



## **Defeasance in Canadian CMBS**

*CMSA, Canadian Chapter  
Defeasance Committee*

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## **Introduction**

The committee was formed to address many issues with the use of defeasance collateral in the Canadian CMBS market. The use of defeasance was a structure influenced by the US CMBS market but not readily transferable in its US form. The experience with this collateral and differences in Canadian law has led to several questions and documentation differences that we felt as an industry we could address.

## **Problem Statement**

The committee identified several areas that can be addressed in terms of standardization and recommendation for best practices. Areas that were identified as needing clarification or standardization are as follows:

- 1) Documentation used when defeasing a loan is not standardized, but may very well lend itself to standardization.
- 2) Partial Defeasance; Some loan documents are not entirely clear on how partial defeasance should be treated.
- 3) The use of GOCs as the sole defeasance collateral is expensive for borrowers to defease their loan. Is it possible to use other collateral?
- 4) Borrower Tax Treatment
  - a. Can the use of a successor borrower be done without causing an adverse tax consequence to the borrower?
  - b. Does the industry need to require successor borrowers if the original borrower was not an SPE?
- 5) Borrower Counsel Opinions on Enforcement
- 6) PPSA Releases, when is this necessary?
- 7) What are the issues involved with releasing the guarantee vs. releasing the borrower?
- 8) Is there guidance we can provide to the borrower who is preparing to do a defeasance?

## Documentation

The actual form documentation can be standardized; we have attached sample documents that have been previously agreed upon by the committee participants (see pages \_\_\_\_).

Documents needed to complete a defeasance include:

1. Defeasance Pledge and Security Agreement (DPSA)
2. Account Agreement
3. Certificate of Officer re Satisfaction of Defeasance Conditions
4. Borrower's Counsel Opinion (including searches)
5. Direction to Lender by MS re execution of Discharge
6. Certificate of Status re Borrower
7. Waiver and Consent Agreement
8. Promissory Note
9. Amending Agreement (can be included in DPSA)
10. Partial Release
11. Independent Accountant Verification of Collateral

## Jurisdiction

The committee recommends that defeasance transactions are completed subject to Ontario law.

## Partial Defeasance

The committee looked to offer guidance to multiple-property loans in which a partial defeasance is requested. In some cases, the language in the mortgage document is vague and suggests that on the defeasance of each property separately, a borrower is required to pledge more than 100% of the allocated loan amount (to account for adverse selection), and that by the time one defeases each of the properties securing the entire loan, the borrower would have pledged more than 100% of the collateral in security obligations. See example below in which the borrower ends up with a loan that is over collateralized by \$850,000:

Example:

3 Prop. Portfolio	Allocated Amount	Date Defeased	Defeased Portion	Difference
Landmark I	1,500,000	March 1, 2004	1,875,000	
Landmark II	1,000,000	March 1, 2005	1,250,000	
Landmark III	900,000	March 1, 2007	1,125,000	
Total	3,400,000		4,250,000	<b>+850,000</b>

The committee recommends that if the defeasance language is vague, it would be treated as contemplated in the second example and the last property defeased should re-balance the portfolio to the outstanding loan amount.

3 Prop. Portfolio	Allocated Amount	Date Defeased	Defeased Portion	Difference
Landmark I	1,500,000	March 1, 2004	1,875,000	
Landmark II	1,000,000	March 1, 2005	1,250,000	
Landmark III	900,000	March 1, 2007	275,000	
Total	3,400,000		3,400,000	<b>0</b>

If the documents are silent on the partial defeasance amount in a multi-property loan, the committee recommends the industry standard of 125% of the then allocated loan amount. Again, with the ability to re-balance when the entire loan is defeased.

### **Use of Non-GoC Collateral**

The committee quickly agreed that the industry should read the obligation for a borrower to pledge GoC bonds as including those bonds which are obligations of the Crown. New transaction documents have already incorporated this position and state the following:

**“Defeasance Collateral”:** With respect to any Defeasance Loan, direct, non-callable Government of Canada obligations or other direct, non-callable obligations of Export Development Corporation, Business Development Bank of Canada, Canada Mortgage and Housing Corporation, Canada Housing Trust or Canadian Wheat Board if and so long as, in each case (a) the issuer of such obligations is or remains a Crown corporation or agency of the Government of Canada and such obligations are guaranteed or backed by the Government of Canada, and (b) the pledge of such obligations as security for such Defeasance Loan will not affect the status of any Offered Certificate as a qualified investment for Deferred Income Plans (as defined in the Prospectus) under the Act. All such obligations shall be acceptable to the Rating Agencies.

To ease any ambiguities, mortgage loan documents should be drafted to include language similar to that noted above.

### **Cost of using GoC Bonds**

Costs to defease a loan in Canada are still appreciably higher than in the US owing to the lower yield of GoC and Canadian Crown debt relative to the defeasance collateral available to a US borrower. The premium to defease in the US is around 10%, while the premium to defease in Canada is approximately 15%. In addition to the expansion of defeasance collateral definition, the committee explored the potential use of provincials to help maximize defeasance execution and potentially save the borrower money. The committee looked at using highly rated provincials to see the effects on cost savings. When using 10-20% provincial debt, the savings to the borrower do not appear to be substantial.

Members of the committee spoke with several Canadian investors in the pass-through notes, most of which would prefer to keep to the existing definition, since there are situations where the use of provincials might not be credit neutral.

However, market forces may dictate that the industry may need to revisit this issue in the future if GoCs and Canadian Crown debt are not readily available because it will make for an inefficient portfolio and become cost prohibitive to borrowers.

## **Borrower Tax Treatment**

The committee addressed the issue of having an SPE or bankruptcy remote entity hold the defeasance collateral. Most Canadian borrowing entities are not originated as an SPE for Canadian CMBS loans. In many cases, SPE borrowers refinance the property without transferring the property and thereby increase (although not defeat) the protections of having an SPE covenantor. By not having an SPE hold the defeasance collateral, or where the SPE holds the defeasance collateral and refinances the property, the defeasance payments could be subject to a stay in the event of borrower bankruptcy. There is no case law to support the proposition that the defeasance collateral would be immediately released from bankruptcy. The committee expects that the protections afforded by the documents put in place at the time of the defeasance will protect the defeasance collateral as security for the loan and expect that a properly informed judge would permit the release the defeasance collateral and the resumption of payments under the loan within a matter of months, but again, there is no case law on point. In addition, recent changes to Ontario law have increased the protections to secured creditors holding securities as collateral such that it is unlikely that other secured creditors of the borrower will be successful in an attempt to impugn the pledge of collateral to the custodian. In light of the new statutory protections, it is more likely that the custodian will be successful in fully recovering all payments due under the loan by fully recovering all bonds pledged by the borrower. In CMBS deals, the servicer would deem the interrupted payments recoverable and advance while funds were subject to a stay. The trust would bear the expense of interest on advances; any expenses incurred defending the collateral; and potentially a modification or liquidation fee as the bankruptcy would signify a special servicer transfer event.

To circumvent this issue, there are several potential structural solutions that limit the potential risk of borrower bankruptcy. The first is to require the borrower to create an SPE to hold the loan upon origination of the loan, and to require that on a refinance of the property, the SPE no longer hold the property. In the latter case, there are additional significant expenses to the borrower, including capital gain and land transfer tax. The second solution is a sister-borrower scenario where a new SPE covenantor becomes a primary obligor under the loan and undertakes to complete the defeasance as performance on behalf of both the original borrower and the SPE. As primary obligor, the new SPE is entitled to complete the defeasance, however, the committee notes that there are significant tax driven uncertainties for the borrower and the SPE. Specifically, there remains the question as to whether the borrower will be denied the deductibility of the ongoing payments under the mortgage where the SPE has completed the defeasance. The committee recommends that the sister-borrower structure only be put in place where the borrower has access to appropriate tax advice to build in protections for the ongoing deductibility of the indebtedness. Additionally, some over collateralization can be required to absorb the potential expenses.

Ideally, there are un-rated bonds in each CMBS transaction that take the risk of borrower insolvency and the expenses that the trust will incur as a result. However, if the loan is defeased, the trust should no longer have to bear the risk of borrower insolvency. There may be other structures that help to mitigate this risk. As new structures are developed the committee will update this working document.

The committee recommends that CMSA-Canada review the merits of helping to lobby Revenue Authority to rule on the novation issue.

### **Borrower Counsel Opinions on Enforcement**

The perfection opinion will confirm that a security interest has been created, that the interest has been perfected and that no further action is necessary to perfect the security interest. Borrower's counsel will be required to give an authorization/enforceability opinion confirming the (i) the enforceability of the defeasance documents against the borrower and (ii) that all corporate steps have been taken by the borrower to enter into the transaction. This opinion may be combined with or separate from the perfection opinion.

Because defeasance is a new concept in Canada, borrowers may have difficulty finding local counsel that can give an educated opinion. The defeasance consultant or servicer working on the transaction should be able to suggest counsel that can give satisfactory opinions.

### **PPSA Searches**

The general intent of the PPSAs is to allow lenders and sellers register their interest in the personal property of a debtor to secure payment of the debt and to establish a priority position in the collateral. Generally, the PPSA is a "race to register" system whereby if you register your interest first, your security interest has priority over someone who registers after you, subject to various alternate forms of perfection such as perfection by possession. The committee recommends that PPSA searches must be done in all defeasances. If a PPSA search turns up any problematic registrations, counsel should speak to them in the opinion, as well as notate what has been done to address them.

Despite the fact that in a defeasance transaction, perfection is completed by possession, and despite the recent changes to Ontario law in respect of the pledge of securities, the Committee recommends that servicer's counsel should also register a financing statement in respect of the pledge of the Defeasance Collateral under the PPSA so that third parties are aware that there is a security interest in the Defeasance Collateral in favor of the Custodian for the benefit of note holders.

Note that recent changes to Ontario law confer on the Custodian, as secured party, additional protections as the custodian has perfected by possession of the bonds (either by way of entitlement or by way of control by agreement). We expect that the pledge documents confer "protected purchaser" status on the Custodian in respect of the defeasance collateral, as that term is defined in the Securities Transfer Act (Ontario).

## **Releasing the Guarantee vs. Releasing the Borrower**

Generally, a borrower who undertakes a defeasance transaction is not entitled to a release of a recourse guarantee, and any third party guarantor or indemnitor is likewise not entitled to a release of any guarantees put in place at the time the loan was put into place. The position of the servicer is that the obligations under the loan documents endure and the protections afforded by the recourse guarantees should also continue. The guarantees and indemnities afford significant additional protection to the interests of the Custodian and the note holders should any shortfall or additional costs, fees or expenses be incurred. That being said, there are two circumstances where releases are appropriate: (1) releases of those parts of guarantees and indemnities that relate solely to the use, operation or ownership of the land (such as misappropriation of rents); or (2) in very limited circumstances, the servicers and rating agencies are amenable to granting releases of guarantors where appropriate protections are put into place. Such releases are evaluated separately on a “deal-by-deal” basis and releases are not to be granted as a matter in due course.

