

The following set of standard charge terms shall be deemed to be included in every charge/mortgage that so provides and references the filing number of this set, as provided in section 9 of the *Land Registration Reform Act* (Ontario); and section 225 of the *Land Title Act* (British Columbia).

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**INDEX**

Article 1 – Definitions.....2

Article 2 – Mortgage and Redemption .....3

Article 3 – Interest on Other Amounts.....3

Article 4 – Payments.....3

Article 5 – Title and Condition of Lands.....4

Article 6 – Encumbrances.....5

Article 7 – Taxes .....5

Article 8 – Insurance.....5

Article 9 – Expenses and Costs.....5

Article 10 – Leasehold Provisions .....6

Article 9 – Expenses and Costs (Continued).....6

Article 11 – Hazardous Substances.....7

Article 12 – Discharge or Transfer of Mortgage.....8

Article 13 – Events of Default .....9

Article 14 – Enforcement and Collection .....10

Article 15 – Receiver .....10

Article 16 – Advances .....11

Article 17 – Strata Title Provisions .....12

Article 17B – Condominium Property Provisions.....12

Article 18 – Assignment of Rents .....13

Article 19 – Subdivision and Partial Discharges.....15

Article 20 – Residence of the Mortgagor .....15

Article 21 – Notices and Demands .....15

Article 22 – Miscellaneous.....16

Article 23 – Interpretation .....16

## Article 1 – Definitions

In this Mortgage unless the context otherwise requires:

- 1.1 “Business Day”** means, except in Section 21.1, each day Monday through Friday inclusive other than a day that is a statutory holiday in the province of registration;
- 1.2 “Financial Institution”** means the Lender or Chargee, as applicable, described in the Mortgage Form;
- 1.3 “Debts and Liabilities”** means
- all indebtedness, both present and future, and whether arising on current account or otherwise, of the Mortgagor to the Financial Institution together with interest thereon, including every advance and readvance and every unpaid balance thereof, by the Financial Institution to the Mortgagor, whenever made, and interest thereon to the same extent as if the advance or readvance had been made at the time of creation of this Mortgage, and
  - all liabilities, present and future, direct or indirect, absolute or contingent, of the Mortgagor to the Financial Institution, and
  - all obligations of the Mortgagor to the Financial Institution, whether or not contained in this Mortgage;
- 1.4 “Environmental Laws”** means all present and future federal, provincial, or municipal laws, ordinances, bylaws, codes, rules, regulations, orders, or decrees regulating, relating to, or imposing liability or standards of conduct with respect to, Hazardous Substances;
- 1.5 “Event of Default”** means an event described in Section 13.1;
- 1.6 “Fixtures”** means all buildings, structures, machinery, plant, and improvements that are now, or that are hereafter, put upon, attached to, affixed to, or installed in or upon the Lands and however installed or attached to the Lands (including being attached only by their own weight) and including, without limitation:
- all plumbing, heating, cleaning, and air conditioning equipment including furnaces, boilers, water heaters, and vacuum systems;
  - all appliances including refrigerators, ranges, dishwashers, clothes washers, clothes dryers, garbage disposals, and garbage compactors;
  - all floor coverings including all carpets and carpeting;
  - all doors, windows, and window coverings, including storm doors, storm windows, window screens, screen doors, drapes, blinds, awnings, and shutters; and
  - in the case of agricultural property, all barns, sheds, silos, granaries, cages, coups, pens, and greenhouses and all equipment installed in any of them;
- 1.7 “Hazardous Substances”** means all hazardous or toxic materials, pollutants, effluents, contaminants, radioactive materials, flammable explosives, chemicals known to cause cancer or reproductive toxicity, emissions, wastes and all other chemicals, materials and substances, the handling, storage, release, transportation, or disposal of which is or becomes prohibited, limited, or regulated by any federal, provincial, or municipal authority or which, even if not so regulated, is or becomes known to pose a hazard to the health or safety of any person, including, without limitation:
- asbestos;
  - petroleum and petroleum by-products;
  - urea formaldehyde foam insulation;
  - polychlorinated biphenyls;
  - all substances now or hereafter designated as “waste”, “hazardous substances”, “hazardous materials”, “hazardous waste”, “contaminants”, “dangerous substances”, “industrial waste”, “liquid wastes”, “pollutants” and/or “toxic substances”, or a similar designation, under any federal, provincial and/or municipal legislation, regulation, bylaw, or ordinance having application to the Mortgagor or any of its property;
- 1.8 “Interest Rate”** means the rate of interest set out in the Mortgage Form;
- 1.9 “Item”** for the purposes of registration in British Columbia, means a section, item, or box on the Mortgage;
- 1.10 “Lands”** means the lands and premises or properties, as applicable, described in the Mortgage Form including every incidental right, benefit, or privilege attaching to that land or running with it and all buildings, Fixtures, and improvements that are now on or later placed or constructed on that land;
- 1.11 “Lease”** (except in Article 18) means, with respect to any part of the Lands in which the Mortgagor has a leasehold interest, the lease creating the leasehold interest (and renewals or replacements of such lease);
- 1.12 “Mortgage Form”** for the purposes of registration in British Columbia, means a Mortgage - Part 1 (*Land Title Act* - Form B) that refers in Item 9 to the filing number of these Standard Mortgage Terms and for the purposes of registration in Ontario, the Charge/Mortgage to which these Standard Mortgage Terms are attached;
- 1.13 “Mortgagor”** means
- if only one name appears as the borrower or chargor, as applicable, in the Mortgage Form, the person named, or
  - if more than one name appears as the borrower or chargor, as applicable in the Mortgage Form, all those persons named together and each of those persons separately;
- 1.14 “Obligations”** means, at any particular time:
- all Debts and Liabilities that the Mortgagor has, before the particular time, acknowledged in writing to, or agreed to in writing with, the Financial Institution are to be secured by this Mortgage, and
  - all Debts and Liabilities that the Financial Institution, in its sole and absolute discretion, has, by notice in writing to the Mortgagor before the particular time, elected to add to the Obligations and be secured by this Mortgage;

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## Article 1 – Definitions (Continued)

- 1.15 “Other Amounts”** means all amounts owed by the Mortgagor to the Financial Institution by virtue only of this Mortgage;
- 1.16 “Permitted Encumbrances”** means the encumbrances that the Financial Institution has agreed to in writing;
- 1.17 “Prime Rate”** means that per annum rate of interest designated by the Financial Institution from time to time as the reference rate to be used as the basis to determine the rate of interest payable on variable rate Canadian dollar loans made by the Financial Institution;
- 1.18 “Taxes”** means all taxes and assessments of every kind that the Mortgagor is required by law to pay to any government or governmental authority by reason of the Mortgagor’s ownership of, or interest in, the Lands or any machinery or equipment on the Lands (including all interest and penalties thereon);
- 1.19 “this Mortgage”** means, collectively, the Mortgage Form, the schedule or schedules attached to the Mortgage Form, and these Standard Mortgage Terms.

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## Article 2 – Mortgage and Redemption

### 2.1 Mortgage

In consideration of the Financial Institution permitting the Mortgagor to incur Obligations:

- a) if the Mortgagor has a freehold interest in the Lands, the Mortgagor transfers and mortgages all the Mortgagor’s freehold interest in the Lands to the Financial Institution; and
- b) if the Mortgagor has a leasehold interest in the Lands, the Mortgagor transfers, subleases and mortgages each Lease and the leasehold or other interest created pursuant to each Lease in the Lands to the Financial Institution each for a term of one day less than the unexpired term of that Lease.

### 2.2 Quiet Possession

Until an Event of Default occurs, the Financial Institution will not interfere with the Mortgagor’s use and enjoyment of the Lands.

### 2.3 Acquiring Greater Interest

If the Mortgagor acquires any greater or additional interest in the Lands, the Mortgagor by this Mortgage transfers and mortgages that greater or additional interest to the Financial Institution without any further act or deed of the Mortgagor or of the Financial Institution.

### 2.4 Redemption

When the Financial Institution has delivered a discharge of this Mortgage to the Mortgagor, this Mortgage will no longer have effect and the Financial Institution’s interest in the Lands will automatically return to the Mortgagor.

