**ASSIGNMENT AND AGREEMENT OF PAYMENT RESERVE**

**THIS** **AGREEMENT** is made this ⚫ day of ⚫ , ⚫.

**BETWEEN:**

EQUITABLE BANK

30 St. Clair Ave W., Suite 700

Toronto, ON M4V 3A1

(hereinafter called the ‘Lender’)

 OF THE FIRST PART,

- and -

⚫ - name and address required

(hereinafter called the ‘Borrower’)

 OF THE SECOND PART.

**WHEREAS** the Borrower has agreed to become indebted to the Lender for a loan (the “**Loan**”) made pursuant to a Commitment dated ⚫, as amended, supplemented, replaced or restated from time to time (collectively, the “**Commitment**”) issued by the Lender and secured by, inter alia, a first mortgage and charge of certain lands and premises comprising ⚫;

**AND WHEREAS**, as a condition of the Loan and in accordance with the Commitment, the Lender has required that the Borrower establish and make payments to the Lender as herein provided, on account of certain reserves to be held as security for and applied on account of due payment and performance by the Borrower of its obligations under the Loan as hereinafter more particularly described and provided;

**NOW THEREFORE, THIS AGREEMENT WITNESSES THAT**, in consideration of the Lender making the Loan available to the Borrower, the initial advance of funds under the Loan, the covenants of the Borrower to pay and perform its obligations under the Loan and other good and valuable consideration now paid or given by each party to the other (the receipt and sufficiency of which are hereby acknowledged by each party hereto), the parties hereto hereby covenant and agree as follows:

1. DEFINITIONS

In addition to the words and phrases elsewhere defined herein, in this Agreement the following words and phrases shall have the following meanings ascribed thereto:

* 1. “**Loan Documents**” means, collectively, all documents, instruments, agreements and opinions now or hereafter creating, evidencing, securing, guaranteeing and/or relating to the Loan and the monies secured by the Loan or any part thereof, including, without limitation, the Commitment and this Agreement;
	2. “**Loan Indebtedness**” means the aggregate of: (i) the outstanding principal balance of the Loan at any time and from time to time; (ii) all accrued and unpaid interest and compound interest payable at any time and from time to time, whether or not then due, at the rate provided by any Loan Document; (iii) all costs of every nature and kind incurred by or on behalf of the Lender with respect to the Loan, including all “Costs” as defined in any Loan Document; (iv) if applicable, any yield maintenance charge and other amount or amounts payable pursuant to and in accordance with any Loan Document in connection with any prepayment of the Loan or any part thereof; (v) any amount, cost, charge, expense or interest added to the Loan Indebtedness under the Loan Documents or applicable laws or which is otherwise due and payable thereunder or secured thereby from time to time; and (vi) the payment, performance, discharge and satisfaction of all other obligations of the Borrower and any guarantor, indemnitor or other person under or in respect of the Loan and Loan Documents; and
	3. “**Property**” means, collectively, (i) all legal and beneficial right, title, estate and interest in and to the lands and premises described above, (ii) all buildings, structures, fixtures, and improvements of any nature or kind now or hereafter located on such lands, (iii) all machinery, equipment, appliances, furniture, furnishings, chattels, fixtures (including all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other similar property of every kind and nature whatsoever now or hereafter located upon or used in connection with such lands or appurtenant thereto, (iv) all present and future leases, offers to lease, subleases, concessions, licenses and other contracts and agreements affecting the use, enjoyment or occupancy of such lands or any portion thereof (including, if a hotel, all guest rooms, meeting rooms, restaurants and other food and beverage facilities), together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security, (v) all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any kind and nature whatsoever arising from or relating to such lands, including, if a hotel, all guest rooms, meeting rooms, restaurants and other food and beverage facilities, vending machines, telephone and television systems, guest laundry and the provision or sale of any goods or services, and (vi) all other appurtenances to such lands.
1. CREATION OF PAYMENT RESERVE

The Borrower hereby irrevocably authorizes and directs the Lender to deduct the amount of $⚫ from the first advance of funds under the Loan, and agrees that the same shall be held, invested and applied as provided by this Agreement.

1. INVESTMENT OF PAYMENT RESERVE

The amount referred to in paragraph 2 hereof shall be held by the Lender in the proportions thereof as stipulated by the Commitment or, if not so stipulated, in such proportions as directed by the Lender in its sole discretion. Each holder of such amount or part thereof shall invest the same in one or more interest bearing term deposits, guaranteed investment certificates (GICs) or other interest bearing accounts held in the name of the Lender and at rates and upon terms and conditions as determined by the Lender in its sole discretion; and all interest earned on the monies so invested from time to time shall be added to and form part of the same and be held by the Lender, as the case may be and as herein provided; and the aggregate monies so invested from time to time and the aggregate interest actually earned thereon are herein collectively called the “**Payment** **Reserve**”.

1. DEEMED ADVANCE

The Borrower acknowledges and agrees that, notwithstanding that the Payment Reserve is being retained and held by the Lender in accordance with the provisions set out herein, the original principal amount of the Payment Reserve shall be deemed to have been fully advanced by the Lender to the Borrower and interest at the rate and upon the terms set out in the Loan Documents shall be payable on such original principal amount of the Payment Reserve from and after the date of the initial advance of the Loan or such other date as specified by the Loan Documents.

