

**THIS MORTGAGE** dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

**Mortgagor (the borrower)**

**AND:**

**HOME TRUST COMPANY, a body corporate**

**Mortgagee (HTC)**

**AND:**

**Spouse of the borrower (if spouse not a borrower)**

**AND:**

**Guarantor**

**MORTGAGE**

1. In this mortgage, "Charge" shall mean this mortgage and the charge hereby created together with all the terms, representations and conditions contained in this mortgage and includes any schedules and addenda thereto. **You** and **your** mean each person who has signed this mortgage as borrower. **We, our** and **us** mean HTC. **Borrower** includes one or more borrowers. **Spouse** includes the spouses of the borrowers. **Guarantor** includes one or more guarantors. **Property** means the property described below.

2. In return for our making a loan to you in the amount of (\$\_\_\_\_\_)

\_\_\_\_\_

Canadian dollars (called the Principal Amount) which you acknowledge having received from us, you hereby give us this mortgage.

3. **Description of the Property covered by this mortgage. \***

Property owned or rented by you (if you are a tenant of your property under a lease, this means that you have the exclusive use of the buildings during the term of the lease):

Any buildings on your property and anything now or later attached or fixed to the buildings or your property including additions, alterations and improvements are covered by this mortgage. However, no additions, alterations or improvements may be made by you without our prior written consent.

\* If space is insufficient to type description of your property in this paragraph, attach Schedule A describing the property and type in above space "See attached Schedule A".

### WHAT THIS MORTGAGE DOES

4. As owner of the Property, you grant and mortgage the Property to us and our successors and assigns (called our **legal representatives**) as security for repayment of your loan. This means you give your entire interest in your property to us and to anyone to whom this mortgage is transferred in any way. You release to us all of your claims on your property until you have complied with all of your obligations under this mortgage.

If you are a tenant of your Property, you grant, assign and mortgage your entire interest in your Property (including any option to purchase) to us and our legal representatives and to anyone to whom we transfer that interest for the entire term of the lease, as security for repayment of your loan.

### MATTERS RELATING TO REPAYMENT

5. **Your Covenant to Pay.** You charge the Property to secure and you covenant to pay to us the Principal Amount, interest and all fees and costs on the terms set out in this Charge or in any amendment, extension or renewal of the Charge and any additional amounts secured by this Charge on the terms elsewhere provided for such debts and liabilities.
6. You agree to pay to us the Principal Amount with interest thereon as well after as before maturity and both before and after default at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum calculated semi-annually, not in advance (the "Interest Rate"), computed from the date the Principal Amount, or any part thereof, is advanced on so much of the Principal Amount as shall from time to time remain unpaid until the whole of the Principal Amount is paid. The Principal Amount and interest shall become due and be paid as follows:
- (i) Interest shall accrue from the date of all advances hereunder and shall be due and payable on the day of each and every month, commencing on the \_\_\_\_\_ day of the month next following the date of the first advance to and including (the "Interest Adjustment Date");
  - (ii) Thereafter, the Principal Amount and interest, as aforesaid, shall be payable by equal consecutive blended monthly instalments of principal and interest of (\$ \_\_\_\_\_), commencing on the \_\_\_\_\_ day of the month next following the Interest Adjustment Date and thus to continue monthly on the \_\_\_\_\_ day of each month to and including the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_;
  - (iii) The balance, if any, of the Principal Amount and interest thereon, as aforesaid, and any other moneys owing under this Mortgage shall be due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the "Balance Due Date");
7. **Your Obligation to Pay Without Set-off or Delay.** You agree to pay all amounts payable pursuant to this Charge and all additional amounts secured by this Charge without abatement, set-off or counterclaim. Should you make any claim against us either initially or by way of abatement, set-off or counterclaim, you agree that any such claim by you will not diminish or delay your obligations to make the payments as provided in this Charge and any such claims by you will not delay the exercise of any remedy and not be a defence to any claim by us against you under this Charge. And without limiting the generality of the foregoing, you agree that should you allege that life insurance or disability insurance should make payment in whole or of any part of the amount secured by this Charge, you will nevertheless be responsible for making all payments provided for under this Charge or any amendment, extension or renewal of the charge or for any other amount secured by this Charge as they become due until the insurer or alleged insurer makes such payments. Should the insurer either deny that any payments are owing or take the position that there is no insurance coverage for any reason whatsoever including misrepresentation by or to you or by or to any agent or representative of the insurer or Chargee, your responsibility to make payments under the Charge shall continue and you will not make any claim for set-off, counterclaim or delay having anything to do with such insurance or application for any insurance.
8. **Application of Payments and Interest After Default.** All monthly payments when received shall be applied first in payment of interest calculated at the Interest Rate, and second in reduction of the Principal Amount, except that if you are in default, we may apply any payments received during the period you are in default on such part of the indebtedness secured by this Charge as we may choose. If you are in default of any amount including interest, interest shall be payable on the interest and other arrears at the Interest Rate compounded monthly.
9. **No Obligation to Advance.** The preparation, execution or registration of this Charge will not bind us to advance the Principal Amount, nor will the advance of a part of the Principal Amount bind us to advance or readvance any other portion of the Principal Amount, or allow you to make any

other indebtedness or liability to us, but nevertheless the security on the Property shall take effect immediately on execution of this Charge by you.