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## Article 3 – Interest on Other Amounts

### 3.1 Pay Interest

The Mortgagor will pay interest to the Financial Institution on Other Amounts at the Interest Rate, compounded monthly, not in advance.

### 3.2 Interest Starts

Interest starts to run on Other Amounts on the day that the money is advanced by the Financial Institution.

### 3.3 Compound Interest

Any interest that has not been paid will be added to the Other Amounts at the end of the compounding period described in Section 3.1 and will then bear interest at the Interest Rate compounded monthly, not in advance. This will be done both before and after maturity, default, and judgment.

### 3.4 Rate Changes

Whenever the Prime Rate changes, the rate constituting the Interest Rate will change by an equal amount, without notice to the Mortgagor.

### 3.5 Certificate of Rate

A certificate of any officer (including a Branch Manager) of the Financial Institution stating what the Prime Rate was at any day or during any period will be conclusive evidence of the Prime Rate on that day or during that period.

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## Article 4 – Payments

### 4.1 Promise to Pay

Except as specifically agreed to in writing by the Financial Institution, the Mortgagor promises to pay the Obligations to the Financial Institution on demand.

### 4.2 Place of Payment

The Mortgagor will make all payments at the address of the Financial Institution set forth in the Mortgage Form or such other address as the Financial Institution may, by notice in writing, advise the Mortgagor.

### 4.3 Time of Payments

Any amount paid to the Financial Institution under this Mortgage that is received after 2:00 pm (local time in the place of registration) on a Business Day or is received on a day that is not a Business Day will be considered received on the next Business Day on which the Financial Institution’s office at the address where the payment was made is open for business.

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## Article 4 – Payments (Continued)

### 4.4 Application of Payments

The Financial Institution may apply any payments or other monies received from the enforcement of this Mortgage in such order as the Financial Institution, in its sole discretion, determines.

### 4.5 Records

The Financial Institution's records as to the date and amount of any advances to, or liabilities otherwise incurred on behalf of, the Mortgagor and as to the date and amount of any payment hereunder shall constitute *prima facie* evidence of such dates and amounts.

### 4.6 Prepayment Rights

Except as specifically agreed to in writing by the Financial Institution, none of the Obligations may be paid by the Mortgagor before they are due.

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## Article 5 – Title and Condition of Lands

### 5.1 Title to Lands

The Mortgagor represents and warrants that:

- a) if the interest mortgaged is fee simple, the Mortgagor is the registered owner of the Lands in fee simple and has the right to transfer and mortgage the Mortgagor's interest in the Lands to the Financial Institution; and
- b) if the interest mortgaged is leasehold, the Mortgagor has a valid and subsisting leasehold estate as lessee under each Lease and has the right to sublease and mortgage the Lands to the Financial Institution.

### 5.2 Condition of Lands

The Mortgagor will:

- a) keep the Lands and any buildings, Fixtures, or other improvements thereon in good condition and repair;
- b) not alter, remodel, rebuild, remove, or demolish any of the buildings or other improvements on the Lands without the prior written consent of the Financial Institution;
- c) not use the Lands, or permit the Lands to be used, for any purpose other than the present use or such other use as is first approved by the Financial Institution in writing;
- d) not commit or permit any act of waste on the Lands;
- e) promptly repair any damage to the Lands and any buildings or other improvements; and
- f) maintain any permitted non-conforming uses of the Lands and otherwise cause the buildings and improvements on the Lands at all times to comply with all federal, provincial, municipal, and other lawful requirements and will forthwith notify the Financial Institution of any order of any lawful authority relating to the buildings and improvements on the Lands.

### 5.3 Inspection

The Mortgagor authorizes the Financial Institution and its authorized representatives to enter upon the Lands and to enter any buildings on the Lands at any time:

- a) to inspect the Lands and the condition of the buildings on the Lands; and
- b) to conduct any environmental testing, site assessment, investigation, or study that the Financial Institution or its authorized representatives deem necessary, including taking soil and ground water samples and creating bore holes in order to obtain such samples.

### 5.4 Mortgagor's Agreements Regarding Inspections

The Mortgagor agrees:

- a) to pay the costs of any environmental testing site assessment, investigation, or study undertaken pursuant to Section 5.3b) above, and
- b) that no entry on the Lands by the Financial Institution or its authorized representatives pursuant to Section 5.3 will deem the Financial Institution or its authorized representatives to be in possession, management, or control of the Lands or any part thereof.

### 5.5 Not Sell or Lease

The Mortgagor will not, without the prior written consent of the Financial Institution, sell, agree to sell, lease, agree to lease, or otherwise dispose or agree to dispose of the Lands (or the Mortgagor's interest therein) or any part or parts thereof. The Mortgagor will also ensure that any permitted lessee of the Lands or part thereof shall not assign the lease or sublease the Lands or part thereof without, in either case, the prior written consent of the Financial Institution.

### 5.6 No Further Encumbrances

The Mortgagor will not, without the prior written consent of the Financial Institution:

- a) grant any mortgage, legal or equitable, of the Lands (or the Mortgagor's interest therein) or any part or parts thereof, nor
- b) except as specifically permitted by the terms of this Mortgage, permit the Lands (or the Mortgagor's interest therein) to be encumbered in any manner whatsoever.

### 5.7 Builders or Construction Lien Legislation

If the Mortgagor undertakes or authorizes any alteration, remodeling, rebuilding, or other construction on the Lands, the Mortgagor will comply with the requirements of the applicable builders or construction lien legislation in the province of registration and will, upon request by the Financial Institution, provide the Financial Institution with sufficient information to enable the Financial Institution to determine whether or not the Mortgagor is complying with the requirements of the applicable builders or construction lien legislation.

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## Article 6 – Encumbrances

### 6.1 Other Encumbrances

The Mortgagor covenants and agrees that, if there are at any time any other encumbrances against the title to the Lands, other than Permitted Encumbrances, the Mortgagor will immediately cause those encumbrances to be discharged from the title to the Lands.

### 6.2 Permitted Encumbrances

The Mortgagor covenants and agrees to fulfil all of the Mortgagor's obligations under each of the Permitted Encumbrances.

### 6.3 Builders' or Construction Liens

Save as specifically provided herein, the Mortgagor will not allow any claims of builders' liens to remain filed against the Lands at any time. If a claim of lien is filed against title to the Lands, the Mortgagor may permit the claim of lien to remain on the title to the Lands only if the Mortgagor immediately:

- a) disputes the validity of the claim of lien; and
- b) gives the Financial Institution reasonable security for payment of the claim of lien if it is found to be valid.

If the claim of lien is found to be valid and the Mortgagor does not then immediately have the lien removed from title to the Lands, the Financial Institution may use the security provided to it by the Mortgagor to pay the lien and have it removed from the title to the Lands.

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## Article 7 – Taxes

### 7.1 Payment of Taxes

The Mortgagor will pay all Taxes before they are overdue.

### 7.2 Proof of Payment

The Mortgagor will give the Financial Institution proof of payment of Taxes on or before December 31 in each year.

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## Article 8 – Insurance

### 8.1 Insurance Requirements

The Mortgagor will insure, and keep insured with an insurer acceptable to the Financial Institution, all buildings, Fixtures, and improvements on the Lands to their full insurable value on a replacement cost basis against loss or damage by fire and against all other risks and hazards the Financial Institution may require.

### 8.2 Policy

The insurance policy will:

- a) be in a form acceptable to the Financial Institution;
- b) contain a mortgage clause acceptable to the Financial Institution; and
- c) name the Financial Institution as a mortgagee and as the person to receive the proceeds of loss after paying amounts payable to holders of prior charges.

### 8.3 Copy

The Mortgagor will promptly give a copy of each insurance policy and each renewal policy or certificate to the Financial Institution.

### 8.4 Loss

If any insured-against loss or damage occurs, the Mortgagor will immediately do everything necessary to enable the Financial Institution to receive payment of the insurance proceeds and will pay all costs in connection therewith.

### 8.5 Insurance Proceeds

The Financial Institution may apply the insurance proceeds in any of the following ways as the Financial Institution in its sole discretion determines:

- a) to pay for repairing the damage to the buildings, Fixtures or other improvements;
- b) to pay the proceeds to the Mortgagor;
- c) to pay the proceeds to any other person having a claim on the title to the Lands; and
- d) to pay any of the Obligations, whether or not these amounts are then payable,

and the Mortgagor waives any statutory right to require the insurance proceeds to be applied in any particular manner, including the provisions of any applicable insurance Laws in the province of registration.

