

CAPITAL REPAIR & IMPROVEMENT

LOAN AGREEMENT

THIS AGREEMENT made effective as of the [DATE]

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON

("Lender")

-and-

[NAME OF BORROWER]

("Borrower")

RECITALS:

WHEREAS the Borrower is an Eligible Housing Provider (as defined below);

AND WHEREAS the Borrower is the registered owner of the residential accommodation know municipally as [Address] (the "Housing Project")

AND WHEREAS the Lender has agreed to provide to the Borrower an interest-free loan, up to \$_____ (the "Loan") for the purposes of financing Borrower's Capital Works at the Housing Project as more particularly set out in Schedule "A" attached hereto (the "Work"), in accordance with the terms and conditions specified in this agreement;

NOW THEREFORE the Lender and the Borrower agree with each other as follows:

1. Definitions and Interpretation

1.1. In this Agreement, unless the context requires otherwise, the following terms have the meanings set out in this Section:

- (a) "Applicable Laws" means, with respect to any Person, property, transaction or event, all present or future laws, statutes, by-laws, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction in any applicable jurisdiction;

- (b) **“Business Day”** means a day, excluding Saturday, Sunday and any other day which is a legal holiday or a day on which banking institutions are closed in the Province of Ontario;
- (c) **“Capital Works”** means the capital repairs and/or improvement to be carried out by or on behalf of Borrower to the Housing Project and as more particularly described in Schedule "A" of this Agreement;
- (d) **“Capital Reserve”** means a reserve fund which shall be determined by the Borrower annually in conjunction with the Lender, accumulated annually by the Borrower and, during the three years following the first allocation of funds on account of the Works or until the completion of the Works (whichever is sooner), maintained by the Lender in trust for the Borrower for the purpose of future repairs and replacements of the capital components of the Housing Project;
- (e) **“Contaminant”** includes, without limitation, any pollutant, dangerous substance, liquid waste, industrial waste, hauled liquid waste, hazardous waste, hazardous material, hazardous substance, toxic substance or contaminant including any of the foregoing as defined in any Environmental Law;
- (f) **“Date of Commitment”** means the date of a Loan Agreement that has been signed by both parties;
- (g) **“Environmental Activity”** means any past, present or future activity, event or circumstance in respect of a Contaminant, including, without limitation, its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation, or its Release into the natural environment, including movement through or in the air, soil, surface water or groundwater;
- (h) **“Environmental Laws”** means all Applicable Laws relating to the environment or occupational health and safety, or any Environmental Activity;
- (i) **“Eligible Housing Provider”** means a housing provider that;
 - i Owns and operates an Eligible Housing Project;
 - ii Is a non-profit corporation or a non-profit housing cooperative corporation; and
 - iii Meets such other criteria as the Service Manager may require.
- (j) **“Funding Conditions”** has the meaning ascribed thereto at Section 2.3, below;
- (k) **“GAAP”** means generally accepted accounting principles in effect from time to time in Canada applied in a consistent manner from period to period;
- (l) **“HSA”** means the *Housing Services Act, 2011*, as amended from time to time or under any successor legislation of similar import, and to the extent applicable, includes the former *Social Housing Reform Act, 2000*;
- (m) **“Minister”** means the *Minister of Municipal Affairs and Housing for Ontario*;
- (n) **“Obligations”** means all obligations of Borrower to Lender under or in connection with this Agreement and the Other Security, including but not limited to all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by

Borrower to Lender in any currency or remaining unpaid by Borrower to Lender in any currency under or in connection with this Agreement or the Other Security, whether arising from dealings between Lender and Borrower or from any other dealings or proceedings by which Lender may be or become in any manner whatever a creditor of Borrower under or in connection with this Agreement, and wherever incurred, and whether incurred by Borrower alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses;

- (o) **“Operating Agreement”** means the agreement entered into between Borrower and Canada Mortgage and Housing Corporation in respect of the operation of the Housing Project, the administration of which Operating Agreement has been delegated to Lender, in its capacity as Service Manager (as defined in the HSA);
- (p) **“Permitted Encumbrances”** means any of the following encumbrances: (a) liens for taxes or assessments or other governmental charges not yet due and payable, (b) pledges or deposits of money securing statutory obligations under worker's compensation, employment insurance, health insurance, social security or public liability laws or similar legislation; (c) zoning restrictions, easements, licenses, or other restrictions on the use of any real property or other minor irregularities in title (including leasehold title) thereto, so long as the same are complied with and do not materially impair the use, value, or marketability of the Property; (d) presently existing or hereinafter created liens in favour of Lender; (e) any lien or encumbrance the validity of which is being contested by Borrower in good faith and in respect of which within 90 days of such lien or encumbrance having been asserted or registered, there shall have been deposited with Lender cash in an amount sufficient to satisfy the same, or Lender shall otherwise be satisfied that its interests are not prejudiced thereby; (f) liens, charges or encumbrances registered or to be registered or created against title to the Property and listed in Schedule "E" attached hereto; and (g) such further encumbrances as may be permitted with the prior written consent of Lender, which consent is not to be unreasonably withheld;
- (q) **“Person”** includes an individual, a partnership, joint venture, trust, company, corporation, association, organization, government or any department or agency thereof, and any other incorporated or unincorporated entity;
- (r) **“Project Costs”** means at any time the aggregate of all costs incurred or to be incurred by Borrower with respect to the Capital Works to the Housing Project, net of HST recovery;
- (s) **“Property”** means the real property on which the Housing Project is situated, as more particularly described in Schedule "B" of this Agreement;
- (t) **“Work”** means all construction and repair work and all technical, architectural, consulting, engineering, legal and administrative services and the materials that are supplied to carry out these services, which are necessary for or incidental to carrying out the Capital Works.

1.2. Unless otherwise provided, all dollar amounts are in Canadian currency and accounting terms are to be interpreted in accordance with GAAP.

