



# CANADIAN WESTERN TRUST COMPANY

## STANDARD MORTGAGE TERMS – VARIABLE RATE

Filed by: CANADIAN WESTERN TRUST COMPANY

Filing No.: 3414502

### MORTGAGE TERMS

The following set of filed standard mortgage terms shall be deemed to be included in and form part of every mortgage, where so indicated in the Mortgage Form (as defined below), all pursuant to section 96 of The Real Property Act (Manitoba).

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

#### 1. DEFINITIONS

1.1 In this Mortgage:

- (a) **“Balance Due Date”** means the balance due date, if any, set out or referred to in item 6(i) of the Mortgage Form;
- (b) **“business day”** means any day which in Manitoba is a day that:
  - (i) is not a “holiday” as that word is defined in The Interpretation Act (Manitoba) as amended or replaced from time to time; and
  - (ii) the Mortgagee is open for business at its Payment Office;
- (c) **“Covenantor”** means the Person or Persons, if any, who execute this Mortgage as “Covenantor” and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (d) **“First Payment Date”** means the first payment date, if any, set out or referred to in item 6(f) of the Mortgage Form;
- (e) **“Fixtures”** mean all present and after-acquired structures, additions, improvements, plant, machinery, apparatus, facilities, equipment, fixtures and other goods installed in or affixed or attached to the buildings or improvements situate in, on or under the Lands or affixed or attached thereto, including without limitation:
  - (i) all fences, motors, wiring, fixed mirrors, suspended ceiling tiles, doors, windows and all other structures, additions, improvements, plant,

machinery, apparatus, facilities, equipment, fixtures and other goods installed in or affixed or attached to the buildings or improvements situate in, on or under the Lands or affixed or attached thereto for use in carrying on an activity inside the said buildings or improvements or on the Lands;

(ii) all carpeting and other floor coverings, including without limitation all carpets and floor coverings in all rooms, halls and stairways;

(iii) all exterior window coverings and fixtures, including without limitation all awnings and shutters, together with interior valances;

(iv) all built-in appliances and furniture, including without limitation all refrigerators, ranges, dishwashers, garbage disposal units, vacuums and stoves; and

(v) all heating, cooling, plumbing, air-conditioning, air-filtering, ventilating, conveyancing, electrical, lighting, telecommunications, security, sprinkler, fire-fighting, systems and equipment, including without limitation all furnaces, water heaters, hot water tanks, oil and gas burners, electric fixtures, escalators, elevators, boilers, pressure vessels, stokers, blowers, tanks, gas pipes, radiators;

(f) **“Hazardous Materials”** means:

(i) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, contaminates, materials or pollutants which:

(A) pose a hazard to the whole or any portion of the Lands, or business of the Mortgagor in connection with the Lands or to the Persons on or about the Lands; or

(B) cause the whole or any portion of the Lands or the business of the Mortgagor in connection with the Lands to be in violation of any Hazardous Materials Laws;

(ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of poly-chlorinated biphenyls, or radon gas;

(iii) any chemical, material or substance defined as or included in the definition of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, or “toxic substances”, “waste” or words of similar import under any applicable local, provincial or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Canadian Environmental Protection Act (Canada), Fisheries Act (Canada), Transportation of Dangerous Goods Act (Canada), Canada Water Act and The Environmental Act (Manitoba), The Contaminated Sites Remediation Act

(Manitoba) and The Dangerous Goods Handling and Transportation Act (Manitoba);

(iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or which may or could pose a hazard to the occupants of the Lands or the owners or occupants of property adjacent thereto, or any other person coming upon the Lands or adjacent property; and

(v) other chemical, materials or substance which may or could pose a hazard to the environment;

(g) **“Hazardous Materials Claims”** means any and all enforcement, cleanup, removal, remedial or other governmental or regulatory actions, prosecutions, investigations, agreements, injunctions or orders instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made by any third party against the Mortgagor in connection with the Lands or the business of the Mortgagor relating thereto relating to damage, contribution, cost recovery, compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials;

(h) **“Hazardous Materials Laws”** means any federal, provincial or local laws, rules, ordinances, regulations, orders or other edicts having the force of law relating to the environment or any Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof or the terms of any permit issued therefore) or the environmental conditions on, under or about the Lands including, without limitation, soil, groundwater and indoor and ambient air conditions;

(i) **“Interest Adjustment Date”** means the interest adjustment date, if any, set out or referred to in item 6(d) of the Mortgage Form;

(j) **“Interest Calculation Period”** means the interest calculation period set out or referred to in item 6(c) of the Mortgage Form;

(k) **“Interest Margin”** means the annual percentage rate, if any, above or below the Prime Rate set out or referred to in item 6(b) of the Mortgage Form;

(l) **“Interest Rate”** means, subject to the provisions of paragraph 20 of this Mortgage, the annual interest rate set out or referred to in item 6(b) of the Mortgage Form, calculated and compounded at the end of each Interest Calculation Period not in advance, or such other rate or rates of interest as may be agreed upon between the Mortgagor and the Mortgagee, and, if the Interest Rate is stated to be a rate above or below the Prime Rate, Interest Rate shall mean the rate per annum equal to the Prime Rate plus or minus the Interest Margin, as the case may be, calculated and compounded at the end of each Interest Calculation Period;

(m) **“Lands”** means all of the estate, right, title and interest of the Mortgagor in and to the land(s) described or referred to in Box 2 of the Mortgage Form together with the improvements, appurtenances and whether now or hereafter existing or acquired, in connection with such land(s);

- (n) “**Last Payment Date**” means the last payment date, if any, set out or referred to in item 6(g) of the Mortgage Form;
- (o) “**Mortgage**” means the Mortgage Form and these filed standard mortgage terms, read together, as amended, modified and extended from time to time;
- (p) “**Mortgage Form**” means the mortgage form (or any amendment or substitution thereof) contemplated by section 96 of The Real Property Act (Manitoba) which refers to these filed standard mortgage terms and is executed by the Mortgagor and the Covenantor, if any, and all schedules and addenda attached to such form;
- (q) “**Mortgagee**” means **Canadian Western Trust Company**, which is the lender or mortgagee described in Box 3 of the Mortgage Form, and its successors and assigns;
- (r) “**Mortgagor**” means the person or persons described in Box 1 of the Mortgage Form as the Borrower(s) or mortgagor(s) who executed the Mortgage Form and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (s) “**Payment Dates**” means the payment dates, if any, set out or referred to in item 6(e) of the Mortgage Form and “**Payment Date**” means any one of them;
- (t) “**Payment Office**” means the place of payment set out or referred to in Box 3 of the Mortgage Form;
- (u) “**Payment**” means the amount of each payment, if any, set out or referred to in item 6(h) of the Mortgage Form;
- (v) “**Encumbrances**” means the prior encumbrances, if any, set out or referred to in Box 13 of the Mortgage Form;
- (w) “**Person**” means and includes any individual, sole proprietorship, corporation, partnership, bank, joint venture, trust, unincorporated association, association, institution, entity, party or government (whether national, federal, provincial, state, municipal, city, county or otherwise and including any instrumentality, division, agency, body or department thereof);
- (x) “**Prime Rate**” means the floating annual variable rate of interest established from time to time by Canadian Western Bank (an affiliate of Canadian Western Trust Company) at its main branch in Winnipeg, Manitoba, as the reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by Canadian Western Bank in Canada and payable on demand and as such the annual variable rate of interest now designated by Canadian Western Bank and commonly referred to and known as its “prime interest rate” or “prime lending rate”;
- (y) “**Principal Sum**” means:
- (i) the principal amount described in item 6(a) of the Mortgage Form or so much thereof as may from time to time be advanced or re-advanced by

the Mortgagee to the Mortgagor hereunder (and which amount shall include all advances or re-advances made by the Mortgagee to the Mortgagor hereunder by virtue of:

(A) letters of credit or letters of guarantee issued to, or to the order of, the Mortgagor; and

(B) bills of exchange or other negotiable instruments accepted by the Mortgagee

at the request of the Mortgagor); plus

(ii) all money or interest thereon that is later added to the Principal Sum under these mortgage terms; less

(iii) payments made on account of the Principal Sum by the Mortgagor from time to time;

(z) **“Taxes”** means all taxes, local improvement charges, rates, levies, charges, assessments and other imposition whatsoever which now are or may hereafter be rated, levied, charged, assessed or imposed by any authority, municipal, local, parliamentary or otherwise, upon the Lands or on the Mortgagor or the Mortgagee in respect of the Lands;

(aa) **“terms”** and **“mortgage terms”** mean, unless the context otherwise requires, all of the covenants, agreements, provisos, terms, conditions and provisions of this Mortgage and any schedules thereto.

## 2. GRANT OF SECURITY

2.1 This mortgage is made under The Real Property Act (Manitoba);

2.2 As security for its obligations hereunder:

(a) The Mortgagor HEREBY GRANTS AND MORTGAGES all of its right, title and interest in and to the Lands to the Mortgagee; and

(b) The Mortgagor HEREBY GRANTS AND MORTGAGES all of its right, titles and interest in and to the Fixtures to the Mortgagee;

subject to Permitted Encumbrances and the proviso for redemption set out in section 3 of this Mortgage;

2.3 If the Mortgagor hereafter acquires any further or greater interest in the Lands, this Mortgage shall extend to such interest in the Lands;

2.4 Without in any way affecting or releasing the Mortgagor’s liability to the Mortgagee for the payment of the moneys and the performance of the obligations hereby secured and for the consideration aforesaid the Mortgagor assigns, transfers and sets over to the Mortgagee:

(a) any moneys due and payable by an expropriating authority upon an expropriation of any or all of the Lands, provided that such assignment is limited

to the amount of moneys secured hereby and outstanding at the date the Mortgagor ceases to be the registered owner of the Lands or such part of the Lands as may be affected by any such expropriation, and the Mortgagor further agrees that it shall execute and deliver any such further or additional documentation which the Mortgagee may in the Mortgagee's sole discretion deem necessary to effect the above assignment or which is requested by the expropriating authority and also agrees to forward to the Mortgagee copies of any documentation relating to an expropriation or proposed expropriation of the Lands or any portion thereof forthwith upon receipt of the same; and

(b) all right, title, claim, demand and interest of the Mortgagor whatsoever at law or in equity or otherwise to indemnification, express or implied, of and from the performance and observance of any and all of the terms of this Mortgage, including without limitation payment of any and all moneys due under this Mortgage by any purchaser of the Lands, or any part thereof, from the Mortgagor.

### **3. PROVISIO FOR REDEMPTION**

3.1 Provided this Mortgage to be void on the occurrence of the following events:

(a) payment to the Mortgagee of the Principal Sum with interest thereon at the Interest Rate calculated as well after as before maturity, default and judgment, as follows:

(i) interest at the Interest Rate calculated as aforesaid on the total of all amounts from time to time advanced or secured hereunder as part of the Principal Sum and computed from the respective dates of such advances, or when such sums become secured, shall become due and be paid by Periodic Payments on each and every Payment Date commencing on the First Payment Date and continuing on each and every Payment Date thereafter to and including the date the entire balance of the Principal Sum, interest thereon as aforesaid and all other moneys due and owing hereunder are fully paid and satisfied;

(ii) the outstanding balance of the Principal Sum together with interest as aforesaid and all other sums secured hereunder shall become due and be paid on the Balance Due Date (herein sometimes called "maturity");

(b) payment to the Mortgagee of all such other moneys as the Mortgagee may be entitled to by virtue of this Mortgage, as and when such moneys shall become due and payable;

(c) payment of Taxes and performance of statute labour; and

(d) observance and performance of all covenants, agreements, provisos, terms, conditions and provisions herein contained;

AND the Mortgagor releases to the Mortgagee all the claims of the Mortgagor on the Lands subject to the above provisos.

**THE MORTGAGOR COVENANTS AND AGREES WITH THE MORTGAGEE AS FOLLOWS:**

**4. PAYMENT**

4.1 The Mortgagor will duly pay the Principal Sum, interest, and all other moneys secured hereby when due and will observe the above provisos;

4.2 The Principal Sum, interest and all other moneys payable hereunder shall be paid when due without any set-off, deduction, defalcation or abatement whatsoever;

4.3 If the Mortgagor fails to pay when due the Principal Sum, interest or other moneys secured hereby, or any part thereof, including compound interest, the Mortgagor shall pay to the Mortgagee compound interest thereon on demand, as well after as before maturity, default and judgment, to be computed with rests on the last day of each Interest Calculation Period;

4.4 The following shall apply if the Interest Rate is a rate below, equal to or above the Prime Rate:

(a) if the Prime Rate changes and so often as the same occurs during the currency of this Mortgage, the Interest Rate shall change without notice to the Mortgagor and the Covenantor on the same day and in the same amount as the Prime Rate changed;

(b) a certificate of any officer of Canadian Western Bank as to the Prime Rate at any particular time or times, shall be deemed to be conclusive evidence of the Prime Rate hereunder at such time or times;

(c) if Canadian Western Bank shall at any time during the currency of this Mortgage establish more than one rate of interest as its Prime Rate, then for the purposes hereof the Prime Rate hereunder shall be the higher or highest of such rates so established; and

(d) in the event mortgage sale and foreclosure proceedings are commenced hereunder by the Mortgagee, the Mortgagee may, at its option, apply to fix the Interest Rate that will be payable hereunder after the grant of the Order for Sale until the balance of the Principal Sum outstanding has been paid in full at the Interest Rate applicable hereunder on that day which is seven (7) days prior to the date of the grant of the Order for Sale;

4.5 Until the Mortgagee shall notify the Mortgagor otherwise, all payments to be made to the Mortgagee under this Mortgage shall be paid to or to the order of the Mortgagee at the Payment Office, in dollars of lawful money of Canada, solely on business days, and before 12:00 o'clock noon local time on any such day and in the event a payment is made after 12:00 o'clock noon local time on any business day, or is made on any day that is not a business day, such payment will be deemed to have been received by the Mortgagee on the business day next following;

4.6 The Mortgagor will, on the due date thereof, pay and satisfy all Taxes and will submit to the Mortgagee tax receipts evidencing the payment of Taxes within thirty (30) days after they become due, provided that:

