

CANADIAN WESTERN BANK
STANDARD CHARGE TERMS – FIXED RATE
LAND REGISTRATION REFORM ACT (ONTARIO)

Filed by: **CANADIAN WESTERN BANK**

The following set of standard charge terms shall be deemed to be included in every charge/mortgage in which the set is referred to by its filing number, as provide in section 9 of the *Land Registration Reform Act* (Ontario).

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

1. DEFINITIONS

1.1 In this set of standard charge terms:

- (a) “**Act**” means the *Condominium Act* (Ontario), the regulations thereunder and any amendments thereto.
- (b) “**Balance Due Date**” means the balance due date, if any, set out or referred to in the Mortgage Form;
- (c) “**business day**” means a day that is not a Saturday, Sunday, or statutory holiday in the Provinces of Ontario or Alberta;
- (d) “**Calculation Period**” means the interest calculation period set out or referred to in the Mortgage Form;
- (e) “**Chargee**” means the “Chargee” identified in the Mortgage Form, and its successors and assigns;
- (f) “**Chargor**” means each person or persons identified in the Mortgage Form as the “Chargor(s)” who executed the Mortgage Form and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (g) “**condominium corporation**” means the corporation created by the registration or deposit of a declaration and description under the Act in respect of the Lands;
- (h) “**condominium property**” is defined in paragraph 15;
- (i) “**Covenantor**” means the Person or Persons, if any, who execute the Mortgage as “Covenantor” and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (j) “**First Payment Date**” means the first payment date, if any, set out or referred to in the Mortgage Form;
- (k) “**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 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;

any successors to the Chargee's interest in the Lands, and any other legal person who acquires the Lands at a foreclosure sale or otherwise through the exercise of the Chargee's rights and remedies, and any successors to any such other legal person, and all directors, officers, employees and agents of all of the aforementioned indemnified parties, harmless from and against any and all actual or potential claims, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, legal fees and disbursements and costs and expenses of investigation) which arise out of or relate in any way to any use, handling, production, transportation, disposal or storage of any Hazardous Materials in or on the Lands whether by the Chargor or any tenant or any other legal person, including without limitation all foreseeable and all unforeseeable consequential damages directly or indirectly arising out of the use, generation, storage, discharge or disposal of Hazardous Materials by the Chargor, any prior owner or operator of the Lands or any legal person on or about the Lands, or arising out of any residual contamination affecting any natural resource or the environment, and the costs of any required or necessary repair, clean-up, remediation or detoxification of the Lands and the preparation of any closure or other required plans. In addition if any Hazardous Material is caused to be removed from the Lands by the Chargor, the Chargee or any other legal person, then such Hazardous Material will be and remain the property of the Chargor and the Chargor will assume any and all liability for such removed Hazardous Material. The Chargor understands that its liability to the aforementioned indemnified parties will arise upon the earlier to occur of the discovery of the Hazardous Materials on, under or about the Lands, or the institution of any Hazardous Materials Claims, and not upon the realization of loss or damage, and that it will survive the payment and satisfaction of all of the other obligations secured under the Mortgage. The Chargor will pay to the Chargee from time to time, immediately upon the Chargee's request, an amount equal to all costs, damages, claims and expenses described or referred to in this paragraph, as reasonably determined by the Chargee;

8.9 The Chargee and any agent of the Chargee, 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 Chargee in its sole discretion deems necessary or advisable, and the Chargee may without the concurrence of the Chargor 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 Chargee may deem proper, and the Chargee shall not hereby become or be liable as a mortgagee in possession.

