Agreements:

- (a) If the loan is insured by CMHC, then the Charge is made pursuant to the *National Housing Act (R.S.C. 1985, C. N-11)* and its regulations, as amended and replaced from time to time, as if these provisions were contained herein in their entirety (collectively, the "Act").
- (b) If there is any conflict between any provision of the Act and any provision contained in the Charge or any Credit Agreements, then the provisions of the Act shall prevail. If there is any conflict between any provision of this Section 61 and any other provision contained in the Charge or any Credit Agreements, then the provisions of this Section 61 shall prevail.
- (c) The Borrower shall not use the Lands for business or industrial purposes unless contained within the limits as set out by the CMHC.
- (d) The provisions of Section 13 (entitled "Inspection") of this set of standard charge terms allowing the Bank to access the Lands shall also apply in favour of CMHC and any agent of CMHC. The reasonable cost of the environmental audits, investigations, tests, assessments, inspections or studies, as the case may be, conducted pursuant to Section 13 shall be paid by the Borrower forthwith upon request by the Bank, and if unpaid shall bear interest at the interest rate applicable to the Insured Loan and if there is more than one such interest rate then at the highest such interest rate, and such costs together with such interest shall be added to and form part of the Liabilities secured by the Charge and form a charge on the Lands. The exercise of any of the above-mentioned rights by any of the Bank, or any of their respective agents shall not mean that the Bank, CMHC or any of their respective agents are in possession of, manage, control or are liable for the Lands or are a chargee or mortgagee in possession of the Lands.
- (e) Should CMHC become at any time subrogated to the rights of the Bank arising from the Insured Loan or if it at any time becomes the assignee of such rights, CMHC shall be deemed to be the sole holder of the subrogated or assigned claim and the Charge and the Bank shall act accordingly. However, the Bank shall retain its personal rights against the Borrower for any amount (if any), other than the amount owing under the Insured Loan, due to it.

- (f) In the event of a sale, transfer or disposition of the Lands, in whole or in part, if:
- (i) the Borrower fails to apply in writing for the approval of the Bank as to the transferee or the terms and conditions of the transfer, or
 - (ii) the Bank does not approve in writing the transferee, or
 - (iii) the Bank does not approve in writing the terms and conditions of the transfer, or
 - (iv) the transferee fails to enter into an assumption agreement satisfactory to the Bank, agreeing to assume the Insured Loan and any amendments thereto, and any collateral agreements and to pay the amount thereby secured and perform every covenant, condition and obligation provided under the Insured Loan and any amendments thereto, and any collateral agreements, to be performed by the Borrower thereunder (including this obligation) at the time and in the manner and in all respects as therein contained and to be bound by each and all of the terms, covenants, conditions and obligations pertaining to the Insured Loan and any amendments thereof,

then, in any such case, the outstanding principal balance of the Insured Loan shall, at the option of the Bank, immediately become due and payable together with all the accrued interest and other monies owing thereunder.

- (g) Any amount paid to the Bank by the Borrower or on the Borrower's behalf to repay any obligation secured by the Charge, or collected by the Bank under **Section 16 (entitled "Insurance")** of this set of standard charge terms, or any proceeds resulting from the exercise of a remedy, shall be allocated toward reducing the Insured Loan before the payment of any other obligation secured by the Charge. (i) If the Insured Loan is granted for construction, repair or renovation purposes:

- (i) The drawings and specifications shall comply with the applicable standards approved by CMHC;
- (ii) If the Lands are an income producing property, the Bank may refuse to make a disbursement if such disbursement is not authorized by CMHC and the Bank shall retain at all times an amount sufficient to allow the work to be completed in accordance with the drawings and specifications it has approved and ensure compliance with the CMHC conditions pertaining to compliance with the rental income objectives. In addition to the other requirements set out in the Charge, the Borrower shall deliver to the Bank, prior to each disbursement of the loan, a certificate of the architect, engineer or other applicable professional as required by the Bank stating that the work has been completed in compliance with the drawings and specifications approved by the Bank and the relevant regulatory authority; and
- (iii) Furthermore, the Borrower shall notify the Bank in writing of the existence of any construction lien affecting the Lands or any part thereof within three days from becoming aware of its registration.