A release of a borrower following defeasance is not appropriate in any circumstance. A release raises the risk that the loan undergoes novation such that there is a deemed disposition of the loan and an immediate reacquisition at fair market value, with such gain or loss being passed-through to the holders of the notes.

### **Guidance to the Borrower**

In general there are a few things the industry can provide as guidance to the borrower. Defeasances take time, generally no less than 30 days from when the process is started. Most borrowers choose to bring on a defeasance consultant that liaises between the borrower, the servicer and other third parties involved in the CMBS trust.

The defeasance process can take longer if the loan docs do not permit defeasance, especially if the PSA does not address the issue, because additional consents are required from the CCR. This can be a challenge when both docs are silent. Not all CCR's are keen to amend loan documents.

This white paper helps identify the list of documents that are needed with each defeasance and also provides sample documents.

### **Summary**

The committee members met and discussed the issues that are outlined in the white paper. As part of the exposure of this document, the committee has recommended that they hold a training call to be able to promote and share their knowledge and experience with the other members of the industry. This may require several separate training secessions/telephone calls/presentations especially for the subservicers and loan originators as these groups tend to handle many of the initial borrower inquiries for a defeasance.



**Appendix I: Sample Form Defeasance Pledge & Security Agreement**

**DEFEASANCE PLEDGE AND SECURITY AGREEMENT**

Made as of [●]  
Between  
[●]  
as Pledgor  
and  
●,  
as Custodian for the registered certificate holders of  
●  
**COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES ●**  
as Pledgee  
and  
●  
as Servicer

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MCMILLAN BINCH MENDELSON LLP

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## DEFEASANCE PLEDGE AND SECURITY AGREEMENT

THIS DEFEASANCE PLEDGE AND SECURITY AGREEMENT is made as of [●], between [●] (the “**Pledgor**”), ●, as custodian (the “**Custodian**”) under the Pooling and Servicing Agreement dated as of [●] (as from time to time amended, restated, supplemented or modified, the “**Pooling and Servicing Agreement**”) for the registered certificate holders in respect of ● Commercial Mortgage Pass-Through Certificates, Series [●]-Canada [●] (the “**Certificates**”) together with its successors and assigns, as secured party (in such capacity, the “**Pledgee**”) and ●, as Master Servicer under the Pooling and Servicing Agreement (the “**Servicer**”).

### RECITALS:

A. [●] (the “**Lender**”) made a loan to the Pledgor in the original principal amount of [●] dollars (\$●) (the “**Loan**”) pursuant to a commitment letter dated [●] between the Pledgor and the Lender (as from time to time amended, restated, supplemented or modified, the “**Commitment**”) and a loan agreement dated [●] between the Pledgor and the Lender (as from time to time amended, restated, supplemented or modified, the “**Loan Agreement**”).

B. The Loan is further evidenced and secured by that certain Charge/Mortgage of Land registered on [●] as Instrument No. [●] executed by the Pledgor in favour of the Lender (the “**Mortgage**”), granting to the Lender, among other things, a lien on the real property described in the said Mortgage (the “**Property**”), together with a General Assignment of Rents and Leases registered on [●] as Instrument No. [●] executed by the Pledgor in favour of the Lender (the “**Assignment**”). The Loan is further evidenced and secured by various other documents executed by the Pledgor, and others in favour of the Lender and the Pledgee (together with the Commitment, the Loan Agreement, the Mortgage and the Assignment, collectively the “**Loan Documents**”).

C. Under a mortgage loan purchase agreement, the Lender sold and assigned all of its right, title and interest in and to the Loan and the Loan Documents to Merrill Lynch Financial Assets Inc. (the “**Issuer**”).

D. Under the Pooling and Servicing Agreement, the Issuer sold and assigned all of its right, title and interest in and to the Loan and the Loan Documents to the Pledgee as of [●].

E. Pursuant to the Loan Documents, the Pledgor has requested that the Pledgee release and discharge the lien of the Mortgage from the Property upon the delivery and pledge by the Pledgor of substitute security for the Loan.

F. Pursuant to the Loan Documents, it is a condition precedent to the Pledgee’s obligation to release and discharge the lien of the Mortgage and other security from the Property that the Pledgor grant a perfected first priority security interest in the Pledged Collateral (as hereinafter defined) to the Pledgee to secure the payment and performance in full when due of all amounts payable under the Loan Documents.

G. The Pledgor is the legal and beneficial owner of the securities listed in Schedule A hereto (collectively, the “**Securities**”).

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1 – INTERPRETATION**

### **1.1 Definitions**

The following terms shall have the following meanings when used herein. Each capitalized term not otherwise defined in this Agreement has the meaning given to it in the Loan Documents.

- (1) **Account Agreement** means the account agreement dated the date hereof between the Pledgor, the Pledgee and the Servicer, including any recitals, schedules and exhibits to that agreement, as amended, restated, supplemented or modified from time to time.
- (2) **Adverse Claim** has the meaning given to it in the STA.
- (3) **Agreement** means this agreement including any recitals, schedules and exhibits to this agreement, as amended, supplemented, restated or modified from time to time.
- (4) **Business Day** means any day other than a Saturday, a Sunday or a day on which banking institutions in the city of Toronto, or cities in which the corporate trust office of the Pledgee or the head office of the Servicer are located, are authorized or obligated by law or executive order to remain closed.
- (5) **Certificates** has the meaning given to it in the Recitals.
- (6) **Certification** has the meaning given to it in Section 4.8.
- (7) **Defeasance Documents** means:
  - (a) this Agreement;
  - (b) the Account Agreement;
  - (c) the Note;
  - (d) a certificate of the Pledgor dated the date hereof certifying that all conditions precedent to the defeasance have been satisfied;
  - (e) an opinion of counsel stating, among other things, that the Pledgee has a perfected first priority security interest in the Pledged Collateral and that this Agreement, the Account Agreement and the Note and any other documents delivered in respect thereof are duly authorized, executed and delivered and are valid, binding

and enforceable agreements of the Pledgor, enforceable in accordance with their respective terms;

- (f) written confirmation from the Rating Agencies confirming that the release herein contemplated will not result in a downgrade in the ratings of the Certificates or any securities backed by or representing an interest in the Loan;
- (g) a certificate of [certified accountant] as to the sufficiency of the Pledged Collateral; and
- (h) all financing statements or financing change statements filed in connection with this Agreement or any other security agreement in favour of the Pledgee,

all as amended, restated, supplemented or modified from time to time.

(8) **Entitlement Order** means an “entitlement order”; as such term is defined in the STA, with respect to the Pledged Collateral, originated by the Pledgee, or the Servicer on behalf of the Pledgee, or the Special Servicer on behalf of the Pledgee.

(9) **Event of Default** means the occurrence and continuation of one or more of the following:

- (a) any default in the payment when due of any principal of or interest on the Loan, including the entire balance and accrued but unpaid interest due under the Loan on the Maturity Date, or default in the payment when due of any other amount payable with respect to the Secured Obligations; or
- (b) any representation, warranty or certification made by the Pledgor for the benefit of the Pledgee, the Servicer or the Special Servicer, or any of them in any Loan Document, Defeasance Document (or in either case, any modification or supplement thereto), or in any certificate, report, financial statement or other item furnished to the Pledgee, the Servicer or the Special Servicer, or any of them in connection with this transaction shall prove to have been false or misleading in any material respect as of the time made or furnished; or
- (c) any of the Loan Documents or Defeasance Documents shall be rescinded or declared null and void, or shall fail to create or perfect the liens, rights, powers and privileges purported to be created thereby (including a perfected security interest in and lien on all of the Pledged Collateral, subject to no prior, equal or subsequent lien) (excepting any liens on the Property which are expressly being released by the Pledgee following the execution and delivery by the Pledgor of the Defeasance Documents); or
- (d) the Pledged Collateral or any part thereof or interest therein becomes subject to any security interest, pledge, covenant, lien, or other encumbrance whether equal, junior or senior to the interest of the Pledgee and whether by operation of law or otherwise; or

- (e) the Pledged Collateral or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise disposed of by the Pledgor, or is the subject of any attempted sale, assignment, transfer or conveyance without written consent of the Pledgee or the Servicer, on behalf of the Pledgee; or
- (f) any direct or indirect interest in the Pledgor becomes subject to any security interest, pledge, covenant, lien, or other encumbrance whether equal, junior or senior to the interest of the Pledgee and whether by operation of law or otherwise, save and except where the Pledgee has provided its prior written consent to same, and the Rating Agency has issued a rating confirmation; or
- (g) the Pledgor shall default in the performance of any of the other obligations under the Loan Documents (except for a default relating solely and specifically to the Property) or the Defeasance Documents; or
- (h) any event which constitutes an event of default under the Mortgage (except for an event of default relating solely and specifically to the Property); or
- (i) the Pledgor:
  - (i) institutes proceedings for substantive relief in any bankruptcy, insolvency, debt restructuring, reorganization, readjustment of debt, dissolution, liquidation, winding-up or other similar proceedings (including proceedings under the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the incorporating statute of the relevant corporation or other similar legislation), including proceedings for the appointment of a trustee, interim receiver, receiver, receiver and manager, administrative receiver, custodian, liquidator, provisional liquidator, administrator, sequestrator or other like official with respect to the relevant corporation or all or any material part of its property or assets;
  - (ii) makes an assignment for the benefit of its creditors;
  - (iii) is unable, or admits in writing its inability, to pay its debts as they become due or otherwise acknowledges its insolvency or commits any other act of bankruptcy or is taken to be insolvent under any applicable legislation;
  - (iv) is terminated, dissolved or liquidated;
  - (v) acquiesces to, or takes any action in furtherance of, any of the foregoing;
  - (vi) **[in respect of the Pledgor only, shall at any time cease to be a Single Purpose Entity];** or

- (j) if any third party in respect of the Pledgor:
- (i) makes any application under the *Companies' Creditors Arrangement Act* (Canada) or similar legislation;
  - (ii) files a proposal or notice of intention to file a proposal under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;
  - (iii) institutes a winding-up proceeding under the *Winding-up and Restructuring Act* (Canada), any relevant incorporating statute or any similar legislation;
  - (iv) presents a petition in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or any similar legislation; or
  - (v) files, institutes or commences any other petition, proceeding or case under any other bankruptcy, insolvency, debt restructuring, reorganization, incorporation, readjustment of debt, dissolution, liquidation, winding-up or similar law now or hereafter in effect, seeking bankruptcy, liquidation, reorganization, dissolution, winding-up, composition or readjustment of debt of any of them, the appointment of a trustee, interim receiver, receiver, receiver and manager, administrative receiver, custodian, liquidator, provisional liquidator, administrator, sequestrator or other like official for any of them, or any material part of any of their respective assets or any similar relief;

and if the application, filing, proceeding, petition or case is not dismissed, stayed or withdrawn within 30 days of commencement thereof.

