

## **ADDITIONAL TERMS AND COVENANTS**

This set of additional terms and covenants is attached as Schedule A to Street Capital Mortgage Corporation residential mortgages in Newfoundland.

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## 1. INTERPRETATION

1.1 All words used in these Additional Terms and Covenants for which an interpretation is provided in Section 1 of the *Registration of Deeds Act (Newfoundland and Labrador)* (the “Act”) have the meaning assigned to them by Section 1 of the Act except for words interpreted in this section 1.

1.2 In these Additional Terms and Covenants:

“**borrower**” means the person or persons named in the mortgage form as the borrower, chargor or mortgagor and who executed the mortgage form as the borrower, chargor or mortgagor and the heirs, personal representatives, successors and assigns of the borrower;

“**borrower mailing address**” means the postal address of the borrower set out in the mortgage form or the most recent postal address provided by the borrower to the lender in accordance with the terms of this mortgage;

“**borrower’s promises and agreements**” means any one or more of the borrower’s covenants, obligations, acknowledgments, promises and agreements contained in this mortgage;

“**commitment letter**” means the commitment letter, if any, governing the loan and all amendments thereto;

“**court**” means a court or judge having jurisdiction in any matter arising out of this mortgage;

“**default**” includes any of the events or circumstances of default listed in section 7.1 of these mortgage terms;

“**guarantor**” means the person or persons who signed the mortgage form as a guarantor or covenantor and any other person or entity who enters into a contract of guarantee with the lender from time to time covenanting and guaranteeing the obligations of the borrower under this mortgage and other loan documents;

“**interest**” means interest at the interest rate shown on the mortgage form, or a revised rate that the lender may establish, on all money owed to the lender under this mortgage;

“**interest adjustment date**” means the interest adjustment date shown on the mortgage form or a revised date as the lender may establish;

“**interest calculation period**” means the period or periods for the calculation of the interest shown on the mortgage form;

“**interest rate**” means the interest rate shown on the mortgage form, or a revised rate that the lender may establish;

“**land**” means all the borrower’s present and future interest in the land and property described on the mortgage form, including every incidental right, benefit or privilege attaching to that land and property or running with it, all buildings and improvements that are now or later constructed on or made to the land and property, all fixtures described in section 2.1, and all appurtenances thereto;

“**lender**” means the party described in the mortgage form as mortgagee, and includes its successors, assigns and any person, entity or corporation to whom the lender transfers this mortgage;

“**lender mailing address**” means the postal address of the lender set out in the mortgage form or the most recent postal address provided in a written notice given by the lender or its servicer to the borrower in accordance with the terms of this mortgage;

“**loan**” means the loan made by the lender to the borrower of the principal amount pursuant to the loan documents;

“**loan documents**” means all documents, instruments, agreements and opinions now and hereafter creating, evidencing, securing, guaranteeing and/or relating to the loan, the mortgage money and the borrower’s promises and agreements, including the commitment letter and this mortgage;

“**loan payment**” means the amount of each periodic payment shown on the mortgage form, or a revised amount that the lender may establish;

“**maturity date**” means the balance due date shown on the mortgage form, or a revised date that the lender may establish, and is the date on which all unpaid mortgage money becomes due and payable, or such earlier date on which the lender can lawfully require payment of the mortgage money;

“**mortgage form**” means the form of mortgage signed by the borrower that includes these Additional Terms and Covenants and all schedules thereto and that is filed or to be filed in the register;

“**mortgage money**” means the principal amount, interest and all other money owed by the borrower under this mortgage, the payment of which is secured by this mortgage;

“**payment due date**” means each payment due date commencing on the first payment date shown on the mortgage form, or a revised date that the lender may establish;

“**place of payment**” means the lender mailing address or any other address provided in a written notice given by the lender or its servicer to the borrower in accordance with the terms of this mortgage;

“**principal amount**” means the amount of money shown as the principal or principal amount on the registered mortgage form and includes all money that is later added to the principal amount, or re-advanced, under this mortgage;

“**receiver**” means a receiver, receiver and manager or receiver manager appointed by the lender under this mortgage;

“**securitization**” means any offering of securities backed by or representing direct or indirect interests in the loan or any pool of loans which includes the loan;

“**taxes**” means the aggregate of:

- (a) all taxes, rates, duties or assessments now or hereafter existing or claimed in respect of the land or its use or improvements on the land;
- (b) all penalties, interest and other monies added to the amounts described in clause (a) by any taxing authority;
- (c) all utility charges including those for electricity, gas, water, sewer, telephone and cable television now or hereafter existing or claimed in respect of the land; and
- (d) any taxes, rates, duties or assessments arising out of any transaction between the borrower and the lender, including goods and services tax, but not including the income taxes of the lender; and

“**this mortgage**” means the mortgage made pursuant to the Act (as amended from time to time) to which the borrower and the lender are parties and which consists of the mortgage form, any amendments contained in it, and these Additional Terms and Covenants, together with any amendments from time to time made afterward as may be agreed upon between the borrower and the lender.

- 1.3 In this mortgage: (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the word “including: means “including, without limitation,”; (c) any reference to the statute means the statute in force as at the date hereof, together with all regulations promulgated thereunder; as the same may be amended, re enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to the commitment letter, any loan document, any lease or other agreement or instrument includes all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) any reference to any person, including the borrower and/or guarantor, includes such person’s respective heirs, executors, administrators, legal representatives, successors and assigns, and extends to officers of the borrower and guarantor where either is a corporation; (f) any reference to the “lender” includes the lender in its capacity as lender and/or custodian and agent for investors in the loan, and any reference to a “corporation” includes a company or other form of body corporate; (g) all dollar amounts are expressed in Canadian dollars; (h) the loan documents are the result of negotiations between the parties thereto and are not to be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation; (i) time is of the essence; and (j) all obligations of the borrower or guarantor in each loan document are deemed to be covenants in favour of the lender.

## 2. WHAT THIS MORTGAGE DOES

- 2.1 In consideration for the lender agreeing to lend all or part of the principal amount to the borrower, the borrower grants and mortgages the land to the lender as security for the repayment of the mortgage money and for performance of all the borrower’s promises and agreements as set forth in this mortgage. All erections, additions and improvements, fixed or otherwise which are now on or at any time hereafter put upon the land or any building thereon, and all apparatus and equipment attached to or added to such erections, additions or improvements, will be fixtures and form part of the land and be part of the security for payment of the mortgage money. Fixtures subject to this mortgage include all fences, boilers, oil and gas burners, stokers, blowers, electric light fixtures, furnaces, heating, piping, plumbing, aerials, air-conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, window blinds, radiators and covers,

fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, plant machinery, television antennae, sprinklers, shutters and awnings, floor coverings, and all apparatus and equipment attached or added thereto.

- 2.2 If the interest mortgaged is described in the mortgage form as a leasehold interest, the grant by the borrower in section 2.1 will be construed as a charge by way of sublease of the unexpired term of the lease less the last day of that term. The borrower will hold the last day of the term in trust for the lender and grants the lender the power to assign and dispose of the last day of the term.
- 2.3 This mortgage is an encumbrance on the land.
- 2.4 The borrower releases to the lender all the borrower's claim to the land until the borrower has paid the mortgage money to the lender, in accordance with this mortgage, and has performed all of the borrower's promises and agreements.
- 2.5 Until default occurs and as long as borrower performs all of the borrower's promises and agreements, the borrower may continue to remain in quiet possession of the land.
- 2.6 When the borrower has paid the mortgage money and performed all the borrower's promises and agreements under this mortgage and the lender has no obligation to make any further advances, or re-advances, of the loan, the borrower, upon payment of the lender's discharge administration fee and applicable legal and administrative costs, will be entitled to receive a discharge of this mortgage in accordance with section 6.19. The discharge must be signed by the lender and must be registered by the borrower in the applicable land registry office to cancel the registration of this mortgage against the land.

### **3. INTEREST**

- 3.1 Interest is chargeable on the mortgage money at the interest rate and is payable by the borrower.
- 3.2 Interest on advances or re-advances of the principal amount starts to accrue on the date and on the amount of each advance or re-advance and accrues on the principal amount until the borrower has paid all the mortgage money.
- 3.3 Interest payable on any part of the principal amount advanced before the interest adjustment date is due and payable to the lender on the interest adjustment date or on an earlier date as may be established by the lender.
- 3.4 After the interest adjustment date, interest is calculated in accordance with the interest calculation period set out in the mortgage form, after as well as before the maturity date.
- 3.5 Interest on the arrears of the principal amount, accrued interest and other sums payable under this mortgage is payable at the same interest rate and times at which interest was payable prior to default. This is known as compound interest. Compound interest that is not so paid will also accrue interest at the rate of the mortgage until paid, both before and after the maturity date as well as both before and after default.
- 3.6 In any case where interest is calculated on a daily basis, simple interest may be charged.
- 3.7 All required interest will be a charge on the land and secured by this mortgage.

