



## STANDARD MORTGAGE TERMS – VARIABLE RATE

Filed by: **CANADIAN WESTERN BANK**

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## MORTGAGE TERMS – PART 2

The following set of filed standard mortgage terms shall be deemed to be included in and form part of every mortgage where so indicated in the Mortgage Form (as defined below).

For consideration, the receipt and sufficiency of which is hereby acknowledged by the Mortgagor, the Mortgagee and the Mortgagee agree as follows:

### 1. DEFINITIONS

#### 1.1 In this Mortgage:

- (a) **“Balance Due Date”** means the balance due date, if any, set out or referred to in item 5(l) of the Mortgage Form;
- (b) **“business day”** means any day in Vancouver, British Columbia that the Mortgagee is open for business at its Payment Office;
- (c) **“Covenantor”** means the Person or Persons, if any, who execute the Mortgage Form and agree to be bound by the terms and conditions of this Mortgage as “Covenantor” and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (d) **“First Payment Date”** means the first payment date, if any, set out or referred to in item 5(f) of the Mortgage Form;
- (e) **“Fixtures”** mean all present and after-acquired structures, additions, improvements, plant, machinery, apparatus, facilities, equipment, fixtures and other goods installed in or affixed or attached to the buildings or improvements situate in, on or under the Lands or affixed or attached thereto, including without limitation:
  - (i) all fences, motors, wiring, fixed mirrors, suspended ceiling tiles, doors, windows and computers and all other structures, additions, improvements, plant, machinery, apparatus, facilities, equipment, fixtures and other goods installed in or affixed or attached to the buildings or improvements situate in, on or under the Lands or affixed or attached thereto for use in carrying on an activity inside the said buildings or improvements or on the Lands;

(ii) all heating, cooling, plumbing, air-conditioning, air-filtering, ventilating, conveyancing, electrical, lighting, telecommunications, security, vacuum, sprinkler, fire-fighting, cooking and refrigeration devices, systems and equipment, including without limitation all furnaces, water heaters, hot water tanks, oil and gas burners, electric fixtures, television antennae, satellite dishes and built-in furniture;

(f) “**Hazardous Materials**” means all hazardous or toxic materials, pollutants, effluents, contaminants, radioactive materials, flammable explosives, chemicals known to cause cancer or reproductive toxicity, emissions, washes and all other chemicals, materials and substances, the handling, storage, release, transportation or disposal of which is or becomes prohibited, limited or regulated by any governmental or regulatory authority, or which, even if not so regulated, is or becomes known to pose a hazard to the health and safety of any person, including, without limitation, asbestos, petroleum and petroleum by-products, urea formaldehyde foam insulation, polychlorinated biphenyls, all substances from time to time designated as or considered to be a “contaminant”, “waste”, “hazardous substance”, “hazardous material”, “toxic substance” or a similar designation under any Hazardous Material Law, including without limitation, the Environmental Management Act (British Columbia), having application to the Lands or the Mortgagors;:

(g) “**Hazardous Materials Claims**” means any and all enforcement, cleanup, removal, remedial or other governmental or regulatory actions, prosecutions, investigations, agreements, injunctions or orders instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made by any third party against the Mortgagor in connection with the Lands or the business of the Mortgagor relating thereto relating to damage, contribution, cost recovery, compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials;

(h) “**Hazardous Materials Laws**” means any federal, provincial or local laws, rules, ordinances, regulations, orders or other edicts having the force of law relating to the environment or any Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof or the terms of any permit issued therefor) or the environmental conditions on, under or about the Lands including, without limitation, soil, groundwater and indoor and ambient air conditions;

(i) “**Interest Adjustment Date**” means the interest adjustment date, if any, set out or referred to in item 5(c) of the Mortgage Form;

(j) “**Interest Calculation Period**” means the interest calculation period set out or referred to in item 5(d) of the Mortgage Form;

(k) “**Interest Margin**” means the annual percentage rate, if any, above or below the Prime Rate set out or referred to in item 5(b) of the Mortgage Form;

(l) “**Interest Rate**” means the annual interest rate set out or referred to in item 5(b) of the Mortgage Form, (or such other rate or rates of interest as may be agreed upon between the Mortgagor and the Mortgagee) calculated and compounded at the end of

each Interest Calculation Period not in advance, and, if the Interest Rate is stated to be a rate above or below the Prime Rate, Interest Rate shall mean the rate per annum equal to the Prime Rate plus or minus the Interest Margin, as the case may be, calculated and compounded at the end of each Interest Calculation Period;

(m) “**Lands**” means all of the estate, right, title and interest of the Mortgagor in and to the land(s) described or referred to in item 2 of the Mortgage Form together with the improvements, appurtenances and every other thing referred to in Section 10 of the Land Transfer Form Act (British Columbia) and whether now or hereafter existing or acquired, in connection with such land(s);

(n) “**Last Payment Date**” means the last payment date, if any, set out or referred to in item 5(i) of the Mortgage Form;

(o) “**Mortgage**” means the Mortgage Form and these filed standard mortgage terms, read together, as amended, modified, renewed and extended from time to time;

(p) “**Mortgage Form**” means the Form B under the Director's Requirements for Electronic Land Title Forms DR 03-11 issued by the Director of Land Titles, British Columbia, under the Land Titles Act, (British Columbia), which refers to these filed standard mortgage terms and is executed by the Mortgagor, and all schedules and addenda attached to such Form B;

(q) “**Mortgagee**” means **Canadian Western Bank**, which is the lender or mortgagee described in item 4 of the Mortgage Form, and its successors and assigns;

(r) “**Mortgagor**” means the person or persons described in item 3 of the Mortgage Form as the borrower(s) or mortgagor(s) who executed the Mortgage Form and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;

(s) “**Payment Dates**” means the payment dates, if any, set out or referred to in item 5(e) of the Mortgage Form and “**Payment Date**” means any one of them;

(t) “**Payment Office**” means the place of payment set out or referred to in item 5(k) of the Mortgage Form;

(u) “**Periodic Payment**” means the amount of each payment, if any, set out or referred to in item 5(g) of the Mortgage Form;

(v) “**Person**” means and includes any individual, sole proprietorship, corporation, partnership, bank, joint venture, trust, unincorporated association, association, institution, entity, party or government (whether national, federal, provincial, state, municipal, city, county or otherwise and including any instrumentality, division, agency, body or department thereof);

(w) “**PPSA**” means the Personal Property Security Act (British Columbia) and all regulations thereto, as amended from time to time;

(aa) “**Prime Rate**” means the annual variable rate of interest established from time to time by the Mortgagee at its main branch in Vancouver, British Columbia, as the reference rate then in effect for determining interest rates on Canadian dollar loans made by the Mortgagee in Canada and commonly referred to and known as its “prime interest rate” or “prime lending rate”;

(ab) “**Principal Sum**” means:

(i) the principal amount described in item 5(a) of the Mortgage Form

(i) all money or interest thereon that is added to such principal amount under this Mortgage; less

(iii) payments made on account of the principal or interest by the Mortgagor from time to time;

(ac) “**Taxes**” means all taxes, rates, levies, charges, assessments and other imposition whatsoever which now are or may hereafter be rated, levied, charged, assessed or imposed by any authority, municipal, local, parliamentary or otherwise, upon the Lands or on the Mortgagor or the Mortgagee in respect of the Lands.

