

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

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and under Section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43**

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**MOTION RECORD**

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Proposed Lawyers for Arm's Length Claimants

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# TAB 1

Court File No. CV-11-9399-00CL

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

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

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and under Section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43**

**NOTICE OF MOTION**

**PEOPLES TRUST COMPANY (“Peoples”)** will make a motion to a judge presiding over the Commercial List on a date to be established at 330 University Avenue, Toronto, Ontario.

**THE PROPOSED METHOD OF HEARING:** The motion will be heard orally.

**THE MOTION IS FOR:**

1. An Order declaring that Peoples is entitled to priority over the claims of all persons, including without limitation the claims of all life lessees against the Property (as defined below) or its proceeds, whether under Right to Occupy Agreements (“RTOAs”) or

otherwise, and any tenants of such life lessees (collectively, "**Life Lease Claimants**"), with respect to the property owned and operated by Rose of Sharon (Ontario) Retirement Community ("**Rose of Sharon**") known municipally as 15-17 Maplewood Avenue, Toronto, Ontario and/or units in the said building (the "**Property**"), save and except for any construction lien claims found to be valid and prior by a judge presiding over the Superior Court of Justice (Commercial List).

2. An Order authorizing and directing Deloitte & Touche Inc., in its capacity as court appointed receiver and manager of Rose of Sharon (the "**Receiver**") to take all commercially reasonable steps to register the Property as a condominium, pursuant to the *Condominium Act* and related regulations;
3. An Order that upon registration of the Property as a condominium under the *Condominium Act* (the "**Registration Date**"), the Receiver may, after the Registration Date, market and sell all condominium units making up the Property free and clear of any and all claims of any person, including the Life Lease Claimants, and free and clear of any ownership or proprietary claims, security interests, hypothecs, mortgages, trusts, deemed trusts, liens, executions, levies, charges, or other financial, monetary or proprietary claims, whether perfected or not perfected, registered or unregistered, secured, unsecured or otherwise (the "**Claims**"); and
4. Such further and other relief as counsel may request and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. Rose of Sharon is a not-for-profit Ontario corporation, originally organized for the purpose of providing non-profit residential accommodation for senior citizens of Korean heritage and to provide related nursing home facilities;
2. Rose of Sharon purchased the Property for the purposes of developing a retirement residence and nursing home in or about 1996;

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3. In order to foster a Korean community base at the Property, Rose of Sharon sought to develop the Property on the basis of providing "life leases" for residents (save and except residents of the long term care facility at the Property);
4. Despite the life lease concept employed by Rose of Sharon for the development of the Property, from its inception, Rose of Sharon kept open the possibility that the project could be converted to condominiums;
5. The life lease arrangements put in place by Rose of Sharon are governed by RTOAs entered into on a unit by unit basis;
6. Among other things, the RTOAs provide as follows:
  - (a) RTOAs create a life lease and give individuals the right to use leased units at the Property for their lives or for their lives and the lives of their surviving spouses;
  - (b) RTOAs do not create a direct ownership interest in the real property or building forming part of the Property and individuals agree not to register notice of their RTOA against title to the Property, except under terms accepted by Rose of Sharon;
  - (c) units subject to RTOAs are to be used for residential purposes only;
  - (d) monies paid under RTOAs may be used by Rose of Sharon for construction of the Project and there is no insurance in connection with monies paid under RTOAs, under the New Home Warranty Program or otherwise;
  - (e) in the event that the Property and the life lease units are registered as condominiums, life lease tenants may be required to acquire condominium units in lieu of their life lease interest but are not entitled to acquire condominium units;
  - (f) life lease tenants must occupy the units themselves;

- (g) life lease tenants are required to deposit between 30% or 40% (as required under the specifically applicable RTOA) of the total amount due under the RTOA and to make instalment payments pursuant to the RTOA over its term;
  - (h) life lease tenants are required to pay maintenance and common area fees in connection with the continued operation of the Property;
  - (i) upon the death of a life lease tenant, or on 90 days notice, life lease tenants may terminate RTOAs and in such case, the unit is to be sold or provided to another lessee by Rose of Sharon, for the benefit of the life tenant or their estate, subject to the payment of a small fee to Rose of Sharon.
7. Subsequently, amendments were entered into with respect to the RTOAs providing that life lease tenants were to give a promissory note to Rose of Sharon representing the balances due under their RTOAs, which notes were to be paid in full by the life lease tenants upon the completion of conversion of the Property to condominiums.
8. As set out above, the life lease arrangements implemented by the RTOAs require that individuals, not corporations or other business organizations, be the holders of the life lease interests and that life lease tenants occupy the units for their own use.
9. The Receiver classifies the 90 life lease units at the Property as follows:
- (a) 27 were purchased by arm's length purchasers (representing purchasers of Korean heritage);
  - (b) 1 unit was purchased by an arm's length purchaser which purchase appears to have been abandoned by the purchaser;
  - (c) 16 units were purchased by former members of Rose of Sharon's board of directors and/or their spouses;
  - (d) 2 units were purchased by Mugungwha Homes;

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- (e) 18 units were purchased by non-arm's length purchasers (i.e., investors) representing purchasers who appear to have purchased units for investment or for purposes other than personal occupation;
- (f) 16 units are vacant and have been released back to Rose of Sharon;
- (g) 6 units are occupied by Unimac Group Inc. ("**Unimac**"), the general contractor retained by Rose of Sharon to build the Property, in connection with an arrangement under which Rose of Sharon purported to give Unimac an interest in the said units in relation to amounts claimed by Unimac under its construction contract with Rose of Sharon;
- (h) 3 units are held by Turfpro Investments Inc. ("**Turfpro**")/William Campbell, obtained in exchange for various loans;
- (i) 4 units have options to purchase in favour of Turfpro in exchange for various loans;
- (j) 1 unsold and vacant unit;

As previously noted by the Receiver, certain of the units at the Property appear to be claimed by more than one party.

10. In addition to the claims under the RTOAs described above, the following mortgages are registered against the Property:
- (a) mortgage in favour of Peoples;
  - (b) mortgage in favour of Morrison Financial Services Limited;
  - (c) mortgage in favour of Turfpro / William Campbell;
  - (d) mortgage in favour of Turfpro; and
  - (e) mortgage in favour of IWOK Corporation;

11. The mortgage in favour of Peoples is entitled to priority over all of the mortgages described above and over the Life Lease Claimants described above.
12. The fees and disbursements of counsel to Peoples are fair and reasonable in the circumstances;
13. Section 101 of the Courts of *Justice Act*; and
14. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Third Report to the Court of the Receiver, dated February 19, 2013;
2. The Affidavit of Martin Mallich sworn April 4, 2013; and
3. Such further and other evidence as counsel may advise and this Court permit.

Dated: April 8, 2013.

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Solicitors for Peoples Trust Company



**PEOPLES TRUST COMPANY**  
Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(PROCEEDING COMMENCED AT TORONTO)**

**NOTICE OF MOTION**

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Solicitors for the Applicant,  
Peoples Trust Company

# TAB 2

Court File No.: CV-11-9399-00CL

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

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and under Section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43**

**AFFIDAVIT OF MARTIN MALLICH  
(sworn April 4, 2013)**

I, **MARTIN MALLICH**, of the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY:**

1. I am Manager, Default Management for Peoples Trust Company (“**Peoples**”). As such I have personal knowledge of the matters deposed to herein save and except where stated to be based on information and belief, in which case, I do verily believe that the information is true.
2. This affidavit is made in support of a motion for an order that Peoples is entitled to a declaration that the mortgage security held by Peoples ranks in priority to all other interests and claims of all persons, including without limitation the claims of all Unit-holders (as defined below) against the property owned and operated by Rose of

Sharon (Ontario) Retirement Community (“**Rose of Sharon**”) known municipally as 15-17 Maplewood Avenue, Toronto, Ontario (the “**Property**”), or its proceeds.

3. As is set out in greater detail below, Rose of Sharon is indebted to Peoples in the approximate amount of \$17,597,986.69 and is in default of its obligations to Peoples pursuant to the credit documents and security instruments held by Peoples in its capacity as senior secured lender.

## **BACKGROUND**

4. Rose of Sharon is a non-share, not for profit Ontario corporation, and carries on business as the developer and operator of a facility intended to provide retirement and nursing home accommodation. Rose of Sharon is a community based organization and is focussed on providing accommodation to people of Korean heritage.

5. As set out in the affidavit of Michael Lombard sworn September 23, 2011 (the “**Lombard Affidavit**”), filed in support of the application to appoint Deloitte & Touche Inc. as a receiver and manager (the “**Receiver**”) in relation to Rose of Sharon, Rose of Sharon developed and operated certain retirement, nursing home and life-lease residential units on the Property. Attached hereto as **Exhibit “A”** is a copy of the parcel register for PIN 10468-0554 (LT), reflecting the registered interests in the Property.

6. The Property is a 12 storey building containing a 60 bed licensed long-term care facility (the “**Nursing Home**”) and 90 individual units which have been marketed to members of the public on a life-lease basis under Right to Occupy Agreements (“**RTOAs**”) (the “**Life-Lease Residence**”, each a “**Life-Lease Unit**”).

7. The Life-Lease Residence was marketed by Rose of Sharon as an initiative to foster a Korean community. Life-Lease Unit holders (“**Unit-holders**”) were given the right to use, occupy and enjoy the Life-Lease Unit for the remainder of the Unit-holder’s life, or if there were two Unit-holders, until the death of the survivor.

8. The Life-Lease Units are governed by RTOAs entered into on an individual-unit basis.

9. Peoples provided first lien financing to Rose of Sharon for the development of the Property.

10. Following default by Rose of Sharon on its obligations to Peoples pursuant to applicable credit agreements and security documentation, by letter dated August 25, 2010, Gowling Lafleur Henderson LLP, the solicitors for Peoples, demanded repayment of the full amount of the indebtedness owing by Rose of Sharon to Peoples and delivered a related notice of intention to enforce security. At the date of demand, Peoples was owed the total sum of approximately \$15,036,370, plus accruing interest and costs.

11. Following delivery on behalf of Peoples of the notice of intention to enforce, Peoples met with representatives of Rose of Sharon on a number of occasions in an effort to work cooperatively so that the existing defaults could be remedied. Despite these efforts, defaults continued. Currently the total sum of \$17,597,986.69 is overdue and owing to Peoples.

12. As set out in greater detail in the Lombard Affidavit, on or about September 16, 2011, Peoples became aware that IWOK Corporation (“**IWOK**”), an entity claiming a second mortgage over the Property, had written to Rose of Sharon alleging ongoing default under its mortgage and advising that IWOK had appointed a receiver and manager over the mortgaged property.

13. Following Peoples’ receipt of the information concerning the enforcement actions by IWOK, Gowling Lafleur Henderson LLP wrote to Rose of Sharon advising that Peoples would proceed with the enforcement of its security and the court appointment of a receiver.

14. By order dated September 27, 2011, Justice C. Campbell appointed Deloitte & Touche Inc. as receiver and manager of all of the assets, undertakings and properties of Rose of Sharon, including the Property. Attached hereto as **Exhibit “B”** is a copy of the Amended and Restated Order of Justice Campbell dated September 27, 2011 appointing the Receiver.

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15. As is set out in greater detail in the Reports to the Court by the Receiver, following its appointment, the Receiver pursued and analyzed information concerning the Life-Lease Residence. The findings of the Receiver are set out in the Third Report to the Court of the Receiver dated February 19, 2013 (the "**Third Report**"), which I have reviewed. Where relevant and as noted, I am relying on information contained in the Third Report.

#### **PEOPLES' LOANS AND SECURITY**

16. Rose of Sharon is indebted to Peoples pursuant to a commitment letter dated March 17, 2005 (the "**Commitment Letter**"), a copy of which is attached hereto as **Exhibit "C"**. The monies advanced pursuant to the Commitment Letter were to provide financing for the construction of the Property (the "**Construction Loan**").

17. As security for the amounts owed by Peoples pursuant to the Commitment Letter, Rose of Sharon granted security in favour of Peoples (the "**Peoples Security**"), including the following:

- (a) Charge/Mortgage of Land made in favour of Peoples Trust Company as Chargee by Rose of Sharon as Chargor, registered May 18, 2007 as Instrument No. AT1450426 in the original principal amount of \$17,300,162 (the "**Peoples Mortgage**"), which is attached hereto as **Exhibit "D"**;
- (b) General Security Agreement dated April 4, 2007 made by Rose of Sharon in favour of Peoples Trust Company (the "**GSA**"), attached hereto as **Exhibit "E"**;
- (c) General Assignment of Rents made by Rose of Sharon in favour of Peoples, dated April 4, 2007 (the "**Assignment of Rents**"), attached hereto as **Exhibit "F"**;

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- (d) Assignment of Rights under Occupancy Agreements made by Rose of Sharon in favour of Peoples, dated April 4, 2007, attached hereto as **Exhibit "G"**; and
- (e) Letter of Revocation from Rose of Sharon to Peoples, dated April 4, 2007 re Licenses from Ministry of Health and Long-Term Care (Ontario) and related documents, attached hereto as **Exhibit "H"**.

18. As indicated in the parcel register for the Property, the Peoples Mortgage was registered on title on May 18, 2007. The parcel register reveals that in accordance with certain postponement arrangements discussed in the Lombard Affidavit, the Peoples Mortgage is registered in priority to all other claims against the Property, and has been the first ranking mortgage since it was registered on title to the Property.

19. As further indicated by the parcel register, the Assignment of Rents was also registered on title in favour of Peoples.

20. Notice of the Peoples GSA was registered under the *Personal Property Security Act* (Ontario) by a financing statement filed on March 27, 2007. Attached hereto as **Exhibit "I"** is a copy of a search result from the records of the Registrar for Personal Property (Ontario) evidencing the filing of the financing statement with respect to the GSA and its perfection in priority.

#### **OTHER CREDITORS**

21. As evidenced by the parcel register in this matter, the prior registered mortgages are subject to postponements registered on title in favour of Peoples. I verily believe that the effect of these postponements and registrations is to grant overall priority to the Peoples Mortgage, such that the other registered mortgages rank as follows:

- (a) Second mortgage for \$700,000 held by Morrison Financial Services Limited ("**MFS**") registered on title on November 14, 2008 (and which was originally held by IWOK until it was transferred to MFS on December 30, 2011

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- (b) Third mortgage for \$100,000 held by Turfpro Investments Inc. (“**Turfpro**”) registered on title on May 14, 1999 (and which was originally a first mortgage held by Mikal Construction Inc. that was transferred to Turfpro on January 19, 2006)
- (c) Fourth mortgage for \$590,000 held by Turfpro registered on title as a second mortgage on August 2, 2002; and
- (d) Fifth mortgage for \$150,000 held by IWOK registered on title on January 19, 2006 (and which was originally a third mortgage held by Mijo Holdings Inc. and transferred to Unimac Group Ltd. (“**Unimac**”) on May 18, 2007, and subsequently transferred to IWOK on March 2, 2010)

Peoples is not aware of any further mortgages on the Property.

22. There are currently two construction liens registered on title. As set out in the Third Report, the first construction lien was registered on November 19, 2010 in favour of Mikal-Calladan Construction Inc. in the amount of \$4,166,659, and subsequently assigned to Trisura Guarantee Insurance Company (the “**Trisura Lien**”). The Trisura Lien is currently the subject of a lien action being defended by the Receiver on behalf of Rose of Sharon and by Peoples.

23. The second construction lien was registered on November 22, 2010 in favour of Tremonte Manufacturing Welding & Ironworks Limited in the amount of \$42,735, which I understand to now be expired.

24. At all times, Peoples maintained adequate holdback, did not advance in the face of any liens, and only advanced upon certification by the authorized construction consultant. Accordingly, Peoples should be entitled to priority over all liens, except to the extent that any holdback claim is found to be valid by a court of competent jurisdiction.

25. As further described in the Lombard Affidavit, the PPSA search reveals certain registrations in favour of a number of leasing companies. Notwithstanding such



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registrations, Peoples' Security is registered in priority to all other claims. Peoples is not aware of any further registrations.

26. Peoples is not aware of any claims or arrears of salary or compensation with respect to the unionized nursing staff employed at the Nursing Home.

### **FINANCING TERMS**

27. The Construction Loan granted by Peoples was insured by Canada Mortgage and Housing Corporation ("CMHC") and subject to the satisfaction of certain terms. The conditions precedent to financing under the Construction Loan provided for, among other things,

- (a) a non-refundable deposit of 30% of each sale for arm's length sales, and for non arm's length sales (up to the maximum amount of 18 sales), a non-refundable deposit of 40% of the sale price; and
- (b) confirmation that the deposits supporting the Life-Lease presales could be used to pay project costs incurred.

28. Peoples was advised by Pelican Woodcliff Inc., Peoples' construction consultant, that as of the date of the first advance of the Construction Loan on May 18, 2007, Rose of Sharon satisfied the conditions precedent to financing. Subsequent to the initial advance, there were 21 further draws, with the last advance occurring in October 2009.

29. The Receiver, and the Receiver's independent counsel are of the opinion that Peoples has a properly perfected security interest in all of the assets, property and undertaking of Rose of Sharon. As indicated above, based on the parcel register for the Property, applicable postponements and the PPSA records, Peoples' Security is registered in priority to all other claims.

### CONDOMINIUM CONVERSION

30. The building on the Property was not constructed under the Tarion warranty program and sales of the Life-Lease Units are not subject to the Ontario New Homes Warranty Act.

31. The plan by Rose of Sharon was to convert the Property to condominiums, such that the Nursing Home would comprise one condominium and the individual units of the Life-Lease Residence would constitute individual condominium units. Registration of a condominium plan for the Property was also a requirement of People's loan to Rose of Sharon.

### RIGHT TO OCCUPY AGREEMENTS

32. Rose of Sharon marketed the non-nursing home portion of the building as life-lease apartments. Rose of Sharon entered into RTOAs with individual Unit-holders which gave the Unit-holders the right to use, occupy and enjoy the Life-Lease Unit for the remainder of the Unit-holder's life, or if there were two Unit-holders, until the death of the surviving Unit-holder. The RTOAs did not however, create any direct ownership in the real property or building of Rose of Sharon (see Term 8 of the RTOA). Attached hereto as **Exhibit "J"** is a copy of the form of RTOA.

33. Among other things, the RTOAs also provide as follows:
- (a) individuals agree not to register notice of their RTOA against title to the Property, except under terms accepted by Rose of Sharon;
  - (b) units subject to RTOAs are to be used for residential purposes only;
  - (c) monies paid under RTOAs may be used by Rose of Sharon for construction of the Property and there is no insurance in connection with monies paid under RTOAs, under the New Home Warranty Program or otherwise;
  - (d) in the event that the Property and the life lease units are registered as condominiums, life lease tenants may be required to acquire condominium

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units in lieu of their life lease interest but are not entitled to acquire condominium units;

- (e) life lease tenants must occupy the units themselves;
- (f) life lease tenants are required to deposit between 30% or 40% (as required under the specifically applicable RTOA) of the total amount due under the RTOA and to make instalment payments pursuant to the RTOA over its term;
- (g) life lease tenants are required to pay maintenance and common area fees in connection with the continued operation of the Property;
- (h) upon the death of a life lease tenant, or on 90 days notice, life lease tenants may terminate RTOAs and in such case, the unit is to be sold or provided to another lessee by Rose of Sharon, for the benefit of the life tenant or their estate, subject to the payment of a small fee to Rose of Sharon.

34. No Unit-holder has registered notice of any RTOA against title to the Property. As the Property is not subject to the Ontario New Homes Warranties Plan Act, it is my understanding that the deposits made by the Unit-holders are not subject to any statutory protection.

35. The expectation under the RTOAs was that the Unit-holders of Life-Lease Units would substantially be individuals of Korean heritage, who would themselves inhabit the Life-Lease Units. The life-lease arrangements implemented by the RTOAs require that individuals, not corporations or other business organizations, be the holders of the life-lease interests and occupy the units for their own use. There was no intention that investors outside of the Korean community would be purchasing the Life-Lease Units and furthermore, no intention that corporations would receive such units in lieu of other payment from Rose of Sharon.

36. Many of the Unit-holders of the Life-Lease Units, as more particularly described in the Third Report of the Receiver and below, do not satisfy the requirements

of the RTOAs and therefore, the interests of such Unit-holders are not effective or enforceable.

#### Acknowledgement and Postponement Agreements

37. Beginning in 2003, the Unit-holders were required to execute Acknowledgement and Consent Agreements (“ACAs”), which provided that, among other things, the Unit-holder was obligated to pay deposits as set out in the RTOA, confirms that the Unit-holder has received a draft copy of the RTOA and reviewed the RTOA with his/her solicitor, acknowledges and agrees that Peoples may require the Life-Lease Residence to be registered as a condominium, and that the Unit-holder has obtained independent legal advice. A sample ACA is attached hereto as **Exhibit “K”**.

38. On April 1, 2010, Rose of Sharon entered into amended RTOAs with all Unit-holders who had a balance owing on the purchase price of their Life-Lease Unit (“**Amended RTOAs**”), which incorporated the terms of the Acknowledgement and Consent Agreements. Attached hereto as **Exhibit “L”** is a copy of a sample Amended RTOA.

39. As a condition to advances under the Construction Loan, all Unit-holders were required to enter into Acknowledgement and Postponement Agreements (“**APAs**”) in favour of Peoples. These APAs provided, among other things, that all amounts paid and to be paid under RTOAs are subordinated and postponed to and do not rank in priority to Peoples’ claims under the Peoples Security. The APAs further provide that all of Rose of Sharon’s right, title and interest in and to the RTOAs, including its right to receive all deposits paid or to be paid thereunder and all proceeds due thereunder has been assigned to Peoples. Attached hereto as **Exhibit “M”** is a sample APA. As set out in the Third Report, APAs have been located for 69 of the units at the Property.

#### Unit Holders

40. The Receiver classifies the 90 Life-Lease Units as follows:

- (a) 27 were purchased by arm’s length Unit-holders (representing Unit-holders of Korean heritage);

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- (b) 1 unit was purchased by an arm's length Unit-holder which purchase appears to have been abandoned by the Unit-holder;
- (c) 16 units were purchased by former members of Rose of Sharon's board of directors and/or their spouses;
- (d) 2 units were purchased by Mugungwha Homes;
- (e) 18 units were purchased by non-arm's length Unit-holders (i.e., investors) representing Unit-holders who appear to have purchased units for investment or for purposes other than personal occupation;
- (f) 16 units are vacant and have been released back to Rose of Sharon;
- (g) 6 units are occupied by Unimac;
- (h) 3 units are held by Turfpro/William Campbell, obtained in exchange for various loans and subject to RTOAs;
- (i) 4 units have options to purchase in favour of Turfpro in exchange for various loans; and
- (j) 1 unsold and vacant unit;

The Receiver has noted that certain of the units at the Property appear to be claimed by more than one party.

41. Over the course of Rose of Sharon's financial challenges, Rose of Sharon obtained funds from the Unit-holders, in the approximate amount of \$2.6 million. The terms of the Construction Loan required that any payment received by Rose of Sharon by Unit-holders of the balance owing on their Life-Lease Units was to be directed to the repayment of the Construction Loan. Rose of Sharon did not provide the new funds raised to Peoples, but instead treated the funds from the Unit-holders as loans, evidenced by way of promissory notes. Such funds therefore cannot be treated as having been

applied on account of obligations owed for the Life-Lease Units. Attached hereto as **Exhibit "N"** is a copy of the form of promissory note.

## **CONCLUSION**

42. Peoples is of the view that priority over the Property should now be determined, in advance of the market and sale of any Life-Lease Units. Peoples's views on this matter are reinforced by the Third Report of the Receiver and by the fact that, save and except for the claim of IWOK discussed above and the Trisura Lien litigation, there have been no claims by any persons, including without limitation, the Unit-holders, with respect to the Property.

43. As a result of:

- (a) the priority of Peoples' mortgage;
- (b) the fact that the deposits supporting the Life-Lease Unit presales were not sufficient to pay project costs incurred;
- (c) the nature of the limited rights provided under the RTOAs;
- (d) the fact that the RTOAs are not registered or registerable against title to the Property;
- (e) the fact that the majority of RTOA claimants are in default of their payments under the RTOAs;
- (f) the fact that express postponements in favour of Peoples have been executed for the majority of the Life-Lease Units; and
- (g) the fact that all of the non-arms length Unit-holders are in breach of the terms under the RTOAs, including without limitation the requirement that each Unit-holder be a natural person and not a corporation and the requirement that each Unit-holder occupy the Life-Lease Unit for their own residential purposes only,


Peoples maintains that it is entitled to priority over all claims against the Property, save and except for the 10% holdback required with respect to any construction lien found to be valid.

44. I am of the opinion that it is just and equitable to grant Peoples priority over the Property, in accordance with the mortgage security held by Peoples.

45. I am swearing this affidavit in support of Peoples' Motion for, among other things, a declaration that the mortgage security held by Peoples ranks in priority to all other interests and claims of other parties in the Property, and for no other or improper purpose.

*CB*

SWORN before me at the City of <sup>VANCOUVER</sup> ~~Toronto~~, )  
in the Province of ~~Ontario~~, on April 4, )  
2013. <sub>BC</sub> )

  
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc. )

  
\_\_\_\_\_  
MARTIN MALLICH

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300 550 BARRARD STREET  
PO. BOX 30 VANCOUVER B.C. V6C 2B5  
TELEPHONE (604) 683 6498

THIS IS EXHIBIT "A"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



~~A Commissioner for Taking Affidavits, etc.~~

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BARRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498





LAND REGISTRY OFFICE #66

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 4  
PREPARED FOR Dmeddings  
ON 2012/10/26 AT 15:02:31

10468-0554 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

PROPERTY DESCRIPTION: LOTS 25, 26 AND PART OF LOT 24, BLOCK F, PLAN 875 DESIGNATED AS PARTS 1 AND 2 ON PLAN 66R-22215. CITY OF TORONTO (FORMERLY CITY OF YORK). S/T A RIGHT OF WAY OVER PART 2 ON PL 66R-22215 AS IN TB374581 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F PL 875. S/T A RIGHT AS IN CA439308 OVER PART 2 PL 66R-22215 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F, PL 875.

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2005/12/30.

ESTATE/QUALIFIER: RECENTLY:  
FEE SIMPLE RE-ENTRY FROM 10468-0424

LT ABSOLUTE PLUS CAPACITY SHARE

OWNERS' NAMES: ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY BENO

PIN CREATION DATE:  
2005/12/30

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2005/12/30 **					
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
**	PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **					
**	TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **					
CA439307	1996/11/25 TRANSFER		\$135,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
CA439308	1996/11/25 TRANSFER		\$315,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
CA517084	1997/12/31 AGREEMENT			CITY OF YORK	CITY OF YORK	C
CA600752	1999/05/14 CHARGE CORRECTIONS: 'CHARGE' CHANGED FROM 'MIKAL CONSTRUCTION INC.' TO 'MIKAL CONSTRUCTION INC.' ON 2006/01/19 BY TONY BAULINO.		\$100,000	MIKAL CONSTRUCTION INC.	MIKAL CONSTRUCTION INC.	C
E579089	2002/08/02 CHARGE		\$590,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	TURPPRO INVESTMENTS INC.	C
56R22215	2005/12/30 PLAN REFERENCE					C
AT1023194	2005/12/30 APL ABSOLUTE TITLE REMARKS: A7948243			ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
AT1040316	2006/01/19 APL (GENERAL) REMARKS: CA600752			MIKAL CONSTRUCTION INC.	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
AT1040360	2006/01/19 TRANSFER OF CHARGE REMARKS: CA600752			MIKAL CONSTRUCTION INC.	TURPPRO INVESTMENTS INC.	C
AT1040424	2006/01/19 CHARGE		\$150,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	MIJO HOLDINGS INC.	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 4

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10468-0554 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
AT1341638	2006/12/22	CHARGE		*** COMPLETELY DELETED *** ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	UNIMAC GROUP LTD.	
AT1366344	2007/01/30	CHARGE		*** COMPLETELY DELETED *** ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	UNIMAC GROUP LTD.	
AT1450426	2007/05/18	CHARGE	\$17,300,162	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	PEOPLES TRUST COMPANY	C
AT1450427	2007/05/18	NO ASSGN RENT GEN REMARKS: RENTS RE:AT1450426		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	PEOPLES TRUST COMPANY	C
AT1450457	2007/05/18	POSTPONEMENT REMARKS: CA600752, AT1040360 POSTPONED TO AT1450426		TURFPRO INVESTMENTS INC.	PEOPLES TRUST COMPANY	C
AT1450458	2007/05/18	POSTPONEMENT REMARKS: E579089 POSTPONED TO AT1450426		TURFPRO INVESTMENTS INC.	PEOPLES TRUST COMPANY	C
AT1450459	2007/05/18	POSTPONEMENT REMARKS: AT1040424 POSTPONED TO AT1450426		MILJO HOLDINGS INC.	PEOPLES TRUST COMPANY	C
AT1450608	2007/05/18	DISCH OF CHARGE REMARKS: RE: AT1341638		*** COMPLETELY DELETED *** UNIMAC GROUP LTD.		
AT1450655	2007/05/18	DISCH OF CHARGE REMARKS: RE: AT1366344		*** COMPLETELY DELETED *** UNIMAC GROUP LTD.		
AT1450745	2007/05/18	TRANSFER OF CHARGE REMARKS: AT1040424		MILJO HOLDINGS INC.	UNIMAC GROUP LTD.	C
66R23529	2008/01/24	PLAN REFERENCE				C
AT1949790	2008/11/14	CHARGE	\$700,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	IWOK CORPORATION	C
AT1949960	2008/11/14	POSTPONEMENT REMARKS: CA600752, AT1040360 TO AT1949790		TURFPRO INVESTMENTS INC.	IWOK CORPORATION	C
AT1949961	2008/11/14	POSTPONEMENT REMARKS: E579089 TO AT1949790		TURFPRO INVESTMENTS INC.	IWOK CORPORATION	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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10468-0554 (LTP)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CRET/ CHKD
AT1950125 REMARKS: AT1040424, AT1450745, AT1949790	2008/11/14	POSTPONEMENT		UNIMAC GROUP LTD.	IWOK CORPORATION	C
AT2318865 REMARKS: AT1450745.	2010/03/02	TRANSFER OF CHARGE		UNIMAC GROUP LTD.	IWOK CORPORATION	C
AT2360896	2010/04/26	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ROYAL WINDSOR MECHANICAL INC.		
AT2389788	2010/05/26	CERTIFICATE		*** COMPLETELY DELETED *** ROYAL WINDSOR MECHANICAL INC.	UNIMAC GROUP LTD. ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY PEOPLES TRUST COMPANY TURFPRO INVESTMENTS INC. IWOK CORPORATION	
REMARKS: AT2360896						
AT2547993	2010/11/09	NOTICE OF LEASE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	YORK HEALTH CARE DEVELOPMENTS INC.	C
AT2556511	2010/11/19	CONSTRUCTION LIEN	\$4,166,659	MIKAL-CALLADAN CONSTRUCTION INC.		C
AT2557379	2010/11/22	CONSTRUCTION LIEN	\$42,735	TREMONTÉ MANUFACTURING WELDING & IRONWORKS LIMITED		C
AT2578872	2010/12/16	NOTICE OF LEASE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	BERG, ROBERT	C
AT2589975	2010/12/31	CERTIFICATE		MIKAL-CALLADAN CONSTRUCTION INC.	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY PEOPLES TRUST COMPANY IWOK CORPORATION	C
REMARKS: RE, AT2556511						
AT2601817	2011/01/19	NOTICE OF LEASE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	YOON, ALBERT	C
AT2905656	2011/12/23	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST	DELOITTE & TOUCHE INC., IN ITS CAPACITY AS RECEIVER AND MANAGER OF ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
AT2908311 REMARKS: AT1949790.	2011/12/30	TRANSFER OF CHARGE		IWOK CORPORATION	MORRISON FINANCIAL SERVICES LIMITED	C
AT2985873 REMARKS: AT2556511	2012/04/10	NOTICE	\$10	TRISURA GUARANTEE INSURANCE COMPANY	MIKAL-CALLADAN CONSTRUCTION INC.	C

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10468-0554 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3018344	2012/05/16	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** ROYAL WINDSOR MECHANICAL INC.		
REMARKS: AT2360896. AT2388788						

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THIS IS EXHIBIT "B"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



~~A Commissioner for Taking Affidavits, etc.~~

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498

Court File No. CV-11-9399-00CL



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 27<sup>th</sup> DAY  
 )  
 JUSTICE C. CAMPBELL ) OF SEPTEMBER, 2011

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

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43**

**AMENDED AND RESTATED APPOINTMENT ORDER**

THIS APPLICATION made by Peoples Trust Company ("Peoples Trust" or the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte & Touche Inc. ("Deloitte") as receiver and manager (in such capacities, the "Receiver") without security, of all of the

assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community (the "**Debtor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Michael Lombard sworn September 22, 2011, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for the Debtor no one appearing for any other party although duly served as appears from the Affidavits of Service of Alma Cano, sworn September 23 and September 26, 2011, and on reading the Consent of Deloitte to act as the Receiver,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, wherever situate, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of

locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) subject to section 110 of the *Long-Term Care Homes Act*, S.O. 2007, c. 8 (the "LTCHA") to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) subject to section 110 of the LTCHA, to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for the Applicant to advise and represent it save and except on matters upon which the Receiver in its judgment determines it requires independent advice, in which case the Receiver shall retain Blaney McMurtry LLP;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) Notwithstanding anything in this Order, the Debtor is the licensee (the "Licensee") of the long-term care home located at 17 Maplewood Avenue, Toronto, Ontario which forms a part of the Property (the "Home"). The



Home is currently licensed pursuant to the LTCHA and the regulations thereunder. Toronto Central Local Health Integration Network (“TC LHIN”) will continue to pay the Licensee (and the Receiver will be entitled to receive such payments) pursuant to the Service Accountability Agreement in respect of the Home between the TC LHIN and the Debtor effective March 4, 2011 (the “SAA”) and the Ministry of Health and Long-Term Care (~~together with the TC LHIN,~~ the “MOH”) will continue to pay the Licensee (which payments shall be received by the Receiver in accordance with this Order) pursuant to ~~the existing agreement,~~ agreements. Any monies received by the Debtor or the Receiver from the MOH or the TC LHIN shall be used or applied by the Receiver for the operation of the Home in accordance with the SAA, any agreement with the MOH and the LTCHA. Any payments by the TC LHIN shall be subject to TC LHIN review and reconciliation as provided for under the SAA and applicable law and written policy. Any payments by the MOH shall be subject to MOH review and reconciliation as provided for under any agreement with the Debtor or the Receiver and applicable law and written policy. For clarity, subject to the foregoing reconciliations, any surplus monies arising from the operation of the Home may be applied by the Receiver in accordance with this Order.

- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

- (k) to apply for such permits, licenses, approvals or permissions as may be required by any governmental authority with respect to the Property, including, without limitation, licenses under the LTCHA
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

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- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including without limitation Mr. Charles Daley and IWOK Corporation (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver and any party the Receiver retains in accordance with subparagraph 3(d) of this Order and section 110 of the LTCHA, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or any party the Receiver retains in accordance with sub-paragraph 3(d) of this Order and section 110 of the LTCHA (the "**Manager**") except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver and the Manager, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a

security interest, or (iv) prevent the registration of a claim for lien. For clarity, this paragraph 9 shall apply to the Manager solely in its capacity as agent for the Receiver.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver or Manager, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver, at least one of which will describe the account holder as "Deloitte & Touche Inc. as Rec. & Mgr. of Rose of Sharon (Ontario) Retirement Community" (the "**Post**

**Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. Neither the Receiver nor the Manager shall be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively,

"**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 81.4(4), and 81.6(2) of the BIA.



18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. Subject to section 107 of the LTCHA, the whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections, 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **GENERAL**

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or,

if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

~~29-28A~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Receiver and Manager shall comply with the SAA, the LTCHA and the regulations thereunder as they apply to the managementoperation of the Home and ~~theneither TC LHIN nor MOH shall not~~ be subject to paragraphs 9 and 10 of this Order in relation to any non-compliance with the SAA, the LTCHA and the regulations thereunder by the Receiver and/or the Manager with respect to the managementoperation of the Home.

29. ~~30.~~ \_\_\_\_\_

**THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



Natasha Brown  
Registrar

ENTERED AT / INSERTE À TORONTO  
DU / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 23 2011

RECEIVED:



**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver and manager (the "Receiver") of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Corporation of every nature and kind whatsoever, wherever situate (the "Debtor"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the head office of the Lender.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DELOITTE & TOUCHE INC. solely in its capacity as Receiver of the Property, and not in its personal capacity

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

Name: Daniel R. Weisz

Title: Senior Vice President

Court File No. CV-11-9399-00CL

**PEOPLES TRUST COMPANY**  
Applicant

v.

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
Respondent

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

**AMENDED AND RESTATED**  
**APPOINTMENT ORDER**

**GOWLING LAFLUEUR HENDERSON LLP**  
Barristers and solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

**Clifton Prophet**  
**LSUC No.: 34845K**

Telephone: (416) 862-3509 / (416) 268-9900  
Facsimile: (416) 862-7661  
Lawyers for the Applicant,  
Peoples Trust Company

THIS IS EXHIBIT "C".  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



---

A Commissioner for Taking Affidavits, etc.

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498



# Peoples TRUST

"Worthy of Your Trust"

March 17, 2005

Rose of Sharon  
c/o Strategic Mortgage Capital  
4950 Yonge Street  
Suite 908  
Toronto, Ontario  
M2N 6K1

**Attention: Mr. Brien Dane**

Dear Brien:

**Re: Commitment Letter for a gross amount of \$17,300,162.  
This is a CMHC construction mortgage to facilitate the construction of the  
proposed 12 storey building containing a 60 bed nursing home and 89  
individual condominium units being sold as life leases.**

We have completed a study of the documentation submitted in support of your request for mortgage financing on the captioned property. Based on the information on hand we are pleased to advise you that Peoples Trust Company has approved the loan application on the following terms and conditions:

**1. BORROWER**

Rose of Sharon (Ontario) Retirement Community

**2. GUARANTOR**

None

**3. LENDER**

Peoples Trust Company ("Lender")

<b>4. LOAN AMOUNT:</b>	Gross Loan Amount	\$17,300,162.50
	CMHC Premium	433,812.50
	CMHC Application Fee	<u>25,350.00</u>
	Net Loan Amount	\$16,841,000.00

**Head Office:**   
Suite 1400, 888 Dunsmuir St.  
Vancouver, B.C. V6C 3K4  
Telephone: 604-683-2881 • Fax: 604-683-5110  
Email: people@peoplestrust.com

**B.C. Region:**   
Suite 920, 888 Dunsmuir St.  
Vancouver, B.C. V6C 3K4  
Telephone: 604-685-1068 • Fax: 604-683-2787  
Email: vancouver@peoplestrust.com

**Prairie Region:**   
Suite 955, 808-4th Ave. S.W.  
Calgary, AB. T2P 3E8  
Telephone: 403-237-8975 • Fax: 403-266-5002  
Email: calgary@peoplestrust.com

**Ontario Region:**   
Suite 920, 130 Adelaide St. West  
Toronto, ON. M5H 3P5  
Telephone: 416-368-3266 • Fax: 416-368-3328  
Email: toronto@peoplestrust.com

Rose of Sharon  
March 17, 2005

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## 5. PURPOSE OF LOAN

To provide a CMHC insured interim construction mortgage for \$17,300,162.50 (which includes CMHC mortgage premium and application fee) to facilitate the construction of a 12 storey building containing a 60 bed licensed nursing home and 89 individual condominium units which are to be sold on a life lease basis.

## 6. TERM

The first advance must occur on or before September 30, 2005 and the final construction draw must be taken before December 30, 2006.

## 7. PREPAYMENT

Prepayment will be permitted on a unit-by-unit basis, provided that the Lender receives the proceeds, less reasonable arm's length sales commissions and legal fees as approved by CMHC, from each respective sale and that the Lender, upon such receipt, will provide discharges of the security on the respective units. A Discharge Fee of \$150.00 per unit is required by Peoples Trust Company.

## 8. MONTHLY PAYMENT / INTEREST RATE

Interest on construction advances at an interest rate of Bank of Montreal Prime + 1 ¼% calculated daily and payable monthly from and including the date of the immediately preceding advance but excluding the date of the then current advance, shall be deducted from the proceeds of the then current advance. In the event there are not sufficient funds remaining in the budget, in the Lender's opinion acting reasonably, then the Borrower must make monthly interest payments when invoiced.

## 9. PROJECT ECONOMICS

Based on the Borrower's submission, the project's economics shall be as follows:

### Sources

Construction Loan	\$17,300,162
Grant from Ministry of Health	2,363,000
Equity from Rose of Sharon	288,869
Life care deposits used during construction	4,043,990
Total Sources	\$23,996,021

### Uses

Total project costs (re Appendix A)	\$23,536,859
CMHC Premium	433,812
CMHC Application Fee	25,350
Total Uses	\$23,996,021

*Ray*

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March 17, 2005

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## 10. REAL ESTATE TAXES

The Borrower prior to, or at the time that advances are made shall pay all outstanding taxes, assessments and other sums, charged or levied against the lands. We shall be at liberty to deduct such amounts from any advances to pay the taxes, in such event the amount of taxes so paid will be repaid by the Borrower from the Borrower's own resources.

## 11. CONDITIONS PRECEDENT

The Lender shall not be obliged to provide any disbursement of funds unless the Borrower has conformed to all his obligations and until the Lender has received and he and his legal counsel are satisfied with the following documentation which the Borrower hereby undertakes to provide:

- (i) Compliance with CMHC's undertaking to insure and special conditions attached thereto, Certificate of Insurance #90-260-530 dated March 10, 2005.
- (ii) Phase I Environment Report addressed to Peoples Trust and CMHC.
- (iii) All security documentation deemed necessary by the Lender and the Lender's solicitors.
- (iv) An opinion from the Lender's solicitors confirming that the Lender has a good and valid first mortgage on the property, free of any encumbrances, which materially, adversely affect the Project.
- (v) An up-to-date Survey and Plot Plan prepared by a registered Ontario land surveyor providing an adequate description of the property and certifying that the building to be erected thereon are to be entirely within the lot boundaries, that there are no encumbrances other than utility easements or other similar rights judged to be acceptable in the aggregate by the Lender's legal counsel and that the Project conforms to all building codes, municipal zoning by-laws and applicable health and other regulations. The said Survey shall have a clause stating that it is prepared for the purpose of the present Loan;
- (vi) Confirmation from the lender's solicitor that the deposits supporting the life lease presales can be used to pay project costs incurred.
- (vii) Project cost consultants for the project will be Pelican Woodcliff and Stratex International.

The cost consultants prior to the first advance will review all final working drawings and specifications and any other relevant material related to the project. The lender is to be provided with opinions from both cost consultants certifying the adequacy and approval of the following:

- a) Final plans and specifications
- b) Design criteria for the use of the project
- c) Compliance with building codes and zoning regulations
- d) Adequacy of structural, electrical and mechanical systems



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March 17, 2005

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- e) Construction schedule submitted by the borrower
- f) Project budget submitted by the borrower
- g) Adequacy and approval of the survey and plot plan
- (viii) A fixed price contract from Mikal-Calladan Construction and Ball Construction for \$17,619,571. Said terms and conditions of contract must be satisfactory to the cost consultant and full bonding of labour, materials and performance will be required as required by the Ministry of Health. *or another contractor acceptable to Peoples Trust dy.*
- (ix) Confirmation 80 of the proposed 89 life lease units have been sold at prices and terms satisfactory to Peoples Trust. Not limiting the terms required for a presale to qualify, but for all non arm's length sale, the non refundable deposit required must not be less than 40% of the selling price. The borrower will be required to obtain written confirmation of the authenticity the agreement of purchase and sale provided to Peoples by way of an estoppel certificate executed by the purchasers.
- (x) Aggregate total of the 80 presales must not be less than \$14,246,000 and provisions for non refundable cash deposits of \$4,170,000.
- (xi) Construction schedule to be prepared by general contractor.
- (xii) Monthly construction draw schedule and cash flow projection forecasting the amount and time of the draw requests.
- (xiii) Confirmation all necessary building and development permits are available.
- (xiv) Copy of a soil report confirming capacity for the execution of the project.
- (xv) Confirmation the three proposed penthouse units on the 12<sup>th</sup> floor will be changed to yield 8 individual units.
- (xvi) Confirmation the monies from the Ministry of Health in the amount of \$2,363,000 has been provided to the borrower and used on the project to pay approved costs.
- (xvii) Confirmation all licenses required to operate the proposed 60 bed nursing home are in place and a management contract with MetCap Living Management Inc. has been executed.
- (xviii) Confirmation the non refundable deposits supporting the 80 presold as life leases have deposits totalling not less than \$4,170,000. For arm's length sales non refundable deposits supporting each sale is to be 30% and for non arm's length sales (cannot be more than 18 sales) the non refundable deposit must be 40% of the sale price. Said proceeds have been used in the project to pay approved costs.
- (xix) Confirmation the required documents to confirm condominium status for the project has been completed to the satisfaction of Peoples solicitors. The project is to be condominiumized so that the nursing home is one condominium corporation and the 89 life lease units have individual condominium status.

*J. reg*

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## 12. SPECIAL CONDITIONS

- (a) Stratex International will inspect the property and give the lender a monthly report of the construction process whether a draw is required or not. All change orders from the above referred fixed price contract must be approved in writing by Stratex International or they will not be allowed. The general contractor and borrower will sign acknowledgement that a change order must be confirmed by Stratex it is valid or no payment is required.
- (b) Borrower is not allowed to cancel any existing life lease presales without Peoples consent.
- (c) Borrower cannot accept an agreement of purchase and sale of a life lease unit without Peoples consent. Said consent or rejection will be given within 3 business days.
- (d) For each draw under this facility, Peoples will charge a fee of \$500.

## 13. AVAILABILITY

It is a condition for the disbursement of funds that in the opinion of the Lender, the financial position of the borrowing company and the property given as security and the Borrower's representations and warranties shall not have suffered any material adverse changes; nor shall there be any action, suits or pending proceedings of which the Borrower has knowledge; and that no event shall have occurred which materially and adversely affects the value of the mortgaged property or any part thereof, or the financial position of the company borrowing the funds.

Funds will be made available as per CMHC's recommendation to advance and subject to all terms and conditions mentioned in the commitment letter, the Mortgage Document and the CMHC Certificate of Insurance (Appendix "B") or other documents following the later all to be to the satisfaction of the Lender and its solicitor;

Subject to the herein conditions funds will be made available on a "cost to complete" basis as follows:

- i) The Project Cost Consultant shall make a site inspection at least once a month at the cost of the Borrower and will submit a report to the Lender certifying that:
  - a) all construction work is being carried out in accordance with the approved plans and specifications and in a good workmanlike manner;
  - b) construction work is progressing within the original construction schedule;
  - c) that portion of the Borrower's requisition covering direct construction costs represents work completed and incorporated into the project;
  - d) the remaining funds still to be advanced under the Loan are sufficient to complete the Project ;
  - e) All funds previously advanced have been used to pay approved costs of the project.
- ii) During the term of the Loan, the Borrower will:



Rose of Sharon  
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- a) remove any liens or new encumbrances or charges against the Project within seven days of written notice by the Lender.
  - b) request and utilize the borrowed funds solely for the Project;
  - c) allow the Lender and its Cost Consultants to have access to the Project at all times;
  - d) permit the Lender (at its discretion) to make advances jointly to the Borrower and the General Contractor and/or its sub-contractors and/or suppliers;
  - e) provide a Project expense summary outlining itemized budget, cost-to-date, application of proceeds from the specific request and cost-to-complete;
  - f) provide billing statements and invoices from suppliers, architects, etc., to support non-major sub-contract items.
  - g) before each advance, provide statutory declarations to the effect that all accounts payable in respect to the Project have been paid since last advance (30 days). All necessary legal work to ensure that the Construction Lien Act has been complied with in all matters.
  - h) Monthly up-date of presales and deposits held to support sales
  - i) provide a written request indicating the amount and to whom funds are to be disbursed (general contractor, sub-contractors, etc.) to such entities for work of the Project within the Project budget and confirming that, based on latest estimates, the unused portion of the construction financing will be sufficient to fully complete the Project and to retire all payables relating to the Project, and that cost with respect to which advances pertain are properly incurred in accordance with the approved budget.
- (iii) No advance is to be less than \$100,000.00 each, with no more than one advance per month;
  - (iv) In the event that the Project Cost Consultant is unable to reconcile the Project expense statements as provided by the Borrower, the Lender reserves the right to suspend further construction advances until the discrepancy has been resolved to the satisfaction of the Project Cost Consultant
  - (v) There will be deducted from each advance a holdback of 10% of the value of the work, services and supplies actually performed from each advance. The holdback will be released upon written confirmation by the Project Cost Consultant and project architects and engineers that all work related to the Project has been completed as per plans and all specifications no earlier than 45 days following the required posting has been made.

In addition, provided that no default exists, the 10% holdback in relation to each sub-contractor, supplier, etc... maybe released upon written confirmation by the project engineer/architect and cost consultant that the work of said particular sub-contractor, supplier, etc... has been completed as per plans and specifications no earlier than 45 days following the required posting.

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- vi) In the event of a cost overrun, the Borrower will contribute an additional equity amount in the Project and/or with the Lender's approval use the contingency fund prior to any further advances so that at all times the remaining funds left to disburse portion of the Loan is sufficient in the Lender's opinion to complete the Project and cover all amounts payable.
- vii) The first advance shall occur at the latest on September 30, 2005 failing which the Lender at its sole discretion may revise, extend or cancel this commitment.
- viii) The interest reserve portion of the Budget is calculated on the basis of interest commencing from the date of the first advance and does not provide for interest carrying costs for the Project prior to that date. Such prior carrying costs will not be paid as part of the first advance, unless previously agreed upon in writing by the Lender, and will be the responsibility of the Borrower. The Lender reserves the right, at its sole discretion, to stop advancing from the interest reserve account in the event of any default under the terms of this Commitment, Deed of Loan or CMHC's Certificate of Insurance or in the event of construction delays or costs overruns.
- ix) It is understood and agreed that until an event of default occurs, interest will be deducted from advances up to an amount not to exceed the amount allocated as interest reserve within the Loan amount. Prompt monthly payment of interest after exhaustion of the interest reserve is the Borrower's responsibility. Failure to do so will constitute default under this Commitment, Deed of Loan or CMHC's Certificate of Insurance. In addition, the Lender reserves the right, at its sole option, to bill for accrued interest on a monthly basis in the absence of any draw for a 30-day period and the amount so billed will be accrued as though there had been a draw made by the Borrower.

#### 14. SECURITY

The following security shall be in form and content satisfactory to the Lender and its legal counsel:

- i) a bulk first CMHC mortgage on the Project for \$17,300,162
- ii) a first mortgage on all present and future income of the Project and on the insurance indemnity of the said income;
- iii) assignment of Agreements of Purchase and Sale inclusive of Purchasers deposits;
- iv) assignment of the architectural contract together with all plans relating to the Project;
- v) assignment of all property management and service contracts.
- vi) assignment of the bonds relating to the General Contractor and sub-contractors and suppliers.

*Jay*

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- vii) a general security agreement, for a sum equal to the Loan amount on the chattels relating to the Project which general security agreement shall contain a cross default clause with the second mortgage;
- viii) Assignment of all security deemed necessary by Peoples Trust solicitor concerning the nursing home and the grant from the Ministry of Health.
- ix) Letter of Undertaking signed by the borrower, committing the borrower, to take Peoples Trust offer of financing for the long term (10 years) CMHC mortgage, for the nursing home when the construction mortgage has been reduced to \$4,466,000. Pricing of the mortgage will be Peoples Trust's costs plus 35 basis points. If the rate had been fixed on March 16, 2005, the rate would have been 5.47%.
- x) any other security documents which our counsel may require.

#### 15. INSURANCE COVERAGE

The Borrower shall provide the Lender with certified copies of insurance policies. All insurance policies must contain the Standard Mortgage Clause approved by the Insurance Bureau of Canada (IBC 3000 Mortgage Clause). Coverage terms and conditions as well as the insuring companies must be entirely satisfactory to the Lender and its insurance advisors. The policies shall provide:

- (a) **All-Risk Insurance (including flood & earthquake and sewer back-up)** with extended coverage for full replacement value of the improvements (including all fixtures and furniture);
- (b) **Course of Construction Insurance:** The Borrower will provide course of construction insurance in an amount, form and content satisfactory to the Lender.
- (c) **Liability Insurance:** The Borrower will maintain general comprehensive liability insurance for personal injury and/or death or damage to the property of a third party for a minimum amount of \$2,000,000 per occurrence;
- (d) **By-Law Insurance:** In a form satisfactory to the Lender.

The amount of this insurance is to be determined by the Lender's insurance consultant. All claims must be made payable firstly to the Lender as its interest may appear and a standard mortgage clause must be attached to all policies. Peoples Trust will require insurance consultants to review your insurance policies and provide their recommendations. The costs will be for the Borrower's account for which we provide the following schedule:

<b>Loan Value</b>	<b>Consultants Cost</b>
Up to \$2.0 Million	\$300.00 + G.S.T.
Over \$2.0 Million to \$4.9 Million	\$350.00 + G.S.T.
Over \$4.9 Million to \$8.0 Million	\$500.00 + G.S.T.
Over \$8.0 Million to \$10.0 Million	\$800.00 + G.S.T.
Over \$10.0 Million to \$15.0 Million	\$1100.00 + G.S.T.
Over \$15.0 Million to \$19.0 Million	\$1350.00 + G.S.T.
In excess of \$19.0 Million	To be negotiated



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## 16. AFFIRMATIVE COVENANTS

The Borrower will:

- i) maintain the Project adequately insured against such perils as would prudent owners of similar properties;
- ii) maintain the property in good repair;
- iii) complete the Project and never stop construction or abandon the Project for more than 15 days.
- iv) maintain a competent and professional management company
- v) allow the Lender or his representative to visit the Project.

## 17. NEGATIVE COVENANTS

So long as the Loan remains unpaid, the Borrower shall not, without the prior written consent of the Lender, perform the following:

- i) create, incur, assume or suffer to exist any new pledge or other charge, or encumbrance upon or in any respect of the Project, without the prior written consent of the Lender and CMHC. Excluded from the above are any servitude granted on the property in favour of utilities, the City and/or public bodies with respect to the development.
- ii) alienate the property in whole or in part without the prior written consent of the Lender.
- iii) change the character of the property except for improvements to be performed from time to time in accordance with zoning and municipal approvals;
- iv) assign the proceeds of the Loan or any part thereof, nor any rights accruing to the Borrower as a result of the acceptance of a commitment letter without the Lender's prior consent.

## 18. ENVIRONMENTAL

The Lender hereby retains the right to refuse to advance funds if at any time there is an adverse material change relating to environmental matters or risk to the subject property.

## 19. EVENTS OF DEFAULT

The occurrence of any of the following events shall constitute an Event of Default:

- i) the Borrower shall be in default in any payment of principal, interest or of taxes under this mortgage;
- ii) any statement, certificate or representation given in or pursuant to this agreement shall prove to be at any time incorrect in any material way;



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- iii) the Borrower shall default in the performance of any other term, covenant or agreement under the commitment, mortgage or CMHC's Certificate of Insurance;
- iv) the Borrower shall become insolvent or bankrupt or cease paying their debts as they mature or shall make an assignment for the benefit of a trustee or receiver.

Upon occurrence and existence of an Event of Default, the Lender shall have the right to exercise all of its rights and recourses, without limitation and, the balance of the Loan outstanding and interest thereon shall, at the Lender's option, immediately become due and payable.

## 20. LEGAL WORK

All documents shall be prepared by the Lender's solicitors. Our solicitors are:

Elaine Harris  
Traub Moldaver  
4 King Street West  
Suite 700  
Toronto, Ontario  
M5H 1B6  
(416) 214-6500

The Borrower shall be responsible for all legal costs involved in the preparation of the mortgage documentation and other documentation related to the Loan.

The law of the Province of Ontario shall apply to this transaction.

## 21. GOOD FAITH DEPOSIT

The Borrower shall provide the Lender a Good Faith Deposit in the amount of \$25,000 upon acceptance of this commitment letter, said fee shall not be refunded to the Borrower in the event that:

- i) the Borrower has for any reason whatsoever failed to comply with any of the terms or conditions of the commitment letter and consequently has not requested or received the first advance of funds under this Loan by September 30, 2005, if approved by CMHC;

The said Good Faith Deposit will be retained by the Lender on account of liquidated damages and the Lender's obligations under the commitment shall be terminated. The agreement referred to the payment of the Good Faith Deposit by the Borrower and the right of the Lender to keep it shall become valid and in effect upon acceptance by the Borrower of this commitment letter and will not

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depend nor be conditional to a subsequent agreement or to the signature of an additional document.

The Lender shall keep the said amount as complete liquidated damages caused to it in the event the Borrower does not comply to the terms and conditions herein stipulated.

The said Good Faith Deposit shall be returned to the Borrower with the first advance of funds and upon confirmation that all documents have been registered and that the terms and conditions of this Loan have been met, unless such failure arises from any event of default or action by the lender.

## 22. REGISTRATION OF DOCUMENTS

All documents relating to this Loan shall be signed and registered by September 30, 2005 provided CMHC approves same, in favour of Peoples Trust Company, a company having its office in the city of Toronto, Province of Ontario.

## 23. NON-MERGER

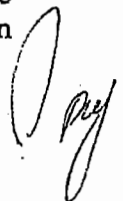
The Borrower's obligations as contained in this commitment (and to the extent that those obligations are not repeated in the mortgage and other security referred to in this letter) shall survive the execution and registration of the mortgage and other security documentation and all advances of funds under the mortgage and the Borrower agrees that those obligations shall not be deemed to be merged in the execution and registration of the mortgage and other security. All terms and conditions of our mortgage and other security documentation shall be deemed to be incorporated in and form part of this commitment except to the extent provided for in this letter. In the event of conflict, the terms of such mortgage and other security documentation and supporting documents shall prevail.

## 24. WAIVER

The Lender's failure to insist upon a strict performance of any obligation or covenant of this commitment by the Borrower or to exercise any option or right herein shall not be a waiver or relinquishment for the future of such obligation or covenant, option or right, but the same shall remain in full force and effect and the Lender shall have the right to insist upon the strict performance by the Borrower of any and all of the terms and provisions of this commitment and the documents.

## 25. MISCELLANEOUS CONDITIONS

- i) the Lender and CMHC shall have the right to install on the Project, at the Borrower's expense, a sign indicating the source of financing, the location of which shall be mutually agreed by the parties;



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- ii) it is understood that the Lender may be acting as an agent for other lenders and retains the right not to divulge the identity of these lenders.

**26. NOTICE**

Any notice shall be sufficiently given if served personally or if mailed by prepaid registered post addressed to:

*To the Borrower:*

Rose of Sharon (Ontario) Retirement Community  
c/o Strategic Mortgage Investments  
4950 Yonge Street, Ste. 908  
Toronto, Ontario  
M2N 6K1

*To the Lender:*

Peoples Trust Company  
c/o Mr. Jim Dysart, Vice President & Regional Manager  
130 Adelaide Street West  
Suite 920  
Toronto, Ontario  
M5H 3P5

Every such notice shall be deemed to have been given upon the day it was personally served or if mailed, upon the second postal date after it was mailed. Either party may designate in writing a substitute address for that set forth above and thereafter notice shall be directed to such substituted address. In the event of a postal strike or in the event of interruption of mail service, then all notices must be delivered to the address set out or such other address as may have been designated.

**27. DISCLOSURE**

The Borrower represents and warrants that all information pertaining to the current use and availability of the Project and the Borrower's and Guarantor's financial conditions have been fully disclosed to the Lender.

**28. OTHER FEES**

All fees in connection with this financing shall be for the Borrower's account. This includes all monies required to be paid to Stratex Investments and Pelican Woodcliff.



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**29. ACCEPTANCE**

Should the enclosed terms and conditions be acceptable to you, please sign the original of this letter and return same together with the Good Faith Deposit in the amount of \$25,000 by 3:00 P.M. March 30, 2005, to the undersigned, failing which the terms of this commitment shall be null and void.

**30. OTHER CONDITIONS**

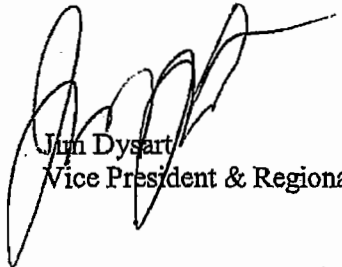
All other terms and conditions required by CMHC in its Special Conditions, and our solicitors, and other information requested by Peoples acting reasonably, must also be met.

**31. FURTHER MORTGAGING**

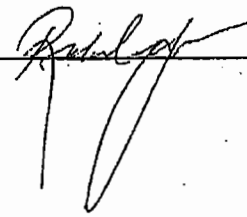
The Borrower shall not grant financing subsequent to this Loan secured by a mortgage over the Lands and improvements without the express written consent of the Lender.