9. ADVANCE OF MORTGAGE MONEYS

9.1 Any payments to be made by the Chargor shall become due and be payable at the times provided under the Mortgage notwithstanding that at the due date of any payment the full amount of the Principal which the 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 Chargee be reduced proportionately;

9.2 The Chargee may deduct accrued interest and costs, charges, and expenses payable hereunder from any advance of the Principal and the Chargee may deduct interest from any advance of the Principal 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;

9.3 Except to the extent that the Chargee by issuing letters of credit or letters of guarantee or accepting bills of exchange or other negotiable instruments at the request of the Chargor is required to make advances or re-advances of money thereunder, the Chargor agrees that neither the preparation, execution or registration of the Mortgage, nor the advance or re-advance in part of the Principal secured under the Mortgage, nor any course of conduct of the Chargee or of any of its officers, agents or employees shall bind the Chargee to advance or re-advance the Principal or any unadvanced portion thereof to the Chargor or to any other person the obligations of whom are guaranteed by the Chargor, it being understood and agreed that the advance or re-advance of the moneys secured under the Mortgage or any part thereof from time to time shall be in the absolute discretion of the Chargee and not exercised or deemed exercised unless and until that advance or re-advance has actually been made to the Chargor, but nevertheless the security created by the Mortgage shall take effect in accordance with the terms of the Mortgage forthwith upon the execution hereof by the Chargor. The Mortgage may contain a revolving credit facility which entitles the Mortgagor to advances of the Principal, repay all or a portion of such Principal, and reborrow the amounts previously paid to the Mortgagee. The Mortgage secures all advances and re-advance of the Principal pursuant to the Mortgage;

9.4 Any portion of the Principal may be advanced or re-advanced by the Chargee 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 the Mortgage and be repayable with interest at the Interest Rate and the Mortgage shall be deemed to be taken as security for the moneys secured under the Mortgage 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.

10. CHARGEES ELECTION TO MAKE PAYMENTS AND CURE DEFAULTS

10.1 If the Chargor fails to make any payment which the Chargor has covenanted or agreed to make by the terms of the Mortgage or to provide proof of the making of any such payment to the Chargee upon demand, the Chargee may make any such payment;

10.2 If the Chargor fails to perform any covenant or agreement herein contained or contained in the Mortgage on the part of the Chargor or to provide proof of performance to the Chargee upon demand, the Chargee may in its sole discretion perform or cause to be performed any such covenant or agreement and may do such acts as it considers are reasonable to protect the interests of the Chargee and for such purposes the Chargee and its authorized representatives may, at its option, enter onto the Lands. Without limiting the generality of the foregoing, the Chargee may:

- (a) insure the buildings on the Lands in accordance with the provisions of the Mortgage if the Chargor neglects to insure or to deliver policies and receipts in accordance with the Mortgage;
- (b) repair and reinstate the buildings and improvements on the Lands if the Chargor fails to repair in accordance herewith or demolishes or alters such buildings or improvements in contravention of the Mortgage;
- (c) without any order or direction of the Chargor, 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) if the Lands are governed in whole or in part, by the Act, pay common expenses, assessments, contributions or levies required to be paid in connection with any condominium unit comprising the Lands;

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

10.3 If the Chargee shall make payment to any creditor of the Chargor or any encumbrance holder in respect of the Lands pursuant to the provisions of the Mortgage, the Chargee 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;

10.4 All payments made and all sums of money expended by the Chargee 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 Chargor 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 added to the Principal and shall be secured by the Mortgage prior to all claims thereon subsequent to the Mortgage;

10.5 Nothing done by the Chargee in reliance on the provisions of this paragraph 10 shall in any manner prejudice the remedies of the Chargee in respect of any default of the Chargor or otherwise.

11. DEFAULT AND ACCELERATION

11.1 If any default at any time be made of or in any payment of the Principal or interest secured by the Mortgage, 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 or other impositions whatsoever, or under the covenant to insure provided in the Mortgage, or as to any other covenant or proviso contained in the Mortgage, or if the Chargor 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 Chargee:

- (a) the outstanding Principal, interest, and all other moneys owing under the Mortgage 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 the provisions relating to a default under the Mortgage by the Chargor shall be as set out herein and the Chargor 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; and
- (b) the Chargee may exercise any and all remedies to enforce the Mortgage;

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

11.3 If all or any part of the Lands are used for an illegal purpose by any person, or if any illegal business is conducted in, on, or about the Lands, or if equipment believed by the Chargee to be related to an illegal business is installed in, on or about the Lands or if the Lands or any part thereof are the subject of or are part of a criminal investigation then, at the option of the Chargee in its unrestricted and absolute discretion, the outstanding Principal shall immediately become due and payable.