## 2. GRANT OF SECURITY

2.1 This mortgage is made under Part 3 of the Land Transfer Form Act (British Columbia);

2.2 (a) The Mortgagor HEREBY GRANTS AND MORTGAGES the Lands to the Mortgagee forever; and

(b) The Mortgagor HEREBY GRANTS A SECURITY INTEREST in the Fixtures pursuant to the PPSA to the Mortgagee forever;

subject to the proviso for redemption set out in section 3 of this Mortgage;

2.3 If the Mortgagor hereafter acquires any further or greater interest in the Lands, this Mortgage shall extend to such interest in the Lands.

## 3. PROVISIO FOR REDEMPTION

3.1 Provided this Mortgage shall be void on the occurrence of the following events:

(a) payment in full to the Mortgagee of the Principal Sum;

(b) payment to the Mortgagee of all such other moneys as the Mortgagee may be entitled to by virtue of this Mortgage, as and when such moneys shall become due and payable;

(c) payment of Taxes and performance of statute labour; and

(d) observance and performance of all covenants, agreements, provisos, terms, conditions and provisions herein contained;

AND the Mortgagor releases to the Mortgagee all the claims of the Mortgagor on the Lands subject to the above provisos.

**THE MORTGAGOR COVENANTS AND AGREES WITH THE MORTGAGEE AS FOLLOWS:**

**4. PAYMENT**

4.1 The Mortgagor will observe the above provisos and will duly pay the Principal Sum, interest and all other moneys secured hereunder when due and in accordance with the following conditions;

(i) interest at the Interest Rate shall accrue and be calculated on the Principal Sum before as well as after maturity, default and judgment from the date of advance of the Principal Sum to and including the Interest Adjustment Date and shall become due and be paid on the Interest Adjustment Date;

(ii) notwithstanding the foregoing, the Mortgagee may require that interest on the Principal Sum, computed from the date of the advance of the Principal Sum shall become due and be paid on the Payment Date immediately following the date of such advance and the balance, if any, of the interest on the Principal Sum shall become due and be paid on the Interest Adjustment Date;

(iii) following the Interest Adjustment Date the Principal Sum shall become due and be paid by equal consecutive Periodic Payments (which include principal and interest) payable on each and every Payment Date from and including the First Payment Date up to and including the Last Payment Date, and the balance of the Principal Sum then remaining shall become due and be paid on the Balance Due Date (herein sometimes called "maturity");

(iv) provided that until the happening of default under any of the provisions of this Mortgage, each Periodic Payment when paid, shall be applied, first, in satisfaction or toward the payment of the interest at the Interest Rate accrued to the Payment Date and any balance of such Periodic Payment thereafter remaining shall be applied in reduction of the principal but, after the happening of default under any of the provisions of this Mortgage, all moneys paid hereunder or received by the Mortgagee may be applied on such part or parts of the moneys secured hereby as the Mortgagee in its sole discretion shall deem advisable; and

(v) for the purposes of the Interest Act (Canada) it is hereby declared that whenever any principal moneys or interest secured by this Mortgage are made payable on a sinking fund plan or on any plan under which the payments of principal moneys and interest are blended, or on any plan that involves an allowance of interest on stipulated payments it is hereby stated that the amount of principal money advanced is the Principal Sum set out or referred to in item 5(a) of the Mortgage Form and the rate of interest chargeable thereon, calculated half

yearly not in advance, is the Interest Rate set out or referred to in item 5(b) of the Mortgage Form;

4.2 The Principal Sum, interest and all other moneys payable hereunder shall be paid when due without any set-off, deduction, defalcation or abatement whatsoever;

4.3 If the Mortgagor fails to pay when due the Principal Sum, interest or other moneys secured hereby, or any part thereof, the Mortgagor shall pay to the Mortgagee compound interest thereon calculated as the Interest Rate on demand, as well after as before maturity, default and judgment, to be computed with rests on the last day of each Interest Calculation Period;

4.4 The following shall apply if the Interest Rate is a rate below, equal to or above the Prime Rate:

(a) if the Prime Rate changes and so often as the same occurs during the currency of this Mortgage, the Interest Rate shall change without notice to the Mortgagor on the same day and in the same amount as the Prime Rate changed;

(b) a certificate of any officer of the Mortgagee as to the Prime Rate at any particular time or times, shall be deemed to be conclusive evidence of the Prime Rate hereunder at such time or times;

(c) if the Mortgagee shall at any time during the currency of this Mortgage establish more than one rate of interest as its Prime Rate, then for the purposes hereof the Prime Rate hereunder shall be the higher or highest of such rates so established; and

(d) in the event foreclosure proceedings are commenced hereunder by the Mortgagee, the Mortgagee may, at its option, apply to fix the Interest Rate that will be payable hereunder after the grant of the Order Nisi until the balance of the Principal Sum outstanding has been paid in full at the Interest Rate applicable hereunder on that day which is seven (7) days prior to the date of the grant of the Order Nisi;

4.5 Until the Mortgagee shall notify the Mortgagor otherwise, all payments to be made to the Mortgagee under this Mortgage shall be paid to or to the order of the Mortgagee at the Payment Office, in dollars of lawful money of Canada, solely on business days, and before 12:00 o'clock noon local time on any such day and in the event a payment is made after 12:00 o'clock noon local time on any business day, or is made on any day that is not a business day, such payment will be deemed to have been received by the Mortgagee on the business day next following;

4.6 The Mortgagor will, on the due date thereof, pay and satisfy all Taxes and will submit to the Mortgagee tax receipts evidencing the payment of Taxes within thirty (30) days after they become due, provided that:

(a) the Mortgagee may deduct, from the Principal Sum advanced under this Mortgage, an amount sufficient to pay all Taxes which have become due or which will become due during the calendar year in which the final advance of the Principal Sum is made;

(b) the Mortgagee may require the Mortgagor to pay to the Mortgagee in monthly instalments, on each Payment Date, such amounts as in the opinion of the Mortgagee are required to total the amount of each succeeding year's Taxes by the time such Taxes or the first instalment thereof fall due, and the Mortgagor shall also pay to the Mortgagee on demand before the due date of each year's Taxes or the first instalment thereof, any additional amount which may be required so that out of the said monthly and additional tax payments the Mortgagee may pay the whole amount of each year's Taxes on or before the due date of the first instalment thereof;

(c) any amounts deducted by or paid to the Mortgagee, pursuant to paragraphs 4.6 (a) or (b) hereof, may, at the option of the Mortgagee, be either credited to the Mortgagor's Tax Account or applied against any Principal Sum or interest then in default under this Mortgage. No amounts in the Tax Account shall be or be deemed to be held in trust and the Mortgagee shall not be obligated to pay any interest or other allowance upon any such amounts. The Mortgagee may, however, in its sole discretion, pay interest on any credit balance in the Tax Account at a rate and at such times determined by it in its sole and absolute discretion;

(d) the Mortgagee shall apply the credit balance in the Tax Account, if any, to the payment of Taxes as they fall due or at such earlier time as the Mortgagee may deem fit as long as the Mortgagor is not in default under any covenant, proviso or agreement contained in this Mortgage, provided, however, that the Mortgagee may at its option from time to time apply all or part of the credit balance in the Tax Account in or towards the payment of any Principal Sum or interest in default under this Mortgage;

(e) if at any time the credit balance in the Tax Account is insufficient to pay the Taxes then due or payable, the Mortgagee may, but shall not be obligated to, at its option, pay such Taxes, including any deficiency. Any amounts paid by the Mortgagee in payment of such Taxes shall be debited to the Tax Account to the extent that the Tax Account is sufficient and the Mortgagee may, at its option, either debit the Tax Account or add to the Principal Sum the amount, if any, by which the Tax Account is insufficient;