- (a) the Mortgagee may deduct, from the Principal Sum advanced under this Mortgage, an amount sufficient to pay all Taxes which have become due or which will become due during the calendar year in which the final advance of the Principal Sum is made;
- (b) the Mortgagee may require the Mortgagor to pay to the Mortgagee in monthly instalments, on each Payment Date, such amounts as in the opinion of the Mortgagee are required to total the amount of each succeeding year's Taxes by the time such Taxes or the first instalment thereof fall due, and the Mortgagor shall also pay to the Mortgagee on demand before the due date of each year's Taxes or the first instalment thereof, any additional amount which may be required so that out of the said monthly and additional tax payments the Mortgagee may pay the whole amount of each year's Taxes on or before the due date of the first instalment thereof;
- (c) any amounts deducted by or paid to the Mortgagee, pursuant to paragraphs 4.6(b) hereof, may, at the option of the Mortgagee, be either credited to the Mortgagor's Tax Account or applied against any Principal Sum or interest then in default under this Mortgage. No amounts in the Tax Account shall be or be deemed to be held in trust and the Mortgagee shall not be obligated to pay any interest or other allowance upon any such amounts. The Mortgagee may, however, in its sole discretion, pay interest on any credit balance in the Tax Account at a rate and at such times determined by it;
- (d) the Mortgagee shall apply the credit balance in the Tax Account, if any, to the payment of Taxes as they fall due or at such earlier time as the Mortgagee may deem fit as long as the Mortgagor is not in default under any covenant, proviso or agreement contained in this Mortgage, provided, however, that the Mortgagee may at its option from time to time apply all or part of the credit balance in the Tax Account in or towards the payment of any Principal Sum or interest in default under this Mortgage;
- (e) if at any time the credit balance in the Tax Account is insufficient to pay the Taxes then due or payable, the Mortgagee may, at its option, pay such Taxes, including any deficiency. Any amounts paid by the Mortgagee in payment of such Taxes shall be debited to the Tax Account to the extent that the Tax Account is sufficient and the Mortgagee may, at its option, either debit the Tax Account or add to the Principal the amount, if any, by which the Tax Account is insufficient;
- (f) any debit balance in the Tax Account from time to time shall bear interest at the Interest Rate and shall, together with such interest, be secured by this Mortgage;
- (g) if so requested by the Mortgagee, the Mortgagor shall:
- (i) deliver to the Mortgagee for each twelve (12) month period, commencing with the First Payment Date, twelve (12) post-dated cheques to cover the monthly payment of Taxes; and

- (ii) execute and deliver to the Mortgagee, the Mortgagee's required documents for a pre-authorized repayment plan with respect to Taxes; and

the Mortgagor shall transmit to the Mortgagee the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith after the receipt of same by the Mortgagor;

4.7 If this Mortgage is now or at any time hereafter subject to any prior encumbrance, charge, lien or interest claimed upon the Lands acceptable to the Mortgagee, including but not limited to Encumbrances (each hereinafter called a "prior charge"):

- (a) the Mortgagor will pay or cause to be paid as they become due all payments required to be made under or by virtue of each prior charge, whether for principal, interest, taxes or otherwise;
- (b) the Mortgagor will duly observe, perform and comply with the covenants, provisos and agreements contained in each prior charge which are to be kept, observed and performed by it;
- (c) any default under a prior charge shall be deemed to be default hereunder and shall entitle the Mortgagee to exercise any and all remedies available to the Mortgagee in the event of default hereunder; and
- (d) in the event of default by the Mortgagor under a prior charge, the Mortgagee shall have the right, but no obligation, to cure the same in its sole and absolute discretion;

4.8 The Mortgagor shall pay all costs, charges and expenses including without limitation legal costs on a solicitor and his own client basis and appraiser's fees, in connection with the negotiation, preparation, registration, modification and extension of this Mortgage;

4.9 The Mortgagor shall pay all fees, costs, charges and expenses including without limitation legal fees, costs, charges and expenses on a solicitor and his own client basis, which may be incurred by or on behalf of the Mortgagee whether before or after court proceedings are commenced, or whether otherwise incurred, in recovering, collecting, procuring or enforcing payment of any or all the moneys secured under this Mortgage or in any way enforcing or protecting the security of this Mortgage or enforcing any of the terms of this Mortgage (including but not limited to all travelling expenses of the Mortgagee, the Mortgagee's servants and agents, and commissions on collection of rent which may be incurred by or on behalf of the Mortgagee in the taking, recovering and keeping possession of the Lands or in inspecting the same) and all other amounts generally in any other measure or proceedings taken by or on behalf of the Mortgagee to realize or collect the moneys hereby secured or to defend or perfect the title of the Lands, all of which fees, costs, charges, commissions, expenses and other amounts shall be a charge under this Mortgage on the Lands in favour of the Mortgagee and shall be payable forthwith by the Mortgagor to the Mortgagee with interest at the Interest Rate until paid;

4.10 The Mortgagor shall forthwith upon demand repay to the Mortgagee all other proper outlays incurred by the Mortgagee and not covered by any other covenant herein;

4.11 The Mortgagee shall have a reasonable time after payment in full of the moneys secured hereby within which to prepare and execute a discharge of this Mortgage, and interest at the Interest Rate shall continue to run and accrue until actual payment in full of all moneys secured hereby has been received by the Mortgagee, and all legal and other expenses for the preparation and execution of such discharge shall be borne by the Mortgagor, and the Mortgagor will not be entitled to a discharge of this Mortgage unless and until the Mortgagor shall have kept and performed all the covenants, provisos, agreements and stipulations herein contained, whether the Mortgagee has taken legal proceedings thereon and recovered judgment or otherwise.

## 5. PREPAYMENT RIGHTS

5.1 The Mortgagor has no right to prepay all or any part of the Principal Sum except as may be agreed to in writing between the Mortgagee and the Mortgagor from time to time.

## 6. TITLE

6.1 The Mortgagor has a good and marketable title in fee simple to the Lands, subject only to Encumbrances;

6.2 The Mortgagor has the right to convey the Lands to the Mortgagee save as aforesaid;

6.3 The Mortgagor has done no act to encumber the Lands, save as aforesaid;

6.4 The Lands are free of Hazardous Materials (provided that the Mortgagee may require that an environmental audit of the Lands be conducted at the expense of the Mortgagor by a Person acceptable to the Mortgagee to confirm that the Lands contain no Hazardous Materials), and there are no other environmental risks or liabilities in connection with the Lands known to the Mortgagor, (or if the Mortgagor is a corporation, to any of the Mortgagor's directors and officers) which have not been disclosed to the Mortgagee;

6.5 On default the Mortgagee shall have quiet possession of the Lands free from all encumbrances, save only for Permitted Encumbrances, provided that until default of payment the Mortgagor shall have quiet possession of the Lands;

6.6 The Mortgagor will execute such further assurances of the Lands as the Mortgagee may require including without limitation any and all documents required by the Mortgagee in connection with The Personal Property Security Act (Manitoba);

6.7 The Mortgagor will not permit a lien to be acquired or filed against the Lands under The Builders' Lien Act (Manitoba) or under any other statute or law at any time in force affecting the Lands;

6.8 In the event the Mortgagor grants any further mortgage or charge or otherwise encumbers the Lands save and except for this Mortgage and Permitted Encumbrances, then, at the sole discretion of the Mortgagee and notwithstanding the other provisions of this Mortgage, the Mortgagee may declare that all moneys hereby secured shall immediately become due and be paid.