### **4. PAYMENT OF THE MORTGAGE MONEY**

- 4.1 The borrower promises to pay the mortgage money to the lender at the place of payment in accordance with the payment provisions set out in this mortgage, as well after as before maturity, default and judgment and without abatement, set-off (including both equitable and legal set-off) or counterclaim. Any claim the borrower makes against the lender, whether by abatement, set-off or counterclaim, will not diminish or delay the borrower's obligations to make the loan payments as provided in this mortgage and will not delay the exercise of any remedy nor be a defence to any claim by the lender against the borrower under this mortgage. And without limiting the generality of the foregoing, the borrower agrees the foregoing applies with respect to any claim or issue of any kind regarding life or other insurance purchased with respect to this mortgage.
- 4.2 The borrower promises to arrange for loan payments to be made through a financial institution in Canada using the lender's pre-authorized payment plan and to keep active, and in good standing, such account to facilitate this method of payment.
- 4.3 The amount of any loan payment will not change as a result of additional payments.
- 4.4 The mortgage money cannot be prepaid except as expressly permitted in the loan documents.

- 4.5 Any additional principal payment which is received on a day other than a payment due date may not be credited for the purpose of calculating interest on the mortgage money until the next ensuing payment due date.

## 5. PROMISES OF THE BORROWER

5.1 The borrower promises:

- (a) to pay all taxes when they fall due and to send to the lender at the place of payment, or at any other place the lender requires, all notices of taxes which the borrower receives, and receipts evidencing payment in full of such taxes within thirty (30) days of their due date. Any claim the borrower makes against the taxing authority will not diminish or delay the borrower's obligation to pay the taxes as required and will not delay the exercise of any remedy nor be a defence to any claim by the lender against the borrower under this mortgage. Failure to provide the required receipts will entitle the lender to obtain evidence of payment from the municipality and any costs so incurred will be added to the mortgage money, be due on demand and bear interest until fully paid.
- (b) if the lender requires the borrower to do so, to pay the lender:
  - (i) on each payment due date the amount of money estimated from time to time by the lender to be sufficient to permit the lender to pay the taxes as they fall due, and
  - (ii) any money in addition to the money already paid to the lender to be paid towards taxes so that the lender will be able to pay the taxes in full.

In addition, the borrower will forward to the lender, immediately upon receipt, the assessment notices, tax bills and other notices affecting the land. Any penalties which are levied against the land because of late payment of taxes are the borrower's responsibility, unless neglect on the lender's part is the reason for the penalties,

- (c) to pay on demand, the amount of money required to make up the deficiency if the taxes actually charged or payable in any calendar year exceed the estimate of the lender for that calendar year,
- (d) to pay all utility and fuel charges related to the land when they are due, to not allow the supply of utilities or fuel to be interrupted or discontinued and, if the supply of utilities or fuel is interrupted for any reason, to ensure that it is immediately restored,
- (e) to forward to the lender at the lender mailing address copies of all documentation relating to any expropriation or proposed expropriation of the land or any part(s) of the land immediately after the borrower receives any such documentation. The borrower irrevocably assigns to the lender any compensation which may become due and payable to the borrower or anyone claiming an interest under or through the borrower by an expropriating authority upon any expropriation of all or part(s) of the land. This assignment is limited to the amount of the mortgage money which is outstanding at the date the borrower ceases to be the registered owner of the land or any such part(s) of the land. Service of a copy of this mortgage on the expropriating authority is sufficient authority for the expropriating authority to deliver such proceeds to the lender,
- (f) to keep the land, the buildings, and any erections or improvements which form a part of the land in good condition and repair and not allow any act of waste on the land or allow the land or any building to become or remain vacant or to be used for any illegal, improper or immoral purpose or activity,
- (g) to sign any other document that the lender reasonably requires to ensure that payment of the mortgage money is secured by this mortgage or by any other security or loan document that the borrower has agreed to give in respect of the mortgage money,
- (h) to not allow the land to be used, without the prior written consent of the lender, for a purpose other than that disclosed to the lender at the time the borrower applied for the loan and/or credit facility secured by this mortgage,
- (i) that at no time will the land or building thereon be used in a manner that would contravene any law, rule, requirement, order, direction, decree, ordinance or regulation of any applicable government authority in force from time to time,
- (j) not to do or allow anyone to do anything that will, in the lender's opinion, have the effect of reducing the value of the land, or any building, erection, addition or improvement upon the land,
- (k) not to make any alteration or improvement to any building which forms part of the land without the prior written consent of the lender,

- (l) not to insulate, affix, or store within or without any building, erection, addition or improvement upon the land, in whole or in part, urea formaldehyde foam insulation, or any hazardous or potentially hazardous, prohibited or controlled substance,
- (m) to remain in actual possession of the land and to not lease or rent any part of the land without the prior written approval of the lender. In the event that the lender's approval is received then the borrower hereby agrees with the lender as follows:
  - (i) to lease and maintain the unit or units in a prudent businesslike manner at fair rents in compliance with all applicable tenancy laws and regulations,
  - (ii) the borrower hereby assigns and sets over to the lender all rents payable from time to time under all leases of the land and any part thereof, whether presently existing or arising in the future, together with the benefit of all covenants, agreements and provisos contained in the said leases,
  - (iii) forthwith after making any lease of the land or any part thereof, the borrower will execute and deliver to the lender an assignment in registerable form, in the lender's usual form, of all rents payable under such lease, the benefit of all covenants, agreements and provisos therein contained on the part of the tenant to be observed and performed and the reversion of such lease, and will also execute and deliver to the lender all such notices and other documents as may be required to render such assignment effectual in law,
  - (iv) nothing herein contained makes the lender responsible for the collection of rents payable under any lease of land or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease,
  - (v) the lender will not by virtue of this paragraph be deemed to be a mortgagee in possession of the land,
  - (vi) the lender is liable to account for only such rents as actually come into its hands less reasonable collection charges in respect thereof and may apply such rents to the repayment of the mortgage money,
  - (vii) notwithstanding anything herein contained, no lease of the land or any part thereof made by the borrower, will have priority over this mortgage, and
  - (viii) the borrower will keep, if required by the lender, records of all rents received and of all expenses paid by the borrower in connection with the land and, at least annually, have a statement of revenue and expenses for the land prepared by a professional accountant if the lender requires and to give a copy of the statement to the lender if the lender requires the borrower to do so.
- (n) to insure and keep insured (or cause to be insured or kept insured) against the risk of fire and other risks and losses that the lender asks the borrower to insure against, with an insurance company licensed to do business in the province in which the land is located and approved by the lender, all buildings and improvements on the land to their full insurable value on a replacement cost basis, and for an amount not less than the amount of this mortgage, and to pay all insurance premiums when due. The insurance policy must:
  - (i) be against all perils and extended perils usually covered in fire insurance policies, including loss or damage resulting from explosion, tempest, tornado, cyclone, earthquake and lighting,
  - (ii) cover loss or damage caused by a boiler, sprinkler system or a other pressured vessel and equipment if such systems exists in any building on the property,
  - (iii) provide comprehensive liability coverage for personal or property damage and losses occurring on or in respect to the property for each occurrence and in the amount the lender specifies,
  - (iv) not contain any co-insurance requirements, and
  - (v) cover loss or damage caused by flooding if so specified by the lender.
- (o) the insurance policy or policies required in 5.1 (n) will contain a mortgage clause approved by the lender that states that payment of any loss will be made to the lender at the place of payment or, if this mortgage is not a first mortgage, the amount of any payment made by the insurer will be paid to the borrower's lenders in the order of their priorities. The borrower will, forthwith upon the happening of any loss or damage, furnish at its expense all necessary proofs and do all acts necessary to enable the lender to obtain payment of the insurance monies. The borrower hereby gives up any statutory right which the borrower may now or at any time hereafter have to require the insurance proceeds to be applied in any particular manner. Any insurance monies received by the lender may, at the option of the lender, be applied in whole or in part to:
  - (i) repairing or rebuilding the land,
  - (ii) the payment of all or any part of the mortgage money, whether or not then due or payable; and/or
  - (iii) payment to the borrower.
- (p) to send a copy of each insurance policy and certificate evidencing renewal thereof to the lender at the place of payment. Failure to provide the required documentation will entitle

the lender to obtain, at its sole discretion, insurance on behalf of the borrower and any costs incurred will be added to the mortgage money, due on demand and bear interest until fully paid. If the lender insures its interest in the lands, the lender is under no obligation to otherwise insure, or keep insured, the lands.