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## Article 9 – Expenses and Costs

### 9.1 Payment by the Financial Institution

The Financial Institution may, but is not obliged to, pay:

- a) any overdue Taxes;
- b) the costs of preparation and registration of this Mortgage;
- c) the costs of enforcing this Mortgage;
- d) any payments the Mortgagor has, in this Mortgage, agreed to pay but has not paid; and
- e) the cost of observing and performing any other covenant or agreement of the Mortgagor contained in this Mortgage which has not been observed and kept by the Mortgagor.

### 9.2 Reimbursement

The Mortgagor will immediately reimburse the Financial Institution on demand for any amount paid under Section 9.1.

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## Article 9 – Expenses and Costs (Continued)

### 9.3 Other Amounts

Until paid by the Mortgagor to the Financial Institution, all Other Amounts will:

- a) be added to the Obligations;
- b) bear interest at the Interest Rate;
- c) be secured by this Mortgage; and
- d) be a charge on the Lands.

### 9.4 Costs

In any court proceedings taken to enforce this Mortgage, the Financial Institution will be entitled to special costs. If some of the costs recovered from the Mortgagor in court proceedings duplicate some of the expenses incurred by the Financial Institution and owing to the Financial Institution under Section 9.2, the Financial Institution will reduce the balance owing under Section 9.2 by the amount of the duplicate costs.

### 9.5 Reinstatement

If, in any court proceedings taken by the Financial Institution to enforce this Mortgage, the Mortgagor is relieved from the consequences of any default, the Financial Institution will be entitled to special costs with respect to those court proceedings.

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## Article 10 – Leasehold Provisions

### 10.1 Leasehold Provisions

The provisions of this Article 10 only apply if the Mortgagor's interest in the Lands or in a part of the Lands is a leasehold interest.

### 10.2 Status

The Mortgagor represents and warrants that:

- a) on the date of execution of this Mortgage no default has occurred and is occurring under any Lease;
- b) each Lease is a valid and subsisting lease for the term set out in that Lease;
- c) all rents and other monies payable under each Lease have been paid in full; and
- d) if the consent of the lessor or landlord is required under any Lease in order for the Mortgagor to rightfully mortgage the leasehold interest created by the Lease to the Financial Institution, the Mortgagor has received that consent.

### 10.3 Covenants

The Mortgagor covenants and agrees that the Mortgagor:

- a) will observe and perform all obligations and covenants contained in each Lease;
- b) will not surrender any Lease or permit any Lease to be terminated;
- c) will not agree to any amendment to any Lease without the Financial Institution's prior written consent;
- d) will promptly give the Financial Institution a copy of each notice, demand, or other document received by the Mortgagor in connection with any Lease;
- e) will exercise any rights of renewal in each and every Lease; and
- f) will hold the last day of the term of each Lease in trust for the Financial Institution to do with as the Financial Institution directs but subject to the same right of redemption and other rights as are hereby given to the Mortgagor with respect to the sublease term hereby granted and the Mortgagor agrees that the Financial Institution may at any time, by deed, remove the Mortgagor or any other person from being the trustee of the last day of each Lease under the trust hereinbefore declared and on the removal of the Mortgagor, or any future trustee of the Lease, may, by deed, appoint a new trustee or trustees in the Mortgagor's place.

### 10.4 Rent

This Mortgage of the Mortgagor's leasehold interest in the Lands is by way of sublease and the rent payable under this sublease shall be \$10 per year payable by the Financial Institution to the Mortgagor upon demand by the Mortgagor, during the currency of this Mortgage.

### 10.5 Attorney

The Mortgagor hereby irrevocably appoints the Financial Institution as the Mortgagor's substitute to be the Mortgagor's attorney during the continuance of this Mortgage. If an Event of Default occurs, the Financial Institution may, for and on behalf of the Mortgagor and upon the notice, if any, provided for in Section 14.1d), assign the Lease and convey the balance unexpired of the term granted by the Lease as the Financial Institution shall at any time direct, and in particular, upon any sale made by the Financial Institution under the power of sale herein contained, the Financial Institution, for and on behalf of the Mortgagor, may assign the Lease and convey the balance unexpired of the term granted by the Lease to the purchaser.

### 10.6 Last Day of Term

The Mortgagor will, with respect to each Lease, at the request of the Financial Institution, but at the cost, charge, and expense of the Mortgagor, grant and assign unto the Financial Institution, or whom it may appoint, the last day of the term of the Lease and any renewal or substituted term; and, if the Financial Institution makes any sale under the power of sale herein contained, the Mortgagor shall stand seized and possessed of the Lands subject to such Lease for the last day of the term of that Lease and of any renewal or substituted term, and of all rights of renewal in trust for the purchaser or purchasers, its or their heirs, executors, administrators, successors, and assigns.

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## Article 10 – Leasehold Provisions (Continued)

### 10.7 Value of Fixtures

If the value of any Fixtures on the Lands should become payable to the Mortgagor pursuant to the terms of a Lease, upon the same being paid to the Mortgagor, the amount so paid shall, if the same is by the terms of the Lease not required to be expended on the Lands, become due and be paid by the Mortgagor to the Financial Institution on account of the Obligations.

### 10.8 Renewal of Lease

The Mortgagor further covenants with the Financial Institution that, if the Mortgagor shall refuse or neglect to renew a Lease or any renewals thereof to be hereafter granted, and to pay the fees, costs, charges and expenses incidental to and payable upon such renewals, then, and as often as it shall happen, the Financial Institution may, if it thinks proper, effect such renewals in its own name or otherwise, and every renewal of the Lease and the Lands thereby demised shall remain and be security to the Financial Institution as well for payment of all monies paid by it for such renewal and its costs, charges, and expenses, as for the Obligations.

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## Article 11 – Hazardous Substances

### 11.1 Environmental Representations and Warranties

To the best of the Mortgagor's knowledge, after due inquiry and investigation, except as previously disclosed to the Financial Institution in writing:

- a) the Lands have been, and continue to be, owned by the Mortgagor and all predecessors in title in material compliance with all applicable Environmental Laws;
- b) there have been no past, and there are no pending or threatened:
  - i) claims, complaints, notices, or requests for information received by or known to the Mortgagor with respect to any alleged violation of any applicable Environmental Laws;
  - ii) complaints, notices, or inquiries to the Mortgagor regarding potential liability under any applicable Environmental Laws; or
  - iii) claims, complaints, notices, or requests to the Mortgagor requiring investigation or remediation under any applicable Environmental Laws that, singularly or in the aggregate, have, or may be reasonably expected to have, a material adverse effect upon the Lands or the Mortgagor's business carried on upon the Lands;
- c) there have been no releases or threatened releases of Hazardous Substances in violation of any applicable Environmental Laws at, on, under, or adjacent to any of the Lands or in the groundwater beneath any of the Lands or any adjacent lands, singularly or in the aggregate, which have or which may be reasonably expected to have a material adverse effect on any of the Lands or the Mortgagor's business carried on upon the Lands;
- d) the Mortgagor has been issued and is in material compliance with all permits, certificates, approvals, licences, and other authorizations relating to environmental matters that are required pursuant to any Environmental Laws and necessary for the Mortgagor's business carried on upon the Lands;
- e) there are no underground storage tanks, or water, gas, or oil wells, active or abandoned, including petroleum storage tanks, on, under or adjacent to any of the Lands that, singularly or in the aggregate, may be reasonably expected to have a material adverse effect upon any of the Lands or the Mortgagor's business carried on upon the Lands; and
- f) no conditions exist at, on, under, or adjacent to any of the Lands which, with the passage of time or the giving of notice, or both, would give rise to liability under any Environmental Laws.

### 11.2 Notice of Hazardous Substances Violations

The Mortgagor will promptly notify the Financial Institution (and provide whatever information the Financial Institution may reasonably request with respect thereto):

- a) upon becoming aware of the occurrence of any violation of any Environmental Laws or permit related to Hazardous Substances, or the receipt of notice of any alleged violation or the receipt of a compliance order;
- b) of the Mortgagor's intended response thereto; and
- c) of all other communications with federal, provincial, or municipal officials or agencies relating to Hazardous Substances.

