

# CANADIAN WESTERN BANK

## STANDARD CHARGE TERMS – HOMEWORKS MORTGAGE

### *LAND REGISTRATION REFORM ACT (ONTARIO)*

Filed by: **CANADIAN WESTERN BANK**

Filing No.: 201034

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

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

### 1. DEFINITIONS

1.1 In this set of standard charge terms:

- (a) “**HOMEWORKS FACILITY LETTER**” means the facility letter entered into between the Chargee and Chargor, as the same may be amended, restated, supplemented and/or replaced from time to time;
- (b) “**Balance Due Date**” means, in respect of each Loan, the balance due date of such Loan, if any, set out or referred to in the applicable Loan Agreement;
- (c) “**business day**” means any day which in Edmonton, Alberta or Toronto, Ontario is a day that:
  - (i) is not a “holiday” as that word is defined in the *Interpretation Act* (Alberta) or the *Interpretation Act* (Ontario), in each case as amended or replaced from time to time; and
  - (ii) the Chargee is open for business at its Payment Office;
- (d) “**Chargee**” means the “Chargee” identified in the Mortgage Form, and its successors and assigns;
- (e) “**Chargor**” means the Person or Persons described in the HOMEWORKS FACILITY LETTER as the Borrower(s) or mortgagor(s) and who is/are identified in the Mortgage Form as the “Chargor(s)” and its/their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (f) “**Condominium Act**” means the *Condominium Act* (Ontario), the regulations thereunder and any amendments thereto;
- (g) “**condominium corporation**” means the corporation created by the registration or deposit of a declaration and description under the Condominium Act in respect of the Lands;

- (h) **“condominium property”** is defined in paragraph 15;
- (i) **“Covenantor”** means the Person or Persons, if any, identified in the Mortgage Form as “Covenantor” and their respective heirs, personal representatives, successors or permitted assigns, as the case may be;
- (j) **“First Payment Date”** means, in respect of each Loan, the first payment date, if any, as set out in the applicable Loan Agreement, which is deemed to be incorporated into and form part of the Mortgage;
- (k) **“Fixtures”** mean all present and after-acquired structures, additions, improvements, plant, machinery, apparatus, facilities, equipment, fixtures and other goods installed in or affixed or attached to the buildings or improvements situate in, on or under the Lands or affixed or attached thereto, including without limitation:
  - (i) all fences, motors, wiring, fixed mirrors, suspended ceiling tiles, doors, windows and all other structures, additions, improvements, plant, machinery, apparatus, facilities, equipment, fixtures and other goods installed in or affixed or attached to the buildings or improvements situate in, on or under the Lands or affixed or attached thereto for use in carrying on an activity inside the said buildings or improvements or on the Lands;
  - (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;
- (l) **“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 Chargor 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 Chargor 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 Hazardous Materials Laws;
  - (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental or quasi-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) any other chemical, materials or substance which may or could pose a hazard to the environment;
- (m) **“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 Chargor in connection with the Lands or the business of the Chargor relating thereto relating to damage, contribution, cost recovery, compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials;
- (n) **“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 therefor) or the environmental conditions on, under or about the Lands including, without limitation, soil, groundwater and indoor and ambient air conditions, including, but not limited to, the *Canadian Environmental Protection Act* (Canada), *Fisheries Act* (Canada), *Transportation of Dangerous Goods Act* (Canada), *Canada Water Act* (Canada) and the *Environmental Protection Act* (Ontario);
- (o) **“Interest Adjustment Date”** means, in respect of each Loan, the interest adjustment date, if any, set out or referred to in the applicable Loan Agreement, which is deemed to be incorporated into and form part of the Mortgage;
- (p) **“Interest Calculation Period”** means, in respect of each Loan, the interest calculation period set out in the applicable Loan Agreement, which is deemed to be incorporated into and form part of the Mortgage;
- (q) **“Interest Rate”** means, subject to the provisions of paragraph 20 hereof, the Prime Rate plus 3% per annum, 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 Chargor and the Chargee in the applicable Loan Agreement;