- (10) **Governmental Authority** means any federal, provincial, local or foreign court, agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever or any governmental or quasi-governmental unit, whether now or hereafter in existence, or any officer or official thereof.
- (11) **Indemnitee** has the meaning given to it in Section 6.
- (12) **Maturity Date** means [●]. [Note: might be balance due date in loan documents]
- (13) **Note** means the promissory note dated the date hereof issued by the Pledgor in favour of Pledge evidencing the continuing indebtedness of the Pledgor under the Loan.
- (14) **Obligor** means any and all Persons obligated to pay money or to perform some other act under or in respect of the Pledged Collateral.
- (15) **Permitted Investments** has the meaning given to it in Schedule B.
- (16) **Person** means any individual, corporation, limited liability company, partnership, joint venture, estate, association, joint stock company, trust, unincorporated organization, or

government or any agency or political subdivision thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

- (17) **Pledged Collateral** has the meaning given to it in Section 2.1.
- (18) **Pledged Collateral Account** has the meaning given to it in Section 2.2(1).
- (19) **Pledged Entitlements** has the meaning given to it in Section 2.1(b).
- (20) **Pledgee** means ●, in its capacity as custodian under the Pooling and Servicing Agreement for the registered certificate holders in respect of ● Commercial Mortgage Pass-Through Certificates, Series [●]-Canada [●] together with its successors and assigns.
- (21) **Pledgor** means [●], a corporation duly organized, validly subsisting and in good standing under the laws of the Province of [Ontario].
- (22) **PPSA** means the *Personal Property Security Act* (Ontario), as amended and in force from time to time, and any successor thereto and any regulations thereunder.
- (23) **Proceeds** means the proceeds of any of the Pledged Collateral.
- (24) **Rating Agency** means Moody's Investors Service, Inc., Standard & Poor's (a division of The McGraw-Hill Companies, Inc.), or DBRS Limited, or their respective successors and assigns, in each case, where such entities have a current rating outstanding on the Certificates.
- (25) **Secured Obligations** means the principal amount of the Loan outstanding from time to time, as increased or decreased as a result of permitted prepayment, modification or otherwise, and all accrued and unpaid interest thereon and all other obligations, expenses, and liabilities due or to become due to the Pledgee under the Defeasance Documents or the Loan Documents, including without limitation all costs and expenses incurred by the Pledgee in enforcing and collecting amounts under the Defeasance Documents or the Loan Documents.
- (26) **Securities** has the meaning given to it in the Recitals.
- (27) **Securities Intermediary** has the meaning given to it in the STA.
- (28) **Servicer** means ● or any successor or assign, acting in its capacity as [successor] Master Servicer under the Pooling and Servicing Agreement.
- (29) **[Single Purpose Entity]** means a trust, corporation, limited partnership, or limited liability company (for purposes of this definition, the "Entity") which, at all times since its formation and thereafter for so long as any of the Secured Obligations remain outstanding and not discharged in full:
  - (a) was and will be organized solely for the purpose of owning the Property, and following the defeasance, owning the Pledged Collateral and performing and

complying with the Defeasance Documents and has not and will not engage in any business unrelated to such purposes;

- (b) other than the Property, has not and will not have any assets other than the Pledged Collateral and proceeds therefrom;
- (c) has not and will not transfer, convey, grant, assign or pledge or permit the transfer, conveyance, granting, assignment or pledge of any of its assets (other than the Property) or any interest therein except for the pledge herein contained;
- (d) has not and will not fail to correct any misunderstanding by a third party regarding the separate identity of such Entity when such Entity is aware of such misunderstanding;
- (e) has not permitted, cooperated with or sought involuntarily or voluntarily and will not permit, cooperate with or seek involuntarily or voluntarily the occurrence of any (i) bankruptcy, insolvency or reorganization petition or any relief under any laws relating to the relief from debts or the protection of debtors generally; (ii) the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official; or (iii) assignment for the benefit of creditors with respect to any beneficiary, partner or member of the Entity;
- (f) has maintained and will maintain its accounts, books and records separate from any other person or entity;
- (g) has maintained and will maintain its books, records, resolutions and agreements as official records;
- (h) has not commingled and will not commingle its funds or assets with those of any other person or entity;
- (i) has held and will hold its assets in its own name or in the name of its trustee;
- (j) has conducted and will conduct its business in its name;
- (k) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other person or entity;
- (l) has paid and will pay its own liabilities out of its own funds and assets;
- (m) has observed and will observe all trust, partnership, corporate or limited liability company formalities, as applicable;
- (n) has maintained and will maintain an arms-length relationship with its affiliates;
- (o) has and will not incur any indebtedness or obligations other than the obligations under the Loan Documents and the Defeasance Documents;

- (p) has not and will not assume any contingent obligations;
  - (q) has not acquired and will not acquire obligations or securities of its beneficiaries, partners, members or shareholders (as the case may be);
  - (r) has allocated and will allocate fairly and reasonably shared expenses with any affiliates, including, shared office space, and uses separate stationery, invoices and cheques;
  - (s) has not and will not pledge its assets for the benefit of any other person or entity other than to the Pledgee pursuant to the Defeasance Documents;
  - (t) has held and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity;
  - (u) has not made and will not make loans to any other person or entity;
  - (v) has not and will not identify its beneficiaries, partners, members or shareholders (as the case may be), or any affiliates of any of them as a division or part of it;
  - (w) has not entered and will not enter into or be a party to, any transaction other than the transaction described or contemplated by the Defeasance Documents;
  - (x) has paid and will pay the salaries of its own employees from its own funds;
  - (y) has not and will not hold out its credit as being available to satisfy the obligations of any member, affiliate or other person;
  - (z) if such Entity is a corporation, limited liability company or limited partnership, then such Entity shall continue and not engage in any dissolution, liquidation, amalgamation, consolidation or merger; and
  - (aa) will at all times comply with, and will not violate, the Single Purpose Entity provisions set forth herein.]
- (30) ***Special Servicer*** means the entity appointed to act as special servicer or any successor or assign, acting in its capacity as Special Servicer under the Pooling and Servicing Agreement.
- (31) ***STA*** means the *Securities Transfer Act, 2006* (Ontario), as amended and in force from time to time, and any successor thereto and any regulations thereunder.

## **1.2 Headings and Table of Contents**

The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

### 1.3 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

### 1.4 References

Unless otherwise specified, references in this Agreement to Sections and Schedules are to sections of, and schedules to, this Agreement.

## SECTION 2 – PLEDGE

### 2.1 Grant of Security Interest

As collateral security for the Secured Obligations, the Pledgor hereby grants, assigns, transfers, sets over, pledges, mortgages, hypothecates and charges to the Pledgee, as and by way of a first fixed and specific mortgage and charge over, and grants to the Pledgee a first-ranking security interest in, the right, title, interest and benefit which the Pledgor now has or may hereafter have in the following property, whether or not in the possession of or otherwise under the control of the Pledgee (collectively, the “**Pledged Collateral**”):

- (a) the Securities and the certificates, if any, evidencing any of the Securities;
- (b) all Security Entitlements (as such term is defined in the STA) to the Securities carried in the Pledged Collateral Account (the “**Pledged Entitlements**”);
- (c) all proceeds of the Securities, including, without limitation, proceeds of any indemnity, warranty or guarantee payable from time to time with respect to any of the Securities, or payments (in any form) made or due and payable to the Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Securities by or on behalf of any Governmental Authority, and any and all other amounts from time to time paid or payable under or in connection with any of the Securities or the Pledged Entitlements;
- (d) any credit balance of funds standing to the credit of the Pledged Collateral Account from time to time, which for greater certainty the Pledgee and the Pledgor confirm shall be regarded as “financial assets” subject to the STA; and
- (e) any and all other (i) funds and proceeds thereof now or hereafter deposited in or credited to the Pledged Collateral Account, (ii) interest and earnings on any of the Pledged Collateral including interest that accrues either before or after the commencement of any bankruptcy or insolvency proceeding by or against the Pledgor, (iii) present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents now or hereafter relating or arising with respect to the Pledged Collateral Account and/or the use

thereof, and (iv) cash and non-cash proceeds and products of the items described in subclauses (i), (ii) and (iii) above.

## **2.2 Purchase of Securities and Pledged Collateral Account**

(1) The parties hereto acknowledge that the Pledgee has established a segregated securities account titled [●] (the “**Pledged Collateral Account**”), at the offices of ● located in Ontario, for the sole purpose of holding the Securities and perfecting the Pledgee’s security interest therein as contemplated by Section 3.1(8).

(2) For greater certainty the parties agree that the Pledgee has no obligation or responsibility to effect or assist in the acquisition of and delivery to the Pledgee of the Pledged Collateral nor to determine whether the Pledged Collateral is acceptable under the terms of the Defeasance Documents or whether any of the Securities constitute Permitted Investments.

(3) The Pledgor authorizes the Pledgee to sell, transfer and use the Pledged Collateral, subject to the provisions of the Account Agreement.

## **2.3 Secured Obligations**

The security interest granted hereby secures, and the Pledged Collateral is collateral security for, the payment and performance in full when due, whether at stated maturity, by acceleration or otherwise of all of the Secured Obligations (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy).

## **2.4 Attachment of Security Interest**

The Pledgor hereby acknowledges and agrees that the parties hereto have not agreed to postpone the attachment of the security interest in the Pledged Collateral created hereby.

## **2.5 Continuing Security Interest**

This Agreement shall create a continuing security interest in the Pledged Collateral.

## **2.6 Insufficient Funds**

The Pledgor shall immediately deposit into the Pledged Collateral Account an amount sufficient to pay any shortfall if, at any time, funds available in the Pledged Collateral Account are insufficient to satisfy all obligations then due under the Loan Agreement, the Mortgage or under any other Defeasance Document arising because the Securities are insufficient to make scheduled payments of interest and principal as required under the Loan Agreement or the Mortgage, including payment of the Loan in full on the Maturity Date, without taking into account (i) reinvestment income, or (ii) failure by any Obligor to satisfy its obligations under the Securities.

## 2.7 No Release or Assumption of Pledgor's Obligations

The granting by the Pledgor to the Pledgee of the security interest in the Pledged Collateral shall not:

- (a) relieve the Pledgor from the performance of any term, covenant, condition or agreement on the Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral; or
- (b) relieve the Pledgor from any liability to any person under or in respect of any of the Pledged Collateral; or
- (c) impose any obligation on the Pledgee to perform or observe any such term, covenant, condition or agreement to be so performed or observed by the Pledgor or impose any liability on the Pledgee for any act or omission on the part of the Pledgor relating thereto or for any breach of any representation or warranty to any person made in connection herewith or therewith.

## 2.8 Survival

The provisions set forth in Section 2.7 shall survive any release of the Pledgor by the Pledgee set forth in the Defeasance Documents, any termination of this Agreement, and any discharge of the Pledgor's obligations under this Agreement or any other agreement concerning the Pledged Collateral.