Sincerely

PEOPLES TRUST COMPANY

  
Jim Dysart  
Vice President & Regional Manager

ACCEPTED this 24~~th~~ day of March 2005

BORROWER: 

Rose of Sharon  
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**APPENDIX "A"**

**THE BUDGET**

Calculation of Project Costs and Methodology of Loan Repayment

Budgeted Costs of Proposed Project

Land (mortgage debt to be repaid)	\$302,434
Fees & Charges	225,092
Bank Charges	3,600
Realty Taxes During Construction	17,000
Development Charges	449,496
Architect Engineering	1,381,468
Legal	128,000
Functional Programming	35,000
Development Consulting & Management	490,000
Audit, Quantity Surveyor	40,540
Project Manager	100,000
Direct costs (Marketing)	220,000
Environment	29,713
CMHC Application Fee	\$27,700
Operational Start-Up	150,000
Hard Construction Costs	17,619,571
Furnishings	800,000
GST (net of rebate)	812,245
Hard Contingency	325,000
Soft Contingency	<u>380,000</u>
*Total	\$23,536,859

\*Note:

- (1) Total costs assumes Turfpro mortgage for \$721,000 is not paid by the proceeds from this mortgage.
- (2) The \$45,000 which is to be paid to CMHC as repayment for the CMHC interim development loan is included in this budget and must be repaid with the first advance.

*I ref*

THIS IS EXHIBIT "D"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



---

A Commissioner for Taking Affidavits, etc.

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498

LRO # 80 Charge/Mortgage

Received as AT1450426 on 2007 05 18 at 15:09

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

yyyy mm dd Page 1 of 13

**Properties**

**PIN** 10468 - 0554 LT **Interest/Estate** Fee Simple

**Description** LOTS 25, 26 AND PART OF LOT 24, BLOCK F, PLAN 875 DESIGNATED AS PARTS 1 AND 2 ON PLAN 66R-22215. CITY OF TORONTO (FORMERLY CITY OF YORK). S/T A RIGHT OF WAY OVER PART 2 ON PL 66R-22215 AS IN TB374581 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F PL 875. S/T A RIGHT AS IN CA439308 OVER PART 2 PL 66R-22215 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F, PL 875 .

**Address** 15 & 17 MAPLEWOOD AVENUE  
TORONTO

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

**Name** ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

**Address for Service** 920 Yonge Street  
Suite 500  
Toronto, Ontario  
M4W 3C7

I, Richard Yoon, President, I, John Yoon, C.E.O., and I, Olivia Yoon, Treasurer, have the authority to bind the corporation.

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

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

**Name** PEOPLES TRUST COMPANY

**Address for Service** 130 Adelaide Street West  
Suite 1801  
Toronto, Ontario  
M5H 3P5

**Provisions**

**Principal** \$ 17,300,162.50 **Currency** CDN

**Calculation Period** SEE SCHEDULE

**Balance Due Date** SEE SCHEDULE

**Interest Rate** SEE SCHEDULE

**Payments**

**Interest Adjustment Date**

**Payment Date** SEE SCHEDULE

**First Payment Date**

**Last Payment Date**

**Standard Charge Terms** 8616

**Insurance Amount** full insurable value

**Guarantor**

**Additional Provisions**

See Schedules

**Signed By**

Cheryl Elizabeth Cochrane

1801-4 King St. West  
Toronto  
M5H 1B6

acting for  
Chargor(s)

Signed 2007 05 18

Tel 4162146500

Fax 4162147275



LRO # 80 Charge/Mortgage

Received as AT1450426 on 2007 05 18 at 15:09

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

yyyy mm dd Page 2 of 13

**Submitted By**

TRAUB MOLDAVER

1801-4 King St. West  
Toronto  
M5H 1B6

2007 05 18

Tel 4162146500

Fax 4162147275

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Chargee Client File Number :

PT LOAN NO. 41600 TM FILE 05-0155

**PAYMENT PROVISIONS**

PROVIDED THIS CHARGE/MORTGAGE OF LAND TO BE VOID upon payment at the office of the Chargee at Toronto, Ontario of SEVENTEEN MILLION, THREE HUNDRED THOUSAND, ONE HUNDRED AND SIXTY-TWO 50/100 DOLLARS (\$17,300,162.50) of lawful money of Canada with interest at the prime lending rate of interest announced, quoted or charged from time to time by the Bank of Montreal at its main branch in Toronto, Ontario as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada, plus 1.25%, which interest shall be calculated monthly and adjusted daily as to fluctuations in such prime rate of interest from time to time and payable on the earlier of demand or monthly as herein set forth, as well after as before maturity and both before and after default as follows:

INTEREST calculated monthly at the aforesaid rate on the amount advanced from time to time shall become due and be payable monthly on the 1st day of each and every month in each and every year from and including the 1st day of the month immediately following the month in which the first advance of funds is made hereunder to and including the 1st day of June, 2008 and the balance of SEVENTEEN MILLION, THREE HUNDRED THOUSAND, ONE HUNDRED AND SIXTY-TWO 50/100 DOLLARS (\$17,300,162.50) together with interest thereon at the aforesaid rate shall become due and payable on the 1st day of June, 2008. The first payment of interest to be computed from the date of the first advance of funds to become due and payable on the first day of the month immediately following the month in which the first advance takes place. The Chargor acknowledges that the prime commercial lending rate as hereinbefore defined on the 23rd day of March, 2007, was 6.00% per annum;

AND taxes and performance of Statute Labour; and observance and performance of all covenants, provisos and conditions herein contained.

**COMPOUND INTEREST**

AND it is hereby agreed that in case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in one (1) month from the time of default a rest shall be made, and compound interest at the rate aforesaid shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the said lands.

**INTEREST PAYMENTS**

THE CHARGEES shall have the option, to be exercised at its sole discretion, but will not be obliged, to deduct and pay any interest due and payable pursuant to the provisions hereof, from any or all of the advances to be made by the Chargee hereunder. In the event that advances are not requested by the Chargor on a monthly basis, or in the event that the Chargee does not exercise its option to pay interest out of advances pursuant hereto, the Chargor shall make all payments of interest hereunder timely in accordance with the provisions of this Charge, immediately upon receipt of the Chargee's invoice with respect to same. It is understood and agreed that the Chargee shall have the option not to pay interest from the interest reserve account.

**ADDITIONAL PROVISIONS****1. DEFINED TERMS**

- (a) Unless otherwise expressly defined or otherwise required by the context, all capitalized terms used herein shall have the same meanings as defined in Standard Charge Terms 8616 (the "Charge Terms");
- (b) "CMHC" means Canada Mortgage and Housing Corporation and its successors and assigns;
- (c) "Environmental Laws" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable directives, orders, codes, judgments and decrees of Governmental Bodies, whether now in existence or hereafter arising, intended to regulate and/or protect the environment and/or any living thing and/or relating to Hazardous Substances;

- (d) "Governmental Body" means any government, parliament, legislature, or any regulatory authority, bureau, tribunal, department, instrumentality, agency, commission or board of any government, parliament or legislature, or any court, and without limiting the foregoing, any other law, regulation or rule-making entity having or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator) and "Governmental Bodies" means any one or more of the foregoing collectively;
- (e) "Hazardous Substance" means any hazardous or dangerous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may, 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 Environmental Laws;
  - (ii) asbestos, urea formaldehyde, poly-chlorinated byphenyl (PCB) and materials manufactured with or containing the same; and,
  - (iii) radioactive and toxic substances.
- and "Hazardous Substances" means any one or more of the foregoing collectively; and,
- (f) "Person" means an individual, sole proprietorship, partnership, joint venture, syndicate, association, trust, body corporate, a natural person in his capacity as trustee, personal representative or other legal representative, the Crown or any agency or instrumentality thereof, and/or any other entity recognized by law.

## 2. ENVIRONMENTAL WARRANTY AND INDEMNITY

The Chargor covenants, represents, warrants, and acknowledges, as follows:

- (c) It has not, and to the best of its knowledge, information and belief after making due inquiry, no other Person has caused or permitted any Hazardous Substance to be placed, stored, located or disposed of, on, under, at or near the Charged Premises nor to be released from the Charged Premises;
- (d) The Charged Premises have never been used as a land fill site, waste disposal site or coal gasification site, or to store Hazardous Substances either above or below ground in storage tanks or otherwise;
- (e) It and, to the best of its knowledge, information and belief after making due inquiry, the tenants, invitees and all other occupiers of the Charged Premises have at all times carried out all business and other activities upon the Charged Premises in strict compliance with all Environmental Laws;
- (f) It will at all times carry out all business and other activities upon the Charged Premises in strict compliance with all Environmental Laws, and will at all times take all necessary measures to ensure that those for whom it is liable in law will also at all times carry out all business and other activities upon the Charged Premises in strict compliance with all Environmental Laws.
- (g) To the best of its knowledge, information and belief after making due inquiry, the use and occupation of the Charged Premises have at all times been in strict compliance with all Environmental Laws;
- (h) No notice, order, stop work order, inspection file, investigation, directive, enforcement action, regulatory action, suit, claim, action, proceeding or charge relating to any Hazardous Substance or to a breach or non-compliance with any Environmental Laws has been issued by any Governmental Body with respect to the Chargor or the Charged Premises, or is otherwise threatened to be issued;
- (i) It will provide the Chargee with full and complete copies of all communications received from time to time from all Governmental Bodies with respect to the Charged Premises;

- (j) It will provide to the Chargee on request and from time to time, information with respect to the status of the environmental matters referred to herein and will complete and deliver, on request, the Chargee's standard form of report, if any, on environmental matters;
- (k) The representations and warranties contained in this paragraph 2 will be true and accurate in all respects as of the date of the first advance made pursuant to the Charge; and,
- (l) The Chargee may delay or refuse to make any advance to the Chargor if it believes that any of the representations and warranties set out in this contained in this paragraph 2 are not true and accurate in all respects as of the date of the first advance made pursuant to the Charge; and,

The Chargee and CMHC and their respective agents may, at any time, before and after default, and for any purpose deemed necessary by the Chargee or CMHC, enter upon the said Charged Premises to inspect the land and the buildings thereon. Without in any way limiting the generality of the foregoing, the Chargee and CMHC and their respective agents may enter upon the Charged Premises to conduct any environmental testing, site assessment, investigation or study deemed necessary from time to time by the Chargee or CMHC and the cost of such testing, assessment, investigation or study, as the case may be, with interest at the rate in the Charge shall be a charge upon the Charged Premises. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or CMHC or their respective agents to be in possession, management or control of the Charged Premises. The Chargee shall also have the right to review and copy any records relating to the Charged Premises and/or to the businesses and other activities conducted thereon.

The Chargor agrees to indemnify and save fully and completely harmless the Chargee and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, demands, claims, actions, charges, orders, directives, undertakings, costs, legal fees and expenses, of every nature and kind, whatsoever and howsoever, which at any time or from time to time may be paid by, or incurred by, or suffered 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 hereinbefore set out;
- (b) the presence of any Hazardous Substance in, on, under or about the Charged Premises;
- (c) the breach of any Environmental Laws; and/or,
- (d) the discharge, emission, release, spill or disposal of any Hazardous Substance from the Charged Premises into or upon any land, the atmosphere, any watercourse, body of water or wetland or any other property.

The representations, warranties, covenants, acknowledgments and indemnifications set out in this paragraph 2 shall survive the release and discharge of the Charge and of any other security held by the Chargee and the repayment and satisfaction of the indebtedness secured by this Charge.

### 3. PRE-AUTHORIZED PAYMENT PLAN

Provided that, at the option of the Chargee, all payments to be made under this Charge shall be made by a pre-authorized payment plan as approved by the Chargee. The Chargee shall not be obligated to accept a payment by any other method. Failure to make all payments by a pre-authorized plan shall be an act of default within the meaning of this Charge and the Chargee shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option.

### 4. FINANCIAL AND OPERATING STATEMENTS

The Chargor covenants that, within the periods of time hereinafter specified, or within such other period(s) of time as may be specified by the Chargee, the Chargor shall deliver or cause to be delivered to the Chargee the following:

- (a) within one hundred twenty (120) days after the end of each fiscal year of operation of the Charged Premises, an annual operating statement in respect of the Charged Premises prepared on a stand alone basis for the Charged Premises for the immediately preceding fiscal year setting forth the gross rents and other income derived from the Charged Premises, the cost and expenses of operation and maintenance of the Charged

Premises and such other information and explanations in respect of the same as may be required by the Chargee;

- (b) within one hundred twenty (120) days after the end of each fiscal year of each Chargor and Covenantor which is a corporation, the annual audited financial statements of each such corporation for its immediately preceding fiscal year including, without limitation, the balance sheet of the corporation as at its fiscal year end with comparative figures for prior years, statements of earnings, retained earnings and changes in financial position as at the fiscal year end with comparative figures for prior fiscal years, any supporting schedules and notes thereto and such other information and explanations as may be required by the Chargee;
- (c) if the Charged Premises contain residential apartment units, an up-to-date, detailed rent roll, certified by the Chargor identifying each vacant unit, each occupied unit, each tenant's name, each unit number, the size of each unit, monthly base rent paid by each tenant, monthly additional rent paid by each tenant, start date of lease, expiry date of lease, any other terms and conditions of the lease pertinent to the operations of the Charged Premises together with a schedule outlining any defaults by the tenant(s) including rental arrears;
- (d) within one hundred and twenty (120) days after the ending of each fiscal year of operation of the Charged Premises, or more frequently if required by the Chargee, confirmation satisfactory to the Chargee that the Chargor is not in arrears with respect to any employee pensions and/or benefits including but not limited to workers' safety insurance premiums, employer health tax premium, Canada Pension Plan contributions, Employment Insurance Commission premiums and all statutory remittances including but not limited to income tax, province sales tax, goods and services tax or where applicable, harmonized sales tax.
- (e) with respect to each Chargor and Covenantor who is an individual and within thirty (30) days after each anniversary of the date of the registration of this Charge, an annual updated financial statement and/or net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Chargee; and,
- (f) all other information reasonably requested by the Chargee with respect to the operation of the Charged Premises including copies of all leases and rent rolls, and the Chargor will allow the Chargee access to the Charged Premises and its financial and computer records with respect to such information.

All such operating and financial statements shall be prepared at the expense of the Chargor and in accordance with generally accepted accounting principles applied on a consistent basis and by a duly qualified chartered accountant or certified public accountant which is acceptable to the Chargee, on a minimum review engagement basis (and shall be submitted in audited form if so required by the Chargee at its option) and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Chargor or Covenantor, as the case may be.

In the event of default by the Chargor under the Charge, or if the Chargor seeks relief under the provisions of the *Companies' Creditors Arrangement Act* (Canada) or other debtor's relief legislation, the Chargor shall be required to establish a separate bank account for the Charged Premises.

##### **5. PRE-PAYMENTS**

Section 6 of the Standard Charge Terms is hereby deleted and the following substituted therefor:

"THE CHARGOR shall be required to pay the net proceeds received on the closings of the Right to Occupy Agreements (the "Agreements") for the apartment units to be constructed on the Charged Lands to the Chargee, and the Chargee, upon receipt of such net proceeds together with the Chargee's discharge fee of \$150.00 per unit and its solicitors' discharge fees and subject to compliance with the *Planning Act* (Ontario), will provide a partial discharge of this Charge with respect to such apartment units for which net proceeds have been received. "Net proceeds" means the proceeds received on each closing less reasonable arm's length's commissions and legal fees as approved by the Chargee and CMHC. The Chargor shall have no other right to prepay all or any part of the

amount outstanding under this Charge prior to the maturity date of this Charge, nor shall the Chargor have any right to obtain further partial discharges of this Charge."

#### **6. RECEIPT OF PAYMENT**

Any payment received after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest to have been made and received on the next bank business day and the Chargee shall be entitled to interest on the amount due it, to and including the date on which the payment is deemed by this provision to have been received.

#### **7. CONSTRUCTION LOANS**

Section 14 of the Charge Terms is hereby deleted and the following is substituted therefor:

"In the event that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Charged Premises, the parties hereto covenant and agree that the following conditions shall apply:

- (a) The Chargor will commence, carry out and complete the development and construction upon the Charged Premises as contemplated by the Commitment (the "Project"), substantially in accordance with the plans, specifications and other material approved by the Lender, all with due diligence, in a good and workmanlike manner and in accordance with all agreements made with, undertakings given to and all statutory and regulatory requirements of all Governmental Bodies having jurisdiction;
- (b) All construction on the Charged Premises shall be carried out by reputable contractors having experience which is commensurate to nature and size of the Project to be constructed, which contractors must be prior approved by the Chargee in writing, such approval not to be unreasonably withheld.
- (c) The renovations to the building and structures located on the Charged Premises having been commenced shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Chargee and to the satisfaction of all Governmental Bodies having jurisdiction.
- (d) The Chargor shall pay, from the Chargor's own resources, all amounts incurred or arising on account of any of the following (hereinafter collectively called "Cost Overruns"):
  - (i) the amount, if any, by which the aggregate of all hard and soft costs incurred and required to be incurred in order to complete the Project exceeds the amount allocated therefor in the budget for the Project approved by the Chargee; and,
  - (ii) any and all amounts, as determined in the reasonable opinion of the Chargee in consultation with the Project architect, engineer or other consultant, required to pay then unpaid Project costs so that, after making such payment, the aggregate hard and soft costs required to be incurred in order to complete the Project will not exceed the unadvanced portion of the loan secured by the Charge.
- (e) The Chargor shall pay all Cost Overruns when and if the same arise and, in any event, upon demand for same by the Chargee or its authorized agent. If any Cost Overruns are not promptly paid by the Chargor forthwith after demand therefor by the Chargee or its authorized agent, the Chargee may, at its option, make any such payment on the Chargor's behalf and any amount so paid shall become immediately due and payable to the Chargee together with interest thereon at the rate then payable under the loan calculated from the date of payment by the Chargee until the date of repayment by the Chargor and same shall be added to the principal of this Charge and secured hereunder.
- (f) Provided that should construction of the Project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Chargor excepted), for a period of fifteen (15) consecutive days (Saturdays, Sundays and statutory holidays excepted), then, at

the option of the Chargee, this Charge shall immediately become due and payable. In the event that construction does cease, then the Chargee shall have the right, at its sole option, to assume complete control of the construction of the Project in such manner and on such terms as it deems advisable. The cost of completion of the Project by the Chargee and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Chargee. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Chargee shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of principal and interest hereunder or at law.

- (g) At all times there shall be sufficient funds unadvanced under this Charge and retained by the Chargee to complete the construction and/or renovation of the Project and as may be necessary to retain the Chargee's priority with respect to any deficiency in the holdbacks required to be retained by the Chargor under the *Construction Lien Act* (Ontario).
- (h) This Charge will be advanced in stages as construction upon the Charged Premises proceeds or as the conditions as enumerated by the Commitment are complied with.
- (i) All advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Chargee with respect to the Project and the progress thereof, whose fees and costs shall be for the account of the Chargor regardless of by whom such Person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other requirements of all Governmental Bodies having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the Project.
- (j) The Chargor shall pay to the Chargee on each occasion when an inspection of the Charged Premises is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Chargee may charge from time to time for each such inspection and the Chargee's solicitors shall be paid their fees and disbursements for each subsearch and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Chargee shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.
- (k) The Chargor shall pay an advancing fee of \$350.00 to CMHC commencing with the third advance of funds hereunder.
- (l) The Chargor shall pay an advancing fee of \$500.00 to the Chargee with the first and second advance of funds hereunder and an advancing fee of \$150.00 for every further advance."

#### **8. CHANGE OF USE**

Section 16 of the Charge Terms is hereby amended by adding the following at the end of the section:

"...or as a hotel, nor will he permit the Charged Premises to be occupied by any person other than as the principal residence of such person."

**9. SALE OR CHANGE OF CONTROL**

Section 26 of the Charge Terms is hereby deleted and the following substituted therefor:

"Provided that in the event of a further sale, conveyance or transfer of the Charged Premises or any portion thereof, or a change in control of the Chargor or a change in the beneficial ownership of the Charged Premises or any portion thereof or a lease of the whole of the Charged Premises, all sums secured hereunder shall, at the Chargee's option, become due and payable forthwith unless the written consent of the Chargee has been first obtained, which consent may be arbitrarily or unreasonably withheld. The rights of the Chargee pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under this Charge from the Chargor or any Person claiming through or under him and the rights of the Chargee hereunder shall continue without diminution for any reason whatsoever until such time as the Chargee has consented in writing as required by this provision.

Provided further that no permitted sale or other dealing by the Chargor with the Charged Premises or any part thereof shall in any way change the liability of the Chargor or Covenantors or in any way alter the rights of the Chargee as against the Chargor or the Covenantors or any other Person liable for payment of the monies hereby secured."

**10. FURTHER ENCUMBRANCES**

Provided that in the event that the Chargor enters into, creates, incurs, assumes, suffers or permits to exist any additional charge, encumbrance, pledge or other financing of the Charged Premises, or of the chattels, equipment or personal property related to the Charged Premises, all sums secured hereunder shall, at the Chargee's option, become due and payable forthwith unless the prior written consent of the Chargee has been obtained, which consent may be arbitrarily or unreasonably withheld.

**11. RECEIVERSHIP**

- (a) The first sentence of the first paragraph of Section 34 of the Charge Terms is hereby amended by the insertion of the words, "...and without any objection or obstruction on the part of the Chargor..." after the words "Notwithstanding anything herein contained...":

"...and without any objection or obstruction on the part of the Chargor..."

- (b) Subsection 34(d) of the Charge Terms is hereby deleted and the following is substituted therefor:

Every such receiver shall be the agent or attorney of the Chargor and the Chargee shall not be responsible for his acts or omissions.

**12. PROFESSIONAL MANAGEMENT**

The Charged Premises must at all times be professionally managed by property managers acceptable to the Chargee. Any changes in the property managers for the Charged Premises shall require the prior written consent of the Chargee, which consent shall not be unreasonably withheld. If, at any time, the Chargee becomes dissatisfied with the current or future property managers for the Charged Premises, and the reasons for such dissatisfaction are not remedied within thirty (30) days notice detailing such dissatisfaction, the Chargor shall, at the request of the Chargee and at the sole expense of the Chargor, change the property managers to such other property managers acceptable to the Chargee. Default under this covenant shall be deemed a default under this charge and the principal sum secured together with accrued interest and costs shall become due and payable at the option of the Chargee.

The Chargor covenants and agrees that, in the event that the Chargor or any non-arms length company is or becomes the property managers for the Charged Premises, it will provide evidence satisfactory to the Chargee annually showing that the fees charged by the Chargor, or non-arms length company, are comparable to the then current rates charged by local third party fee-based property management firms for properties similar to the Charged Premises.

The Chargor shall permit the Chargee or its authorized representatives (without in any way being in control of the same) to inspect the Charged Premises (including all and any buildings situate on the Charged Premises) at all reasonable times. In the event that the Chargee, acting reasonably, determines that the Charged Premises (including any and all buildings situate on



the Charged Premises) require repair, replacement, maintenance or cleaning, the Chargee shall request that the Chargor pay to the Chargee and the Chargor shall pay to the Chargee in each year during the currency of this Charge, in equal monthly instalments (together with and in addition to the regular monthly payments of principal and interest), such amounts as the Chargee may estimate as being necessary to carry out and conduct such repair, replacement, maintenance or cleaning; provided that if the Chargor is in default under this Charge, then such payments of the fund, if any, created by the accumulation of such payments, may be applied towards the principal amount outstanding under this Charge. Nothing set out above shall require the Chargee to make or conduct any such repairs, replacements, maintenance or cleaning.

The Chargee may (without in any way being in control of the Charged Premises) appoint a monitor having the power to attend at the Charged Premises to review the physical status of the said lands and all improvements thereon and the financial operation of the Charged Premises and consents and agrees that the monitor will report to the Chargee with respect to such inspections.

### **13. NON-MERGER**

Notwithstanding the registration of this Charge and the advance of funds pursuant hereto, the terms and conditions of the letter of commitment (the "Commitment") dated March 17, 2005, as may be amended from time to time, issued by the Chargee to or on behalf of the Chargor and the certificate of insurance (the "Certificate") issued by CMHC under account number 90-260-530, shall remain binding and effective on the parties hereto, and shall not merge in this Charge nor in any document executed and delivered to the Chargee in connection with the transaction contemplated by the Commitment and the Certificate, and the terms of the Commitment and the Certificate are incorporated herein by reference.

### **14. SPECIFIC ASSIGNMENT OF LEASES**

As further security to this Charge, the Chargor covenants and agrees to grant to the Chargee, upon thirty days prior written notice, a specific assignment of all leases of premises in the building on the Charged Premises.

### **15. MATERIAL ADVERSE CHANGES**

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of this Charge, the Chargee discovers a discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Chargee by or on behalf of the Chargor or any Covenantor concerning the Charged Premises or the financial condition and responsibility of the Chargor or any covenantor or in the event of any material adverse change in the value of the Charged Premises or the financial status of the Chargor or any lessee on which the Chargee relied upon in making any advances hereunder, which material change, discrepancy or inaccuracy cannot be rectified by the Chargor or such Covenantor (if applicable) within 30 days after written notification thereof by the Chargee to the Chargor or such Covenantor, the Chargee shall be entitled to decline to advance any further funds pursuant hereto and to declare any and all amounts advanced pursuant hereto together with interest thereon to be forthwith due and payable.

### **16. CONDOMINIUM PROVISIONS**

Section 33 of the Charge Terms is hereby deleted and the following substituted therefor:

"Provided that if all or any part of the Charged Premises is or becomes a condominium unit pursuant to the provisions of the *Condominium Act, 1998* (Ontario), the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in this Charge:

- (a) For the purposes of all parts of the Charged Premises comprising one or more such condominium units, all references in this Charge to the Charged Premises shall include the Chargor's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
- (b) The Chargor shall at all times comply with the *Condominium Act, 1998* (Ontario) and shall forward to the Chargee proof of such compliance as the Chargee may request from time to time including, without limitation, status certificates issued by the Condominium Corporation; and if the Chargor fails to so comply in any respect, the Chargee may do so at its option and all costs and expenses incurred by the Chargee in connection therewith shall be secured by this Charge and

- payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;
- (c) The Chargor shall pay, when due, all monies payable by the Chargor or with respect to the Charged Premises in accordance with the provisions of the *Condominium Act, 1998* (Ontario) and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Chargee upon request; and if the Chargor fails to make any such payment, the Chargee may do so at its option and all amounts so paid by the Chargee shall be secured by this Charge and shall be payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;
- (d) The Chargor hereby irrevocably appoints, authorizes and empowers the Chargee to exercise the rights of the Chargor to vote or to consent as an owner within the meaning of the *Condominium Act, 1998* (Ontario) with respect to all matters relating to the affairs of the Condominium Corporation, or to abstain from doing so, provided that:
- (i) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise such right to vote or to consent, in which case the Chargor may exercise its right to vote or to consent for so long as such notice remains effective or until such notice is revoked by the Chargee; and any such notice may be for an indeterminate period of time, a limited period of time or for a specific meeting or matter;
- (ii) the Chargee shall not be under any obligation to vote or to consent or to protect the interests of the Chargor; and,
- (iii) the exercise by the Chargee of its right to vote or to consent or to abstain from doing so shall not constitute the Chargee as a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Chargee;
- (e) The Chargor shall forward to the Chargee by delivery or by prepaid registered mail copies of every notice, assessment, claim, demand, by-law, rule, request for consent and other communication relating to all or any part of the Charged Premises or the common elements or affairs of the Condominium Corporation on or before the date which is the earlier of:
- (i) fourteen (14) days after receipt of the same by the Chargor;
- (ii) seven (7) days prior to the date set for any meeting of the Condominium Corporation or any committee thereof;
- (iii) seven (7) days prior to the due date of any claim or demand for payment; and,
- (iv) within twenty-four (24) hours after becoming aware of any information concerning termination of any insurance policy, insurance trust agreement or management agreement relating to the Condominium Corporation or any of its assets;
- (f) The Chargor hereby authorizes and directs the Condominium Corporation to permit the Chargee to inspect the records of the Condominium Corporation at any reasonable time;
- (g) In addition to and notwithstanding any other provisions of this Charge, the outstanding principal amount and all accrued interest and other charges secured by this Charge shall, at the Chargee's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:
- (i) the government of the Condominium Corporation or the government of the Charged Premises by the Condominium Corporation is terminated;

- (ii) a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Charged Premises, or any part of the same is expropriated;
- (iii) the Condominium Corporation fails to comply with any provision of the *Condominium Act, 1998* (Ontario) or its declaration or any of its by-laws and rules;
- (iv) the Condominium Corporation fails to insure its assets, including the Charged Premises, in accordance with the *Condominium Act, 1998* (Ontario) and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same."

#### **17. CONSENT TO REGISTRATION OF CONDOMINIUM PLAN**

Provided the Chargor is not in default of the provisions of the Charge or the Commitment, the Chargee hereby agrees that it will consent to the Chargor registering a plan or plans of condominium and declaration (the "Condominiums") pursuant to the *Condominium Act, 1998* (Ontario), as amended, with respect to the Charged Premises or a portion thereof provided that the Chargee has received and approved the draft plans of condominium and the declaration and provided further that the Chargor, if requested by the Chargee, shall deliver to the Chargee prior to the registration of the Condominiums, a further charge of the Charged Premises (the "Replacement Charge") on the same terms and conditions save and except for the new legal description of the Charged Premises. It is agreed that the Replacement Charge shall secure the same indebtedness as the within Charge. In connection with the provision of the Replacement Charge, the Chargor shall also provide a replacement general assignment of rents (the "Replacement Assignment of Rents"), a re-confirmation of all existing security and such further and other documentation as may then be required by the Chargee's solicitors.

Provided further that this Charge and the original assignment of rents and leases relating thereto shall not be released or discharged from the Charged Premises (save and except for any partial discharge provisions provided for herein) until the expiration of ninety (90) days immediately following the later of the registration of the Condominiums and the registration of the Replacement Charge and Replacement Assignment of Rents. Provided further that at the time of the request for a discharge of this Charge and the original assignment of rents and leases the Chargor shall not be in default of the provisions, of this Charge, the Replacement Charge and/or the Commitment, failing which the Chargee shall not be obliged to discharge same.

#### **18. CONDOMINIUM REGISTRATION**

The Chargor agrees that if the Chargor fails to register the required documentation and take whatever other steps are required to create two (2) condominium corporations on the Charged Premises no later than June 1, 2007, all monies owing under this Charge, including principal and interest, shall, at the option of the Chargee, immediately become due and payable, provided that if the Chargor fails to bring two (2) condominium corporations into existence by the said date for reasons that are, in the opinion of the Chargee, beyond the Chargor's control, the Chargee may, at its sole option extend the said date for such period of time as it deems necessary.

#### **19. SALE OF CONDOMINIUM UNITS**

The Chargor agrees, that no sale of individual units will be permitted, unless specifically agreed to be the Chargee and CMHC, and according to terms and conditions issued by the Chargee. Any attempt to sell individual units without the Chargee's consent shall, at the sole discretion of the Chargee, be deemed a breach of this charge and all moneys owing under this Charge, including principal and interest, shall immediately become due and payable.

