



STANDARD MORTGAGE TERMS

HOMEWORKS MORTGAGE

Filed By: **CANADIAN WESTERN BANK**

Filing No.: **4909815**

CANADIAN WESTERN BANK ALL INDEBTEDNESS MORTGAGE

The following set of filed standard charge 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), all pursuant to The Real Property Act (Manitoba).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Mortgagor, the Mortgagor hereby warrants and represents to and covenants and agrees with the Bank, as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In these filed standard charge mortgage terms and every mortgage that includes them, the following words and phrases have the meanings indicated:

“**Application**” means any loan application, commitment letter, loan agreement, offer of financing or like application or instrument for or related to or in respect of the Indebtedness, or any part thereof, which this Mortgage secures and includes any amendments, extensions, renewals, substitutions, supplements, replacements and restatements thereof or thereto;

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

“**Bank’s Address**” means the address of the Bank described in Box 4 of the Mortgage Form or any other address that the Bank may notify the Mortgagor of in writing;

“**Box**” means a box, designated by its number, on the Mortgage Form. Where any information contained in a Box is amended by agreement, a reference in these Mortgage Terms to information in a Box will include the information contained in any amending agreement;

“**Collateral**” means the goods subject to the security interest created by paragraph 2.1(b);

“**Covenantor**” means the person or persons, if any, who execute the Mortgage Form as covenantor and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;

“**Covenantor’s Address**” means the address of the Covenantor described in the Application, if any, or any other address that the Covenantor may notify the Bank of in writing. In case of doubt, the address of the Covenantor shall be the address of the Lands;

“**Customer**” means the person or persons, if any, whose present and future indebtedness, liabilities or obligations to the Bank from time to time is or are guaranteed by the Mortgagor, and the heirs, personal representatives, successors and assigns of the Customer;

“**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, security interest or any agreement capable of creating any of the foregoing affecting the Mortgagor’s Interest;

“Environmental Laws” means any and all international, federal, provincial, state, municipal or local laws, regulations, treaties, orders, judgments, decrees, ordinances, official directives and authorizations relating to the environment, Hazardous Materials or occupational health and safety from time to time having application to the Lands, the Collateral, the Mortgagor or the Mortgagor’s Interest;

“Event of Default” means one of the events of default under this Mortgage described in section 5 of these Mortgage Terms;

“fiscal year” means the fiscal year of the Mortgagor or the Covenantor, as the case may be;

“financial statements” means the balance sheet, income statement, statement of retained earnings, statement of changes in financial position and such supporting schedules and notes, all fairly presenting the financial position of the Mortgagor or the Covenantor, as the case may be, all prepared in accordance with GAAP and containing comparative information for the preceding comparative period restated, if necessary, to conform to GAAP for the current period;

“financial statements for the Lands” means a statement of revenue and expenses arising from leasing and the operation of the Lands;

“GAAP” means generally accepted accounting principles, policies and standards which are provided for in the handbook of the Canadian Institute of Chartered Accountants consistently applied;

“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 Environmental Laws, including without limitation, the Canadian Environmental Protection Act (Canada), Fisheries Act (Canada), Transportation of Dangerous Goods Act (Canada), Canada Water Act and The Environmental Act (Manitoba), The Contaminated Sites Remediation Act (Manitoba) and The Dangerous Goods Handling and Transportation Act (Manitoba);

“Indebtedness” means:

- (a) all present and future indebtedness and liability (whether absolute, contingent, direct, indirect, matured, unmatured, extended, renewed, joint or several) of the Mortgagor (and of each of them if more than one) to the Bank, wheresoever and howsoever incurred and any ultimate balance thereof, including, without limitation, all advances on current or running account, future advances and re-advances, Interest and all costs, expenses and other moneys payable to the Bank whether or not referred to in this Mortgage; and
- (b) all other obligations of the Mortgagor to the Bank whether or not contained in this Mortgage;

“Interest” means interest at the Interest Rate owed to the Bank under this Mortgage;

“Interest Margin” means the annual percentage rate, if any, above or below the Prime Rate set out or referred to in Box 5 of the Mortgage Form;

“Interest Rate” means the interest rate described in Box 5 of the Mortgage Form, or such other rate or rates of interest as the Bank and the Mortgagor may agree upon, and, if that interest rate is stated to be a rate above the Prime Rate, means the rate per annum equal to the aggregate of the Interest Margin and the Prime Rate in effect from time to time, and such rate shall change automatically, without notice to the Mortgagor or the Covenantor, on each date the Prime Rate is changed by the Bank;

“Lands” all of the estate, right, title and interest of the Mortgagor in and to the land(s) described or referred to in Box 3 of the Mortgage Form together with all buildings, structures, improvements and appurtenances, whether now or hereafter existing or acquired, in connection with such land(s);

“Maximum Amount” means the amount of money described in Box 5 of the Mortgage Form as the principal amount;

“Mortgage” means the Mortgage Form and these Mortgage Terms read together;

“Mortgage Form” means the mortgage form (or any amendment or substitution thereof) contemplated by The Real Property Act (Manitoba) which refers to these Mortgage Terms and is executed by the Mortgagor and the Covenantor, if any;

“Mortgage Terms” means these filed standard charge mortgage terms;

“Mortgagor” means the person or persons described in Box 2 of the Mortgage Form as the mortgagor(s) of the Lands or mortgagor(s) or grantor(s) of a mortgage or encumbrance who execute(s) the Mortgage Form as such and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;

“Mortgagor’s Address” means the address of the Mortgagor described in the Application, if any, or any other address that the Mortgagor may notify the Bank of in writing. In case of doubt, the address of the Mortgagor shall be the address of the Lands;

“Mortgagor’s Interest” means the Mortgagor’s presently held right, title and interest in and to the Lands and the Collateral and any other right, title or interest that the Mortgagor may in the future acquire in the Lands and the Collateral and includes, without limitation, all the Mortgagor’s right, title and interest as the registered owner of the fee simple or of any Encumbrance affecting the Lands;

“Permitted Encumbrances” means Encumbrances, if any, affecting the Lands or the Mortgagor’s Interest which are consented to in writing by the Bank;

“person” is to be broadly interpreted and includes an individual, a partnership, a corporation, a joint stock company, a trust, an unincorporated association, a joint venture or other entity;

“Place of Payment” means the Bank’s Address described in Box 4 of the Mortgage Form or any other place of payment that the Bank may notify the Mortgagor of in writing;

“Prime Rate” (also referred to as “prime” in the Mortgage Form) means the floating annual prime interest rate established from time to time by the Bank as the reference rate it will use to determine rates of interest payable to the Bank by borrowers of Canadian dollar loans in Canada and designated by the Bank as its prime rate;

“Receiver” includes a receiver, a receiver manager and a receiver and manager;

“Taxes” means the aggregate of:

- (a) all taxes, rates, duties or assessments now or hereafter owing or claimed in respect of the Mortgagor’s Interest or any machinery, equipment or improvements on the Lands, to the extent such machinery, equipment or improvements form part of the Mortgagor’s Interest, or arising out of any transaction between the Mortgagor and the Bank, but does not include the Bank’s income or capital taxes;
- (b) all penalties, interest and other moneys added to the amounts described in (a) by the taxing authorities; and
- (c) all utility charges including those for electricity, gas, water, telecommunications, telephones and cable television now or hereafter owing or claimed in respect of the Mortgagor’s Interest.