## SECTION 3 – REPRESENTATIONS, WARRANTIES AND COVENANTS

### 3.1 Pledgor's Representations, Warranties and Covenants

The Pledgor hereby represents, warrants and covenants to and for the benefit of the Pledgee, the Servicer and the holders of the Certificates from time to time as follows:

- (1) **Value.** The Pledgor has received value for the Secured Obligations and for the granting of the security interest described herein.
- (2) **Rights in Pledged Collateral.** The Securities exist and the Pledgor is, as of the date hereof, and as to all Pledged Collateral acquired by it from time to time after the date hereof, will be, the legal and beneficial owner of all of the Pledged Collateral.
- (3) **No Liens or Other Financing Statements.** Except for the security interest granted to the Pledgee under this Agreement and financing statements and/or financing change statements filed or to be filed with respect to and covering the security interest granted by the Pledgor pursuant to this Agreement, the Pledgor holds the Pledged Collateral now existing, and will own any of the Pledged Collateral hereafter coming into existence from time to time, free and clear of any lien or claim, including but not limited to any Adverse Claim, and the Pledgor has not assigned, transferred, set-over, pledged, mortgaged, hypothecated, charged, sold, granted a security interest in, or otherwise conveyed any of the Pledged Collateral and shall defend the Pledged Collateral

against all claims and demands of all Persons at any time claiming any interest therein adverse to the Pledgee. There is no control agreement or financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral executed by the Pledgor or filed in any public office. So long as the Pledgor remains obligated to pay the Secured Obligations, the Pledgor shall not enter into any such control agreement, or execute, file or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to the Pledged Collateral.

(4) **Perfection.** All of the Securities comply with the requirements under the Loan Documents and the Defeasance Documents and are Permitted Investments, and the Pledgor has taken or caused other Persons to take all actions necessary to effect the creation and perfection of the Pledgee's security interest in the Securities and other Pledged Collateral, and has caused to be filed with the Personal Property Security Registration System of Ontario (or any other system of registration necessary or advisable) any required financing statements or financing change statements (naming the Pledgor as debtor and the Pledgee as secured party) evidencing the security interest created by this Agreement, and, together with the book entries described in Section 3.1(8) below, such actions taken with respect to the Pledged Collateral pursuant to this Agreement create a valid and perfected first priority security interest in the Pledged Collateral, as security for the Secured Obligations.

(5) **Authorization; Enforceability.** The Pledgor is a corporation duly organized, validly existing and in good standing under the laws of the Province of [Ontario]. The Pledgor has all corporate powers, authority and legal right to enter into this Agreement and the Pledgor has all corporate powers, authority and legal right to pledge and grant a lien on the Pledged Collateral pursuant to this Agreement. This Agreement has been duly authorized, executed and delivered by the Pledgor and constitutes the legal, valid and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its terms.

(6) **No Consents, Etc.** No authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any court, Governmental Authority, or with any securities exchange or any other Person, is required in connection with (i) the due execution, delivery or performance by the Pledgor of this Agreement, (ii) the assignment of, and the grant of a security interest on (including the priority thereof), the Pledged Collateral by the Pledgor in the manner and for the purpose contemplated by this Agreement, or (iii) the exercise of the rights and remedies of the Pledgee created hereby, except those that have been obtained or made concurrently with the execution hereof, including, without limitation, filings in the appropriate offices provided for under the laws of the Province of Ontario.

(7) **No Breach.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the terms and provisions hereof will conflict with or result in a breach of, the Pledgor's constating documents or formation agreements, any applicable law or regulation, or any order, writ, injunction or decree of any court or Governmental Authority, or any agreement or instrument to which the Pledgor is a party or by which the Pledgor is bound or to which any of the Pledged Collateral is subject, or result in

the creation or imposition of any lien upon the Pledgor's earnings or assets pursuant to the terms of any such agreement or instrument.

(8) **Actions With Respect to Securities.** The Servicer hereby directs the Pledgor to direct, and the Pledgor hereby agrees to direct, the Pledgor's Securities Intermediary to (i) arrange for the purchase of the Securities as contemplated by the Loan Documents, and (ii) cause the Securities to be credited to the Pledged Collateral Account on the date hereof and to be held therein as continuing collateral security for the Secured Obligations for the benefit of the holders of the Certificates, until the Secured Obligations have been indefeasibly satisfied in full. The Pledgor acknowledges and agrees that the Pledgee and the Servicer on its behalf shall have the sole and exclusive authority to give Entitlement Orders with respect to the Pledged Collateral.

(9) **Pledged Collateral.** On the date hereof, all information set forth herein (including the schedules and exhibits hereto) or otherwise provided to the Pledgee relating to the Pledged Collateral is, to the knowledge of the Pledgor, accurate and complete in all material respects.

(10) **No Indebtedness.** The Pledgor has not incurred any indebtedness other than the Loan and other indebtedness not in contravention of the Loan Documents.

(11) **No Intent to Hinder Creditors.** This pledge of the Securities to the Pledgee is not done in contemplation of insolvency or bankruptcy or with an intent to hinder, delay or defraud any of the Pledgor's creditors.

(12) **No Insolvency.** The Pledgor is not insolvent, or in insolvent circumstances, on the eve of insolvency or unable to meet its engagements within the meaning of any Canadian insolvency statutes and no act or proceeding has been taken or is pending in connection with the Pledgor for its, and the Pledgor has not received notice in respect of, and is not in the course of, dissolution, liquidation, winding-up or reorganization. The Pledgor will not be rendered insolvent within the meaning of any of the Canadian insolvency statutes immediately after signing this Agreement, and the Pledgor is not being rendered insolvent by the pledge of the Securities to the Pledgee.

(13) **Adequate Capitalization.** The assets owned by the Pledgor immediately after giving effect to the pledge of the Securities to the Pledgee represent an amount of capital that is not unreasonably small for the business in which the Pledgor is engaged, and the Pledgor does not intend to engage in any other business for which such capital would be unreasonably small.

(14) **No Intent to Incur Debts Beyond Ability to Pay.** At the time of the pledge of the Securities to the Pledgee, the Pledgor does not intend to, or believe that it will, incur debts that would be beyond its ability to pay as such debts matured.

(15) **Purpose.** The Pledgor's purpose in entering into the defeasance is to effect a [sale/refinance] of the Property.

(16) **Sufficiency of Pledged Collateral.** The Pledged Collateral and any cash delivered to the Pledgee herewith provides, without reinvestment, cash in an amount sufficient to pay and discharge all remaining payments of principal and/or interest when due under the Loan, including full payment of all Loan indebtedness on the Maturity Date.

(17) ***Transfer of Interest in Pledgor.*** Except as permitted by the Loan Agreement, the Pledgor will not, and will not permit any Person to, sell, assign, transfer, convey, pledge or otherwise dispose of all or any direct or indirect interest in the Pledgor, without the prior written consent of the Pledgee, which consent may [not] be unreasonably withheld, until the date on which all Secured Obligations have been paid in full and satisfied.

(18) ***[Single Purpose Entity.*** The Pledgor is, and following the defeasance shall remain, a Single Purpose Entity.]

### **3.2 Pledgee's Representations, Warranties and Covenants**

The Pledgee hereby represents, warrants and covenants to and for the benefit of the Servicer and the holders of the Certificates from time to time as of the date hereof as follows:

(1) ***Entitlement Holder.*** It will become the "entitlement holder" (as such term is defined in the STA) in respect of the Securities upon their being credited to the Pledged Collateral Account and will at all times so remain in connection with the Pledged Collateral.

(2) ***Eligible Institution.*** It is an Eligible Institution (as such term is defined in the Account Agreement).

(3) ***Control.*** It has accepted, and will at all times maintain, control of all of the Pledged Collateral through the Pledged Collateral Account with its Securities Intermediary, and the jurisdiction of such holding for the purpose of the STA shall be Ontario.

(4) ***No Adverse Claim.*** It has received no notice of, and has no knowledge of, any Adverse Claim or lien or encumbrance as to the Pledged Collateral (including, but not limited to, any claim, lien or encumbrance in favour of Canada or any province) (other than the lien created under the Defeasance Documents).

(5) ***Inclusions.*** Each item of "personal property", "security", "instrument" or "money" (as each term is defined in the PPSA), and the proceeds of any of the foregoing, credited to the Pledged Collateral Account shall be treated by the Pledgee as subject to this Agreement.

(6) ***No Inconsistencies.*** Without limitation of any of the foregoing, the Pledgee shall not give Entitlement Orders to its Securities Intermediary that are inconsistent with this Agreement or any other Defeasance Document.

### **3.3 Covenants Concerning the Pledged Collateral**

The Pledgor hereby covenants to the Pledgee that:

(1) ***Waiver of Liens.*** It waives and releases, solely for the benefit of the Pledgee, any and all claims, liens, encumbrances or rights of set-off that it may now or hereafter have against the Pledged Collateral or any portion thereof.

(2) ***Protection of Pledgee's Security.*** It shall not take any action that impairs the rights of the Pledgee in the Pledged Collateral or the perfection of the security interests created hereunder.

(3) ***Payments.*** So long as no Event of Default shall have occurred and be continuing, all distributions, cash, interest, earnings, return of capital or other payments made in respect of the Pledged Collateral shall be deposited in the Pledged Collateral Account and utilized in accordance with the provisions of the Account Agreement (which utilization shall include, without limitation, the payment of monthly instalments due under the Loan Agreement, the Commitment and the Mortgage and the final payment on the Maturity Date). At all times, whether before or during the continuation of any Event of Default, all rights to enforce and collect payments in respect of the Pledged Collateral or to direct the disposition thereof shall be exercised exclusively by the Pledgee, or the Servicer on behalf of the Pledgee. In the event that any payments in respect of the Pledged Collateral are made directly to the Pledgor, the Pledgor shall hold such amounts in trust as agent and trustee for the Pledgee, segregate all amounts received pursuant thereto in a separate account and pay such amounts promptly to or as directed by the Pledgee.

(4) ***Transfers or Liens.*** It shall not (i) sell, convey, assign or otherwise dispose of, or grant any option, right or warrant with respect to, any of the Pledged Collateral, or (ii) create or, by its action or inaction, permit to exist any lien upon or with respect to any Pledged Collateral, except for the lien created by this Agreement.

## **SECTION 4 – RIGHTS AND DUTIES OF PLEDGEE**

### **4.1 Limitation on Duty of Pledgee in Respect of Pledged Collateral**

Beyond the exercise of reasonable care in the custody thereof, the Pledgee shall not have any duty as to any Pledged Collateral in its possession or under its control or in the possession or under the control of any agent or bailee or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except for those duties of the Pledgee set out in this Agreement. The Pledgee shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession or under its control if the Pledged Collateral is accorded treatment substantially equal to that which it accords its own property. The Pledgee shall not be liable or responsible for any loss or damage to any of the Pledged Collateral, or for any diminution in the value thereof, by reason of the act or omission of it or any agent or bailee selected by the Pledgee in good faith. For greater certainty, the foregoing shall not in any way be construed as amending, modifying or limiting the duties of the Pledgee to the Servicer that are expressly set out in this Agreement.