6.9 If the Mortgagor holds a leasehold interest in the Lands, the Mortgagor covenants with the Mortgagee that:

- (a) the Mortgagor has a good leasehold title to the Lands;
- (b) the Mortgagor has a right to mortgage, charge and sublet the leasehold title to the Lands to the Mortgagee in the manner herein provided and, if required, has obtained the lessor's consent to this Mortgage;
- (c) neither the Mortgagor nor any other person has heretofore made, done, committed or suffered any act to encumber the lease or any part thereof except as the records of the land titles office disclose;
- (d) the lease is a good, valid and subsisting lease and it has not been surrendered, forfeited, amended or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Mortgagor up to the date of the execution of this Mortgage by the Mortgagor;
- (e) the Mortgagor will not amend, surrender or modify the lease without the written consent of the Mortgagee first had and obtained and it will not allow the lease to be terminated or forfeited;
- (f) the Mortgagor will pay the rent reserved by the lease and will observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Mortgagee indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto;
- (g) each officer of the Mortgagee shall be the Mortgagor's attorney during the continuance of this Mortgage so as to permit the Mortgagee to execute any document or do any act or thing which the Mortgagee is permitted or the Mortgagor is required to execute or do pursuant to the provisions hereof; and
- (h) The last day of the term of the lease is excepted from the charge created hereby, but the Mortgagor will stand possessed of the Lands for the last day of the term, or any renewal term, granted by the lease, in trust for the Mortgagee and will sell and assign the last day of the term, or any renewal term, as the Mortgagee may direct, but subject to the same right of redemption and other rights as are hereby given to the Mortgagor with respect to the derivative term hereby granted. In the event of any sale or assignment by the Mortgagee as contemplated herein, the Mortgagor will hold the said last day in trust for the purchaser, and the purchaser's heirs, executors, administrators, successors and assigns.

## 7. INSURANCE

7.1 The Mortgagor will forthwith insure and during the continuance of this Mortgage will keep insured each and every building, structure, erection, improvement, fixture or replacement thereof (including without limitation all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever) now on the Lands or which may hereafter be erected thereon against loss or damage by fire and such other perils as the Mortgagee may reasonably require (including but not limited to boiler insurance, loss of rental income and business interruption insurance);

7.2 The Mortgagor will keep and maintain third party liability insurance in an amount satisfactory to the Mortgagee;

7.3 The Mortgagor will keep and maintain such other insurance as is customarily maintained by persons operating or occupying similar properties in equivalent locations;

7.4 All insurance coverage required by the Mortgagee shall be issued by insurers in form and upon terms and in amounts acceptable to the Mortgagee, and the Mortgagor shall cause the Mortgagee to be named as a loss payee as its interest may appear in respect of the Lands on the policy or policies of insurance effected by the Mortgagor and shall cause mortgage clauses in a form approved by the Mortgagee to be included in such policy or policies and shall provide evidence of such insurance to the Mortgagee forthwith upon demand;

7.5 The Mortgagor will pay all insurance premiums and sums of money necessary for such purposes as the same shall become due;

7.6 The Mortgagor will forthwith assign, transfer and deliver over to the Mortgagee each and every policy or policies of insurance and receipts thereto appertaining;

7.7 The Mortgagor shall forthwith on the happening of any loss or damage furnish to the Mortgagee at the Mortgagor's expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of insurance moneys;

7.8 Any insurance moneys received may, at the option of the Mortgagee, be applied to a suspense account or in or towards rebuilding, reinstating or repairing all or any portion of the Lands or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Lands or be applied or paid partly in one way and partly in another or such moneys may be applied, in the sole discretion of the Mortgagee, in whole or in part on the moneys secured hereby or any part thereof whether due or not then due;

7.9 To ensure that the Mortgagee may so apply such insurance moneys in the manner herein contemplated, the Mortgagor assigns and releases to the Mortgagee all rights of the Mortgagor to receive the insurance moneys and expressly waives all the Mortgagor's rights and benefits under The Insurance Act (Manitoba).

## 8. USE, ALTERATIONS AND REPAIRS

8.1 The Mortgagor shall not without the express written consent of the Mortgagee first had and obtained:

- (a) change the present use of the Lands; nor
- (b) permit the Lands to be unoccupied or unused;

8.2 The Mortgagor shall promptly observe, perform, execute and comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of every governmental, municipal and civil authority or agency concerning the Lands and further agrees, at the cost and expense of the Mortgagor, to do and perform all acts and things which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances and regulations and in particular, but without limiting the generality of the foregoing:

- (a) it will observe and comply in all material respects with the provisions of all Hazardous Material Laws pertaining to the Lands or the business of the Mortgagor in connection therewith and from time to time, upon request of the Mortgagee, provide to the Mortgagee evidence satisfactory to the Mortgagee, acting reasonably, of such observance and compliance;
- (b) it will, after becoming aware thereof, promptly provide the Mortgagee with notice of:
  - (i) the presence of or any discharge or release of Hazardous Materials on, under or about the Lands which is required to be reported to any governmental authority;
  - (ii) any Hazardous Materials Claims; and
  - (iii) any remedial action taken in response to any Hazardous Materials Claims;
- (c) it will not object to and will take such actions and do such things within its power as may be reasonable and necessary to enable the Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims; and
- (d) it will observe and comply in all material respects with all applicable laws, regulations, bylaws, ordinances and orders of any governmental authority having application to the Lands or the business of the Mortgagor in connection therewith which pertain to health and safety or industrial hygiene;

8.3 The Mortgagor will keep the Lands and all buildings, structures, erections, improvements and the like now or hereafter constructed thereon in good condition and repair according to the nature and description thereof respectively, and shall not commit any act of waste or allow any act of waste to be committed upon the Lands;

8.4 Save as herein otherwise expressly permitted, the Mortgagor will not, without the prior written consent of the Mortgagee, demolish the whole or any part of the

buildings, structures, erections, improvements and the like now or hereafter existing on the Lands and will not proceed with any alteration, remodelling, rebuilding or addition thereto or thereof, in whole or in part;

8.5 The Mortgagor will not insulate or allow any building, erection, addition or improvement now or hereafter existing on the Lands to be insulated in whole or in part with urea formaldehyde foam insulation or asbestos;

8.6 No Hazardous Materials exist on, under or about the Lands. No Hazardous Materials have at any time been transported to or from the Lands or used, generated, manufactured, stored or disposed of on, under or about the Lands. No enforcement actions in respect of Hazardous Materials Laws are pending or threatened against the Lands or any operations of the Mortgagor. The Mortgagor will comply with all Hazardous Materials Laws, and will cause all tenants under any lease or occupancy agreement affecting the Lands and all other legal persons on or occupying the Lands, to comply with all Hazardous Materials Laws. Without limiting the generality of the foregoing, the Mortgagor will not use, generate, manufacture, store or dispose of, nor will it permit the use, generation, storage or disposal of, Hazardous Materials on, under or about the Lands, nor will it transport or permit the transportation of Hazardous Materials to or from the Lands. The Mortgagor will promptly take any and all necessary remedial action in response to the presence, storage, use, disposal, transportation, discharge or release of any Hazardous Materials on, under or about the Lands, provided that the Mortgagor will take such remedial action in good faith so as to minimize any impairment to the Lands and the grants, mortgages and charges created hereby. In the event the Mortgagor undertakes any remedial action with respect to any Hazardous Materials on, under or about the Lands, the Mortgagor will conduct and complete such remedial action to the satisfaction of the Mortgagee, in compliance with all applicable federal, provincial and local laws, regulations, rules, ordinances and policies, and in accordance with the orders and directives of all federal, provincial and local governmental authorities;