- (q) to pay on demand all of the lender's costs, including the fees of any loan servicer and rating agency, and lawyer's fees and disbursements (on a full indemnity basis), incurred in connection with or arising out of:
- (i) the preparation, execution and registration of this mortgage and other loan documents, including all necessary steps to advance and secure the mortgage money,
  - (ii) the collection of the mortgage money,
  - (iii) the enforcement of the terms of this mortgage, including efforts to compel the borrower to perform the borrower's promises and agreements. These costs include the lender's cost of inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of and managing the land, preparing the land for sale or lease, selling or leasing the land, the cost of the time and services of the lender's employees or agent for so doing and all other costs and expenses incurred by the lender to protect the lender's interest under this mortgage. These costs form part of the mortgage money and bear interest until they are fully paid,
  - (iv) appointing a receiver, receiver and manager or any other person(s) with similar powers (under this mortgage, applicable laws or otherwise) and such person's fees and expenses (including all legal fees and disbursements and all agent's costs and expenses). These costs form part of the mortgage money and bear interest until they are fully paid,
  - (v) obtaining any environmental audits or other inspections, tests or reports with respect to the land,
  - (vi) complying with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the land,
  - (vii) performing the obligations of the borrower under this mortgage or any other loan document, including all fees, costs, charges and expenses incurred in removing any lien from title to the land which has been made, created, incurred or permitted to exist in breach of this mortgage (whether or not having priority over this mortgage). These costs form part of the mortgage money and bear interest until they are fully paid,
  - (viii) any costs of the lender in granting approvals or consents requested by the borrower pursuant to this mortgage or any other loan document and the costs of obtaining confirmation thereof by applicable rating agencies,
  - (ix) the preparation of a discharge of this mortgage when the borrower has paid all money due under this mortgage and the borrower requests that it be discharged, and
  - (x) without limiting the foregoing, any other fees, costs, charges or expenses payable or reimbursable to the lender or its servicer under any of the loan documents or applicable laws, and including allowances for time, service, work or effort of the lender in connection with and of the foregoing matters,
- (r) if the lender requires that the borrower do so, to
- (i) give the lender in each calendar year post-dated cheques for all loan payments due for that calendar year and for taxes, or
  - (ii) arrange for all loan payment and payments to the lender for the payment of taxes to be made by pre-authorized cheques or by pre-authorized electronic direct-debit transfer.
- (s) to pay any money which, if not paid, would result in a default under any charge or encumbrance having priority over this mortgage or which might result in the sale of or foreclosure upon the land if not paid,
- (t) to provide, at the lender's request, full particulars and supporting documentation pertaining to:
- (i) the borrower's status as a spouse,
  - (ii) the name, address and birth date of the borrower's spouse and the authorization of the borrower's spouse to the Registrar under the *Vital Statistics Act (Newfoundland and Labrador)* to provide to the lender all information in its possession regarding the borrower's and the borrower's spouse's marriage, divorce or death, with the intention being that the lender be kept fully informed of the names and addresses of the owners of the land and of any spouse who is not an owner but who may have any right pursuant to the *Family Law Act (Newfoundland and Labrador)*,
  - (iii) the status of the land as a homestead within the meaning of the *Family Law Act (Newfoundland and Labrador)*, and
  - (iv) the beneficial and legal ownership of the land.

In addition, the borrower will immediately provide to the lender with notice of any change in the information previously disclosed to the lender as it may pertain to this section, and

- (u) if your property includes a newly or recently constructed house, to meet all of the requirements to obtain and maintain the new home warranty applicable or available in the province and to reimburse the lender for any costs which it incurs in complying with such requirements on the borrower's behalf if the borrower fails to do so and to reimburse the lender for any costs which it incurs enforcing the borrower's rights under such warranty if the borrower fails to do so. Such costs form part of the mortgage money, are payable on demand and bear interest until they are fully paid.

5.2 The borrower represents and warrants to the lender that:

- (a) the borrower has good and marketable legal and beneficial title to the land in fee simple and has the right to mortgage the land to the lender (or, if the interest mortgaged is described in the mortgage form as a leasehold interest, the borrower represents and warrants that the borrower has good and marketable legal and beneficial leasehold title to the land, the lease which creates such interest is a good, valid and subsisting lease and has not been surrendered, forfeited, amended or become void or voidable, the rents and covenants in the lease have been duly paid and performed and, if required, the landlord's consent to this mortgage has been obtained),
- (b) the borrower's title to the land is subject only to those charges and encumbrances that are registered in the land registry office at the time the borrower signed the mortgage form, or those that the lender has otherwise agreed to in writing,
- (c) subject to section 5.2 (b) the borrower has not given any other charge or encumbrance against the land and has no knowledge of any other claim against the land, and
- (d) no building, erection, addition or improvement upon the land has been insulated with urea formaldehyde foam insulation and that no hazardous or potentially hazardous, prohibited or controlled substance has been affixed or stored within or without any building, erection, addition or improvement upon the land.

## **6. AGREEMENTS BETWEEN THE BORROWER AND THE LENDER**

6.1 Subject to section 5.1 (b);

- (a) the lender will use the money paid by the borrower to pay taxes unless there is a default, in which case the lender may, at its sole discretion, apply the money in payment of the mortgage money,
- (b) the lender is not obligated to pay taxes more often than annually,
- (c) the lender may pay taxes where insufficient tax monies have been collected and if this occurs, interest may be charged on the overdraft amount until such overdraft has been paid by the borrower,
- (d) if the borrower wishes to take advantage of any discounts or avoid penalties in connection with the payment of taxes, he may pay the lender such additional amounts for that purpose,
- (e) the borrower is responsible for applying for all government grants, assistance and rebates in respect of taxes and regardless of the standing of any such applications, the lender will continue to pay amounts as billed by the taxing authority and at the due dates as set out,
- (f) no monies paid to, or at any time retained by, the lender are required to be held in trust or to bear interest, and
- (g) in the event that monies estimated by the lender to be required to pay the taxes in any calendar year exceed the taxes actually charged for that calendar year, the remaining monies may be retained by the lender on account of any pre-estimate of taxes for the next calendar year.

6.2 Any money paid to the lender under this mortgage will,

- (a) prior to default, be applied in the following order and where applicable: mortgage life insurance, taxes, interest, principal, home warranty premiums and finally in payment of all other money owned by the borrower under this mortgage, and
- (b) after a default, be applied in any manner the lender chooses, at its sole discretion.



- 6.3 If the application of money by the lender as referred to in section 6.2 causes payments on any insurance policy or home warranty plan purchased by the borrower to go into default or to be cancelled, the lender shall have no liability of any kind with respect thereto.
- 6.4 If the lender takes possession of the land, the lender will not be responsible for maintaining and preserving the land and need only account to the borrower for any money which the lender actually receives in connection with the land.
- 6.5 The lender may, but will not be required to, spend money to perform any of the borrower's promises and agreements set forth in this mortgage which the borrower has not performed and any money so spent will form part of the mortgage money, bear interest from the date the money was so spent and be immediately due and payable by the lender.
- 6.6 If the borrower wants to give any notice to the lender, the borrower must do so by delivering such notice in person to the lender at the place of payment or by sending it by registered or certified mail to the lender mailing address.
- 6.7 If the lender wants to give any notice to the borrower or guarantor, the lender must do so by delivering such notice in person to the borrower or guarantor or by sending it by registered or certified mail to the borrower or guarantor mailing address. Notice may also be given by facsimile transmission or internet (email) delivery. If the borrower or guarantor is a corporation, delivery may be made to a director, officer, employee or attorney of the corporation. A notice or demand delivered by any of these methods will be deemed to have been received by the borrower or guarantor.
- 6.8 Any notice sent by mail by the borrower, the lender or the guarantor will be considered to have been received five (5) days after it is post marked provided, however, that notice to be given during a mail or postal disruption must be delivered in person or couriered by the sender at the sender's expense. Any notice delivered in person will be considered to have been received upon actual receipt of such notice by the borrower or guarantor, or by an officer of the lender.
- 6.9 This mortgage may be renewed or amended upon agreement between the borrower and the lender with or without an increased rate of interest notwithstanding that there may be subsequent encumbrances at the time of such renewal or amendment. Should the renewal agreement be returned to the lender with the signature of one of the borrowers thereupon and unsigned by any other borrower or guarantors, at the lender's sole discretion the borrower so signing shall be deemed to be the lawful attorney of the non-signing parties and the renewal shall be as effective against any such non-signing party as if they had signed. Should the borrower not return the renewal agreement offer and not pay out the mortgage money on the maturity date, this mortgage may be deemed to have been renewed pursuant to the policy of the lender in effect at that time. This mortgage will secure the payment and other obligations as extended or changed in the renewal agreement. It will not be necessary to register any such agreement in order to retain priority for this mortgage on such altered terms over any instrument registered subsequent to this mortgage. Any such agreement will be effectual and binding on the borrower and any such subsequent encumbrancer and will take priority against such subsequent encumbrancer immediately upon execution by the borrower. The borrower must pay all legal and administrative costs of the lender incurred in connection with any such agreement. The borrower acknowledges that the provisions of this paragraph do not confer any right of renewal upon the borrower. The borrower further acknowledges that in the event of default, the lender may, at its sole discretion, reverse any renewals or amendments of this mortgage back to previously existing terms.
- 6.10 The lender may deduct from any advance of the principal amount,
- (a) any taxes, interest and/or any premiums of insurance payable by the borrower pursuant to section 5.1 (n) that are due and payable up to and including the date of the advance,
  - (b) the lawyer's fees and disbursements (on a full indemnity basis) to prepare and register this mortgage including other necessary steps to advance and secure the mortgage money and to report to the lender,
  - (c) any liens against the land,
  - (d) any discounts or bonuses on which the borrower and lender agree, and
  - (e) any reasonable fees, charges or expenses incurred in inspecting or evaluating the land.
- 6.11 If default occurs under any other mortgage or agreement between the borrower and the lender, whether in respect of the mortgage money or otherwise, it will have the same effect as a default under this mortgage and if a default occurs under this mortgage it will have the same effect as though a default had occurred under any other mortgage or agreement between the borrower and lender. The lender may exercise its rights under any of the mortgages in any order that the lender chooses.