### 11.3 Hazardous Substances Indemnity

The Mortgagor here by agrees, at its sole cost and expense, to indemnify, protect, hold harmless and defend (with counsel of the Financial Institution's choice) the Financial Institution and its successors and as signs and their respective directors, officers, agents, attorneys, and employees (collectively the "**Indemnitees**" and individually an "**Indemnitee**") from and against all claims, demands, damages, losses, liabilities, obligations, penal ties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements, and expenses (including, without limitation, fees, disbursements, and costs of lawyers, environmental consultants, and experts), and all foreseeable and unforeseeable consequential and other damages of any kind or of any nature whatsoever (collectively, "**Losses**") which may at any time be imposed upon, incurred, or suffered by or asserted or awarded against any Indemnitee directly or indirectly relating to or arising from any Hazardous Substance which originated on or from any of the Lands at any time, past, present, or future (collectively "**Environmental Matters**"), including, without limitation:

- a) any past, present, or future presence of any Hazardous Substance on, in, under, or affecting all or any portion of any of the Lands or on, in, under, or affecting all or any portion of any property adjacent or proximate to any of the Lands;
- b) any past, present, or future storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal, or transportation of any Hazardous Substance on, in, under or from any of the Lands;
- c) any violation at any time of any Environmental Laws;

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## Article 11 – Hazardous Substances (Continued)

- d) the failure of the Mortgagor to properly complete, obtain, submit, or file any notice, permit, licence, authorization, covenant, or similar item relative to any Environmental Matters described herein in connection with any of the Lands or the ownership, use, operation, or enjoyment thereof;
- e) the extraction, removal, containment, transportation, or disposal of any Hazardous Substance from any portion of any of the Lands or any other property adjacent or proximate to any of the Lands;
- f) any past, present, or future presence, operation, closure, abandonment, or removal from any of the Lands of any storage tank which at any time contained any Hazardous Substances;
- g) the implementation and enforcement of any monitoring, notification, or other precautionary measures which may at any time become necessary to protect against the release or discharge of Hazardous Substances on, in, under, or affecting any of the Lands or into the air, any body of water, any other public domain, or any property adjacent or proximate to any of the Lands;
- h) any failure of any Hazardous Substances generated or moved from any of the Lands to be removed, contained, transported, and disposed of in compliance with all applicable Environmental Laws; or
- i) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substances or violation of any Environmental Laws occurring or allegedly occurring at any time.

### 11.4 Limitation on Indemnity

The indemnity in Section 11.3 will not apply to:

- a) Losses that would have been imposed upon, incurred, or suffered by or asserted or awarded against any Indemnitee even if the Mortgagor had not granted this Mortgage, or
- b) Losses incurred or suffered by an Indemnitee by virtue of the settlement by agreement of the Indemnitee of a claim against the Indemnitee unless the Mortgagor has agreed to the settlement in writing,

and the Mortgagor shall have the onus of proving that any particular Losses are Losses to which this Section applies.

### 11.5 Survival of Hazardous Substances Indemnity

The Indemnity in Section 11.3 is given solely to protect the Indemnitees against Losses and not as additional security for, or as a means of repayment of, the Obligations. Accordingly, the obligations of the Mortgagor under this Article 11 will be independent of, and will not be measured or affected by:

- a) any amounts at any time secured by this Mortgage;
- b) the sufficiency or insufficiency of the security of this Mortgage;
- c) any consideration given by the Financial Institution or any other party in any realization proceedings to acquire any property mortgaged or charged by this Mortgage;
- d) the discharge or repayment in full of the Obligations;
- e) the discharge, assignment, transfer, or release of this Mortgage by the Financial Institution; or
- f) any exculpatory provisions in any laws or documentation limiting the Financial Institution's rights to recover a deficiency judgment.

### 11.6 Environmental Audit

The Mortgagor will, if requested by the Financial Institution cause, an environmental audit to be made of the Lands by a person or firm approved by the Financial Institution, at the Mortgagor's sole expense, and which audit will be of such scope as the Financial Institution in its absolute discretion, acting reasonably, may require.

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## Article 12 – Discharge or Transfer of Mortgage

### 12.1 Discharge of Mortgage

If, at anytime:

- a) there are no Obligations outstanding and secured by this Mortgage,
- b) any obligations of the Financial Institution to make advances that will be secured by this Mortgage have been terminated, and
- c) the Mortgagor is not in default under this Mortgage,

then, at the request of the Mortgagor, the Financial Institution will, within a reasonable time after such request, prepare and sign a discharge of this Mortgage (the "**Discharge of Mortgage**"). The Financial Institution will give the Discharge of Mortgage to the Mortgagor when the Mortgagor pays to the Financial Institution the following fees and expenses:

- x) the Financial Institution's standard fee for signing a discharge of mortgage, and
- y) all of the Financial Institution's expenses of preparing and signing the Discharge of Mortgage.

The foregoing fees and expenses will be payable by the Mortgagor only if, and to the extent that, the Financial Institution is not prohibited by law from charging fees and recovering its expenses in connection with a discharge of this Mortgage.

### 12.2 Registration of Discharge of Mortgage

The Mortgagor will be responsible for registering the Discharge of Mortgage to remove this Mortgage from the title to the Lands.

### 12.3 Required Transfer of Mortgage

If the Mortgagor is entitled to require that the Financial Institution transfer this Mortgage to another person, the Financial Institution will execute and deliver a transfer of this Mortgage (the "**Transfer of Mortgage**") to the other person upon the written direction of the Mortgagor to that effect and upon payment to the Financial Institution of all of the following amounts:

- a) the Obligations outstanding and secured by this Mortgage (including any prepayment fees),

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## Article 12 – Discharge or Transfer of Mortgage (Continued)

- b) the Financial Institution's standard fee for signing a transfer of a mortgage, and
- c) all of the Financial Institution's expenses of preparing (or amending) and signing the Transfer of the Mortgage.

### 12.4 Voluntary Transfer of Mortgage

The Financial Institution may transfer this Mortgage to any person at any time and upon such terms as the Financial Institution may decide. If the Financial Institution transfers this Mortgage, the person to whom it is transferred will have all the powers, rights, and remedies available to the Financial Institution in this Mortgage and the definition of "Financial Institution" will be amended to mean the person to whom the Financial Institution has transferred this Mortgage.

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## Article 13 – Events of Default

### 13.1 Events of Default

The following are events of default under this Mortgage:

- a) **Default** – if the Mortgagor fails to observe or perform something hereby required to be done or some covenant or condition hereby required to be observed or performed;
- b) **Permits To Be Done** – if the Mortgagor does, or permits to be done, anything that the Mortgagor has herein agreed not to do or permit to be done;
- c) **Misrepresentation** – if any representation or warranty given by the Mortgagor (or any director or officer thereof if the Mortgagor is a corporation) is untrue in any material respect;
- d) **Winding Up** – if the Mortgagor is a corporation and if an order is made or a resolution passed for the winding-up of the Mortgagor, or if a petition is filed for the winding-up of the Mortgagor;
- e) **Bankruptcy** – if the Mortgagor commits or threatens to commit any act of bankruptcy or becomes insolvent or makes an assignment or proposal under the *Bankruptcy and Insolvency Act* or a general assignment in favour of its creditors or a bulk sale of its assets, or if a bankruptcy petition is filed or presented against the Mortgagor;
- f) **Arrangement** – if the Mortgagor is a corporation and if any proceedings with respect to the Mortgagor are commenced under the *Companies' Creditors Arrangement Act*;
- g) **Execution, Etc.** – if any execution, sequestration, extent, or any other process of any Court become enforceable against the Mortgagor or if a distress or analogous process is levied against the property of the Mortgagor or any part thereof;
- h) **Other Indebtedness** – if the Mortgagor permits any sum which has been admitted as due by the Mortgagor or is not disputed to be due by the Mortgagor and which forms, or is capable of being made, a charge upon the Lands in priority to this Mortgage to remain unpaid after proceedings have been taken to enforce the same as a prior charge;
- i) **Default in Other Payment** – if the Mortgagor defaults under documentation with respect to any other loan made by the Financial Institution to the Mortgagor, whether or not such loan constitutes part of the Obligations, or made by any other lender to the Mortgagor;
- j) **Sale or Lease** – if, without the prior written consent of the Financial Institution, the Mortgagor sells, agrees to sell, leases, agrees to lease, or otherwise disposes or agrees to dispose of the Lands or any part or parts thereof or any interest therein;
- k) **Mortgage or Encumbrance** – if, without the prior written consent of the Financial Institution, the Mortgagor grants or agrees to grant any further mortgage of the Lands or any part or parts thereof or any interest therein or otherwise permits the Lands to be encumbered in any manner other than by Permitted Encumbrances;
- l) **Mortgagor Dies** – If the Mortgagor is an individual and the Mortgagor dies (or if the Mortgagor is more than one individual and the last survivor of those individuals dies);
- m) **Lands Abandoned** – if the Lands (or any part of the Lands) are abandoned or left unoccupied for more than 30 days;
- n) **Lands Expropriated** – if the Lands (or any part of the Lands) are expropriated;
- o) **Unlawful Purpose** – if the Lands (or any part of the Lands) are used for any unlawful purpose or any unlawful activity is carried on in or on the Lands, whether with or without the consent or knowledge of the Mortgagor; or
- p) **Change of Control** – if the Mortgagor is a corporation and if, without the prior written consent of the Financial Institution, there is, in the opinion of the Financial Institution, a change of effective control of the Mortgagor.