1.2 The headings for sections of these Mortgage Terms have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Mortgage.

1.3 All provisions of this Mortgage shall have effect to the maximum extent permitted by law, notwithstanding any agreement to the contrary.

1.4 Unless the context otherwise requires, words imparting the singular include the plural and vice versa and words imparting gender include all genders. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall".

1.5 If there is any conflict between these Mortgage Terms and the Mortgage Form, the provisions of the Mortgage Form shall govern.

1.6 Reference in these Mortgage Terms to any statute or act shall mean that statute or act, as it was on the date these Mortgage Terms were registered, and all amendments thereto and all legislation passed in substitution therefor.

1.7 This Mortgage is given pursuant to The Real Property Act (Manitoba) and, if the Mortgagor has applied for and been approved by the Bank for a National Housing Act loan, the National Housing Loan Act.

2. MORTGAGE AND SECURITY INTEREST

2.1 For consideration:

- (a) the Mortgagor grants and mortgages to the Bank absolutely the Mortgagor's Interest to have and to hold to and for the use of the Bank forever; and
- (b) without in any way limiting paragraph 2.1(a), pursuant to The Personal Property Security Act (Manitoba) and all regulations thereto, as amended from time to time, the Mortgagor grants to the Bank a security interest in the Mortgagor's right, title and interest in all goods which are now fixtures on the Lands and in all goods which hereafter become fixtures on the Lands, and the Mortgagor agrees that the security interest in such goods which are now fixtures attaches immediately and the security interest in such goods which become fixtures shall attach at the time the goods become fixtures.

2.2 This Mortgage will be void upon:

- (a) payment to the Bank on demand of the principal amount of the Indebtedness up to the Maximum Amount;
- (b) payment to the Bank on demand of Interest, both before and after maturity and before and after judgment, on the principal amount of the Indebtedness outstanding from time to time, up to the Maximum Amount;
- (c) payment of all costs, expenses and other moneys to which the Bank is entitled by virtue of this Mortgage as and when such moneys become due and payable;
- (d) payment of Taxes; and
- (e) observance and performance of all agreements, provisos and conditions herein contained.

2.3 The Mortgagor releases to the Bank all claims of the Mortgagor on the Mortgagor's Interest subject to the foregoing proviso for redemption.

2.4 Every part into which the Mortgagor's Interest is or may hereafter be divided stands and shall stand charged with the whole of the Indebtedness and no person shall have any right to require the Indebtedness to be apportioned upon or in respect of such parts but the Bank may release any part or parts of the Mortgagor's Interest with or without sufficient consideration and without releasing the Mortgagor or any Covenantor from this Mortgage.

2.5 This Mortgage is and shall be a continuing security to the Bank for the payment of all present and future amounts owing in respect of the Indebtedness, notwithstanding that there shall have been:

- (a) any apparent change in the nature, state or form of any account of the Mortgagor or the Customer with the Bank;
- (b) any new advance or re advance by the Bank to the Mortgagor or the Customer, whether by loan, discount, the drawing of a cheque by the Mortgagor or the Customer or otherwise;
- (c) any discount or acceptance by the Bank from or for the Mortgagor or the Customer of any promissory note, bill of exchange, other negotiable instrument or other commercial paper;
- (d) any credit of any amount to any account of the Mortgagor or the Customer by reason of deposit of moneys or otherwise; or
- (e) any renewal, replacement, substitution, alteration, reduction, satisfaction, payment, release or discharge of any promissory note, bill of exchange, other negotiable instrument or other commercial paper from time to time held by the Bank or any security held therefor;

and no such event shall be deemed to be a payment on account of the Indebtedness or any part thereof or call for or require an application as payment on account of the Indebtedness or any part thereof, or in any way affect the security of this Mortgage, unless some officer of the Bank shall give a receipt to the Mortgagor to that effect.

3. COVENANT TO PAY

3.1 The Mortgagor will pay to the Bank, on demand, the principal amount of the Indebtedness and, until such payment, the Mortgagor will pay to the Bank on the last day of each and every month, Interest on the principal amount of the Indebtedness which remains unpaid from time to time, calculated daily on the basis of the actual number of days elapsed divided by 365 (or, in the case of a leap year, 366) and aggregated for that month; provided that if the Mortgagor pays the principal amount of the Indebtedness, and pays interest at the rate or rates then in effect for the Indebtedness, at the times, in the manner and upon such other terms as otherwise may be agreed upon between the Mortgagor and the Bank, the Mortgagor will not be obliged to pay the principal amount of the Indebtedness or Interest on the terms set out above.

3.2 If the Mortgagor fails to pay the Indebtedness, or any part thereof, including Interest, when due, the Mortgagor will pay to the Bank compound interest thereon at the Interest Rate as well after as before maturity and judgment to be computed with rests on the last day of each month.

3.3 All payments to the Bank hereunder shall be made at the Place of Payment. Any payment made after 12:00 p.m. local time at the Place of Payment shall be deemed to have been made on the next business day.

3.4 Any portion of the Indebtedness which by its terms is payable on demand may be prepaid at any time without notice, bonus or penalty. The Mortgagor may not prepay any other portion of the Indebtedness unless the Bank agrees in writing to permit such prepayment. Any amounts as may be payable by the Mortgagor to the Bank pursuant to such agreement shall be a charge under and secured by this Mortgage on the Lands in favour of the Bank and shall be payable by the Mortgagor to the Bank when due together with interest at the Interest Rate from the due thereof until paid.

3.5 All Interest payable in respect of the Indebtedness shall be calculated using the nominal rate method and not the effective rate method, and the deemed reinvestment principle shall not apply to such calculations.