#### **20. REPLACEMENT RESERVE**

The Chargor shall establish a reserve fund (the "Replacement Reserve") for capital replacements at the Charged Premises. The Replacement Reserve is to be funded annually commencing four (4) months after the first fiscal year end following the interest adjustment date of the CMHC insured long term charge/mortgage in favour of the Lender which is to be registered on the portion of the Charged Premises on which a nursing home is to be constructed (the "Permanent Charge") and is to be maintained for the fixed term of the Permanent Charge

with an amount equal to at least 2.0% of the actual accommodation envelope revenue for the nursing home based on its audited income statement. The use and disposition of the Replacement Reserve shall be subject to the approval or direction of the Chargee. The Replacement Reserve is to be comprised of moneys deposited in a segregated bank account identified for its intended purpose and/or invested in such other securities as may be acceptable to the Chargee. Non-compliance with this funding requirement shall constitute a default under this Charge and the Permanent Charge. In the event of default under this Charge and/or the Permanent Charge, any amount remaining in the Replacement Reserve must be made available to reduce a claim against the CMHC Mortgage Insurance Fund.

#### **21. ADDITIONAL EVENTS OF DEFAULT**

**WITHOUT** limiting any of the provisions of this Charge, each of the following events shall also be considered an event of default hereunder upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall immediately become due and payable at the option of the Chargee exercised by notice in writing to the Chargor:

- a. Failure or refusal of the Chargor to make all statutory remittances including but not limited to workers' safety insurance premiums, employer health tax premium, Canada Pension Plan contributions, Employment Insurance Commission premiums and all statutory remittances including but not limited to income tax, province sales tax, goods and services tax or where applicable, harmonized sales tax;
- b. The building plan of the building constructed on the Charged Premises is physically altered without the written approval of the Chargee and CMHC;
- c. the building constructed on the Charged Premises ceases to be occupied by persons utilizing the accommodation for purposes of a principal residence.

**NOTWITHSTANDING** the foregoing, except in the event of a voluntary petition in bankruptcy by the Chargor or any guarantor, the Chargee may, at its option, provide a period of grace not to exceed sixty (60) days for the correction of such default, including any legally required grace period. Delay by the Chargee in the exercise of any of its rights in the event of a default shall not be construed as a waiver of such rights or of the default, and the failure of the Chargee to act in any such event shall not be construed as a waiver of its rights as to any subsequent event or default. In the event that a default remains uncorrected, the Chargee may exercise any and/or all of the remedies available to it.

#### **22. DUE ON SALE**

SECTION 26 of the Charge Terms is hereby amended by adding the following:

"The Chargor covenants and agrees with the Chargee that in the event of the Chargor selling, conveying, transferring or entering into an agreement for sale or of transfer of title to the Charged Premises (including, but not limited to, the sale of shares or other interest resulting in a transfer of majority ownership interest) or any part of it to a purchaser or transferee not approved of in writing by the Chargee, which approval shall not unreasonably be withheld, all monies hereby secured with accrued interest thereon shall forthwith become due and payable at the Chargee's option. Any such conveyance, transfer or entry into an agreement for sale or of transfer shall not (even if the Chargor receives the Chargee's consent) release the Chargor from any of its obligations under this Charge."

#### **23. ENVIRONMENTAL INSPECTIONS**

The Chargee or agent of the Chargee or agent of CMHC may, at any time, before and after default, and for any purpose deemed necessary by the Chargee or CMHC, enter upon the Charged Premises to inspect the said lands and buildings thereon. Without in any way limiting the generality of the foregoing, the Chargee or CMHC, or their respective agents, may enter upon the Charged Premises to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Chargee or CMHC and the reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the mortgage rate, shall be a charge upon the Charged Premises. The exercise of any of the powers enumerated in this section shall not deem the Chargee, CMHC or their respective agents to be in possession, management or control of the said lands and buildings.

LAND REGISTRATION REFORM ACT, 1984

SET OF STANDARD CHARGE TERMS

Filed by CANADA MORTGAGE AND HOUSING CORPORATION

The following set of Standard Charge Terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act, 1984.

1. CHARGE

The chargor or chargors (herein called the "Chargor") named in any charge of which this set of Standard Charge Terms forms a part by reference to its filing number in such charge (herein called the "Charge") charges the lands described in the Charge (herein called the "Charged Premises") with the payment to the Chargee of the principal and interest and all other monies secured by the Charge upon the terms as set out in the Charge including this set of Standard Charge Terms and whenever reference is made in this set of Standard Charge Terms to the Charge it shall include this set of Standard Charge Terms.

2. DEFEASANCE

- (a) The provisions relating to defeasance contained in subsection 6(2) of the Land Registration Reform Act, 1984, shall be and are hereby expressly excluded from the terms of the Charge.
- (b) The following proviso shall apply if and only if a specific proviso for defeasance is not included in a schedule to the Charge: Provided that this Charge shall be void upon the Chargor, his heirs, executors, administrators, successors or assigns or any of them paying or causing to be paid to the Chargee, its successors or assigns the principal sum set forth in the Charge and interest thereon as well after as before maturity and default and judgement at the rate set forth in the Charge at the days and times and in the manner set forth in the Charge and all other amounts payable by the Chargor hereunder and paying any taxes, rates, levies, charges or assessments upon the Charged Premises no matter by whom or what authority imposed and observing and performing all covenants, provisos and conditions herein contained.

3. APPLICATION OF PAYMENTS

Provided that if the Charge is repayable by blended instalments of principal and interest the instalments payable under the Charge are to be applied firstly to interest calculated as provided in the Charge on the principal monies from time to time outstanding and the balance of the said instalments shall be applied on account of principal; except however in the case of default by the Chargor, the Chargee may apply any payments received during the period of default in whatever order it may elect as between principal, taxes, interest, repairs, insurance premiums or other advances made on behalf of the Chargor.

4. COMPOUND INTEREST

It is agreed that in case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid on the next interest payment date after the date of default a rest shall be made, and compound

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interest at the rate aforesaid shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Charged Premises.

5. TAXES

With respect to municipal taxes, school taxes and local improvement rates (hereinafter referred to as "taxes") chargeable against the Charged Premises, it is MUTUALLY AGREED between the parties to the Charge that:

- (a) The Chargee may deduct from the final advance of the monies secured by the Charge an amount sufficient to pay the taxes which have become or will become due and payable at the Interest Adjustment Date referred to in the Charge and are unpaid at the date of such final advance
- (b) After the Interest Adjustment Date the Chargor shall pay to the Chargee in monthly instalments on the dates on which instalments of principal and interest are payable hereunder, sums sufficient to enable the Chargee to pay the whole amount of taxes on or before the due date for payment thereof or, if such amount is payable in instalments, on or before the due date for payment of the first instalment thereof.
- (c) Where the period between the Interest Adjustment Date and the next following annual due date or first instalment date is less than one year the Chargor shall pay to the Chargee in equal monthly instalments, during such period and during the next succeeding 12 months period, an amount estimated by the Chargee to be sufficient to pay, on or before the expiration of the said 12 months period, all taxes which shall become due and payable during the said two periods and during the balance of the year in which the said 12 months period expires; and the Chargor shall also pay to the Chargee on demand the amount, if any, by which the actual taxes exceed such estimated amount.
- (d) Except as provided in the last preceding clause, the Chargor shall, in each and every month, pay to the Chargee one-twelfth of the amount (as estimated by the Chargee) of the taxes next becoming due and payable; and the Chargor shall also pay to the Chargee on demand the amount, if any, by which the actual taxes exceed such estimated amount.
- (e) The Chargee shall allow the Chargor interest at not less than the prevailing rate allowed by the chartered banks on personal savings deposits with chequing privileges on the minimum monthly balances standing in the mortgage account from time to time to the credit of the Chargor for payment of taxes, such interest to be credited to the mortgage account not less frequently than once each year; and the Chargor shall be charged interest at the mortgage rate, on the debit balance, if any, of taxes in the mortgage account outstanding after payment of taxes by the Chargee, until such debit balance is fully repaid.

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The Chargee agrees to apply such deduction and payments on the taxes chargeable against the said lands so long as the Chargor is not in default under any covenant, proviso or agreement contained herein, but nothing herein contained shall obligate the Chargee to apply such payments on account of taxes more often than yearly. Provided, however, that if, before any sum or sums so paid to the Chargee shall have been so applied, there shall be default by the Chargor in respect of any payment of principal or interest as herein provided, the Chargee may apply such sum or sums in or towards payment of the principal and or interest in default. The Chargor further covenants and agrees to transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by him.

Notwithstanding the provisions of clause 5, the Chargee may, with the approval of Canada Mortgage and Housing Corporation, request the Chargor to pay the taxes as and when such taxes become due and to submit to the Chargee tax receipts evidencing the payment of the said taxes within 30 days after they become due, and in such case, the aforesaid monthly instalment, where applicable, will be adjusted accordingly.

#### 6. PREPAYMENTS

(a) PROVIDED that the Chargor when not in default hereunder shall have the privilege of paying an additional amount of principal, not in excess of 10% of the original amount of this charge, on the first anniversary of the interest adjustment date, and a similar amount of principal on the second anniversary of the said date, upon payment, by way of bonus of three months interest on the amount of any such additional payment, it being agreed that such privilege shall not be cumulative.

(b) PROVIDED that on the third anniversary of the interest adjustment date and on any monthly instalment date thereafter, the Chargor, when not in default hereunder, shall have the privilege of paying the whole amount owing hereunder, or any part thereof, upon payment by way of bonus of three months interest on the principal amount of any such additional payment.

(c) PROVIDED, however, that if this mortgage covers a rental housing project, as defined in the National Housing Act, the foregoing additional payment privileges shall not apply, but the Chargor when not in default hereunder, shall have the privilege of paying, on the fifth anniversary of the interest adjustment date or on any monthly instalment date thereafter, the whole amount owing hereunder, upon payment by way of bonus, of an additional three months interest on the principal amount then outstanding.

(d) PROVIDED that when any partial additional payments are made the amount thereof shall be equal to the sum of the principal portions of a number of consecutive monthly instalments which would otherwise become due hereunder next following the date upon which such additional payment is made, and the payment dates of all remaining instalments and of the balance owing hereunder shall be accelerated so that the Chargor shall pay the aforesaid monthly instalment in each and every month, commencing with the month immediately following the month in which the additional payment is made and continuing until all moneys owing hereunder shall have been fully repaid.

#### 7. DEEMED COVENANTS EXCLUDED

The covenants deemed to be included in a Charge by subsection 7(1) of the Land Registration Reform Act, 1984 shall be and are hereby expressly excluded from the terms of the Charge.

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8. COVENANTS IN LIEU OF STATUTORY COVENANTS

The Chargor doth hereby, for himself, his heirs, executors administrators and successors covenant, promise and agree to and with the Chargee, its successors and assigns, as follows:

(a) To Pay and Observe Covenants

That the Chargor, his heirs, executors, administrators and successors or some or one of them shall pay or cause to be paid to the Chargee, its successors or assigns without deduction or abatement the principal money secured by the Charge with interest as set out in the Charge at the times and in the manner therein limited for payment thereof, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations particularly set forth in the Charge, and, without limitation, shall pay any taxes, rates, levies, charges or assessments upon the Charged Premises or in respect thereof, no matter by whom or by what authority imposed, which the Chargee has paid or have been rendered liable to pay and shall also pay all other sums as the Chargee may be entitled to under the Charge.

(b) For Good Title

That the Chargor, at the time of execution and delivery of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible title in fee simple to the Charged Premises free of any trusts, reservations, limitations, provisos or conditions (except those contained in the original grant thereof from the Crown) or any other matter or thing to alter, charge, change, encumber or defeat the same.

(c) Right to Charge

That the Chargor has good right, full power and lawful and absolute authority to charge the Charged Premises with their appurtenances unto the Chargee, its successors and assigns, in the manner set out in the Charge.

(d) Quiet Possession on Default

That from and after default in the payment of the principal money mentioned in the Charge, or the interest thereof, or any part thereof, or in the doing, observing, performing, fulfilling or keeping of one or more of the provisions, agreements or stipulations contained in the Charge, contrary to the true intent and meaning thereof, then in every such case, it shall be lawful for the Chargee, its successors and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the lands and premises described in the Charge or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of the Chargor, his heirs, executors, administrators, successors or assigns or any other person or persons whomsoever, free and clear of all arrears of taxes and assessments whatsoever due or payable upon or in respect of the Charged Premises or any part thereof and of and from all former conveyances, mortgages, charges, rights, annuities, debts, executions and recognizances and of any other charges or encumbrances whatsoever.

(e) Further Assurances

That from and after default shall happen to be made of or in the payment of the principal amount, or the interest thereon, or any part of the principal or interest, as set forth in the Charge or of or in the doing, observing, performing, fulfilling or keeping of one or more of



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the provisions, agreements or stipulations in the Charge contrary to the true intent and meaning hereof, then and in every such case the Chargor, his heirs, executors, administrators and assigns and all and every person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the Charged Premises by, from, under or in trust for him, shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the Chargee, its successors and assigns make, do, suffer and execute or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances, and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the Charged Premises unto the Chargee, its successors and assigns, as by the Chargee, its successors and assigns, or its or their solicitor shall or may be lawfully and reasonably devised, advised, or required.

(f) Insurance

(i) And that the Chargor (which in this Section includes his heirs, executors, administrators, successors or assigns) will forthwith insure and during the continuance of the Charge keep insured in favour of the Chargee (which in this Section includes its successors or assigns) against loss or damage by fire, and, as the Chargee may require, insure against loss or damage by tempest, tornado, cyclone, lightning and other risks or hazards, each and every building on the Charged Premises and which may hereafter be erected thereon, both during erection and thereafter, for the full insurable value thereof in lawful money of Canada in a company duly authorized to carry on business as such and shall pay all premiums and sums of money necessary for such purpose as the same shall become due; each policy of insurance shall provide that loss, if any, shall be payable to the Chargee as its interest may appear, subject to a standard form of mortgage clause or other mortgage clause approved by the Chargee and the Chargor will forthwith assign, transfer and deliver over unto the Chargee the policy of insurance and receipts thereto appertaining; and if the Chargor shall neglect to keep the said buildings or any of them insured as aforesaid, or to deliver such policies and receipts or to produce to the Chargee at least fifteen days before the termination of any insurance, evidence of renewal thereof, the Chargee shall be entitled but shall not be obliged to insure the said buildings or any of them, and if the Chargee shall pay any premiums or sums of money for insurance for the premises or any part thereof the amount of such payment shall be added to the debt secured by the Charge and shall bear interest at the same rate applicable to principal as set out in the Charge from the time of such payments and shall be payable at the time appointed for the next ensuing paying of interest on the said debt; and the Chargor shall forthwith on the happening of any loss or damage, furnish at his own expense all necessary proofs and do all necessary acts to enable the Chargee to obtain payment of the insurance monies and the production of the Charge shall be sufficient authority for the said insurance company to pay any such loss to the Chargee, and the said insurance company is hereby directed thereupon to pay the same to the Chargee: and any insurance monies received may, at the option of the Chargee, be applied in rebuilding, reinstating or repairing the Charged Premises or be paid to the Chargor or any other person appearing by the registered title to be or to have been the owner of the Charged Premises or be applied or paid partly in one way and partly in another, or it may be applied, in the sole discretion of the Chargee, in whole or in part on the Charge debt or any part thereof whether due or not then due.

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(ii) If the Charged Premises are part of a condominium the insurance provisions set out in paragraph (i) above will not apply and the following will apply to the Charge:

And that the Chargor (which in this Section includes his heirs, executors, administrators, successors or assigns) or the Condominium Corporation or both of them will forthwith insure and during the continuance of the Charge keep insured in favour of the Chargee (which in this Section includes its successors or assigns) against loss or damage by fire and, as the Chargee may require, insure against loss or damage by tempest, tornado, cyclone, lightning and other risks or hazards, each and every building on the Charged Premises and which may hereafter be erected thereon, both during erection and thereafter, for the full insurable value thereof in lawful money of Canada in a company approved by the Chargee; and the Chargor or the Condominium Corporation or both of them will forthwith assign, transfer and deliver unto the Chargee the policy or policies of insurance and receipts thereof appertaining and if the Chargor or Condominium Corporation or both of them shall neglect to keep the said buildings or any of them insured aforesaid, or to deliver such policy or policies, and receipts or produce to the Chargee at least fifteen days before the termination of any insurance, evidence of renewal thereof, the Chargee shall be entitled but shall not be obligated to insure the said buildings or any of them; and the Chargor or the Condominium Corporation or both of them shall forthwith on the happening of any loss or damage comply fully with the terms of the policy, or policies, of insurance and, without limiting the generality of the obligation of the Chargor to observe and perform all the duties and obligations imposed on him by the Condominium Act and by the Declaration and By-laws of the Condominium Corporation as hereinafter provided, shall comply with the insurance provisions of the Declaration; and the Chargor as a member of the Condominium Corporation shall seek the full compliance by the Condominium Corporation of the aforementioned covenants.

9. RELEASE

And the Chargor hath released, remised and for ever quitted claim, and by these presents doth release, remise, and for ever quit claim unto the Chargee, its successors and assigns, all right, title, interest, claim and demand whatsoever, of, unto and out of the said lands and premises hereby charged or intended so to be, and every part and parcel thereof, so as that neither the Chargor, his heirs, executors, administrators, successors or assigns, shall or may at any time hereafter have, claim, pretend to, challenge or demand the said Charged Premises or any part thereof, in any manner howsoever, subject always to the proviso for defeasance.

10. ENTRY AFTER DEFAULT AND POWER OF SALE

Provided that the Chargee (which in this section includes its successors or assigns) on default by the Chargor (which in this section includes his heirs, executors, administrators, successors or assigns) of payment of the principal and interest or any part thereof as herein and by the Charge required or in the observing, performing, fulfilling or keeping of one or more of the covenants of the Chargor provided in the Charge may enter into possession of the lands and premises hereby charged or intended so to be and take the rents, issues and profits and whether in or out of possession make such lease or leases as he or they shall think fit, and also on fifteen days' default as aforesaid and after giving at least thirty-five days' written notice to the persons and in the manner and form prescribed by Part III of the Mortgages Act, R.S.O. 1980, c. 296 as it may be amended from time to time may sell the lands and premises charged by the Charge or intended so to be or any

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part or parts thereof by public auction or private contract, or partly the one and partly the other, and may convey and assure the same when so sold to the purchaser or purchasers thereof, his or their heirs, successors or assigns, or as he or they shall direct and may do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the Chargee 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 or their wilful neglect or default. 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 it is agreed that notice may be effectually given by leaving it with an adult person on the Charged Premises, if occupied, or by placing it on some portion of the Charged Premises if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in a newspaper published in the county or district in which the Charged Premises are situate, and such notice shall be sufficient although not addressed to any person or persons by name or designation and notwithstanding that any person or persons to be affected thereby may be unknown, unascertained or under disability. And it is hereby further agreed that the proceeds of sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Charged Premises or by reason of non-payment or procuring payment of monies, secured hereby or otherwise, and that the Chargee may sell all or any part of the Charged Premises on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the Charged Premises and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder; and that 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 case had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any person damnified by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power in damages only; and the above powers may be exercised by the successors and assigns of the Chargee and against the heirs, executors, administrators, successors and assigns of the Chargor. The Chargee may sell fixtures, machinery, crops and standing or fallen trees apart from the lands, and the purchaser as well as the Chargee shall have all necessary access for securing, cutting and removal. It is agreed between the parties to the Charge that nothing in this section contained shall prejudice or diminish any other rights and remedies and powers of the Chargee hereunder or in the Charge contained or existing at law by virtue thereof.

And it is further agreed between the parties to the Charge that until such sale or sales shall be made as aforesaid, the Chargee shall and will stand possessed of the rents and profits of the said Charged Premises in case it shall take possession of them on default as aforesaid and after such sale or sales shall stand possessed of the monies to arise and be produced from such sales, or which might arise from any

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insurance upon the Charged Premises or any part thereof upon trust firstly in payment of all the expenses incident to the sales, leases, conveyances, or attempted sales, or leases, secondly all costs, charges, damages and expense of the Chargee relating to taxes, rents, insurance, repairs, utilities and any other amounts which the Chargee may have paid relating to the Charged Premises, thirdly in discharge of all interest and costs then due in respect of the Charge, fourthly in discharge of the principal money secured by the Charge, fifthly in payment of the subsequent encumbrancers according to their priorities and the residue shall be paid to the Chargor as he may direct and shall also, in such event, at the request, costs and charges of the Chargor transfer, release and assure unto the Chargor or to such person or persons as he shall direct and appoint, all such parts of the Charged Premises as shall remain unsold for the purposes aforesaid, discharged from all the Charge, but no person who shall be required to make or execute any such assurances shall be compelled for the making thereof to go or travel from his usual place of abode. Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale and the other powers and provisions contained in the Charge the Chargee shall have and be entitled to its right of foreclosure of the fee interest or equity of redemption of the Chargor in the lands hereby charged as fully and effectually as it might have exercised and enjoyed the same in case the power of sale, and the other former provisos and trusts incident thereto had not been herein contained.

11. DISTRESS

Provided that and it is further stipulated, provided and agreed by and between the parties to the Charge that the Chargee, its successors or assigns, may distrain for arrears of interest against the Charged Premises or any part thereof and recover by way of rent reserved as in the case of a demise the arrears of interest and all costs and expenses incurred in such levy or distress and may also distrain for arrears of principal and monthly payments of taxes, if required, in the same manner as if the same were arrears of interest.

12. PRINCIPAL DUE ON DEFAULT

Provided that, and it is hereby further expressly declared and agreed, that if any default shall occur in the payment of the interest money secured by the Charge, or any part thereof, or in payment of any instalment of principal as the same mature or of any instrument, promissory note, bill of exchange or other obligation now or at any time held by the Chargee in respect of or representing or securing the money hereby secured or any part thereof, or in the performance of any covenant, proviso or agreement herein contained or if any waste be committed or suffered on the Charged Premises then at the option of the Chargee, the principal money secured by the Charge or intended so to be shall forthwith become due and payable in like manner and with the like consequences and effects as if the time herein mentioned for payment of such principal money had fully come and expired, subject to any relief afforded to the Chargor at law. The Chargee may, however, waive its right to call in the principal and shall not be therefore debarred from asserting and exercising its right to call in the principal upon the happening of any future default or breach.

13. CHARGOR'S QUIET POSSESSION UNTIL DEFAULT

And provided and it is agreed that until default in the payment of principal or interest secured by the Charge or intended so to be, or any part of either of the same or in the performance of any of the provisions set forth in the Charge contrary to the true intent and

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meaning thereof, it shall be lawful for the Chargor, his heirs, executors, administrators, successors and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the Charged Premises, and receive and take the rents and profits thereof to his and their own use and benefit, without let, suit, hindrance, interruption, or denial by the Chargee, its successors or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for it, them or any or either of them.

14. CONSTRUCTION

The Chargor covenants and agrees with the Chargee to construct a building or buildings and other improvements on the said land in accordance with plans and specifications which have been or are hereafter approved by Canada Mortgage and Housing Corporation and by the Chargee and to carry on diligently to completion the construction of the said building, buildings and other improvements.

15. WASTE

The Chargor covenants and agrees with the Chargee that he will not permit waste to be committed or suffered on the Charged Premises and will maintain the buildings and other improvements on the said premises in good order and repair to the satisfaction of the Chargee.

16. ALTERATIONS

The Chargor covenants and agrees with the Chargee that he will not make or permit to be made any alterations or additions to the Charged Premises without the consent of the Chargee and will not use the said premises or permit them to be used for the purpose of any business, trade or manufacture of any description.

17. INSPECTION

The Chargee or agent of the Chargee or agent of Canada Mortgage and Housing Corporation, may, at any time, enter upon the said lands to inspect the lands and buildings thereon.

18. ADVANCES

It is the intention of the parties hereto that the building now erected, being erected or to be erected on the Charged Premises forms part of the security for the full amount of the moneys secured by this mortgage and that all advances on this mortgage are to be made from time to time in the future in accordance with the progress of such building and or upon its completion and occupation or sale; and the Chargor agrees that neither the execution nor registration of this mortgage nor the advance of part of the said moneys shall bind the Chargee to advance the said moneys or any unadvanced part thereof, and that the advance of the said moneys or any part thereof from time to time shall be in the sole discretion of the Chargee.

19. FIXTURES

It is hereby mutually covenanted and agreed by and between the parties hereto that all erections and improvements fixed or otherwise now on or hereafter put upon the Charged Premises, including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, aerials, air-conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings, and all apparatus and equipment appurtenant thereto,

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and all farm machinery and improvements, fixed or otherwise and even though not attached to the lands otherwise than by their own weight, are and shall, in addition to other fixtures thereon, be and become fixtures and form part of the realty and shall be a portion of the security for the indebtedness herein mentioned.

20. PARTIAL RELEASE

Provided that the Chargee may at all times release any part or parts of the Charged Premises or any other security or any surety for payment of all or any part of the monies hereby secured or may release the Chargor or any other person from any covenant or other liability to pay the said monies or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Chargee and without thereby releasing any other part of the Charged Premises, or any other securities or covenants herein contained, it being especially agreed that notwithstanding any such release the Charged Premises, securities and covenants remaining unreleased shall stand charged with the whole of the monies secured by the Charge.

21. CHARGE NOT BOUND TO ADVANCE

The Chargor agrees that neither execution nor registration of the Charge nor the advancement in part of the monies shall bind the Chargee to advance the monies or any unadvanced part thereof, but that the advance of the monies or any part thereof from time to time shall be in the sole discretion of the Chargee, but nevertheless the expenses of the examination of the title and of the Charge and valuation are to be secured by the Charge, the same to be charged hereby upon the Charged Premises and shall be without demand thereof, payable forthwith with interest at the rate provided in the Charge, and in default the Chargee's power of sale and all other remedies under the Charge shall be exercisable.

22. LIENS AND CONSTRUCTION

Provided also that upon the registration of any lien against the Charged Premises, or in the event of any buildings being erected thereon being allowed to remain unfinished or without any work being done on them for a period of ten (10) days, the principal and interest hereby secured shall, at the option of the Chargee, forthwith become due and payable.

23. NON-MERGER

Provided and it is agreed, that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenant or affect the Chargee's right to interest at the rate and times herein provided; and further that said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

24. RIGHTS ON DEFAULT

And the Chargor covenants and agrees with the Chargee that in the event of default in the payment of any instalment of principal, interest or taxes hereby secured or any other monies payable hereunder by the Chargor or on breach of any covenant proviso or agreement herein contained after all or any part of the monies hereby secured have been advanced, the Chargee may at such time or times as it may deem necessary and without the concurrence of any other person enter upon the said

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lands and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the said lands, or for inspecting, taking care of, leasing, collecting the rents of, and managing generally the property hereby secured as it may deem expedient, and all reasonable costs, charges and expenses including allowances for the time and service of any employee of the Chargee or other person appointed for the above purposes shall be forthwith payable to the Chargee, and shall be a charge upon the said lands and shall bear interest at the rate aforesaid until paid.

25. OBLIGATIONS SURVIVE SALE

Provided further that no sale or other dealing by the Chargor with the Charged Premises or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the monies hereby secured.

26. DUE ON SALE

Provided that in the event of

- (a) The Chargor selling, conveying, transferring, or entering into any agreement of sale or transfer of the title of the lands hereby charged to a purchaser, grantee or transferee not approved in writing by the Chargee; or
- (b) If such a purchaser, grantee or transferee should fail to (i) apply for and receive the Chargee's written approval as aforesaid, (ii) personally assume all the obligations of the Chargor under this charge, and (iii) execute an Assumption Agreement in the form required by the Chargee,

then at the option of the Chargee all monies hereby secured with accrued interest thereon shall forthwith become due and payable.

27. PRIOR ENCUMBRANCES

It is further stipulated, provided and agreed, that the Chargee may pay the amount of any encumbrance, lien or charge now or hereafter existing, or to arise or to be claimed upon the said lands having priority over this charge, including any taxes or other rates on the said lands or any of them, or any amounts payable to the Condominium Corporation, and may pay all costs, charges and expenses and all solicitors' charges or commissions, as between a solicitor and his client, which may be incurred in taking, recovering and keeping possession of the Charged Premises and generally in any proceedings or steps of any nature whatever properly taken in connection with or to realize this security, or in respect of the collection of any overdue interest, principal, insurance premiums or any other monies whatsoever payable by the Chargor hereunder whether any action or any judicial proceedings to enforce such payments has been taken or not, and the amount so paid and insurance premiums for fire or other risks or hazards and any other monies paid hereunder by the Chargee shall be added to the debt hereby secured and be a charge on the Charged Premises and shall bear interest at the rate aforesaid, and shall be payable forthwith by the Chargor to the Chargee, and the non-payment of such amount shall be a default of payment within the meaning of those words in the paragraph dealing with power of sale and shall entitle the Chargee to exercise the power of sale and all other remedies hereby given. In the event of the Chargee paying the amount of any such encumbrance, lien or charge, taxes

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or rates, either out of the monies advanced on the security or otherwise, it shall be entitled to all the rights, equities and securities of the person or persons, company, corporation, or Government so paid off, and is hereby authorized to retain any discharge thereof, without registration, for a longer period than six months if it thinks proper to do so.

28. EXTENSIONS

Provided that no extension of time given by the Chargee to the Chargor, or anyone claiming under the Chargor or any other dealing with the owner of the Charged Premises, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person liable for the payment of the monies hereby secured.

29. DISCHARGE

The Chargee shall have a reasonable time after payment in full of the monies secured by the Charge within which to prepare and execute a discharge of the Charge, and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee and all legal and other expenses for the preparation and execution of such discharge shall be borne by the Chargor.

30. SPOUSE'S CONSENT

And the spouse of the Chargor so named in the Charge hereby consents to the transaction evidenced by the Charge and releases all interest in the Charged Premises to the extent necessary to give effect to the rights of the Chargee hereunder, and agrees that the Chargee may, without further notice, deal with the Charged Premises and the debt hereby created as the Chargee may see fit.

31. FAMILY LAW ACT, 1986

The Chargor covenants and agrees that

- (a) he or the owner from time to time of the Charged Premises will advise and keep advised the Chargee as to whether he (i.e. the Chargor or the owner from time to time) is a spouse as defined by Section 1(1) of the Family Law Act, 1986 (the Act), and, if so, the name of his spouse, and of any change in his spousal status or in the status of the Charged Premises as a matrimonial home within the meaning of the Act, and
- (b) forthwith on request he will furnish the Chargee with such evidence in connection with any of the matters referred to in clause (a) above as the Chargee may from time to time require, including, without limitation, his and his spouse's name, address and birth date and his and his spouse's authorization to the Registrar under the Vital Statistics Act of Ontario to provide the Chargee from time to time on request all information in its possession relative to any marriage, divorce or death of the Chargor or his spouse,

and on default the principal money, interest and all other monies hereby secured shall, at the option of the Chargee, forthwith become due and payable.