- 6.12 The lender's right of consolidation applies to this mortgage and to any other mortgage given by the borrower to the lender. In the event the borrower has mortgaged other property to the lender, the borrower will not have the right to pay off this mortgage or any mortgage of other property unless the borrower pays the lender all money owed by the borrower to the lender under this mortgage and under all such mortgages of the other property.
- 6.13 The lender may distrain for arrears of interest and may distrain for arrears of the principal amount in the same manner as if the same were arrears of interest.
- 6.14 If the lender obtains a judgment against the borrower for failure to comply with any of the borrower's promises and agreements under this mortgage, such judgment will not result in a merger of the terms of the judgment with the lender's other remedies or rights to enforce the other obligations of the borrower under this mortgage according to the terms hereof. The lender will continue to be entitled to receive interest and any such judgment will provide that interest thereon be computed at the interest rate until such judgment has been fully paid.
- 6.15 If any cheque or pre-authorized payment issued or authorized by the borrower to the lender in payment of any amount due and owing under this mortgage is not honoured when presented for payment or when electronically debited, the borrower will pay to the lender, on demand, all expenses and reasonable administrative costs, including the lender's returned cheque fee as determined from time to time, incurred by the lender as a result of such dishonour. Such costs form part of the mortgage money, are payable on demand and bear interest until fully paid.
- 6.16 The borrower will pay on demand the lender's reasonable administrative costs and charges arising out of or incurred by the lender in connection with its administration of this mortgage and the review, execution and delivery of any documents which the lender is requested to prepare or execute in connection herewith. Such costs form part of the mortgage money, are payable on demand and bear interest until fully paid.
- 6.17 All representations made by the borrower to the lender in connection with this mortgage and the application for the loan and/or current or running account secured by this mortgage are true and complete as of the date this mortgage is executed. The borrower agrees that all such representations will survive the execution and registration of this mortgage.
- 6.18 If the borrower or guarantor fails to observe or perform any condition, agreement, covenant or term set out in the application for the loan, the commitment letter, any other loan and/or a current or running account secured by this mortgage or in any other document giving contractual relationship between the borrower and the lender, then the borrower will be deemed to be in default under the terms of this mortgage and at the option of the lender all monies secured by this mortgage will immediately become due and payable and all powers conferred upon the lender by this mortgage will immediately become exercisable.
- 6.19 The discharge of this mortgage will be executed and released by the lender at the expense of the borrower and the lender will have a reasonable time after payment in full of the mortgage money to execute and release a discharge of this mortgage. Interest will continue to accrue and be payable until actual payment in full of all monies owing under this mortgage have been received by the lender. All legal and administrative costs of the lender, including the lender's applicable fee, as determined from time to time, incurred in connection with the preparation, execution and delivery of such discharge and other associated documents will be borne by the borrower whether the discharge is prepared and/or delivered by the lender or not. The borrower is responsible for registering the discharge and for the costs of such registration.
- 6.20 From time to time the lender will set, at its sole discretion, a minimum dollar amount which, if either overpaid or underpaid in relation to the total amount required to discharge this mortgage, will be neither refunded to the borrower nor collected by the lender. The lender and the borrower hereby give up any right either may have, now or at any time hereafter, to collect such set amount. Monies received by the lender to discharge this mortgage that are short more than the pre-determined allowable amount may, at the lender's sole discretion, be returned to the borrower. In the event discharge monies are returned by the lender, this mortgage will remain in full force and effect and as if said money had not been received.
- 6.21 The lender or its agent may, whenever the lender deems necessary to do so, enter upon and inspect the land and any building or other improvements which forms part of the land and make any repairs that the lender considers are necessary. The costs of any such inspections and repairs will be paid immediately by the borrower. Such costs form part of the mortgage money, bear interest until fully paid and will be a charge upon the land prior to all claims thereon subsequent to this mortgage. If the borrower neglects to keep the buildings, erections and improvements in good condition and repair, or commits or permits any act of waste on the land (as to which lender will be the sole judge) or makes default as to any of the warranties or agreements contained in this mortgage, the mortgage money will, at the options of the lender, immediately become due and payable.
- 6.22 This mortgage is in addition to and not in substitution for any other security held by the lender for all or any of the monies secured hereunder. The lender may follow its remedies thereunder,

hereunder and under any security evidencing the monies advanced under this mortgage, concurrently or successively, at its option.

- 6.23 No sale or other dealing by the borrower with the land or any part thereof or the equity of redemption will in any way change the liability of the borrower or any person liable for the obligations of the borrower hereunder or in any way alter the rights of the lender as against any person liable for the payment of the mortgage money.
- 6.24 If the borrower sells, conveys, transfers or enters into any agreement for the sale or transfer of title of the land or any part thereof to any purchaser, grantee or transferee without the prior written consent of the lender, the mortgage money will, in addition to the lender's other rights and remedies hereunder, at the lender's option, immediately become due and payable.
- 6.25 All payments secured by this mortgage must be made at the place of payment in lawful money of Canada. All payments required to be made by the borrower pursuant to this mortgage must be made before 13:00 local time at the place of payment on the date on which payment is to be made. Any payment made after the aforementioned time, will be deemed to have been made on the next following business day.
- 6.26 The lender may from time to time waive, in whole or in part, the benefit of any provision in this mortgage or any default by the borrower, but such waiver on any occasion will be deemed not to be a waiver of such provision thereafter or of any subsequent default. No waiver will have effect unless made in writing and executed by the lender. If the lender does not exercise any of its rights upon the occurrence of default or does not demand that the borrower cure the default, the lender is not prevented from later compelling the borrower to cure that default or from exercising any of those rights in connection with that default or any later default of the same or any other kind.
- 6.27 The parties intend that this mortgage be considered to have been executed by the borrower under seal for all purposes with the intention that this mortgage be a specialty under applicable laws, whether or not a seal is actually affixed to this mortgage.
- 6.28 Neither the preparation, execution nor registration of this mortgage binds the lender to advance or re-advance the mortgage money, nor does the advance or re-advance of part of the mortgage money bind the lender to advance any unadvanced portion(s) thereof.
- 6.29 The borrower agrees to pay the lender's servicing fees to cover reasonable time and costs for the administration of this mortgage including, a fee or allowance for:
- (a) dealing with each late, missed or dishonoured payment, or any other payment which does not clear as scheduled,
  - (b) preparing each assumption, arrears, reinstatement, discharge, port or other mortgage statement, whether provided to the borrower, his agents, solicitors or any other interested person,
  - (c) processing each application to obtain the lender's consent to assume this mortgage or the lender's approval or consent for any other matter required by this mortgage whether or not approval or consent is provided or the matter is completed,
  - (d) processing each extension, renewal, restructuring or other amendment of the mortgage or amounts secured by the mortgage, whether or not completed,
  - (e) investigating the status of realty tax payments and administering tax payments,
  - (f) investigating the status of any insurance and administering insurance cancellations and paying insurance premiums,
  - (g) registering a financing statement or financing change statement or issuing or receiving any notice or information, security status or acknowledgement request and conducting any required searches,
  - (h) registering electronically or otherwise or executing and delivering any discharge of this mortgage (notwithstanding that the discharge may have been prepared by the borrower or other person on the borrower's behalf),
  - (i) the personal time and trouble of the lender's employees or agents in collecting any payment or inquiring into compliance or otherwise or dealing with or enforcing any other obligation in this mortgage and any litigation in relation thereto or in managing or selling the property including with respect to taxes, condominium fees and matters, insurance, repair and construction, environmental matters, leases and other encumbrances, and
  - (j) generally, any matter connected with the proper administration of this mortgage and property.