### 13.2 Acceleration

Upon the occurrence of an Event of Default, unless the Financial Institution waives the Event of Default pursuant to Section 13.3, all Obligations will immediately become due and payable and the security of this Mortgage will become enforceable.

### 13.3 Waiver

The Financial Institution may waive an Event of Default but that waiver will not extend to or in any way affect any subsequent Event of Default and the Financial Institution's rights resulting therefrom.

### 13.4 Contingent Liabilities

This Mortgage may secure contingent obligations or liabilities (the "**Contingent Liabilities**") that may not have become fixed and absolute when the Financial Institution is entitled to demand payment of the Obligations and in those circumstances and for the purpose of demanding payment of the Obligations:

- a) the Financial Institution may estimate the amount of the Contingent Liabilities and the estimated amount will be due and payable by the Mortgagor to the Financial Institution;
- b) the estimated amount of Contingent Liabilities due and payable pursuant to (a) above will form part of the Other Amounts and, accordingly, the amount required to redeem this Mortgage will include the estimated amount of Contingent Liabilities;

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## Article 13 – Events of Default (Continued)

- c) the amount of estimated Contingent Liabilities received by the Financial Institution pursuant to this Section will be held by the Financial Institution as collateral security for the payment to the Financial Institution of the Contingent Liabilities if and when they become fixed and absolute liabilities; and
- d) if any of the estimated Contingent Liabilities received by the Financial Institution are subsequently extinguished without ever having become fixed and absolute or become fixed and absolute in an amount less than estimated, the excess amount received by the Financial Institution will be paid to the Mortgagor together with such interest, if any, which the Financial Institution may in its absolute discretion deem appropriate.

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## Article 14 – Enforcement and Collection

### 14.1 Remedies

Upon the occurrence of an Event of Default the Financial Institution may take any or all of the following actions:

- a) sue the Mortgagor for the amounts secured by this Mortgage;
- b) take possession of the Lands (and exclude the Mortgagor and any other persons from the Lands);
- c) distraint upon any goods on the Lands for the amounts secured by this Mortgage;
- d) sell the Lands by public auction or private sale or lease the Lands on any terms and conditions the Financial Institution sees fit and on at least seven (7) days' notice to the Mortgagor, or if an Event of Default continues for at least three months, then without any notice to the Mortgagor;
- e) apply to Court to obtain a court order that the Lands be sold on any terms approved by the Court;
- f) apply to Court to foreclose the Mortgagor's interest in the Lands; and
- g) appoint a receiver or apply to Court for the Court to appoint a receiver.

### 14.2 Proceeds of Sale

If the Lands are sold by public auction, private sale, or court order, the Financial Institution will use the net amount received by the Financial Institution from the sale first to pay all Obligations, and any surplus will be paid:

- a) according to the court order, if the Lands are sold by court order; or
- b) to the Mortgagor, if the Mortgagor's interest in the Lands is sold other than by court order.

### 14.3 Deficiency

If the amount received from a sale of the Lands is not sufficient to fully pay the Obligations, the Mortgagor will forthwith pay the deficiency to the Financial Institution.

### 14.4 Other Securities

If the Financial Institution holds other securities as security for repayment of the Obligations, the Financial Institution may realize on those securities or this Mortgage in any order it decides. Any action under those securities will not prevent action being taken under this Mortgage and *vice versa*.

### 14.5 Not Mortgagee in Possession

Nothing done by the Financial Institution under this Mortgage other than actually taking possession of the Lands will make the Financial Institution a mortgagee in possession.

### 14.6 No Merger

If the Financial Institution obtains a judgment under this Mortgage, the judgment will not merge with this Mortgage and the Financial Institution will continue to have all its rights under this Mortgage (including the right to receive interest on Other Amounts at the Interest Rate) until all of the Obligations have been paid in full.

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## Article 15 – Receiver

### 15.1 Receiver's Power

Any receiver appointed by the Financial Institution pursuant to Section 14.1 will have the following powers:

- a) Take Possession – to take possession of, and for that purpose to enter, the Lands;
- b) Repair and Maintain – to repair and maintain any buildings or other improvements forming part of the Lands;
- c) Manage Lands – to manage the Lands and to demand, recover, and receive income from the Lands and give receipts for such income;
- d) Carry on Business – to carry on or concur in carrying on the business of the Mortgagor on the Lands, to employ and discharge any persons upon the terms and at the remuneration the receiver considers proper, and to do all necessary things to carry on the business of the Mortgagor on the Lands;
- e) Sell or Lease – to sell or lease or concur in the selling or leasing of the whole or any part of the Lands and to terminate or amend any lease of the whole or any part of the Lands;
- f) Complete Construction – to complete the construction of any buildings or other improvements forming part of the Lands;
- g) Act in Mortgagor's Name – to act in the name of the Mortgagor or otherwise as the receiver considers necessary;
- h) Institute Proceedings – to institute and prosecute all suits, proceedings, and actions that the receiver considers necessary for the proper protection of the Lands or to recover any income from the Lands, to defend all suits, proceedings, and actions against the Mortgagor or the receiver and to appear and conduct the prosecution and defence of any suit, proceeding, or action then pending or thereafter instituted and appeal any suit, proceeding, or action;
- i) Make Arrangements – to make any arrangement or com- promise that the receiver considers expedient;
- j) Other Powers – to exercise such other powers as may be conferred by law; and

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## Article 15 – Receiver (Continued)

- k) Raise Money – to borrow money to carry on the business of the Mortgagor on the Lands or to maintain the whole or any part of the Lands, in such amount as the receiver may, from time to time, deem necessary and in so doing the receiver may issue certificates (herein called “**Receiver’s Certificates**”) and the Receiver’s Certificates may be payable either to order or to bearer and may be payable at such time or times as the receiver may think expedient and will bear interest as shall be stated therein and the amounts from time to time payable by virtue of such Receiver’s Certificates will form a charge upon the Lands in priority to this Mortgage.

### 15.2 Sale or Lease of Lands by Receiver

In exercising the receiver’s foregoing power to sell or lease the whole or any part of the Lands, the receiver may in the receiver’s absolute discretion:

- a) sell the whole or any part of the Lands at public auction, by public or private tender, or by private sale;
- b) effect a sale or lease by conveying or demising in the name of or on behalf of the Mortgagor or otherwise;
- c) make any stipulation as to title or conveyance or commencement of title;
- d) participate in, rescind, or vary any contract of sale or lease;
- e) resell or release without being answerable for any loss occasioned thereby; and
- f) sell on terms as to credit as shall appear to be most advantageous to the receiver, and if a sale is on credit neither the receiver nor the Financial Institution shall be accountable for any monies until actually received.