- (h) If the Lands are an income producing property, the Borrower shall comply with the following requirements:

- (i) In accordance with **Section 14 (entitled "Taxes")** of this set of standard charge terms, the Borrower shall pay monthly to the Bank, on the same date as the instalment payments to be made by the Borrower under the Credit Agreements or on such other dates as the Bank may at its option specify, the amount which the Bank shall indicate to the Borrower, which the Bank may at its option revise from time to time, to ensure the payment of Taxes which may affect the Lands within the twelve following months. The Borrower shall deliver to the Bank, forthwith after receipt thereof, all tax bills, assessment notices, other notices, statements and documents the Borrower receives respecting any Taxes;
- (ii) The Borrower may manage the Lands provided that such management by the Borrower is sound, reasonable and prudent and is similar to that provided by businesses specializing in such matters, as determined by the Bank and CMHC;
- (iii) The Borrower shall, within four months following the end of each fiscal year of the Borrower, deliver to the Bank financial statements of the Borrower and statements related to the Lands, including a detailed statement of revenues and expenditures pertaining to the Lands or any part of the Lands, prepared in form and by professionals approved by the Bank; and

- (iv) The Borrower shall not grant any other mortgage, charge or hypothec on the Lands or further encumber the Lands in any manner without the prior written approval of the Bank.
- (l) The Charge and Credit Agreements are governed by the laws of the Province of Ontario; and any dispute respecting them shall exclusively be submitted to the courts having jurisdiction in such Province.
- (j) Any references or rights in this Charge to any fluctuating account or accounts, revolving loans, additional or further advances beyond an initial advance, re-advances, and multiple facilities, shall be deemed deleted and not applicable. In addition, in light of the foregoing, any new or additional advances, increases to principal, or further borrowings or extensions of the term, shall not be permitted unless agreed to by the Bank, and only on the condition that same are new loans made to the Borrower, whether or not same continue to be secured by this Charge. The Borrower covenants and agrees to enter into such additional or new security documentation requested by the Bank to evidence the foregoing, including and without limitation a new commitment letter and a new Charge.
- (k) Any references in this Charge with respect to, or rights relating to, lines of credit, shall be deemed deleted and not applicable.
- (l) Any references or rights in this Charge, in favour of the Bank or otherwise, with respect to any crosscollateralization, cross default, or consolidation of any security, mortgages, loans, or property, or the granting of property as security for more than one loan, or more than one loan being secured by a single property, shall be deemed deleted and not applicable, with the intent that this Charge shall only be registered against the Lands, the Lands shall only secure the Liabilities and no other indebtedness, and the only real property security for the Liabilities shall be the Lands.
- (m) Any right set out in this Charge allowing for the Borrower to determine or change any payment dates or frequencies shall be subject to the obligation that, and deemed to include a provision that, such payments must be made on at least a monthly basis, and shall include regular blended payments of both principal and interest.

62. **DEFINED TERMS**

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

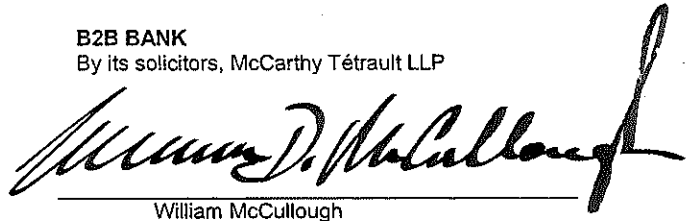
- (a) **"Bank"** means the Person or Persons named in the Registered Mortgage Form as the mortgagee or chargee and the respective successors and assigns of such Person or Persons;
- (b) **"Borrower"** means the Person or Persons named in the Registered Mortgage Form as the mortgagor or chargor, and the respective heirs, executors, personal representatives, administrators, successors and assigns of such Person or Persons;
- (c) **"Business Day"** means a day other than a Saturday, a Sunday or a statutory holiday observed in the Province of Ontario;
- (d) **"Charge"** means the Registered Mortgage Form including any schedules and addenda attached to it, all renewals, extensions and amendments thereto and replacements thereof from time to time, and this set of standard charge terms;
- (e) **"CMHC"** means Canada Mortgage and Housing Corporation;
- (f) **"Condominium Act"** means the *Condominium Act*, R.S.O. 1998, c. 19, as amended or replaced from time to time;
- (g) **"Condominium Corporation"** means each corporation created pursuant to the *Condominium Act* and pertaining to all or any part of the Lands which are governed by the *Condominium Act*;
- (h) **"Costs"** has the meaning set out in Section 26 of this set of standard charge terms;
- (i) **"Credit Agreements"** means all documents, now or in the future, that give rise to, govern, or relate to Liabilities, including, without limitation, financing agreements, loan agreements, credit agreements, contracts, promissory notes, bills, notices, guarantees and instruments, and all present and future amendments, renewals, extensions, restatements, replacements and substitutions of them; and **"Credit Agreement"** means any one of them;