The lender's fees shall be the amounts as established and as generally applied by the lender from time to time and may be ascertained upon inquiry to the lender. Current fees are set out in the loan

documents relating to this mortgage and are subject to change at any time, at the sole discretion of the lender.

- 6.30 The borrower agrees to pay all amounts the lender expends or incurs in any manner in connection with this mortgage, including:
- (a) the making of the loan secured by this mortgage and each amendment, extension or renewal thereof including preparation, execution and registration of this mortgage and any other security, instrument and documents,
  - (b) collecting payments under and enforcing and realizing the security of this mortgage,
  - (c) defending or otherwise dealing with any action or proceeding in which the lender, by reason of this mortgage, may be a party or otherwise interested including, any construction lien or similar matters, any foreclosure, sale, redemption, assessment or other action or proceedings by any other encumbrancer or any certificate of pending litigation or other title matter, and
  - (d) performing or complying with any of the borrower's obligations under this mortgage including, those relating to insurance, condominium, repair and construction, leases, taxes, prior encumbrances and environmental matters.

All legal costs incurred by the lender in dealing with compliance with any term and in enforcement of this mortgage, including legal fees for court proceedings on a full indemnity basis, will be added to the mortgage money and bear interest until fully paid.

- 6.31 The borrower agrees that if the borrower received a cash back amount or other incentive from the lender on the making of this mortgage, or any renewal, conversion or amendment thereto, by way of a cash payment, an allowance, a gift certificate or voucher, or a discount on any interest rate, the borrower will, on repayment in full, early renewal, conversion, port, purchase or assumption, pay back to the lender, in addition to any other compensation required under the mortgage, a proportionate part of such cash back amount. The proportionate part is calculated, by the division of the total cash back amount received by the number of months in the term times the number of months remaining in the term, including the month in which the repayment, early renewal, conversion, port, purchase or assumption is made.
- 6.32 The borrower agrees that if the borrower becomes a resident of the United States of America (U.S.A) for tax purposes and the lender thereby becomes subject to a tax payable to the government of the U.S.A. on the interest the lender receives from the borrower through any payment under this mortgage, the interest rate on this mortgage will be increased by multiplying by a factor, which the lender will set from time to time at its sole discretion, to offset the lender's obligations in that regard.
- 6.33 The borrower acknowledges it may not be possible for the lender to provide a cost of borrowing amount for fees or compensation which the lender may charge at some future date and the borrower will not be entitled to receive a rebate for any of the costs of borrowing in such cases.
- 6.34 The lender will have the same right with respect to collection of any amounts added to the mortgage money as it does with respect to the collection of the principal amount and interest under this mortgage or at law or in equity.

## **7. DEFAULT**

- 7.1 A default occurs under this mortgage if:
- (a) the borrower fails to pay all or any portion of the mortgage money when due, including any loan payment on any payment due date,
  - (b) the borrower breaks any of the borrower's promises and agreements and/or otherwise defaults in any charge or encumbrance on the land that ranks in priority over this mortgage,
  - (c) the borrower breaks any of the borrower's promises and agreements,
  - (d) the guarantor breaks any of the guarantor's promises and agreements,
  - (e) the borrower, or guarantor, breaks any agreement or promise made to the lender in a mortgage of any other land or other property or in any other agreement made with the lender even though the promises and agreements set forth in this mortgage may not have been broken,
  - (f) the borrower and/or guarantor makes an assignment for the benefits of its creditors, is declared bankrupt or insolvent, makes a proposal or otherwise takes advantage of the

provisions for relief under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditor's Arrangement Act* (Canada) or similar legislation in any jurisdiction,

- (g) the land is abandoned or left unoccupied for thirty (30) or more days or any act of waste is committed as to all or any part of the land,
- (h) the land or any part thereof is expropriated,
- (i) the borrower does not discharge any judgment attaching to the land within thirty (30) days of receiving notice of its filing,
- (j) the borrower allows any contractor's, labourer's or material supplier's claim of lien to remain undischarged on the title to the land for more than thirty (30) days,
- (k) any building, erection, addition or improvement on the land contains urea formaldehyde foam insulation;
- (l) a receiver of all or any part of the land is appointed,
- (m) any representation or warranty, whether or not contained herein, made by or on behalf of the borrower to the lender is untrue,
- (n) without the prior written consent of the lender, the borrower creates or permits to exist any mortgage, lien or charge on, or claim against, the land,
- (o) the holder of any other mortgage, lien or charge on, or any claim against, the land does anything to enforce or realize on such mortgage, lien charge or claim,
- (p) the borrower and/or guarantor is an individual, the borrower and/or guarantor dies or is declared incompetent to manage his or her own affairs,
- (q) the borrower and/or guarantor is a corporation and:
  - a. an order is made or a resolution is passed for the winding up of the corporation,
  - b. the borrower enters into an amalgamation, merger or other similar arrangement with any party, person or corporation, without the prior written consent of the lender,
  - c. the borrower ceases, or threatens to cease, to carry on business, and
  - d. there is a change in registered owners of the shares of the borrower or a change in the persons having effective voting control of the borrower, without the prior written consent of the lender.
- (r) if the borrower agrees to or does sell, transfer, assign, lease or otherwise dispose of or deal with the land or any part thereof without the prior written consent of the lender,
- (s) there is default by any person or persons in the performance or observance of any provision or covenant under any other security or guarantee for the repayment of the mortgage money, or any guarantor makes an authorized assignment or a receiver of all or any part of the property to which such guarantor is appointed or if any such guarantor should give notice under any right which may be contained in such security or guarantee to limit the continuing obligations of the guarantor, and
- (t) the property is a condominium unit or units and a vote authorizes termination of the condominium or the sale of all, or substantially all, of the condominium corporation's assets or its common elements or the condominium corporation fails to insure the unit and common elements.

## **8. CONSEQUENCES OF DEFAULT**

- 8.1 If a default occurs, all mortgage money then owing to the lender will, if the lender chooses, become immediately due and payable by the borrower, and as a consequence, where applicable, the lender shall be under no obligation to make any further advances to the borrower pursuant to any product that permits advances or re-advances from time to time and which is secured by this mortgage.
- 8.2 If a default occurs, the borrower waives any rights or reinstatement, whether by statute or otherwise.
- 8.3 If a default occurs the lender may, in any order that the lender chooses, do any of one or more of the following:
  - (a) demand payment of all the mortgage money,
  - (b) sue the borrower and/or the guarantor for the amount of money due,

- (c) take legal proceedings to compel the borrower and/or guarantor to keep their promises and agreements,
- (d) with or without entering into possession of the land, sell the land and other property by public auction or private sale, or lease the land, to any person including the lender or any employee, agent or representative of the lender, on terms as to credit and otherwise as the lender at its sole discretion may determine and for such price as can reasonably be obtained at that time, on thirty five (35) days notice to the borrower if the default has continued for fifteen (15) days, or without notice to the borrower, if the default has continued for sixty (60) days or more, unless notice is required by law,
- (e) apply to the court for an order that the land be sold on terms approved by the court,
- (f) apply to the court to foreclose on the borrower's interest in the land so that when the court makes its final order of foreclosure, the borrower's interest in the land will be absolutely vested in and belong to the lender,
- (g) appoint a receiver of the land,
- (h) without becoming a mortgagee in possession, enter upon the land without the permission of anyone and make any arrangements the lender considers necessary to:
  - (i) inspect, lease, collect rents or manage the land,
  - (ii) complete the construction of any building on the land, or
  - (iii) repair and building on the land.
- (i) take whatever action the lender determines to be necessary to take, recover and keep possession of the land, and
- (j) take such other actions as the lender may be entitled to take at law or in equity.

Nothing in this section affects the jurisdiction of the court.