2. Loan

2.1. *Establishment and Amount of Loan.* Lender hereby establishes in favour of Borrower a non-revolving zero-interest loan (the “Loan”) in the maximum principal amount of \$_____ (the “Loan Limit”), by way of loan

advances (“Advance”). Each Advance by Lender to Borrower on account of the Loan will be provided to the Lender in accordance to Schedule “C”.

2.2. *Availability.* Borrower may borrow any amount up to the Loan Limit through established schedule as per Schedule “C”, or providing written notice to Lender, in each case thirty (30) days prior to the date of a requested Advance, which notice shall include the amount of any requested Advance, the required date of such Advance and revised Schedule “C”.

2.3. *Lender's Conditions.* Provided that Borrower is not in default under this Agreement, Borrower may borrow against the Loan in accordance with a draw schedule agreed to by Lender as per Schedule “C”, which reflects project milestones and anticipated cash flow needs respecting the Work. Each Advance is conditional upon Borrower providing satisfactory responses to any concerns raised by Lender upon its review of documents such as proposed project specifications, proposed tender documents and bid processes, proposed contract awards, and proposed certificates of payment. Borrower shall comply with the procedures and requirements respecting the Work as are set forth in Schedule "F". From time to time, Lender may require Borrower to provide documentary evidence to Lender's satisfaction to substantiate that the Work is being carried out in accordance with the project milestones. Notwithstanding anything else herein contained, the availability and quantum of Advances shall be subject to the following Funding Conditions:

- (a) During the three years following the first allocation of funds on account of the Works or until the completion of the Works (whichever is sooner), Project Costs shall be paid first from the Capital Reserve, and Capital Reserve shall not be reduced below the amount of \$[TBD], which shall be maintained for emergency and unexpected repairs.
- (b) Any capital repairs or other form of capital expenditure in addition to the Works shall be approved by the Lender for so long as any portion of the Loan remains outstanding, whether or not the cost thereof would be paid from Capital Reserve. The Borrower shall submit to the Lender a schedule of estimated capital expenditure requirements annually with its estimate of subsidy requirement.

2.4. *Repayment.* The Loan is repayable commencing three years following the first allocation of funds on account of the Works or the completion of the Works (whichever is sooner).

- (a) Borrower shall pay, in consecutive monthly installments an amount equal to the Monthly Payment as established in Schedule “D”. For the purposes of this Agreement, the “**Monthly Payment**” means the monthly payment of the Loan, amortized over a [number of year] period. Monthly Payments shall be payable monthly on the first day of each month;
- (b) All repayments of the loan shall be payable in lawful money of Canada at Lender's office address as set out herein, or such other address as Lender may from time to time designate in writing; and
- (c) Despite anything otherwise provided in this Agreement, if Lender ceases to be responsible as Service Manager under the HSA, for the administration and funding of the Housing Project, the balance outstanding of the Loan shall be immediately due and payable.

2.5. *Treatment of Loan on Financial Statements.* Borrower's treatment of the Loan on its financial statements may, subject to Applicable Laws, shall be in a form acceptable to Lender and in accordance with GAAP.

2.6. *Payment of Costs and Expenses.* Borrower shall pay to Lender on demand by Lender, all costs and expenses of Lender and its agents from time to time incurred in connection with the defense, establishment, protection or enforcement of any of the rights or remedies of Lender under this Agreement or any of the Security, including, without limitation, all of the fees and disbursements of counsel to Lender incurred in connection therewith, all of which form part of the Obligations.

3. Final Reconciliation

3.1. *Final Reconciliation.* Within ninety (90) days of the earlier of: (i) date of completion of the Work; and (ii) such date as Lender may determine, in its sole discretion (the “**Final Reconciliation Date**”), Borrower shall provide Lender with a detailed reconciliation statement (the “**Final Reconciliation Statement**”) of all costs expended in respect of the Work up to and including the Final Reconciliation Date. For the purposes of this Section 3.5, “**completion**” shall mean completion as determined under subsection 2(3) of the *Construction Act* (Ontario). The Final Reconciliation Statement shall also include a reconciliation of HST recoverable by Borrower. Borrower shall return to Lender all funds advanced on account of the Loan, which, as of the Final Reconciliation Date, have not been used for the purposes of Capital Works, and any HST recoverable by Borrower, within thirty (30) days of Lender's written approval of the Final Reconciliation Statement. If Borrower is unable to submit the Final Reconciliation Statement by The Final Reconciliation Date, it shall submit a draft statement based on available information and submit the Final Reconciliation Statement as soon as possible thereafter.

4. Purpose of Loan

4.1. The purpose of The Loan is to finance the agreed upon Capital Works to the Housing Project, and Borrower agrees not to use any portion of the Loan for any other purpose.

5. Conditions Precedent

5.1. The availability of the Loan and all Advances hereunder are conditional upon:

- (a) The receipt by Lender of a duly executed copy of this Agreement;
- (b) The receipt by Lender of the Security, in such form as Lender may require, duly executed, delivered, and where applicable, registered to perfect and maintain the security created thereby and such certificates, authorizations, resolutions and legal opinions as Lender may reasonably require;
- (c) The receipt by Lender of such financial, corporate and other records or documents relating to Borrower as Lender may reasonably require;
- (d) There being no Event of Default by Borrower hereunder or Security;
- (e) All covenants, representations and warranties of Borrower hereunder or under the Security being complied with and being true in all material respects;
- (f) Borrower having good and marketable title to the Property, free of all mortgages, charges, liens and encumbrances other than Permitted Encumbrances;
- (g) The Permitted Encumbrances being in good standing;
- (h) There being no default by Borrower under the First Mortgage or any other security granted by Borrower to the bolder of the First Mortgage (the "First Mortgage");

- (i) The receipt of the consent of the Minister to the provisions of this Loan Agreement and the transactions contemplated hereunder, if required under the HSA; and
- (j) Borrower obtaining approval and authorization from Lender, or an authorized delegate of Lender, before incurring capital expenditures respecting the Work and prior to paying any invoices therefore.