3.6 Notwithstanding that this Mortgage is stated to be payable on demand, the Bank will not make demand for payment of any portion of the Indebtedness which by its terms is not payable on demand unless and until an Event of Default has occurred and has not been waived by the Bank.

3.7 If the payment of any Indebtedness by the Mortgagor or any Customer should for any reason subsequently be declared to be void or voidable under federal or provincial law relating to creditor's rights and if the Bank is required to repay or restore, in whole or in part, any such payment, or elects to do so upon the reasonable advice of its legal counsel, then, as to the amount of any such payment, and as to all reasonable costs, expenses and legal fees of the Bank related thereto, the liability of the Mortgagor or any such Customer automatically shall be renewed, reinstated and restored and shall exist as though such payment had never been made.

4. REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants to the Bank that:

- (a) the Mortgagor has the right to mortgage, charge and grant a security interest in the Mortgagor's Interest to the Bank;
- (b) the Mortgagor has good title to the Mortgagor's Interest and has done no act to encumber the Mortgagor's Interest except for Permitted Encumbrances;
- (c) on default the Bank shall have quiet possession of the Mortgagor's Interest free from all Encumbrances except Permitted Encumbrances; and
- (d) there are no environmental risks or liabilities, or breaches or allegations of breaches of Environmental Laws, known to the Mortgagor which have not been disclosed to the Bank.

5. DEFAULT

Unless waived by the Bank in writing, each of the following shall be an Event of Default:

- (a) default of payment of the Indebtedness, or any part thereof, when due; or
- (b) breach by the Mortgagor or the Covenantor of any other agreement, term, condition, covenant or representation herein contained which breach is not rectified within 10 days of notice thereof to the Mortgagor; or
- (c) default of payment of any moneys payable under, or in the observance or performance of any agreement, term or condition of, any Encumbrance on the Mortgagor's Interest or any instrument creating or pertaining to the Mortgagor's Interest; or
- (d) breach by the Mortgagor, the Covenantor or the Customer of any agreement in any other agreement between the Bank and any of them which breach is not rectified within the time provided for therein or, if no such time for rectification is specified, within 10 days of notice thereof to the Mortgagor; or
- (e) the Mortgagor, the Covenantor or the Customer makes an assignment for the benefit of any creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- (f) a Receiver of all or any part of the Mortgagor's Interest is appointed; or
- (g) an order of execution against the Mortgagor's Interest or any part thereof remains unsatisfied for a period of 10 days; or
- (h) any representation or warranty, whether or not contained herein, by or on behalf of the Mortgagor, the Covenantor or the Customer to the Bank is untrue; or
- (i) without the prior written consent of the Bank, the Mortgagor creates or permits to exist any Encumbrance on or in or any claim against the Mortgagor's Interest; or
- (j) the holder of any other Encumbrance on or in or claim against the Mortgagor's Interest does anything to enforce or realize on such Encumbrance or claim; or
- (k) all or any portion of the Mortgagor's Interest is expropriated; or
- (l) the Mortgagor sells, conveys, transfers or enters into an agreement for sale of or transfer of title to the Mortgagor's Interest or any part thereof; or
- (m) if the Mortgagor, the Covenantor or the Customer is a corporation:

- (i) an order is made or an effective resolution is passed for winding up any of them; or
 - (ii) any of them enters into an amalgamation, a merger or other similar arrangement with any other person, without the prior written consent of the Bank; or
 - (iii) any of them ceases, or threatens to cease, to carry on its business; or
 - (iv) there is a change in control of any of them; or
- (n) if the Mortgagor, the Covenantor or the Customer is an individual, any of them dies or is declared incompetent to manage his or her affairs; or
- (o) the Mortgagor fails to comply with any work orders or other deficiency notices issued to the Mortgagor by any governmental authority having or claiming jurisdiction over the Lands or any buildings located on the Lands within 60 days of receiving any such work order or deficiency notice, or such longer period of time as the Bank and the Mortgagor may agree upon from time to time; or
- (p) If:
- (i) the Lands or any part thereof are used by any person for any illegal or prohibited purpose or in connection with any illegal or prohibited activity whatsoever, or
 - (ii) any activity takes place on the Lands or any part thereof which constitutes an offence under or breaches any section or provision of the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada) or any other federal or provincial statute of any application to the Lands.

6. BANK'S REMEDIES

6.1 Upon the occurrence of an Event of Default, the Bank may declare all or any portion of the Indebtedness which is not by its terms payable on demand to become immediately due and payable, and the Bank may enforce and realize on the security of this Mortgage by any action permitted by law or in equity, and in particular the Bank may do any one or more of the following:

- (a) take proceedings under The Real Property Act (Manitoba) for the sale of the Mortgagor's Interest, or any part thereof, or apply to Court for an order that the Mortgagor's Interest, or any part thereof, be sold on terms approved by the Court;
- (b) take proceedings under The Real Property Act (Manitoba) or apply to Court to foreclose the Mortgagor's Interest, or any part thereof;
- (c) take whatever action is necessary to take, recover and keep possession of the Mortgagor's Interest;
- (d) without notice sell the Mortgagor's Interest or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor, and on terms as to credit and otherwise, and with such conditions of sale and stipulations as to title or evidence of title or otherwise, as it shall in its discretion deem proper; and in the event of a sale under this paragraph, the following shall apply:
 - (i) in the event of any sale on credit or for part cash and part credit, the Bank shall not be accountable for or charged with any moneys until actually received;
 - (ii) the Bank may rescind or vary any contract of sale and may buy in and resell the Mortgagor's Interest or any part thereof without being answerable for loss occasioned thereby;
 - (iii) no purchaser shall be bound to inquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety;

- (iv) no lack of default or want of notice or other requirement, or any irregularity or impropriety of any kind shall invalidate any sale;
 - (v) the Bank may take sale proceedings hereunder, notwithstanding that other mortgage proceedings have been taken or are then pending; and
 - (vi) for the purposes of this paragraph the Mortgagor hereby appoints the Bank as its irrevocable attorney to exercise the aforesaid powers and to execute and do all deeds, documents and things as may be necessary in the circumstances.
- (e) appoint a Receiver of the Mortgagor's Interest and of all the properties, assets, effects and undertakings (hereinafter all together called the "Undertakings") of the Mortgagor related to or arising out of the Mortgagor's Interest and may from time to time remove any Receiver so appointed and appoint another, but the Bank shall be under no liability to the Receiver for the Receiver's remuneration or otherwise, and a Receiver so appointed shall be the agent of the Mortgagor and shall have power:
- (i) to take possession of and get in the Mortgagor's Interest and the Undertakings;
 - (ii) to sell or lease or concur in selling or leasing the Mortgagor's Interest and the Undertakings;
 - (iii) to make any arrangement or compromise which he shall think expedient;
 - (iv) to the extent permitted by law or to such lesser extent permitted by the Receiver's appointment, to carry on, or concur in the carrying on of, any development or improvement then in progress or otherwise contemplated by the Mortgagor related to the Mortgagor's Interest or the business of the Mortgagor relating to the Mortgagor's Interest and for such purpose from time to time to borrow money either secured or unsecured, and if secured by security on the whole or any part of the Mortgagor's Interest and the Undertakings which security may rank before or *pari passu* with or behind this Mortgage as such security may specify and if it does not so specify it shall rank before this Mortgage; and
- (f) in respect of the Collateral, exercise the remedies of a secured party under The Personal Property Security Act (Manitoba).