### 15.3 Attorney

To enable the receiver to exercise the powers granted to the receiver under this Mortgage, the Mortgagor hereby appoints each receiver to be its attorney to effect a sale or lease of the Lands or any part or parts thereof by conveying or leasing the same in the name of or on behalf of the Mortgagor or otherwise and under the receiver’s own seal and to give effectual receipts for any monies paid pursuant to such sale or lease; and any deed, lease, agreement, receipt, or other instrument signed by a receiver under the receiver’s seal pursuant hereto will have the same effect as if it were under the seal of the Mortgagor.

### 15.4 Validity of Sale

No purchaser at any sale purporting to be made by the Financial Institution or the receiver pursuant to the powers in Sections 14.1d) or 15.2 shall be bound to enquire whether any default or breach has been made or continues or whether any notice required hereunder has been given, or as to the necessity or expediency of the stipulations subject to which the sale is made, or otherwise as to the propriety of the sale or regularity of its proceedings, or be affected by notice that any such default or breach has been made or continues, or notice that the sale is otherwise unnecessary, improper, or irregular. Despite any impropriety or irregularity, or notice thereof to any purchaser, the sale as regards that purchaser shall be deemed to be within the aforesaid powers and be valid accordingly and the remedy, if any, of the Mortgagor in respect of any impropriety or irregularity whatsoever in any sale by the receiver or the Financial Institution will be in damages only.

### 15.5 Removal and Reappointment

Any receiver appointed by the Financial Institution may be removed by the Financial Institution and another receiver appointed.

### 15.6 Agent of Mortgagor

Any receiver appointed by the Financial Institution will be the Mortgagor’s agent. The Mortgagor will be responsible for all actions of the receiver and nothing done by the receiver will make the Financial Institution liable as a mortgagee in possession.

### 15.7 Fees

The receiver will be entitled to the receiver’s reasonable fees out of the proceeds received by him.

### 15.8 Balance

The receiver will pay the balance of any income received by the receiver, after deduction of the receiver’s fees and expenses, to the Financial Institution.

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## Article 16 – Advances

### 16.1 No Obligation

Except as provided in Section 16.2, neither the execution nor the registration of this Mortgage will bind the Financial Institution to advance any monies nor shall the advance of any monies bind the Financial Institution to advance or readvance any unadvanced portion thereof.

### 16.2 Limited Obligation to Advance

Solely to the extent that this Mortgage is registered against Lands located in British Columbia, if this Mortgage secures the obligation of the Mortgagor to repay to the Financial Institution amounts payable by the Financial Institution under one or more letters of credit, guarantees, or bankers’ acceptances, the Financial Institution shall be required pursuant to this Mortgage to advance the amount of such letters of credit, guarantees, or bankers’ acceptances by payment to the party entitled to such payment and, pursuant to Section 28 of the *Property Law Act*, R.S.B.C. 1996, Chap. 377, this Mortgage will have priority to the full extent of amounts so advanced over mortgages and judgments registered after the registration of this Mortgage.

### 16.3 Deductions

The Financial Institution may deduct from any advance or readvance of monies to the Mortgagor secured by this Mortgage:

- a) any Taxes, the payment of which is overdue;
- b) any interest accrued under this Mortgage, whether or not due and payable;

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## Article 16 – Advances (Continued)

- c) the amount of any lien, judgment, mortgage, or other financial encumbrance registered against the Lands that ranks or may rank in priority to this Mortgage or any advance made pursuant to this Mortgage and that is not a Permitted Encumbrance; and
- d) an amount estimated by the Financial Institution's solicitors or notaries as being the fees and disbursements (and applicable taxes) for preparing and registering this Mortgage.

### 16.4 Current or Running Account

If this Mortgage secures a current or running account:

- a) the Financial Institution may, from time to time, readvance to the Mortgagor any advances secured by this Mortgage that may have been repaid by the Mortgagor;
- b) this Mortgage will continue to have effect and will not be deemed to have been discharged by reason only that:
  - i) all advances and readvances have been repaid; or
  - ii) there is nothing owing to the Financial Institution under this Mortgage; and
- c) this Mortgage will remain as effective security for all Obligations until the Financial Institution delivers a discharge of this Mortgage to the Mortgagor in accordance with Section 12.1 hereof.

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## Article 17 – Strata Title Provisions

To the extent that this mortgage is registered against Lands located in British Columbia, then the provisions of this Article 17 A will apply:

### 17.1 Strata Lots

If the Lands include any strata lot, this Article 17 will apply.

### 17.2 Obligations under Strata Property Act

The Mortgagor will fulfil all the obligations of a strata lot owner under the *Strata Property Act*, S.B.C. 1998, Chap. 43, and the bylaws of the strata corporation and will pay all contributions levied by the strata corporation.

### 17.3 Assignment of Voting Rights

The Mortgagor assigns to the Financial Institution the Mortgagor's right to vote pursuant to the *Strata Property Act* under the strata corporation's bylaws on matters relating to insurance, maintenance, finance, or other matters relating to the security of the Financial Institution. Nothing in this Mortgage requires the Financial Institution to vote or to protect the interests of the Mortgagor.

### 17.4 Not Mortgagee in Possession

Nothing in this Article 17, including the Financial Institution voting on behalf of the Mortgagor, will make the Financial Institution a mortgagee in possession.

### 17.5 Notices and Statements

At the request of the Financial Institution, the Mortgagor will give to the Financial Institution copies of all notices, financial statements, and other documents given by the strata corporation to the Mortgagor.

### 17.6 Obtaining Certificate

The Mortgagor hereby appoints the Financial Institution as its agent for the purpose of obtaining, from time to time, certificates from the strata corporation pursuant to Sections 59 and 115 of the *Strata Property Act (BC)*.

### 17.7 No Leases over Three Years

The Mortgagor will not lease any strata lot for a term of three years or more.

### 17.8 Access to Records

Pursuant to Section 36 of the *Strata Property Act*, the Mortgagor hereby authorizes any officer of the Financial Institution to review and obtain copies of the records and documents referred to in Section 35 of the *Strata Property Act*.

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## Article 17B – Condominium Property Provisions

If the Lands includes a Condominium Unit, this article will apply.

### 17.1B Obligations Under Condominium Act

The Mortgagor will fulfill all the obligations of a Condominium Unit owner under the Condominium Act and the Condominium Documents, and will pay promptly when due all Common Expenses in respect of the Condominium Unit. The Mortgagor will provide to the Financial Institution, on request, proof that all such obligations have been fulfilled and all such Common Expenses have been paid. If the Mortgagor defaults in the payment of any Common Expenses when due, or upon any default or breach by the Mortgagor of any covenant or obligation of a Condominium Unit owner under the Condominium Act or Condominium Documents, then, without limiting any other rights and remedies of the Financial Institution under or in respect of the Mortgage, the Obligations and/or applicable Laws, the Financial Institution, at its option and in its sole discretion, but without obligation, may pay such outstanding Common Expenses and/or rectify any such default or breach by the Mortgagor. All costs incurred by the Financial Institution in paying such amounts and/or rectifying such default or breach shall be payable by the Mortgagor to the Financial Institution immediately on demand and until paid, such costs, together with interest thereon at the Interest Rate, shall be added to the Obligations and secured by the Mortgage.

### 17.2B Assignment Of Voting Rights

The Mortgagor assigns to the Financial Institution the Mortgagor's right to vote pursuant to the Condominium Act and the Condominium Documents. Nothing in the Mortgage requires the Financial Institution to vote or to protect the interests of the Mortgagor, except as otherwise required by applicable laws.

### 17.3B Notices And Statements

At the request of the Financial Institution, the Mortgagor will give to the Financial Institution copies of all notices, financial statements, and other documents given by the Condominium Corporation to the Mortgagor.

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## Article 17B – Condominium Property Provisions (Continued)

### 17.4B No Leases Three Years Or More

The Mortgagor will not lease any Condominium Unit for a term of 3 years or more.

### 17.5B Obtaining Certificates

The Mortgagor hereby appoints the Financial Institution as the Mortgagor's agent for the purpose of obtaining, from time to time, all certificates and other information from the Condominium Corporation which the Mortgagor is otherwise entitled to obtain from the Condominium Corporation under the Condominium Act or the Condominium Documents.

### 17.6B Access To Records

The Mortgagor hereby authorizes any officer of the Financial Institution to review and obtain copies of all records and documents, including financial statements, maintained by the Condominium Corporation and which the Mortgagor is entitled to obtain under the Condominium Act or the Condominium Documents.