6. Security Interest

As security for the repayment and performance of the Obligations, Borrower shall, on or before the first Advance, provide Lender with executed and registrable security documents in the forms attached hereto as Schedule "G" (the "**Security**"), completed in accordance with this Agreement.

6.1. Lender acknowledges and agrees that notwithstanding that the Security provides that the principal secured thereunder is payable on demand, Lender shall have no right to demand payment thereunder except in accordance with the provisions of this Agreement relating to repayment. In the event of a conflict or inconsistency between the provisions of this Agreement and the Security, the provisions of this Agreement shall prevail.

6.2. Lender and Borrower agree that the Security shall rank immediately behind the First Mortgage. Lender agrees to postpone its Security in favour of the First Mortgage. The terms and provisions of the First Mortgage shall not be amended or renewed without the prior written consent of Lender, not to be unreasonably withheld.

6.4 All relevant Security, including this Agreement, may be registered against title to the Property.

6.5. Borrower acknowledges and agrees that Lender may make a claim or demand payment under the Security, in accordance with the provisions of this Agreement, notwithstanding any limitation period regarding such claim or demand set forth in the *Limitations Act, 2002* (Ontario) or under any other Applicable Laws with similar effect and, to the maximum extent permitted by Applicable Laws, any limitations periods set forth in the *Limitations Act 2002* (Ontario) or Applicable Laws are excluded. For greater certainty, Borrower acknowledges that this Agreement constitutes a "business agreement" as defined under Section 22 of the *Limitations Act 2002* (Ontario).

6.6. Concurrently with the provision of the Security, Borrower shall provide or cause to be provided to Lender:

- (a) Such corporate authorizations, resolutions and certificates as Lender may reasonably require in respect of this Agreement and the Security; and
- (b) Such opinions of Borrower's solicitors, in form and content satisfactory to Lender acting reasonably as to title, registrations, priority of Security and zoning matters, and as to the due authorization, execution, delivery and enforceability of this Agreement and the Security.

7. Representations and Warranties of Borrower

7.1. The Borrower represents and warrants to the Lender as follows, which representations and warranties will be deemed to be continuing representations and warranties during the entire term of this Agreement:

- (a) The Borrower is a corporation legally incorporated, duly organized and validly existing, and in good standing under the laws of the Province of Ontario.
- (b) The execution, delivery and performance of this Agreement is within the corporate powers and capacities of the Borrower and have been duly authorized by proper corporate proceedings.
- (c) There are no actions, suits or proceedings pending or to the knowledge of the Housing Provider threatened against or adversely affecting the Borrower in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign which might materially affect the financial condition of the Borrower or the title to the Housing Project.
- (d) No representation or warranty by the Borrower in this Agreement, nor any statement or certificate (including financial statements) furnished or to be furnished to the Lender pursuant hereto contains or will contain any untrue statement of any fact or omits or will omit to state a fact necessary to make such representation, warranty, statement or certificate not misleading.
- (e) The Borrower is in compliance with all applicable federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and bylaws.
- (f) It has good and marketable title to all of its properties and assets, including the Property, free and clear of any mortgages, liens, claims, loans or encumbrances, other than: (i) those created hereunder; and (ii) the Permitted Encumbrances;
- (g) It is in compliance in all material respects with the First Mortgage and all other security granted by Borrower to the holder of the First Mortgage;
- (h) It is in compliance in all material respects with all of the Permitted Encumbrances;
- (i) It is in compliance in all material respects with all Applicable Laws including, without limitation, all Environmental Laws;
- (j) It possesses all licenses, patents, trademarks, service marks and copyrights, free from material restrictions, that are necessary for the ownership, maintenance and operation of its assets and businesses and it is not in violation of any rights of third parties with respect to any of the foregoing;
- (k) No event has occurred which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of this Agreement or any security agreement given in connection herewith; and
- (l) It has filed all material tax returns required to be filed by it, paid or made provision for payment of all taxes and claims ranking in priority to Lender's security (including interest and penalties) which are due and payable, and provided adequate reserves for payment of any tax, the payment of which is being contested.

8. Covenants of Borrower

8.1. Borrower hereby covenants and agrees with Lender that it shall, during the currency of this Agreement, and while the Loan is outstanding, provide Lender with:

- (a) Annual audited financial statements for Borrower, within one hundred and fifty (150) days of each fiscal year end; and
- (b) Such other financial and operating statements and reports as and when Lender may reasonably require.

8.2. Borrower hereby covenants and agrees with Lender that it shall, during the currency of this Agreement, and while the Loan is outstanding:

- (a) Pay all sums of money due and owing by it and perform all of its obligations under this Agreement as and when the same become due;
- (b) Pay all sums of money due and owing by it and perform all of its obligations under the First Mortgage as and when the same become due;
- (c) The Borrower shall use its best efforts to seek out and engage individuals to sit on its board of directors from relevant professional backgrounds such as financial and technical fields and Lender's staff.
- (d) Promptly provide Lender with written notice of any event which constitutes or which, with notice, lapse of time, or both, would constitute a breach of any covenant or other term or condition of this Agreement, any Security or any other agreement given in connection herewith;
- (e) Not alter, supersede or cancel its articles of incorporation or letters patent without the prior written consent of Lender;
- (f) Not, without the prior written consent of Lender, and, where applicable under the HSA, the Minister, transfer, lease or otherwise dispose of or offer, list, advertise or hold out for transfer, lease or other disposal, the Housing Project or any part of it, including any chattels in it. Borrower may, without the consent of Lender or the Minister: (i) enter into an occupancy agreement or offer, list, advertise or hold out for occupancy an individual unit in the Housing Project for a term not exceeding one year; and (ii) in the ordinary course of operating the Housing Project, dispose of or offer, list, advertise or hold out for disposal, chattels in the Housing Project;
- (g) Save and except for the First Mortgage, not, without the prior written consent of Lender, and, where applicable under the HSA, the Minister, mortgage, replace an existing mortgage or otherwise encumber the Housing Project, or extend the term of or otherwise amend any existing or approved mortgage or other encumbrance of the Housing Project, unless it does so in compliance with such rules as may be prescribed under the HSA;
- (h) Maintain and preserve in full force and effect its corporate existence and all rights, licenses, leases, qualifications, privileges, franchises and other authority adequate for the conduct of its business;
- (i) Keep its assets fully insured against such perils and in such manner as would be customarily insured by Persons carrying on a similar business or owning similar assets;