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32. SEVERABILITY OF ANY INVALID PROVISIONS

It is agreed that in the event that at any time any provision of these presents is illegal or invalid under or inconsistent with the provisions of any applicable statute or regulation thereunder or would by reason of the provisions of any such statute or regulation render the Chargee unable to collect the amount of any loss sustained by it as a result of making the above recited loan which it would otherwise be able to collect under such statute, then such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Chargee unable to collect the amount of any such loss.

33. CONDOMINIUMS

If the Charged Premises is a condominium unit, the following provisions shall apply:

- (a) The Charge is made in pursuance of the Condominium Act.
- (b) The Chargor covenants and agrees at all times and from time to time to observe and perform all duties and obligations imposed on him by the Condominium Act and by the Declaration and the By-laws, as amended from time to time, of the Condominium Corporation, by virtue of his ownership of the said lands. Any breach of the said duties and obligations shall constitute a breach of covenant under the Charge.
- (c) Without limiting the generality of the foregoing, the Chargor covenants and agrees that he will pay promptly when due any contributions to common expenses required of him as an Owner of the Charged Premises and in the event of his default in doing so the Chargee, at its option, may pay the same and the amount so paid shall be added to the debt secured by the Charge and shall be a charge on the Charged Premises and shall bear interest at the same rate from the time of such payments and shall be payable forthwith by the Chargor to the Chargee whether or not any payment in default has priority to the Charge or any part of the monies secured thereby.
- (d) The Chargee is hereby irrevocably authorized and empowered to exercise the right of the Chargor as an Owner of the Charged Premises vote or to consent in all matters relating to the affairs of the Condominium Corporation provided that,
  - (i) The Chargee may at any time or from time to time give notice in writing to the Chargor and the said Condominium Corporation that the Chargee does not intend to exercise the said right to vote or consent and in that event until the Chargee revokes the said notice the Chargor may exercise the right to vote. 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.
  - (ii) The Chargee shall not by virtue of the assignment to the Chargee of the right to vote or consent be under any obligation to vote or consent or to protect the interests of the Chargor.
  - (iii) The exercise of the right to vote or consent shall not constitute the Chargee a Chargee in possession.

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34. RECEIVERSHIP

Notwithstanding anything herein contained, it is declared and agreed that any time and from time to time when there shall be default under the provisions of these presents, the Chargee may, at such time and from time to time and with or without entry into possession of the Charged Premises, or any part thereof, by instrument in writing appoint any person, whether an officer or officers or an employee or employees of the Chargee or not, to be a receiver (which term as used herein includes a receiver manager and also includes the plural as well as the singular) of the Charged Premises, or any part thereof, and of the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any receiver and appoint another in his stead, and that, in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor, but no such appointment shall be revocable by the Chargor. Upon the appointment of any such receiver from time to time the following provisions shall apply:

(a) Every such receiver shall have unlimited access to the Charged Premises as agent and attorney for the Chargor (which right of access shall not be revocable by the Chargor) and shall have full power and unlimited authority to -

- (i) collect the rents and profits from tenancies whether created before or after these presents,
- (ii) rent any portion of the Charged Premises which may become vacant on such terms and conditions as he considers advisable and enter into and execute leases, accept surrenders and terminate lease,
- (iii) complete the construction of any building or buildings or other erections or improvements on the Charged Premises left by the Chargor in an unfinished state or award the same to others to complete and purchase, repair and maintain any personal property including, without limitation, appliances and equipment, necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Chargor's materials, supplies, plans, tools, equipment (including appliances) and property of every kind and description,
- (iv) manage, operate, repair, alter or extend the Charged Premises or any part thereof.

The Chargor undertakes to ratify and confirm whatever any such receiver may do in the premises.

- (b) The Chargee may at its discretion vest the receiver with all or any of the rights and powers of the Chargee.
- (c) The Chargee may fix the reasonable remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Charged Premises.

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- (d) Every such receiver shall be deemed the agent or attorney of the Chargor and, in any event, the agent of the Chargee and the Chargee shall not be responsible for his acts or omissions.
- (e) The appointment of any such receiver by the Chargee shall not result in or create any liability or obligation on the part of the Chargee to the receiver or to the Chargor or to any other person and no appointment or removal of a receiver and no actions of a receiver shall constitute the Chargee a Chargee in possession of the Charged Premises.
- (f) No such receiver shall be liable to the Chargor to account for moneys other than moneys actually received by him in respect of the Charged Premises, or any part thereof, and out of such moneys so received every such receiver shall, in the following order, pay:
- (i) his remuneration aforesaid;
  - (ii) all costs and expenses of every nature and kind incurred by him in connection with the exercise of his powers and authority hereby conferred;
  - (iii) interest, principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to these presents, including taxes;
  - (iv) to the Chargee all interest, principal and other moneys due hereunder to be paid in such order as the Chargee in its discretion shall determine;
  - (v) and thereafter, every such receiver shall be accountable to the Chargor for any surplus.
- The remuneration and expenses of the receiver shall be paid by the Chargor on demand and shall be a charge on the Charged Premises and shall bear interest from the date of demand at the same rate as applies to the principal hereby secured.
- (g) Save as to claims for accounting under clauses (f) of 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 him by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud.
- (h) The Chargee may, at any time and from time to time, terminate any such receivership by notice in writing to the Chargor and to any such receiver.
- (i) The statutory declaration of an officer of the Chargee as to default under the provisions of these presents 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 a receiver who is ostensibly exercising powers herein provided

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for and such dealing shall be deemed, as regards such person, to be valid and effectual.

- (j) 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.

35. COMPLIANCE WITH LAW

The Chargor covenants and agrees to promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority and agency concerning the Charged Premises and will at its own expense make any and all improvements thereon or alterations thereto, structural or otherwise, which may be required at any time by any such present or future law, rule, requirement, order, direction, ordinance or regulation. The Chargee, whenever it deems necessary, may by its surveyor or agent enter upon and inspect the Charged Premises and make such improvements and alterations as the Chargee deems necessary to render the Charged Premises in compliance with such laws, rules, requirements, orders, directions, ordinances or regulations and the reasonable cost of such inspection, improvements and alterations with interest at the rate set forth in the Charge shall be payable forthwith and be a charge upon the Charged Premises.

36. CHARGEЕ EXPENSES

The Chargor agrees to pay the reasonable and necessary costs, charges and expenses of and incidental to this Charge, and to any and all other documents required in connection therewith, and any amendment or renewal thereof, and of anything done in connection with the enforcement of the security granted thereby or the procuring or the payment of any moneys payable hereunder including, without limiting the generality of the foregoing, all solicitor's fees, costs and expenses of examination of title, and the obtaining of the opinion of counsel for the Chargee thereon and all costs and expenses valuing the Charged Premises in connection with the foregoing. The Chargor further agrees that such amounts shall be paid forthwith upon demand and until paid shall bear interest at the rate provided for in the Charge and shall be a charge on the Charged Premises.

37. INTERPRETATION

And it is hereby agreed and declared that the expression "the Chargor" used in these presents shall include the heirs, executors, administrators, successors and assigns of the Chargor and the expression "the Chargee" shall include the successors and assigns of the Chargee and (if the Charge affects the Condominium) the expression "the Condominium Corporation" shall mean the Condominium Corporation referred to in the description and the expression "Declaration" shall mean the declaration registered in connection with the Condominium Corporation, and words in the singular include the plural, and words in the plural include the singular, and words importing the masculine gender include the feminine and neuter genders where to context so requires, and that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor shall be equally binding upon his, her or their respective heirs, executors, administrators, successors and assigns and that all such covenants, liabilities and obligations shall be joint and several, and that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargee shall be equally secured to and exercisable by its successors and assigns.

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38. PARAGRAPH HEADINGS

The paragraph headings herein are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

39. DATE OF CHARGE

This Charge, unless otherwise specifically provided, shall be deemed to be dated as of the earliest date of signature by a Chargor.

40. NATIONAL HOUSING ACT

The Charge is made in pursuance of the National Housing Act.

41. TRUE COPY

The Chargor acknowledges receipt of a true copy of the within Charge.

DATED *THE 13TH* day of *MARCH*, 1986

CANADA MORTGAGE AND HOUSING CORPORATION

Per: 

Per: 

THIS IS EXHIBIT "E"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



A Commissioner for ~~Taking Affidavits, etc.~~

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683 6498

**GENERAL SECURITY AGREEMENT**  
(site specific)

THIS AGREEMENT made as of the 4<sup>th</sup> day of April, 2007,

BY:

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
hereinafter called the "Debtor"

IN FAVOUR OF:

**PEOPLES TRUST COMPANY**  
hereinafter called the "Secured Party"

IN CONSIDERATION of the Secured Party extending credit and making or agreeing to make one or more advances to the Debtor and for other good and valuable consideration, the Debtor covenants with the Secured Party as follows:

**ARTICLE I - DEFINITIONS**

1.01 **Definitions:** Capitalized terms used in this Agreement that are not defined in this Section have the respective meanings ascribed thereto in the Act and all other capitalized terms used in this Agreement have the respective meanings ascribed thereto in this Section:

- (a) "Act" means the *Personal Property Security Act* (Ontario);
- (b) "Buildings" means all structures, buildings and other improvements constructed, being constructed or to be constructed on the Lands;
- (c) "Collateral" means all Personal Property (including, without limitation, each Account, Chattel Paper, Document of Title, Equipment, Instrument, Intangible, Inventory, Money, Security and Goods) and the Contracts, Insurance Policies, Licences and Permits and Service Agreements, which is now or hereafter owned or acquired by or on behalf of the Debtor or in respect of which the Debtor now or hereafter has any rights and which is now or hereafter may become located on, affixed or attached to, placed upon, situate in or on, or which may arise out of, from or in connection with the ownership, use or disposition of, the Lands or the Buildings or any part thereof including, without limitation, all increases, additions, substitutions, repairs, renewals, replacements, Accessions, accretions and improvements to any such Personal Property and all Proceeds and other amounts derived directly or indirectly from any dealings with any such Personal Property;
- (d) "Contracts" means all present and future contracts, professional contracts, management contracts and subcontracts entered into by or on behalf of the Debtor for the supply of services or materials to the Lands and the operation of any business or undertaking thereon including, without limitation, all agreements, invoices and other writings related thereto;
- (e) "Expenses" means all costs, fees and expenses (including legal fees and disbursements on a full indemnity basis) incurred by or on behalf of the Secured Party in connection with or arising out of or from any one or more of the following:
  - (i) any act done or taken by the Secured Party or any Receiver, or any proceeding instituted by the Secured Party, the Debtor or any other Person in connection with or in any way relating to any one or more of the Act, this Agreement or any part hereof, the preservation, protection, enforcement or realization of the Collateral or the Security Interest or both, the recovery of the Indebtedness and responding to enquiries regarding the scope of the Security Interest perfected by the registration of a Financing Statement under the Act;
  - (ii) the remuneration of the Receiver, if any; and,

- (iii) all amounts incurred or paid by or on behalf of the Secured Party pursuant to Section 5.03 hereof;
- (f) "Event of Default" or "Events of Default" has the meaning ascribed in Section 4.01 hereunder;
- (g) "Indebtedness" means all present and future debts and liabilities due or to become due, absolute or contingent, direct or indirect, now existing or hereafter arising, owing by the Debtor to the Secured Party, whether pursuant to or under the Letter of Commitment, the Loan Documents or otherwise and includes any extensions, renewals or replacements thereof and includes the Expenses;
- (h) "Insurance Policies" means all present and future builder's risk, hazard, damage, rental or business income loss and public liability policies of insurance now or hereafter obtained or maintained in connection with the Project;
- (i) "Lands" means the lands and premises described on Schedule "A" annexed hereto;
- (j) "Letter of Commitment" means that certain commitment letter dated March 17, 2005, issued by the Secured Party in favour of the Debtor, as same may be amended from time to time;
- (k) "Licences and Permits" means all present and future approvals, licences, building permits and other permits now or hereafter issued or required to be issued by any public or governmental authority in order to permit the construction and operation of a nursing home, long term care facility, sheltered care facility, rest home or any other similar such undertaking and business on the Lands and shall include any Licences and Permits issued by MOH;
- (l) "Loan Documents" means all agreements, instruments and other documents made or assigned by the Debtor in favour of the Secured Party in connection with the loan transaction contemplated in the Letter of Commitment, as same may be amended or replaced from time to time;
- (m) "MOH" means the Ministry of Health and Long Term Care for Ontario or any other governmental authority having jurisdiction from time to time over the operations of the Debtor;
- (n) "Person" includes an individual, sole proprietorship, partnership, joint venture, syndicate, association, trust, body corporate, a natural person in his capacity as trustee, personal representative or other legal representative, the Crown or any agency or instrumentality thereof, and/or any other entity recognized by law.
- (o) "Receiver" means a receiver or a receiver and manager or any other Person (including the Secured Party) appointed by the Secured Party or by any court of competent jurisdiction for all or any part of the assets of the Debtor or for all or any part of the Collateral, and includes the agents, servants and employees of such Receiver;
- (p) "Security Interest" means the assignment, transfer, mortgage, charge and security interest provided for in Section 2.01 hereof and "security interest" has the meaning ascribed thereto in the Act; and,
- (q) "Service Agreements" means the Long-Term Care Facility Agreement and the Agreement to Develop Long-Term Facility Beds entered into between the Debtor and MOH and all other agreements from time to time with respect to the allocation of beds in the facility and the payment of subsidies therefor.

## **ARTICLE II - GRANT OF SECURITY INTEREST AND ATTACHMENT**

2.01 **Security Interest:** As continuing security for the payment of the Indebtedness and the performance, fulfilment and satisfaction of all covenants, obligations and conditions on the part of the Debtor set out herein, in the Letter of Commitment and in the Loan Documents, the Debtor:

- (a) assigns, transfers, mortgages and charges to and in favour of the Secured Party all of the Debtor's rights, title and interest in and to the Collateral; and,



- (b) grants to and in favour of the Secured Party a security interest in the Collateral;

as and by way of a fixed charge.

2.02 **Exclusion of Last Day of Leasehold Interest from Security Interest:** The Security Interest referred to in Section 2.01 hereof shall not extend to or apply to the last day of the term of any lease or agreement therefor that is now or may hereafter be held by the Debtor; provided, however, if the Security Interest becomes enforceable, the Debtor shall thereafter stand possessed of the last day of each such lease or agreement therefor and shall hold the same in trust for, and shall, upon receipt of a written request to that effect from the Secured Party assign the same to, any Person who acquires the term of any such lease or any agreement therefor in the course of any enforcement of the Security Interest or in the course of any realization upon the Collateral or any part thereof.

2.03 **Attachment:** The Debtor and Secured Party confirm that they have not postponed or agreed to postpone the time for attachment of the Security Interest and that the Debtor has received Value.

2.04 **Amalgamation:** The Debtor acknowledges and agrees that in the event that it amalgamates with any other company or companies it is the intention of the parties hereto that the term Debtor when used herein shall apply to each of the amalgamating companies and to the amalgamated company, such that the Security Interest granted hereby:

- (a) shall extend to the Collateral owned by each of the amalgamated companies and the amalgamated company at the time of amalgamation and to all Collateral thereafter owned or acquired by the amalgamated company; and,
- (b) shall secure the Indebtedness of each of the amalgamating companies and the amalgamated company to the Lender at the time of amalgamation and any Indebtedness of the amalgamated company thereafter arising.

And for greater particularity, the Security Interest shall attach to the Collateral owned by each company amalgamating with the Debtor, and by the amalgamated company, at the time of amalgamation, and shall attach to any Collateral thereafter owned or acquired.

### **ARTICLE III - REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.01 **Representations and Warranties:** The Debtor represents and warrants to the Secured Party as of the date of this Agreement as follows:

- (a) the Collateral is owned by the Debtor with good and marketable title thereto, free and clear of any assignments, executions, mortgages, charges, hypothecations, pledges, security interests, liens, demands, adverse claims and any other encumbrances whatsoever;
- (b) the Debtor has the full power, capacity and authority to execute and deliver this Agreement and to observe and perform all of the Debtor's obligations thereunder;
- (c) if the Debtor is a corporation or partnership, the Debtor is duly constituted, validly existing and in good standing under the laws of its governing jurisdiction; and,
- (d) the name of the Debtor as set out on the first page of this Agreement is the full and correct legal name of the Debtor.

3.02 **Covenants:** The Debtor covenants and agrees with the Secured Party that so long as any of the Indebtedness remains outstanding:

- (a) if applicable, the Debtor will at all times maintain its existence as a corporation or a partnership, as the case may be;
- (b) the Debtor will diligently maintain and operate the Collateral and shall conduct its operations in a reasonable and prudent manner so as to maintain, preserve and protect the Collateral;
- (c) the Debtor will pay all taxes, rates, levies, government fees and dues levied, assessed or imposed in respect of the Collateral or any part thereof, as and when

- the same become due and payable, and shall forthwith upon request by the Secured Party deliver such evidence as may satisfy the Secured Party that such taxes, rates, levies, fees and dues have been paid;
- (d) the Debtor will at all times repair and keep in good order and condition any part or parts of the Collateral that constitutes tangible personal property, and renew and replace all and any of the same which may become unrepairable or destroyed;
  - (e) the Debtor will insure, at its own expense, on a replacement cost basis, all items of Collateral for which insurance coverage is purchasable, at all times during which any Indebtedness exists, with insurers and pursuant to policies approved by the Secured Party, for such risks and perils as a reasonable owner of similar Collateral would consider prudent and for such other insurable risks and perils as the Secured Party may from time to time consider advisable or desirable and in respect of which insurance coverage may be available. All cancellation clauses in such policies are to provide for at least thirty (30) days' prior notice of such cancellation to the Secured Party;
  - (f) the Debtor will deliver to the Secured Party original or certified true copies of all policies of insurance required to be maintained by the Debtor pursuant hereto and the Debtor will, at least thirty (30) days prior to the expiry of any such insurance policy, deliver to the Secured Party a renewal receipt, binder or new policy replacing such expiring insurance policy, or otherwise satisfy the Secured Party that such insurance has been renewed;
  - (g) the Debtor will cause all proceeds payable under all policies of insurance required to be maintained by the Debtor hereunder to be made payable to the Secured Party, as its interest may appear, and will otherwise deal with such policies in such manner so as to enable all proceeds payable thereunder to be collected by the Secured Party from the insurer. The Secured Party may elect to have such insurance money applied in the reinstatement of the relevant Collateral or towards repayment of the Indebtedness whether then due or not;
  - (h) the Debtor will not create, grant, assume or otherwise permit to exist any assignment, execution, mortgage, charge, hypothec, pledge, lien, security interest or other encumbrance upon the Collateral or any part thereof or the Debtor's interest therein that ranks or is capable of being enforced in priority to, or *pari passu* with, or subsequent to, the Security Interest;
  - (i) the Debtor will from time to time at the request of the Secured Party and at the expense of the Debtor, make and do all such acts and things and execute and deliver all such instruments, security agreements and other writings and assurances as may be necessary or desirable or recommended by counsel to the Secured Party with respect to this Agreement or the Collateral or in order to perfect, keep perfected, maintain and preserve the Security Interest;
  - (j) the Debtor will pay or reimburse the Secured Party upon demand for all Expenses together with interest thereon from the date of payment by the Secured Party until paid in full to the Secured Party by the Debtor at the highest rate of interest payable under the Loan Documents, calculated and compounded monthly before and after demand, maturity, default and judgment, together with interest on overdue interest at the same rate;
  - (k) the Debtor will not transfer, convey, sell, sublease, assign, otherwise alienate the Collateral or any part thereof;
  - (l) the Debtor will not change the location of the Collateral or any part thereof;
  - (m) the Debtor will not amalgamate, continue, restructure or dissolve;
  - (n) the Debtor will not permit or suffer by operation of law any change in control or beneficial ownership of the Debtor;
  - (o) the Debtor will not, except upon thirty (30) days prior written notice to the Secured Party:
    - (i) change its legal name; and/or,

- (ii) change its registered head office; and,
- (p) in the event of any change of the Debtor's name or in the location of the Collateral, the Debtor will pay to the Secured Party forthwith all legal and other costs associated with amending all registrations related to the Loan Documents and of providing any other assurances to the Secured Party as may be reasonably required in the circumstances.

#### **ARTICLE IV - EVENTS OF DEFAULT AND REMEDIES**

4.01 **Events of Default:** The Debtor shall be in default hereunder upon the occurrence of any one or more of the following events (which shall collectively be called "Events of Default" and individually an "Event of Default"):

- (a) if the Debtor is in default under or pursuant to, or otherwise fails to perform, fulfill or satisfy any covenant, obligation or condition set out in, or upon the occurrence of an event described as an "Event of Default" or a "Default" in, this Agreement, the Letter of Commitment or any of the Loan Documents; and,
- (b) if the Debtor or any guarantor or covenantor of the Indebtedness or any part thereof dies or commits an act of bankruptcy or becomes insolvent or has a Receiver appointed for it or over any of its assets, or if any creditor takes possession of any of its assets, or if any execution, distress or other like process is levied or enforced upon the Collateral or any part thereof, or if any compromise or arrangement with creditors is made by any of them.

4.02 **Remedies Upon Default:** Upon the occurrence of an Event of Default the full amount of the Indebtedness shall, at the option of the Secured Party, become due and payable whereupon the Security Interest shall immediately be enforceable by the Secured Party, and the Secured Party shall have, in addition to all other rights, powers and remedies available at law and in equity, the following rights, powers and remedies:

- (a) the Secured Party may immediately sue for the Indebtedness;
- (b) the Secured Party may appoint and reappoint by instrument in writing, or institute proceedings in any court of competent jurisdiction for the appointment or reappointment of, any Person (including the Secured Party) to be a Receiver of all or any part of the Collateral. The Secured Party may remove or replace the Receiver from time to time, and appoint another Receiver in his stead or make application to a court of competent jurisdiction to do so. Subject to the provisions of the instrument or court order appointing the Receiver, the Receiver so appointed or replaced shall have, possess and may exercise all or any part of the rights, powers and remedies of the Secured Party (whether conferred upon the Secured Party by this Agreement or otherwise). For greater certainty, where the Secured Party is referred to in this Agreement, the term shall, where the context permits, include the Receiver so appointed or replaced and the officers, employees, servants or agents of the Secured Party and the Receiver;
- (c) the Secured Party may, without notice, take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral by any method permitted by law, and to that end the Debtor agrees:
  - (i) to deliver possession of the Collateral to the Secured Party forthwith upon its receipt of a written or verbal demand therefor, at such place or places specified by the demand; and,
  - (ii) that the Secured Party may, at any time during the day or night, by any lawful means, enter upon the Lands and Buildings and upon any other premises where any of the Collateral may be found for the purpose of rendering unusable any part of the Collateral which constitutes equipment or for the purpose of taking possession of and removing the Collateral or any part thereof or both;
- (d) subject to the Act, the Secured Party may without notice, advertisement, demand for payment or any other formality (all of which are hereby waived) do any act or thing to preserve the Collateral or its value, or seize, collect, realize upon, lease, dispose of, release to third parties, sell by public or private sale or any other mode

of disposition as the Secured Party may consider advisable or otherwise deal with the Collateral or any part thereof in such manner, for such consideration, upon such terms and conditions and at such time or times as may, in the absolute discretion of the Secured Party, seem to it necessary or advisable;

- (e) subject to the Act, the Secured Party may without notice, retain the Collateral or any part thereof and postpone the sale or any other disposition or dealing with the Collateral or any part thereof for such period as may, in the absolute discretion of the Secured Party, seem to it necessary or advisable;
- (f) subject to the Act, the Secured Party may without notice, elect to retain all or any part of the Collateral in satisfaction of the Indebtedness or any part thereof;
- (g) subject to the Act, the Secured Party may purchase all or any part of the Collateral at any public or private sale, auction, tender or by way of any other mode of disposition;
- (h) the Secured Party may borrow money on the security of the Collateral and create security interests in the Collateral, whether or not in priority to the Security Interest, which, in the absolute discretion of the Secured Party, may impair the Debtor's right to redeem the Collateral;
- (i) the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor and may enter upon, occupy and use all or any of the Buildings and buildings occupied or used by the Debtor, or in which the Collateral or any part thereof is situate for such time as the Secured Party sees fit, free of charge, to the exclusion of the Debtor; and,
- (j) the Secured Party may pay any indebtedness of the Debtor, post any security or otherwise deal with any other creditors of the Debtor in order to obtain the discharge of any mortgage, charge, hypothecation, pledge, security interest, lien, claim or other encumbrance that may exist against the Collateral or any part thereof.

4.03 **Receiver as Agent:** The Receiver shall be the agent of the Debtor for all purposes except possession of the Collateral only, which possession shall be on behalf of and as agent of the Secured Party and not the Debtor.

4.04 **Risk of Loss:** Where all or any part of the Collateral is in the possession of the Secured Party or the Receiver the risk of loss or damage, whether caused by the negligence of the Secured Party, the Receiver or otherwise, shall be the sole responsibility and obligation of the Debtor.

#### **ARTICLE V - GENERAL CONTRACT PROVISIONS**

5.01 **Secured Party Not Liable:** Neither the Secured Party nor the Receiver shall be bound to do any one or more of the following:

- (a) give any notice;
- (b) make or do any repair, processing or preparation for disposition of the Collateral (whether commercially reasonable or not);
- (c) use reasonable care in the custody or preservation of any of the Collateral in its possession;
- (d) keep the Collateral identifiable;
- (e) proceed in a commercially reasonable manner in the collection from debtors of the Debtor;
- (f) exercise any rights, powers and remedies whatsoever including, without limitation, seize, collect, realize upon, lease, sell or otherwise dispose of, borrow money on the security of, release to third parties, obtain possession of, obtain payment for, maintain or preserve or protect, the Collateral or any part thereof or its value; and
- (g) institute proceedings for the purpose of seizing, collecting, realizing upon, disposing of or obtaining possession of or payment for, the Collateral or any part

thereof or for the purpose of preserving any rights of the Secured Party, the Debtor or any other Person in respect of same;

nor shall the Secured Party or the Receiver be liable or accountable for doing or for failing to do any one or more of the foregoing. Notwithstanding Section 4.03 hereof, the Debtor shall be liable for all actions, causes of action, proceedings, debts, demands, claims, losses, damages and other liabilities incurred or suffered by the Debtor, the Secured Party or the Receiver by reason of or on account of any act or failure to act of the Receiver.

5.02 **Application of Funds:** All amounts realized from the Collateral upon the enforcement of the Security Interest shall be applied by the Secured Party or the Receiver firstly, to the payment of Expenses, secondly, to the payment of such part of the Indebtedness as constitutes interest, and thirdly, to the payment of the balance of the Indebtedness; and any deficiency shall be and remain payable by the Debtor to the Secured Party. If any surplus remains after the payments itemized herein, such surplus shall be applied in the manner provided for in the Act. Notwithstanding the foregoing, the Secured Party reserves the right to interplead or make any appropriate application pursuant to the *Trustee Act* (Ontario).

5.03 **Performance by Secured Party:** If the Debtor fails to perform, fulfill or satisfy any covenant, obligation or condition herein set out including, without limitation, the payment of money, the Secured Party may, in its absolute discretion, but without being bound to do so, perform any such covenant, obligation or condition capable of being performed by the Secured Party. No such performance or payment shall relieve the Debtor from any default under this Agreement or any consequence of such default.

5.04 **Rights, Powers and Remedies:** Each right, power and remedy of the Secured Party provided for in this Agreement or available at law or in equity may be exercised separately from or in combination with, and is in addition to and not in substitution for, any other right, power and remedy of the Secured Party however created. Without limiting the generality of the foregoing, the taking of judgment or judgments by the Secured Party shall not operate as a merger or affect the right of the Secured Party to interest as provided herein.

5.05 **Waiver:** No consent or waiver, express or implied, by the Secured Party to or of any breach or default by the Debtor in the performance of its obligations hereunder shall be deemed or construed to be a consent to or a waiver of any other breach or default in the performance of the Debtor's obligations hereunder. Failure on the part of the Secured Party to complain of any act or failure to act of the Debtor or to declare the Debtor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Secured Party of its rights hereunder.

5.06 **Dealings with Persons:** The Secured Party may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Collateral, the Debtor, debtors of the Debtor, guarantors, sureties and others, as the Secured Party may see fit, without prejudice to the Secured Party's rights, powers and remedies whatsoever.

5.07 **Notices:** Any notice or demand which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally or by facsimile upon the party for whom it is intended, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail, in the case of the Debtor, addressed to it at any address for service provided by the Debtor to the Secured Party under any of the Loan Documents and in the case of the Secured Party, addressed to it at the address set out in the Letter of Commitment. The date of receipt of such notice or demand, if served personally or by facsimile, shall be deemed to be the date of the delivery thereof, or if mailed as aforesaid, the fourth business day following the date of mailing. For the purposes hereof, personal service on the Debtor shall be effectively given by delivery to any officer, director or employee of the Debtor. The Secured Party or the Debtor may, from time to time, change its address or stipulate another address from the address described in this Agreement by giving notice in the manner provided in this Section and in respect of the Debtor provided that it has complied with the terms of Subsection 3.02 (o) hereof.

5.08 **Successors and Assigns:** This Agreement and each of the covenants, warranties and representations herein set out shall enure to the benefit of the Secured Party and the Secured Party's successors and assigns and shall be binding upon the Debtor and the Debtor's heirs, personal representatives, successors and assigns of the Debtor. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation, any trustee in bankruptcy and, where any party is a

partnership, any new partnership resulting from the admission of new partners or any other change in the composition of such partnership, including, without limiting the generality of the foregoing, the death or resignation of any or all of the partners.

5.09 **Survival:** All covenants, undertakings, agreements, representations and warranties made by the Debtor in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Debtor herein shall be deemed to have been relied upon by the Secured Party.

5.10 **Entire Agreement:** This Agreement constitutes the entire agreement between the Debtor and the Secured Party relating to the Security Interest and may not be amended in any manner except by written instrument signed by both of them.

5.11 **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and the parties hereto irrevocably attorn to the laws of the courts of this Province sitting at Toronto, Ontario.

5.12 **Legislation References:** Any references in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re enacted from time to time or as a reference to any successor thereto.

5.13 **Time of the Essence:** Time is and shall continue to be of the essence of this Agreement.

5.14 **Headings:** The insertion of headings in this Agreement is for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

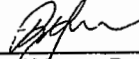
5.15 **Number and Gender:** In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders.

5.16 **Joint and Several:** If two or more Persons have executed this Agreement as Debtor, all covenants and obligations of such Persons hereunder shall be joint and several covenants and obligations.

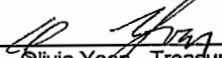
5.17 **Acknowledgement:** The Debtor acknowledges receipt of a duplicate executed copy of this Agreement.

**IN WITNESS WHEREOF** the undersigned has executed this Agreement as of the date first above written.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President

Per:   
Name: John Yoon - C.E.O.

Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

Lots 25 and 26 and Part Lot 24, Block F, Plan 875  
Designated as Parts 1 and 2, Plan 66R-22215  
City of Toronto

PIN: 10468-0554 LT

**MUNICIPAL ADDRESS**

15 and 17 Maplewood Avenue  
Toronto, Ontario

THIS IS EXHIBIT "F"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



~~A Commissioner for Taking Affidavits, etc.~~

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498



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

yyyy mm dd Page 1 of 6

**Properties**

**PIN** 10468 - 0554 LT

**Description** LOTS 25, 26 AND PART OF LOT 24, BLOCK F, PLAN 875 DESIGNATED AS PARTS 1 AND 2 ON PLAN 66R-22215, CITY OF TORONTO (FORMERLY CITY OF YORK). S/T A RIGHT OF WAY OVER PART 2 ON PL 66R-22215 AS IN TB374581 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F PL 875. S/T A RIGHT AS IN CA439308 OVER PART 2 PL 66R-22215 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F, PL 875 .

**Address** 15 & 17 MAPLEWOOD AVENUE  
TORONTO

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

**Name** ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

**Address for Service** 920 Yonge Street  
Suite 500  
Toronto, Ontario  
M4W 3C7

I, Richard Yoon, President, and I, John Yoon, C.E.O. and I, Olivia Yoon, Treasurer, have the authority to bind the corporation.

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

Party To(s)	Capacity	Share
-------------	----------	-------

<b>Name</b>	PEOPLES TRUST COMPANY
<b>Address for Service</b>	130 Adelaide Street West Suite 1801 Toronto, Ontario M5H 3P5

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, AT1450426 registered on 2007/05/18 to which this notice relates is deleted

Schedule: See Schedules

**Signed By**

Cheryl Elizabeth Cochrane	1801-4 King St. West Toronto M5H 1B6	acting for Applicant(s)	Signed 2007 05 18
Tel 4162146500			
Fax 4162147275			
Cheryl Elizabeth Cochrane	1801-4 King St. West Toronto M5H 1B6	acting for Party To(s)	Signed 2007 05 18
Tel 4162146500			
Fax 4162147275			

**Submitted By**

TRAUB MOLDAVER	1801-4 King St. West Toronto M5H 1B6	2007 05 18
Tel 4162146500		
Fax 4162147275		

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

LRO # 80 Notice Of Assignment Of Rents-General

Received as AT1450427 on 2007 05 18 at 15:09

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

yyyy mm dd Page 2 of 6

**File Number**

Party To Client File Number :

PT LOAN NO. 41600 TM FILE 05-0155

**GENERAL ASSIGNMENT OF RENTS**THIS ASSIGNMENT made this 4<sup>th</sup> day of April, 2007.

BETWEEN:

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
hereinafter called the "Assignor".

- and -

**PEOPLES TRUST COMPANY**  
hereinafter called the "Assignee"

THIS ASSIGNMENT is given as additional security for the payment for all obligations, indebtedness and liability of the Assignor to the Assignee under a certain Charge/Mortgage of even date in the principal amount of SEVENTEEN MILLION, THREE HUNDRED THOUSAND, ONE HUNDRED AND SIXTY-TWO 50/100 DOLLARS (\$17,300,162.50) registered in the Land Titles Division of the Toronto Registry Office, given by the Assignor, as chargor, to the Assignee, as chargee, (the "Charge") charging those lands and premises legally described in the Properties Section of page one of this document and municipally known as 15 and 17 Maplewood Avenue, Toronto, Ontario (the "Property") whether such obligations, indebtedness or liabilities are incurred prior to, at the time of, or subsequent to, the execution of this assignment.

1. FOR VALUE RECEIVED, the Assignor hereby grants, assigns and transfers to the Assignee:

- (a) All leases, offers to lease, licences and other agreements permitting the occupation or use of the Property or any part thereof, whether now in existence or hereafter created, and whether written or oral, and all amendments, extensions, renewals, modifications and replacements thereof (collectively, the "Leases");
- (b) All rents, issues, income, receipts, profits, subsidies, grants, rates, charges, fees, credits, inducements, proceeds of early termination or surrender, payments received from governmental authorities, proceeds of insurance indemnities, and all other monies payable to or received by or on behalf of the Assignor under the Leases, and/or payable to or received by or on behalf of the Assignor in respect of all other occupants, residents and/or patients now or hereafter residing on the Property and whether or not the Property is used as a rest home, nursing home, long term care facility, sheltered care facility or other similar facility; all of the foregoing, whether now in existence or hereafter owing, and all of the present and future revenues, incomes, monies, book debts and accounts receivable received or derived from the Property and/or the operation of all present and future businesses therefrom (collectively, the "Rents");
- (c) All rights, privileges, options, advantages, security interests and other benefits of the Assignor whatsoever pursuant to the Leases and whether now in existence or hereafter created (collectively, the "Rights"); and,
- (d) All guarantees of the Leases, whether now in existence or hereafter created, and the rights, powers and privileges of the Assignor pursuant to the same (collectively, the "Guarantees").

2. The security of this Assignment is and shall be primary security to the Assignee and on a parity with the real estate charged by the Charge, and shall not in any way be construed as secondary security. All amounts collected hereunder, after deducting the expenses of collection and costs thereon, shall be applied on account of the indebtedness secured by the Charge, or in such other manner as may be provided in the Charge. Nothing herein contained shall be construed as constituting the Assignee as trustee, mortgagee or chargee in possession.

3. The Assignor does hereby empower the Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for any or all of the Rents which may become due under the Leases and to avail itself of and pursue all remedies for the enforcement of the Leases and the Assignor's rights in and under the Leases as the Assignor may be entitled to have pursued but for this Assignment.

4. The Assignor warrants that:

- (a) the Leases are in full force and effect;
  - (b) the copies of the Leases which have been delivered to the Assignee are true and correct copies;
  - (c) the Assignor has not assigned or pledged the Leases or any interest therein save and except as disclosed by registered title;
  - (d) no default exists on the part of the lessees thereunder ("the Lessees") under the Leases or the Assignor, as lessor, in the performance on the part of either, of the terms, covenants, provisions or agreements contained in the Leases;
  - (e) other than last month's rents, no Rents have been paid by any of the Lessees more than thirty (30) days in advance;
  - (f) none of the Rents has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Assignor, directly or indirectly, or by assuming any Lessee's obligations with respect to other premises; and,
  - (g) no security deposit has been made by the Lessees under any of the Leases, save and except as disclosed to the Assignee.
5. The Assignor waives any rights of set-off against the Lessees.
6. The Assignor covenants and agrees that:
- (a) the Leases shall remain in full force and effect irrespective of any merger of any of the interest of the lessor and Lessees thereunder;
  - (b) it will not transfer or convey the title in fee to any of the premises described in the Leases (the "Premises") to any of the Lessees without the prior written consent of the Assignee which may be unreasonably withheld;
  - (c) if the Leases provided for the abatement of Rents during the repair of the Premises by reason of fire or other casualty, the Assignor shall furnish rental insurance to the Assignee, the policies to be in an amount and form and written by such insurance companies as shall be satisfactory to the Assignee;
  - (d) it will not terminate, modify or amend the Leases, or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or accept a surrender thereof without the prior written consent of the Assignee, and that any attempted termination, modification or amendments of the Leases without such prior written consent shall be null and void;
  - (e) it will not collect any of the Rents in advance of the time when such Rents shall become due under the terms thereof;
  - (f) it will not discount any Rents not yet due and owing to the Assignor;
  - (g) it will not execute any other assignments of the Leases, Rents, Rights and/or Guarantees;
  - (h) it will perform all of the Assignor's covenants and agreements as lessor under the Leases, and it will not suffer or permit to occur any release of liability of the Lessees, or any rights of the Lessees to withhold payment of Rents;
  - (i) It will give prompt notice to the Assignee of any notice of default on the part of the Assignor with respect to the Leases received from the Lessees, and it will immediately furnish the Assignee with complete copies of all such notices;
  - (j) all Leases shall be bona fide, the terms of which are to be approved by the Assignee prior to execution, and shall be at rental rates and terms consistent with comparable space in the area of the Property;
  - (k) the Assignor will provide to the Assignee leasing activity reports not less frequently than yearly after registration of the Charge;

- (l) if requested by the Assignee, it will enforce the Leases and all remedies available to the Assignor against the Lessees, in the event of default under the Leases by the Lessees;
- (m) none of the rights or remedies of the Assignee under the Charge shall be delayed or in any way prejudiced by this Assignment;
- (n) notwithstanding any variation of the terms of the Charge or any renewal or extension of time for payment thereunder, the Leases, Rents, Rights and Guarantees hereby assigned shall continue as additional security in accordance with the terms hereof;
- (o) it will not alter, modify or change the terms of any Guarantees or cancel or terminate such Guarantees without the prior written consent of the Assignee;
- (p) it will not consent to any assignment of the Leases, or any subletting thereunder, whether or not in accordance with their terms, or to any assignment of Rents, Rights and/or Guarantees, without the prior written consent of the Assignee;
- (q) it will not request, consent to, agree to or accept a subordination of the Leases to any mortgage or other encumbrance now or hereafter affecting the Property;
- (r) it will not exercise any right of election, whether specifically set forth in any such Leases or otherwise which would in any way diminish the any of the Lessees' liability or have the effect of shortening the term of the Leases;
- (s) it will pay the costs, charges and expenses of and incidental to the taking, preparation and filing of this Assignment or any notice hereof which may be required, and of every renewal related thereto; and,
- (t) it will not enter into any Leases affecting the Property in the following circumstances:
  - (i) with a party not at arm's-length from the Assignor;
  - (ii) which would have the effect of decreasing the Lessee's financial obligations under any Lease or increasing the responsibility of the landlord thereunder;
  - (iii) which is not in accordance with a standard form of lease for the Property which has been approved by the Assignee without any material modifications thereto;
  - (iv) which would permit the use of the Premises for any use not in keeping with a high quality building and/or development for which the Charge was given as security, or which would materially adversely affect the market value of the Property; and/or,
  - (v) which would commit the Assignee to fulfil any obligations of the Assignor with respect to the Leases in the event that the Assignee exercises any of its remedies in respect of the Property.

7. Upon any vesting of title to the Property in the Assignee or other party by court order, operation of law, or otherwise, or upon delivery of a transfer or conveyance pursuant to the Assignee's exercise of remedies under the Charge, all right, title and interest of the Assignor in and to the Leases, Rents, Rights and Guarantees shall by virtue of this Assignment, immediately vest in and become the absolute property of the party vested with such title or the transferee(s) named in such transfer or conveyance, without any further act or assignment by the Assignor. The Assignor hereby irrevocably appoints the Assignee and its successors and assigns, as its agent and attorney, to execute all instruments of assignment or further assurances in favour of such party vested with title or the transferee(s) as may be required in the circumstances.

8. In the exercise of the powers herein granted to the Assignee, no liability shall be asserted or enforced against the Assignee, all such liability being hereby expressly waived and released by the Assignor. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and the Assignor shall and does hereby agree to indemnify the Assignee for, and to save and hold it harmless of and from, any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any obligations or undertakings on its part to perform or

discharge any of the terms, covenants or agreements contained in the Leases. Should the Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defence of any such claims or demands, the amount thereof, including costs, expenses and legal fees on a full indemnity basis, shall be secured hereby, and the Assignor shall reimburse the Assignee therefore immediately upon demand.

9. Although it is the intention of the parties that this Assignment shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Assignee shall not exercise any of the rights or powers herein conferred upon it until a default shall occur under the terms and provisions of this Assignment or of the Charge, but upon the occurrence of any such default, the Assignee shall be entitled, upon notice to the Lessees, to the Leases, and to all Rents and other amounts then due under the Leases and thereafter accruing, and to the Rights and Guarantees, and this Assignment shall constitute a direction to and full authority to the Lessees to pay all Rents to the Assignee without proof of the default relied upon by the Assignee. The Lessees are by this Assignment hereby irrevocably authorized to rely upon and comply with any notice or demand by the Assignee for the payment to the Assignee of any Rents which may be or thereafter become due under the Leases, regardless whether any default under the Charge has actually occurred or is then existing.

10. In the event that the Assignee collects any payments of Rents due to the Assignor's default, the Assignee shall be entitled to receive from such Rents, in addition to any other fees chargeable, a management fee of 5.0% of the gross receipts from such Rents, it being understood for greater certainty that the Assignor and the Assignee have agreed that such management fee is a just and equitable fee having regard to the circumstances.

11. Any receiver or receiver-manager appointed pursuant to the Charge or by any court shall be deemed to be the agent of the Assignor and the Assignor shall be solely responsible for the acts of such receiver or receiver-manager and its remuneration and expenses, and the Assignee shall not in any way be responsible for any misconduct or negligence on the part of such receiver or receiver-manager.

12. This Assignment is intended to be additional to and not in substitution for or in derogation of any assignment of Rents contained in the Charge or in any other document.

13. A discharge of the Charge shall operate as an automatic reassignment to the Assignor of this Assignment and the Rents, Leases, Rights and Guarantees assigned thereby.

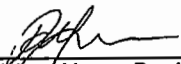
14. This Assignment shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties hereto irrevocably attorn to the jurisdiction of the courts of this province sitting at Toronto, Ontario.


15. In this Assignment, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders.

16. This Assignment shall be binding upon and enure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF the Assignor has executed this Assignment as of the date first above written.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President

Per:   
Name: John Yoon - C.E.O.

Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

THIS IS EXHIBIT "G"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



---

A Commissioner for Taking Affidavits, etc.

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498

**ASSIGNMENT OF RIGHTS UNDER OCCUPANCY AGREEMENTS**

THIS AGREEMENT made the 4<sup>th</sup> day of April, 2007,

BY:

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
hereinafter called the "Assignor"

IN FAVOUR OF:

**PEOPLES TRUST COMPANY**  
hereinafter called the "Lender"

WHEREAS the Lender has agreed to extend a loan or establish one or more credit facilities in the maximum amount of SEVENTEEN MILLION, THREE HUNDRED THOUSAND, ONE HUNDRED AND SIXTY-TWO 50/100 DOLLARS (\$17,300,162.50) (collectively the "Loan") in favour of the Assignor on the terms and subject to the conditions set out in a letter of commitment dated March 17, 2005 issued by the Lender with respect to the Loan and a Certificate of Insurance issued by Canada Mortgage and Housing Corporation ("CMHC") under CMHC account number 90-260-530, as both may be amended from time to time (collectively the "Commitment") with respect to a residential project located at 15 and 17 Maplewood Avenue, Toronto, Ontario (the "Property");

AND WHEREAS as security for amounts owing to the Lender on account of the Loan, the Assignor agreed, among other things, to execute and deliver this agreement in favour of the Lender;

NOW THEREFORE, in consideration of the Lender extending credit and making or agreeing to make one or more advances of the Loan and for other good and valuable consideration, the Assignor covenants with the Lender as follows:

**ARTICLE I - DEFINITIONS AND INTERPRETATIONS**

1.01 **Definitions:** Capitalized terms used in this Agreement have the respective meanings ascribed thereto in this section:

- (a) "Closing Proceeds" means all amounts paid or to be paid by any Purchaser to the Assignor at the time of occupancy under a Right to Occupy Agreement.
- (b) "Deposits" means all amounts paid or to be paid by any Purchaser to the Assignor as a deposit pursuant to a Right to Occupy Agreement;
- (c) "Indebtedness" means all present and future debts and liabilities due or to become due, absolute or contingent, direct or indirect, now existing or hereafter arising owing by the Assignor (or if more than one Assignor, by any one or more of them) to the Lender, whether pursuant to the Loan Documents or otherwise and includes any extensions, renewals or replacements thereof and includes the Loan;
- (d) "Lands" means those lands and premises described in Schedule "A" attached hereto;
- (e) "Loan Documents" means all agreements, instruments and other documents made or assigned by the Assignor in favour of the Lender in connection with the Loan and includes any letter of commitment or loan agreement relating thereto, as same may be amended from time to time;
- (f) "Net Proceeds" means 100% of the Closing Proceeds payable to or on behalf of the Assignor by a Purchaser pursuant to a Right to Occupy Agreement and whether such amount is payable before, contemporaneously with or at any time after the commencement of such Right to Occupy Agreement, less:
  - (i) reasonable legal fees and disbursements payable by the Assignor to counsel for the Assignor for legal services rendered on behalf of the Assignor in connection with the Right to Occupy Agreement;



- (ii) reasonable commissions payable by the Assignor to arm's length third party real estate brokers in connection with the Right to Occupy Agreement; and
  - (iii) such other amounts, if any, approved in writing by the Lender;  
and Net Proceeds includes, without limitation:
  - (iv) all present and future income, rents, profits and other amounts including insurance proceeds and expropriation awards payable with respect to a Right to Occupy Agreement and
  - (v) any promissory note, letter of credit or letter of guarantee, and any charges, assignments, security agreements or other encumbrances that are given by any Purchaser in order to evidence or secure any portion of the amounts payable under a Right to Occupy Agreement;
- (g) "Project" means, collectively, the Lands and all improvements now or hereafter constructed on or made to the Lands;
- (h) "Purchaser" shall mean the purchaser under a Right to Occupy Agreement, and "Purchasers" shall mean all such purchasers; and
- (i) "Right to Occupy Agreements" means all present and future agreements entered into between the Assignor or on the Assignor's behalf with a Purchaser to purchase the right to occupy a portion of the Project, and "Right to Occupy Agreement" shall mean any such agreement.

1.02 **Number and Gender:** All nouns and personal pronouns relating thereto shall be read and construed as the number and gender may require and the verb shall be read and construed as agreeing with the noun and pronoun.

1.03 **Recitals Correct:** The Assignor confirms the validity and truth of the above-noted recitals, which have the same force and effect as if repeated herein at length.

## ARTICLE II - ASSIGNMENT AND ATTACHEMENT

2.01 **Assignment:** As continuing security for the payment of the Indebtedness and the performance, fulfilment and satisfaction of all covenants, obligations and conditions on the part of the Assignor set out herein or set out in the Loan Documents, the Assignor assigns, sets over and transfers to the Lender all its rights, title and interest in and to, and all claims of every nature or kind which the Assignor now or hereafter may have under or pursuant to, the Right to Occupy Agreements and the Deposits and the Net Proceeds including, without limitation:

- (a) the benefit of any and all present and future guarantees and indemnities with respect to any Right to Occupy Agreement and the performance of any or all of the obligations of any Purchaser thereunder;
- (b) all other debts, demands, choses in action and claims which are now or may hereafter be or become due, owing or accruing due to the Assignor under the Right to Occupy Agreements or the Deposits or the Net Proceeds; and
- (c) all books, accounts, invoices, letters, papers and documents in any way evidencing or relating to any of the foregoing;

all of the foregoing described in this Section 2.01 together with all proceeds therefrom are hereinafter collectively called the "Collateral".

## ARTICLE III - ACKNOWLEDGEMENTS, COVENANTS, REPRESENTATIONS AND WARRANTIES

3.01 **Burdens Not Assigned:** The Assignor expressly acknowledges and agrees that all liabilities, obligations and other burdens of the Collateral are reserved exclusively to the Assignor and are not included in the property and assets that are hereby assigned, transferred and otherwise encumbered to or in favour of the Lender.

3.02 **Acknowledgement of Assignor:** The Assignor acknowledges that neither this Agreement nor the assignment set out herein:

- (a) shall in any way lessen or relieve the Assignor from its obligations to perform, fulfill and satisfy its covenants, obligations and all other provisions set out in the Collateral or any part thereof;
- (b) imposes any obligation on the Lender to assume any obligation under, or to observe, perform or satisfy any covenant, obligation or other provision set out in, the Collateral or any part thereof; or
- (c) imposes any liability on the Lender for any act or omission on its part in connection with this Agreement, the assignment constituted hereby, the Collateral or any part thereof.

3.03 **Positive Covenants of Assignor:** The Assignor covenants and agrees:

- (a) to perform, fulfill and satisfy all covenants, obligations and all other provisions set out in the Collateral or any part thereof;
- (b) to deliver to the Lender a copy of all written notices, demands or requests given in connection with or pursuant to the Collateral or any part thereof that are received by the Assignor, forthwith upon receipt of same and that are delivered by the Assignor, contemporaneously with the delivery of same;
- (c) to indemnify and save the Lender harmless from and against any losses, damages, costs and expenses (including legal fees and disbursements on a solicitor and his own client basis) suffered or incurred by the Lender in connection with, on account of or by reason of:
  - (i) the assignment to the Lender of the Collateral and any obligation of the Lender resulting therefrom to perform, fulfill or satisfy any covenant, obligation or other provision set out in the Collateral or any part thereof;
  - (ii) any failure of the Assignor to observe, perform or satisfy its covenants, obligations and all other provisions set out in this Agreement or set out in the Collateral or any part thereof; and
  - (iii) the enforcement by the Lender of the assignment constituted by this Agreement;
- (d) to notify the Lender in writing as soon as the Assignor becomes aware of any Dispute (as hereinafter defined), claim or litigation in respect of the Collateral or any part thereof or of any breach or default by the Assignor, any Purchaser or any other person, firm or corporation in the performance or satisfaction of any of the covenants, obligations or other provisions set out in the Collateral or any part thereof;
- (e) to obtain such consents from third parties including, without limitation, Purchasers, as may be necessary or required in connection with the assignment constituted by this Agreement and, in addition, such other consents from third parties as the Lender may require or desire;
- (f) upon the written request of the Lender, to execute and deliver to the Lender specific assignments of any of the Right to Occupy Agreements duly acknowledged by the respective Purchasers thereunder, which specific assignments shall be in form and substance acceptable to the Lender;
- (g) that each of the Right to Occupy Agreements shall be an unconditional (to the Purchaser) agreement entered into by the Assignor in good faith, at arm's length, at a price and otherwise upon such terms and conditions as are reasonable and proper in the circumstances and upon prevailing market terms and conditions;
- (h) to deliver to the Lender, on a monthly basis, an updated sales report for the Project detailing all Life Lease Occupancy Agreements, all Deposits and other amounts paid and payable under such Right to Occupy Agreements, the name, address and telephone number of each Purchaser and his or her solicitor, and, in addition, at the request of the Lender from time to time, a notarial copy of each Right to Occupy Agreement and of any guarantee or indemnity in respect of the obligations of any Purchaser thereunder;

- (i) to execute and deliver to each Purchaser, at the request of the Lender from time to time, a written notice directing such Purchaser to pay the Net Proceeds and all other amounts owing under the Right to Occupy Agreements to the Lender;
- (j) without limiting the generality of subsection 3.03(i) hereof, if any Closing Proceeds or other amounts owing to the Assignor under the Right to Occupy Agreements are received by the Assignor, to pay to the Lender all such Closing Proceeds and other amounts, forthwith upon receipt of same by the Assignor;
- (k) that it will pay to the Lender upon demand all costs, fees and expenses including, without limitation, legal fees and disbursements on a solicitor and his own client basis, incurred by or on behalf of the Lender in connection with or arising out of or from this Agreement including, without limitation, any one or more of the following:
  - (i) any act done or taken by or on behalf of the Lender, or any proceeding instituted by or on behalf of the Lender, the Assignor or any other person, firm or corporation, in connection with or in any way relating to any one or more of this Agreement or any part thereof, the preservation, protection, enforcement or realization of the Collateral or any part thereof, the recovery of the Indebtedness or any part thereof and responding to enquiries regarding the scope of the security interest perfected by the registration of a financing statement under the Personal Property Security Act of Ontario (the "Act"); and
  - (ii) all amounts incurred or paid by the Assignor pursuant to Section 4.01 hereof; and

together with interest thereon from the date of the incurring of such expenses at the highest rate of interest provided for in any of the Loan Documents. Whether any action or any judicial proceedings to enforce the aforesaid payments has been taken or not, the amount owing to the Lender under this subsection shall be added to the Indebtedness;
- (l) furnish to the Lender in writing all information requested by the Lender relating to the Collateral or any part thereof; and
- (m) to the extent that the Assignor has received from any Purchaser, prior to the execution of this Agreement, any Deposits or other amounts on account of the Right to Occupy Agreements, and to the extent that further Deposits are received, the Assignor shall only utilize any such amounts to pay costs and expenses associated with the Project that have been approved by the Lender

3.04 **Negative Covenants of Assignor:** The Assignor covenants and agrees that it shall not:

- (a) without the prior written consent of the Lender, enter into Right to Occupy Agreements with any Purchaser on monetary terms less than those in the pro forma Right to Occupy Agreement presented to the Lender;
- (b) sell, assign, transfer, dispose of, collect, receive or accept any of the Collateral or any part thereof nor do, nor permit to be done, any act or thing whereby the Lender may be prevented or hindered from so doing;
- (c) pledge, charge, mortgage, hypothecate, create a security interest in or otherwise encumber the Collateral or any part thereof;
- (d) cancel or terminate any of the Right to Occupy Agreements or do any act or thing allowing any Purchaser under any of the Right to Occupy Agreements to cancel or terminate any of the Collateral or any part thereof;
- (e) waive, amend, modify or vary any of the covenants, obligations and other provisions set out in the Collateral or any part thereof, or otherwise agree or consent to any waiver, amendment, modification or variation of any of them, whether by way of collateral agreement or otherwise;
- (f) waive or agree to waive any failure of any Purchaser under any of the Right to Occupy Agreements to perform, fulfill or satisfy any of the covenants, obligations and other provisions set out in any of the Right to Occupy Agreements or any part thereof; or
- (g) settle or resolve Disputes.

3.05 **Representations and Warranties of Assignor:** The Assignor represents and warrants to the Lender that:

- (a) the Collateral including, without limitation, each of the Right to Occupy Agreements in effect as of the date hereof, is in good standing and in full force and effect, unamended, and there are no defaults thereunder;
- (b) the Assignor has good, valid and legal right to absolutely assign and transfer to the Lender the Collateral, free and clear of all assignments, mortgages, charges, pledges, security, interests and other encumbrances;
- (c) the Assignor has not received notice of any default or claim for set-off from any Purchaser or any other party to the Collateral or any part thereof;
- (d) none of the Collateral in existence on the date hereof is incapable of assignment to the Lender in accordance with the provisions of this Agreement, nor is the consent of any third party required for any assignment set out in this Agreement or in connection with any further assignment by the Lender; and
- (e) no Net Proceeds, payments, proceeds, receipts or other distributions due or to become due on any date subsequent to the date of this Agreement have been collected in advance of the time when the same become due under the terms of the Collateral or any part thereof.

#### **ARTICLE IV - DEFAULT**

4.01 **Enforcement Upon Default:** Without limiting in any manner whatsoever the Lender's rights, remedies and recourses pursuant to this Agreement, by operation of law or otherwise, if any of the representations and warranties set out in this Agreement or in any of the Loan Documents is untrue or if the Assignor has defaulted under or pursuant to or otherwise failed to perform, fulfill or satisfy any covenant, obligation or condition set out in, or upon the occurrence of an event of default described as an "Event of Default" or a "Default" in, this Agreement, or in any of the Loan Documents (hereinafter collectively called a "Default") the Lender and may, from time to time and at any time, at its sole discretion, in its own name or in the name of the Assignor and without notice to the Assignor, do any one or more of the following:

- (a) perform, fulfill or satisfy any covenant, obligation or other provision set out in any of the Collateral which could have been performed, fulfilled or satisfied by the Assignor;
- (b) exercise any of the rights, powers, authority and discretion which, pursuant to any of the Collateral, could have been exercised by the Assignor including, without limitation, amending and renewing any one or more of the Right to Occupy Agreements and otherwise dealing with the Purchasers and others and participating in all settlement negotiations and arbitration proceedings resulting from a dispute (the "Dispute") arising out of, in connection with or pursuant to any of the Collateral; and
- (c) collect any Net Proceeds, proceeds, receipts or income arising from or out of the Collateral including, without limitation, the institution of proceedings, whether in the name of the Assignor or the Lender or both, for the collection of same;

and in the event that the Lender does any one or more of the foregoing, for such period of time that the Lender continues to do so, the rights, benefits, powers and advantages of the Assignor with respect thereto shall thereupon be extinguished.

The Assignor further acknowledges and agrees that all costs, charges and expenses incurred by the Lender in connection with doing anything permitted in this Section 4.01 including, without limitation, legal fees and disbursements on a solicitor and his own client basis, shall be forthwith paid by the Assignor to the Lender.

4.02 **Application of Funds:** All amounts realized from the Collateral upon the enforcement of this Agreement shall be applied by the Lender firstly, to the payment of expenses owing under the Loan Documents, secondly, to the payment of such part of the Indebtedness as constitutes interest, and thirdly, to the payment of the balance of the Indebtedness; and any deficiency shall be and remain payable by the Assignor to the Lender. If any surplus remains after the payments itemized herein, such surplus shall be applied in the manner provided for in the Act.

Notwithstanding the foregoing, the Secured Party reserves the right to interplead or make any appropriate application pursuant to the Trustee Act (Ontario) or any successor legislation thereto.

4.03 **Authority of Assignor Prior to Default:** Prior to the commencement of the term of each Right to Occupy Agreement and until a Default occurs the Assignor shall have the authority to collect any monies payable or arising out of or from the Collateral and, subject to section 3.04 hereof, the Assignor shall have the authority to exercise, in good faith, all of the rights, powers, authority and discretion under the Collateral. However, upon the occurrence of a Default, such authority shall immediately cease without further notice to the Assignor. Notwithstanding the generality of the foregoing, all Net Proceeds payable upon the commencement of occupancy under the Right to Occupy Agreements are directed to be paid to the Lender (and this shall be each Purchaser's good and sufficient irrevocable authority to do so). Any monies payable or arising out of or from the Collateral received by or on behalf of the Assignor after a Default has occurred or upon or after occupancy by a Purchaser under a Right to Occupy Agreement shall be received and held in trust for the Lender and forthwith remitted to the Lender. The Lender may, at any time or times, by notice to any Purchaser, direct such Purchaser to pay Net Proceeds and other monies to the Lender and such notice shall be good and sufficient authority for any Purchaser so doing. Any payment of Net Proceeds and other monies by a Purchaser to the Lender shall not constitute a default under such Purchaser's Right to Occupy Agreement. The receipt by the Lender of Net Proceeds or other monies from a Purchaser shall constitute and be deemed receipt thereof by the Assignor.

4.04 **Lender Not Liable:** The Lender shall not be bound to do any one or more of the following:

- (a) give any notice;
- (b) exercise any rights, powers, authority, discretion or remedies whatsoever; and
- (c) institute proceedings for the purpose of seizing, realizing upon, disposing of or obtaining possession of the Collateral or any part thereof or for the purpose of collecting or obtaining payment of the Net Proceeds or of the Indebtedness or any part thereof or for the purpose of preserving any rights of the Lender, the Assignor or any other, person, firm or corporation in respect of same;

nor shall the Lender be liable or accountable for doing or failing to do any one or more of the foregoing. The Assignor shall be liable for all actions, causes of action, proceedings, debts, demands, claims, losses, damages and other liabilities incurred or suffered by the Assignor or the Lender by reason of or on account of any act or failure to act of the Lender.