- 8.4 If the lender takes possession of the land pursuant to its rights hereunder, any equipment (which is not part of the property), furniture, household or personal belongings which remain on the property for a period of more than five days after the date of the taking of possession, shall be deemed to be abandoned and the lender may remove, store, dispose of or otherwise deal with such abandoned goods in such manner as the lender chooses. Removal, storage and other costs will be added to the mortgage money and bear interest until fully paid. The lender shall have no liability of any kind to the borrower with respect to the removal and disposal of the goods as aforesaid.
- 8.5 If the lender sells the land pursuant to its rights hereunder, the lender will be entitled to buy in or rescind or vary any contract for sale of any of the land and resell without being accountable for any loss resulting from such action. In the case of a sale on credit, the lender will only be accountable for monies actually received in cash as and when so received and for any such purposes the lender may make all agreements it deems proper. Any purchaser or lessee need not see to the propriety or regularity of any sale or lease and any such sale or lease will not be invalidated by any lack of notice to the borrower. The borrower's sole remedy, in case of lack of notice, will be in damages. The powers conferred upon the lender by this mortgage are in addition to, and not in limitation of, any other rights or powers of the lender at law and/or in equity.
- 8.6 If the lender sells or leases the land the net proceeds of any such sale or lease, or both, will be applied as the lender, at its sole discretion, may direct in payment of all or part of:
- (a) any real estate agent's commission, or auctioneer's fee or commission,
  - (b) adjustments usually made on the sale of land,
  - (c) the lender's fees, expenses and costs as described in section 8.9, and
  - (d) the mortgage money,
- and will pay any surplus:
- (e) according to an order of the court if the land is sold by an order of the court, or
  - (f) the party then entitled by law to receive such surplus.
- 8.7 If the money available to pay the mortgage money, after payment of the fees, commissions, adjustments and expenses referred to in section 8.6, is not sufficient to pay all the mortgage money, the borrower will pay to the lender on demand the amount of the deficiency.
- 8.8 If the lender obtains judgment against the borrower as a result of a default, the remedies described

in section 8.3 may continue to be used by the lender to compel the borrower to perform the borrower's promises and agreements. The lender will continue to be entitled to receive interest on the mortgage money until the judgment is paid in full.

- 8.9 The borrower agrees to pay to the lender, all fees, expenses and costs incurred by the lender in enforcing this mortgage. These expenses and costs include the lender's cost of taking and keeping possession of the land, the cost of the time and services of the lender or the lender's employees for so doing, the lender's legal fees and disbursements on a full indemnity basis and all other costs and expenses incurred by the lender to protect the lender's interest under this mortgage. These fees, expenses and costs will be added to the mortgage money, be payable on demand and bear interest until they are fully paid.
- 8.10 If the lender does not exercise any of its rights upon the occurrence of default or does not demand that the borrower cure the default, the lender is not prevented from later compelling the borrower to cure that default or from exercising any of those rights in connection with that default or any later default of the same or any other kind.
- 8.11 Upon default:
- (i) before the maturity date of this mortgage (or last renewal, conversion or amendment thereto), the lender will be entitled to require, in addition to the mortgage money compensation equal to three (3) month's interest, calculated on the outstanding principal amount, at the interest rate set out in the mortgage form (or last renewal, conversion or amendment thereto). The borrower will not be entitled to require a discharge of this mortgage without such payment. Nothing contained in this mortgage affects or limits the right of the lender to recover, by action or otherwise, the compensation amount so in arrears after default has been made; and
  - (ii) after the maturity date of this mortgage (or last renewal, conversion or amendment thereto), the lender will be entitled to require, in addition to the mortgage money compensation equal to three (3) month's interest, calculated on the outstanding principal amount, at the interest rate set out in the mortgage form (or last renewal, conversion or amendment thereto) or three (3) month's written notice of the intention to pay, in lieu thereof, and if payment is not made on the date specified in the notice, then on payment of such three (3) month's interest. The borrower will not be entitled to require a discharge of this mortgage without such payment or notice. Nothing contained in this mortgage affects or limits the right of the lender to recover, by action or otherwise, the compensation amount so in arrears after default has been made.

The borrower agrees that the amounts calculated by the lender pursuant to subsections 8.11 (i) and 8.11 (ii) will, in the absence of obvious error, be conclusive.

- 8.12 No performance or payment by the lender relieves the borrower from any default under this mortgage or any consequences of that default.
- 8.13 All provisions of this mortgage relating to the sale of the property following default, including the giving of notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising any power of sale or other sale remedy. Wherever any such requirement may be waived or shortened, such requirement is hereby waived and shortened.

## **9. CONSTRUCTION OF BUILDINGS OR IMPROVEMENTS**

- 9.1 The borrower will not demolish, construct, alter or add to any buildings or improvements on the land without the prior written consent of the lender and then only in accordance with accepted construction standards, building codes and municipal or government requirements and plans and specifications approved by the lender. By granting approval, the lender does not assume responsibility for the conformity of any documentation to any set standard, code or other requirement.
- 9.2 The lender or its agent may, at any time it becomes aware of a failure to carry on approved work in a timely manner or in accordance with accepted standards, enter the property and have exclusive possession of the property and of all materials, plant, gear and equipment on the property, free of interference from the borrower, and complete construction of the building(s) in accordance with exiting plans or such other plans as the lender may choose. The costs of such construction will form part of the mortgage money, be due on demand and bear interest until fully paid.
- 9.3 The money advanced pursuant to this mortgage is not to be used for the purpose of securing the financing of any improvement (as defined in the *Mechanics' Lien Act (Newfoundland and Labrador)*) to the land or for repaying any mortgage or charge which was taken to secure the financing of an improvement of the land, unless the mortgage money was advanced for this expressed purpose with the lender's knowledge and set out as such in the loan documents.

9.4 If this mortgage was advanced with the expressed intent to finance any construction, alteration or addition, the lender may make advances of the principal amount to the borrower based on the progress of construction. The lender will decide whether or not any advances will be made, the amount of the advances and holdback requirements, and when and on what criteria those advances will be made.

9.5 During such time or times that there is construction of any buildings or other improvements on the property, the borrower or the borrower's contractor must maintain builder's all risk insurance with a stated amount clause for the improvements to their full insurable value.

## **10. RECEIVER**

10.1 The borrower appoints the lender and any agent of the lender as the borrower's attorney to appoint a receiver of the land.

10.2 The lender may, if any default occurs, with or without entering into possession of the land, appoint a receiver of the land and the receiver:

- (a) will be the borrower's agent and the borrower will be solely responsible for the receiver's acts or omissions,
- (b) will have power, either in the borrower's name or in the name of the lender, to demand, recover and receive income from the land and to start and carry on any action or court proceeding to collect that income,
- (c) may give receipts for income which it receives,
- (d) may carry on any business which the borrower conducted on the land,
- (e) may lease or sublease the land or any part of it on terms and conditions that the receiver, at its sole discretion, chooses,
- (f) may complete the construction of, or repair to, any building or improvement on the land,
- (g) may take possession land in full or in part,
- (h) may manage the land and maintain it in good condition,
- (i) will have the power to perform, in whole or in part, the borrower's promises and agreements, and
- (j) will have the power to do anything that, in the receiver's opinion, will maintain and preserve the land or increase or preserve the value or income potential of the land.

10.3 From income received the receiver may do any of the following in any order the receiver chooses:

- (a) retain its remuneration as fixed by the lender or ordered by the court,
- (b) retain enough money to pay or recover the cost to collect the income from the land and to cover other disbursements,
- (c) pay all taxes and the cost of maintaining the land in good repair, completing the construction of any building or improvement on the land, supplying goods, utilities, and services to the land and taking steps to preserve the land from damage by weather, vandalism or any other cause,
- (d) pay any money that might, if not paid, result in a default under any charge or encumbrance having priority over this mortgage or that might result in a sale of the land if not paid,
- (e) pay taxes in connection with anything the receiver is entitled to do under this mortgage,
- (f) pay interest to the lender that due and payable, pay all or part of the principal amount to the lender whether or not it is due and payable and/or pay any other mortgage money owed by the borrower under this mortgage, and,
- (g) pay insurance premiums.

10.4 The receiver may borrow money for the purpose of doing anything the receiver is authorized to do and any interest charged on that money and all the costs of borrowing, will form part of the mortgage money and bear interest until fully paid.



- 10.5 A receiver appointed by the lender may be removed by the lender and the lender may appoint another in the receiver's place.
- 10.6 The remuneration and disbursements of the receiver will form part of the mortgage money and bear interest until fully paid.
- 10.7 Nothing done by the receiver as outlined in this section 10 will make the lender a mortgagee in possession.