6.2 The net proceeds of any sale or lease, or both, hereunder shall be applied, subject to the claims of all secured and unsecured creditors (if any) ranking in priority to the mortgage and security interest created by this Mortgage, as the Bank, in its absolute discretion, may direct:

- (a) in payment of any costs, charges, expenses and legal fees (between solicitor and own client):
 - (i) incurred by reason of non-payment of the Indebtedness and the exercise by the Bank of any of its rights and remedies under this Mortgage; and
 - (ii) of and incidental to the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- (b) in or toward payment to the Bank of the principal amount of Indebtedness up to the Maximum Amount;
- (c) in or toward payment of Interest and compound interest;
- (d) in or toward payment of other moneys owing hereunder, and,

subject to applicable laws, the Bank's right to payment of any amount of the Indebtedness that exceeds the Maximum Amount and the rights of other creditors, any surplus shall be paid to the Mortgagor.

7. GENERAL COVENANTS

7.1 The Mortgagor will execute such further assurances of the Mortgagor's Interest as the Bank may require.

7.2 The Mortgagor will forthwith pay or cause to be paid:

- (a) all Taxes when due and, upon request, will furnish the Bank with a copy of receipts for such payments;
- (b) all Encumbrances now or hereafter existing or claimed in respect of the whole or any part of the Mortgagor's Interest and, upon request, will furnish the Bank with a copy of receipts for such payments;
- (c) all costs, charges, expenses and legal fees (between solicitor and own client) which may be incurred by the Bank in:
 - (i) inspecting and appraising the value of the Mortgagor's Interest;
 - (ii) investigating title to the Mortgagor's Interest;
 - (iii) negotiating, preparing and registering this Mortgage and other necessary instruments;
 - (iv) taking, recovering and keeping possession of the Mortgagor's Interest;
 - (v) all other actions and proceedings taken in connection with or to realize on the security of this Mortgage, or to protect or enforce the Bank's rights hereunder (including the Bank's cost of the time and services of the Bank's employees); and
 - (vi) preparing and executing a discharge of this Mortgage.

7.3 If the Bank pays and satisfies the whole or any part of any Taxes, or of any Encumbrances now or hereafter existing or claimed in respect of the whole or any part of the Mortgagor's Interest, the Bank shall be entitled to all the equities and securities of the person or persons so paid and the Mortgagor hereby authorizes the Bank to retain any discharge thereof without registration for so long as the Bank may think fit so to do.

7.4 The Mortgagor will:

- (a) obtain and maintain insurance, or cause insurance to be obtained and maintained, against such insurable risks and perils as the Bank may direct including, without limitation, insurance against loss or damage by fire and other risks and perils to the Collateral and all other improvements now and hereafter on the Lands, to the extent that such improvements form part of the Mortgagor's Interest, in amounts not less than their full insurable value and, if such improvements include a steam boiler or any other object generating steam or operated by steam, the Mortgagor will insure and keep insured such improvements against loss or damage by explosion of such boiler or other object;
- (b) effect such insurance with such insurer and on such terms as may be approved by the Bank with loss payable to the Bank in priority to every person except the holder of any Permitted Encumbrances;
- (c) upon execution of the Mortgage Form, deliver to the Bank a copy of the policy or policies evidencing such insurance and a copy of receipts for the premiums thereon;
- (d) at least 15 days prior to the expiry of an insurance policy and, should notice of cancellation be given, at least 5 days prior to the date fixed for cancellation of an insurance policy, deliver to the Bank evidence of renewal or replacement as the case may be; and
- (e) effect such new insurance as the Bank may require if the insurer or the insurance ceases to have the approval of the Bank.

The Mortgagor waives any statutory right to require the insurance proceeds to be applied in any particular manner.

7.5 If the whole or any part of the Collateral or any other improvements now or hereafter on the Lands, to the extent that such improvements form part of the Mortgagor's Interest, is damaged the Mortgagor shall forthwith notify the Bank.

7.6 All improvements now or hereafter on the Lands, to the extent that such improvements form part of the Mortgagor's Interest, including but without limiting the generality of the foregoing, all buildings, apparatus and equipment appurtenant to such improvements, are and shall be subject to the mortgage, charge and security interest created by this Mortgage.

7.7 Without the prior written consent of the Bank, the Mortgagor will not permit any part of the Lands which is subject to the Mortgagor's Interest to remain unoccupied or unused.

7.8 The Mortgagor will not do anything that has the effect of reducing the value of the Mortgagor's Interest, or any part thereof; or permit waste to be committed or suffered on the Lands and will maintain or cause to be maintained all Collateral and all other improvements now or hereafter on the Lands, to the extent that such improvements form part of the Mortgagor's Interest, in good order and repair to the satisfaction of the Bank.

7.9 The Bank may at such time or times as it may deem necessary and without the concurrence of the Mortgagor or any other person make such arrangements for repairing, finishing and maintaining the Collateral and any other improvements now or hereafter on the Lands, to the extent that such improvements form part of the Mortgagor's Interest, and for investigating, inspecting, taking care of, leasing, collecting of rents of and managing generally the Mortgagor's Interest, as it may deem expedient, without thereby becoming liable as a mortgagee in possession.

7.10 If the Mortgagor fails to make all payments required by clause 7.2 or paragraph 9.1(d) or to insure pursuant to clause 7.4, the Bank, without in any way being obliged to do so, may make such payments and effect such insurance, and all costs, charges, expenses and legal fees (between solicitor and own client) incurred by the Bank in connection therewith and in connection with the exercise by the Bank of its rights under clause 7.9, including an allowance for the time and services of any officer of the Bank or other persons appointed for the above purpose, shall be:

- (a) a mortgage, charge and security interest on the Mortgagor's Interest in favour of the Bank prior to all Encumbrances and claims subsequent to this Mortgage;
- (b) payable by the Mortgagor forthwith; and
- (c) added to the Indebtedness.