### **4.2 Right to Disclose**

The Pledgee shall have the right to disclose any information disclosed or released to it if in the opinion of the Pledgee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Pledgee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure under law or by court order or administrative direction.

#### **4.3 Not Required to Expend Funds**

None of the provisions contained in this Agreement or any supplemental agreement shall require the Pledgee or the Custodian to expend or risk its own funds or otherwise incur financial liability in performing its duties or in the exercise of any of its rights or powers.

#### **4.4 Retain Experts**

The Pledgee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Pledgee may pay remuneration for all services performed for it in the discharge of its duties hereunder and the Pledgor shall reimburse the Pledgee therefor.

#### **4.5 Reliance on Experts**

The Pledgee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser, whether retained or employed by the Pledgor, the Servicer or the Pledgee in relation to any matter arising in the performance of its duties under this Agreement.

#### **4.6 No Liability**

The Pledgee shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted excepting only its own gross negligence or wilful misconduct.

#### **4.7 No Discretion**

Notwithstanding anything to the contrary which may be contained herein, the Pledgee shall not have any obligation to exercise any discretion in the performance of its obligations hereunder and shall only be required to act upon the express written instructions of the Servicer.

#### **4.8 Validity of Certifications**

If at any time in the performance of its duties under this Agreement it shall be necessary for the Pledgee to receive, accept, act or rely upon any certificate, notice, request, waiver, consent, receipt, direction, affidavit or other paper, writing or document furnished to it (a "**Certification**") and purporting to have been executed or issued by the Pledgor, the Servicer or their authorized officers or attorneys, the Pledgee shall be entitled to rely and act upon the genuineness and authenticity of any such Certification submitted to it, as a valid Certification. It shall not be necessary for the Pledgee to ascertain whether or not the persons who have executed, signed or otherwise issued, authenticated or receipted such Certifications have authority to do so or that they are the same persons named therein or otherwise to pass upon any requirement of such Certifications that may be essential for the validity or effectiveness or upon the truth and acceptability of any information contained therein which the Pledgee in good faith believes to be genuine.

## **SECTION 5 – EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

### **5.1 Remedies Not Limited**

If an Event of Default shall have occurred, then and in every such case, the Pledgee may, as directed by the Servicer, take any one or more or all of the following actions:

- (a) instruct the Obligor or Obligors on the Securities or any agreement, instrument or other obligation constituting the Pledged Collateral to make any payment required by the terms of such instrument, agreement or obligation directly to or as directed by the Pledgee;
- (b) cause all entries in the records of its Securities Intermediary with respect to the Securities to be changed or modified to show the Pledgee or a designee of the Pledgee as the record owner of the Securities;
- (c) exercise all the rights and remedies of a secured party under applicable law with respect to the Pledged Collateral;
- (d) seek specific performance of, or enjoin actions in violation of, the Pledgor's or the Securities Intermediary's obligations under the Defeasance Documents; and
- (e) exercise all other available rights, privileges and remedies, at law or in equity, with respect to the Pledged Collateral, and may exercise such rights and remedies either in the name of the Pledgee or in the name of the Pledgor for the use and benefit of the Pledgee to the fullest extent permitted by applicable law.

### **5.2 Application of Proceeds**

The proceeds of the exercise by the Pledgee of any remedy hereunder shall be paid to and applied as directed by the Servicer as follows:

**FIRST:** to the payment of all amounts due and owing in respect of the Secured Obligations;

**SECOND:** to the payment of all costs and expenses of any suit and of all proper compensation, expenses, liabilities and advances, including expenses and legal fees, owed to, incurred by or made by the Pledgee and all taxes, assessments or liens superior to the lien hereof;

**THIRD:** to the payment of the expenses of the Pledgee or any party to the Pooling and Servicing Agreement with respect to its obligations thereunder; and

**FOURTH:** the balance, if any, to the Pledgor or to another Person lawfully entitled thereto as determined by a court of competent jurisdiction.

### **5.3 Additional Rights**

Upon the occurrence of an Event of Default, the Pledgee may, as directed by the Servicer, sell, assign or otherwise dispose of all or any part of the Pledged Collateral or any part thereof that shall then be in, or shall thereafter come into, the possession, custody or control of the

Pledgee or any of its agents, at such place or places deemed appropriate by the Servicer, and for cash or for credit or for future delivery, at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required by applicable statute, and cannot be waived), and the Pledgee or anyone else may be the purchaser, assignee or recipient of any or all of the Pledged Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of any kind, including any right of equity of redemption (statutory or otherwise) of the Pledgor, and the Pledgor hereby expressly waives and releases any such demand of performance, notice (other than any non-waivable statutory notice) and right of equity of redemption. The Pledgee may, as directed by the Servicer, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned. The parties acknowledge and agree that the Securities will be sold on a recognized market and, accordingly, the Pledgee need not furnish the Pledgor with notice of its intention to sell the Securities. The proceeds of each collection, sale or other disposition under this Section 5.3 shall be applied in accordance with Section 5.2 hereof.

#### **5.4 Private Sale**

Neither the Pledgee nor the Servicer shall incur any liability as a result of the sale of the Pledged Collateral, or any part thereof, as directed and/or supervised by the Servicer, or the Special Servicer, at any private sale pursuant to Section 5.3 hereof conducted in a commercially reasonable manner. The Pledgor hereby waives any claims against the Pledgee or the Servicer arising by reason of the fact that the price at which the Pledged Collateral may have been sold at any such private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Pledgee accepts the first offer received and does not offer the Pledged Collateral to more than one offeree.

#### **5.5 Foreclosure**

The Pledgor acknowledges that the Pledged Collateral constitutes Defeasance Collateral under and as defined in the Pooling and Servicing Agreement and that, given the nature and purpose of Defeasance Collateral, an election by the Pledgee to accept the Pledged Collateral in full satisfaction of the Secured Obligations constitutes a reasonable remedy in favour of the Pledgee and the Pledgor accordingly hereby consents to the Pledgee retaining the Pledged Collateral after an Event of Default in satisfaction of the Secured Obligations, including, without limitation, in accordance with Section 65(6) of the PPSA and all replacements or amendments thereof upon receipt of the notice required by Section 65(2) of the PPSA and all replacements or amendments thereof (without prejudice to any other rights or remedies of Pledgee).

#### **5.6 Appointment of Receiver**

(1) Upon the occurrence of an Event of Default, the security hereby constituted becomes enforceable and so long as it remains enforceable, the Pledgee, or the Servicer (on the Pledgee's behalf) may, to the extent permitted and in the manner prescribed by law, by instrument in writing appoint any Person to be a receiver (which term shall include an interim receiver and a

receiver and manager) of the Pledged Collateral or of any part thereof and may remove any receiver so appointed and appoint another in its stead, and any such receiver shall have power:

- (a) to take possession of or control over the Pledged Collateral or any part thereof (and in such event the said receiver shall have possession or control of the Pledged Collateral free from all encumbrances);
- (b) whether or not the receiver has taken possession of or control over the Pledged Collateral or any of it, to sell or otherwise dispose or concur in a disposition of the whole or any part of the Pledged Collateral, at public auction, by public tender or by private sale, with only such notice as may be required by law, either for cash or upon credit, at such time and upon such terms and conditions as the receiver may determine, including a term that a commission shall be payable to the Pledgee or the Servicer in respect thereof;
- (c) to make any commercially reasonable arrangement or compromise with respect to the Pledged Collateral which the receiver shall deem expedient; and
- (d) to exercise any other of the powers of the Pledgee or the Servicer conferred by the Pledgee or the Servicer as applicable, in the instrument appointing and empowering such receiver.

(2) The receiver may execute and deliver to any purchaser of the Pledged Collateral or any part thereof good and sufficient deeds and documents for the same, the receiver being irrevocably constituted the true and lawful attorney of the Pledgor for the purpose of making any such sale, assignment or other disposition and executing such deeds and documents; the said power of attorney is a power coupled with an interest and the Pledgor hereby ratifies all that the said attorney shall lawfully do or cause to be done by virtue hereof; provided that any such receiver shall be deemed the agent of the Pledgor and the Pledgee shall not be in any way responsible for any misconduct or negligence of any such receiver.

### **5.7 No Waiver**

No failure on the part of the Pledgee to exercise, no course of dealing with respect to, and no delay on the part of the Pledgee in exercising, any right, power or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

### **5.8 Remedies Cumulative, etc.**

The remedies herein provided are cumulative and are not exclusive of any remedies provided by law. In the event the Pledgee shall have instituted any proceeding to enforce any right, power or remedy under this Agreement, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Pledgee, then and in every such case, the Pledgor, the Pledgee and each other party to any of the Defeasance Documents shall be restored to their respective former positions and rights hereunder with

respect to the Pledged Collateral, and all rights, remedies and powers of the Pledgee shall continue as if no such proceeding had been instituted.

### **5.9 Performance by Pledgee; Pledgee Appointed Attorney-in-Fact**

If the Pledgor fails to do any act or thing that it has covenanted to do hereunder or if any warranty on the part of the Pledgor contained herein shall be breached, the Pledgee, or the Servicer, on behalf of the Pledgee, may (but shall not be obligated to), do the same or cause it to be done or remedy any such breach, and may (but shall not be obliged to) expend funds for such purpose. Any and all amounts so expended by the Pledgee or the Servicer, on behalf of the Pledgee, (including, but not limited to, legal expenses and disbursements) shall be paid by the Pledgor promptly upon demand therefor, with interest at the rate set out in the Loan Agreement, during the period from the date on which such payment is made to and including the date of repayment. The Pledgor hereby authorizes the Pledgee or the Servicer, on behalf of the Pledgee, and appoints the Pledgee or the Servicer, on behalf of the Pledgee, as its attorney-in-fact, with full authority in the place and stead of the Pledgor, as applicable, and in the name of the Pledgor, as applicable, or otherwise, from time to time to take any action and to execute any instrument which is consistent and in accordance with the terms of this Agreement and the other Defeasance Documents and which the Pledgee or the Servicer, on behalf of the Pledgee, may deem necessary or advisable to accomplish the purposes of this Agreement and the other Defeasance Documents. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term of this Agreement. The Pledgor hereby ratifies all actions that such attorney shall lawfully take or cause to be taken in accordance with this Section 5.9.