10. **Prepayment Privileges and Compensation.** The Charge is closed to prepayment except as follows:

- (a) **Annual 20% Prepayment.** Where the Charge secures a loan for a fixed term, you may, when not in default, on each anniversary of the Interest Adjustment Date prepay an amount not greater than 20% of the original Principal Amount of the fixed term loan. You may not prepay more than 20% of the original Principal Amount on any anniversary date, even though you may have prepaid less than 20% of that amount on a previous anniversary date;
- (b) **Prepayment After Year 3.** You may also, at any time after the third anniversary of the Interest Adjustment Date, prepay the full outstanding balance of this Charge upon payment of the greater of:
  - (i) three months interest at your existing interest rate as set out in the Charge or, if renewed, in the agreement for the last renewal of the fixed term loan secured by the Charge; or
  - (ii) the interest rate differential based on the difference between your existing interest rate as set out in the Charge or, if renewed, in the agreement for the last renewal of the loan and the then current rate for the term remaining on the Charge or renewal of the loan based on our posted rate for a mortgage for a term that is the next shortest to the remaining term of your Charge or if renewed, of the agreement for the last renewal of the fixed rate loan secured by the Charge calculated on the full principal amount being repaid;
- (c) **Prepayment After Default.** If prepayment of the Principal Amount is made prior to the Balance Due Date or the maturity date of the last renewal of any fixed term loan secured by the Charge, then you agree to indemnify and save us harmless from all costs and losses resulting therefrom and to pay to us the amount determined in accordance with paragraph 10(b) above and we may also recover such amount from the proceeds of any sale of the Property or other proceedings for enforcement of the Charge;
- (d) **Payment After Maturity.** Where there is default after the Balance Due Date or maturity date of the last renewal of any fixed term loan secured by the Charge, you may pay the outstanding principal amount of such loan only upon payment of three months interest calculated on the outstanding principal amount or three months written notice in lieu thereof and we may also recover such amount from the proceeds of any sale of the Property or other proceedings for enforcement of the Charge.

11. **Time and Place for Payment.** All payments under this Charge shall be made to us at such place as we shall designate to you from time to time. Each payment is to be made by 2:00 p.m. on the day on which it is due and payable. Any payment received by us after 2:00 p.m. shall be deemed for the purpose of calculation and payment of interest, to have been made and received on the next day we are open for business.

12. **Preauthorized Payments.** Unless we otherwise agree, you agree to establish and make all regular payments as they become due pursuant to the Personally Approved Payment Service or other preauthorized payment method acceptable to us.

13. **Renewal.** You agree that where this Charge secures a loan for a fixed term, this Charge may be automatically renewed from time to time in the following manner:

Prior to the Balance Due Date of the Charge, and of each renewal term, we may, but we are not obligated to, send to you a notice of renewal setting forth the balance outstanding on the Charge and the interest rate, payment amount and the other terms and conditions on which the Charge may be renewed. Unless you pay the balance outstanding on the Charge, accept other renewal terms offered or make other arrangements in writing to extend payment by the Balance Due Date of this Charge or of any renewal or extended term of this Charge, you will be deemed to have accepted a renewal for a one year term on the terms set out in the notice of renewal. On any renewal, the amount of the payments being made pursuant to the Personally Approved Payment Service or other preauthorized payment mechanism will be adjusted accordingly. Renewal fees not paid by such Balance Due Date will be added to the balance outstanding on the Charge and bear interest at the renewal rate.

No renewal or extension of time given by us to you shall in any way affect or prejudice our rights against you, the Guarantor or any other person. It shall not be necessary to register notice of any such renewal or obtain any consents or acknowledgements in order to retain priority for this Charge so altered over any subsequent encumbrance or instrument registered subsequent to this Charge.

14. **Fluctuating Account/Additional Debts Secured.** You agree that this Charge will secure all your indebtedness and liabilities from time to time to us. The Charge is a general and continuing security for the Principal Amount or the parts thereof actually advanced or readvanced from time to time and interest thereon at the Interest Rate and fees and expenses incurred pursuant to this Charge and for all other present and future debts and liabilities you may have with us, whether direct or indirect, absolute or contingent, incurred by you alone or with any other person, and interest thereon and charges, fees and expenses incurred with respect thereto.

No payment, no revolving or fluctuation of the indebtedness or liability, no change in the form of the indebtedness or liability nor acceptance or renewal or substitution of any note, instrument or other document evidencing or regarding any of the indebtedness or liability will constitute a reduction or discharge in whole or in part of the security of this Charge and the Charge will not cease to operate and will not be extinguished except as provided in paragraph 15 below.

15. **Discharge.** If you pay us the Principal Amount, interest and all the other amounts secured by this Charge in full and you notify us in writing that such payment is in final and permanent pay out of all your indebtedness and liabilities to us and request a discharge of this Charge, we will discharge this Charge. You will give us a reasonable time after payment in which to prepare and issue the discharge. You must pay our expenses of having it prepared and you will also be responsible for the cost of registering it.

## COVENANTS AND WARRANTIES

16. **Title Warranty and Covenants.** You warrant and agree that:

- (a) **Good Title.** You have (unless you have a leasehold title and paragraph 16 is applicable) good and marketable title in fee simple to the Property subject only to any prior registered charge, to which we have agreed in writing;
- (b) **To Protect Title.** You will preserve your title to the Property and the validity and priority of this Charge and you will forever warrant and defend the same for us against the claims of all persons;
- (c) **Authority to Charge.** You have the right to charge the Property to us;
- (d) **Release of Claims.** You release to us all of your right, title, interest and claim to the Property subject to the right to discharge contained in Section 15 above;

17. **Additional Covenants if Property is a Leasehold.** If you have a leasehold interest in the Property, the Charge will not apply to the last day of the term of your lease or the term of any renewal or replacement of your lease. You will hold the last day of each term in trust for us and transfer it on our direction to any person acquiring such term. Our President or any Vice-President or Branch Manager is appointed your attorney with full power of substitution to complete such transfer. This appointment will not be terminated by your disability or death.