### 17.7B Obligations Due And Payable

The Obligations will become immediately due and payable, at the option of the Financial Institution and in its sole discretion, if:

- a) the Condominium Corporation fails to comply with the Condominium Act and the Condominium Documents,
- b) the Condominium Corporation fails to insure the Condominium Unit and all of the other condominium units and common elements (or other property and assets of the Condominium Corporation, as applicable) in compliance with applicable laws or do all that is required to collect proceeds of any insurance maintained by or on behalf of the Condominium Corporation,
- c) the Condominium Corporation makes any material modification to the common elements (or other property and assets of the Condominium Corporation, as applicable) without the Financial Institution approval,
- d) the owners have voted to terminate the Condominium Corporation,
- e) a sale of any material part of the common elements (or other property and assets of the Condominium Corporation, as applicable) is authorized, or
- f) the portion of the Lands subject to the Condominium Act ceases to be governed by the Condominium Act.

### 17.8B Definitions

In this Article 17B unless the context otherwise requires:

**"Common Expenses"** means, in respect of a Condominium Unit, the common expenses, levies, assessments, contributions, and other amounts payable by the owner of such Condominium Unit to the related Condominium Corporation or any other person(s) from time to time under the Condominium Act or the Condominium Documents;

**"Condominium Act"** means, in respect of a Condominium Unit, the applicable legislation and all related regulations of the Governing Jurisdiction governing the creation and regulation of such Condominium Unit;

**"Condominium Corporation"** means, in respect of a Condominium Unit, the related condominium corporation or strata corporation, as applicable, created and/ or governed by the Condominium Act;

**"Condominium Documents"** means all documents and instruments creating or governing the Condominium Unit and the related Condominium Corporation, including, as applicable, the declaration, bylaws, and rules of the Condominium Corporation;

**"Condominium Unit"** means a condominium unit or strata lot created under the Condominium Act;

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## Article 18 – Assignment of Rents

### 18.1 Leases and Rents

If the Lands or any part thereof are at any time subject to a Lease the provisions of this Article 18 will apply.

### 18.2 Definitions

In this Article 18:

- a) **"Guarantees"** means each and every guarantee, indemnity, or other surety contract, whether contained in a Lease or otherwise, present or future, with respect to the payment of Rents or performance by a Tenant of any other obligations under a Lease and **"Guarantee"** means one of the Guarantees;
- b) **"Guarantor"** means each and every guarantor, indemnitor, or other person liable to the Mortgagor pursuant to a Guarantee;
- c) **"Leases"** means all present and future, written or oral:
  - i) leases,
  - ii) agreements to lease,
  - iii) tenancy agreements,
  - iv) licences,
  - v) rights of occupation, and
  - vi) all agreements supplemental thereto with respect to the Lands or any part or parts thereof and that are derived from the Mortgagor's interest in the Lands and **"Lease"** means one of the Leases;
- d) **"Rents"** means all rents and other monies payable to the Mortgagor under and pursuant to the Leases;
- e) **"Tenant"** means any person, howsoever described, liable to the Mortgagor under a Lease.

### 18.3 Assignment

The Mortgagor hereby grants, assigns, transfers, and sets over unto the Financial Institution:

- a) the Rents;
- b) all covenants, benefits, and advantages contained in or to be derived from, the Leases; and

## Article 18 – Assignment of Rents (Continued)

- c) all covenants, benefits, and advantages contained in, or to be derived from, the Guarantees; to have and to hold and to receive the same unto the Financial Institution until all of the Obligations secured under this Mortgage have been fully paid and satisfied and this Mortgage has been discharged.

### 18.4 Exercise of Rights

The Financial Institution will not exercise its rights under this Article 18 unless and until an Event of Default has occurred, provided that:

- a) the Financial Institution may give notice, at any time, to any Tenant or Guarantor advising of this assignment but unless an Event of Default has occurred any such notice will provide that the Rents are to continue to be paid to, or to the order of, the Mortgagor until otherwise directed by the Financial Institution; and
- b) if an Event of Default has occurred, the Financial Institution may give notice in writing of this assignment to any Tenant or Guarantor directing payment of the Rents to the Financial Institution or its nominee and this will be an irrevocable direction by the Mortgagor to every Tenant and Guarantor that upon receipt of such notice all payments of rent are to be made as directed thereby.

### 18.5 Representations and Warranties

The Mortgagor hereby represents and warrants to the Financial Institution that:

- a) the Mortgagor has not previously assigned the Rents, Leases, or Guarantees, in whole or in part, pursuant to an assignment that is presently in force; and
- b) all of the Rents are payable on a monthly basis and there is not now nor has there ever been any right of set-off, commutation, or prepayment with respect to the Rents.

### 18.6 Positive Covenants

The Mortgagor hereby covenants and agrees with the Financial Institution that:

- a) the Mortgagor will provide to the Financial Institution, forthwith upon request, a current list of all Leases and Guarantees in such detail as the Financial Institution may reasonably require and also, if requested by the Financial Institution, a copy of each Lease and Guarantee;
- b) the Mortgagor will, forthwith upon notice from the Financial Institution that it requires the same, execute and deliver to the Financial Institution specific assignments of specific Leases and the Rents payable thereunder;
- c) the Mortgagor will give to each Tenant and Guarantor, when directed by the Financial Institution, notice of this assignment and any specific assignment;
- d) the Mortgagor will, at all times, observe and perform all of the Mortgagor's obligations under each of the Leases; and
- e) the Mortgagor will promptly advise the Financial Institution in writing
  - i) of any defaults under any of the Leases that are not cured within 14 days of the Mortgagor giving the Tenant or Guarantor notice thereof,
  - ii) of any other events pursuant to that the Mortgagor is entitled to terminate a Lease,
  - iii) of any termination of any Lease, and
  - iv) of any distraint or other action taken by the Mortgagor against a Tenant or a Tenant's assets.

### 18.7 Negative Covenants

The Mortgagor will not, without the prior written consent of the Financial Institution:

- a) accept prepayment of any Rents;
- b) permit any set-off, waiver, release, discharge, discount, or commutation of the payment of any of the Rents; or
- c) while any Event of Default is in existence, modify, amend, surrender, cancel, or terminate any of the Leases or the Guarantees.

### 18.8 Attorney

The Mortgagor hereby nominates, constitutes, and appoints the Financial Institution to be its true and lawful attorney for and in its name, but for the use and benefit of the Financial Institution, to demand, recover, and enforce payment of all Rents and for such purposes to institute such actions at law or in equity and take such proceedings by distress or otherwise as the Financial Institution shall from time to time deem fit and proper and for the purposes aforesaid or any of them to make, assign, and execute any and all warrants of distress and other documents in the name of the Mortgagor as the Financial Institution shall deem fit or proper. The costs of all such distraints and all other expenses are to be paid by the Mortgagor and to be added to and form part of the Other Amounts and to bear interest at the Interest Rate. The Mortgagor agrees with the Financial Institution that this Power of Attorney may be exercised on behalf of the Financial Institution through any one of its officers and that it shall be irrevocable so long as any monies remain owing under this Mortgage.

### 18.9 Notice Effective

No Tenant or Guarantor will be bound to ascertain whether or not an Event of Default has occurred or is continuing and whether or not an Event of Default has occurred and any notice of this assignment will be valid and effective as regards any Tenant or Guarantor even though no Event of Default has occurred or is continuing and the remedy, if any, of the Mortgagor will be against the Financial Institution only.

### 18.10 The Financial Institution Not Responsible for Collections

Nothing herein contained shall be construed so as to have the effect of making the Financial Institution responsible for the collection of the Rents or any part or parts thereof or for the observance or performance of any of the covenants, terms, or conditions to be observed or performed by the Mortgagor under any of the Leases.

### 18.11 Accounting

The Financial Institution shall be liable to account only for such monies as may actually come into its hands by virtue of this assignment, less proper collection charges, and such monies when so received by the Financial Institution will be applied on account of the monies secured by this Mortgage.