12. REMEDIES OF CHARGEES ON DEFAULT

12.1 If the Chargor is in default, the outstanding Principal, interest and all other amounts secured under the Mortgage will immediately become due and payable at the Chargee's option and the Chargee may, in addition to any other rights or remedies that are available to the Chargee at law, enforce any one or more of the remedies listed below in any order, separately or together, to the extent that such remedies are available at such time;

12.2 The Chargee's remedies are:

(i) Go to Court – The Chargee may take court proceedings to obtain a judgment against the Chargor to pay the Chargee the amounts secured under the Mortgage.

(ii) Foreclosure or Sale by a Court – The Chargee may take court proceedings to foreclose the Chargor's equity of redemption in the Lands. If the Chargee obtains a final order of foreclosure from the court, the Lands will become the Chargee's. The Chargee may also ask the court to order the sale of the Lands under its supervision. The net proceeds from the sale of the Lands will be applied to reduce the amounts secured under the Mortgage. If the net proceeds are less than the amounts secured, the Chargor must pay the Chargee the difference, and the Chargee may obtain a judgment against the Chargor to pay the Chargee the difference. If the net proceeds are more than the amounts secured, the excess will be paid to the Chargor.

(iii) Lease the Property – If the Chargor's default continues for 15 days, the Chargee may, on 15 days' notice to the Chargor, lease the Lands; if the Chargor's default continues for 30 days, the Chargee may, without notice to the Chargor, lease the Land. The Chargee may apply the net proceeds of any lease to reduce any part of the amounts secured under the Mortgage. If the net proceeds of any lease are less than the amounts secured, the Chargor must pay the Chargee the difference. If the

net proceeds are more than the amounts secured, the excess will be paid to the Chargor.

(iv) Power of Sale – If the Chargor’s default continues for 15 days, the Chargee may, on at least 35 days’ written notice to the Chargor delivered in accordance with the *Mortgages Act* (Ontario), enter on and sell the whole or any part of the Lands. Any sale can be for cash or on credit, or partly for cash and partly on credit, by private sale or public auction and on such terms as can be obtained. The Chargee may cancel, amend or not complete any contract of sale without being responsible for any resulting loss. The net proceeds from any sale of the property will be applied to reduce the amounts secured under the Mortgage. If the net proceeds are less than the amounts secured, the Chargor must pay the Chargee the difference, and the Chargee may obtain a judgment against the Chargor to pay the Chargee the difference. If the net proceeds are more than the amounts secured, the excess will be paid to the Chargor.

(v) Enter on the Lands – The Chargee can enter on the Lands at any time without the Chargor’s permission and inspect, collect rents or manage the Lands, repair or complete construction of any building or other improvement on the Lands and do anything else that the Chargee is entitled as mortgagee to do. Any costs the Chargee incurs will be added to the Principal and will bear interest at the Interest Rate.

(vi) Possession – The Chargee can take possession of the Lands at any time, without the Chargor’s permission, and take all necessary action to recover and keep possession of the Lands. The Chargee will not be considered to be a mortgagee in possession unless the Chargee actually takes possession of the Lands. The Chargee may lease or sell the Lands without actually entering into possession of the Lands. While in possession, the Chargee will only be accountable for money actually received by the Chargee.