And furthermore, you warrant and agree that:

- (a) you have good and marketable leasehold title to the Property;
  - (b) you have a good, valid and subsisting lease of the Property and you have given to us a full and complete copy of that lease;
  - (c) all rents and other monies payable under the lease have been paid and you are not otherwise in default under any obligation set out in the lease;
  - (d) you do not require the consent of the landlord to charge your leasehold interest in the Property, or if required, you have obtained the consent of the landlord to this Charge;
  - (e) you will pay rent and perform and observe all your other obligations under the lease;
  - (f) you will not surrender the lease or cause or allow it to be terminated or forfeited;
  - (g) you will not agree to any amendment of the lease without first obtaining our written consent.
  - (h) you will renew the lease as necessary to protect our interest and the Charge will extend to any such renewal.
18. **Fixtures, Additions, etc.** You agree the Property includes all property of any kind that is at any time attached or fixed to the land or buildings or placed on and used in connection with them including all heating and cooling equipment such as furnaces, pumps, water heaters and air conditioners (central, window and other units), all cooking and refrigeration equipment, light

fixtures, television antennae, satellite dishes, security systems, central vacuum, trees, shrubs and plants, as well as all alterations, additions and improvements to the buildings.

19. **Representations, Information, etc.** You warrant and represent that all representations made by you or anyone on your behalf in the application for mortgage loan and any other information you or the Guarantor have provided to us for our consideration in deciding whether to grant, amend or renew the mortgage loan or any other amount secured by this charge are true and correct at the time made or provided.
20. **Compliance With Building and Other Laws and Use.** Your use of the Property complies and you will continue to comply with all building and zoning by-laws and if a non-conforming use, you will continue such legal non-conforming use, unless we otherwise agree in writing. You will also comply with all other laws in your use and occupation of the Property and will not use or permit the Property to be used for any illegal, improper or immoral purpose or activity.
21. **No Other Mortgages or Liens.** You will not create or permit to exist any other mortgage, construction lien (other than any unregistered lien for work or supply to an improvement approved by us for an account not yet due) or other lien (other than for taxes and utilities not yet due) or other encumbrances against the Property without our prior written approval and if approved, without such other security holder agreeing to be fully subsequent in priority and subordinated in payment to all amounts that may from time to time be secured by this Charge.
22. **Payment of Taxes and Other Encumbrances.** You will also pay all taxes and other rates levied on the Property and all accounts for utilities supplied to the Property and all charges, mortgages, liens and other encumbrances on the Property when they are due and comply with your other obligations under them. You will, if we ask for it, immediately give us receipts showing that the taxes and other accounts have been paid.
23. **No Sale Without Consent.** You will not sell, transfer, lease or otherwise dispose of all or any part of the Property or any interest therein or if a corporation, permit a change in control, without our prior written approval and if approved, without such approved purchaser, transferee or lessee entering an assumption agreement in form satisfactory to us. Acceptance of any payments from a purchaser, transferee or lessee or after a change in control not approved in writing by us, shall not constitute an approval or waiver by us.
24. **Financial Information.** If the Property or any part is not your residence property, you will when so requested by us provide to us any and all financial information and statements related to the Property or your or the Guarantor's affairs.
25. **Additional Covenants if Property is a Condominium Unit.** The following provisions apply to any condominium unit that is part of the Property;
  - (a) **Compliance.** You will comply with the Condominium Act and the declaration, by-laws and rules of the corporation. You will provide us with proof of your compliance from time to time as we may request. You will forward to us copies of any notices, assessments, by-laws, rules and financial statements of the corporation. You will provide us, on request, with any other documents and information that you receive from the corporation or are entitled to receive.
  - (b) **Repair.** You will maintain all improvements made to your unit and repair them after damage.
  - (c) **Insurance of Unit.** You will insure all improvements which you or the previous owners have made to your unit. Furthermore, you will insure your common or other interest in buildings which are part of the condominium property or assets of the corporation, if the corporation fails to insure the buildings as required by the Act and the declaration, by-laws and rules of the corporation. These obligations are in addition to your obligations in this Charge under the heading Insurance for the Property as far as they apply to a condominium unit.
  - (d) **Right to Vote - Proxy.** Provided we are in possession of the Property, you hereby assign to us and authorize us to exercise your rights under the Act to vote and to consent. If we do not exercise such rights, you may do so, but you will do so according to any instructions which we may give you from time to time. You also authorize us to inspect the corporation's records.
26. **Insurance for the Property.**
  - (a) **Fire and Other Perils.** You will cause the Property to be insured by an insurer and under a policy or policies satisfactory to us to an amount of not less than the full insurable value of the buildings and improvements on the Property. The insurance must be against the perils and extended perils usually covered in fire insurance policies, including but not limited to loss or damage by explosion, tempest, tornado, cyclone, earthquake and lightning.