- (r) **“Lands”** means all of the estate, right, title and interest of the Chargor in and to the land(s) described in item 3 of the HOMEWORKS FACILITY LETTER and referred to in the Mortgage Form together with the improvements and appurtenances, whether now or hereafter existing or acquired, in connection with such land(s), including, without limitation, all Fixtures, and in the case of a condominium unit, the common elements and any other interest the Chargor has in the condominium property;
- (s) **“Land Registry Office”** means the land registry office or the land titles office in the Province of Ontario having jurisdiction over the Lands;
- (t) **“Last Payment Date”** means, in respect of each Loan, the last payment date, if any, set out or referred to in the applicable Loan Agreement, which is deemed to be incorporated into and form part of the Mortgage;
- (u) **“Loan”** means a loan or other extension of credit approved pursuant to the HOMEWORKS FACILITY LETTER and which is secured hereby;
- (v) **“Loan Agreement”** means the HOMEWORKS FACILITY LETTER, and each mortgage loan agreement, line of credit agreement, overdraft protection agreement, consumer loan agreement, personal demand agreement and any other type of agreement entered into between the Chargee and the Chargor for the extension of credit by the Chargee to the Chargor, any guarantee given by the Chargor to the Chargee and any other dealings between the Chargee and the Chargor, in each case as amended, restated, supplemented and/or replaced from time to time;
- (w) **“Mortgage”** means, collectively, the HOMEWORKS FACILITY LETTER, the Mortgage Form and this set of standard charge terms, read together, as amended, modified and extended from time to time;
- (x) **“Mortgage Form”** means, for the non-electronic paper based registration system, the Form 2 Charge/Mortgage of Land or, for the electronic registration system, the Charge prepared in electronic format and registered electronically pursuant to Part III of the *Land Registration Reform Act* (Ontario), including any schedules attached to it;
- (y) **“net proceeds”** means the proceeds of the sale or lease of the Lands, less the costs incurred by the Chargee to take, recover or keep possession of the Lands, to sell, lease or transfer the Lands, including, without limitation, all amounts paid by the Chargee on account of taxes, maintenance, repairs, utilities, insurance, appraisal fees, common expenses, special assessments and other costs paid to the condominium corporation and any other amount that the Chargee may pay to maintain, operate, manage or preserve the Lands and the Chargee’s legal expenses in connection with the foregoing;
- (z) **“Payment Dates”** means the payment dates, if any, as set out in the Loan Agreements for the Loans, which are deemed to be incorporated into and form part of the Mortgage and **“Payment Date”** means any one of them;
- (aa) **“Payment Office”** means the place of payment set out or referred to in the HOMEWORKS FACILITY LETTER;

- (bb) **“Periodic Payment”** means, in respect of each Loan, the amount of each periodic payment of interest and/or principal, if any, set out or referred to in the applicable Loan Agreement;
- (cc) **“Permitted Encumbrances”** means the prior encumbrances, if any, set out or referred to in item 3(ii) of the HOMEWORKS FACILITY LETTER;
- (dd) **“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);
- (ee) **“Prime Rate”** means the floating annual variable rate of interest established from time to time by the Chargee at its main branch in Edmonton, Alberta, as the reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by the Chargee in Canada and payable on demand and as such the annual variable rate of interest now designated by the Chargee and commonly referred to and known as its “prime interest rate” or “prime lending rate”;
- (ff) **“Principal Sum”** means:
- (i) the principal amount set out or referred to in item 3(iii) of the HOMEWORKS FACILITY LETTER or so much thereof as may from time to time be advanced or re-advanced by the Chargee to the Chargor (and which amount shall include all advances or re-advances made by the Chargee to the Chargor by virtue of:
    - (A) mortgage loans, lines of credit, account overdrafts, personal instalment loans and/or demand loans;
    - (B) letters of credit or letters of guarantee issued to, or to the order of, the Chargor; and
    - (C) bills of exchange or other negotiable instruments accepted by the Chargee
 at the request of the Chargor); plus
  - (ii) all money or interest thereon that is later added to the Principal Sum under the Mortgage; less
  - (iii) payments made on account of the Principal Sum by the Chargor from time to time;
- (gg) **“Taxes”** means all taxes, local improvement charges, rates, levies, charges, assessments and other impositions of any nature or kind whatsoever (including, without limitation, any penalties or interest imposed with respect to arrears) 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 Chargor or the Chargee in respect of the Lands; and

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

## 2. GRANT OF SECURITY

- 2.1 As security for its obligations under the Mortgage and each Loan Agreement (including, without limitation, repayment of the Principal Sum and interest thereon), the Chargor **HEREBY MORTGAGES AND CHARGES** all of its right, title and interest in and to the Lands (including all Fixtures) to the Chargee subject to Permitted Encumbrances and the proviso for redemption set out in paragraph 3 hereof;
- 2.2 If the Chargor hereafter acquires any further or greater interest in the Lands, charges, mortgages and security interests created by the Mortgage shall automatically extend to such interest in the Lands;
- 2.3 Without in any way affecting or releasing the Chargor’s liability to the Chargee for the payment of the moneys and the performance of the obligations hereby secured and for the consideration aforesaid the Chargor assigns, transfers and sets over to the Chargee:
- (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 Chargor 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 Chargor further agrees that it shall execute and deliver any such further or additional documentation which the Chargee may in the Chargee’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 Chargee 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 Chargor 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 the Mortgage, including without limitation payment of any and all moneys due under the Mortgage by any purchaser of the Lands, or any part thereof, from the Chargor.