7.11 The taking of a judgment or judgments on any of the agreements herein contained shall not operate as a merger of such agreements or affect the Bank's right to Interest and any such judgment shall provide that interest thereon be computed at the same rate or rates and in the same manner as herein provided until that judgment has been fully paid and satisfied.

7.12 Any portion of the Indebtedness may be advanced or re-advanced by the Bank in one or more sums at any future date or dates by:

- (a) direct advances to the Mortgagor or the Customer;
- (b) the issue of letters of credit or letters of guarantee at the request of the Mortgagor or the Customer and payment under such letters of credit or letters of guarantee to the beneficiaries thereof; or
- (c) the acceptance of bills of exchange issued by the Mortgagor or the Customer and payment of such bills of exchange to the holders thereof;

and the amount of such advances, re-advances and payments when so made shall be secured by this Mortgage and be repayable with Interest and this Mortgage shall be deemed to be taken as security for the ultimate balance of the Indebtedness, whether arising from the current and running accounts represented by advances, re-advances and payments as aforesaid by the Bank to the Mortgagor or the Customer under a line of credit or a

current loan, or otherwise, and the mortgage, charge and security interest created by this Mortgage shall take effect forthwith on the execution of the Mortgage Form. If this Mortgage is redeemed by the Mortgagor, it shall be cancelled and shall not be re-issued but:

- (d) any partial payment made thereon by the Mortgagor or the Customer to the Bank; or
- (e) any ceasing by the Mortgagor or the Customer to be indebted to the Bank;

shall be deemed not 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 Bank to the same extent as if such advance or re-advance had been made on the execution of the Mortgage Form.

7.13 Except to the extent that the Bank issues letters of credit or letters of guarantee or accepts bills of exchange or other negotiable instruments at the request of the Mortgagor or the Customer and is required to make payments thereunder:

- (a) neither the execution nor the registration of the Mortgage Form shall bind the Bank to advance any moneys;
- (b) the advance of moneys or any part thereof under this Mortgage shall be in the sole discretion of the Bank; or
- (c) the advance of moneys from time to time shall not bind the Bank to advance any further moneys.

7.14 Any and all payments made in respect of the Indebtedness and the moneys or other proceeds realized from any securities held therefor (including this Mortgage) may be applied, and re-applied, notwithstanding any previous application, on such part or parts of the Indebtedness or such other indebtedness and liability of the Mortgagor or the Customer to the Bank as the Bank may see fit.

7.15 This Mortgage shall not nor shall anything herein contained operate so as to create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange, guarantee or other security held by or which may hereafter be held by the Bank from the Mortgagor, the Covenantor or the Customer, or from any other person or persons whomsoever, and this Mortgage shall not in any way prejudicially affect any security held or which may hereafter be held by the Bank for such indebtedness or the Indebtedness or any part or parts thereof or the liability of any endorser or any other person or persons upon any such lien, bond, promissory note, bill of exchange, guarantee or other security or any renewal thereof or replacement or substitution therefor held by the Bank for or on account of such indebtedness or the Indebtedness or any part or parts thereof.

7.16 The taking of this Mortgage shall not operate as a merger of the remedies of the Bank for payment of the Indebtedness or of the remedies of the Bank under any lien, bond, promissory note, bill of exchange, other negotiable instrument, other commercial paper or guarantee and notwithstanding this Mortgage or anything contained herein such remedies shall remain intact and be capable of enforcement against the Mortgagor, the Covenantor, the Customer and all other persons liable for the Indebtedness or any part or parts thereof in the same manner and to the same extent as if the Mortgage Form had not been executed.

7.17 The Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with, the Mortgagor, the Covenantor, the Customer and all other persons and securities as the Bank may see fit without prejudicing the rights of the Bank under this Mortgage.

7.18 No sale or other dealing by the Mortgagor with the equity of redemption in the Lands or the Mortgagor's Interest shall in any way change the liability of the Mortgagor or in any way alter the rights of the Bank as against the Mortgagor, the Covenantor, the Customer or any other person liable for payment of the Indebtedness.

7.19 The Mortgagor will observe and perform all agreements, terms and conditions in all instruments creating or pertaining to the Mortgagor's Interest.

7.20 The Mortgagor and the Covenantor will deliver to the Bank:

- (a) within 90 days of the end of each fiscal year, copies of its financial statements and the report of its auditor, if any, thereon;
- (b) if the Mortgagor leases the Lands to tenants, within 90 days of the end of each fiscal year, copies of the financial statements for the Lands;
- (c) at any time such other information as the Bank may reasonably request.

7.21 The Mortgagor will adhere to and comply with all restrictive covenants affecting the Mortgagor's Interest and all laws, regulations, rules, notices and orders of Canada, Manitoba or any municipality or other authority having or claiming jurisdiction over the Lands and affecting the Mortgagor's Interest including, without limitation, Environmental Laws.

7.22 The Mortgagor shall indemnify the Bank, 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 Bank; 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 Environmental Laws.

This clause 7.22 shall survive the repayment of the Indebtedness and all other amounts owing under this Mortgage 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.

7.23 The Mortgagor waives any right it may have in any jurisdiction to pay any part of the Indebtedness in a currency (a "Payment Currency") other than that which the Mortgagor or the Customer has agreed to pay (an "Agreed Currency"), and if:

- (a) any part of the Indebtedness is received by the Bank in a Payment Currency, whether as a result of any judgment or order or the enforcement thereof, the liquidation, receivership, bankruptcy, or insolvency of the Mortgagor or for any other reason; and
- (b) the amount of Agreed Currency which results from the conversion of the Payment Currency so received is less than the amount of the Agreed Currency which the Bank is entitled to receive;

the Mortgagor shall indemnify the Bank for the deficiency and any loss sustained as a result. Such conversion shall be made at such prevailing rate of exchange on such date and in such market as is determined by the Bank as being most appropriate for such conversion. The Mortgagor shall pay the costs of conversion. The obligations created by this clause 7.23 are in addition to all other obligations of the Mortgagor under, and are secured by, this Mortgage.

7.24 All payments to be made under this Mortgage shall be made:

- (a) without set off or counterclaim; and
- (b) free and clear of and without deduction for or on account of all present and future taxes, levies, imposts, deductions, charges and withholdings whatsoever together with interest therein and penalties with respect thereto, if any, and any payments made on or in respect thereof (collectively "Withholding Taxes") unless the Mortgagor is compelled by law to make payment subject to such Withholding Taxes.