- (b) **Boiler Insurance.** If there is a boiler or other pressured vessel or a sprinkler system in any building on the Property, the insurance to be obtained by you must cover loss or damage caused by the boiler or other pressured vessel and equipment operated with it or caused by the sprinkler system;
  - (c) **Owner's Liability Insurance.** If the Property is used for commercial purposes, you must have comprehensive liability insurance for personal and property damage and losses occurring on or in respect to the Property for an amount per occurrence which we may specify to you in writing;
  - (d) **Rental Interruption Insurance.** If the Property is used for commercial purposes and we so request in writing, you must also have insurance against loss of rents and other income or payments to be made by tenants or others with respect to use of the Property or any part thereof from the risks covered by the other required insurance for 100% of the rents and other payments from the property or rental value for a period of at least twelve months from the date the claim arises;
  - (e) **Builder's All Risk.** During such time or times as there is construction of any buildings or other improvements on the Property, you will maintain builder's all risk insurance with a stated amount clause for the improvements for full insurable value.
  - (f) **No Co-Insurance.** The insurance may not contain co-insurance requirements;
  - (g) **Proof of Insurance.** Each policy of insurance shall contain mortgage clauses and loss payee clauses in a form satisfactory to us. You must on request deliver to us any policy of insurance on the Property. You must give us proof that you have obtained the insurance you are required to obtain and you must, at least 10 days before any insurance expires or is terminated, give us proof that you have arranged for such insurance to be renewed or replaced. If you fail in any way to comply with these obligations, we may (but we are not obliged to) obtain insurance on your behalf. If we think it is necessary, we can require you to cancel any existing insurance for the Property and provide other insurance which meets our approval;
  - (h) **Insurance Claims and Proceeds.** If loss or damage occurs, you will provide us with necessary proofs of claim and do everything else necessary to enable us to obtain payment of our interest in the insurance proceeds. Insurance proceeds may, in whole or in part, exclusively at our option, be used to rebuild or repair damaged buildings or be used to reduce all or part of the amount secured by this Charge.
  - (i) **Further Assignment.** You assign as additional security for your obligations under this Charge all interest in or under any insurance of any kind affected with respect to the Property and the proceeds thereof, whether or not placed in accordance with the requirements of this Charge.
27. **Payment of Encumbrances.** You will pay all accounts for utilities supplied to the Property and all charges, mortgages, liens and other encumbrances on the Property when they are due and comply with your other obligations under them.
28. **Property Taxes.**
- (a) "taxes" mean all taxes, rates and assessments of any nature or kind, including property taxes, local improvement rates, interest and penalties levied on or payable with respect to the Property;
  - (b) if we so require, you agree to pay to us on each payment date under the Charge or any amendment or renewal thereof, sums sufficient, as determined by us, to enable us to pay the whole amount of taxes on or before the due date for payment of taxes or, if taxes are payable in instalments, on or before the due date for payment of the first instalment;
  - (c) if you wish to take advantage of any discount or to avoid any penalty in connection with the payment of taxes, you shall pay to us an appropriate amount in addition to the amount referred to in paragraph (b) above;
  - (d) if the taxes on the Property in any calendar year exceed our estimate, you will pay us the difference on demand;
  - (e) you agree to send us all tax bills and other notices or communications relating to taxes as soon as you receive them;
  - (f) we do not have to hold any moneys which you send us under this paragraph in trust, nor pay interest on them, nor apply them to pay taxes more than once a year;

- (g) should you default under any of your obligations in the mortgage, we do not have to use monies so received to pay taxes and we may, if we wish, apply such monies to any of your debts or liabilities to us;
- (h) before or on the Interest Adjustment Date, we may withhold from any advance under the Charge any amount we feel necessary to pay or to anticipate future payments of taxes.
29. **Repair and Maintenance of Property.** You will maintain the Property in good order, condition and repair and will promptly make all necessary repairs, replacements, and improvements. You will not allow any part of the Property to become or remain vacant without our written consent. You will not commit waste and will not remove, demolish or materially alter the Property or any part of it without our prior written consent. We may, whenever we feel it necessary, either by ourself or by our agent enter upon and inspect the Property and you shall pay the costs associated with such inspection. If you, or anyone claiming under you, neglect to keep the Property in good condition and repair, or commit any act of waste on the Property, or do anything by which the value of the Property is diminished, as to all of which we shall be sole judge, we may (but we are not obliged to) enter the Property and effect such repairs or work as we consider necessary.
30. **Obligations Regarding Construction.** If any improvement (which includes construction, alteration, repair and demolition) is or is to be made to the Property, you must inform us in writing immediately if it has started, or otherwise before it is started and the plans and specifications must be approved by us. You covenant with us that if you fail at any time for a period of 10 business days to diligently carry on the work of construction of any building or buildings being or to be erected on the Property, or without our consent in writing, you depart in such construction from the plans approved by us or from the generally accepted standards of construction in the locality of the Property, or you permit any construction or other lien to be registered against the Property for any period exceeding 10 days, we may at our option at any time, through our agents or contractors, enter the Property and have exclusive possession of the Property and of all materials, plant, gear and equipment on the Property, free of interference by you and complete construction of the building or buildings either according to your plans approved by us, or according to such other plans, specifications or design as we in our discretion may choose. You shall pay all costs in connection with such construction.
31. **Your Obligations Regarding Environmental Matters.**
- (a) To the best of your knowledge and belief, after due inquiry and investigation, no part of the Property contains, has ever contained or will in the future, except as provided below, contain any hazardous substances;
- (b) We may require that you obtain from time to time at your expense an environmental audit report on all or any part of the Property, which report shall be satisfactory to us;
- (c) You agree that any activities, operations or storage on any part of the Property that may involve hazardous substances will only be undertaken after full disclosure to us and with our approval. Any such activities, operations or storage will be in accordance with Environmental Laws and Regulations. You will on reasonable request from time to time provide us with satisfactory evidence of such compliance along with copies of all current permits and licenses necessary for the lawful operation or storage on the Property. Without limiting the generality of the foregoing, no use of any part of the Property will be allowed which may cause or increase the likelihood of the escape, seepage, leakage, spillage, release or discharge of any hazardous substance on, from or under the Property or permit any policy of insurance in respect to the Property to be cancelled;
- (d) You will promptly notify us as soon as you know of or suspect that any hazardous substance has been brought on to the Property or that there is any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any hazardous substance on, from or under the Property whether from your activities or storage or from those of another property owner or carrier or from any other source;
- (e) You will promptly remove any hazardous substances that are on the Property in any manner and from any source, other than for activities, operations and storage which we have permitted as provided above, and complete all remediation of the Property that may be required by reason of the presence of hazardous substances and that we may consider prudent, all in accordance with Environmental Laws and Regulations;
- (f) You agree to indemnify us with respect to any and all costs and liabilities we may incur for investigations, remediation and other matters related to hazardous substances that are or may be on or about or suspected to be on or about any part of the Property or nearby property;
- (g) Any environmental audit report you may provide to us or we may obtain or any other investigation we may conduct or any remedial or other work we or someone on our behalf