(vii) Personal Property – It shall be lawful for the Chargee to, and the Chargor hereby grants full power and license to the Chargee 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, interest or other moneys secured by the Mortgage as shall from time to time be or remain in arrears or unpaid, together with all costs, charges and expenses of the Chargee in connection therewith (including without limitation legal fees, costs, charges and expenses on a solicitor and his own client basis);

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

12.4 In addition to the foregoing rights and powers, the Chargee may appoint by instrument in writing a receiver, receiver-manager or receiver and manager (herein called the “Receiver”) of the Lands, with or without bond, and may from time to time remove the Receiver and appoint another in his stead. A Receiver appointed by the Chargee as aforesaid will be deemed to be the agent of the Chargor and the Chargor shall be solely responsible for the Receiver’s acts or defaults and the Chargee shall not be in any way responsible therefor and the Chargee shall not be liable to the Receiver for his remuneration, costs, charges or expenses;

12.5 It is further specifically understood and agreed that the Receiver appointed by the Chargee 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 Chargor in operating the business comprised of the Lands or which is conducted thereon by the Chargor;
- (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 Chargor comprised of the Lands or which is conducted thereon by the Chargor 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 the Mortgage and the Chargor 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 Chargor 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;

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

12.7 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 the 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 Chargee of all costs and charges owing hereunder and interest and arrears of interest remaining unpaid hereunder;
- (c) thirdly, in payment to the Chargee of the outstanding Principal; and
- (d) fourthly, any surplus shall be paid to the Chargor;

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;

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

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

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

12.11 The Chargee may realize on various securities and any parts thereof in any order that the Chargee 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.

13. PRESERVATION OF MORTGAGE AND OTHER SECURITY

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

13.2 Any portion of the Lands that are or may hereafter be subdivided does and shall stand as charged with the whole of the moneys secured by the Mortgage, and no person shall have any right to require the moneys secured by the Mortgage to be apportioned upon or in respect of any such subdivision;

13.3 The Chargee 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 secured by the Mortgage or may release the Chargor or any other person from any covenant or other liability to pay the moneys secured by the Mortgage 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 Chargee, and without thereby releasing any other part of the Lands or any other securities or covenants contained in the Mortgage, it being agreed that, notwithstanding any such release, the Lands, securities and covenants remaining unreleased shall stand charged with the whole of the moneys secured by the Mortgage;

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

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

13.6 Any act done or omitted to be done by any of the parties hereto regarding any other securities held by the Chargee for the Principal, interest and other amounts secured by the Mortgage or any part thereof shall not in any way affect or prejudice the Mortgage, and the 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 Chargee for such sums.

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 Chargor 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 Chargee; or

(b) if such purchaser, grantee, transferee or assignee should fail to:

(i) apply for and receive the Chargee's written approval as aforesaid;

(ii) if required by the Chargee, personally assume all the obligations of the Chargor under the Mortgage, and

(iii) if required by the Chargee, execute an assumption agreement in the form required by the Chargee;

then the Chargee at its option may declare the outstanding Principal, all accrued interest and all other moneys then secured under the Mortgage, to become immediately due and payable in full and the Chargor shall pay the same forthwith.

14.2 The word “assigned” as used in paragraph 14.1 shall include any transfer, sale, assignment, bequest, inheritance, encumbrance or other disposition of shares of any body corporate comprising the Chargor, in whole or in part, having the result of changing the identity of the person(s) who during the term of the Mortgage exercise the effective voting control of such body corporate.

14.3 The Chargee 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 Chargor 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 Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the moneys secured by the Mortgage.

15. CONDOMINIUM

15.1 If the Lands comprise a condominium unit, the Mortgagor agrees to comply with the provisions of this paragraph 15 in addition to the other provisions of this set of standard charge terms.

15.2 The Chargor will comply with the Act and with the declaration, by-laws and rules and regulations of the condominium corporation in effect from time to time and the Chargor will cause any of the Chargor’s guests to do so as well.

15.3 The Chargor will pay all amounts required by the Act, the declaration, the by-laws of the condominium corporation and the condominium corporation’s budget on or before the date such amounts are due, including, but not limited to, all common expenses, contributions, levies or assessments. If the Chargee requests, the Chargor will give the Chargee proof that it has done so. If the Chargor does not make any payments which it is obligated to pay, the Chargee may do so on the Chargor’s behalf and add such amounts to the amounts secured under the Mortgage and such amounts will bear interest at the Interest Rate.