8.7 If requested by the Mortgagee from time to time, the Mortgagor will promptly submit, at its own expense, a report, satisfactory in form and content to the Mortgagee and prepared by a consultant approved by the Mortgagee, certifying that the Lands are not then being used nor have they been used in the past for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials. The Mortgagor will immediately advise the Mortgagee in writing of any and all Hazardous Materials Claims, of the presence of any Hazardous Materials on, under or about the Lands, of any remedial action taken by the Mortgagor in response to any Hazardous Materials Claims or any Hazardous Materials on, under or about the Lands, of the Mortgagor's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Lands, of the Mortgagor's discovery of any occurrence of condition on any real property adjoining or in the vicinity of the Lands that could cause the Lands to be subject to any restrictions on the ownership, occupancy, transferability or use of the Lands under any Hazardous Materials Laws. The Mortgagor will immediately provide the Mortgagee with copies of all communications with federal, provincial and local governments or agencies relating to Hazardous Materials Laws and all communication with any legal person relating to Hazardous Materials Claims;

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

8.9 The Mortgagee and any agent of the Mortgagee, may at any time and from time to time enter upon the Lands to inspect the Lands or any part or parts thereof and at any time the Mortgagee in its sole discretion deems necessary or advisable, and the Mortgagee may without the concurrence of the Mortgagor or any other person make arrangements to repair, finish, and put in order the buildings, structures, erections, improvements and the like now or hereafter existing on the Lands, and to inspect, take care of, lease, collect the rents of, and generally manage the Lands as the Mortgagee may deem proper, and the Mortgagee shall not hereby become or be liable as a mortgagee in possession.

## **9. ADVANCE OF MORTGAGE MONEYS**

9.1 Any payments to be made by the Mortgagor shall become due and be payable at the times provided herein notwithstanding that at the due date of any payment the full amount of the Principal Sum which this Mortgage is expressed to secure has not been advanced, but when the full amount is not advanced, the payments may in the sole discretion of the Mortgagee be reduced proportionately;

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

Mortgagee may deduct interest from any advance of the Principal Sum calculated from the date of that advance to the date of the next Payment Date occurring after the date on which that advance was made;

9.3 Except to the extent that the Mortgagee by issuing letters of credit or letters of guarantee or accepting bills of exchange or other negotiable instruments at the request of the Mortgagor is required to make advances or re-advances of money thereunder, the Mortgagor agrees that neither the preparation, execution or registration of this Mortgage, nor the advance or re-advance in part of the Principal Sum hereby secured, nor any course of conduct of the Mortgagee or of any of its officers, agents or employees shall bind the Mortgagee to advance or re-advance the Principal sum or any unadvanced portion thereof to the Mortgagor or to any other person the obligations of whom are guaranteed by the Mortgagor, it being understood and agreed that the advance or re-advance of the moneys hereby secured or any part thereof from time to time shall be in the absolute discretion of the Mortgagee and not exercised or deemed exercised unless and until that advance or re-advance has actually been made to the Mortgagor, but nevertheless the security created by this Mortgage shall take effect in accordance with the terms of this mortgage forthwith upon the execution hereof by the Mortgagor. NOTICE IS HEREBY GIVEN to every person dealing with the title to the Lands that advances and re-advances not exceeding the aggregate amount secured by this Mortgage shall be secured by this Mortgage;

9.4 Any portion of the Principal Sum may be advanced or re-advanced by the Mortgagee all or in part at any future date or dates and the amount of those advances and re-advances when so made shall be secured by this Mortgage and be repayable with interest at the Interest Rate and this Mortgage shall be deemed to be taken as security for the moneys hereby secured arising from the current and running accounts represented by advances and re-advances hereunder under a line of credit or a current loan or otherwise, and the charge and mortgage created by the Mortgage shall take effect forthwith on the execution of the Mortgage Form;

9.5 If this Mortgage is redeemed by the Mortgagor, it shall be cancelled and shall not be re-issued, but neither:

- (a) any partial payment made thereon by the Mortgagor to the Mortgagee; nor
- (b) any ceasing by the Mortgagor to be indebted to the Mortgagee;

shall be deemed to be a redemption or cancellation pro tanto or otherwise, and this Mortgage shall be and remain valid security for any subsequent advance or re-advance by the Mortgagee to the Mortgagor to the same extent as if that advance or re-advance had been made on the execution of this Mortgage.

## **10. MORTGAGEE'S ELECTION TO MAKE PAYMENTS AND CURE DEFAULTS**

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

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

- (a) insure the buildings on the Lands in accordance with the provisions hereof if the Mortgagor neglects to insure or to deliver policies and receipts in accordance herewith;
- (b) repair and reinstate the buildings and improvements on the Lands if the Mortgagor fails to repair in accordance herewith or demolishes or alters such buildings or improvements in contravention hereof;
- (c) without any order or direction of the Mortgagor, pay to contractors, sub-contractors, material men, labourers, and other persons supplying or having a claim for work, services, or materials supplied in and about the construction, repairing, altering or replacing of any buildings, structures, erections or improvements and the like now or hereafter constructed on the Lands, any moneys due to them for such work, services or materials; and
- (d) pay common expenses, assessments, contributions or levies required to be paid in connection with any strata lot comprising the Lands;

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

10.3 If the Mortgagee shall make payment to any creditor of the Mortgagor or any encumbrance holder in respect of the Lands pursuant to the provisions hereof, the Mortgagee shall be entitled to all equities and securities held by such creditor or encumbrance holder in respect of the indebtedness or encumbrance paid or satisfied;

10.4 All payments made and all sums of money expended by the Mortgagee under this paragraph 10, including incidental costs, charges, expenses and outlays incurred in doing anything under this paragraph 10, shall be forthwith payable by the Mortgagor on demand with interest at the Interest Rate from the time or respective times of the payment thereof until paid, and until paid shall be a charge on the Lands in favour of the Mortgagee prior to all claims thereon subsequent to this Mortgage and may be added to the Principal Sum as if the same had originally formed part thereof;

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

## **11. DEFAULT AND ACCELERATION**

11.1 If any default at any time be made of or in any payment of the Principal Sum or interest hereby secured or mentioned, or intended so to be, or any part thereof,

at the times and in the amounts provided, or in payment of any of the taxes, rates, levies, charges, rents, assessments, statute labour or other impositions whatsoever, or under the covenant to insure herein given, or as to any other covenant or proviso herein contained, or if the Mortgagor becomes bankrupt or insolvent or makes or demonstrates an intention to make an assignment for the benefit of its creditors or makes a proposal or takes advantage of any provision of the Bankruptcy and Insolvency Act (Canada) or any other legislation for the benefit of insolvent debtors or if the whole or any portion of the Lands become the subject of expropriation proceedings, then and in every such case and in the sole discretion of the Mortgagee:

- (a) the outstanding Principal Sum, interest, and all other moneys owing hereunder shall forthwith become due and payable without notice in like manner and with like consequences and effects to all intents and purposes whatsoever as if the Balance Due Date had fully come and expired, and the provisions relating to a default under this Mortgage by the Mortgagor shall be as set out herein and the Mortgagor shall not be relieved from the consequences of default by payment of the moneys of which default of payment has been made and costs and charges related thereto;
- (b) the Mortgagee shall have possession of the Lands free and clear from all encumbrances subject only to Permitted Encumbrances; and
- (c) the Mortgagee may exercise any and all remedies to enforce this Mortgage;

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

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

## **12. REMEDIES OF MORTGAGEE ON DEFAULT**

12.1 The Mortgagee, on default of any payment required to be made hereunder as and when due, may on one week's notice enter on and lease or sell the Lands or any part or parts thereof; and should default in payment continue for one month, the foregoing powers of entry and leasing or sale, or any of them, may be exercised without notice and the Mortgagee may lease or sell as aforesaid without entering into possession of the Lands; and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that such

power had been improperly or irregularly exercised or that notice had not been given; and the Mortgagee may sell the whole or any part or parts of the Lands by public auction or private contract, or partly one and partly the other, on such terms as to credit and otherwise as to the Mortgagee shall appear most advantageous and for such prices as can reasonably be obtained therefor; and sales may be made from time to time of portions of the Lands to satisfy interest or parts of the Principal Sum overdue, leaving the Principal Sum or balance thereof to run at interest, payable at the Interest Rate; and the Mortgagee may make any stipulations as to title or commencement of title, or otherwise, as the Mortgagee shall deem proper; and the Mortgagee may buy in or rescind or vary any contract for sale of any of the Lands and re-sell, without being answerable for any loss occasioned thereby; and in the case of a sale on credit the Mortgagee shall only be bound to account to the Mortgagor for such moneys as have been actually received from the purchaser(s) after the satisfaction of the Mortgagee's claim; and for any of such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee deems fit; and the purchaser at any sale hereunder shall not be bound to see to the propriety or regularity thereof; and no want of notice or of publication, even if required hereby, shall invalidate any sale hereunder; and the above powers may be exercised by the Mortgagee and against the Mortgagor, and the costs of any abortive sale shall become a charge upon the Lands, and the Mortgagee may add them to the moneys secured hereby;

12.2 If default shall be made in payment of any part of the Principal Sum, interest or other moneys hereby secured at any time herein provided for the payment thereof, it shall be lawful for the Mortgagee to, and the Mortgagor hereby grants full power and license to the Mortgagee to enter, seize and distrain upon any goods upon the Lands and by distress warrant to recover by way of rent reserved as in the case of a demise of the Lands as much of the Principal Sum, interest or other moneys hereby secured as shall from time to time be or remain in arrears or unpaid, together with all costs, charges and expenses of the Mortgagee in connection therewith (including without limitation legal fees, costs, charges and expenses on a solicitor and his own client basis);

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

12.4 Upon any default or defaults in the payment of the moneys hereby secured or of any installment thereof or of interest thereon, as they become due, or upon any default by the Mortgagor in the performance or observance of any of the terms of this Mortgage, or of any of the assignments of rents or leases or other deeds or instruments from time to time given by the Mortgagor to the Mortgagee as additional or collateral security for the moneys hereby secured, then on the happening of any one or more of such events, the Mortgagor shall refrain from collecting and receiving all rents accruing as aforesaid and, upon notice from the Mortgagee, all tenants shall thereafter

pay all such rents to the Mortgagee, and any payment made otherwise will not discharge the obligations of such tenant, and the Mortgagee may immediately cause default proceedings to be commenced under this Mortgage in the manner prescribed by law, and the Mortgagee shall be entitled to have a receiver, receiver-manager or a receiver and manager appointed and, without proof of any ground for his appointment other than the said default, to take possession and charge of the Lands and to fully and effectively operate the business which the Lands comprise or which was conducted thereon by the Mortgagor including, without limiting the generality of the foregoing, the right to rent the same and receive and collect the rents, issues and profits thereof under direction of the Court, and any amount so collected by such receiver shall be applied under direction of the Court to the payment of any judgment rendered, or amounts found due, according to the terms of this Mortgage including the costs of collection and legal fees, costs, charges and expenses on a solicitor and his own client basis, and in the event of any default or defaults in the payment of the moneys hereby secured or of any installment thereof or of interest thereon or in the performance or observance of any of the terms of this Mortgage, the Mortgagee shall have the right forthwith after any such default to enter upon, take possession of and rent the Lands and receive the rents, issues and profits thereof and apply the same, after payment of all necessary charges and expenses, on account of the moneys hereby secured;

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

12.6 It is further specifically understood and agreed that the Receiver appointed by the Mortgagee shall have the following powers, subject to any limitations in the instrument in writing or any order of a court of competent jurisdiction appointing him, namely to:

- (a) take possession of the Lands;
- (b) rent the Lands or any portion thereof and receive and collect the rents, issues and profits thereof;
- (c) carry on or concur in carrying on the business of the Mortgagor in operating the business comprised of the Lands or which is conducted thereon by the Mortgagor;
- (d) pay any or all debts and liabilities in connection with the Lands;
- (e) sell or lease or concur in selling or leasing any or all of the Lands;
- (f) make any arrangements or compromises which the Receiver considers expedient;
- (g) borrow money, upon the security of the whole or any part of the Lands, to carry on the business of the Mortgagor comprised of the Lands or which is

conducted thereon by the Mortgagor or to maintain the whole or any part of the Lands in a manner that will be sufficient to obtain the amounts from time to time required in the opinion of the Receiver, and in so doing the Receiver may issue certificates (each herein called a "Receiver's Certificate") that may be payable as the Receiver considers expedient and bear interest as stated therein, and the amounts from time to time payable under any Receiver's Certificate shall charge the Lands in priority to this Mortgage and the Mortgagor hereby charges the Lands with the debt, if any, owing from time to time under any Receiver's Certificate; and

(h) institute and prosecute all suits, proceedings and actions which the Receiver considers necessary or advisable for the proper protection of the Lands, to defend all suits, proceedings and actions against the Mortgagor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted, and appeal any suit, proceeding or action;

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

12.8 The net revenue received from the Lands and the net proceeds of sale of the Lands or any part thereof shall be applied by the Receiver, subject to the claims of creditors, if any, ranking in priority to this Mortgage, as follows:

(a) firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable to him;

(b) secondly, in payment to the Mortgagee of all costs and charges owing hereunder and interest and arrears of interest remaining unpaid hereunder;

(c) thirdly, in payment to the Mortgagee of the Principal Sum owing hereunder; and

(d) fourthly, any surplus shall be paid to the Mortgagor;

provided that in the event any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or any portion of the surplus as the Receiver deems appropriate in the circumstances;

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

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

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

12.12 The Mortgagee may realize on various securities and any parts thereof in any order that the Mortgagee may consider advisable, and any realization, whether by foreclosure or sale, on any security or securities shall not bar realization on any other security or securities.