- (j) Maintain, preserve and protect all of its property and assets in good order and working repair and condition (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all required and recommended repairs, renewals and replacements thereto;
- (k) File all material tax returns which are to be filed by it from time to time, pay or make provision for payment of all taxes and claims ranking in priority to Lender's Security (including interest and penalties), and provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (l) Maintain, preserve and protect all of its rights to enjoy and use patents, copyrights, trademarks, trade names, service marks, licenses, leases, and franchises;
- (m) Comply in all material respects with all Applicable Laws including, without limitation, all Environmental Laws;
- (n) Comply in all material respects with all Permitted Encumbrances;
- (o) Not, without the prior written consent of Lender, amend, replace or renew the First Mortgage;
- (p) Not, without the prior written consent of Lender, sell, transfer, convey, lease or otherwise dispose of any of its properties or assets other than in the ordinary course of business and on commercially reasonable terms;
- (q) Not, without the prior written consent of Lender, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein;
- (r) Not, without the prior written consent of Lender, merge, amalgamate or otherwise enter into any other form of business combination with any other Person;
- (s) Promptly provide Lender with written notice of any non-compliance by Borrower with any Environmental Laws or any Release of a Contaminant from the Property into the natural environment, and indemnify and save Lender harmless from and against any liability, loss or damage as a result of an Environmental Activity or any non-compliance with any Environmental Laws;
- (t) Permit Lender or its representatives, from time to time, to visit and inspect Borrower's premises, properties and assets and examine and obtain copies of Borrower's records or other information and discuss Borrower's affairs with the auditors, counsel and other professional advisors of Borrower;
- (u) Prepare and submit annually a capital plan as part of Borrower's reporting requirements, which plan shall be subject to the approval of Lender, acting reasonably;
- (v) Obtain approval and authorization from Lender, or an authorized delegate of Lender, before incurring capital expenditures respecting: (i) the Work; or (ii) any other capital repairs or capital projects undertaken by Borrower, whether or not to be paid for from Borrower's own funds, and prior to paying any invoices therefor;

- (w) Permit inspection of the Housing Project by Lender at Lender's discretion with reasonable notice being given to Borrower from Lender; and
- (x) Ensure that the Housing Project shall continue to, and shall at all times during the term of the Loan, participate in a social housing program in a manner acceptable to Lender.

8.3. The Borrower shall indemnify and hold harmless the Lender from and against any and all liability, injury, loss, costs, damages, expenses (including legal, expert, and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Work, or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Lender. Such indemnification shall survive the termination of this Agreement for claims arising from or out of incidents occurring during the term of this agreement.

8.4. The obligation to indemnify will require the Borrower to exhaust all reasonable opportunities to seek recovery, which efforts shall include but shall not be limited to resorting to legal action to defend third party claims.

9. Insurance and Indemnity

9.1. Throughout the term of this Agreement, the Borrower shall maintain commercial general liability insurance on an occurrence basis for an amount of not less than Five Million Dollars (\$5,000,000) and shall include the Lender as an additional insured with respect to the Borrower's operations and omissions relating to its obligations under this Agreement, such policy to include non-owned automobile liability, personal liability, personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses.

Automobile liability insurance for an amount not less than five million (\$5,000,000) dollars on forms meeting statutory requirements covering all vehicles used in any manner in connection with the performance of the terms of this Agreement.

9.2. The Borrower shall submit a completed standard Insurance Certificate (Form #0788), and shall provide the Lender with a minimum of thirty days' notice in advance of cancellation of such insurance.

9.3. The Lender reserves the right to request such higher limits of insurance or other types of policies appropriate to this Agreement as it may reasonably require.

9.4. Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.

10. Right of Prepayment

10.1. It is the intention of the parties that the Loan shall be closed until the Maturity Date. The Borrower may prepay the Loan in full or in part prior to the Maturity Date with Lender's prior written consent.

11. Events of Default

11.1. Upon the occurrence of any of the following events of default (individually an "**Event of Default**"):

- (a) Any representation or warranty made by the Borrower herein or in any instrument submitted pursuant hereto proves to be false in any material respect or the Housing Provider breaches one or more of the covenants and/or other term set out in this Agreement;
- (b) The Borrower becomes insolvent or bankrupt or subject to the provisions of the Winding-Up Act and Restructuring Act, R.S.C. 1985, c. W-11, as amended or the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended, or goes into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors or otherwise acknowledges itself insolvent.
- (c) The Borrower abandons the Housing Project or ceases or threatens to cease to manage and operate the Housing Project as it is presently managed and operated, or threatens to commit any act of bankruptcy.
- (d) Any execution or any other process of any court becomes enforceable against the Housing Project or if a distress or analogous process is levied on the Housing Project, and the execution, sequestration, extent, distress or process, remains unsatisfied for a period as would permit the Housing Project or a part of it to be sold.
- (e) Steps are taken or proceedings are commenced by any person to dissolve, wind up or terminate the existence of the Housing Provider or to liquidate its assets.
- (f) Any trustee, receiver, receiver and manager or similar person is appointed with respect to the Housing Project.
- (g) The Housing Project is seized under execution or attachment.
- (h) The Lender, in good faith believes that the ability of the Borrower to pay any of its obligations to the Service Manager or to perform any of the covenants contained in the Agreement is impaired or in jeopardy.
- (i) Failure to provide data/reports as set out in this Agreement in accordance with the timelines and in the format as requested by the Lender.

The Lender shall be under no further obligation to make any Advances and Lender may give notice to Borrower (a) declaring Lender's obligation to make Advances to be terminated, in which case they shall terminate immediately, and/or (b) declaring the outstanding amount of the Obligations to be due and payable, in which case the Obligations shall be immediately due and payable without presentment, demand, protest or any further notice of any kind, all of which are expressly waived by Borrower.