may perform or any storage or use of hazardous substances on the Property we may permit will not relieve you from your obligations hereunder;

(h) The representations, covenants, agreements and indemnity made in this section shall survive satisfaction and discharge of the Charge, sale of all or any part of the Property or extinguishment of the Charge if we or our nominee becomes owner of the Property by foreclosure or otherwise following default;

(i) Hazardous substances refers to solid, gaseous or liquid waste and substances or conditions that are prohibited, controlled or otherwise regulated or that are otherwise hazardous in fact or that are considered potentially hazardous and Environmental Laws and Regulations mean all requirements of common law, statutes, by-laws, orders, permits and the like of any government or governmental authority relating to environmental, health, fire or safety matters.

32. **Further Assurances and Reservation of Rights.** You will, before or after default, execute any further documents and do such other acts with respect to any aspect of this Charge, at your own expense, as we may reasonably require.

You agree that no sale or other dealing by you with the Property or any dealing by us with the whole or any part of Property or with any person liable in any manner for the whole or any part of the amount secured by this Charge, shall in any way affect or prejudice our rights against you or any other person liable to pay any amount secured by this Charge.

### DEFAULT AND REMEDIES

33. **Your Right to Quiet Possession.** Until default by you under this Charge, you shall have possession and receive the rents and profits from the Property.

34. **Events of Default.** You will be in default under this Charge upon the happening of each and every of the following events:

- (a) if you default in the payment of the Principal Amount, of interest or any other amount secured by this Charge, when payment of such amount becomes due under the terms of this Charge or as elsewhere provided for any other amount secured by this Charge;
- (b) if you default in the observance or performance of any term or covenant which you have agreed to observe or perform under this Charge or elsewhere;
- (c) if a petition in bankruptcy is filed against you, if you make a general assignment for the benefit of your creditors, if a receiver, interim receiver, monitor or similar person is placed or is threatened to be placed in control of or for overview of your affairs or Property, or in our opinion, you become insolvent;
- (e) if a construction lien or similar lien is registered against the Property;
- (f) if a default occurs under any other lien, charge or other encumbrance existing against the Property.

35. **Acceleration on Default.** If at any time you should be in default under this Charge, then the Principal Amount and interest and all amounts secured by this Charge shall, at our option, become due and payable immediately.

36. **Remedies on Default.** Upon the occurrence of any event of default, the Charge shall, at our sole option, be immediately enforceable (without thereby declaring the Principal Amount and other amounts secured by the Charge immediately due and payable unless we have in writing declared the same due and payable) and we may realize upon our security and enforce our rights (without notice to you except as specifically required by any term of this Charge or by any applicable statute) by the following remedies:

- (a) **Possession.** We may enter into possession of the Property and occupy and use it without any objection from you. Our liability for the time in possession of all or any part of the Property shall be limited to an accounting for monies actually received by us;
- (b) **Distrain.** We may distrain your goods for arrears of interest;
- (c) **Lease.** We may lease all or any part of the Property with or without entering into possession of the Property;
- (d) **Court Action.** We may take proceedings in any Court of competent jurisdiction for sale or foreclosure of all or any part of the Property;
- (e) **Court Receiver.** We may take proceedings in any Court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a receiver and



manager) of all or any part of the Property, and you hereby consent to a court order for such appointment;

- (f) **Power of Sale.** We may with or without entering into possession sell all or any part of the Property pursuant to the power of sale in such manner as may to us seem best;
- (g) **Receiver.** We may appoint in writing a receiver of the Property and of the rents and profits thereof. We may from time to time remove any such receiver and appoint another in its stead, and in making any such appointment or removal, we shall be deemed to be acting as the agent or attorney for you. The purpose of such appointment shall include the orderly management, administration and/or sale of the Property or any part thereof.
- (h) **Abandoned Personal Property.** Any equipment or furniture or household or personal belongings which remain on the Property for a period of more than five days after we or a receiver take possession of the Property shall be deemed abandoned and we may remove, store, dispose of or otherwise deal with such abandoned goods in such manner as we see fit. Removal, storage and other costs may be added to the amount secured by this Charge;
- (i) **Performance of Your Covenants.** If you fail to perform any covenant or condition under this Charge, we may (but we are not obliged to) ourselves perform or cause to be performed the same at your expense. If we pay any taxes, utility accounts, charges, liens or other encumbrances, we shall be entitled to all equities and securities of the person or persons so satisfied, and we may retain any discharge or cessation of charge unregistered until we are paid. We may rely on any statement of account or statement of non-performance which we reasonably believe to be correct without any subsequent challenge of any kind as to the correctness thereof by you.

We may exercise these rights and remedies from time to time separately or in combination and as often and in such manner as we see fit. They are in addition to and not in substitution for any other rights we may have at law, in equity or by statute, or under any other security or agreement with you.