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## Article 18 – Assignment of Rents (Continued)

### 18.12 Proceedings

If the Financial Institution at any time in its absolute discretion deems it advisable to take proceedings either judicially or extrajudicially by way of distress or otherwise for the enforcement of the payment of the Rents or performance of the obligations of any Tenant or Guarantor, then the Mortgagor will, if requested by the Financial Institution, join with the Financial Institution in such proceedings and the Mortgagor hereby irrevocably authorizes the Financial Institution to join the Mortgagor in such proceedings.

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## Article 19 – Subdivision and Partial Discharges

### 19.1 Subdivision

If the Lands are subdivided:

- a) each subdivided lot will be charged with the whole amount secured by this Mortgage; and
- b) the Financial Institution cannot be required to discharge this Mortgage against any subdivided lot unless the full amount secured by this Mortgage is paid when due.

### 19.2 Partial Discharges

The Financial Institution may discharge this Mortgage from any part of the Lands in return for any consideration required by the Financial Institution. If the Financial Institution discharges any part of the Lands from this Mortgage, this Mortgage will continue against the balance of the Lands that have not been discharged.

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## Article 20 – Residence of the Mortgagor

### 20.1 Representation and Warranty

The Mortgagor represents and warrants to the Financial Institution that the Mortgagor is a resident of Canada for the purposes of Section 116 of the *Income Tax Act* (Canada).

### 20.2 Not to Cease

The Mortgagor shall not, without the prior written consent of the Financial Institution, cease to be a resident of Canada for the purposes of Section 116 of the *Income Tax Act* (Canada).

### 20.3 Notice of Change

The Mortgagor shall, forthwith upon becoming a non-resident of Canada, so advise the Financial Institution by notice in writing, and until the Financial Institution receives such notice the Financial Institution may for all purposes rely on the Mortgagor's representation and warranty contained in Section 20.1 and may assume that the representation and warranty in Section 20.1 continues to be correct.

### 20.4 Provide Documentation

If the Mortgagor becomes a non-resident of Canada for the purposes of Section 116 of the *Income Tax Act*, the Mortgagor will:

- a) forthwith upon becoming a non-resident of Canada, provide the Financial Institution with all documentation required to establish the adjusted cost base of the Lands and the opening balances of capital cost allowance accounts on fixed capital assets forming part of the Lands, and
- b) provide to the Financial Institution annual updates of the information contained in the documentation provided pursuant to clause (a) no later than December 31, in each year.

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## Article 21 – Notices and Demands

### 21.1 Notices and Demands

Any notice or demand to be given under this Mortgage must be in writing and must be:

- a) delivered,
- b) sent by mail,
- c) transmitted by facsimile, or
- d) sent by email,

to the respective party to be served at its respective address, fax number, or email address set out in the Mortgage or otherwise provided to the other parties in writing. Any party may change its address, fax number, or email address for purposes of this Agreement by notice as provided in this Section. Except as provided in the next paragraph and in Section 11.2, all notices and demands will be deemed to have been received by the person to whom it is addressed:

- a) on the date of receipt if delivered;
- b) five days from the date of mailing if sent by mail; or
- c) the date of transmission if transmitted by facsimile or email.

Notwithstanding any other provisions of this Mortgage, any notice or demand received or otherwise deemed received:

- a) after 5:00 pm (local time in the place of registration), or
- b) on a day that is not a Business Day,

will be deemed to have been received on the next Business Day. In this provision "**Business Day**" means a day on which the office of the Financial Institution located at the address indicated on the Mortgage is open for business.

### 21.2 Labour Disputes

If there is a labour dispute affecting mail delivery in Canada, any notice or demand that is mailed during, or three Business Days before, the labour dispute will only be considered received when actually received by the person to whom it is addressed.

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## Article 22 – Miscellaneous

### 22.1 Sale of Lands

In the event of a sale of the Lands or any portion thereof:

- a) a condition of obtaining the consent of the Financial Institution to the sale will be that the purchaser or transferee execute and deliver to the Financial Institution an agreement in form approved by the Financial Institution whereby the purchaser or transferee assumes and undertakes to pay the Obligations (or such of them as the Financial Institution may specify) and to be bound by, observe and perform all of the covenants, agreements, conditions, stipulations, and provisos on the part of the Mortgagor herein contained;
- b) the Mortgagor will not, unless the Financial Institution specifically provides in writing, be relieved of any of the Mortgagor's obligations under this Mortgage; and
- c) whether or not the Financial Institution consents to the sale, the Mortgagor hereby assigns, transfers, and sets over to the Financial Institution all the Mortgagor's right, title, claim, demand, and interest whatsoever at law or in equity or otherwise to be indemnified by the purchaser or transferee of and from payment of any and all monies secured by this Mortgage.

### 22.2 Further Assurances

The Mortgagor will execute, at the Financial Institution's request, all other documents and will do all other things that the Financial Institution may reasonably require to ensure that payment of the Obligations are fully secured by this Mortgage and after an Event of Default to ensure that title to the Lands is vested in the Financial Institution or any purchaser from the Financial Institution.

### 22.3 Consolidation

For the purposes of registration in British Columbia, the doctrine of consolidation will apply to this Mortgage notwithstanding Section 31(3) of the *Property Law Act*, R.S.B.C. 1996, Chap. 377, or any similar statutory provision in force from time to time.

### 22.4 Fees

The Mortgagor will pay to the Financial Institution as and when demanded reasonable administration, renewal, and other fees imposed from time to time by the Financial Institution in connection with this Mortgage.

### 22.5 Land Registration Reform Act

With respect to any Lands situate in the Province of Ontario, the covenants deemed to be included in a charge of freehold or leasehold land situate in the Province of Ontario pursuant to Section 7(1) of the *Land Registration Reform Act* (Ontario), as amended or replaced from time to time, are hereby expressly excluded.

### 22.6 Change In Status

Immediately after any change or happening affecting any of the following:

- a) the spousal status of the Mortgagor;
- b) the qualification of the building on the Lands as a matrimonial home, family asset, homestead, or similar designation within the meaning of the applicable family, domestic relations, matrimonial property, dower, or similar laws of the province of registration; and
- c) the legal title or beneficial ownership of the Lands;

the Mortgagor shall advise the Mortgagee accordingly and furnish the Financial Institution with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the Lands and of any spouse who is not an owner but who has a right of possession in the Lands by virtue of the applicable family, domestic relations, matrimonial property, dower, or similar laws of the province of registration. The Mortgagor covenants and agrees to furnish the Financial Institution with such information and evidence in connection with any of a), b), and c) above as the Financial Institution may from time to time request.

If the Mortgagor has a spouse, by signing the Mortgage, the Mortgagor's spouse: (a) consents to the Mortgage, (b) releases all interest in the Lands, such that the Mortgagee can enforce its rights under the Mortgage, and (c) agrees that the Mortgagee can, without notice, deal with the Lands and the Mortgage.

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## Article 23 – Interpretation

### 23.1 Headings

The headings in this Mortgage are inserted for convenience of reference only and will not affect the construction or interpretation of this Mortgage.

### 23.2 Schedules Attached

Any schedules attached to the Mortgage or Mortgage Form are a part of this Mortgage.

### 23.3 Invalid Provisions

If any provision contained in this Mortgage is determined to be invalid or unenforceable, the remainder of this Mortgage will not be affected thereby and each other provision of this Mortgage will be valid and enforceable to the fullest extent permitted by law.

### 23.4 Singular or Masculine Words

The use of singular or masculine in this Mortgage will include the plural, feminine, or corporate body where appropriate.

### 23.5 More Than One Mortgagor

If more than one person constitutes the Mortgagor, the agreements of, and all obligations and covenants to be performed and observed by, the Mortgagor hereunder will be the joint and several agreements, obligations, and covenants of each of the persons comprising the Mortgagor and any request or authorization given to the Financial Institution by any of the persons comprising the Mortgagor will be deemed to be the joint and several requests or authorizations of each of the persons comprising the Mortgagor.

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## **Article 23 – Interpretation (Continued)**

### **23.6 Persons Bound**

This Mortgage will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

### **23.7 Governing Law**

This Mortgage will be governed by, and construed in accordance with, the laws of the province of registration and the laws of Canada in force in the applicable province and the Mortgagor hereby submits to the jurisdiction of the courts of the province of registration with respect to this Mortgage.

### **23.8 Statute References**

A reference in this Mortgage to a particular statute means the statute as amended from time to time and any statute substituted therefore.

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