## **SECTION 6 – INDEMNIFICATION**

### **6.1 Indemnity**

In addition to and without limiting any other rights of each of the Pledgee or the Servicer, the Pledgor agrees to indemnify each of the Pledgee and the Servicer and their respective officers, directors, employees, representatives, agents and successors and assigns (each an “**Indemnitee**”) and hold such Indemnitee harmless from and against any and all liabilities, losses, damages, costs, penalties, actions, suits, demands, levies and expenses of any kind, including, without limitation, the fees and disbursements of counsel on a solicitor and own client basis, which may be suffered by, imposed on, incurred by or asserted against an Indemnitee, including without limitation, costs of frivolous actions which an Indemnitee may be required to defend, however arising from or out of any act, omission or error of Indemnitee in connection with an Indemnitee’s actions hereunder or in connection with the Pledgor’s default under any of the Defeasance Documents or in connection with the Pledgor’s actions hereunder or in connection with any investigative, administrative or judicial action (whether or not such Indemnitee shall be designated a party thereto) relating to or arising out of this Agreement, the Loan Documents, the Pledged Collateral or the other Defeasance Documents (including, without limitation, any such proceeding by the Pledgor against an Indemnitee or by an Indemnitee against the Pledgor); provided that an Indemnitee shall not have the right to be indemnified

hereunder for its own gross negligence or wilful misconduct as determined by a court of competent jurisdiction.

## **6.2 Survival**

The provisions of this Section 6 shall survive the termination of this Agreement and the discharge of the obligations of the Pledgor or its successors and permitted assigns under this Agreement or the resignation or removal of the Pledgee or the Servicer.

## **SECTION 7 – ACKNOWLEDGEMENTS**

(1) The Pledgor hereby acknowledges and agrees that the terms of the Mortgage are incorporated into this Agreement and remain in full force and effect (except those terms relating specifically to the Property and the use, ownership and maintenance of the Property) and hereby ratifies and confirms any and all representations, covenants and warranties made in the Mortgage (except those pertaining only to the Property). The Pledgor hereby confirms and agrees with the Pledgee that the Secured Obligations created under or pursuant to the Loan Documents to which it is party continue in full force and effect in accordance with their respective terms. The Pledgor further confirms that all indemnification obligations set forth in the Mortgage or the other Loan Documents shall survive the release of the Property from the lien constituted by the Mortgage. Notwithstanding the release of the Property from the lien constituted by the Mortgage, the Pledgor hereby acknowledges and confirms that the provisions in the Mortgage continue to apply insofar as such provisions relate to the continuing debt obligations under the Mortgage (save and except for those terms which relate specifically to the Property and the use and maintenance of the Property). For greater certainty, the Pledgor hereby acknowledges and agrees that this section shall not constitute, and shall not be pleaded as, an estoppel against the Pledgee's rights under any Defeasance Document. In the event of any inconsistency between the terms of this Agreement and the terms of the Mortgage which are incorporated herein or any other Loan Documents, the Servicer shall determine which terms prevail.

(2) The parties hereto agree that the Defeasance Documents shall not discharge, constitute a repayment and readvance of, or a novation of, any of the loans or any other indebtedness, liabilities and obligations of the Pledgor incurred under the Loan Documents and the Loan Documents, as modified by this Agreement, remain in full force and effect without novation.

(3) The Pledgor hereby confirms that each of the Loan Documents executed and delivered by it (i) are not released, discharged or otherwise affected by the execution, delivery or performance of this Agreement or any security therefor, except as otherwise expressly provided in this Agreement; (ii) continue in full force and effect without abrogation, impairment or limitation; and (iii) continue to secure all obligations, liabilities and indebtedness of the Pledgor under this Agreement, the other Defeasance Documents and each of the Loan Documents to which it is a party, including, without limitation, the Secured Obligations, except as otherwise expressly provided in this Agreement.

## **SECTION 8 – GENERAL**

### **8.1 Termination**

When all of the Secured Obligations have been indefeasibly satisfied, performed in full and released, this Agreement shall terminate. Upon termination of this Agreement or any release of the Pledged Collateral in accordance with the provisions of the Defeasance Documents, the Pledgee shall upon the request and at the sole cost and expense of the Pledgor and as directed by Servicer, forthwith assign, transfer and deliver, and shall direct its Securities Intermediary to assign, transfer and deliver, to the Pledgor against receipt and without express or implied recourse to or warranty by the Pledgee (i) such of the Pledged Collateral to be released as may be in the possession or control of the Pledgee and as shall not have been sold or otherwise applied pursuant to the terms hereof, and (ii) proper instruments acknowledging the termination of this Agreement or the release of such Pledged Collateral, as the case may be.

### **8.2 Authority**

Any Person executing this Agreement in a fiduciary or other representative capacity represents that it has full power and authority to do so and that any applicable or required court, partnership, corporate or other authority has been duly and properly given and continues as of the date hereof.

### **8.3 Further Assurances**

(1) ***Filing of Documents.*** The Pledgor agrees that, upon written request of the Pledgee at any time and from time to time, it will make, execute, endorse, acknowledge and file and refile, or permit the Pledgee to file and refile, such lists, descriptions and designations of the Pledged Collateral, copies of documents of title, vouchers, invoices, schedules, entitlement orders, powers of attorney, assignments, confirmatory assignments, supplements, additional security agreements, financing statements, financing change statements, continuation statements, transfers, endorsements and other documents (including, without limitation, this Agreement), in form and substance reasonably satisfactory to the Pledgee in such offices as the Pledgee may deem reasonably necessary or appropriate, wherever required or permitted by law in order to perfect, protect and preserve the rights and interests granted to the Pledgee hereunder.

(2) ***Filing of Documents.*** The Pledgor hereby authorizes the Pledgee and appoints the Pledgee as its attorney-in-fact to file such financing statements, financing change statements, continuation statements, amendments thereto and other documents, without the signature of the Pledgor to the fullest extent permitted by applicable law, and the Pledgor agrees to do such further acts and things, and to execute and deliver to the Pledgee such additional assignments, agreements, powers and instruments, as the Pledgee may reasonably require to effectuate the purposes of this Agreement, to preserve or protect the lien on the Pledged Collateral created by this Agreement or to assure and confirm unto the Pledgee its rights, powers and remedies hereunder. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term of this Agreement. All of the foregoing shall be at the sole cost and expense of the Pledgor.

(3) **Survival.** The provisions set forth in this Section 8.3 shall survive any release of the Pledgor by the Pledgee set forth in the Defeasance Documents and any termination of this Agreement, and shall survive any bankruptcy or insolvency of the Pledgor.

(4) **Copies of Loan Documents.** The Pledgor covenants to provide copies of the Loan Documents, as the same may be amended from time to time, to the Pledgee forthwith upon request.

(5) **References.** All references to “Pledgee” in this Section 8.3 shall be deemed to be references to the “Pledgee or the Servicer, on behalf of the Pledgee”.

**8.4 Modification in Writing and Waiver**

This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the Pledgor or the Pledgee or any of the other parties hereto, but only by an agreement in writing and signed by the parties affected thereby, but including the Pledgee. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by the Pledgor or any other party hereto from the terms of any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or the other Defeasance Documents, no notice to or demand on Pledgor in any case shall entitle the Pledgor to any other or further notice or demand in similar or other circumstances.

**8.5 Notice**

All notices or other communications hereunder by any party to the other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the fifth (5<sup>th</sup>) Business Day following the day such notice is deposited with the Canadian postal service first class certified mail, postage prepaid, return receipt requested, or on the first (1<sup>st</sup>) Business Day after deposit with such overnight courier, in either case addressed to the address set forth below for the party to whom such notice is to be given, or to such other address as the party shall in like manner designate in writing. If a Notice has been sent by prepaid registered mail and before the fifth (5<sup>th</sup>) Business Day after the mailing there is a discontinuance or interruption of regular postal service so that the Notice cannot reasonably be expected to be delivered within five Business Days after the mailing, the Notice will be deemed to have been given when it is actually received.

Pledgor:                      
                                   
                                   
                                 Attn:                      
                                 Facsimile:

With a copy to:       
                            
                            
                          Attn:             
                          Facsimile:     
Pledgee:             
                            
                            
                          Attn:             
                          Facsimile:     
Servicer:             
                            
                            
                          Attn:             
                          Facsimile:     
With a copy to:       
                            
                            
                          Attn:             
                          Facsimile:   

**8.6     Governing Law; Jurisdiction**

This Agreement and each of the documents contemplated by or delivered in connection with the Agreement, the creation, attachment, perfection, effect of perfection or non-perfection and priority of the rights and interests of the Pledgee in the Pledged Collateral, and all other rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**8.7     Severability**

Any provision of this Agreement which is prohibited or determined by a court of law to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**8.8     Counterparts**

This Agreement and any amendments, waivers, consents or supplements hereto may be executed and delivered in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered, including by way of facsimile or other electronic means, shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement.

## **8.9 Entire Agreement**

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement, constitutes the entire agreement and understanding between the parties with respect to the matters and transactions contemplated hereby and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal.

## **8.10 Assignment and Enurement**

This Agreement shall be binding upon and shall enure to the benefit of the successors and permitted assigns of the parties hereto. Any body corporate into which the Pledgee may be merged or with which it may be consolidated and amalgamated, any body corporate resulting from any merger, consolidation or amalgamation to which the Pledgee is a party, and any body corporate authorized to carry on the business of a trust company in Canada which acquires all or substantially all of the corporate trust business of the Pledgee will be the successor Pledgee without the execution of any instrument or further act. The Pledgee may, as directed by the Servicer, assign or otherwise transfer any of the Secured Obligations to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Pledgee, herein or otherwise. The Pledgor shall not, without the prior written consent of the Pledgee and, if necessary, each Rating Agency that has issued a rating of the Certificates, assign its rights or obligations under this Agreement.

(Signatures on following pages)

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer(s) as of the date first above written.

**PLEDGOR:**

●

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**PLEDGEE:**



By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**SERVICER:**



By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation

## **Schedule A – Securities**

Please see attached.

Including replacements, if any, for any of the securities listed on the attached.

## **Schedule B – Permitted Investments**

**[to be determined w/r/t PSA]**

Appendix II: Sample Form Account Agreement

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**ACCOUNT AGREEMENT**

Made as of ●  
Between  
●  
as Pledgor  
and  
● [TRUST COMPANY],  
as Custodian for the registered certificateholders of  
●  
**COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES ●**  
as Pledgee  
and  
●  
as Servicer

---

MCMILLAN BINCH MENDELSON LLP

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# DEFEASANCE PLEDGE AND SECURITY AGREEMENT

THIS ACCOUNT AGREEMENT is made as of ● between ● (the “**Pledgor**”), ● (“**[Trust Company]**”) as custodian (in such capacity, the “**Custodian**”) under the Pooling and Servicing Agreement dated as of ● (as from time to time amended, restated, supplemented or modified, the “**Pooling and Servicing Agreement**”) for the registered certificate holders in respect of ● Commercial Mortgage Pass-Through Certificates, Series ● (the “**Certificates**”) together with its successors and assigns, as secured party (in such capacity, the “**Pledgee**”) and ●, as master servicer under the Pooling and Servicing Agreement (the “**Servicer**”).