## **11. CONDOMINIUM UNIT PROVISIONS**

- 11.1 If the land described in the mortgage form is or becomes one or more condominium units forming a part of a condominium property, then the borrower, in addition to its other obligations under this mortgage will also be required to comply with this section 11 and the *Condominium Act (Newfoundland and Labrador)* and the definitions in that statute will apply.
- 11.2 The borrower promises the lender and agrees that:
- (a) it will fulfil all of the borrower's obligations as a condominium unit owner under the *Condominium Act (Newfoundland and Labrador)* and the declaration, bylaws, rules and regulations of the condominium corporation and will pay all money owed by the borrower to the condominium corporation ("unit charges"). Upon request by the lender from time to time, the borrower will provide satisfactory proof to the lender that all unit charges have been paid in full,
  - (b) the borrower's breach of any of the borrower's obligations as a condominium unit owner will constitute a breach of the borrower's obligations under this mortgage, and
  - (c) the borrower has the right to exercise the borrower's rights as an owner of the land, to vote or to consent in all matters relating to the condominium corporation provided that,
    - (i) the lender may, at any time or from time to time, give notice to the borrower and to the condominium corporation that the lender intends to exercise its right to vote or to consent and in that event, until the lender revokes its notice, the borrower may not exercise the right to vote. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter, and
    - (ii) the lender's exercising of the right to vote or to consent will not make the lender a mortgagee in possession.
  - (d) any claim the borrower makes against the condominium corporation, will not diminish or delay the borrower's obligation to pay the unit charges as required and will not delay the exercise of any remedy nor be a defence to any claim by the lender against the borrower under this mortgage.
- 11.3 If the borrower does not pay any unit charges when due, then without limiting any of the other rights and remedies of the lender under this mortgage or otherwise at law or in equity, the lender may, but is not obligated to, pay such charges including the interest, legal fees and other costs of the condominium corporation as they relate to the borrower's unit. Any amounts so paid will be added to the mortgage money, be payable on demand and bear interest until they are fully paid. The borrower shall pay all such outstanding condominium charges, even if such charges are being disputed by the borrower and the lender shall have the right but not the obligation to pay any such disputed charges, even if made aware of the dispute.
- 11.4 The borrower assigns to the lender the right to vote for the borrower under the bylaws of the condominium corporation, but the lender is not required to do so or to attend or vote at any meeting or to protect the borrower's interest.
- 11.5 At the request of the lender, the borrower will give the lender, at the borrower's expense, copies of all notices, financial statements and other documents given by the condominium corporation to the borrower.
- 11.6 The borrower appoints the lender to be the borrower's agent to inspect or obtain copies of any records or other documents of the condominium corporation that the borrower is entitled to inspect or obtain.
- 11.7 If the condominium corporation transfers, charges or adds to the common property, or amends the declaration of the bylaws, and if, in the lender's opinion, the value of the land is reduced, the mortgage money will, at the lender's option, immediately become due and payable to the lender on demand.
- 11.8 Notwithstanding that the condominium corporation is obliged to obtain and maintain insurance with respect to all or any part of the lands, the condominium property (including the borrower's

condominium unit) or the assets of the condominium corporation, as required by the *Condominium Act (Newfoundland and Labrador)*, the declaration, the bylaws and the rules and regulations of the condominium corporation, in the event that the condominium corporation fails to obtain and maintain such insurance as required, the borrower will do so.

- 11.9 The borrower will insure all improvements which at any time the borrower, or any previous owner, makes or has made to the lands against destruction or damage by fire and other perils usually covered in fire insurance policies and against such other perils as the lender may require for the full replacement cost. The insurance company and the terms of the policy are to be reasonably satisfactory to the lender.
- 11.10 Nothing done by the lender under this section 11 will make or deem the lender to be a mortgagee in possession.

## **12. SUBDIVISION OF LAND**

- 12.1 If the land is subdivided at any time during the term of this mortgage:
- (a) this mortgage will charge each subdivided lot as security for payment of all the mortgage money, and
  - (b) the lender is not required to discharge this mortgage as a charge on any of the subdivided lots unless and the entire the mortgage money is paid.
- 12.2 Even though the lender is not required to discharge any subdivided lot from this mortgage, the lender may, at its sole discretion, agree to do so in return for payment of all or part of the mortgage money and in addition, any penalties charged by the lender. If the lender discharges a subdivided lot, this mortgage will continue to charge the subdivided lot or lots that have not been discharged.

## **13. GUARANTOR'S PROMISES AND AGREEMENTS**

- 13.1 The guarantor acknowledges that the lender would not have agreed to lend the principal amount to the borrower without the promises and agreements of the guarantor set forth herein and, in consideration of the lender advancing all or part of the loan to the borrower, the guarantor:
- (a) agrees to be liable with the borrower as principal debtor and not as surety for the due payment of the mortgage money, at the times and in the manner provided for in this mortgage;
  - (b) unconditionally guarantees full performance and discharge by the borrower of all of the obligations of the borrower under this mortgage and the other loan documents at the times and in the manner provided for in this mortgage the other loan documents;
  - (c) will indemnify and save the lender harmless from and against all losses, damages, costs and expenses which the lender may sustain, incur or be or become liable for in respect of the loan secured by this mortgage, including:
    - (i) the failure, for any reason, of the borrower to pay the mortgage money or to do any other act, matter or thing pursuant to the provisions of this mortgage or the other loan documents, and
    - (ii) any act, action or proceeding of or by the lender for, or in connection with, the recovery of the mortgage money or any part thereof or obtaining performance by the borrower or any other person of any other act, matter or thing pursuant to the provision of this mortgage or other loan documents;
  - (d) agrees that the lender may, at any time and without notice to, or consent or concurrence by the guarantor, renew this mortgage on the same or different terms, make any settlement, compromise, composition, extension, alteration or variation in the terms of this mortgage (including any increase in the interest rate or principal amount secured by this mortgage), or take, release or surrender any security, or otherwise deal with the borrower and that no such dealing by the lender nor any carelessness or neglect by the lender in asserting its rights nor any other thing whatsoever, including, without in any way limiting the generality of the foregoing, failure to register or perfect any security, the loss by operation of law of any right of the lender against the borrower or any other person or the loss or destruction of any security nor any dissolution, winding up, receivership, insolvency or death of the borrower or any other guarantor or person in any way releases or diminishes the liability of the guarantor under this mortgage;
  - (e) agrees that the lender will not be obliged to proceed against the borrower or any other person or to enforce or exhaust any security before proceeding to enforce the obligations of the guarantor set out in this mortgage and, that the enforcement of those obligations

may take place before, after or concurrent with the enforcement of any debt or obligation of the borrower or the enforcement of any security for that debt or obligation; and

- (f) agrees with the lender to be jointly and severally liable under this mortgage with the borrower and all other guarantors.
- 13.2 Each guarantor's obligations will be binding upon the guarantor's successors, assigns, personal representatives and administrators.
- 13.3 All indebtedness of the borrower to the guarantor, present and future, is hereby assigned to the lender and postponed to the mortgage money secured by this mortgage and, for the purpose of effecting the same, the borrower and guarantor agree with the lender that no payments whether by way of repayment of indebtedness, loans, advances, dividends, return of capital or otherwise whatsoever, will be paid by the borrower to the guarantor, or received by the guarantor from the borrower without the express written consent of the lender until the mortgage money hereby secured has been fully paid and satisfied, and that any payment made or received in contravention of this provision will be held by the guarantor in trust for the lender and paid over to the lender by the guarantor on demand.
- 13.4 The guarantor acknowledges that this mortgage has been delivered free from any conditions or collateral agreements and that no representations have been made to the guarantor affecting the liability of the guarantor under this mortgage.
- 13.5 If the guarantor is a corporation, the guarantor represents and warrants that the execution and delivery of this mortgage and the giving of financial assistance by way of this mortgage has been authorized by all necessary corporate action of the guarantor, has been determined by the directors of the guarantor to be in the best interests of the guarantor, that the execution and delivery of this mortgage is not a breach of the constating documents of the guarantor, any law governing or affecting the guarantor or any agreement given by the guarantor to any third party and that the guarantor has full power and capacity to execute and deliver this mortgage.
- 13.6 The guarantor's promises and agreements shall be binding on the guarantor, surviving the bankruptcy, insolvency, dissolution, death and incapacity of the borrower, until all the mortgage money is fully paid to the lender and a discharge of this mortgage has been registered in accordance with section 6.19.

#### **14. LEASEHOLD MORTGAGE**

- 14.1 This section 14 applies only if the borrower's interest in the land at the time of this mortgage is executed is, or includes, a leasehold interest.
- 14.2 The borrower represents to the lender that,
- (a) the lease is owned by the borrower subject only to those charges and encumbrances that are registered in the land registry office at the time the borrower executes the mortgage form,
  - (b) the lease is in good standing,
  - (c) the borrower has complied with all the borrower's promises and agreements contained in the lease,
  - (d) the borrower has paid all rent and other amounts due and payable under the lease,
  - (e) the lease is not in default, and
  - (f) the borrower has the right to mortgage the lease to the lender.
- 14.3 The borrower will:
- (a) comply with the lease and not do anything that would cause the lease to be terminated,
  - (b) immediately give to the lender a copy of any notice received from the lessor under the lease,
  - (c) immediately notify the lender if any party to the lease, including the borrower, advises the other party(s) to the lease of their intention to terminate the lease before the term expires, and
  - (d) execute any other document the lender requires to ensure that the freehold interest in the land is charged by this mortgage should such freehold interest be transferred to, or otherwise be acquired by, the borrower.