15.4 The Chargor will mail to the Chargee by prepaid registered mail or deliver to the Chargee a copy of every notice, assessment, claim or demand for payment, rule or regulation, request or demand of the Chargee to consent to any matter, and every other communication relating to the Chargor’s unit or the common elements of the condominium property so that the Chargee receives such communications at least five days before any claim or demand is payable or, in the case of other communications, within five days of the date the Chargor receives them.

15.5 The Chargor irrevocably authorizes the Chargee, in the Chargor’s name and on the Chargor’s behalf, to exercise the Chargor’s rights under the Act and under the declaration and bylaws of the condominium corporation to vote at any meeting of the condominium corporation and to consent to any matter relevant to the management, sale or other dealings with the property or assets of the condominium corporation or the termination of the application of the Act to the condominium corporation. However, the Chargor may exercise such rights to vote or consent unless the Chargee notifies the Chargor in writing that the Chargee wishes to use the Chargee’s rights to vote or consent, in which case the Chargee may also notify the condominium corporation. The Chargee’s wish to vote or consent can be for a limited period of time or for a particular meeting or matter. When the Chargee votes or consents in the Chargor’s place, the Chargee does not then become a mortgagee in possession and is not responsible for protecting the Chargor’s interests or for the way the Chargee votes or consents or fails to do so.

15.6 At the Chargee’s option, the amounts secured under the Mortgage will become payable immediately if:

- (a) the condominium of which the Lands forms a part, including, without limitation, the common elements and the assets of the condominium corporation (collectively, the “condominium property”) is no longer governed by the Act;
- (b) a vote of the unit owners authorizes the sale of the condominium property or any part thereof;

- (c) the condominium corporation fails to comply with the Act, the declaration, by-laws, rules and regulations or any other reciprocal or shared facilities agreement to which it is a party;
- (d) the condominium corporation fails, in the Chargee's opinion, to manage the condominium property in a careful way or to maintain the condominium property in good repair;
- (e) the condominium corporation fails to insure the condominium property according to law, the Act and any additional requirements the Chargee may have or fails to do all that is necessary to collect insurance proceeds;
- (f) the condominium corporation makes or permits to be made any substantial modification to the condominium property or any part thereof without the Chargee's approval; or
- (g) there has been substantial damage to the condominium property and the owners have voted for termination of the condominium corporation.

The Chargee's rights to cause the amounts secured under the Mortgage to become payable immediately will not be affected by the fact that the Chargee may have voted in favour of or consented to any of the foregoing.

15.7 If the Lands consist solely of a condominium unit, the Chargor must insure and keep insured in the Chargee's favour and until the Mortgage is discharged, the Lands (including, without limitation, all buildings, structures, fixtures and improvements now or in the future located on the Lands not required to be insured by, the condominium corporation according to the Act or the declaration of the condominium corporation) for not less than its full replacement value in Canadian dollars.

The condominium corporation must obtain such appropriate insurance as it is required to obtain under the Act and under the declaration and by-laws of the condominium corporation, failing which the Chargor will be in default. In addition, the Chargor must insure against loss or damage by fire with extended perils coverage, and against such additional risks as the Chargee may at any time require, all improvements or those improvements required by the Act or by-laws of the condominium corporation which at any time have been made to the Lands.

All insurance policies must be provided by a company approved by the Chargee and contain mortgage clauses approved by the Insurance Bureau of Canada or by the Chargee confirming that loss proceeds are payable firstly to the Chargee, and the Chargor will have the first right to receive and to have a lien on the loss proceeds. Upon the Chargee's request, the Chargor will provide the Chargee with certified copies of every insurance policy with respect to the Lands and, not less than 15 days before any policy expires, evidence of its renewal.

The Chargee may place and pay for any insurance policy if the Chargor fails to do so. Any premiums or sums of money which the Chargee pays for insurance will be immediately payable by the Chargor to the Chargee or added to the amounts secured by the Mortgage if not so paid and will bear interest at the Interest Rate.