37. **Matters Relating to the Sale of the Property.** The following terms shall apply to any sale, as permitted by law:

- (a) We may sell the whole or any part or parts of the Property by public auction or private contract, or partly one or partly the other;
- (b) The sale may be conducted immediately upon the expiration of any redemption or reinstatement period required by law or at any time thereafter and we may delay the sale for such period of time as we consider to be in our best interest;
- (c) We may sell on such terms as to credit and otherwise as shall appear to us most advantageous and for such prices as can reasonably be obtained and may make any stipulations as to title or evidence or commencement of title or otherwise which we consider appropriate;
- (d) In the case of a sale on credit we shall be bound to pay you or apply on account of the Principal Amount only such monies as have been actually received from the purchasers from time to time. After the satisfaction of all our claims, we are not bound to pay any amount to you or any other person claiming entitlement thereto until all such agreements and assurances as we consider fit have been executed and delivered;
- (e) We may buy in or rescind or vary any contract for the sale of the whole or any part of the Property and resell without being answerable for loss occasioned thereby;
- (f) Any person, including us, may bid on, tender for or purchase the Property at the sale;
- (g) Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper. No want of any required notice or publication shall invalidate any sale or lease under this Charge and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the power of sale shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given; any person prejudiced by an unauthorized, improper or irregular exercise of power shall have his or her remedy against the person exercising the power in damages only;
- (h) Notice as provided for in this Charge shall be given to you in such manner and form and within such time as provided by the mortgage, land title or other acts, as amended in the province where the Property is located;

- (i) Unless otherwise required, you agree that notice may be given by mailing it in a registered letter addressed to you or your legal representative at the last address known to us and shall be effective as of the date of mailing;
  - (j) All provisions of this Charge relating to a sale of the Property following default, including, without limitation, the persons to whom notice of exercising the power of sale shall be given and the manner of giving such 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. Wherever there is a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of any law, the provisions of such law shall govern.
38. **Matters Relating to a Receivership.** The following provisions shall apply with respect to the appointment of any receiver:
- (a) a statutory declaration of any of our officers as to default under the provisions of this Charge shall be conclusive evidence thereof;
  - (b) we may from time to time fix the remuneration of any receiver;
  - (c) our appointment of a receiver or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not create any liability on our part to such receiver in any respect and shall not have the effect of constituting us a Chargee in possession in respect of the Property or any part thereof;
  - (d) the receiver shall be the irrevocable agent or attorney of you for the collection of all rents and other payments recoverable in respect to the Property or any part thereof, whether in respect of any tenancies, licenses or other agreements created in priority to this Charge or subsequent thereto;
  - (e) the receiver shall have full power to manage, operate, amend, repair, alter or extend the Property or any part thereof in your name for the purposes of securing the payment of rental and other income from all or any part of the Property;
  - (f) the provisions of Section 37 with respect to a sale by us shall, to the extent applicable, apply to any sale by the receiver;
  - (g) the receiver shall have full power to complete any unfinished construction upon the Property in such manner with such modifications as to it appear fit;
  - (h) the receiver shall, so far as concerns responsibility and liability for its acts and omissions, be deemed to be your agent or attorney and not ours;
  - (i) the receiver shall not be liable to account to you for monies or damages other than cash received by it in respect of the Property and out of such cash every such receiver shall pay, in the following order:
    - i) all payments made or incurred by it in connection with management, operation, amendment, repair, alteration or extension of the Property or any part thereof;
    - ii) its remuneration;
    - iii) all payments necessary to keep in good standing or satisfy and discharge all charges, liens and other encumbrances on the Property prior to this Charge;
    - iv) interest, costs and other charges accruing due under this Charge principal owing under this Charge and other amounts secured by this Charge, to be applied to such parts thereof and in such order as we see fit.

#### **FEES, COSTS AND EXPENSES**

39. **Servicing Fees.** You agree to pay to us servicing fees to cover our reasonable time and costs for administration of the Charge including without limitation, a fee or allowance for
- (a) dealing with each late or missed payment and for replacement of each cheque or other instrument not honoured when presented for payment or any preauthorized payment which does not clear as scheduled
  - (b) preparing each assumption, arrears, reinstatement, discharge or other mortgage statement, whether provided to you, our agents or solicitors or any other interested person,

- (c) processing each application to obtain our consent to assume the mortgage or our approval or consent for any other matter required by the Charge whether or not approval or consent is provided or the matter is completed,
- (d) processing each extension, renewal, restructuring or other amendment of the Charge or amounts secured by the Charge, whether or not completed,
- (e) investigating status of any insurance and administering insurance cancellations and paying insurance premiums,
- (f) investigating status of realty tax payments and administering tax payments,
- (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 Charge (notwithstanding that the discharge may have been prepared by you or other person on your behalf),
- (i) the personal time and trouble of our employees or agents in collecting any payment or inquiring into compliance or otherwise reviewing or dealing with or enforcing any other obligation contained in this Charge or instructing and assisting counsel or other agents with respect to the enforcement of this Charge and any litigation in relation thereto or in managing or selling the Property including, without limitation, 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 the Mortgage.

Our servicing fees shall be the amounts established and generally applied by us from time to time and may be disclosed in a Schedule to this Charge or ascertained upon inquiry to us.

40. **Costs.** You agree to pay us all amounts we expend and costs we incur in any manner in connection with this Charge including, without limitation, expenses in relation to:

- (a) the making of the loan secured by this Charge and each amendment, extension or renewal thereof including preparation, execution and registration of the Charge and any other security, instrument and documents;
- (b) collecting payments under and enforcing and realizing the security of this Charge;
- (c) defending or otherwise dealing with any action or proceeding in which we by reason of the Charge may be a party or otherwise interested including without limitation any construction lien or similar matter, any foreclosure, sale, redemption, assessment or other action or proceeding by any other encumbrancer or any certificate of pending litigation or other title matter;
- (c) performing or complying with any of your obligations under this Charge including, without restriction, those relating to insurance, condominium, repair and construction, leases, taxes and prior encumbrances and environmental matters.