- 14.4 Any default under the lease is a default under this mortgage.
- 14.5 The borrower promises the lender the borrower will not, without first obtaining the written consent of the lender, surrender or terminate the lease, agree to change any of the terms of the lease or acquire the freehold interest in the land.
- 14.6 The lender may perform any promise or agreement of the borrower under the lease and the cost to the lender of so doing will form part of the mortgage money, be payable on demand and bear interest until fully paid.
- 14.7 If the borrower acquires the freehold interest in any part of the land:
- (a) the freehold estate will not merge with the borrower's leasehold title but will always remain separate and distinct unless the lender otherwise consents in writing,
  - (b) this mortgage will constitute, automatically and immediately without execution or registration of further documentation, a first mortgage and charge of the freehold estate of the land so acquired, in addition to a first mortgage and charge of the leasehold interest, and this mortgage will not be deemed, or held to have been, terminated, and
  - (c) the borrower will do all acts and execute all documentation necessary to evidence the charge of the freehold estate constituted section 2.2, and any failure to comply with this section will be a default under this mortgage.
- 14.8 Nothing done by the lender under this section 14 will make or deem the lender to be a mortgagee in possession.

## **15. GENERAL**

- 15.1 This mortgage binds the borrower and any guarantor and their successors, executors and administrators.
- 15.2 The lender may sell, transfer or assign the loan, any of the mortgage money and the loan documents or any interest therein from time to time as the lender may determine at its sole discretion to any person or persons without notice to, or the consent of, the borrower or guarantor. The rights and/or obligations of the borrower under or in respect of the loan, the mortgage money and the loan documents, may not be assigned to, performed by or enforced by any other person. Following the sale, transfer and/or assignment of the loan by the lender, a custodian may continue to hold the loan documents and all security as agent and nominee for and on behalf of each purchaser thereof and, in such capacity, will continue to have full power and authority to exercise all rights and remedies under the loan and the loan documents as agent and nominee for and on behalf of each such purchaser and as if it were the sole owner of the loan and the loan documents.
- 15.3 Each person who signs this mortgage as a borrower or guarantor is jointly and severally liable for all the borrower's promises and agreements as though each such person had been the only person to sign this mortgage as borrower or guarantor.
- 15.4 If any part of this mortgage is not enforceable all other parts will remain in effect and be enforceable against the borrower and any guarantor.
- 15.5 The headings before the paragraphs in this mortgage do not form part of this mortgage. They have been inserted for convenience of reference only.
- 15.6 The provisions of the commitment letter, if any, will survive (and not merge upon) the execution and delivery of this mortgage and the other loan documents and each of the borrower and the guarantor will continue to be liable for all of their respective liabilities under the commitment letter, and the terms of the commitment letter as they are incorporated in this mortgage by reference. In the event of any inconsistency between the term of any such commitment letter and this mortgage, the commitment letter will prevail.
- 15.7 Notwithstanding any provision of any loan document to the contrary, in no event will the aggregate "interest", as defined in section 347 of the *Criminal Code* (Canada), payable under his mortgage exceed the effective annual rate of interest lawfully permitted under that section and, if any payment, collection or demand pursuant to this mortgage in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand will be deemed to have been made by mutual mistake of the borrower and the lender and the amount of such payment or collection will either be applied to the mortgage money (whether or not due and payable), and not to the payment of "interest" (as defined in section 347 of the *Criminal Code* (Canada)), or be refunded to the borrower at the option of the lender. For purposes of each loan document, the effective annual rate of interest in respect of the loan will be determined in accordance with generally accepted actuarial practices and principles over the term of the loan on the basis of annual compounding of the lawfully permitted rate of

interest. In the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the lender will be conclusive for the purposes of such determination.

- 15.8 This mortgage is governed by and construed in accordance with the laws of the province in which the property is located without application of any principle of conflict of laws which may result in laws other than such laws in force applying to this mortgage.
- 15.9 Each of the parties will promptly cure any defect in the preparation, execution and delivery of the loan documents to which it is a party. The borrower and any guarantor will promptly execute and deliver, upon request by the lender from time to time all such other and further documents, agreement, security, opinions, certificates and instruments (which may form part of the loan documents) as may be required by the lender to more fully state and secure the mortgage money and its other obligations and liabilities as set out in any loan document or to make any registration, file any notice or obtain any consent, including any documents required by the lender in connection with the assignment or securitization of any interest in the loan, and will take all other steps necessary to maintain the validity, intended priority and enforceability of the loan documents and the security thereof.
- 15.10 The implied covenants deemed to be included in this mortgage under sections 56 and 57 of the Act are in addition to and will not be interpreted to supersede or replace any of the covenants contained in this mortgage which are covenants by the borrower. If there is a conflict between any of the covenants implied by the Act and any term contained in this mortgage, the term contained in this mortgage prevails.
- 15.11 The borrower agrees that, only for the purpose of defining the date of this mortgage with respect to any statutory right of prepayment, the date of this mortgage will be deemed to be the interest adjustment date, regardless of the date of the signature of this mortgage.
- 15.12 Any agreement in writing between the borrower and the lender altering the terms of this mortgage in any way, including altering the payment of the unpaid mortgage money, the term and/or the interest rate (whether increased or decreased) need not be registered in any land registry office, but is effectual and binding on the land and upon the borrower, the lender and upon any subsequent chargee, encumbrancer, transferee of the land, or any part thereof, or other person claiming an interest in the land, as if the agreement had been registered prior to their obtaining any interest in the land. This mortgage will be effective whether or not the whole or any portion of the principal amount is advanced before, after or on the date of execution of this mortgage. This mortgage secures the mortgage money and any portion of the principal amount may be advanced or re-advanced by the lender in one or more sums on any future dates and the amount of those advances and re-advances when made will be secured by this mortgage and be repayable with interest. If the whole or any part of the principal amount or other amount secured hereby is repaid, until the lender has executed and delivered to the borrower a registrable discharge of this mortgage, this mortgage remains valid security for any subsequent advance or re-advance by the lender to the borrower to the same extent as if that advance or re-advance had been made on the date of execution of this mortgage. This mortgage shall have priority over any such other encumbrances affecting the land notwithstanding that such other encumbrances may have arisen prior to a re-advance and notwithstanding that the terms may have been amended from the original. Nothing in this paragraph obliges the lender to make a further advance or re-advance.

## **16. CONSENT TO RELEASE AND DISCLOSE**

- 16.1 Each of the borrower and guarantor confirms it has read the lender's Privacy Policy, as is available from the lender upon request and as may be amended from time to time, and acknowledges and agrees that the information set out therein constitutes its consent and prior written notice of the collection, use and disclosure of his or her personal information. In addition, each of the borrower and guarantor acknowledges and agrees that the loan (or securities or certificates backed by or representing any interest in the loan, or a pool of loans which includes the loan) may be sold or securitized into the secondary market without further notice to, or the consent of, the borrower or the guarantor. The lender, or its servicer, may from time to time release, disclose, exchange, share, transfer and/or assign, at its sole discretion, all information and materials (including financial statements and information concerning the status of the loan, such as existing or potential loan or lease defaults or other facts or circumstances which might affect the performance of the loan) provided to, or obtained by the lender, relating to the borrower, the guarantor, the land or the loan (both before and after the initial advance of the loan and/or default) without restriction and without notice to, or the consent of, the borrower or the guarantor, to:
- (a) the lender's third party advisors and/or agents, such as lawyers, accountants, consultants, appraisers, credit verification sources and servicers,
  - (b) any subsequent or proposed purchaser of the loan and/ or their third party advisors,
  - (c) the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution,

- (d) the public or other interested persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the loan or loan pools or any interest therein regardless of format or scope of distribution,
- (e) any governmental authority having jurisdiction over such sale or securitization of the loan or loan pool or any trade of interest in the loan or loan pool, and
- (f) any other person, including rating agencies, in connection with the sale, assignment or securitization of the loan or in connection with any collection or enforcement proceedings taken under or in respect of the loan and/or the loan documents.

Each of the borrower and guarantor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

## **17. FEES**

There are fees chargeable by the lender which the borrower is liable to pay, including but not limited to, the following: returned cheque fees (all reasons), holding or delaying payments, mortgage payment changes (to frequency, due date or amortization), renewal (at maturity or earlier), discharge (administration fee re: preparation, execution and delivery), transfer, assignment, reprinting documentation, payment of utility or tax arrears, tax or other account breakdown statements, refinance, port, assumption, release of covenant, copying material from file, and such other fees as may be chargeable from time to time by the lender. A complete listing of all fees charged and the amounts of such charges are available upon request from the lender. All such fees as herein provided are intended to compensate the lender for the lender's administrative costs and shall not be deemed a penalty. The amount of such fees, if not paid, will be added to the mortgage money secured hereunder and bear interest at the rate provided in the mortgage and the lender shall have the same rights with respect to the collection of the same as it does with respect to the collection of the mortgage money hereunder.