(f) any debit balance in the Tax Account from time to time shall bear interest at the Interest Rate and shall, together with such interest, be secured by this Mortgage;

(g) if so requested by the Mortgagee, the Mortgagor shall:

(i) deliver to the Mortgagee for each twelve (12) month period, commencing with the First Payment Date, twelve (12) post-dated cheques to cover the monthly payment of Taxes; and

(ii) execute and deliver to the Mortgagee, the Mortgagee's required documents for a pre-authorized repayment plan with respect to Taxes; and

the Mortgagor shall transmit to the Mortgagee the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith after the receipt of same by the Mortgagor;

4.7 If this Mortgage is now or at any time hereafter subject to any encumbrance, charge, lien or interest claimed upon the Lands, including but not limited to Permitted Encumbrances (each hereinafter called a “prior charge”):

- (a) the Mortgagor will pay or cause to be paid as they become due all payments required to be made under or by virtue of each prior charge, whether for principal, interest, taxes or otherwise;
- (b) the Mortgagor will duly observe, perform and comply with the covenants, provisos and agreements contained in each prior charge which are to be kept, observed and performed by it;
- (c) any default under a prior charge shall be deemed to be default hereunder and shall entitle the Mortgagee to exercise any and all remedies available to the Mortgagee in the event of default hereunder; and
- (d) in the event of default by the Mortgagor under a prior charge, the Mortgagee shall have the right, but not the obligation, to cure the same in its sole and absolute discretion;

4.8 The Mortgagor shall pay all costs, charges and expenses including without limitation legal costs on a solicitor and his own client basis and appraiser’s fees, in connection with the negotiation, preparation, registration, modification and extension of this Mortgage;

4.9 The Mortgagor shall pay all fees, costs, charges and expenses including without limitation legal fees, costs, charges and expenses on a solicitor and his own client basis, which may be incurred by or on behalf of the Mortgagee whether before or after court proceedings are commenced, or whether otherwise incurred, in recovering, collecting, procuring or enforcing payment of any or all the moneys secured under this Mortgage or in any way enforcing or protecting the security of this Mortgage or enforcing any of the terms of this Mortgage (including but not limited to all travelling expenses of the Mortgagee, the Mortgagee’s servants and agents, and commissions on collection of rent which may be incurred by or on behalf of the Mortgagee in the taking, recovering and keeping possession of the Lands or in inspecting the same) and all other amounts generally in any other measure or proceedings taken by or on behalf of the Mortgagee to realize or collect the moneys hereby secured or to defend or perfect the title of the Lands, all of which fees, costs, charges, commissions, expenses and other amounts shall be a charge under this Mortgage on the Lands in favour of the Mortgagee and shall be payable forthwith by the Mortgagor to the Mortgagee with interest at the Interest Rate until paid;

4.10 The Mortgagor shall forthwith upon demand repay to the Mortgagee all other proper outlays incurred by the Mortgagee and not covered by any other covenant herein;

4.11 The Mortgagee shall have a reasonable time after payment in full of the moneys secured hereby within which to prepare and execute a discharge of this Mortgage, and all legal and other expenses for the preparation and execution of such discharge shall be borne by the Mortgagor, and the Mortgagor will not be entitled to a discharge of this Mortgage unless and until the Mortgagor shall have kept and performed all the covenants, provisos, agreements and stipulations herein contained, whether the Mortgagee has taken legal proceedings thereon and recovered judgment or otherwise.



## **5. PREPAYMENT RIGHTS**

5.1 The Mortgagor has no right to prepay all or any part of the Principal Sum except as agreed to in writing between the Mortgagor and Mortgagee from time to time.

## **6. INSURANCE**

6.1 The Mortgagor will forthwith insure and during the continuance of this Mortgage will keep insured each and every building, structure, erection, improvement, fixture or replacement thereof (including without limitation all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever) now on the Lands or which may hereafter be erected thereon against loss or damage by fire and such other perils as the Mortgagee may reasonably require (including but not limited to boiler insurance, loss of rental income and business interruption insurance);

6.2 The Mortgagor will keep and maintain third party liability insurance in an amount satisfactory to the Mortgagee;

6.3 The Mortgagor will keep and maintain such other insurance as is customarily maintained by persons operating or occupying similar properties in equivalent locations;

6.4 All insurance coverage required by the Mortgagee shall be issued by insurers in form and upon terms and in amounts acceptable to the Mortgagee, and the Mortgagor shall cause the Mortgagee to be named as a loss payee as its interest may appear in respect of the Lands on the policy or policies of insurance effected by the Mortgagor and shall cause mortgage clauses in a form approved by the Mortgagee to be included in such policy or policies and shall provide evidence of such insurance to the Mortgagee forthwith upon demand;

6.5 The Mortgagor will pay all insurance premiums and sums of money necessary for such purposes as the same shall become due;

6.6 The Mortgagor will forthwith assign, transfer and deliver over to the Mortgagee each and every policy or policies of insurance and receipts thereto appertaining;

6.7 The Mortgagor shall forthwith on the happening of any loss or damage furnish to the Mortgagee at the Mortgagor's expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of insurance moneys;

6.8 Any insurance moneys received may, at the option of the Mortgagee, be applied to a suspense account or in or towards rebuilding, reinstating or repairing all or any portion of the Lands or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Lands or be applied or paid partly in one way and partly in another or such moneys may be applied, in the sole discretion of the Mortgagee, in whole or in part on the moneys secured hereby or any part thereof whether due or not then due;

6.9 To ensure that the Mortgagee may so apply such insurance moneys in the manner herein contemplated, the Mortgagor assigns and releases to the Mortgagee all rights of the Mortgagor to receive the insurance moneys and expressly waives all the Mortgagor's rights and

benefits under the Insurance Act (British Columbia) and the Fires Prevention (Metropolis) Act 1774.

## **7. USE, ALTERATIONS AND REPAIRS**

7.1 The Mortgagor shall not without the express written consent of the Mortgagee first had and obtained:

- (a) change the present use of the Lands; nor
- (b) permit the Lands to be unoccupied or unused;

7.2 The Mortgagor shall promptly observe, perform, execute and comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of every governmental, municipal and civil authority or agency concerning the Lands and further agrees, at the cost and expense of the Mortgagor, to do and perform all acts and things which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances and regulations and in particular, but without limiting the generality of the foregoing:

- (a) it will observe and comply in all material respects with the provisions of all Hazardous Material Laws pertaining to the Lands or the business of the Mortgagor in connection therewith and from time to time, upon request of the Mortgagee, provide to the Mortgagee evidence satisfactory to the Mortgagee, acting reasonably, of such observance and compliance;
- (b) it will, after becoming aware thereof, promptly provide the Mortgagee with notice of:
  - (i) the presence of or any discharge or release of Hazardous Materials on, under or about the Lands which is required to be reported to any governmental authority;
  - (ii) any Hazardous Materials Claims; and
  - (iii) any remedial action taken in response to any Hazardous Materials Claims;
- (c) it will not object to and will take such actions and do such things within its power as may be reasonable and necessary to enable the Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims; and
- (d) it will observe and comply in all material respects with all applicable laws, regulations, bylaws, ordinances and orders of any governmental authority having application to the Lands or the business of the Mortgagee in connection therewith which pertain to health and safety or industrial hygiene;

7.3 The Mortgagor will keep the Lands and all buildings, structures, erections, improvements and the like now or hereafter constructed thereon in good condition and repair

according to the nature and description thereof respectively, and shall not commit any act of waste or allow any act of waste to be committed upon the Lands;