If any Withholding Taxes or amounts in respect thereof must be deducted or withheld from any amounts payable or paid under this Mortgage by the Mortgagor, the Mortgagor shall pay such additional amounts as may be necessary to ensure that, after all required deductions or withholdings (including deductions and withholdings resulting from any additional amounts required to be paid by reason of this clause), the Bank receives a net amount equal to the full amount which it would have received had payment not been made subject to such Withholding Taxes. The Mortgagor shall deliver to the Bank evidence reasonably satisfactory to the Bank (including all relevant receipts) that each payment by the Mortgagor in respect of such Withholding Taxes relating to or arising out of this Mortgage on any amount paid or payable under this Mortgage, has been duly remitted to the appropriate authority, within 10 days of receipt of a written request by the Bank to do so.

7.25 All covenants, agreements, representations and warranties of the Mortgagor and/or any other person executing the Mortgage Form as contained in the Application shall be deemed incorporated into 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 Bank to exercise all of the rights and remedies of the Bank 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.

8. MISCELLANEOUS

8.1 Every certificate signed by an officer of the Bank purporting to show:

- (a) the amount of Indebtedness at any particular time due and payable under this Mortgage shall be prima facie evidence as against the Mortgagor of the amount due and payable at such time under this Mortgage; and
- (b) the Prime Rate at any particular time shall be conclusive evidence of the Prime Rate at that time.

8.2 The invalidity or unenforceability of the whole or any part of any section, clause or paragraph of this Mortgage shall not affect the validity or enforceability of any other section, clause or paragraph or the remainder of such section, clause or paragraph.

8.3 All agreements and liabilities entered into or imposed upon the Mortgagor, if more than one, shall be joint and several.

8.4 Time shall be of the essence hereof.

8.5 The Bank may from time to time and at any time waive in whole or in part the benefit to it of any provision in this Mortgage or any default by the Mortgagor, the Covenantor or the Customer, but such waiver on any occasion shall be deemed not to be a waiver of such provision thereafter or of any subsequent default but no waiver shall be binding on the Bank unless it is in writing.

8.6 In accordance with The Law of Property Act (Manitoba), the doctrine of consolidation is not abolished with respect to this Mortgage.

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

8.8 The Mortgagor waives all rights to receive from the Bank a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this Mortgage.

8.9 Any demand or notice herein referred to, or any notice or document relating to any action or other proceeding concerning this Mortgage, may be effectively given to the Mortgagor and the Covenantor by the Bank:

- (a) by leaving the same with an adult person on the Lands, if occupied, or placing the same on some portion thereof; if unoccupied; or
- (b) by delivering the same or mailing the same by prepaid registered post to the Mortgagor at the Mortgagor's Address and to the Covenantor at the Covenantor's Address; or
- (c) if the Mortgagor or the Covenantor is a corporation, by delivering the same or mailing the same by prepaid registered post to the Mortgagor or the Covenantor, as the case may be, at their registered office; or
- (d) by publishing the same twice in some newspaper published or circulating in the county or district in which the Lands are situate;

and to the Bank by the Mortgagor or Covenantor by mailing such notice by prepaid registered post to the Bank at the Bank's Address. If the Mortgagor or the Covenantor consists of more than one person, notice to any one of them shall be deemed to be notice to all of them.

9. SPECIAL INTERESTS

9.1 Condominium Provisions

If the Lands now or at any time hereafter are comprised of one or more condominium units (such unit or units herein called the "Unit"), the Mortgagor covenants and agrees:

- (a) "Act" means for the purposes of this Section 9.1, The Condominium Act (Manitoba), as amended and replaced from time to time;
- (b) Where used in this Section 9.1 or elsewhere in these Mortgage Terms, the terms, "common expenses", "common elements", "unit owner", "condominium corporation", and "unit" shall have the respective meanings attributed to them in the Act;
- (c) The Mortgagor shall observe and perform each and every one of the covenants and provisions required to be observed and performed by the Mortgagor by virtue of his ownership of the Unit or pursuant to the terms of this Mortgage, the Act, the bylaws of the condominium corporation and all respective amendments thereto;
- (d) Without restricting the generality of the foregoing, the Mortgagor shall pay when due all common expenses and any other administration expenses, assessments, instalments, contributions or payments leviable by the condominium corporation against the Unit or the Mortgagor as owner thereof (all of the foregoing, for the purposes of this Mortgage, are deemed to be included in and form part of "common expenses"), failing which the Bank may, but shall not be obliged, to pay the same;
- (e) The Bank may deduct from any advance of monies secured by this Mortgage an amount sufficient to pay any common expenses attributable to the Unit which have or may become due and remain unpaid at the date for adjustment of interest;
- (f) The Mortgagor shall, promptly following receipt thereof, transmit to the Bank any notices received from the condominium corporation including all notices and bills affecting the imposition of the common expenses with respect to the Unit;
- (g) If the Mortgagor makes default in the performance of his obligations under this Paragraph 9 (regardless of any action or proceedings taken or proposed by the condominium corporation) the

same shall constitute default under this Mortgage to the same extent as if the time for payment of the principal sum and other monies hereby secured had fully come and expired;

- (h) Upon default herein and notwithstanding any other right or action of the condominium corporation or the Bank, the Bank may distrain for arrears of any assessments, instalments or payments due to the Bank or arising under any of the subparagraphs in this Paragraph contained;
- (i) The definitions contained in the Act shall apply to this Mortgage;
- (j) The Mortgagor shall deliver to the Bank a copy of each and every:
 - (i) notice of any meeting of members of the condominium corporation at least ten (10) clear days prior to the date fixed for such meeting;
 - (ii) claim or demand for payment by the Mortgagor to the condominium corporation or to any person, firm or corporation duly authorized to receive monies otherwise payable to the condominium corporation at least five (5) clear days prior to the date upon which such claim or demand becomes due and payable;
 - (iii) notice of any breach of any of the provisions of the Act, the bylaws of the condominium corporation or of any rule or regulation of the condominium corporation within five (5) days of the date upon which such notice is received by the Mortgagor;
 - (iv) request or demand for the consent of the Mortgagor to any matter affecting the Unit within (5) days of the date upon which such request or demand is received by or made of the Mortgagor;
- (k) In the event that the condominium status of the Unit is terminated or in the event of a sale of any part of the common elements is authorized by a vote of the unit owners thereof, then, all monies secured by this Mortgage shall, at the option of the Bank, immediately become due and payable and the powers of entering, leasing or selling and all other remedies hereunder shall without more become exercisable by the Bank;
- (l) The Mortgagor does hereby irrevocably assign unto the Bank and by these presents does irrevocably authorize and empower the Bank to exercise the right of the Mortgagor as the owner of the Unit to vote or to consent to all matters relating to the affairs of the condominium corporation, provided however that:
 - (i) the Bank may at any time and from time to time give notice in writing to the Mortgagor and to the condominium corporation that the Bank does not intend to exercise its right to vote or consent and in that event until the Bank revokes such notice the Mortgagor may exercise the right to vote or consent;
 - (ii) any such notice may be for an indeterminate period of time or for a specific meeting or matter;
 - (iii) the Bank shall not by virtue of this assignment, authorization and power in favour of the Bank be under any obligation to vote or consent or to protect the interests of the Mortgagor nor be responsible for any exercise or failure to exercise the right to vote or consent;
 - (iv) this assignment, authorization and power in favour of the Bank or the exercise by the Bank of the right to vote or consent shall not constitute the Bank a mortgagee in possession;
 - (v) in all situations where a unanimous resolution is not required, the right to vote may only be exercised by the Mortgagor if the Bank is not represented by proxy, or if represented by proxy, does not desire to vote;
- (m) The Mortgagor does hereby irrevocably assign unto the Bank:

- (i) any lease or rights to occupy any parking space or spaces in the building of which the Unit forms part, demised to or reserved or designated for exclusive use by the Mortgagor; and
- (ii) any lease or rights to exclusive use of any common property or special privileges in respect thereof granted to the Mortgagor.

9.2 Assignment of Rents

If the Mortgagor's Interest, or any part thereof; is or becomes subject to any lease, agreement to lease, tenancy, right of use or occupation, or licence (all of which leases, agreements to lease, tenancies, rights and licences are in this clause collectively called the "Leases"):

- (a) the Mortgagor transfers and assigns to the Bank absolutely all rents and moneys of whatsoever nature or kind including repayment of tenant inducements, operating expenses and other revenue (in this clause called the "Rents") now due and payable or which may hereafter become due and payable:
 - (i) under all existing and future Leases in respect of the whole or any portion of the Mortgagor's Interest; and
 - (ii) under every existing and future guarantee of each and every one of the obligations of each and every existing or future tenant, user, occupier, or licensee of the whole or any portion of the Mortgagor's Interest;

together with the benefit of all covenants and rights therein, and, specifically, in the Leases contained, and the full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for the Rents and to enforce payment thereof in the name of the Mortgagor, as security for payment of the Indebtedness;

- (b) the Mortgagor represents and warrants to the Bank that:
 - (i) it has not terminated, cancelled or accepted surrender of any of the Leases or waived, released, reduced or abated any rights or remedies of the Mortgagor or obligations of any other party under any of the Leases or in connection with any of the Leases;
 - (ii) none of those rights, remedies or obligations are affected by any other agreement, document or understanding or by any reduction, abatement, defence, set off, or counterclaim, except those consented to in writing by the Bank;
 - (iii) no Rents have been paid in advance for a period exceeding one month;
 - (iv) there are no existing defaults under any of the Leases;
 - (v) there are no outstanding disputes under any of the Leases;
- (c) the Mortgagor agrees with the Bank that:
 - (i) without the prior written consent of the Bank, it will not terminate, cancel or accept surrender of any of the Leases or waive, release, reduce or abate any rights or remedies of the Mortgagor or obligations of any other party under any of the Leases or in connection with any of the Leases;
 - (ii) without the prior written consent of the Bank, none of such rights, remedies or obligations will be affected by any other agreement, document or understanding or by any reduction, abatement, defence, set-off, or counterclaim;
 - (iii) without the prior written consent of the Bank, none of the Leases or the Mortgagor's rights thereunder including the right to receive the Rents, will be amended, assigned, encumbered, discounted or anticipated;

- (iv) without the prior written consent of the Bank, no Rents will be paid in advance for a period exceeding one month;
 - (v) it will observe and perform all of its obligations under each of the Leases;
 - (vi) a true copy of each of the Leases will be delivered by the Mortgagor to the Bank upon demand by the Bank;
 - (vii) it will execute such further assurances as may be required by the Bank from time to time to perfect this assignment, including without limiting the generality of the foregoing, whenever any Lease not now existing is made or arises, it will, upon demand by the Bank at any time, forthwith give the Bank a specific assignment of the rents and guarantees thereunder, if any, similar to this assignment and will give any other parties thereto notice of such assignment and will obtain from them acknowledgements of such notice;
 - (viii) without the prior written consent of the Bank, it will not lease or agree to lease or grant any licence or user of any part of the Mortgagor's Interest except at a rent and on terms and conditions and to tenants which are not less favourable or desirable to the Mortgagor than those which a prudent landlord would expect to receive for the premises to be leased;
 - (ix) nothing herein contained shall have the effect of making the Bank responsible for the collection of the Rents, or any of them, or for the performance of or in respect of the Leases, or any of them, to be observed or performed by the Mortgagor and the Bank shall not, by virtue of this assignment or its receipt of the Rents or any of them, become or be deemed a mortgagee in possession of the Lands and the Bank shall not be under any obligation to take any action or exercise any remedy in the collection or recovery of the Rents, or any of them, or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the Leases, or any of them, and the Bank shall be liable to account only for such monies as shall actually come into its hands, less proper collection charges, and such monies may be applied on account of any indebtedness of the Mortgagor to the Bank; and
 - (x) upon demand by the Bank at any time, the Mortgagor shall, and, at any time, the Bank may, notify each and every one of the parties so obligated to pay the Rents, or any part thereof, that the same have been assigned to the Bank;
- (d) the Bank may enforce its rights under this clause independently of its rights under clause 6.1;
 - (e) provided that so long as the Mortgagor does not accept prepayment of any Rents (other than the current month's Rent and the last month's Rent) the Mortgagor may collect and deal with any Rents prior to the occurrence of an Event of Default.