All legal costs incurred by us will be paid by you in full (including legal fees as between the solicitor and his own client).

41. **Interest and Security for Fees and Costs.** All the above described fees and costs, allowances and expenses shall be secured by this Charge, shall bear interest at the Interest Rate from the date incurred or calculated by us and shall be payable by you forthwith on demand.

#### **MISCELLANEOUS MATTERS**

42. **Delay, Waiver and Release of Property.** You agree that we may in our discretion at any time release any part or parts of the Property or any other security or any surety for the whole or any part of the Principal Amount, interest and other amounts secured by this Charge either with or without any sufficient consideration, without responsibility or liability to you and without releasing any other part of the Property or any person from this Charge or from any of the covenants and without being accountable to you for the value of such released Property, securities or surety, or for any money except that actually received by us. Every part or lot into which the Property is or may be divided does and shall stand charged with the whole of the Principal Amount, interest and other amounts secured by this Charge.

We may delay in enforcing any of our rights under this Charge or the obligations secured or any agreement evidencing or securing the obligations secured without losing or impairing those rights. We can waive breach of your obligations under this Charge or under any related security or agreement without losing our rights in respect of any other breach of your obligations.

43. **Charge not a Substitute for any other Security.** You agree that this Charge shall not create any merger, rebate or discharge of any debt owing to us or of any lien, bond, note, instrument or other security now or subsequently held by us, whether from you or from any other party or parties and this Charge shall not in any way affect any security which may now or subsequently be held by us for the whole or any part of the Principal Amount, interest and other amounts secured by this Charge or the liability of any other person upon any such lien, bond, note, instrument or other security or contract or any renewal or renewals of the same held by us for or on account of the Principal Amount, interest and other amounts secured by this Charge or any portion thereof, nor shall our remedies be affected in any manner.
44. **Judgments.** If we obtain a court judgment against you for your failure to pay any of the Principal Amount, interest and other amounts secured by this Charge or to perform any of your obligations to us under this Charge, the judgment will not result in a merger of your obligations under this Charge with the judgment or take away any of our other rights to enforce this Charge. We will continue to be entitled to receive interest on the Principal Amount, interest and other amounts secured by this Charge at the Interest Rate, calculated and payable in the agreed way, and the judgment may so provide.
45. **Interpretation and Headings.** Wherever in this Charge the singular or masculine is used, the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties so require. The headings do not form part of this document and have been inserted for convenience of reference only. This Charge shall be interpreted, enforced and governed by the laws of the Province of Nova Scotia. If any provision of this Charge shall be prohibited by or invalid under applicable law, such provision shall not invalidate the remaining provisions of this Charge. Nothing contained in this Charge shall require you to pay or for us to accept interest in an amount greater than that allowed by applicable law. In the event that the payment of interest or other amounts under this Charge would otherwise exceed the maximum amount allowed under applicable law or violate any laws as to disclosure or calculation of interest charges, then your obligations to pay interest or other charges shall be reduced or amended to the maximum rate or amount permitted under applicable law.
46. **Joint Signatures.** If more than one person signs this Charge, each person who signs it is jointly and severally bound to comply with all obligations of the Chargor under this Charge.
47. **Demands and Notices.** Unless otherwise provided in this Charge or prohibited by law, where this Charge allows or requires us to make a demand on or give a notice to any person (including you), we may make the demand or give the notice by delivering it personally to the person (where the person is a corporation, by delivering it personally to a director, officer, employee or agent of the corporation) or by mailing it by prepaid registered mail addressed to the person at the person's last known address.

A notice or demand so delivered will be regarded as given or made when it is so delivered to the person or to the director, officer or employee of the corporation. A notice or demand so mailed will be regarded as given or made on the day it is mailed, whether the person receives it or not.

#### **ASSIGNMENT OF RENTS**

48. **Assignment of Rents.** You agree with us as follows:
- (a) You assign and set over to us all rents and other monies payable from time to time under all leases, licenses or other agreements in respect of any part of the Property, whether presently existing or arising in the future, together with the benefit of all covenants, terms and provisos contained in such lease, license or agreement;
  - (b) You will provide us with copies of all leases, licenses and agreements respecting the Property and you will notify us of any proposed lease, license or agreement. You may not make any lease, license or agreement to which we object in writing to you;
  - (c) Immediately after making any lease, license or agreement respecting any part of the Property, you will on our request execute and deliver to us an assignment in our usual and registerable form of all rents or monies payable under such lease, license or agreement, the benefit of all covenants, agreements and provisos contained in such lease, license or agreement on the part of the tenant, licensee, user or guarantor to be observed and performed and the reversion of such lease, and you will also execute and deliver to us all such notices and other documents as may be required in order to render such assignment effectual in law;
  - (d) Nothing shall make us responsible for the collection of rents or monies payable under any lease, license or agreement in respect of any part of the Property or for the performance of any covenants, terms or conditions contained in any such lease, license or agreement.