- (j) **"Default"** means any default occurring under this Charge and includes, without limitation, any event described in Section 22 of this set of standard charge terms;
- (k) **"Family Law Act"** means the *Family Law Act*, R.S.O. 1990, c. F.3, as amended or replaced from time to time;
- (l) **"Fixtures"** means all fixtures and improvements, fixed or otherwise, including, without, limiting the generality of the foregoing, all piping, plumbing, electrical equipment or systems, aerials, refrigerators, stoves, clothes washers and dryers, dishwashers, incinerators, radiators and covers, fixed mirrors, fitted blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment, cooking and refrigeration equipment, and all component parts of any of the foregoing, and all apparatus and equipment appurtenant thereto, and all farm machinery and improvements, fixed or otherwise and even though not attached to the lands otherwise than by their own weight;
- (m) **"Guarantor"** means each Person who is named in the Charge as covenantor or guarantor or who has otherwise, directly or indirectly, as principal debtor or as surety, agreed to pay or perform or guaranteed payment or performance of all or any part of the Liabilities or who has agreed to be bound by the terms of any one or more of the Charge and the Credit Agreements, and the heirs, executors, personal representatives, administrators, successors and assigns of each such Person;
- (n) **"Hazardous Substance"** means any hazardous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may, whether as determined by the Bank or based upon reasonably authoritative information then available concerning such substance, immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing: (i) any such substance as defined or designated under any applicable Laws for the protection of the environment or any living thing; (ii) asbestos, urea formaldehyde, poly-chlorinated biphenyl (PCB) and materials manufactured with or containing the same; and (iii) radioactive and toxic substances;
- (o) **"Land Registration Reform Act"** means the *Land Registration Reform Act*, R.S.O. 1990, c. L. 4, as amended or replaced from time to time;
- (p) **"Lands"** means the lands described in the Registered Mortgage Form; all benefits, easements, rights-of-way and other appurtenances thereto; all buildings, structures, improvements and Fixtures now or hereafter located on such lands; and all property, additions, alterations and substitutions of any nature or kind now or hereafter attached, fixed or appurtenant to such lands, buildings, structures, improvements or Fixtures;
- (q) **"Law"** means any law, statute, by-law, regulation, rule, requirement, order, direction, policy, guideline, code and ordinance of any government, or governmental or administrative authority or agency, and all applicable common laws or equitable principles, whether now or hereafter in force and effect;
- (r) **"Liabilities"** means all obligations, debts, liabilities and extensions of credit, present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, now or at any time and from time to time due and owing by the Borrower to the Bank or remaining unpaid by the Borrower to the Bank, incurred or arising either before or after the delivery for registration of the Charge, and whether incurred or arising from a Credit Agreement or other agreement or dealings between the Bank and the Borrower, or from any agreement, proceedings or dealings with any third party by which the Bank may be or become in any manner whatever a creditor of the Borrower, or howsoever otherwise incurred or arising, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety, and any ultimate unpaid balance thereof, whether reduced from time to time and afterwards increased or entirely extinguished and afterwards incurred again (such as, for example, a revolving line of credit), and includes, without limiting the generality of the foregoing, all principal, interest (including compound interest), Costs, prepayment charges, and all other amounts owing by the Borrower to the Bank from time to time, due and payable by the Borrower under the Charge, or to which the Bank is entitled under the Charge, and all obligations, covenants, provisos, conditions, and undertakings, present or future, which the Borrower is required to or has agreed to perform, observe or comply with, whether contained in the Charge, Credit Agreements or otherwise;
- (s) **"Mortgage Insurer"** means CMHC or other institution that provides mortgage default insurance;
- (t) **"Mortgages Act"** means the *Mortgages Act*, R.S.O. 1990, c. M. 40, as amended or replaced from time to time;
- (u) **"Person"** means a natural person or any other legal entity, such as a corporation;
- (v) **"Principal Amount"** means the principal amount specified in the Registered Mortgage Form;

- (w) **"Receiver"** means any receiver, receiver and manager, receiver-manager or trustee of the Lands or any other similar Person appointed from time to time by the Bank or by any court of competent jurisdiction;
- (x) **"Registered Mortgage Form"** means, for the non-electronic paper based registration system, the Form 2 Charge/Mortgage of Land under the *Land Registration Reform Act* that the Borrower signs to give this Charge, and any schedules attached to it, or, for the electronic registration system, the Charge/Mortgage authorized by the Borrower and prepared in electronic format and registered electronically as provided by Part III of the *Land Registration Reform Act*, as the case may be, and includes all schedules and addenda to either such document;
- (y) **"Spouse"** means the spouse of the Borrower or another or common law interest in the Lands under applicable Laws;
- (z) **"Taxes"** means all present and future taxes, rates, assessments, duties, local improvement charges, development charges, levies, administration fees, and other charges, of any nature or kind, imposed upon or in respect of the Lands by any governmental authority having jurisdiction, including all interest and penalties payable in connection therewith;
- (aa) **"Unit"** has the meaning given to it in the *Condominium Act*.


DATED the 13th day of November, 2018

B2B BANK
By its solicitors, McCarthy Tétrault LLP



William McCullough

STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE

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