9.3 Leasehold Mortgage

If the Mortgagor's Interest, or any part thereof; is as a lessee of the Lands, or any part thereof, under a lease, agreement to lease, tenancy, right of use or occupation, or licence or any renewal, replacement or extension thereof (all of which leases, agreements to lease, tenancies, rights, licences, renewals, replacements and extensions are in this clause collectively called the "Lease"):

- (a) the Mortgagor grants and mortgages to the Bank by sub demise the Mortgagor's Interest and the Lease;
- (b) if the Lease cannot be effectively charged without consent, any charge intended to be created by this Mortgage upon the Lease shall not become effective until, but shall become effective immediately when, all consents necessary for the validity and effectiveness of such charge have been obtained;
- (c) the last 10 days of the Mortgagor's right to occupy or use the Lands under the Lease are excepted out of the charge created by this Mortgage;

- (d) the Mortgagor represents and warrants to the Bank that the Lease is in good standing, the Mortgagor has the right to mortgage the Lease to the Bank, all rents or other moneys payable under the Lease have been paid and all other obligations under the Lease, whether of the Mortgagor or the landlord, have been performed or complied with;
- (e) the Mortgagor agrees that any default under the Lease shall be deemed to be an Event of Default;
- (f) without the prior written consent of the Bank, the Mortgagor will not surrender or terminate the Lease or permit any amendment of the terms of the Lease; and
- (g) unless otherwise permitted by the Bank, the Mortgagor shall exercise every renewal of the Lease.

9.4 **Mortgage of Mortgage**

If the Mortgagor's Interest, or any part thereof; is as a mortgagee of the Lands, or any part thereof, under a mortgage (in this clause called the "Head Mortgage"):

- (a) the Mortgagor transfers and assigns to the Bank absolutely all the right, title and interest of the Mortgagor in and to the Head Mortgage and the moneys now and hereafter owing thereunder, together with the full benefit of all the Mortgagor's powers under the Head Mortgage, including any guarantee contained in the Head Mortgage, and grants to the Bank, full power and authority to use the name of the Mortgagor for enforcing the performance of the covenants and other matters and things contained in the Head Mortgage;
- (b) the Mortgagor represents and warrants to the Bank that the Head Mortgage is good and valid security;
- (c) the Mortgagor represents and warrants to the Bank that the Mortgagor has not done, nor permitted any act, matter or thing whereby the Head Mortgage has been assigned to another person, released or discharged, either in whole or in part;
- (d) the Mortgagor agrees that default of any kind under the Head Mortgage or the Mortgagor becoming entitled to take any action or proceeding under the Head Mortgage shall be deemed to be an Event of Default;
- (e) the Mortgagor shall not accept any prepayment of the moneys owing under the Head Mortgage other than in accordance with the terms thereof; provided that, if the Mortgagor is obliged to accept a prepayment, the amount thereof shall be paid to the Bank as a prepayment of the Indebtedness unless the Bank waives such prepayment; and
- (f) without the prior written consent of the Bank, the Mortgagor will not permit any amendment to the terms of the Head Mortgage.

9.5 **Sale or Transfer**

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

then the Bank 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;

The word "assigned" as used in paragraph (a) 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;

The Bank 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 Bank as against the Mortgagor or any other person liable for payment of the moneys hereby secured.

9.6 Development Mortgage

If the Mortgagor is borrowing all or part of the Indebtedness in order to purchase the Lands or construct utilities, improvements or buildings thereon, or both (in this clause called the "Development"), the Mortgagor agrees with the Bank that:

- (a) the Development being or to be carried out on the Lands forms part of the security for the Indebtedness;
- (b) the Mortgagor will carry on construction of the Development continuously, diligently and with dispatch until completed and will devote its full efforts and energy to the development and construction of the Development and shall not abandon or delay completion of the Development or, without the prior written consent of the Bank, depart from any plans and specifications provided to the Bank in connection with the Development;
- (c) the Mortgagor will construct the Development in a good and workmanlike manner using first class quality materials in accordance with the aforesaid plans and specifications and will comply with all restrictions, conditions, ordinances, codes, regulations and laws of governmental authorities having jurisdiction over, or an interest in, the Lands or the Development including, without limitation, all Environmental Laws; and
- (d) the Mortgagor will pay or cause to be paid as soon as the same are due all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, workers' compensation assessments and other charges of any nature and kind (in this clause collectively called the "Liens") which could in any circumstances constitute a lien or charge having priority over this Mortgage and will from time to time on demand provide the Bank with such books, payrolls and other records, receipts, certificates and declarations as the Bank may deem necessary to satisfy itself that such Liens have been paid as soon as they are due, and if a builder's lien or Lien is filed against the Lands, the Mortgagor will cause that lien or Lien to be removed forthwith upon notice by the Bank.

10. COVENANTOR

10.1 This paragraph applies if the Mortgage Form has 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 good and valuable consideration now paid by the Bank to the Covenantor (the receipt and sufficiency of which is hereby acknowledged), hereby covenants, promises and agrees to and with the Bank as a principal debtor and not as a surety as follows:

- (a) the Covenantor will at all times pay, or cause to be paid, the Indebtedness as and when due in accordance with its terms;
- (b) the Covenantor adopts each and every agreement of the Mortgagor as set out in this Mortgage and agrees with the Bank to observe and perform all such agreements;

- (c) for greater certainty:
- (i) the taking of this Mortgage shall not operate as a merger of the remedies of the Bank for payment of the Indebtedness or of the remedies of the Bank under any lien, bond, promissory note, bill of exchange, other negotiable instrument, other commercial paper or guarantee and notwithstanding this Mortgage or anything contained herein such remedies shall remain intact and be capable of enforcement against the Mortgagor, the Covenantor, the Customer and all other persons liable for the Indebtedness or any part or parts thereof in the same manner and to the same extent as if the Mortgage Form had not been executed;
 - (ii) the Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with, the Mortgagor, the Covenantor, the Customer and all other persons and securities as the Bank may see fit without prejudicing the rights of the Bank under this Mortgage;
- (d) all agreements and liabilities entered into or imposed upon the Covenantor, if more than one, shall be joint and several; and
- (e) demand may be made upon, and notice may be given to, the Covenantor in the same manner as to the Mortgagor under this Mortgage.

10.2 The Covenantor acknowledges receipt of a copy of this Mortgage.

10.3 The Covenantor waives all rights to receive from the Bank a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this Mortgage.

10.4 The Bank shall not be bound to exhaust its recourse against the Mortgagor or any other person before enforcing its rights against the Covenantor.

10.5 Any failure on the part of the Bank to perfect, maintain or enforce its rights, whether due to default, negligence or otherwise on the part of the Bank, with respect to this Mortgage, or any other security granted to the Bank relating to this Mortgage or the moneys secured hereby, shall not prejudice the Bank 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.

10.6 The release of any person or persons comprising the Covenantor from their duty in such capacity in whole or in part, shall not affect the liability of any person or persons remaining as Covenantor pursuant to the terms and conditions of this Mortgage, which liability shall in each instance remain unimpaired and in full force and effect as if each person being so released had not been party to this Mortgage.

END OF SET