### **13. PRESERVATION OF MORTGAGE AND OTHER SECURITY**

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

13.2 Every part, lot or strata lot into which the Lands are or may hereafter be divided does and shall stand as charged with the whole of the moneys hereby secured, and no person shall have any right to require the moneys hereby secured to be apportioned upon or in respect of any such part, lot or strata lot;

13.3 The Mortgagee may at all times release any part or parts of the Lands or any other security or any surety for payment of all or any part of the moneys hereby secured or may release the Mortgagor or any other person from any covenant or other liability to pay the moneys secured hereby or any part thereof, either with or without any consideration therefor and without being accountable for the value thereof or for any moneys except those actually received by the Mortgagee, and without thereby releasing any other part of the Lands or any other securities or covenants herein contained, it being agreed that, notwithstanding any such release, the Lands, securities and covenants remaining unreleased shall stand charged with the whole of the moneys hereby secured;

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

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

13.6 Any act done or omitted to be done by any of the parties hereto regarding any other securities held by the Mortgagee for the Principal Sum, interest and other amounts hereby secured or any part thereof shall not in any way affect or prejudice this Mortgage, and this Mortgage shall remain and be in force until satisfaction thereof is made by payment of all sums hereby secured as if no other security was held by the Mortgagee for such sums.

## 14. SALE OR TRANSFER

- 14.1 (a) if the Lands or any part thereof are sold, transferred, conveyed or assigned or otherwise disposed of, or the Mortgagor enters into any agreement to effect any of the foregoing, whether by registered or unregistered instrument and whether for valuable or nominal consideration or otherwise, to a party not first approved in writing by the Mortgagee; or
- (b) if such purchaser, grantee, transferee or assignee should fail to:
- (A) apply for and receive the Mortgagee's written approval as aforesaid;
- (B) if required by the Mortgagee, personally assume all the obligations of the Mortgagor under this Mortgage, and
- (C) if required by the Mortgagee, execute an assumption agreement in the form required by the Mortgagee;

then the Mortgagee at its option may declare the Principal Sum then secured hereunder, all accrued interest and all other moneys then secured hereby, to become immediately due and payable in full and the Mortgagor shall pay the same forthwith;

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

14.3 The Mortgagee shall be entitled to charge a reasonable servicing fee to process each application for approval as herein contemplated, which fee shall be payable forthwith upon demand. Failure by the Mortgagor to pay such servicing fee shall be deemed to be an act of default hereunder. It is further understood and agreed that any approval given hereunder shall in no way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of the moneys hereby secured.

## 15. CONDOMINIUM PROVISIONS

15.1 If the Lands now or at any time hereafter are comprised of one or more condominium units as defined under The Condominium Act (Manitoba) (which in this section is referred to as the "Act"), the Mortgagor covenants and agrees:

- (a) The Mortgagor shall observe and perform each and every one of the covenants and provisions required to be observed and performed by the Mortgagor by virtue of his ownership of the Unit or pursuant to the terms of this Mortgage, the Act, the bylaws of the Condominium Corporation and all respective amendments thereto;
- (b) Without restricting the generality of the foregoing, the Mortgagor shall pay when due any administration expenses, assessments, instalments, contributions of payments leviable by the Condominium Corporation against the Unit or the

Mortgagor as owner thereof (hereinafter referred to as the "common expenses", failing which the Mortgagee may, but shall not be obliged, to pay the same;

(c) The Mortgagee may deduct from any advance of monies secured by this Mortgage an amount sufficient to pay any common expenses attributable to the Unit which have or may become due and remain unpaid at the date for adjustment of interest;

(d) The Mortgagor shall, promptly following receipt thereof, transmit to the Mortgagee any notices received from the Condominium Corporation including all notices and bills affecting the imposition of the common expenses with respect to the Unit;

(e) If the Mortgagor makes default in the performance of his obligations under this Paragraph 15 (regardless of any action or proceedings taken or proposed by the Condominium Corporation) the same shall constitute default under this Mortgage to the same extent as if the time for payment of the principal sum and other monies hereby secured had fully come and expired;

(f) Upon default herein and notwithstanding any other right or action of the Condominium Corporation or the Mortgagee, the Mortgagee may distrain for arrears of any assessments, instalments or payments due to the Mortgagee or arising under any of the subparagraphs in this Paragraph contained;

(g) The definitions contained in the Act shall apply to this Mortgage:

(h) The Mortgagor shall deliver to the Mortgagee a copy of each and every:

(i) notice of any meeting of members of the Condominium Corporation at least ten (10) clear days prior to the date fixed for such meeting;

(ii) claim or demand for payment by the Mortgagor to the Condominium Corporation or to any person, firm or corporation duly authorized to receive monies otherwise payable to the Condominium Corporation at least five (5) clear days prior to the date upon which such claim or demand becomes due and payable;

(iii) notice of any breach of any of the provisions of the Act, the bylaws of the Condominium Corporation or of any rule or regulation of the Condominium Corporation within five (5) days of the date upon which such notice is received by the Mortgagee;

(iv) request or demand for the consent of the Borrower to any matter affecting the Unit within (5) days of the date upon which such request or demand is received by or made of the Mortgagee;

(i) In the event that the condominium status of the Unit is terminated or in the event of a sale of any part of the common elements is authorized by a vote of the owners thereof, then, all monies secured by this Mortgage shall, at the option of the Mortgagee, immediately become due and payable and the powers of entering, leasing or selling and all other remedies hereunder shall without more become exercisable by the Mortgagee;

(j) The Mortgagor does hereby irrevocably assign unto the Mortgagee and by these presents does irrevocably authorize and empower the Mortgagee to exercise the right of the Mortgagor as the owner of the Unit to vote or to consent to all matters relating to the affairs of the Condominium Corporation, provided however that;

(i) the Mortgagee may at any time and from time to time give notice in writing to the Mortgagor and to the Condominium Corporation that the Mortgagee does not intend to exercise its right to vote or consent and in that event until the Mortgagee revokes such notice the Mortgagor may exercise the right to vote or consent;

(ii) any such notice may be for an indeterminate period of time or for a specific meeting or matter;

(iii) the Mortgagee shall not by virtue of this assignment, authorization and power in favour of the Mortgagee be under any obligation to vote or consent or to protect the interests of the Mortgagor nor be responsible for any exercise or failure to exercise the right to vote or consent;

(iv) this assignment, authorization and power in favour of the Mortgagee or the exercise by the Mortgagee of the right to vote or consent shall not constitute the Mortgagee a Mortgagee in possession;

(v) in all situations where a unanimous resolution is not required, the right to vote may only be exercised by the Mortgagor if the Mortgagee is not represented by proxy, or if represented by proxy, does not desire to vote;

(k) The Mortgagor does hereby irrevocably assign unto the Mortgagee:

(i) any lease or rights to occupy any parking space or spaces in the building of which the Unit forms part, demised to or reserved or designated for exclusive use by the Mortgagor;

(ii) any lease or rights to exclusive use of any common property or special privileges in respect thereof granted to the Mortgagor.