7.4 Save as herein otherwise expressly permitted, the Mortgagor will not, without the prior written consent of the Mortgagee, demolish the whole or any part of the buildings, structures, erections, improvements and the like now or hereafter existing on the Lands and will not proceed with any alteration, remodelling, rebuilding or addition thereto or thereof, in whole or in part;

8.5 The Mortgagor shall indemnify the Mortgagee, and its officers, directors, employees, agents and shareholders, in their capacities as such, and hold each of them harmless from and against any and all losses, liabilities, damages, costs, expenses and claims of any and every kind whatsoever, including, without limitation:

- (a) the cost, liability or damage arising out of defending, counterclaiming or claiming over against third parties in respect of any action or matter;
- (b) any cost, liability or damage arising out of a settlement of any action or proceeding entered into by the Mortgagee; and
- (c) the costs of complying with the order, direction or request of any governmental or regulatory authority having jurisdiction;

which at any time or from time to time may be paid, incurred or asserted against any of them for, with respect to or as a result of:

- (d) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Lands or into or upon any lands, the atmosphere or any watercourse, body of water or wetland of any Hazardous Material where it has been proven that the source of the Hazardous Material is the Lands; and
- (e) any Hazardous Materials Laws.

This paragraph 8.5 shall survive the repayment of the Principal Sum, interest and all other moneys secured hereunder and the granting of an order absolute of foreclosure of the Lands and shall continue in full force and effect so long as any possibility of any such liability, claim or loss exists and shall apply notwithstanding any knowledge which any of the foregoing persons may have concerning such liabilities, claims or losses either now or in the future.

8.6 The Mortgagee and any agent of the Mortgagee, may at any time and from time to time enter upon the Lands to inspect the Lands or any part or parts thereof and at any time the Mortgagee in its sole discretion deems necessary or advisable, and the Mortgagee may without the concurrence of the Mortgagor or any other person make arrangements to repair, finish, and put in order the buildings, structures, erections, improvements and the like now or hereafter existing on the Lands, and to inspect, take care of, lease, collect the rents of, and generally

manage the Lands as the Mortgagee may deem proper, and the Mortgagee shall not hereby become or be liable as a mortgagee in possession.

## **8. ADVANCE OF MORTGAGE MONEYS**

8.1 Except to the extent that the Mortgagee by issuing letters of credit or letters of guarantee or accepting bills of exchange or other negotiable instruments at the request of the Mortgagor is required to make advances or re-advances of money thereunder, the Mortgagor agrees that neither the preparation, execution or registration of this Mortgage, nor the advance or re-advance in part of the Principal Sum hereby secured, nor any course of conduct of the Mortgagee or of any of its officers, agents or employees shall bind the Mortgagee to advance or re-advance the Principal Sum or any unadvanced portion thereof to the Mortgagor or to any other person the obligations of whom are guaranteed by the Mortgagor, it being understood and agreed that the advance or re-advance of the moneys hereby secured or any part thereof from time to time shall be in the absolute discretion of the Mortgagee and not exercised or deemed exercised unless and until that advance or re-advance has actually been made to the Mortgagor, but nevertheless the security created by this Mortgage shall take effect in accordance with the terms of this Mortgage forthwith upon the execution hereof by the Mortgagor;

8.2 Any portion of the Principal Sum may be advanced or re-advanced by the Mortgagee all or in part at any future date or dates and the amount of those advances and re-advances when so made shall be secured by this Mortgage and be repayable with interest at the Interest Rate and this Mortgage shall be deemed to be taken as security for the moneys hereby secured arising from the current and running accounts represented by advances and re-advances hereunder under a line of credit or a current loan or otherwise, and the charge and mortgage created by the Mortgage shall take effect forthwith on the execution of the Mortgage Form;

8.3 If this Mortgage is redeemed by the Mortgagor, it shall be cancelled and shall not be re-issued, but neither:

- (a) any partial payment made thereon by the Mortgagor to the Mortgagee; nor
- (b) any ceasing by the Mortgagor to be indebted to the Mortgagee;

shall be deemed to be a redemption or cancellation pro tanto or otherwise, and this Mortgage shall be and remain valid security for any subsequent advance or re-advance by the Mortgagee to the Mortgagor to the same extent as if that advance or re-advance had been made on the execution of this Mortgage.

## **9. MORTGAGEE'S ELECTION TO MAKE PAYMENTS AND CURE DEFAULTS**

9.1 If the Mortgagor fails to make any payment which the Mortgagor has covenanted or agreed to make by the terms of this Mortgage or to provide proof of the making of any such payment to the Mortgagee upon demand, the Mortgagee, may but shall not be obligated to, make any such payment;

9.2 If the Mortgagor fails to perform any covenant or agreement herein contained on the part of the Mortgagor or to provide proof of performance to the Mortgagee upon demand, the

Mortgagee may in its sole discretion perform or cause to be performed any such covenant or agreement and may, at the expense of the Mortgagor, do such acts as it considers are reasonable to protect the interests of the Mortgagee and for such purposes the Mortgagee and its authorized representatives may enter onto the Lands. Without limiting the generality of the foregoing, the Mortgagee may:

- (a) insure the buildings on the Lands in accordance with the provisions hereof if the Mortgagor neglects to insure or to deliver policies and receipts in accordance herewith;
- (b) repair and reinstate the buildings and improvements on the Lands if the Mortgagor fails to repair in accordance herewith or demolishes or alters such buildings or improvements in contravention hereof;
- (c) without any order or direction of the Mortgagor, pay to contractors, sub-contractors, material men, labourers, and other persons supplying or having a claim for work, services, or materials supplied in and about the construction, repairing, altering or replacing of any buildings, structures, erections or improvements and the like now or hereafter constructed on the Lands, any moneys due to them for such work, services or materials; and
- (d) pay common expenses, assessments, contributions or levies required to be paid in connection with any strata lot comprising the Lands;

PROVIDED THAT the Mortgagee shall not be bound to exercise its rights hereunder and, if the Mortgagee shall exercise its rights hereunder, it shall not be liable to the Mortgagor for any loss or damage suffered by the Mortgagor as a result of such exercise;

9.3 If the Mortgagee shall make payment to any creditor of the Mortgagor or any encumbrance holder in respect of the Lands pursuant to the provisions hereof, the Mortgagee shall be entitled to all equities and securities held by such creditor or encumbrance holder in respect of the indebtedness or encumbrance paid or satisfied;

9.4 All payments made and all sums of money expended by the Mortgagee under this paragraph 10, including incidental costs, charges, expenses and outlays incurred in doing anything under this paragraph 10, shall be forthwith payable by the Mortgagor on demand with interest at the Interest Rate from the time or respective times of the payment thereof until paid, and until paid shall be a charge on the Lands in favour of the Mortgagee prior to all claims thereon subsequent to this Mortgage and may be added to the Principal Sum as if the same had originally formed part thereof;

9.5 Nothing done by the Mortgagee in reliance on the provisions of this paragraph 10 shall in any manner prejudice the remedies of the Mortgagee in respect of any default of the Mortgagor or otherwise.