Neither you or we will cause the tenant, licensee, user or guarantor under the lease, license or agreement to pay rent or monies to us unless and until you are in default;

- (e) We shall not by virtue of this assignment or collection of any rents or monies thereunder be deemed a mortgagee in possession of the Property. You will perform and observe all of the landlord's covenants and obligations contained in each lease, license and agreement and will not collect rents more than one month in advance (other than monies held as security deposits);
- (f) We shall be liable to account for only such rents and monies as actually come into our hands, less reasonable collection charges and all expenses, and may apply such rents to the repayment of the Principal Amount, interest and other amounts secured by this Charge as we see fit; and
- (g) Notwithstanding anything contained in this Charge, no lease, license or agreement respecting any part of the Property shall have priority over this Charge without our consent in writing.

### **GUARANTEE**

49. **Guarantee.** Each person signing the Charge as a Guarantor agrees in consideration of our making the loan to you, as follows:

- (a) The Guarantor, with you, as principal debtor and not as surety will duly pay or cause to be paid all amounts payable under this Charge on the days and times and in the manner provided for payment of the same;
- (b) The Guarantor unconditionally guarantees full performance and discharge by you of all your obligations under the provisions of this Charge at the times and in the manner provided in this Charge;
- (c) The Guarantor indemnifies and saves us harmless from and against all losses, damages, costs and expenses which we may sustain, or incur or be or become liable for by reason of:
  - i) the failure for any reason whatsoever by you to pay the amounts payable under this Charge or to do and perform any other act, matter or thing required by the provisions of this Charge; or
  - ii) any act, action or proceeding, of or by us, for, or in connection with, the recovery of the amounts payable under this Charge by you, or enforcing the performance by you or any other person liable under this Charge or any act, matter or thing required by the provision of this Charge;
- (d) We shall not be obliged to proceed against you or any other person liable under this Charge or to enforce or exhaust any security before proceeding to enforce the obligations of the Guarantor set out in this paragraph and that enforcement of such obligations may take place before, after or contemporaneously with enforcement of any of your debts or obligations under this Charge or the enforcement of any security for any such debt or obligation;
- (e) We may, without notice to and the consent or approval of the Guarantor, grant extensions of time for payment, make renewals, increase, vary and amend the Interest Rate, the Principal Amount and other terms of the Charge and the indebtedness secured by the Charge, release the whole or any part of the Property or other security from this Charge, or otherwise deal with you, any of the indebtedness secured by this Charge or the Property or other security as we see fit without releasing or lessening the liability of the Guarantor;
- (f) The Guarantor agrees to be bound by each such renewal, variation and amendment of any terms of the Charge we make with you and each reference to the Charge in this Guarantee paragraph shall mean the Charge as so renewed and amended from time to time, regardless of whether made with or without the knowledge, consent or approval of the Guarantor;
- (g) No delay or carelessness or neglect by us in asserting any of our rights, nor the loss of any right by operation of law, nor the loss or destruction of any security, nor the lack of validity or enforceability of all or any part of this Charge or any other security held for or any document evidencing any part of the indebtedness or liability secured by the Charge will in any way release or lessen the liability of the Guarantor;
- (h) The Guarantor has read this Charge and is fully aware of its terms and in particular, the terms of this paragraph;

- (i) Where there is more than one Guarantor, each Guarantor is jointly and severally responsible under this guarantee with the other Guarantor(s) and you;
- (j) We may serve notice on the Guarantor and any notice to the Guarantor shall be deemed received in the same manner as provided for notice to you in this Charge.

50. **Consent of Spouse.**

By signing this mortgage each spouse of a borrower consents to this mortgage and releases any interest which he or she may have in the property covered by this mortgage as far as necessary to give effect to our rights under this mortgage.

51. **Signing this Mortgage.**

If you have read this mortgage and you agree to its terms, sign in the space provided for your signatures. Witnesses must sign in the spaces provided for the witnesses' signatures. Necessary legal seals should be added next to your signatures.

_____ (Witness)	_____(Seal) (Borrower)
_____ (Witness)	_____(Seal) (Borrower)
_____ (Witness)	_____(Seal) (Spouse of Borrower)
_____ (Witness)	_____(Seal) (Guarantor)
_____ (Witness)	_____(Seal) (Guarantor)



**AFFIDAVIT OF LEGAL AGE AND SPOUSAL STATUS**

I/We, \_\_\_\_\_,  
of \_\_\_\_\_,  
in the \_\_\_\_\_ of \_\_\_\_\_, make oath and say:

1. **THAT** we are the Mortgagors in the foregoing Mortgage and are of the full age of nineteen (19) years.
  
2. **THAT** we are now, and intend to be at the date of closing, residents of Canada within the meaning of the *Income Tax Act* (Canada).
  
3. **THAT** for the purpose of this our Affidavit, "spouse" means either of a man or a woman who:
  - (i) are married to each other;
  - (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity; or
  - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabitating or have cohabited within the preceding year.
  
4. **THAT** for the purpose of this Affidavit "spouse" includes an individual who is a party to a registered domestic-partner declaration made in accordance with Section 53 of the *Vital Statistics Act* but does not include a former domestic partner.
  
5. **THAT** as of the date hereof, we are the spouses of each other and have no other spouse as defined herein nor any former domestic partner with the rights contemplated by Section 55 of the *Vital Statistics Act* or any former spouse with rights under the *Matrimonial Property Act*.
  
6. **THAT** we acknowledge that we executed the foregoing instrument under seal on the date of this affidavit.
  
7. **THAT** this acknowledgment is made pursuant to s. 31(a) of the *Registry Act*, R.S.N.S. 1989, c. 392 for the purpose of registering the instrument.

**SWORN TO BEFORE ME**, at Halifax, )  
Province of Nova Scotia, this \_\_\_\_ day of )  
, before me: )  
) \_\_\_\_\_ )  
) \_\_\_\_\_ )  
\_\_\_\_\_  
A Barrister of the Supreme Court of )  
Nova Scotia )