If any loss or damage occurs, the Chargor will immediately, at its expense, do everything necessary to enable the Chargee to obtain the insurance proceeds. The production of a copy of the Mortgage will be sufficient authority for the insurance company to pay any loss to the Chargee or to accept instructions from the Chargee dealing with the loss, and the insurance company is hereby directed to pay the same to Chargee. Insurance proceeds may, at the Chargee's option, in whole or in part be: (i) used to repair or rebuild the Lands; (ii) paid to the Chargor; and/or (iii) used to reduce any part of the amounts secured by the Mortgage, whether due or not, including, without limitation, an amount to compensate the Chargee for loss of interest.

The Chargor will, and to the extent it is within the Chargor's control will cause the condominium corporation to, assign and transfer the policy or policies of insurance and receipts thereof to the Chargee and if the Chargor or the condominium corporation fails to keep the buildings and improvements insured or provide the Chargee at least 15 days before the termination of any insurance, evidence of renewal, the Chargee is entitled but not obligated to insure the buildings or improvements.

The obligation to insure may be performed by the condominium corporation and the proceeds of insurance may be payable in accordance with the declaration and by-laws of the condominium corporation. The Chargor promises that, in the event of loss or damage, the Chargor will fully comply with the terms of all insurance policies and with the insurance provisions of the declaration and by-laws and that, as a member of the condominium corporation, the Chargor will insist that the condominium corporation fully complies with these terms.

16. COVENANTOR

16.1 This paragraph applies if the Mortgage 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 Chargee to the Covenantor (the receipt and sufficiency of which is hereby acknowledged), hereby covenants, promises and agrees to and with the Chargee as a principal debtor and not as a surety:

(a) to duly and punctually pay the outstanding Principal, interest and all other moneys from time to time owing on the security of the 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 Chargor to be observed and performed and to indemnify, protect and save harmless the Chargee from all loss, costs and damage in respect of the 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 Chargee in respect of any default by the Chargor which may arise under the Mortgage and no extension or extensions granted by the Chargee to the Chargor for payment of the moneys secured by the Mortgage, or for the doing, observing or performing of any covenant, agreement, matter or thing contained in the Mortgage, to be done, observed or performed by the Chargor, nor any variation in or departure from the provisions of the 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 by the Mortgage, nor any taking of further security from the Chargor nor any other dealings between the Chargee and the Chargor, shall in any way prejudice the Chargee 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 the Mortgage, until the outstanding Principal, interest and other moneys owing under the Mortgage are fully paid and satisfied;

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

(d) that any failure on the part of the Chargee to perfect, maintain or enforce its rights, whether due to default, negligence or otherwise on the part of the Chargee, with respect to the Mortgage, or any other security granted to the Chargee relating to the Mortgage or the moneys secured by the Mortgage, shall not prejudice the Chargee 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 the Mortgage; and

(f) that the Chargee 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 Chargor.

17. PROMISSORY NOTE

17.1 Any promissory note or notes taken in connection with any advance or re-advance of funds to be secured under the Mortgage is taken as collateral security only and not in satisfaction of the moneys secured under the Mortgage.

18. OTHER OBLIGATIONS

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

18.2 All covenants, agreements, representations and warranties of the Chargor and/or any other person executing the Mortgage as contained in any loan application, commitment letter or similar application for the Mortgage loan (the "Application") shall be deemed incorporated and made part of the Mortgage as if the same covenants, agreements, representations and warranties of the Chargor and any such other person were fully repeated in the Mortgage and in the event of any breach by the Chargor 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 the Mortgage, the breach shall be deemed to be a default under the Mortgage and shall entitle the Chargee to exercise all of the rights and remedies of the Chargee including, but without limiting the generality of the foregoing, the right to demand payment of the moneys secured under the Mortgage. In the event any conflict between the provisions of the Application and the Mortgage, the provisions of the Mortgage shall govern.

19. ESTOPPEL CERTIFICATE

19.1 The Chargor, within seven (7) days after receipt of a request to do so, will certify to the Chargee, or any person designated by the Chargee, the amount of the outstanding Principal, the date to which interest is paid, that it has no right of set-off against the moneys due under the Mortgage or, if it has such a right of set-off, the amount thereof, and that there have been no amendments hereof or, if there has been any such amendment, specifying it.