## **10. DEFAULT AND ACCELERATION**

10.1 If any default at any time be made of or in any payment of the Principal Sum or interest hereby secured or mentioned, or intended so to be, or any part thereof, at the times and in the amounts provided, or in payment of any of the taxes, rates, levies, charges, rents,

assessments, statute labour or other impositions whatsoever, or under the covenant to insure herein given, or as to any other covenant or proviso herein contained, or if the Mortgagor dies, becomes bankrupt or insolvent or makes or demonstrates an intention to make an assignment for the benefit of its creditors or makes a proposal or takes advantage of any provision of the Bankruptcy and Insolvency Act (Canada) or any other legislation for the benefit of insolvent debtors or if the whole or any portion of the Lands become the subject of expropriation proceedings, then and in every such case and in the sole discretion of the Mortgagee:

- (a) the outstanding Principal Sum, interest, and all other moneys owing hereunder shall forthwith become due and payable without notice in like manner and with like consequences and effects to all intents and purposes whatsoever as if the Balance Due Date had fully come and expired, and notwithstanding that this Mortgage is declared to be made in pursuance of Part 3 of the Land Transfer Form Act (British Columbia), it is expressly understood and agreed by the Mortgagor that the reinstatement provisions of the form of words numbered 15 in Column II of Schedule 6 to the said Land Transfer Form Act shall have no force and effect in respect of this Mortgage or any of the moneys hereby secured, whether for interest, or principal or upon any other account whatsoever and the provisions relating to a default under this Mortgage by the Mortgagor shall be as set out herein and the Mortgagor shall not be relieved from the consequences of default by payment of the moneys of which default of payment has been made and costs and charges related thereto;
- (b) the Mortgagee may exercise any and all remedies to enforce this Mortgage; and
- (c) the Mortgagee shall have possession of the Lands free and clear from all encumbrances subject only to Permitted Encumbrances.

10.2 If the Mortgagor or any other person liable for the performance of any or all of the Mortgagor's obligations under this Mortgage defaults in the observance or performance of any of the terms of any other security documents given or granted to the Mortgagee as additional or collateral security for the payment of the moneys hereby secured or the performance of the terms of this Mortgage, then such default shall be deemed to be a default under this Mortgage and entitle the Mortgagee to exercise any and all remedies available to the Mortgagee in the event of default under this Mortgage.

11.3 If the Lands, or any part thereof, are used by any person for any purpose or use whatsoever, or any activity takes place upon the Lands, or any part thereof, which constitutes an offence under any section or provision of the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada), then at the option of the Mortgagee in its unrestricted and absolute discretion, the Principal Sum shall immediately become due and payable in full by the Mortgagor.

## **11. REMEDIES OF MORTGAGEE ON DEFAULT**

11.1 The Mortgagee, on default of any payment required to be made hereunder as and when due, may upon such notice as may be required by applicable law, enter on and lease or sell the Lands or any part or parts thereof; and should default in payment continue for one month, the foregoing powers of entry and leasing or sale, or any of them, may be exercised without notice

and the Mortgagee may lease or sell as aforesaid without entering into possession of the Lands; and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that such power had been improperly or irregularly exercised or that notice had not been given; and the Mortgagee may sell the whole or any part or parts of the Lands by public auction or private contract, or partly one and partly the other, on such terms as to credit and otherwise as to the Mortgagee shall appear most advantageous and for such prices as can reasonably be obtained therefor; and sales may be made from time to time of portions of the Lands to satisfy interest or parts of the Principal Sum overdue, leaving the Principal Sum or balance thereof to run at interest, payable at the Interest Rate; and the Mortgagee may make any stipulations as to title or commencement of title, or otherwise, as the Mortgagee shall deem proper; and the Mortgagee may buy in or rescind or vary any contract for sale of any of the Lands and re-sell, without being answerable for any loss occasioned thereby; and in the case of a sale on credit the Mortgagee shall only be bound to account to the Mortgagor for such moneys as have been actually received from the purchaser(s) after the satisfaction of the Mortgagee's claim; and for any of such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee deems fit; and the purchaser at any sale hereunder shall not be bound to see to the propriety or regularity thereof; and no want of notice or of publication, even if required hereby, shall invalidate any sale hereunder; and the above powers may be exercised by the Mortgagee and against the Mortgagor, and the costs of any abortive sale shall become a charge upon the Lands, and the Mortgagee may add them to the moneys secured hereby;

11.2 If default shall be made in payment of any part of the Principal Sum, interest or other moneys hereby secured at any time herein provided for the payment thereof, it shall be lawful for the Mortgagee to, and the Mortgagor hereby grants full power and license to the Mortgagee to enter, seize and distrain upon any goods upon the Lands and by distress warrant to recover by way of rent reserved as in the case of a demise of the Lands as much of the Principal Sum, interest or other moneys hereby secured as shall from time to time be or remain in arrears or unpaid, together with all costs, charges and expenses of the Mortgagee in connection therewith (including without limitation legal fees, costs, charges and expenses on a solicitor and his own client basis);

11.3 The obtaining of a judgment or judgments in any action to enforce this Mortgage or any of the covenants herein contained or any covenant contained in any other security for payment of the moneys hereby secured or performance of the obligations herein contained shall not operate as a merger of this Mortgage or of the moneys hereby secured or any of the said covenants or affect the right of the Mortgagee to interest at the Interest Rate and at the times aforesaid on any moneys owing to the Mortgagee under any covenant therein or herein set forth, and any judgment shall provide that interest shall be computed at the Interest Rate and in the same manner as herein provided until the judgment or judgments shall have been fully paid and satisfied;

11.4 Upon any default or defaults in the payment of the moneys hereby secured or of any installment thereof or of interest thereon, as they become due, or upon any default by the Mortgagor in the performance or observance of any of the terms of this Mortgage, or of any of the assignments of rents or leases or other deeds or instruments from time to time given by the Mortgagor to the Mortgagee as additional or collateral security for the moneys hereby secured, then on the happening of any one or more of such events, the Mortgagor shall refrain from

collecting and receiving all rents accruing as aforesaid and, upon notice from the Mortgagee, all tenants shall thereafter pay all such rents to the Mortgagee, and any payment made otherwise will not discharge the obligations of such tenant, and the Mortgagee may immediately cause default proceedings to be commenced under this Mortgage in the manner prescribed by law, and the Mortgagee shall be entitled to have a receiver, receiver-manager or a receiver and manager, (herein called a "Receiver") appointed and, without proof of any ground for his appointment other than the said default, to take possession and charge of the Lands and to fully and effectively operate the business which the Lands comprise or which was conducted thereon by the Mortgagor including, without limiting the generality of the foregoing, the right to rent the same and receive and collect the rents, issues and profits thereof under direction of the Court, and any amount so collected by such receiver shall be applied under direction of the Court to the payment of any judgment rendered, or amounts found due, according to the terms of this Mortgage including the costs of collection and legal fees, costs, charges and expenses on a solicitor and his own client basis, and in the event of any default or defaults in the payment of the moneys hereby secured or of any installment thereof or of interest thereon or in the performance or observance of any of the terms of this Mortgage, the Mortgagee shall have the right forthwith after any such default to enter upon, take possession of and rent the Lands and receive the rents, issues and profits thereof and apply the same, after payment of all necessary charges and expenses, on account of the moneys hereby secured;

11.5 A Receiver appointed by the Mortgagee as aforesaid will be deemed to be the agent of the Mortgagor and the Mortgagor shall be solely responsible for the Receiver's acts or defaults and the Mortgagee shall not be in any way responsible therefor and the Mortgagee shall not be liable to the Receiver for his remuneration, costs, charges or expenses;

11.6 It is further specifically understood and agreed that the Receiver appointed by the Mortgagee shall have the following powers, subject to any limitations in the instrument in writing or any order of a court of competent jurisdiction appointing him, namely to:

- (a) take possession of the Lands;
- (b) rent the Lands or any portion thereof and receive and collect the rents, issues and profits thereof;
- (c) carry on or concur in carrying on the business of the Mortgagor in operating the business comprised of the Lands or which is conducted thereon by the Mortgagor;
- (d) pay any or all debts and liabilities in connection with the Lands;
- (e) sell or lease or concur in selling or leasing any or all of the Lands;
- (f) make any arrangements or compromises which the Receiver considers expedient;
- (g) borrow money, upon the security of the whole or any part of the Lands, to carry on the business of the Mortgagor comprised of the Lands or which is conducted thereon by the Mortgagor or to maintain the whole or any part of the Lands in a manner that will be sufficient to obtain the amounts from time to time required in the opinion of the Receiver, and in so doing the Receiver may issue certificates (each herein called a "Receiver's Certificate") that may be payable as the Receiver considers expedient and



bear interest as stated therein, and the amounts from time to time payable under any Receiver's Certificate shall charge the Lands in priority to this Mortgage and the Mortgagor hereby charges the Lands with the debt, if any, owing from time to time under any Receiver's Certificate; and

(h) institute and prosecute all suits, proceedings and actions which the Receiver considers necessary or advisable for the proper protection of the Lands, to defend all suits, proceedings and actions against the Mortgagor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted, and appeal any suit, proceeding or action;

11.7 In exercising his powers hereunder, any Receiver will be free to deal with the Lands and any assets of the Mortgagor related thereto in such order or manner as he may be directed by the Mortgagee, any rule of law or equity to the contrary notwithstanding, including, without limitation, the equitable principle or doctrine of marshalling;

11.8 The net revenue received from the Lands and the net proceeds of sale of the Lands or any part thereof shall be applied by the Receiver, subject to the claims of creditors, if any, ranking in priority to this Mortgage, as follows:

- (a) firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable to him;
- (b) secondly, in payment to the Mortgagee of all costs and charges owing hereunder and interest and arrears of interest remaining unpaid hereunder;
- (c) thirdly, in payment to the Mortgagee of the Principal Sum owing hereunder; and
- (d) fourthly, any surplus shall be paid to the Mortgagor;

provided that in the event any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or any portion of the surplus as the Receiver deems appropriate in the circumstances;

11.9 Neither the provisions of this Mortgage nor the exercise of the powers provided in this Mortgage shall render the Mortgagee a mortgagee in possession, and the Mortgagee shall not be accountable except for the moneys actually received by the Mortgagee;

11.10 All remedies available to the Mortgagee herein shall be in addition to and not restrictive of the remedies of the Mortgagee at law and in equity and by statute;

11.11 Each remedy of the Mortgagee may be enforced in priority to or concurrently with or subsequent to any other remedy or remedies of the Mortgagee;

11.12 The Mortgagee may realize on various securities and any parts thereof in any order that the Mortgagee may consider advisable, and any realization, whether by foreclosure or sale, on any security or securities shall not bar realization on any other security or securities.

## **12. PRESERVATION OF MORTGAGE AND OTHER SECURITY**

12.1 No extension of time given by the Mortgagee to the Mortgagor, nor anyone claiming under the Mortgagor, nor any other dealing by the Mortgagee with the owner of the equity of redemption of the Lands, shall in any way affect or prejudice the rights or remedies of the Mortgagee against the Mortgagor or any other person liable either in whole or in part for the payment of the moneys hereby secured or the performance of the obligations of the Mortgagee hereunder;

12.2 Every part, lot or strata lot into which the Lands are or may hereafter be divided does and shall stand as charged with the whole of the moneys hereby secured, and no person shall have any right to require the moneys hereby secured to be apportioned upon or in respect of any such part, lot or strata lot;

12.3 The Mortgagee may at all times release any part or parts of the Lands or any other security or any surety for payment of all or any part of the moneys hereby secured or may release the Mortgagor or any other person from any covenant or other liability to pay the moneys secured hereby or any part thereof, either with or without any consideration therefor and without being accountable for the value thereof or for any moneys except those actually received by the Mortgagee, and without thereby releasing any other part of the Lands or any other securities or covenants herein contained, it being agreed that, notwithstanding any such release, the Lands, securities and covenants remaining unreleased shall stand charged with the whole of the moneys hereby secured;

12.4 The Mortgagee may waive any default hereunder provided that no such waiver, nor any failure to enforce at any time or from time to time any of the rights of the Mortgagee hereunder, shall prejudice the Mortgagee's rights in the event of any future default or breach;

12.5 The provisions of this Mortgage and the security of this Mortgage are in addition to, but not in substitution for, any other security now or hereafter held by the Mortgagee for the Principal Sum, interest and other amounts hereby secured or any part thereof;

12.6 Any act done or omitted to be done by any of the parties hereto regarding any other securities held by the Mortgagee for the Principal Sum, interest and other amounts hereby secured or any part thereof shall not in any way affect or prejudice this Mortgage, and this Mortgage shall remain and be in force until satisfaction thereof is made by payment of all sums hereby secured as if no other security was held by the Mortgagee for such sums.

## **13. RIGHT OF CONSOLIDATION PRESERVED**

The doctrine of consolidation shall apply to this Mortgage notwithstanding Section 31 of the Property Law Act (British Columbia).

## **14. SALE OR TRANSFER**

14.1 (a) If the Lands or any part thereof are sold, transferred, conveyed or assigned or otherwise disposed of, or the Mortgagor enters into any agreement to effect any of the foregoing, whether by registered or unregistered instrument and whether for valuable or

nominal consideration or otherwise, to a party not first approved in writing by the Mortgagee; or

- (b) if such purchaser, grantee, transferee or assignee should fail to:
  - (A) apply for and receive the Mortgagee's written approval as aforesaid;
  - (B) if required by the Mortgagee, personally assume all the obligations of the Mortgagor under this Mortgage; and
  - (C) if required by the Mortgagee, execute an assumption agreement in the form required by the Mortgagee;

then the Mortgagee at its option may declare the Principal Sum then secured hereunder, all accrued interest and all other moneys then secured hereby, to become immediately due and payable in full and the Mortgagor shall pay the same forthwith;

14.2 The word "assigned" as used in paragraph 15.1 shall include any transfer, sale, assignment, bequest, inheritance, encumbrance or other disposition of shares of any body corporate comprising the Mortgagor, in whole or in part, having the result of changing the identity of the person(s) who during the currency of this Mortgage exercise the effective voting control of such body corporate;

14.3 The Mortgagee shall be entitled to charge a reasonable servicing fee to process each application for approval as herein contemplated, which fee shall be payable forthwith upon demand. Failure by the Mortgagor to pay such servicing fee shall be deemed to be an act of default hereunder. It is further understood and agreed that any approval given hereunder shall in no way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of the moneys hereby secured.