No express or implied waiver by the Lender of any default hereunder will in any way be construed to be a waiver of any future or subsequent default. A waiver by the Lender of its right to exercise one remedy in respect of an Event of Default will not operate as a waiver by the Lender of its right to exercise another remedy in respect of that Event of Default. The Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of the Lender's rights or remedies, hereunder or under any documents made in connection herewith.

12. Force Majeure

12.1. Subject to Section 12.2 **Force Majeure** means any event that is beyond the reasonable control of a Party; and makes a Party's performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances. Force Majeure includes:

- (a) Infectious diseases, war, riots and civil disorder;

- (b) Storm, flood, earthquake and other severely adverse weather conditions;
- (c) Lawful act by a public authority; and
- (d) Strikes, lockouts or other labour actions

12.2. Force Majeure shall not include:

- (a) Any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees; or
- (b) Any event that a diligent Party could reasonably have been expected to:
 - i. Take into account at the time of the execution of the Agreement; and
 - ii. Avoid or overcome in the carrying out of its obligations under the Agreement.

12.3. The failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfil the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement. The Parties shall fulfil their obligations under this Agreement as soon as reasonably possible after a Force Majeure event has ended or been resolved.

13. Miscellaneous Provisions

13.1. *Survival of Representations and Warranties.* The representations and warranties contained herein or made pursuant to this Agreement and all other Security shall survive until the termination of this Agreement.

13.2. *Notices.* All notices, statements, demands, requests or other instruments which may be or are required to be given under this Agreement shall be in writing and shall be delivered in person or sent by facsimile or prepaid registered mail addressed to the applicable party as follows:

If to Lender:

The City of London Attention: Manager, Housing Services
355 Wellington St. Suite 248 2nd Floor
London, ON N6A 3N7

If to Borrower:

[Borrower's address]
Attn: President and/or Board Chair

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Any

notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1st) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

13.3. *Review.* Lender may conduct periodic reviews of the affairs of Borrower, as and when determined by Lender, for the purpose of evaluating the financial condition of Borrower. Borrower shall make available to Lender such financial statement and other information and documentation as Lender may reasonably require and shall do all things reasonably necessary to facilitate such review.

13.4. *Audit.* Lender shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating to this Agreement, including third party records pertinent thereto. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to Lender and/or any of its duly authorized representatives, appointees or delegates, to be inspected and/or audited, at all reasonable times both during the term of this Agreement and subsequent to expiration and termination. Borrower shall execute and deliver within ten (10) Business Days of receipt from Lender, any direction and/or authorization to a third party authorizing such third party to provide to Lender, and/or any of its duly authorized representatives, appointees or delegates, all information and records with respect to this Agreement that is requested by Lender. Borrower agrees that Lender shall be entitled to make copies of any or all of the said books and records as Lender reasonably requests or requires from time to time. Borrower shall fully co-operate with Lender and/or any of its duly authorized representatives, appointees or delegates in respect of any inspections, audits, reviews and requests made by Lender under Section 13.4 and Section 13.5. The rights and obligations of the parties under Section 13.4 and Section 13.5 shall survive the termination or expiration of this Agreement.

13.5. *Records.* Except as specifically otherwise provided in this Agreement, Borrower agrees to prepare and maintain its financial records in accordance with GAAP. Borrower agrees to retain and preserve all of its books and records relating to this Agreement for a period of seven (7) years after each such record has been received or created, as the case may be.

13.6. *Schedules.* The Schedules attached hereto are incorporated into this Agreement by reference.

13.7. *Entire Agreement.* This Agreement and all Schedules and other attachments hereto, Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the entire agreement among the parties with respect to the subject matter set forth herein or therein and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof or thereof.

13.8. *Joint and Several.* Where more than one Person is liable as Borrower for any obligation under this Agreement, the liability of each such Person for such obligation is joint and several with each other such Person.

13.9. *Non-Merger.* The provisions of this Agreement shall not merge with any other security provided to Lender, but shall continue in full force for the benefit of the parties hereto.

13.10. *Amendments.* This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

13.11. *Waivers.* No failure or delay on the part of Lender in exercising any right or power hereunder or under any security document shall operate as a waiver thereof.

13.12. *Relationship of Parties.* Each of the parties expressly disclaims any intention to create a partnership or joint venture. Nothing herein shall be construed so as to make Lender a partner or joint venture of Borrower or to render Borrower the agent or other authorized representative of Lender for any purpose. Lender is acting hereunder only in its capacity as a lender and shall have the same rights, responsibilities and obligations as any other lender. Except as otherwise expressly provided in this Agreement, or in any agreement entered into by Borrower and Lender pursuant to this Agreement, neither Borrower nor Lender shall have any authority to act for or to assume any obligations or responsibility on behalf of the other. Borrower shall not at any time expressly or by any course of conduct hold itself out as a partner, joint venturer or agent of Lender.

13.13. *Governing Law.* This Agreement and the rights and obligations of the parties hereunder shall be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein.

13.14. *Assignment.* Borrower shall not assign or transfer or permit the assignment or transfer of any of its rights or obligations under this Agreement without the prior written consent of Lender. Lender may assign all or part of its rights and obligations under this Agreement to any Person. Lender may disclose to potential or actual assignees confidential information regarding Borrower (including any such information provided by Borrower to Lender) and shall not be liable for any such disclosure.

13.15. *Severability.* Any portion or provision of the Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining portions or provisions hereof in such jurisdiction or, to the extent permitted by law, rendering that or any other portion or provision of the Agreement invalid, illegal or unenforceable in any other jurisdiction.

13.16. *Binding Effect.* This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

13.17. *Time of Essence.* Time shall be of the essence in all provisions of this Agreement.

13.18. *Counterparts and Facsimile.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument. Transmission of executed copies of this Agreement, whether or not in counterpart, by facsimile or other form of electronic transmission shall be deemed to have the same effect as delivery of an originally executed copy to the party receiving the facsimile transmission.