#### **ARTICLE V - GENERAL CONTRACT PROVISIONS**

5.01 **Further Assurances:** The Assignor agrees to execute all such further assignments and other documents and to do all such further acts and things including obtaining any consents which are required by the Lender, from time to time, to more effectively assign and transfer the Collateral to the Lender and the Lender is irrevocably constituted the true and lawful attorney of the Assignor, with full power of substitution, to execute in the name of the Assignor any assignment or other document for such purposes.

5.02 **No Novation:** This assignment and transfer to the Lender of the Collateral is continuing security granted to the Lender, without novation or impairment of any other existing or future security held by the Lender in order to secure, among other things, payment to the Lender of the Indebtedness.

5.03 **Rights, Powers and Remedies:** Each right, power and remedy of the Lender provided for in this Agreement or available at law or in equity may be exercised separately from or in combination with, and is in addition to and not in substitution for, any other right, power and remedy of the Lender however created. Without limiting the generality of the foregoing, the taking of judgment or judgments by the Lender shall not operate as a merger or affect the right of the Lender to interest as provided herein.

5.04 **Re-assignment:** Upon the Indebtedness being paid in full the Lender shall, within a reasonable time following its receipt of a written request from the Assignor and at the sole cost and expense of the Assignor, reassign the Collateral to the Assignor.

5.05 **Waiver:** No consent or waiver, express or implied, by the Lender to or of any breach or default by the Assignor in the performance of its obligations hereunder shall be deemed

or construed to be a consent to or waiver of any other breach or default in the performance by the Assignor of its obligations hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder.

5.06 **Dealings with Persons:** The Lender may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Collateral, the Assignor, debtors of the Assignor, guarantors, sureties and others, as the Lender may see fit, without prejudice to the Lender's rights, powers and remedies whatsoever.

5.07 **Notices:** Any notice or demand which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally or by telefax upon the party for whom it is intended, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail addressed to the Assignor at its address set out in any of the Loan Documents and addressed to the Lender at its address set out in any of the Loan Documents. The date of receipt of such notice or demand, if served personally or by telefax, shall be deemed to be the date of the delivery thereof, or if mailed as aforesaid, the fourth business day following the date of mailing. For the purposes hereof, personal service on the Assignor shall be effectively given by delivery to any officer, director or employee of the Assignor. The Lender or the Assignor may, from time to time, change its address or stipulate another address from the address described in this Agreement by giving notice in the manner provided in this section.

5.08 **Entire Agreement:** This Agreement constitutes the entire agreement between the Lender and the Assignor pertaining to the assignment of the Collateral and may not be amended in any matter except by written instrument signed by them. This Agreement shall enure to the benefit of the successors and assigns of the Lender and shall be binding upon the successors and permitted assigns of the Assignor.

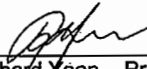
5.09 **Survival:** All covenants, undertakings, agreements, representations and warranties made by the Assignor in this Agreement and any instruments delivered pursuant to or in connection herewith, shall survive the execution and delivery of this Agreement and any advances made by the Lender to the Assignor, and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Assignor shall be deemed to have been relied upon by the Lender.

5.10 **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

5.11 **Receipt of Copy:** The Assignor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF the undersigned has executed this Agreement as of the date first above written.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President

Per:   
Name: John Yoon C.E.O.

Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

Lots 25 and 26 and Part Lot 24, Block F, Plan 875  
Designated as Parts 1 and 2, Plan 66R-22215  
City of Toronto

PIN: 10468-0554 LT

**MUNICIPAL ADDRESS**

15 and 17 Maplewood Avenue  
Toronto, Ontario

THIS IS EXHIBIT "H"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



~~A Commissioner for Taking Affidavits, etc.~~

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BARRARD STREET  
P.O. BOX 30 VANCOUVER B.C. V6C 2R5  
TELEPHONE (604) 683-6498



ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY  
 920 Yonge Street, Ste. 500  
 Toronto, Ontario  
 M4W 3C7

DATE: April 4, 2007

Peoples Trust Company  
 130 Adelaide Street West  
 Suite 1801  
 Toronto, Ontario  
 M5H 3P5

Dear Sirs:

RE: PEOPLES TRUST COMPANY (the "Lender")  
 loan to ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY  
 (the "Borrower")  
15 and 17 Maplewood Avenue, Toronto, Ontario (the "Property")

We refer to a letter of commitment dated March 17, 2005 issued by the Lender to the Borrower and the Certificate of Insurance issued by Canada Mortgage and Housing Corporation ("CMHC") under CMHC Account Number 90-260-530, as both may be amended from time to time (collectively, the "Commitment") for the making of a loan by the Lender to the Borrower in the amount of \$17,300,162.50.

Pursuant to the terms of the Commitment and all security documents delivered by the Borrower to the Lender in connection therewith (the "Security Documents"), we are delivering to you herewith a direction and authorization addressed to the Ministry of Health and Long Term Care (Ontario), the Minister thereof, and the Director under the *Nursing Homes Act* (Ontario) which direction and authorization constitutes the irrevocable authorization to the addressees thereto to cancel and revoke the licence referred to therein (such direction and authorization is hereinafter referred to as the "Letter of Revocation").

You have requested the Letter of Revocation in order that, in realizing upon the security granted by us pursuant to the Commitment and the Security Documents, you, your receiver and manager or a purchaser of the business, the Property, or any part or parts thereof, shall be in a position to apply for a new licence.

In consideration of the making by you of the loan pursuant to the Commitment and other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged), we agree as follows:

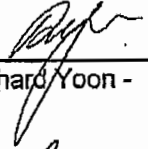
1. Upon the occurrence of an Event of Default as defined in the Commitment and the Security Documents, you, your receiver and manager or a purchaser of the business, the Property, or any part or parts thereof, may forthwith and at any time thereafter date the Letter of Revocation, deliver the Letter of Revocation to the addressees thereto and take

such action as may be necessary to accomplish the revocation of the licence referred to therein and, for the purposes of so doing, we hereby irrevocably constitute and appoint you our duly authorized attorney to take such steps and perform such actions in our name or otherwise as may be necessary or advisable to effect the revocation of the licence referred to in the Letter of Revocation.

2. We shall not revoke, countermand or otherwise amend these instructions or the provisions of the Letter of Revocation and any attempt to do so shall be null and void.

Yours very truly,

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President


Per:   
Name: John Yoon - C.E.O.

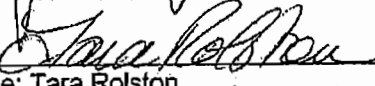
Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

The undersigned hereby acknowledges receipt of this letter this \_\_\_\_ day of April, 2007 and agrees that its entitlement hereunder only arises upon the occurrence of an event of default as defined in the Commitment or the Security Documents.

PEOPLES TRUST COMPANY

Per:   
Name: Jim Dysart  
Title: Vice President

Per:   
Name: Tara Rolston  
Title: Regional Manager

**CONSENT**

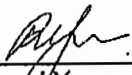
TO: PEOPLES TRUST COMPANY  
AND TO: TRAUB • MOLDAVER, its solicitors  
RE: PEOPLES TRUST COMPANY (the "Lender")  
loan to ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY  
(the "Borrower")  
17 Maplewood Avenue, Toronto, Ontario (the "Property")

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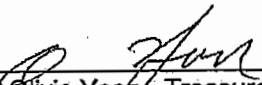
IN CONSIDERATION of the advance of the above noted transaction and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby consents to the Lender and its successors and assignees, having access to any and all Ministry of Health and Long Term Care for Ontario (the "Ministry") records pertaining to the nursing home located at the Property and any other nursing home facilities which are licensed by the Ministry and which are owned by the undersigned.

DATED this 4<sup>th</sup> day of April, 2007.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President

Per:   
Name: John Yoon - C.E.O.

Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

**DIRECTION RE RELEASE OF INFORMATION**

TO: THE MINISTRY OF HEALTH AND LONG TERM CARE

AND TO: THE MINISTER THEREOF

AND TO: THE DIRECTOR UNDER THE  
NURSING HOMES ACT (ONTARIO)

RE: PEOPLES TRUST COMPANY (the "Lender")  
loan to ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY  
(the "Borrower")  
17 Maplewood Avenue, Toronto, Ontario ( the "Property")

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THIS IS TO advise that the undersigned is the owner of the above noted Property and has made arrangements to obtain or has obtained mortgage financing for the Property from the Chargee.

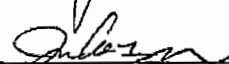
UPON REQUEST therefor from time to time by the Chargee or by its solicitors, Traub • Moldaver, or by any other agent thereof, YOU ARE HEREBY AUTHORIZED to disclose or release to the Chargee or its solicitors any and all information maintained by you in your records as to outstanding work orders, notices, violations, infractions or any other matters requiring attention which are within your jurisdiction affecting the subject Property and, generally, whether the subject Property meets with your approval and complies with any statutes, by-laws or regulations which are within your jurisdiction.

AND FOR SO DOING this shall be your good, sufficient and irrevocable authority; and you are hereby released from any and all claims, demands, actions or proceedings arising from your release of such information.

DATED this *4th* day of April, 2007.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President

Per:   
Name: John Yoon - C.E.O.

Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

**DIRECTION AND AUTHORIZATION**  
**RE LETTER OF REVOCATION**

TO: THE MINISTRY OF HEALTH AND LONG TERM CARE

AND TO: THE MINISTER THEREOF

AND TO: THE DIRECTOR UNDER THE  
NURSING HOMES ACT (ONTARIO)

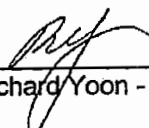
THE UNDERSIGNED hereby irrevocably directs and authorizes you to forthwith terminate and revoke Licence No. \_\_\_\_\_ granted to **ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY** pursuant to the *Nursing Homes Act* (Ontario) to operate and maintain a nursing home at 17 Maplewood Avenue, Toronto, Ontario (the "Property") and for so doing this shall be your full and sufficient authority.

WE HEREBY consent to the issuance of a new licence pursuant to the *Nursing Homes Act* (Ontario) to operate and maintain a nursing home on the Property to Peoples Trust Company (including its successors and assigns) or as it further directs in writing.

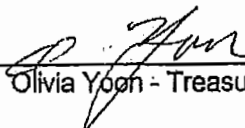
AND WE HEREBY release each of you from any and all claims that the undersigned may have in connection with Licence No. \_\_\_\_\_ and the termination thereof in accordance herewith.

DATED this \_\_\_\_\_ day of \_\_\_\_\_

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY

Per:   
Name: Richard Yoon - President

Per:   
Name: John Yoon - C.E.O.

Per:   
Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

NOTICE OF SURRENDER OF LICENCE

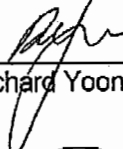
TO: THE MINISTRY OF HEALTH AND LONG TERM CARE  
 AND TO: THE MINISTER THEREOF  
 AND TO: THE DIRECTOR UNDER THE  
 NURSING HOMES ACT (ONTARIO)  
 RE: NURSING HOME LICENCE  
 17 Maplewood, Toronto (the "Property")

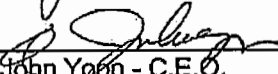
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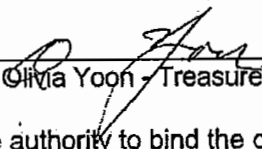
IN ACCORDANCE with the *Nursing Homes Act* (Ontario), the undersigned licensee hereby give you notice of its intention to surrender the above-noted Nursing Home Licence to the Director effective the        day of

DATED this        day of

ROSE OF SHARON (ONTARIO)  
 RETIREMENT COMMUNITY

Per:   
 Name: Richard Yoon - President

Per:   
 Name: John Yoon - C.E.O.

Per:   
 Name: Olivia Yoon - Treasurer

We have authority to bind the corporation.

DIRECTION TO TRANSFER

TO: THE MINISTRY OF HEALTH AND LONG TERM CARE  
 AND TO: THE MINISTER THEREOF  
 AND TO: THE DIRECTOR UNDER THE  
 NURSING HOMES ACT (ONTARIO)  
 RE: NURSING HOME LICENCE  
 17 Maplewood Avenue, Toronto (the "Property")

---

THE UNDERSIGNED hereby irrevocably directs and authorizes you to forthwith transfer Licence No. \_\_\_\_\_ granted to **ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY** pursuant to the *Nursing Homes Act* (Ontario) to operate and maintain a nursing home at 17 Maplewood Avenue, Toronto, Ontario (the "Property") to **PEOPLES TRUST COMPANY**, and its successors and assigns, or as it further directs in writing and for so doing this shall be your full and sufficient authority.

DATED this        day of

ROSE OF SHARON (ONTARIO)  
 RETIREMENT COMMUNITY

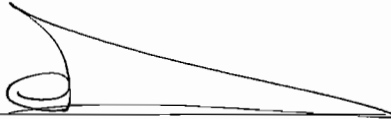
Per: \_\_\_\_\_  
 Name: Richard Yoon - President

Per: \_\_\_\_\_  
 Name: John Yoon - C.E.O.

Per: \_\_\_\_\_  
 Name: Olivia Yoon - Treasurer

We have authority to bind the corporation

THIS IS EXHIBIT "I":  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



\_\_\_\_\_  
A Commissioner for Taking Affidavits, etc.

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498





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Web Page ID: **WEnqResult**

File Currency: **02APR 2013**

System Date: **03APR2013**



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<b>Type of Search</b>		Business Debtor								
<b>Search Conducted On</b>		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
<b>File Currency</b>		02APR 2013								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>			
	633774177	1	3	1	5	27MAR 2017				
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>										
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>			
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<b>Individual Debtor</b>		<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>		<b>Business Debtor Name</b>					<b>Ontario Corporation No.</b>			
		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
		<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
		920 YONGE STREET, SUITE 500			TORONTO	ON	M4W 3C4			
<b>Individual Debtor</b>		<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>		<b>Business Debtor Name</b>					<b>Ontario Corporation No.</b>			
		<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Secured Party</b>		<b>Secured Party / Lien Claimant</b>								
		PEOPLES TRUST COMPANY								
		<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
		130 ADELAIDE STREET WEST, SUITE 1801			TORONTO	ON	M5H 3P5			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
		X	X	X	X					
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>				
<b>General Collateral Description</b>	<b>General Collateral Description</b>									
	PROPERTY USED IN CONNECTION WITH, SITUATE AT, OR ARISING FROM THE OWNERSHIP, DEVELOPMENT, USE OR DISPOSITION OF THE LANDS KNOWN AS 15 AND 17 MAPLEWOOD AVENUE, TORONTO, ONTARIO									
<b>Registering Agent</b>	<b>Registering Agent</b>									
	TRAUB, MOLDAVER (E. HARRIS 05-0155)									
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
	4 KING STREET WEST, SUITE 1801			TORONTO	ON	M5H 1B6				

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
<b>File Currency</b>	02APR 2013								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>				
	633774177	1	3	2	5				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>			
		001	001		20120321 1522 1862 4560				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>			
	633774177		X	B RENEWAL	5				
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>					
	<b>Business Debtor Name</b>								
	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
<b>Other Change</b>	<b>Other Change</b>								
<b>Reason / Description</b>	<b>Reason / Description</b>								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
	<b>Business Debtor Name</b>					<b>Ontario Corporation No.</b>			
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Assignor</b>	<b>Assignor</b>								
<b>Secured Party</b>	<b>Secured Party/ Lien Claimant/ Assignee</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	GOWLING LAFLEUR HENDERSON LLP HRV								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	100 KING STREET WEST, SUITE 1600				TORONTO	ON	M5X 1G5		
END OF FAMILY									

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
<b>File Currency</b>	02APR 2013								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	644731335	2	3	3	5	01MAY 2014			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
644731335		001	2		20080501 1201 6005 8032	P PPSA	06		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation No.</b>			
	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
	165 VAUGHN RD			TORONTO	ON	M6C 2L9			
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation No.</b>			
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	NATIONAL LEASING GROUP INC. L# 2416790								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
	1558 WILLSON PL			WINNIPEG	MB	R3T 0Y4			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
			X						
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	ALL POWER SUPPLY, WIRES, ELECTRICAL BOX, TELEPHONE SYSTEM, MONITORS OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2416790 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			

CONTINUED

<b>Type of Search</b>	Business Debtor						
<b>Search Conducted On</b>	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY						
<b>File Currency</b>	02APR 2013						
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>
	644731335	2	3	4	5	01MAY 2014	
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>							
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>
644731335		002	2		20080501 1201 6005 8032		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>		

<b>Business Debtor</b>		<b>Business Debtor Name</b>				<b>Ontario Corporation No.</b>				
		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Individual Debtor</b>		<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>		
<b>Business Debtor</b>		<b>Business Debtor Name</b>				<b>Ontario Corporation No.</b>				
		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>		<b>Secured Party / Lien Claimant</b>								
		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>		<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>		<b>Year</b>		<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>		<b>General Collateral Description</b>								
		TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.								
<b>Registering Agent</b>		<b>Registering Agent</b>								
		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
END OF FAMILY										
<b>Type of Search</b>		Business Debtor								
<b>Search Conducted On</b>		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
<b>File Currency</b>		02APR 2013								
		<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>		<b>Status</b>	
		651385143	3	3	5	5	05FEB 2014			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>										
<b>File Number</b>		<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>
651385143			001	1			20090205 1054 2988 0320		P PPSA	05
<b>Individual Debtor</b>		<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>		
<b>Business Debtor</b>		<b>Business Debtor Name</b>				<b>Ontario Corporation No.</b>				
		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY								
		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
		165 VAUGHN RD				TORONTO		ON	M6C 2L9	
<b>Individual Debtor</b>		<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>		
<b>Business Debtor</b>		<b>Business Debtor Name</b>				<b>Ontario Corporation No.</b>				
		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	

<b>Secured Party</b>		<b>Secured Party / Lien Claimant</b>							
		ESSEX CAPITAL LEASING CORP.							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
		3280 DEVON DRIVE			WINDSOR		ON	N8X 4L4	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
			X	X	X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	VARIOUS KITCHEN EQUIPMENT AS PER LEASE #10048								
<b>Registering Agent</b>		<b>Registering Agent</b>							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	

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 LAST MODIFIED: DECEMBER 09, 2012

THIS IS EXHIBIT "J".  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



~~A Commissioner for Taking Affidavits, etc.~~

**ANDREW A. BURY**  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BARRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683 6498

RIGHT TO OCCUPY AGREEMENT  
(Purchaser Type C)

THIS AGREEMENT made in duplicate this 8<sup>th</sup> day of April, 2005.

BETWEEN:

**THE ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY INC.**  
Proposed Project 165 / 171 Vaughan Road, Toronto (the Property)

(hereinafter referred to as the "Community")

-- and --

ANNE MARIE HEINRICHS

of the City of Guelph,

in the Province of Ontario.

(hereinafter referred to as the "Purchaser")

**WHEREAS** the Community is in the process of developing and subsequently constructing a nursing home and housing accommodations consisting of units described as the Residences at the **Rose of Sharon;**

**AND WHEREAS** the Purchaser is desirous of purchasing the "right to occupy" one of the units to be constructed;

**AND WHEREAS** the buildings will be operated on a non-profit basis.

**NOW WITNESSETH** In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

THE UNIT

1. The Community agrees to use its best efforts to construct in accordance with the plans and specifications as prepared by Victor J. Heinrichs Inc. Architect, the unit being identified as #LM2 (the "Unit") along with the options and modifications as specified and described in the Schedule of Options and Modifications attached hereto.

The Purchaser agrees to purchase from the Community the right to use, occupy and enjoy the Unit for the purchase price of One Hundred Eighty One Thousand Five Hundred Seventy Dollars (\$181,570), including Zero (0) parking space(s) (all being hereinafter called the "Right to Occupy Cost") in accordance with paragraph 6 hereof.

3. The plans, specifications and Schedule of Options and Modifications shall be maintained at the office of the Community and be available for inspection during regular office hours.

4. The Unit shall be completed and ready for occupancy by the Purchaser on or before the 31<sup>st</sup> day of November, 2006 (the "Date of Possession"). Provided however, that if the Unit is not

ready for occupancy on the Date of Possession as a result of any cause beyond the control of the Community, then the Community shall be entitled to extend the Date of Possession for one or more periods not exceeding ninety (90) days as may be necessary.

5. The Community shall be entitled to terminate this contract on thirty (30) days' written notice, if the Community in its absolute discretion determines that this contract cannot be fulfilled. Upon such notice being given, the Purchaser shall be entitled to receive a refund of all moneys paid without interest.

6. The Purchaser agrees to pay the Right to Occupy Cost to the Community as follows:  
(Complete and cross out as appropriate)

(a) One percent (1%) of the Right to Occupy Cost upon execution of this agreement; being One Thousand Eight Hundred Sixteen Dollars (\$1,816)

(b) Nine percent (9%) of the Right to Occupy Cost 10 days after the signing of this Right to Occupy Agreement; being Sixteen Thousand Three Hundred Forty One Dollars (\$16,341)

(c) Ten percent (10%) of the Right to Occupy Cost within 90 days after the signing of this Right to Occupy Agreement; being Eighteen Thousand One Hundred Fifty Seven Dollars (\$18,157)

(d) Ten percent (10%) of the Right to Occupy Cost upon footings completed; being Eighteen Thousand One Hundred Fifty Seven Dollars (\$18,157)

(e) Ten percent (10%) of the Right to Occupy Cost upon Main Floor Slab poured; being Eighteen Thousand One Hundred Fifty Seven Dollars (\$18,157)

(f) The final payment is due upon Occupancy permit; being One Hundred Eight Thousand Nine Hundred Forty Two Dollars (\$108,942)

The Purchaser shall pay the above-noted sums upon ten (10) days' notice of the appropriate events.

#### COMMON AREAS

1. The Purchaser shall have the non-exclusive right to the use of the areas designated by the Community as common areas, facilities and amenities, for the purposes for which they are intended by the Community. Common areas include general space such as halls, elevators and parking areas other than designated parking space(s) under a Right to Occupy Agreement. Common areas and elements also include specific spaces for cultural, social, worship & recreational activities. These areas are for the use and enjoyment of the community as a whole, and only secondarily for private functions when available and under specified conditions. These areas are the rooftop party room, rooftop patio, café, chapel / meeting room, spa and library.

2. The Purchaser acknowledges that the facilities and amenities are to be developed for the enhancement of the total community and they will open for use by the total community. The Community shall be entitled to make changes, improvements or alterations in regard thereto as the Community in its absolute discretion may deem desirable.

3. If as a result of the exercise by the Community of its discretion the facilities and amenities are changed, diminished or abolished, the Community shall not be subject to any liability or damages, nor is the Purchaser entitled to any compensation or abatement.



**MONTHLY MAINTENANCE FEES**

1. The Purchaser shall pay to the Community, in advance, a monthly maintenance fee commencing on the date of possession and thereafter on the 1st day of each and every calendar month.
2. The monthly maintenance fee is calculated based on the area of the unit. This includes the gross floor area of the unit, the area of the exterior wall assemblies, the area of any wall that separates the unit from any common spaces (corridor, staircase, duct, or plumbing space) and half the area of any wall that separates two units.
3. The monthly maintenance unit fee is to include, but not limited, to the following:
  - (a) Costs of operation, maintaining, repairing and managing the residential building, the Unit (the purchaser pays for unit damage & insurance), the common areas, the amenities and facilities, as well as the visitor parking areas, including snow and garbage removal, sewer and water, gas, insurance, building maintenance, landscaping, ground maintenance, elevator maintenance contract, equipment costs, equipment replacement reserves, major repairs and major capital repair reserves and management fees.
  - (b) Costs of providing services for the residents, including amenity space charges, activity and program co-ordination costs.
4. The monthly maintenance unit fee excludes all areas within and including the drywall of the party, exterior and corridor walls, but includes the plumbing, mechanical, and electrical (excluding the fixtures). Fenestration is a common element as are Suite entry doors including hardware.
5. Municipal taxes, electricity and any optional services such as communications and entertainment will be billed separately by the Community and paid for by the unit holder in addition to the foregoing.
6. The monthly maintenance fee for the parking spaces are assessed separately. The monthly maintenance fee shall be based on a proportionate share in relation to the area of the Unit space to the total of the Unit spaces in the building.

**TERMS OF THE AGREEMENT**

1. The term of this Agreement is the lifetime of the Purchaser or if there are two Purchasers, upon the death of the survivor. This Agreement terminates earlier upon the occurrence of one of the following:
  - (a) The Purchaser gives to the Community ninety (90) days' written notice of his/her intention to sell/transfer his/her interest;
  - (b) Failure of the Purchaser to comply with the terms hereof or the rules and regulations as declared by the Community from time to time;
2. Upon the Purchaser, who has given notice in accordance with paragraph 1 (a) above, giving vacant possession of the Unit to the Community, the Community shall proceed to sell the Right to Occupy the Unit in accordance with paragraph 5 below.
3. Upon the death of the Purchaser or the survivor of the Purchasers or the occurrence of paragraph 5 for which the Community shall provide the Purchaser or his/her representative with written notice, the Purchaser or his/her representative shall upon the happening of such event or receipt of such notice provide the Community within ninety (90) days possession of the Unit and the Community shall be entitled to proceed to sell the Right to Occupy Unit in accordance with paragraph 19 below.
4. If vacant possession is not given within ninety (90) days of such notice, the Community shall be entitled to enter the Unit and recover possession.

5. Upon termination of this Agreement in accordance with paragraph 1 above, the Community shall be entitled to sell the Right to Occupy Unit to another party of its selection.
6. The Community shall use its best efforts to obtain the fair market value of such Right. Further, the Association shall use its best efforts to sell the Right as quickly as is reasonable. Upon the closing of the sale, the Purchaser shall be entitled to receive the sale proceeds less a three percent (3%) fee which shall be retained by the Community, less any amount outstanding to the Community. The purchaser shall not be entitled to the receipt of anything further, and shall no longer have any interest in the Unit, common areas, facilities or amenities.
7. Community shall be entitled to purchase the Right itself at fair market value as determined by the parties, or failing such agreement by the average price of two appraisals: one obtained by the Community and one obtained by the Purchaser. The Community retains the right, acting reasonably, to select which purchasers are acceptable, which are not.
8. This agreement shall not create any direct ownership in the real property or building of the Community and the Purchaser agrees not to register notice of this Agreement against title to the lands upon which the building sits, until Occupancy and then only in accordance with the form of notice approved by the Community acting reasonably and in accordance with applicable registration regulations. The property may be subject to a number of agreements with the Municipality, utility providers and others which requires for the regulation and functioning of property. Any encumbrances in favour of lenders will be discharged or a non-disturbance agreement obtained for the Unit on Occupation or as soon as reasonably possible thereafter.
9. The Purchaser shall only be able to sell his/her rights hereunder in accordance with paragraphs 1 and 10 hereof. The Purchaser shall not otherwise sell, grant, transfer or assign this Agreement or any rights hereunder to any person other than the Community.
10. However, if the community does not sell the unit within 90 days after there is vacant possession, then the purchaser may endeavor to sell the unit as he / she sees fit, and not pay the community the 3% fee.
11. The Purchaser shall use the Unit for residential purposes only.
12. This Agreement shall not be changed or modified except by written instruction, signed by both the Purchaser and the Community.
13. This Agreement and every term herein contained, shall be binding upon the Purchaser and his/her respective heirs, executors and administrators.
14. Where there are two or more Purchasers bound by the same terms herein contained, their obligations shall be joint and several.
15. If any clause or section of this Agreement shall be determined to be illegal or unenforceable, then such clause or section shall be considered separate or severable from this Agreement and the remaining provisions hereof shall be binding upon the Purchaser and the Community.

#### **INSURANCE**

1. The Community is required to obtain and maintain all risk insurance coverage for the common elements and the units but not for improvements or betterments made by an owner to his unit or for furnishing, fixtures, equipment, decorating and personal property and chattels of the unit owner. The Corporation assumes no obligation with respect to insurance which may be obtained and maintained by an owner. Each owner is advised to inquire as to additional insurance coverage that may be required by him from his issuance advisors.
2. Proof of the insurance stated above, must be supplied by the purchaser to the Community.

3. The Community shall not be liable for injury or death arising from or out of, any occurrence in, upon, at or relating to the Community's lands or the Unit, or damage to the property of the Purchaser or others; nor shall the Community be responsible for any injury or loss or damage to the Purchaser, or any property of the Purchaser from any cause whatsoever, whether or not any such acts, damage, injury, loss or death results from the negligence of the Community, its agents, servants, employees or any other party for whom the Community is, in law, responsible.
4. No member shall do or permit to be done anything that will in any way increase the risk of fire or the rate of fire insurance for the Association.
5. All property of the Purchaser kept or stored at the Unit or elsewhere in the building shall be at the sole risk of the Purchaser and the Purchaser shall hold the Community harmless from and against any claims arising out of damages and loss to the same, including subrogation claims by the Purchaser's Insurers.
6. The Purchaser shall keep the Unit clean and well maintained and shall not modify it in any way, without the Community's written consent, interior decorating and carpeting excluded.
7. The Purchaser shall comply with all provisions of law, including and without limiting the generality of the foregoing, the requirement of all federal, provincial or municipal legislative enactments, by-laws and regulations now or hereinafter in force, which relate to the project, the unit and its use and occupation thereof.
8. Members shall be careful not to permit water to be left running unattended. Apartment residents in particular shall be responsible for the good condition of hoses on appliances.
9. Each unit owner agrees to indemnify the Corporation against any liability, loss, cost, damage or injury to any unit and to the common elements as a result of any act or omission by such unit owner or by his residents, tenants, or guests.

#### **MAINTENANCE**

1. The Purchaser shall grant access to the Unit to the Community, its servants, employees or agents and prospective purchasers at reasonable times, upon reasonable notice, during daylight hours, and at all times in case of emergency.
2. The Purchaser shall not do, or omit to do, or permit to be done, anything in respect of the Unit, the doing or omission of which, as the case may, shall be or result in a nuisance or menace to the Community or to any other residents of other dwellings within the retirement community.
3. No member shall alter any exterior part or paint colour of a structure inhabited under a Right to Occupy Agreement, including balcony or designated parking area in the parking garage, without written permission of the Board.
4. No interior changes to any unit shall be undertaken which could affect the structural integrity of the unit or any building.
5. The maintenance of and alteration to common space will be under the authority of The Board and not carried out by any individual member(s).
6. The Community shall remain the owner of the building and of the Unit and shall have the right of entry to the Unit at reasonable times, upon reasonable notice, during daylight hours and at all times in case of emergency.
7. The Community shall have exclusive control and management of the common areas, facilities and amenities.