## **15. STRATA LOT PROVISIONS**

15.1 If the Lands now or at any time hereafter are comprised of one or more strata lots, the Mortgagor covenants and agrees:

- (a) "Act" means for the purposes of this paragraph, the Strata Property Act (British Columbia);
- (b) where used in this paragraph 16 the terms "common expenses", "common property", "owner", "Strata Corporation" and "strata lot" shall have the respective meanings attributed to them in the Act;
- (c) to observe and perform all the covenants, agreements, conditions and provisos required to be observed and performed under the Act and any by-laws, rules and regulations that may be passed by the Strata Corporation or any special interest section thereof of which the Mortgagor is a member by virtue of ownership by the Mortgagor of the strata lot(s) hereby charged;

- (d) to pay, on or before the due dates thereof, the share of common expenses and each and every assessment, contribution or levy made by the Strata Corporation or any special interest section thereof against the strata lot(s) and interest(s) in the Lands hereby charged, and the Mortgagor shall not permit a situation under which the Strata Corporation or any special interest section thereof may register in the land title office a certificate of lien in Form G prescribed under the Strata Property Regulation, B.C. Registry 43/2000, as amended or replaced from time to time (the “Strata Property Regulation”);
- (e) to forward to the Mortgagee within ten (10) days of demand by the Mortgagee a certificate in Form F prescribed under the Strata Property Regulation certifying that no moneys are owing to the Strata Corporation by the Mortgagor;
- (f) that the Mortgagor shall not without the prior written consent of the Mortgagee:
- (i) assign any of the Mortgagor’s rights, powers, duties or obligations under the Act or the by-laws created under the Act; or
  - (ii) give possession of any strata lot(s) hereby charged to any person whether on the basis of an agreement providing for the purchase of the strata lot(s) by the occupier or on the basis of a lease, sublease or assignment of lease for a term of one (1) year or more or otherwise;
- (g) to grant and hereby grants to the Mortgagee all rights and powers to vote conferred on the Mortgagor by the Act, but neither this section nor anything done by virtue thereof shall render the Mortgagee a mortgagee in possession;
- (h) that this Mortgage constitutes express written notice to the Mortgagor that the Mortgagee intends to exercise the power to vote on any matters relating to insurance, maintenance, finance or other matters affecting the security for this Mortgage, and no additional notice need be given to the Mortgagor to permit the Mortgagee to exercise the right and power to vote conferred on the Mortgagor in respect of these matters, and the Mortgagee may, at any duly called meeting of the Strata Corporation of which the Mortgagee has received written notice, exercise the right to vote on these matters if the Mortgagee is not by its authorized representative, agent or proxy, present at that meeting;
- (i) that the right and power to vote granted in this Mortgage to the Mortgagee does not impose on the Mortgagee any duty or obligation whatsoever to protect the interest of the Mortgagor, and the Mortgagee shall not be responsible for the consequences of any exercise of the right to vote or any failure to exercise the right to vote;
- (j) that under section 36(1)(c) of the Act the Mortgagor hereby authorizes any officer of the Mortgagee to apply at any time and from time to time during the term hereof to the Strata Corporation to have the by-laws for the time being in force governing the strata lot(s) and interest in the Lands hereby charged made available for inspection by an officer of the Mortgagee;

(k) that the Mortgagor hereby authorizes any officer of the Mortgagee to request from the Strata Corporation at any time and from time to time an information certificate under Section 59 of the Act;

(l) that the Mortgagor shall cause the Mortgagee to be named as a loss payee as its interest may appear in respect of the strata lot(s) on the policy or policies of insurance effected by the Strata Corporation, on the buildings, common facilities and the insurable improvements owned by the Strata Corporation and shall cause mortgage clauses in a form approved by the Mortgagee to be included in such insurance policy or policies and shall provide evidence of such insurance to the Mortgagee forthwith upon demand;

(m) that if the insurance effected by the Strata Corporation on the buildings and common facilities is inadequate in the opinion of the Mortgagee, then the Mortgagor shall upon demand effect insurance of the strata lot(s) and the Mortgagor's interest in the common property against such risks or hazards and in an amount as the Mortgagee may require with an insurance company and by a policy satisfactory to the Mortgagee, which policy or policies shall contain loss payable provisions and mortgage clauses as aforesaid, and shall provide evidence of such insurance to the Mortgagee; and

(n) that the Mortgagee is the Mortgagor's agent to examine, inspect and obtain copies of any and all records, minutes, books of account or other documents of any nature and kind whatsoever which the Mortgagor is entitled to examine or inspect.

## **16. COVENANTOR**

16.1 This paragraph applies if the Mortgage Form been executed by a "Covenantor" and if so, the Covenantor for the sum of TEN DOLLARS (\$10.00) of lawful money of Canada and other consideration now paid by the Mortgagee to the Covenantor (the receipt and sufficiency of which is hereby acknowledged), hereby covenants, promises and agrees to and with the Mortgagee as a principal debtor and not as a surety:

(a) to duly and punctually pay the Principal Sum, interest and all other moneys from time to time owing on the security of this Mortgage and to observe and perform or cause to be observed and performed all the covenants, agreements, terms, provisos, stipulations, and conditions herein contained on the part of the Mortgagor to be observed and performed and to indemnify, protect and save harmless the Mortgagee from all loss, costs and damage in respect of this Mortgage and every matter and thing herein contained;

(b) that no release or releases of any portion or portions of the Lands and no indulgence shown by the Mortgagee in respect of any default by the Mortgagor which may arise under this Mortgage and no extension or extensions granted by the Mortgagee to the Mortgagor for payment of the moneys hereby secured, or for the doing, observing or performing of any covenant, agreement, matter or thing herein contained, to be done, observed or performed by the Mortgagor, nor any variation in or departure from the provisions of this Mortgage including but not limited to any variation or increase of the Interest Rate or any extension of the term of payment of the moneys secured hereunder, nor any taking of further security from the Mortgagor nor any other dealings between the Mortgagee and the Mortgagor, shall in any way prejudice the Mortgagee or modify, alter,

vary or affect the liability of the Covenantor in any way under this covenant, which shall continue and be binding on the Covenantor, as well after as before default under, judgment upon, or maturity of this Mortgage, until the Principal Sum, interest and other moneys owing hereunder are fully paid and satisfied;

(c) that the Mortgagee shall not be bound to exhaust its recourse against the Mortgagor or any other person before enforcing its rights against the Covenantor;

(d) that any failure on the part of the Mortgagee to perfect, maintain or enforce its rights, whether due to default, negligence or otherwise on the part of the Mortgagee, with respect to this Mortgage, or any other security granted to the Mortgagee relating to the within mortgage or the moneys secured hereby, shall not prejudice the Mortgagee with respect to its rights pursuant to this covenant and shall not discharge or limit or lessen the liability of the Covenantor pursuant to the terms hereof;

(e) that the release of any person or persons comprising the Covenantor from his or her or its liability hereunder, in whole or in part, shall not affect the liability of any person or persons remaining as Covenantor above, which liability shall in each instance remain unimpaired and still in full force and effect as if each person being so released had not been party to this Mortgage; and

that the Mortgagee may vary any agreement or arrangement with any or all of the persons comprising the Covenantor and grant extensions of time to or otherwise deal with the Covenantor without any consent on the part of the Mortgagor.

## **17. OTHER OBLIGATIONS**

17.1 Any default by the Mortgagor in the performance of any contractual obligation to the Mortgagee under any agreement or legal instrument collateral or supplemental hereto, and any default by any person or persons in the performance or observance of any provision or covenant hereunder or under any other security for the payment of the moneys secured by this Mortgage and any material adverse change in the financial condition of the Mortgagor and/or any other person executing this Mortgage, and the making of any mis-statement by any person in any statutory declaration or certificate at any time delivered in connection with this Mortgage, shall be deemed to be a default hereunder and shall entitle the Mortgagee to exercise all remedies available to the Mortgagee in the event of default by the Mortgagor hereunder;

17.2 All covenants, agreements, representations and warranties of the Mortgagor and/or any other person from time to time contained in any loan application, commitment letter or similar application (the "Application") for the moneys secured hereby shall be deemed incorporated and made part of this Mortgage as if the same covenants, agreements, representations and warranties of the Mortgagor and any such other person were fully repeated in this Mortgage and in the event of any breach by the Mortgagor or any such other person of any of the covenants, agreements, representations and warranties contained in the Application, all of which shall survive throughout the term of this Mortgage, the breach shall be deemed to be a default under this Mortgage and shall entitle the Mortgagee to exercise all of the rights and remedies of the Mortgagee including, but without limiting the generality of the foregoing, the

right to demand payment of the moneys hereby secured. In the event any conflict between the provisions of the Application and this Mortgage, the provisions of this Mortgage shall govern.