13.19. *Freedom of Information.* Borrower acknowledges and agrees that the commercial and financial information in this Agreement is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

SIGNED, SEALED AND DELIVERED

**THE CORPORATION OF THE CITY OF LONDON AS
REPRESENTED BY THE MANAGING DIRECTOR,
HOUSING, SOCIAL SERVICES AND DEARNESS
HOME**

Kevin Dickins
Acting Managing Director
Housing, Social Services and Dearness Home

Housing Provider

Authorized Signing Officer

Name and Title (Please Print)

Authorized Signing Officer

Name and Title (Please Print)

I/We have the authority to bind the Corporation

SCHEDULE "A"
CAPITAL WORKS

Eligible Housing Provider Name:

Housing Project Address:

Description of Capital Works:

SCHEDULE "B"

LEGAL DESCRIPTION OF PROPERTY

*

SCHEDULE "C"
DRAW SCHEDULE

Date of Loan Advance	Loan Advance Amount
Click here to enter a date.	
Click here to enter a date.	
Click here to enter a date.	
Click here to enter a date.	
Click here to enter a date.	
Click here to enter a date.	
Total	

SCHEDULE "D"
LOAN REPAYMENT SCHEDULE

Total Loan Amount	\$[Amount]
Interest Rate	Zero-Interest
Payment Frequency	Monthly
Amortization Remaining	[Number of Months]
Payment Amount	[Total Loan Amount/Number of Months]
Start Date	Click here to enter a date.
Maturity Date	Click here to enter a date.

SCHEDULE "E"
PERMITTED ENCUMBRANCES

Inst Reg No	Date	Inst Type	Party From	Party To

SCHEDULE "F"**PROCEDURES RESPECTING PERFORMANCE OF THE WORK**

Borrower agrees to maintain compliance with the following procedures respecting the carrying out of the Work at the Housing Project:

1. Borrower shall follow procurement procedures as set by Housing Provider's procurement policy and/or City of London's Housing division Notification (HDN) 2008-134 as amended from time to time. All quotes/bids received and evaluated shall be based on the same scope of work and component materials.
2. Borrower declares there is no conflict of interest with any of the contractors selected for the completion of the Works.
3. Borrower shall obtain Lender's prior written consent before it retains any professionals or contractors, before it enters into any contracts for the Work, and prior to approving any change orders with respect to the Work. Borrower shall designate a party to act as the contact with Lender for the purposes of this Agreement. Lender undertakes to provide either its written approval or comments within ten (10) days of Lender's receipt of the document requiring its approval.
4. Lender shall be given notice of and will be entitled to attend at the construction site and to attend all site meetings and other construction related events concerning the Housing Project, in order to monitor the progress of the Work. Any inspection by Lender shall not in any way relieve any consultant and/or contractor of their obligations and responsibilities under their respective contracts. It is specifically acknowledged and agreed that any such attendances or inspections by Lender, whether at the construction site or elsewhere, are for the sole purposes of monitoring the progress of the Work and the approval of Advances, and no such attendances or inspections shall result in, or cause Lender to assume any obligations or liabilities in connection with the Work or to be liable to or have any obligations to any consultant, contractor, sub-contractor or service or materials provider.
5. Lender shall be entitled to receive and/or examine, upon request, the following:
 - (a) field review and inspection reports;
 - (b) approved shop drawings;
 - (c) test reports and required certificates of acceptance;
 - (d) invoices respecting the Work; and
 - (e) any other relevant documentation as requested by Lender in connection with the Work.

In this respect Borrower agrees to take whatever steps are necessary to cause third parties to provide any relevant documentation that Lender requests in connection with the Work.

6. Lender will not be responsible for and will not have control or charge of the Work, including, but not limited to, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs required for the Housing Project, in accordance with the applicable construction safety legislation, other regulations or general construction practice. Further, Lender, its employees, agents or assigns will not be responsible for or have control or charge over the acts or omissions of any contractor, subcontractor, consultant or their respective agents, employees or

other person performing any of the Work. Under no circumstances shall Lender, its employees, agents or assigns, assume nor shall it be deemed to have assumed, liability in respect of the Work, its sufficiency or completeness.

7. Borrower shall comply with the provisions of the *Construction Act*, R.S.O., 1990, c.C.30, as amended or replaced from time to time, including without limitation, the requirement to retain any holdbacks required to be retained pursuant to the *Construction Act*. Borrower shall comply with all applicable federal, provincial, municipal or local laws, statutes, regulations and by-laws.
8. Borrower shall disclose the Loan as a separate item on its audited financial statements and shall detail the amount of disbursements and nature of the expenditures concerning the Loan.

SCHEDULE "G"

CHARGE/MORTGAGE SCHEDULE ADDITIONAL PROVISIONS

1. For the purposes of this Charge:
 - (a) "Charged Premises" means the lands and premises legally described in Schedule "B";
 - (b) "Chargor" means [Name of Borrower];
 - (c) "Chargee" means The Corporation of the City of London;
 - (d) "CMHC" means Canada Mortgage and Housing Corporation;
 - (e) "First Mortgage" means the CMHC insured first mortgage obtained by the Chargor registered against title to the Project;
 - (f) "Loan Agreement" means the loan agreement between the Chargor and the Chargee dated the [Date of Loan Agreement];
 - (i) "Other Security" means the General Security Agreement and the Assignment Agreement being given by the Chargor to the Chargee simultaneously with this Charge;
 - (g) "Permitted Encumbrances" has the meaning ascribed to it in the Loan Agreement;
 - (h) "Lender" means the Chargee, The Corporation of the City of London.