## **16. COVENANTOR**

16.1 This paragraph applies if the Mortgage Form been executed by a "Covenantor" and if so, the Covenantor for the sum of TEN DOLLARS (\$10.00) of lawful money of Canada and other good and valuable consideration now paid by the Mortgagee to the Covenantor (the receipt and sufficiency of which is hereby acknowledged), hereby covenants, promises and agrees to and with the Mortgagee as a principal debtor and not as a surety:

(a) to duly and punctually pay the Principal Sum, interest and all other moneys from time to time owing on the security of this Mortgage and to observe and perform or cause to be observed and performed all the covenants, agreements, terms, provisos, stipulations, and conditions herein contained on the part of the Mortgagor to be observed and performed and to indemnify, protect

and save harmless the Mortgagee from all loss, costs and damage in respect of this Mortgage and every matter and thing herein contained;

(b) that no release or releases of any portion or portions of the Lands and no indulgence shown by the Mortgagee in respect of any default by the Mortgagor which may arise under this Mortgage and no extension or extensions granted by the Mortgagee to the Mortgagor for payment of the moneys hereby secured, or for the doing, observing or performing of any covenant, agreement, matter or thing herein contained, to be done, observed or performed by the Mortgagor, nor any variation in or departure from the provisions of this Mortgage including but not limited to any variation or increase of the Interest Rate or any extension of the term of payment of the moneys secured hereunder, nor any taking of further security from the Mortgagor nor any other dealings between the Mortgagee and the Mortgagor, shall in any way prejudice the Mortgagee or modify, alter, vary or affect the liability of the Covenantor in any way under this covenant, which shall continue and be binding on the Covenantor, as well after as before default under, judgment upon, or maturity of this Mortgage, until the Principal Sum, interest and other moneys owing hereunder are fully paid and satisfied;

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

(d) that any failure on the part of the Mortgagee to perfect, maintain or enforce its rights, whether due to default, negligence or otherwise on the part of the Mortgagee, with respect to this Mortgage, or any other security granted to the Mortgagee relating to the within mortgage or the moneys secured hereby, shall not prejudice the Mortgagee with respect to its rights pursuant to this covenant and shall not discharge or limit or lessen the liability of the Covenantor pursuant to the terms hereof;

(e) that the release of any person or persons comprising the Covenantor from his or her or its liability hereunder, in whole or in part, shall not affect the liability of any person or persons remaining as Covenantor above, which liability shall in each instance remain unimpaired and still in full force and effect as if each person being so released had not been party to this Mortgage; and

(f) that the Mortgagee may vary any agreement or arrangement with any or all of the persons comprising the Covenantor and grant extensions of time to or otherwise deal with the Covenantor without any consent on the part of the Mortgagor.

## **17. PROMISSORY NOTE**

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

## **18. OTHER OBLIGATIONS**

18.1 Any default by the Mortgagor in the performance of any contractual obligation to the Mortgagee under any agreement or legal instrument collateral or

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

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

## **19. ESTOPPEL CERTIFICATE**

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

## **20. INTEREST RATE ALTERNATIVE**

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

## **21. ASSIGNMENT OF RENTS**

21.1 To further secure the Principal Sum and interest and all other sums which may become due and payable hereunder, the Mortgagor hereby transfers and assigns all rents payable by any tenants of any and all parts of the Lands. It is understood and agreed that the Mortgagee may, without notice to the Mortgagor or to any other party hereunder, exercise at any time the powers hereby conferred. It is further understood and agreed that neither the existence of this paragraph nor the exercising of any of the powers conferred by this assignment of rentals nor the collection of any rents hereunder shall constitute the Mortgagee a mortgagee in possession, nor shall they render the Mortgagee liable to account to any of the parties hereunder for failure to collect or for

neglect in collecting any of the rentals, nor shall they impose any obligation whatsoever on the Mortgagee to take any proceedings whether in a court of law or otherwise to enforce payment of the said rentals, nor shall they render the Mortgagee liable for any neglect to repair or to supply heat or electricity or any other service to the tenants or to pay taxes but such responsibility, notwithstanding the collection of any rentals as aforesaid, shall rest entirely with the Mortgagor.

## **22. BUILDING MORTGAGE**

22.1 If this Mortgage is a building mortgage then the Mortgagor covenants:

(a) to construct a building or buildings or other improvements on the Lands in accordance with such plans and other specifications as have been or shall hereafter be approved in writing by the Mortgagee;

(b) that any such construction shall be carried out diligently, and in a proper and workmanlike manner; and in conformity with the ordinances, by-laws and other requirements of any government, government agency or other body having statutory jurisdiction over construction on the Lands;

(c) that any buildings or improvements now or hereafter erected or constructed on the Lands shall stand as and form part of the security for the full amount of the moneys secured by this Mortgage; and

(d) that the moneys secured hereby are to be advanced from time to time in the discretion of the Mortgagee in accordance with the state of the buildings or other improvements being or to be erected or constructed on the Lands and upon the fulfillment of any other conditions or requirements stipulated by the Mortgagee, but save where the Mortgagee expressly undertakes in writing to the Mortgagor to make any advance, nothing in this paragraph shall vary or modify any provision in this Mortgage which concerns, governs or limits the Mortgagee's obligation to advance any monies secured by this Mortgage.

## **23. MAXIMUM RETURN TO MORTGAGEE**

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

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

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

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

**24. MISCELLANEOUS**

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

24.2 Any extension of the term of payment of the moneys hereby secured, or any part thereof, and any agreement increasing or decreasing the rate of interest payable hereunder, prior to the execution of the discharge of this Mortgage by the Mortgagee need not be registered in a land title office, but shall be effectual and binding on the Mortgagor, the Covenantor and any other person liable for the moneys hereby secured, in whole or in part, and it shall not be necessary to register any such agreement in order to retain priority of this Mortgage so altered over any instrument registered as a charge against the Lands subsequently to the registration of this Mortgage;

24.3 Any demand or notice necessary to be given in pursuance of the exercise of the powers and provisions herein contained may be given to the Mortgagor or to any encumbrancer by writing signed or purporting to be signed by or on behalf of the Mortgagee;

24.4 Any demand or notice to be made or given under the provisions of this Mortgage may be effectually made or given in writing addressed to the party to whom it is made or given and delivered or mailed by registered post to the address stated in Item 2 or 8 of the Mortgage Form or to such other address in Manitoba as the party to whom it is made or given shall have previously specified by written notice, and shall be deemed to have been made or given on the date of delivery if delivered and on the third day after mailing if mailed;

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

**25. INTERPRETATION**

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

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

25.3 In the event of any party being comprised of two or more persons, all covenants and agreements of such party herein contained shall be and be deemed to be joint and several covenants or agreements of each such person, and the heirs, executors, administrators, successors and permitted assigns of each such person shall

be jointly and severally bound by the covenants, agreements, stipulations and provisos herein stated in addition to those granted or implied by statute;

25.4 If any of the terms of this Mortgage are or are held to be unenforceable or otherwise invalid, such holding will not in any way affect the enforceability or validity of the remaining terms of this Mortgage;

25.5 This Mortgage including any covenants and indemnity of the Covenantor provided for herein shall be governed by and construed in accordance with the laws of the Province of Manitoba, and each party hereby submits to the jurisdiction of the courts of the Province of Manitoba and agrees to be bound by any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding; provided that the foregoing shall in no way limit the right of the Mortgagee to commence suits, actions or proceedings based on this Mortgage in any other jurisdiction;

25.6 Wherever the singular or masculine gender is used throughout this Mortgage, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;

25.7 This Mortgage is intended by the Mortgagor and the Mortgagee to take effect as a deed, notwithstanding that it may or may not be executed under seal;

25.8 Time shall be of the essence hereof;

25.9 All references in these filed standard mortgage terms to statutes, regulations or sections of statutes or regulations shall be construed as referring to those statutes, regulations or sections as amended from time to time and to all replacements thereof from time to time, unless the context otherwise requires. All references to sections of Manitoba statutes are to those sections in The Continuing Consolidation of the Statutes of Manitoba.

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

**END OF SET**