## **18. BUILDING MORTGAGE**

If this Mortgage is a building mortgage then:

- (a) to construct a building or buildings or other improvements on the Lands in accordance with such plans and other specifications as have been or shall hereafter be approved in writing by the Mortgagee;
- (b) that any such construction shall be carried out diligently, and in a proper and workmanlike manner; and in conformity with the ordinances, by-laws and other requirements of any government, government agency or other body having statutory jurisdiction over construction on the Lands;
- (c) any buildings or improvements now or hereafter erected or constructed on the Lands shall stand as and form part of the security for the full amount of the moneys secured by this Mortgage;
- (d) the moneys secured hereby are to be advanced from time to time in the discretion of the Mortgagee in accordance with the state of the buildings or other improvements being or to be erected or constructed on the Lands and upon the fulfillment of any other conditions or requirements stipulated by the Mortgagee, but save where the Mortgagee expressly undertakes in writing to the Mortgagor to make any advance, nothing in this paragraph shall vary or modify any provision in this Mortgage which concerns, governs or limits the Mortgagee's obligation to advance any monies secured by this Mortgage;
- (e) any payments to be made by the Mortgagor shall become due and be payable at the times provided herein notwithstanding that at the due date of any payment the full amount of the Principal Sum which this Mortgage is expressed to secure has not been advanced, but when the full amount is not advanced, the payments may in the sole discretion of the Mortgagee be reduced proportionately; and
- (f) the Mortgagee may deduct accrued interest and costs, charges, and expenses payable hereunder from any advance of the Principal Sum and the Mortgagee may deduct interest from any advance of the Principal Sum calculated from the date of that advance to the date of the next Payment Date occurring after the date on which that advance was made.

## **19. ASSIGNMENT OF RENTS**

To further secure the Principal Sum and interest and all other sums which may become due and payable hereunder, the Mortgagor hereby transfers and assigns all rents payable by any tenants of any and all parts of the Lands. It is understood and agreed that the Mortgagee may, without notice to the Mortgagor or to any other party hereunder, exercise at any time the powers hereby conferred. It is further understood and agreed that neither the existence of this paragraph nor the exercising of any of the powers conferred by this assignment of rentals nor the collection of any rents hereunder shall constitute the Mortgagee a mortgagee in possession, nor shall they

render the Mortgagee liable to account to any of the parties hereunder for failure to collect or for neglect in collecting any of the rentals, nor shall they impose any obligation whatsoever on the Mortgagee to take any proceedings whether in a court of law or otherwise to enforce payment of the said rentals, nor shall they render the Mortgagee liable for any neglect to repair or to supply heat or electricity or any other service to the tenants or to pay taxes but such responsibility, notwithstanding the collection of any rentals as aforesaid, shall rest entirely with the Mortgagor.

## **20. MAXIMUM RETURN TO MORTGAGEE**

20.1 The Mortgagor agrees that, notwithstanding any agreement to the contrary, no Interest will be payable at a criminal rate as defined and pursuant to Section 347 of the Criminal Code (Canada). If the effective annual rate of Interest received by the Mortgagee from the Mortgagor or on the security of this Mortgage, calculated in accordance with actuarial practices and principles, would be a criminal rate then:

- (a) the rate of interest payable on such credit advanced is hereby reduced so that it equals one percent (1%) per annum less than the minimum rate that would be a criminal rate;
- (b) any remaining excess that has been paid will be credited toward repayment of the Principal Sum; and
- (c) any overpayment that may remain after such crediting will be returned forthwith upon demand.

## **21. MISCELLANEOUS**

21.1 In order for any addition to or modification, amendment or variation of this Mortgage to be effective it must be in writing and signed by all parties to this Mortgage;

21.2 Any extension of the term of payment of the moneys hereby secured, or any part thereof, and any agreement increasing or decreasing the rate of interest payable hereunder, prior to the execution of the discharge of this Mortgage by the Mortgagee need not be registered in a land title office, but shall be effectual and binding on the Mortgagor and any other person liable for the moneys hereby secured, in whole or in part, and it shall not be necessary to register any such agreement in order to retain priority of this Mortgage so altered over any instrument registered as a charge against the Lands subsequently to the registration of this Mortgage;

21.3 Any demand or notice necessary to be given in pursuance of the exercise of the powers and provisions herein contained may be given to the Mortgagor or to any encumbrancer by writing signed or purporting to be signed by or on behalf of the Mortgagee;

21.4 Any demand or notice to be made or given under the provisions of this Mortgage may be effectually made or given in writing addressed to the party to whom it is made or given and delivered or mailed by registered post to the address stated in Item 3 or 4 of the Mortgage Form or to such other address in British Columbia as the party to whom it is made or given shall have previously specified by written notice, and shall be deemed to have been made or given on the date of delivery if delivered and on the third day after mailing if mailed;



21.5 The Mortgagee has not made and the Mortgagor does not rely on any representations, warranties, covenants, agreements, conditions or provisos, oral or otherwise, whether made by the Mortgagee or any person acting actually or ostensibly on the Mortgagee's behalf, other than those contained or deemed contained in this Mortgage unless those representations, warranties, covenants, agreements, conditions and provisos are contained in a supplementary contract in writing duly executed by both the Mortgagor and the Mortgagee which supplementary contract is expressed to survive the closing of the transaction referred to therein and the registration of this Mortgage.

## **22. INTERPRETATION**

22.1 The paragraph headings in this Mortgage are inserted for convenience of reference only and shall not affect the construction or interpretation of this Mortgage;

22.2 All references in this Mortgage to the words "hereof", "herein" or "hereunder" shall be construed to mean and refer to this Mortgage as a whole and shall not be construed to refer only to a specific paragraph or clause of this Mortgage unless the context clearly requires such construction;

22.3 In the event of any party being comprised of two or more persons, all covenants and agreements of such party herein contained shall be and be deemed to be joint and several covenants or agreements of each such person, and the heirs, executors, administrators, successors and permitted assigns of each such person shall be jointly and severally bound by the covenants, agreements, stipulations and provisos herein stated in addition to those granted or implied by statute;

22.4 If any of the terms of this Mortgage are or are held to be unenforceable or otherwise invalid, such holding will not in any way affect the enforceability or validity of the remaining terms of this Mortgage;

22.5 This Mortgage shall be governed by and construed in accordance with the laws of the Province of British Columbia, and each party hereby submits to the jurisdiction of the courts of the Province of British Columbia and agrees to be bound by any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding; provided that the foregoing shall in no way limit the right of the Mortgagee to commence suits, actions or proceedings based on this Mortgage in any other jurisdiction;

22.6 Wherever the singular or masculine gender is used throughout this Mortgage, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;

22.7 This Mortgage is intended by the Mortgagor and the Mortgagee to take effect as a deed, notwithstanding that it may or may not be executed under seal;

22.8 Time shall be of the essence hereof.

22.9 All references in this Mortgage to statutes, regulations or sections of statutes or regulations shall be construed as referring to those statutes, regulations or sections as amended

from time to time and to all replacements thereof from time to time, unless the context otherwise requires.

**END OF SET**