2. Any conflict between the terms and conditions of this Schedule to the Mortgage and the Standard Charge Terms of the Mortgage shall be settled in favour of the terms and conditions of this Schedule to the Mortgage

3. The Chargor has at the request of the Chargee agreed to give this Charge as a continuing collateral security for payment and satisfaction to the Chargee, of all advances to and, debts, obligations, covenants, duties and liabilities of the Chargor, present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, due or to become due, now existing or hereafter incurred or arising, or remaining unpaid by the Chargor to the Chargee, incurred by or arising from the Loan Agreement, or from any agreement or dealings with any third party by which the Chargee may be or become in any manner whatsoever a creditor of the Chargor or however otherwise incurred or arising and whether the Chargor be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (such advances, debts, obligations, covenants, duties and liabilities being hereinafter called the "**Liabilities**") but it being agreed that this Charge at any one time will not secure that portion of the aggregate principal component of the liabilities outstanding at such time which exceeds the sum of [LOAN AMOUNT] DOLLARS (the "**Loan Amount**").

4. The Chargor covenants with the Chargee that if the Chargee makes any payment, in connection with the determination, establishment or preservation of its priority, whether such payment is made to a lien claimant or other person claiming an interest in the Charged Premises or is paid into court, then the amount or amounts so paid and all costs, charges and expenses incurred in connection therewith shall be forthwith

payable to the Chargee by the Chargor and shall be a charge on the Charged Premises and shall be added to the debt hereby secured and shall bear interest at the said rate, and in default of payment, the power of sale and other remedies hereunder may be exercised. It is further agreed that the Chargee shall not become a mortgagee in possession by reason only of exercising any of the rights given to it under this paragraph or in making any payment to preserve, protect or secure the Charged Premises.

5. The Chargor covenants with the Chargee that in the event of the Chargor selling, conveying, transferring or entering into an agreement for the sale or transfer of title of the Charged Premises to a purchaser or transferee not approved in writing by the Chargee, such approval to be subject to the provisions contained in the Loan Agreement, all monies hereby secured with accrued interest thereon, at the option of the Chargee, shall forthwith become due and payable.
6. Subject to the renewals, replacements and consolidations permitted in Section 14 below, the Chargor shall not further mortgage or encumber the Charged Premises without the prior written approval of the Chargee.
7. The Chargor shall obtain and maintain throughout the term of the Charge, all such insurance coverage as it is required to obtain and maintain pursuant to the provisions of the Contribution Agreement.
8. Environment:
 - (a) The Chargor, at its sole cost and expense, shall comply, with all federal, provincial and municipal laws, rules, regulations and orders, with respect to the discharge and removal of hazardous or toxic wastes, and with respect to the discharge of contaminants into the natural environment. The Chargor shall pay immediately when due the cost of removal of any such wastes and the cost of any improvements if necessary to deal with such contaminants and keep the Charged Premises *free* and clear of any lien imposed pursuant to such laws, rules and regulations. In the event the Chargor fails to do so, after notice to the Chargor and the expiration of the earlier of (i) any applicable cure period under the Charge or (ii) the cure period under the applicable law, rule, regulation or order, the Chargee at its sole option may declare the Charge to be in default.
 - (b) The Chargor shall indemnify and hold the Chargee harmless from and against all losses, costs, damages or expenses (including, without limitation, legal fees and costs incurred in the investigation, defence and settlement of any claims) relating to the presence of any hazardous waste or contaminant referred to herein.
9. The Chargee or its agents may, at any time, before and after default, and for any purpose deemed necessary by the Chargee, enter upon the Charged Premises to inspect the lands and buildings thereon. Without limiting the generality of the foregoing, the Chargee or its agents may enter upon the Charged Premises to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Chargee. The exercise of any of the powers enumerated in this paragraph shall not deem the Chargee or its agents to be in possession, management or control of the said lands and buildings.
10. This Charge shall become enforceable by the Chargee if any one or more of the following events has occurred and is continuing (in each case and "Event of Default"):
 - (a) The non-payment when due of principal, interest, fees or other amounts payable hereunder;
 - (b) The Chargor commits an act of default, or is otherwise in breach of its obligations under the Agreements or any of the Other Security;

- (c) If any representation or warranty made or deemed to have been made in this Charge, the Loan Agreement or any of the Other Security is materially false or inaccurate or if the Chargor shall be in breach of any material covenant or other provision contained in the Loan Agreement;
 - (d) If proceedings for the bankruptcy, receivership, dissolution, liquidation, winding-up, reorganization or readjustment of debt of the Chargor is commenced, or if an application is brought with respect to the Chargor pursuant to the provisions of the *Companies' Creditors Arrangement Act*;
 - (e) If the Chargor is insolvent, or is adjudged or declared bankrupt or insolvent, or makes an assignment for the benefit of its creditors, or petitions or applies to any tribunal for the appointment of a receiver or trustee for it or any substantial part of its property, or commences any proceedings relating to it under any reorganization, arrangement, readjustment of debt, dissolution, liquidation or other similar proceeding, or by any act or failure to act indicate its consent to, approval of, or at the essence in, any such proceedings for it or any substantial part of its property, or suffers the appointment of any receiver or trustee;
 - (f) If an encumbrancer takes possession of any property of the Chargor, or if a distress or execution or similar process is levied or enforced against any of the properties of the Chargor; or
 - (g) The breach at any time in any material respect of the provisions of any applicable law affecting the Charged Premises.
11. If the Chargor has committed an Event of Default, the principal balance then outstanding on account of the Loan Amount, together with any other amounts payable pursuant to the terms of this Charge, shall forthwith become due and payable at the option of the Chargee and all powers conferred by this Charge shall become exercisable by the Chargee.
12. If the Chargor has committed an Event of Default, then, in addition to the rights under Section 13 hereof and Standard Charge Terms filed as, the Chargee shall have the following rights, powers and remedies in addition to any other rights, powers and remedies which may otherwise be available in law:
- (a) To enter upon and possess all or any part of the Charged Premises;
 - (b) To preserve and maintain the Charged Premises and make such replacements thereof and additions thereto as it shall deem advisable;
 - (c) To exercise all powers necessary to the performance of all functions provided for herein including without limitation the powers to purchase on credit, to borrow money in the Chargor's name or in its own name and to advance its own money to the Chargor at such rates of interest as it may deem reasonable;
 - (d) To commence any action or proceeding against the Chargor which the Chargee might determine to be necessary in the circumstances;
 - (e) To cease making any further advances under the Loan Agreement secured by this Charge; and/or
 - (f) To appoint in writing a receiver or receiver/manager (the "Receiver") of the Charged Premises, with or without bond, and may from time to time remove the Receiver and appoint another in its stead, and any such Receiver appointed hereunder shall have the following powers:

- (i) To take possession of the Charged Premises and to collect **the housing charges** and such property, undertaking and assets of the Chargor assigned and/or charged to the Chargee herein and for such purpose to enter into and upon any lands, buildings and premises and

for such purpose to do any act and take any proceedings in the name of the Chargor or otherwise as it shall deem necessary, specifically including, but not limited to managing, operating, repairing, altering or extending the Charged Premises or any part thereof;
- (ii) To employ and discharge agents, workmen, accountants and others upon such terms and with such salaries, wages or remuneration as it shall think proper, to repair and keep in repair the Charged Premises and to do all necessary acts and things for the protection or the said Charged Premises;
- (iii) To sell or lease or concur in selling or leasing any or all of the Charged Premises, or any part thereof; and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver; and any such sale may be made from time to time as to the whole or any part or parts of the Charged Premises; and the Receiver may make any stipulations as to title or conveyance or commencement of title or otherwise which it shall deem proper; and it may buy or rescind or vary any contracts for the sale of any part of the Charged Premises and may resell the same; and it may sell any of the same on such terms as to credit or part cash and part credit or otherwise as shall appear in its sole opinion to *be* most advantageous and at such prices as can reasonably be obtained shall be accountable for or charged with any moneys until actually received;
- (iv) To make any arrangement or compromise which the Receiver may think expedient in the interest of the Chargee and to consent to any modification or change in or omission from the provisions of this Charge and to exchange any part or parts of the Charged Premises for any other property suitable for the purposes of the Chargee and upon such terms as may seem expedient and either with or without payment or exchange of money or regard to the equality of the exchange or otherwise;
- (v) To borrow money to carry on the operations of the Chargor at the Charged Premises and to charge the whole or any part of the Charged Premises in such amounts as the Receiver may from time to time deem necessary, and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as detailed therein and the amounts from time to time payable under such certificates shall constitute a Charge against the Charged Premises in priority to this Charge;
- (vi) To execute and prosecute all suits, proceedings and actions which the Receiver, in its opinion, considers necessary for the proper protection of the Charged Premises, and to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;
- (vii) To execute and deliver to the purchaser of any part or parts of the Charged Premises, good and sufficient deeds for the same, the Receiver hereby being constituted the irrevocable attorney of the Chargor for the purpose of making such sale and executing such deed, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Chargor, and all other persons claiming the said property or any part or parcels thereof by, from, through or under the Chargor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided;

- (viii) The net profits of the operations of the Chargor at the Charged Premises and the net proceeds of any sale of the Charged Premises or part thereof shall be applied by the Receiver, subject to the claims of any creditor ranking in priority to this Charge:
- (1) Firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by it of all or any of the powers aforesaid, including the reasonable remuneration of the Receiver and all amounts properly payable by it;
 - (2) Secondly, in payment of all costs, charges and expenses payable hereunder;
 - (3) Thirdly, in payment to the Chargee of the Loan Amount owing hereunder;
 - (4) Fourthly in payment of to the Chargee of any other monies remaining unpaid hereunder; and
 - (5) Fifthly, any surplus shall be paid to the Chargee, provided that in the event any party claims a Charge against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus as the Receiver deems appropriate in the circumstances.
- (ix) During any period wherein the Chargee or any receiver or receiver and manager appointed by it shall manage the Charged Premises or any part thereof, upon or after entry, as provided herein, the Chargee shall not, nor shall any receiver or receiver and manager, be responsible or liable for any debts contracted by it, for damages to any other property or person, or for salaries or non-fulfilment of any contract, save and except as to claims at law or in equity to an accounting; and the Chargee shall not be bound to do, observe, or perform, or to see the observance or performance by the Chargor of any of the obligations herein imposed upon the Chargor nor in any other way supervise or interfere with the conduct of the Chargor's operations of the Charged Premises;
- (x) The Chargee shall not be liable to the Receiver for his remuneration, costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising, unless the same shall be caused by his own gross negligence or wilful default; and he shall, when so appointed, by notice in writing pursuant hereto, be deemed to be the agent of the Chargor, and the Chargor shall be solely responsible for his acts and default and for his remuneration;
- (xi) Save as to claims for an accounting contained in this paragraph, the Chargor hereby releases and discharges any such Receiver from every claim of every nature, whether sounding in damages or not, which may arise or be caused to the Chargor or any person claiming through or under it by reason or as a result of anything done by such Receiver, unless such claim be in direct and proximate result of dishonesty or fraud;
- (xii) The Chargee may, at any time and from time to time, terminate any Receiver by notice in writing to the Chargor and to the Receiver;
- (xiii) The statutory declaration of an employee or agent of the Chargee as to default under the provisions of this Charge and as to the due appointment of the Receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with

the Receiver through its ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual;

(xiv) The rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have.

13. The Charge is hereby postponed to the First Mortgage and shall be continued to be postponed to any renewal or replacement or consolidation of the First Mortgage, with or without an increased rate of interest, provided the aggregate principal sums of such mortgages are not increased.

14. Section 4 of the Standard Charge Terms filed as No. is amended by adding thereto, in the last line, following the words "from the Crown" the words "and further save and except the Permitted Encumbrances".

15. In the event of any conflict or inconsistency between the terms of the Loan Agreement and the terms of this Charge, the provisions of the Loan Agreement shall govern to the extent necessary to remove the conflict or inconsistency.

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IN WITNESS WHEREOF this Charge has been executed on behalf of the Chargor by its authorized officers.

[BORROWER]

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) Per:

) Name:

) Title:

)

) Per:

) Name:

) Title:

I/We have authority to bind the Corporation.