1. PLEDGE OF PAYMENT RESERVE

The Borrower hereby transfers, assigns, pledges, grants a security interest in and otherwise encumbers to and in favour of the Lender the Payment Reserve and any and all certificates, receipts, accounts or other investment documents evidencing same or to which same may have been converted from time to time, as security for the due payment and performance by the Borrower of its obligations under the Loan including, without limitation, payment of the Loan Indebtedness as and when due, payment of any unpaid realty taxes and penalties, utilities, insurance premiums and other costs any nature or kind in respect of the Property or any part thereof, payment of any amount due under any mortgage, charge, lien or other encumbrance of any nature or kind having priority or subordinate to any Loan Document, and payment of all costs of every nature and kind incurred by or on behalf of the Lender with respect to the Loan.

1. DISBURSEMENT OF PAYMENTS RESERVE

The Borrower hereby irrevocably authorizes and directs the Lender to apply the Payment Reserve or so much thereof as is necessary and available so as to pay to the Lender the regular monthly instalments of interest and principal due and coming due under the Loan at any time and from time to time, and otherwise in accordance with the “Payment Reserve” provisions of the Commitment and, at the Lender’s option, subject to all customary title sub- searches and other due diligence required by the Lender in connection with each such advance. Except as provided in this paragraph, nothing herein shall obligate the Lender to utilize or apply the Payment Reserve for payment of any amount owing in connection with the Loan, the Loan Documents, the Property or any other mortgage, charge, lien or encumbrance thereof.

1. DEFAULT

Upon the occurrence of any default under the Loan or any Loan Document and for so long as any such default exists, the Lender shall be entitled, at the sole discretion of the Lender, to apply all or any part of the Payment Reserve in any manner whatsoever toward the payment and/or performance of the Borrower's obligations under the Loan and the Loan Documents including, without limitation, payment of any or all of those items enumerated in paragraph 6 hereof; and any such payment may be made for such purpose and in such order of priority, either for the Lender’s benefit or for the benefit of the Property or any other encumbrance thereof, as the Lender may determine in its sole discretion; and no such payment shall in any way lessen or prejudice the obligation of the Borrower to repay the Loan Indebtedness in accordance with the Loan Documents; and if, other than for the payments contemplated by paragraph 6 hereof, any part of the Payment Reserve is applied as aforesaid, the Borrower shall replenish and repay the full amount so applied to the Lender , as the case may be, forthwith upon demand therefor by the Lender.

1. REFUND

Upon full repayment of the Loan Indebtedness, it is understood and agreed that the Lender will refund to the Borrower the balance of the Payment Reserve, if any, and if applicable will instruct the Lender’s solicitors to do so.

1. INCONSISTENCIES

Notwithstanding anything to the contrary set out in any other Loan Document, in the event of any inconsistency between the terms of the Commitment and the terms of this Agreement, the terms of the Commitment shall prevail, provided that the inclusion of any term in this Agreement that is not set out in the Commitment shall not be an inconsistency.

1. GENERAL CONTRACT PROVISIONS

Any and all Schedules to this Agreement form a part hereof. No amendment, waiver, discharge or release of this Agreement shall be binding or enforceable unless made in writing signed by all of the parties hereto. Time is and shall remain of the essence under and pursuant to this Agreement; provided that the time for performing or completing any matter under or pursuant to this Agreement may be extended or abridged by an agreement in writing by the parties or their respective solicitors. Failure by any party to strictly enforce any provisions hereof shall not operate as a waiver or limitation of such party's rights hereunder in respect of any subsequent default. If any provision of this Agreement or the application thereof to any person or circumstance is to any extent held or rendered invalid, unenforceable or illegal, same shall be considered separate and severable herefrom and all other provisions of this Agreement shall remain in full force and effect and be binding upon the parties hereof. The headings set forth in this Agreement are inserted for convenience and reference only and shall in no way define or limit the intent or interpretation of any of the provisions hereof. Wherever in this Agreement any subject matter is described as including specifically described persons, things, events or other items, unless expressly stated to the contrary, the word “*including”* or any other derivation or variation of that word means, as the case may be, *“including, without limitation,*” or *“including, without limiting the generality of the foregoing,*” or such derivation or variation thereof as required by the context. This Agreement shall be read and construed with all changes of gender and number of the party or parties referred to in each case as required by the context, and the covenants and agreements of each party shall be deemed to be joint and several where such party is more than one person, firm or corporation. With respect to each party which is a partnership, each person who is presently a partner of such partnership and each person who becomes a partner of such partnership shall be and continue to be jointly and severally liable for all covenants and agreements of such party notwithstanding that any such person subsequently ceases to be a partner of such partnership, subject to and only to the extent of the limited liability of any such person that is a limited partner of such partnership.

1. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Each party hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

1. COUNTERPARTS AND CONSOLIDATION

This Agreement may be executed by the parties hereto in two or more counterparts, and when each party has executed and delivered a counterpart of this Agreement to all of the other parties hereto, such counterparts taken together shall be deemed to be a fully executed original copy of this Agreement as though all parties had executed the same document. The Borrower hereby irrevocably consent to and authorize the Lender to consolidate the signed pages of each such executed counterpart into a single document, which consolidated document shall be deemed to be a fully executed original copy of this Agreement as though all parties had executed the same document.

1. AGREEMENT BINDING UPON SUCCESSORS

This Agreement and all rights and obligations arising from same shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, legal personal representatives, successors and assigns, except as limited by the provisions of any other Loan Document.

**IN WITNESS WHEREOF** this Agreement has been signed and delivered on the date set out above.

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| --- | --- | --- |
| SIGNED & DELIVEREDIn the presence of: |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: ⚫ |
| Witness: ⚫ |  |

**OR**

**⚫**

Per: ⚫

Per: ⚫

I/We have the authority to bind the corporation.