## RECITALS:

H. The Pledgor, the Pledgee and the Servicer have entered into that certain Defeasance Pledge and Security Agreement dated the date hereof (as from time to time amended, supplemented or modified, the “**Defeasance Pledge and Security Agreement**”) with respect to the securities listed in Schedule A attached hereto (the “**Securities**”) and other assets that, together with the Securities, constitute the Pledged Collateral (as defined in the Defeasance Pledge and Security Agreement).

I. The Pledgor has agreed that the Pledgee shall hold the Pledged Collateral in accordance with the Defeasance Pledge and Security Agreement and this Agreement.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## SECTION 9 – INTERPRETATION

### 9.1 Definitions

The following terms shall have the following meanings when used herein. Each capitalized term not otherwise defined in this Agreement has the meaning given to it in the Defeasance Pledge and Security Agreement.

- (1) **Accountant’s Letter** has the meaning given to it in Section 12.4.
- (2) **Agreement** means this account agreement including any recitals, schedules and exhibits to this account agreement, as amended, supplemented, restated or modified from time to time.
- (3) **Business Day** means any day other than a Saturday, a Sunday or a day on which banking institutions in the city of Toronto, or cities in which the corporate trust office of the Pledgee or the head office of the Servicer are located, are authorized or obligated by law or executive order to remain closed.
- (4) **Certification** has the meaning given to it in Section 17.8.
- (5) **Collection Account** has the meaning given to it in Section 12.4.

- (6) **Commitment** means the commitment letter between ● and the Pledgor dated ●.
- (7) **Defeasance Pledge and Security Agreement** has the meaning given to it in the Recitals.
- (8) **Eligible Institution** means any trust company (including [Trust Company] and any affiliate of [Trust Company]) incorporated under the laws of Canada or any province thereof or any bank listed in Schedule I or Schedule II to the *Bank Act* (Canada) and meeting the criteria set out in the definition of “Eligible Institution” in the Pooling and Servicing Agreement.
- (9) **Event of Default** has the meaning given to it in the Defeasance Pledge and Security Agreement.
- (10) **Indemnitees** has the meaning given to it in Section 18.
- (11) **Mortgage** means that certain Charge/Mortgage of Land registered on ● as Instrument No. ● executed by the Pledgor in favour of ●, as mortgagee.
- (12) **Permitted Investments** has the meaning given to it in Schedule B.
- (13) **Pledged Collateral Account** has the meaning given to it in Section 10(1).
- (14) **Securities** has the meaning given to it in the Recitals.
- (15) **Securities Intermediary** has the meaning given to it in the STA.
- (16) **STA** means the *Securities Transfer Act, 2006* (Ontario), as amended and in force from time to time, and any successor thereto and any regulations thereunder.

## 9.2 Headings and Table of Contents

The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

## 9.3 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

## 9.4 References

Unless otherwise specified, references in this Agreement to Sections and Schedules are to sections of, and schedules to, this Agreement.

## **SECTION 10- ESTABLISHMENT AND CUSTODY OF PLEDGED COLLATERAL ACCOUNT**

(1) The parties hereto acknowledge that the Pledgee has established a segregated securities account (the “**Pledged Collateral Account**”) as follows:

**Account:** ● - Commercial Mortgage Pass-Through Certificates Series ● Pledged Collateral Account, ●, Defeasance Mortgage # [●]

**Account No.** ●

The Pledged Collateral Account has been established for the sole purpose of holding the Securities and perfecting the Pledgee’s security interest therein as contemplated by Section 3.1(8) of the Defeasance Pledge and Security Agreement.

(2) The Pledgee agrees with the Servicer that during the term of this Agreement and the Defeasance Pledge and Security Agreement, the Pledgee shall:

- (i) maintain the Pledged Collateral Account and all of the Pledged Collateral with its Securities Intermediary at an office located in Toronto, Ontario, Canada;
- (ii) ensure that at all times the jurisdiction, as determined in accordance with the STA, of its Securities Intermediary shall be and shall continue to be the Province of Ontario; and
- (iii) serve as custodian with respect to the Pledged Collateral and the Pledged Collateral Account, in accordance with this Agreement and the Defeasance Pledge and Security Agreement.

(3) The Pledgor hereby authorizes the Pledgee to:

- (i) act as custodian with respect to the Securities and the Pledged Collateral Account, subject to the terms of the Defeasance Pledge and Security Agreement; and
- (ii) hold the Pledged Collateral Account subject to the sole dominion and control of the Pledgee.

(4) The Pledgor has delivered or will deliver the Securities to the Pledgee by causing the same to be credited to the Pledged Collateral Account.

(5) The Pledgee has no obligation or responsibility to effect or assist in the acquisition of and delivery to the Pledgee of the Pledged Collateral nor to determine whether the Pledged Collateral is acceptable under the terms of the Defeasance Documents or whether any of the Securities constitute Permitted Investments.

## **SECTION 11 - TITLE TO PLEDGED COLLATERAL**

Title to the Pledged Collateral shall be held in accordance with the Defeasance Pledge and Security Agreement and applicable law.

## **SECTION 12 - DUTIES OF PLEDGEE REGARDING PLEDGED COLLATERAL**

### **12.1 Administration**

The Pledgee acknowledges and agrees that it shall act on behalf of the holders of the Certificates with respect to the Securities and the Pledged Collateral Account in accordance with the terms of this Agreement and the Defeasance Pledge and Security Agreement. The Pledgee shall have no responsibility for the supervision or management of the Pledged Collateral except as provided in this Agreement, the Defeasance Pledge and Security Agreement or as otherwise provided by applicable law. The Pledged Collateral Account shall at all times be maintained as a segregated account. Any and all proceeds of the Pledged Collateral, and interest and earnings thereon, shall be credited to and held in the Pledged Collateral Account, and shall be re-invested only in accordance with this Agreement. The Pledgee's responsibility with regard to the sale, purchase, exchange or other matters relating to any assets at any time held in or credited to the Pledged Collateral Account shall be limited to those set out in the Defeasance Pledge and Security Agreement or required by applicable law, and shall not require the consent of the Pledgor or any other Person. The Pledged Collateral Account shall be assigned the federal tax identification number of the Pledgor, which number is ● and all taxable income earned or gain realized with respect to the Pledged Collateral shall be taxable as income or gain, as applicable, of the Pledgor.

### **12.2 Eligible Institution**

The Pledgee shall at all times serve as custodian hereunder. The Pledgee is and shall at all times continue to be, and the Pledged Collateral Account shall at all times be maintained in the name of an Eligible Institution. Upon the occurrence of any events or circumstances which result in the Pledgee (or any successor to the Pledgee permitted or required under this Agreement) failing to qualify as an Eligible Institution, the Pledged Collateral Account and all of the Pledged Collateral, and all rights and obligations of the Pledgee (or such successor to the Pledgee) under this Agreement,

- (a) shall promptly, and in any case within thirty (30) calendar days, be transferred to an Eligible Institution;
- (b) such Eligible Institution shall assume in writing all obligations of the Pledgee (or such successor to the Pledgee) under this Agreement; and
- (c) all expenses incurred with the appointment of the Eligible Institution including the fee of such Eligible Institution in connection with the Pledged Collateral Account and the services to be provided by such Eligible Institution as successor to Pledgee (or such successor Pledgee) shall be at the expense of the Pledgor and the Pledgor will promptly reimburse the Pledgee for all expenses incurred with respect to the appointment of such

successor Eligible Institution as Pledgee, including the fee of such Eligible Institution in connection with the services to be provided by such Eligible Institution as successor to the Pledgee.

### 12.3 Collection of Interest, Principal and Earnings

The Pledgee shall receive all interest and principal when due from the Pledgor or otherwise with respect to the Pledged Collateral, and shall collect all amounts due with respect to Permitted Investments, and shall deposit all amounts so collected to the Pledged Collateral Account, but shall be under no responsibility or duty to undertake collection efforts or to instigate or participate in any legal proceedings or to retain counsel in an effort to accomplish such collection. All revenues received in any such collection action shall be deposited to the Pledged Collateral Account and disposed of as set forth herein.

### 12.4 Distributions

The Pledgee, acting by instruction of the Servicer as herein provided, shall have the sole right to control distributions from the Pledged Collateral Account. Except as otherwise specifically provided in written instructions given in accordance with Section 13 below, the Pledgor hereby authorizes and directs the Pledgee to make, and the Pledgee hereby agrees to make, payments on account of the Pledgor's obligations pursuant to the Loan Documents and the Defeasance Documents, from the Pledged Collateral Account by transferring the same to the Servicer's collection account using the following wiring instructions:

[Bank]  
[address]  
Toronto, Ontario

Account No. ●  
Transit ●  
Attention: ●

Reference: Mortgage #● – ●

(the "**Collection Account**") by wire in an amount equal to [●], beginning on ●, 2007 and continuing on a monthly basis thereafter until ●, on which date Pledgee shall pay to the Collection Account by wire an amount equal to \$●, all such amounts at the times and in the amounts provided for in the Loan Documents and shown in the accountant's letter from [certified accountant] including the schedules thereto (the "**Accountant's Letter**"), a copy of which is attached hereto as Schedule C, provided that the Pledgee shall not be required to expend or risk its own funds or otherwise incur financial liability to satisfy the monthly payments to the Collection Account described hereinabove. The Pledgee shall not be required to determine whether any such payments are as provided for in the Loan Documents or in the Accountant's Letter. Any amounts remaining in the Pledged Collateral Account after payments are made to the Collection Account as provided above shall be held in the Pledged Collateral Account until after the date on which final payment of all amounts required under the Commitment and other Defeasance Documents on account of the Secured Obligations and all fees and expenses of the

Pledgee have been paid (the “**Final Payment Date**”), whereupon any amounts remaining in the Pledged Collateral Account shall be paid over to the Pledgor, within five (5) Business Days after the Final Payment Date.

## **12.5 Default**

The Pledgee shall have all of the rights and remedies afforded under the Defeasance Pledge and Security Agreement or otherwise, at law or in equity, with respect to any default under this Agreement.

## **SECTION 13 – INSTRUCTIONS AND SIGNATURES**

(1) Instructions given to the Securities Intermediary by the Pledgee, or the Servicer on its behalf, must be in writing, with copies of such instructions sent to the Pledgor. All instructions and directions for the Pledged Collateral Account must be signed by a person or persons duly authorized by the Servicer on behalf of the Pledgee to sign, such instructions to be in such form as Securities Intermediary may reasonably require. Specimen signatures of all persons to whom authority has been delegated shall be furnished. The employees of the Servicer listed in Schedule D attached hereto are authorized by the Servicer on behalf of the Pledgee to deliver instructions to the Securities Intermediary hereunder.

(2) The Servicer acting on behalf of the Pledgee shall have the right, from time to time, to change the list of persons duly authorized to sign instructions on behalf of the Pledgee. Any changes to the list of authorized signatories shall be deemed effective upon receipt by the Securities Intermediary of written notice regarding such changes.