8. The Community shall maintain and repair when necessary the Unit, its electrical, plumbing systems, Community supplied appliances and Heating, Ventilation and Air Conditioning System. The costs of such repairs shall be borne by the Purchaser if the damage has been caused by the Purchaser or his/her guests.

#### OPERATION

1. The Purchaser / Occupant may keep pets in the Unit. No pet that is deemed a nuisance or unsuitable by the Community shall be kept by the Purchaser. Pets form part of this community on the understanding that they will be kept under control when outside their home unit, not create disturbing noise, and cause no damage to property. Their owners will clean up litter immediately.

2. Moving of household effects & furniture in or out of the building shall be before 7AM & after 11PM, by appointment only. Note that the elevator cannot be held for exclusive use for more than 10 minutes.

3. Garbage will be disposed of only in accordance with posted regulations. Members will ensure that common areas they have used are left secured. Keys and access cards will not be duplicated without authorization.

4. There are staff onsite at all times in case of need – members are expected to use discretion in the use of their time so that they are available for emergencies.

5. Barbeques may be used on the Roof Garden & the Penthouse terraces and in other areas upon approval by the Board.

6. Smoking is not permitted in the building.

7. Members will be considerate of their neighbours when playing music or creating noise.

8. The Community shall report, on an annual basis, to the Purchaser with respect to the management of the residences and the provision of common areas, facilities and amenities.

Notice may be given to the Community at:

Rose of Sharon (Ontario) Retirement Community  
920 Yonge Street, Suite 500.  
Toronto, Ontario  
M4W 3C7

Notice may be given to the Purchaser at:

5163 Guelph Road #1  
Ontario, N1H 6J4

In both instances, notice shall be deemed effective on the date that the notice is delivered or mailed.

#### DISPUTE RESOLUTION

1. Should a dispute about any of the above rules or regulations involve only a few members, the parties will endeavor in good faith to resolve the dispute.

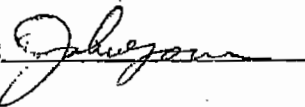
2. Should a breach or infraction or disregard for any rule or regulation occur without the identity of the offender being known or ascertainable, any member may ask the Board, or its Committee to post a reminder as the Board sees fit.

3. Should disputes remain unresolved despite the efforts of the parties, the Board will set up a dispute resolution mechanism. The Board's decision in all cases is final.

4. Amendments, deletions and additions to these Rules and Regulations shall be proposed by the Board to any general meeting, and ratified by a simple majority of those present and voting.

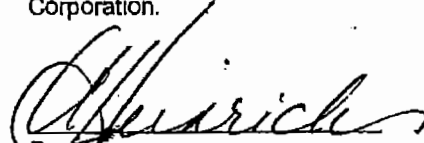
**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Agreement this 8<sup>th</sup> day of April, 2005.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY INC

Per: 

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

We have authority to bind the Corporation.

  
Purchaser

\_\_\_\_\_  
Purchaser

**ROSE OF SHARON - ACKNOWLEDGEMENT AND CONSENT AGREEMENT**

In consideration of the sum of \$1.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and in consideration of the covenants contained herein and in the Right to Occupy Agreement attached to this Agreement, the undersigned, ANNE MARIE HEINRICHS individually and collectively called the "Purchaser"), acknowledges and agrees as follows:

1. The Purchaser has been advised by Rose (the "Community") that there are two parts to the development of the Property:
  - (i) a long term care component (the "Long Term Care Project"); and
  - (ii) a residential life lease component consisting of a number of apartment units and related amenities (the "Life Lease Project"), (collectively referred as the "Project")
2. The Purchaser has signed the Agreement to purchase a life lease unit from the Community in the Life Lease Project, dated the 8<sup>th</sup> day of April, 2005. Pursuant to the Agreement, the Purchaser is obligated to pay deposit installments totaling (\$72,628) (the "Deposit") on account of the purchase price as described in the Agreement.
3. The Purchaser acknowledges and agrees that, such Agreement is a good and valid agreement of purchase and sale enforceable against the Purchaser by the Community and its successors and assigns. In addition, on the date of executing this Agreement, the Purchaser acknowledges that he / she has received from the Community and subsequently reviewed with his/her solicitor a draft copy of the Agreement (the "Right to Occupy Agreement"). The Purchaser acknowledges that the Agreement is substantially settled but the Community has the right to amend the Agreement, in its sole and absolute discretion, from time to time, until it is in a form acceptable to the Community, its lender and any regulatory authority. Notwithstanding any provision of the Agreement to the contrary, the Purchaser agrees to execute the final version of the Agreement forthwith after receiving execution copies from the Community provided that there are no amendments to the purchase price, the exclusive right to occupy the unit and entitlement to net sale proceeds on sale or other substantive provisions of such agreements that would have material adverse effect on the Purchaser. The Purchaser waives any right to claim that the Agreement is void for uncertainty or subject to any right of rescission because the Agreement will not be finalized and / or executed by the parties until a future date.
4. The Deposits paid by the Purchaser may be used by the Community in the construction for the Project. The Deposits are not insured under the Ontario New Home Warranty program or otherwise. There is a builder's warranty of one year, with some elements with an extended warranty.
5. As required by Canada Mortgage and Housing Corporation, the Purchaser acknowledges and agrees that he / she has been advised that the construction lender has the legal right, in its sole and absolute discretion but without any obligation, to insist that the Life Lease Project be registered as a condominium corporation. Further, the Purchaser acknowledges and agrees that he/she has been advised that, in this event, the Purchaser may be required to acquire, but he/she is not entitled to require, a condominium unit rather than a life lease unit on terms and conditions that have been fully explained to the Purchaser at the time of executing this Agreement, which terms and conditions will be reflected in the final version of the Agreement.
6. The Purchaser has received independent legal advice prior to his/her signing this Acknowledgment and Consent Agreement.
7. As required by Canada Mortgage and Housing Corporation, on the date of executing this Agreement and from time to time, the Purchaser agrees to provide to the Community all financial and other information as the Community may reasonably require in order to confirm the credit worthiness of the Purchaser and the Purchaser's ability to complete the transaction of purchase and sale.
8. The Purchaser acknowledges that this Agreement is incorporated into and shall form part of the Agreement to Purchase.

9. The Purchaser agrees that this Acknowledgement and the Agreement are binding on the Purchaser and his/her heirs, executors, administrators, personal legal representatives, successors and assigns. This Acknowledgement and the Agreement shall be for the benefit of and be binding upon each of the parties and their successors and assigns.

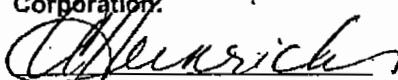
**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Agreement this 8<sup>th</sup> day of April, 2005.

**ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY INC**

Per: 

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

**We have authority to bind the  
Corporation.**

  
Purchaser

\_\_\_\_\_  
Purchaser

THIS IS EXHIBIT "K"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



\_\_\_\_\_  
A Commissioner for Taking Affidavits, etc.

ANDREW A. BURY  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BARRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498



**ROSE OF SHARON - ACKNOWLEDGEMENT AND CONSENT AGREEMENT**

In consideration of the sum of \$1.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and in consideration of the covenants contained herein and in the Right to Occupy Agreement attached to this Agreement, the undersigned, **ANNE MARIE HEINRICHS** individually and collectively called the "Purchaser"), acknowledges and agrees as follows:

1. The Purchaser has been advised by Rose (the "Community") that there are two parts to the development of the Property:
  - (i) a long term care component (the "Long Term Care Project"); and
  - (ii) a residential life lease component consisting of a number of apartment units and related amenities (the "Life Lease Project"), (collectively referred as the "Project")
  
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3. The Purchaser acknowledges and agrees that, such Agreement is a good and valid agreement of purchase and sale enforceable against the Purchaser by the Community and its successors and assigns. In addition, on the date of executing this Agreement, the Purchaser acknowledges that he / she has received from the Community and subsequently reviewed with his/her solicitor a draft copy of the Agreement (the "Right to Occupy Agreement"). The Purchaser acknowledges that the Agreement is substantially settled but the Community has the right to amend the Agreement, in its sole and absolute discretion, from time to time, until it is in a form acceptable to the Community, its lender and any regulatory authority. Notwithstanding any provision of the Agreement to the contrary, the Purchaser agrees to execute the final version of the Agreement forthwith after receiving execution copies from the Community provided that there are no amendments to the purchase price, the exclusive right to occupy the unit and entitlement to net sale proceeds on sale or other substantive provisions of such agreements that would have material adverse effect on the Purchaser. The Purchaser waives any right to claim that the Agreement is void for uncertainty or subject to any right of rescission because the Agreement will not be finalized and / or executed by the parties until a future date.
  
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6. The Purchaser has received independent legal advice prior to his/her signing this Acknowledgment and Consent Agreement.
  
7. As required by Canada Mortgage and Housing Corporation, on the date of executing this Agreement and from time to time, the Purchaser agrees to provide to the Community all financial and other information as the Community may reasonably require in order to confirm the credit worthiness of the Purchaser and the Purchaser's ability to complete the transaction of purchase and sale.
  
8. The Purchaser acknowledges that this Agreement is incorporated into and shall form part of the Agreement to Purchase.

9. The Purchaser agrees that this Acknowledgement and the Agreement are binding on the Purchaser and his/her heirs, executors, administrators, personal legal representatives, successors and assigns. This Acknowledgement and the Agreement shall be for the benefit of and be binding upon each of the parties and their successors and assigns.

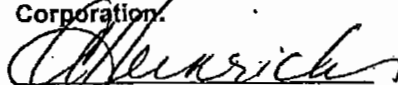
IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement this 8<sup>th</sup> day of April, 2005.

ROSE OF SHARON (ONTARIO)  
RETIREMENT COMMUNITY INC

Per: 


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

We have authority to bind the  
Corporation.

  
Purchaser

\_\_\_\_\_  
Purchaser

THIS IS EXHIBIT "L"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



A Commissioner for Taking Affidavits, etc.

ANDREW A. BURY  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BARRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498

**AMENDMENT TO  
RIGHT TO OCCUPY AGREEMENT**

**THIS AGREEMENT** made this 1<sup>st</sup> day of April, 2010.

**BETWEEN:**

**ROSE OF SHARON (ONTARIO) RETIREMENT  
COMMUNITY INC.**

(herein "Rose")

- and -

*Berg, Robert Assured Care  
Consulting Inc*

(herein "Purchaser")

**WHEREAS** a Right to Occupy Agreement was entered into between Rose and the Purchaser on the 1<sup>st</sup> day of April, 2010; in respect of unit 203 (LM3) including One (1) parking space.

**AND WHEREAS** the parties are desirous of amending the terms of the Right to Occupy Agreement.

**NOW WITNESSETH** that in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. The Purchaser has requested and Rose is prepared to close the life lease purchase and defer the payment of One Hundred Sixty Eight Thousand Dollars (\$168,000.00) (the "Balance") in accordance with the terms and conditions contained in this agreement.
2. The Balance will be secured by a promissory note from the Purchaser having the following terms and conditions:
  - a. Principal amount of One Hundred Thirty Seven Thousand and Nine Hundred Fifty Eight Dollars (\$137,958.00);
  - b. Term of two (2) years;
  - c. Interest rate 6.75% calculated half yearly not in advance;
  - d. Blended monthly payments based on a twenty-five amortization plan;
  - e. Open at any time or times without notice or bonus;

- f. Immediately due and payable in the event the Unit is sold or in the event the Purchaser is in default of the terms and conditions of the Right to Occupy Agreement.
- 3. This Agreement shall be construed in accordance with the laws of the Province of Ontario and treated in all respects as an Ontario contract.
- 4. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and permitted assigns.
- 5. Notice may be given to the parties at the following addresses:

Vendor  
 Rose of Sharon (Ontario) Retirement Community Inc.  
 165 Vaughan Road, Toronto, ON M6C 2L9

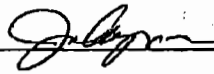
Purchaser

Address : ACC Assured Care Consulting Inc.

113 Yorkville Ave., Suite 300, Toronto, Ontario M5R1C1

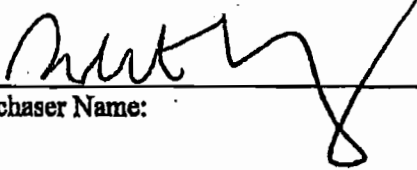
IN WITNESS WHEREOF the parties have hereunto set their hands and seals this 1<sup>st</sup> day of April, 2010.

SIGNED, SEALED AND DELIVERED ) ROSE OF SHARON (ONTARIO)  
 ) RETIREMENT COMMUNITY INC.

) Per: 

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

) I/We have authority to bind the corporation.

)   
 Purchaser Name:

  
 Witness

\_\_\_\_\_  
 Witness

) \_\_\_\_\_  
 Purchaser Name:

**PROMISSORY NOTE**Amount: \$137,958.00Date: April 1, 2010

**FOR VALUE RECEIVED** \$137,958.00 ("the Maker") acknowledges him/her/themselves indebted and hereby promises to pay to **ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY INC.** "the Lender") at its address noted below or at such other place as the Lender may designate in writing to the Maker from time to time, the principal sum of One Hundred Thirty Seven Thousand and Nine Hundred Fifty Eight Dollars (\$137,958.00) (the "principal sum") in lawful money of Canada together with interest thereon as hereinafter provided, in respect of unit 203 (LM3).

**1. ADDRESSES OF PARTIES:**

The Maker declares its address to be: ACC Assured Care Consulting Inc.

113 Yorkville Ave., Suite 300, Toronto, Ontario M5R1C1

The Lender declares its address to be: 165 Vaughan Road, Toronto, ON M6C 2L9

**2. INTEREST:**

The Principal Sum hereunder shall bear interest at the rate of 6.75 per cent (6.75%) per annum, calculated semi-annually, not in advance, as well after as before maturity both before and after default on such portion of the Principal Sum as remains from time to time unpaid.

**3. PAYMENTS**

- (a) **Blended Payments of Principal and Interest:** Principal and interest from the date hereof shall be payable by the Maker in blended equal consecutive monthly instalments of Nine Hundred Thirty Nine Dollars and Eighty Seven Cents (\$939.87) each on the 1<sup>st</sup> day of each and every month, commencing on the 1<sup>st</sup> day of April, 2010, until the 1<sup>st</sup> day of April, 2012, in each year, and the balance, if any, of the Principal Sum shall be due on the 1<sup>st</sup> day of April, 2012.

Provided that the aforesaid instalments are to be applied first in payment of the interest due from time to time, calculated at the aforementioned rate of interest and the balance to be applied in reduction of the Principal Sum, subject however to the provisos hereinafter contained.

- (b) **Due on Demand:** Notwithstanding anything else contained herein the Principal Sum and interest owing hereunder shall be due on demand. In the event the Maker is in breach of their obligations contained in the Right to Occupy Agreement between the parties dated the 1<sup>st</sup> day of April, 2010.
- (c) **Open:** Provided that the indebtedness of the Maker hereunder shall be open to prepayment in whole or in part on any regular payment date without notice, bonus or

penalty.

- (d) **Prepayment Penalty:** The Maker shall be entitled to prepay any part of the Principal Sum ~~upon payment to the Lender of an amount equal to three months' interest~~   
 *without penalty. RB*
- (e) **Acceleration:** Provided that in default of a payment of interest or in default of a payment of instalments of principal or in default of the performance of any of the obligations of the Maker hereunder, the balance of the Principal Sum and interest shall immediately become due and payable at the option of the Lender. The Maker shall not be relieved from such default without the Lender's written consent first being obtained.
- (f) **Death of Maker:** Entire balance of principal, interest and any other costs owing under the terms hereof shall become immediately due and payable at the option of the Lender on the death of the Maker or any one of them.

4. **COVENANTS BY MAKER:**

The Maker covenants and agrees with the Lender as follows:

- (a) **Right to Occupy Agreement:** To abide by the terms and conditions of the Right to Occupy Agreement dated the 1<sup>st</sup> day of April, 2010; To provide to the Lender a full copy of its financial statements within 90 days of its fiscal year end.

5. **COSTS:**

And the Maker hereby covenants with the Lender that he will pay the costs, charges and expenses of and incidental to the taking, preparation, execution and filing of Notice of this Note and any documents relating thereto and of every renewal thereof, and also all costs which the Lender may incur by reason of the default of the Maker in payment of the moneys advanced hereunder, including costs between solicitor and client, and all bailiff's and other fees and expenses and bank charges.

6. **DEFAULT:**

Upon the occurrence of any default on the part of the Maker as hereinafter defined, all indebtedness hereunder shall, at the option of the Lender, forthwith become due and payable.

The Maker shall be in default under this Promissory Note upon the occurrence of any of the following events:

- (a) the Maker shall fail to pay any of the indebtedness when due or to observe or perform any of the covenants contained herein;
- (b) the Maker shall become insolvent or commit an act of bankruptcy or make an assignment in bankruptcy.
- (c) the Maker shall breach the covenant in paragraph 4 above;

**7. LIMITATIONS:**

- (a) This Promissory Note is made for business purposes and is a "business agreement" as defined in the Limitations Act, 2002 (herein "the Act"); and
- (b) No limitation periods found in the Act, other than the ultimate limitation period found in Section 15 of that Act, shall apply to this Promissory Note and to the obligations imposed by this Promissory Note.

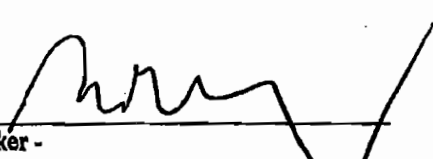
**8. INTERPRETATION AND GENERAL:**


- (a) **Proof of Compliance:** The Lender may require reasonable proof that the borrower is not in default under the terms of this Promissory Note and failing the Maker providing such reasonable proof, the Lender may take whatever steps are necessary to obtain such proof and the costs of obtaining such proof shall be added to the principal amount outstanding on this Note.
- (b) **Judgments:** Provided and it is hereby agreed, that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Lender's right to interest at the rate and times herein provided; and further that said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.
- (c) **Advance of Funds:** This Promissory Note is issued pursuant to the advance of funds by the Lender to the Maker in the amount of the face value of this Promissory Note, the receipt of which is acknowledged by the Maker.
- (d) **Successors:** This Promissory Note and all of its provisions, terms and conditions shall be binding upon and enure to the benefit of the Lender, its successors and assigns and the Maker and its successors. The term "successors" shall include, without limitation, any company resulting from the amalgamation of a party hereto with any other company.
- (e) **Waiver of Presentment:** The Maker of this Promissory Note does hereby waive presentment for payment, notice of nonpayment, protest and notice of protest and does hereby consent to all extensions and renewals hereto, without notice.
- (f) **Laws of Ontario:** The provisions of this Promissory Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario.
- (g) **Number - Gender:** Provided and it is hereby agreed that in construing these presents the words "Maker" and "Lender" and the personal pronoun "it" or "its" relating thereto and used therewith, shall be read and construed as "Maker or Makers," "Lender or Lenders," and "his," "her," "its" or "theirs," respectively, as the number and gender of the party or parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted; and that all rights, advantages, privileges, immunities, powers and things hereby secured to the Lender or Lenders shall be equally secured to and exercisable by his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be; and that all covenants, liabilities and obligations entered into or imposed hereunder upon the Maker or Makers shall be equally binding upon his, her or their heirs, executors, administrators and permitted assigns, or successors and assigns as the case may be; and that all such covenants and liabilities and obligations shall be joint and several.



- (i) **Joint and Several Liability:** All the covenants, liability and obligations entered into or imposed hereunder upon the Maker or Makers shall be joint and several.
- (h) **Severability:** Provided that if any of the covenants or conditions in this Promissory Note contained shall be void for any reason if shall be severed from the remainder of the provisions hereof and such remainder shall remain in full force and effect notwithstanding such severance;

**DATED** at Toronto, Ontario, this 1<sup>st</sup> day of April, 2010

  
 \_\_\_\_\_  
 The Maker -

  
 \_\_\_\_\_  
 The Lender -

**JOHN YOON, CEO  
ROSE OF SHARON**

THIS IS EXHIBIT "M"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



---

A Commissioner for Taking Affidavits, etc.

ANDREW A. BURY  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BARRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498

*Rm 2* ✓

**ACKNOWLEDGEMENT AND POSTPONMENT**

TO: PEOPLES TRUST COMPANY

AND TO: TRAUB • MOLDAVER, its solicitors

RE: PEOPLES TRUST COMPANY (the "Lender")  
loan to ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY ("Community")  
15 and 17 Maplewood Avenue Toronto (the "Property")

WHEREAS:

- A. Community as vendor has entered into a Right To Occupy Agreement (the "Agreement") with the undersigned whereby the undersigned has/have agreed to purchase the right to use, occupy and enjoy a residential dwelling unit (the "Unit") at the Property;
- B. The undersigned has/have paid and will pay to Community certain deposits as portions of the Right to Occupy Costs as set out in the Agreement;
- C. Community has entered into a loan arrangement (the "Loan") with the Lender with respect to the Property and has or will grant to the Lender certain security for the Loan including a Charge/Mortgage of the Property and an assignment of the Agreement (collectively, the "Lender's Security").

NOW THEREFORE, in consideration of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the undersigned acknowledges, covenants and agrees as follows:

- 1. The undersigned acknowledge(s) that Community has assigned to the Lender, all of Community's right, title and interest in the Agreement including its right to receive all deposits paid or to be paid thereunder and all proceeds due to Community thereunder; and
- 2. The undersigned agree(s) and acknowledge(s) that all deposits paid and to be paid under the Agreement are subordinated and postponed to, and shall not rank in priority to, the Loan and the Lender's Security.

The covenants and agreements contained herein shall extend to and be binding upon the undersigned and their heirs, personal representatives, successors and assigns.

This Acknowledgement and Postponment may be executed and delivered by facsimile or email transmission and, when so executed and delivered, shall be binding on the undersigned effective upon such execution and delivery.

DATED this 20 day of April, 2007.

WITNESS:

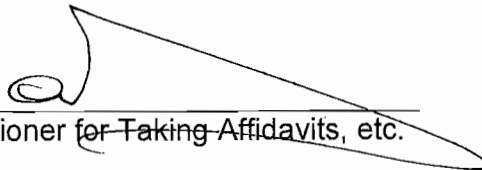
*Mary Yantz*

*LMH Anne Marie Heinrichs*

Name:  
Unit Number:

Name:  
Unit Number:

THIS IS EXHIBIT "N"  
TO THE AFFIDAVIT OF  
**MARTIN MALLICH**  
SWORN BEFORE ME THIS  
4<sup>TH</sup> DAY OF APRIL, 2013.



A Commissioner for Taking Affidavits, etc.

ANDREW A. BURY  
BARRISTER & SOLICITOR  
SUITE 2300, 550 BURRARD STREET  
P.O. BOX 30, VANCOUVER, B.C. V6C 2B5  
TELEPHONE (604) 683-6498

## PROMISSORY NOTE

Amount: \$137,958.00Date: April 1, 2010

**FOR VALUE RECEIVED** \$137,958.00 ("the Maker") acknowledges him/her/themselves indebted and hereby promises to pay to **ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY INC.** ("the Lender") at its address noted below or at such other place as the Lender may designate in writing to the Maker from time to time, the principal sum of One Hundred Thirty Seven Thousand and Nine Hundred Fifty Eight Dollars (\$137,958.00) (the "principal sum") in lawful money of Canada together with interest thereon as hereinafter provided, in respect of unit 203 (LM3).

1. **ADDRESSES OF PARTIES:**

The Maker declares its address to be: ACC Assured Care Consulting Inc.

113 Yorkville Ave., Suite 300, Toronto, Ontario M5R1C1

The Lender declares its address to be: 165 Vaughan Road, Toronto, ON M6C 2L9

2. **INTEREST:**

The Principal Sum hereunder shall bear interest at the rate of 6.75 per cent (6.75%) per annum, calculated semi-annually, not in advance, as well after as before maturity both before and after default on such portion of the Principal Sum as remains from time to time unpaid.

3. **PAYMENTS**

- (a) **Blended Payments of Principal and Interest:** Principal and interest from the date hereof shall be payable by the Maker in blended equal consecutive monthly instalments of Nine Hundred Thirty Nine Dollars and Eighty Seven Cents (\$939.87) each on the 1<sup>st</sup> day of each and every month, commencing on the 1<sup>st</sup> day of April, 2010, until the 1<sup>st</sup> day of April, 2012, in each year, and the balance, if any, of the Principal Sum shall be due on the 1<sup>st</sup> day of April, 2012.

Provided that the aforesaid instalments are to be applied first in payment of the interest due from time to time, calculated at the aforementioned rate of interest and the balance to be applied in reduction of the Principal Sum, subject however to the provisos hereinafter contained.

- (b) **Due on Demand:** Notwithstanding anything else contained herein the Principal Sum and interest owing hereunder shall be due on demand. In the event the Maker is in breach of their obligations contained in the Right to Occupy Agreement between the parties dated the 1<sup>st</sup> day of April, 2010.
- (c) **Open:** Provided that the indebtedness of the Maker hereunder shall be open to prepayment in whole or in part on any regular payment date without notice, bonus or

penalty.

- (d) **Prepayment Penalty:** The Maker shall be entitled to prepay any part of the Principal Sum ~~upon payment to the Lender of an amount equal to three months' interest.~~  
*without penalty. RB*
- (e) **Acceleration:** Provided that in default of a payment of interest or in default of a payment of instalments of principal or in default of the performance of any of the obligations of the Maker hereunder, the balance of the Principal Sum and interest shall immediately become due and payable at the option of the Lender. The Maker shall not be relieved from such default without the Lender's written consent first being obtained.
- (f) **Death of Maker:** Entire balance of principal, interest and any other costs owing under the terms hereof shall become immediately due and payable at the option of the Lender on the death of the Maker or any one of them.

#### 4. COVENANTS BY MAKER:

The Maker covenants and agrees with the Lender as follows:

- (a) **Right to Occupy Agreement:** To abide by the terms and conditions of the Right to Occupy Agreement dated the 1<sup>st</sup> day of April, 2010; To provide to the Lender a full copy of its financial statements within 90 days of its fiscal year end.

#### 5. COSTS:

And the Maker hereby covenants with the Lender that he will pay the costs, charges and expenses of and incidental to the taking, preparation, execution and filing of Notice of this Note and any documents relating thereto and of every renewal thereof, and also all costs which the Lender may incur by reason of the default of the Maker in payment of the moneys advanced hereunder, including costs between solicitor and client, and all bailiff's and other fees and expenses and bank charges.

#### 6. DEFAULT:

Upon the occurrence of any default on the part of the Maker as hereinafter defined, all indebtedness hereunder shall, at the option of the Lender, forthwith become due and payable.

The Maker shall be in default under this Promissory Note upon the occurrence of any of the following events:

- (a) the Maker shall fail to pay any of the indebtedness when due or to observe or perform any of the covenants contained herein;
- (b) the Maker shall become insolvent or commit an act of bankruptcy or make an assignment in bankruptcy.
- (c) the Maker shall breach the covenant in paragraph 4 above;

**7. LIMITATIONS:**

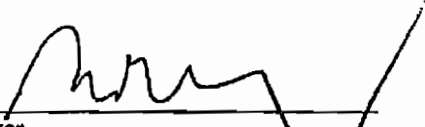
- (a) This Promissory Note is made for business purposes and is a "business agreement" as defined in the Limitations Act, 2002 (herein "the Act"); and
- (b) No limitation periods found in the Act, other than the ultimate limitation period found in Section 15 of that Act, shall apply to this Promissory Note and to the obligations imposed by this Promissory Note.

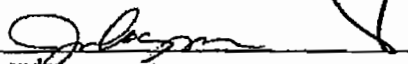
**8. INTERPRETATION AND GENERAL:**

- (a) **Proof of Compliance:** The Lender may require reasonable proof that the borrower is not in default under the terms of this Promissory Note and failing the Maker providing such reasonable proof, the Lender may take whatever steps are necessary to obtain such proof and the costs of obtaining such proof shall be added to the principal amount outstanding on this Note.
- (b) **Judgments:** Provided and it is hereby agreed, that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Lender's right to interest at the rate and times herein provided; and further that said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.
- (c) **Advance of Funds:** This Promissory Note is issued pursuant to the advance of funds by the Lender to the Maker in the amount of the face value of this Promissory Note, the receipt of which is acknowledged by the Maker.
- (d) **Successors:** This Promissory Note and all of its provisions, terms and conditions shall be binding upon and enure to the benefit of the Lender, its successors and assigns and the Maker and its successors. The term "successors" shall include, without limitation, any company resulting from the amalgamation of a party hereto with any other company.
- (e) **Waiver of Presentment:** The Maker of this Promissory Note does hereby waive presentment for payment, notice of nonpayment, protest and notice of protest and does hereby consent to all extensions and renewals hereto, without notice.
- (f) **Laws of Ontario:** The provisions of this Promissory Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario.
- (g) **Number - Gender:** Provided and it is hereby agreed that in construing these presents the words "Maker" and "Lender" and the personal pronoun "it" or "its" relating thereto and used therewith, shall be read and construed as "Maker or Makers," "Lender or Lenders," and "his," "her," "its" or "theirs," respectively, as the number and gender of the party or parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted; and that all rights, advantages, privileges, immunities, powers and things hereby secured to the Lender or Lenders shall be equally secured to and exercisable by his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be; and that all covenants, liabilities and obligations entered into or imposed hereunder upon the Maker or Makers shall be equally binding upon his, her or their heirs, executors, administrators and permitted assigns, or successors and assigns as the case may be; and that all such covenants and liabilities and obligations shall be joint and several.

- (i) **Joint and Several Liability:** All the covenants, liability and obligations entered into or imposed hereunder upon the Maker or Makers shall be joint and several.
- (h) **Severability:** Provided that if any of the covenants or conditions in this Promissory Note contained shall be void for any reason if shall be severed from the remainder of the provisions hereof and such remainder shall remain in full force and effect notwithstanding such severance;

**DATED** at Toronto, Ontario, this 1<sup>st</sup> day of April, 2010

  
 \_\_\_\_\_  
 The Maker -

  
 \_\_\_\_\_  
 The Lender -

JOHN YOON, CEO  
ROSE OF SHARON

g:\4168605524\2010\007\promissory note - v2.doc [7]



**PEOPLES TRUST COMPANY**  
Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(PROCEEDING COMMENCED AT TORONTO)**

**AFFIDAVIT OF MARTIN MALLICH**  
**(Sworn April 4, 2013)**

**Gowling Lafleur Henderson LLP**

Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

**Clifton Prophet (LSUC # 34845K)**

Tel: (416) 862-3509

Fax: (416) 863-7661

**Cara Sklar (LSUC # 60289H)**

Tel: (416) 862-4370

Fax: (416) 863-7661

Solicitors for the Applicant,  
Peoples Trust Company

**PEOPLES TRUST COMPANY**  
Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(PROCEEDING COMMENCED AT TORONTO)**

**MOTION RECORD**

**Gowling Lafleur Henderson LLP**

Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

**Clifton Prophet (LSUC No.: 34345K)**

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