20. INTEREST RATE ALTERNATIVE

20.1 If the Interest Rate would, except for this clause, be a criminal rate, or void for uncertainty, or unenforceable for any other reason, then the Interest Rate shall be one per cent (1%) per annum less than the minimum rate which would be a criminal rate calculated in accordance with generally accepted actuarial practices and principles.

21. ASSIGNMENT OF RENTS

21.1 To further secure the Principal and interest and all other sums which may become due and payable under the Mortgage, the Chargor 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 Chargee may, without notice to the Chargor 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 Chargee a mortgagee in possession, nor shall they render the Chargee 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 Chargee to take any proceedings whether in a court of law or otherwise to enforce payment of the said rentals, nor shall they render the Chargee 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 Chargor.

22. BUILDING MORTGAGE

22.1 If the Mortgage is a building mortgage then the Chargor covenants:

- (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 Chargee;

(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) that 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 the Mortgage; and

(d) that the moneys secured by the Mortgage are to be advanced from time to time in the discretion of the Chargee 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 Chargee, but save where the Chargee expressly undertakes in writing to the Chargor to make any advance, nothing in this paragraph shall vary or modify any provision in the Mortgage which concerns, governs or limits the Chargee's obligation to advance any monies secured by the Mortgage.

23. MAXIMUM RETURN TO CHARGE

23.1 The Chargor agrees that, notwithstanding any agreement to the contrary, no interest on the Principal will be payable in excess of that permitted by the laws of Canada. If the effective annual rate of interest, calculated in accordance with generally accepted actuarial practices and principles, would exceed the amount permitted by the laws of Canada, then:

(a) the amount of any fees payable in connection therewith will be reduced to the extent necessary to eliminate such excess;

(b) any remaining excess that has been paid will be credited toward prepayment of the outstanding Principal; and

(c) any overpayment that may remain after such crediting will be returned forthwith upon demand.

24. MISCELLANEOUS

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

24.2 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 Chargor or to any encumbrancer by writing signed or purporting to be signed by or on behalf of the Chargee;

24.3 Any demand or notice to be made or given under the provisions of the 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 on page 1 of the Mortgage Form or to such other address 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;

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

25. INTERPRETATION

25.1 The paragraph headings in this set of standard charge terms are inserted for convenience of reference only and shall not affect the construction or interpretation of this set of standard charge terms;

25.2 All references in this set of standard charge terms or in the Mortgage to the words “hereof”, “herein” or “hereunder” shall be construed to mean and refer to this set of standard charge terms or Mortgage as the case may be as a whole and shall not be construed to refer only to a specific paragraph or clause of this set of standard charge terms or Mortgage as the case may be unless the context clearly requires such construction;

25.3 In the event of any party being comprised of two or more persons, all covenants and agreements of such party herein contained and in the Mortgage 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;

25.4 If any of the terms of this set of standard charge terms or the 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 set of standard charge terms or the Mortgage;

25.5 This set of standard charge terms including any covenants and indemnity of the Covenantor provided for herein shall be governed by and construed in accordance with the laws of the Province of Ontario, and each party hereby submits to the jurisdiction of the courts of the Province of Ontario 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 Chargee to commence suits, actions or proceedings based on this set of standard charge terms or Mortgage in any other jurisdiction;

25.6 Wherever the singular or masculine gender is used throughout this set of standard charge terms or the 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;

25.7 Time shall be of the essence hereof;

25.8 All references in these standard charge terms 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;

25.9 If the Chargor has applied for and been approved by the Chargee for a *National Housing Act* loan, the Mortgage shall be subject to the *National Housing Act*;

25.10 The covenants contained in section 7(1) of the *Land Registration Reform Act* (Ontario) are excluded from the Mortgage.

CANADIAN WESTERN BANK, by its solicitors,
McCarthy Tétrault LLP

Per:



Tzen-Yi Goh