## **SECTION 14 – ACCOUNTING AND TAXES**

### **14.1 Accounting and Reporting**

The Pledgee shall:

- (a) keep complete and accurate books of the Pledged Collateral Account and all Permitted Investments showing all receipts, disbursements and transactions in the Pledged Collateral Account;
- (b) prepare and deliver to the Servicer and the Pledgor monthly reports summarizing all transactional activity in the Pledged Collateral Account within a reasonable period of time after the end of each month (not to exceed thirty days); and
- (c) advise the Servicer of receipt of any payment or of any non-payment by an Obligor of principal or interest on account of the Pledged Collateral within five (5) Business Days of the related payment date.

### **14.2 Taxes**

The Pledgor agrees that it retains the obligation to prepare and file all required provincial and federal tax reports and returns, and to pay any taxes related to its ownership of the assets in

the Pledged Collateral Account, and that all such taxes shall be paid from sources other than the Pledged Collateral (whether or not such taxes are paid or payable by the Pledgor). The Pledgee shall provide to the Pledgor annually within 30 days of each fiscal year-end:

- (a) a statement of earned income on the Pledged Collateral for the preceding year;
- (b) a statement of the payments made to the Collection Account for the preceding year;
- (c) a statement of disbursements and expenses for the preceding year; and
- (d) such further and other information as the Pledgor may reasonably require to prepare and file all required provincial and federal tax reports and returns.

## **SECTION 15 – TERMINATION OF PLEDGEE’S OBLIGATIONS**

The Servicer may, without terminating this Agreement, replace or substitute [Trust Company] as Pledgee hereunder at any time after thirty (30) days’ prior written notice to the other parties hereto, it being understood that the Servicer and the Rating Agency should be satisfied with such replacement or substitution. [Trust Company] may resign from its obligations as Pledgee under this Agreement at any time after sixty (60) days’ prior written notice to the other parties hereto, provided that a substitute Eligible Institution, satisfactory to the Rating Agency and the Servicer, has been designated and has assumed in writing the obligations of [Trust Company] as Pledgee hereunder. The Servicer shall designate a substitute Pledgee hereunder, in its sole discretion, promptly after receipt of notice of resignation by [Trust Company] and shall take all reasonable actions necessary to cause such designated successor promptly to assume the obligations of the Pledgee hereunder.

## **SECTION 16- FEES AND COSTS**

Concurrently with the execution of this Agreement, the Pledgor shall pay the sum of (a) \$● in the aggregate, inclusive of Goods and Services Tax (“GST”), to the Pledgee in full payment of its fee in connection with the Pledged Collateral Account and the services provided hereunder by the Pledgee; (b) [●] to the Servicer in respect of its defeasance processing fee; and (c) [●] to the Servicer in respect of its defeasance fee. Such fees have been fully earned by each of the Pledgee and the Servicer and are not refundable or subject to reduction. If any additional costs or expenses are incurred by the Pledgee or the Servicer in connection with the execution of and/or duties under this Agreement or the Defeasance Pledge and Security Agreement, including without limitation any legal fees or disbursements, the Pledgor agrees to pay all such costs and expenses directly to the Pledgee or the Servicer, as the case may be, within ten (10) Business Days following receipt of written notice therefor.

## **SECTION 17– RIGHTS AND DUTIES OF PLEDGEE**

### **17.1 Anti-Money Laundering/Terrorist Financing Compliance**

The Pledgee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Pledgee, in its sole

judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Pledgee, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on ten (10) days' written notice to all parties provided that (i) the Pledgee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Pledgee's satisfaction within such ten (10) day period, then such resignation shall not be effective.

### **17.2 Right to Disclose**

The Pledgee shall have the right to disclose any information disclosed or released to it if in the opinion of the Pledgee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Pledgee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure under law or by court order or administrative direction.

### **17.3 Not Required to Expend Funds**

None of the provisions contained in this Agreement or any supplemental agreement shall require the Pledgee or the Custodian to expend or risk its own funds or otherwise incur financial liability in performing its duties or in the exercise of any of its rights or powers.

### **17.4 Retain Experts**

The Pledgee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Pledgee may pay remuneration for all services performed for it in the discharge of its duties hereunder and the Pledgor shall reimburse the Pledgee therefor.

### **17.5 Reliance on Experts**

The Pledgee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser, whether retained or employed by the Pledgor, the Pledgee or the Servicer on its behalf in relation to any matter arising in the performance of its duties under this Agreement.

### **17.6 No Liability**

The Pledgee shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted excepting only its own gross negligence or wilful misconduct.

### **17.7 No Discretion**

Notwithstanding anything to the contrary which may be contained herein, the Pledgee shall not have any obligation to exercise any discretion in the performance of its obligations hereunder and shall only be required to act upon the express written instructions of the Servicer.

### **17.8 Validity of Certifications**

If at any time in the performance of its duties under this Agreement it shall be necessary for the Pledgee to receive, accept, act or rely upon any certificate, notice, request, waiver, consent, receipt, direction, affidavit or other paper, writing or document furnished to it, including, without limitation, instructions delivered pursuant to Section 13 hereof (a “**Certification**”) and purporting to have been executed or issued by the Pledgor, the Servicer or their authorized officers or attorneys, the Pledgee shall be entitled to rely and act upon the genuineness and authenticity of any such Certification submitted to it, as a valid Certification. It shall not be necessary for the Pledgee to ascertain whether or not the persons who have executed, signed or otherwise issued, authenticated or receipted such Certifications have authority to do so or that they are the same persons named therein or otherwise to pass upon any requirement of such Certifications that may be essential for the validity or effectiveness or upon the truth and acceptability of any information contained therein which the Pledgee in good faith believes to be genuine.

## **SECTION 18 – INDEMNIFICATION**

### **18.1 Indemnity**

In addition to and without limiting any other rights of each of the Pledgee or the Servicer, the Pledgor agrees to indemnify each of the Pledgee and the Servicer and their respective officers, directors, employees, representatives, agents and successors and assigns (each an “**Indemnitee**”) and hold such Indemnitee harmless from and against any and all liabilities, losses, damages, costs, penalties, actions, suits, demands, levies and expenses of any kind, including, without limitation, the fees and disbursements of counsel on a solicitor and own client basis, which may be suffered by, imposed on, incurred by or asserted against an Indemnitee, including without limitation, costs of frivolous actions which an Indemnitee may be required to defend, however arising from or out of any act, omission or error of Indemnitee in connection with an Indemnitee’s actions hereunder or in connection with the Pledgor’s default under any of the Defeasance Documents or in connection with the Pledgor’s actions hereunder or in connection with any investigative, administrative or judicial action (whether or not such Indemnitee shall be designated a party thereto) relating to or arising out of this Agreement, the Loan Documents, the Pledged Collateral or the other Defeasance Documents (including, without limitation, any such proceeding by the Pledgor against an Indemnitee or by an Indemnitee against the Pledgor); provided that an Indemnitee shall not have the right to be indemnified hereunder for its own gross negligence or wilful misconduct as determined by a court of competent jurisdiction.

## **18.2 Survival**

The provisions of this Section 18 shall survive the termination of this Agreement and the discharge of the obligations of the Pledgor or its successors and assigns under this Agreement or the resignation or removal of the Pledgee or the Servicer.

## **SECTION 19- GENERAL**

### **19.1 Authority**

Any Person executing this Agreement in a fiduciary or other representative capacity represents that it has full power and authority to do so and that any applicable or required court, partnership, corporate or other authority has been duly and properly given and continues as of the date hereof.

### **19.2 Modification in Writing and Waiver**

This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the Pledgor or the Pledgee or any of the other parties hereto, but only by an agreement in writing and signed by the parties affected thereby, but including the Pledgee. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by the Pledgor or any other party hereto from the terms of any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or the other Defeasance Documents, no notice to or demand on Pledgor in any case shall entitle the Pledgor to any other or further notice or demand in similar or other circumstances.

### **19.3 Notice**

All notices and other communications hereunder by any party to any other party shall be given in accordance with the Defeasance Pledge and Security Agreement.

### **19.4 Governing Law; Jurisdiction**

This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### **19.5 Severability**

Any provision of this Agreement which is prohibited or determined by a court of law to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

## **19.6 Counterparts**

This Agreement and any amendments, waivers, consents or supplements hereto may be executed and delivered in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered, including by way of facsimile or other electronic means, shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement.

## **19.7 Entire Agreement**

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement, constitutes the entire agreement and understanding between the parties with respect to the matters and transactions contemplated hereby and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal.

## **19.8 Assignment and Enurement**

(1) This Agreement shall be binding upon and, subject to the restrictions on assignment by the Pledgor set forth in the Defeasance Pledge and Security Agreement, shall enure to the benefit of the successors and permitted assigns of the parties hereto. The Pledgee, as directed by the Servicer, shall have the right to assign or transfer rights and obligations under this Agreement without limitation. Any assignee or transferee shall be entitled to all the benefits afforded the Pledgee under this Agreement; provided, that such assignee or transferee shall have delivered to the other parties hereto written confirmation that such assignee and transferee agrees to be bound by the terms of this Agreement and is also the assignee or transferee of the Defeasance Documents.

(2) The Pledgee shall have the right to assign or transfer its rights and obligations hereunder only in connection with a termination, as set forth in Section 15 or with the prior written consent of the Servicer, provided that any body corporate into which the Pledgee may be merged or with which it may be consolidated and amalgamated, any body corporate resulting from any merger, consolidation or amalgamation to which the Pledgee is a party, and any body corporate authorized to carry on the business of a trust company in Canada which acquires all or substantially all of the corporate trust business of the Pledgee will be the successor Pledgee.

(3) The Pledgor shall not, without the prior written consent of the Pledgee, as directed by the Servicer, and, if necessary, each Rating Agency that has issued a rating of the Certificates, assign or transfer its rights or obligations under this Agreement.

(Signatures on following pages)

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer(s) as of the date first above written.

**PLEDGOR:**

●

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**PLEDGEE:**

●, as Custodian for the registered  
certificateholders of ● **COMMERCIAL  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES ●**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/we have authority to bind the corporation.

**SERVICER:**

●, in its capacity as Master Servicer pursuant to the Pooling and Servicing Agreement for ●, as Custodian for the registered certificate holders of

● **COMMERCIAL MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES ●**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## **Schedule C – Securities**

Please see attached.

Including replacements, if any, for any of the securities listed on the attached.

**Schedule D – Permitted Investments**

**[to be filled in w/r/t PSA]**

**Schedule E – Accountant’s Letter**

Please see attached.

**Schedule F – Authorized Signatories of Servicer**

The following employees of the Servicer are authorized by the Servicer on behalf of the Pledgee to deliver instructions to the Securities Intermediary under the Account Agreement:

<b>Name</b>	<b>Title</b>	<b>Signature</b>
_____	_____	_____ Specimen Signature
_____	_____	_____ Specimen Signature