## 3. PROVISO FOR REDEMPTION

- 3.1 The Chargee will, if requested by the Chargor, sign a discharge of the Mortgage upon the occurrence of the following events:
- (a) payment to the Chargee 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 sums 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; and

- (ii) the outstanding balance of the Principal Sum together with interest as aforesaid and on all other sums secured hereunder shall become due and be paid on the Balance Due Date (herein sometimes called "maturity");
- (b) payment to the Chargee of all such other moneys as the Chargee may be entitled to by virtue of the Mortgage or any Loan Agreement, as and when such moneys shall become due and payable;
- (c) payment of Taxes;
- (d) observance and performance of all covenants, agreements, provisos, terms, conditions and provisions contained in the Mortgage and any Loan Agreement; and
- (e) the Chargee no longer having any obligation to advance funds or extend credit to the Chargor pursuant to the Mortgage or any Loan Agreement.

AND the Chargor releases to the Chargee all the claims of the Chargor on the Lands subject to the above provisos.

**THE CHARGOR COVENANTS AND AGREES WITH THE CHARGEE AS FOLLOWS:**

**4. PAYMENT**

- 4.1 The Chargor will duly pay the Principal Sum, interest, and all other moneys secured by the Mortgage 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, counterclaim, defalcation or abatement whatsoever;
- 4.3 If the Chargor fails to pay when due the Principal Sum, interest or other moneys secured by the Mortgage, or any part thereof, including compound interest, the Chargor shall pay to the Chargee 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 that is based upon the Prime Rate:
  - (a) if the Prime Rate changes and so often as the same occurs during the currency of the Mortgage, the Interest Rate shall change without notice to the Chargor and the Covenantor on the same day and in the same amount as the Prime Rate changed;
  - (b) a certificate of any officer of the Chargee 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 the Chargee shall at any time during the currency of the 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 foreclosure proceedings are commenced hereunder by the Chargee, the Chargee may, at its option, apply to fix the Interest Rate that will be payable hereunder after the grant of the final order of foreclosure 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 Nisi;
- 4.5 Until the Chargee shall notify the Chargor otherwise, all payments to be made to the Chargee under the Mortgage shall be paid to or to the order of the Chargee at the Payment Office, in dollars of lawful money of Canada, solely on business days, and before 12:00 o'clock noon local time at the place where the Payment Office is located 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 Chargee on the business day next following;
- 4.6 The Chargor will, on the due date thereof, pay and satisfy all Taxes and will submit to the Chargee tax receipts evidencing the payment of Taxes within thirty (30) days after they become due, provided that:
- (a) the Chargee may deduct from any advance of the Principal Sum an amount sufficient to pay the Taxes which have become or then will become due and payable on or before the date of such advance;
- (b) at the option of the Chargee, the Chargor will in each year during the currency of the Mortgage, if directed by the Chargee, pay to the Chargee in equal monthly instalments such amount as the Chargee may estimate as being the Taxes due and payable in each calendar year and such instalments shall be paid along with and in addition to the Periodic Payments and such instalments shall be applied on account of Taxes so long as the Chargor is not in default hereunder but the Chargor shall not be paid interest on monies paid to the Chargee on account of Taxes;
- (c) any amounts deducted by or paid to the Chargee, pursuant to paragraphs 4.6(b) hereof may, at the option of the Chargee, be applied against any Principal or interest then in default under the Mortgage. No such amounts paid to the Chargee shall be or be deemed to be held in trust and the Chargee shall not be obligated to pay any interest or other allowance upon any such amounts; and
- (d) the Chargor shall transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith after the receipt of same by the Chargor;
- 4.7 If the Mortgage is now or at any time hereafter subject to any encumbrance, charge, lien or interest claimed upon the Lands, including but not limited to Permitted Encumbrances (each hereinafter called a "prior charge"):
- (a) the Chargor 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 Chargor 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 and notify the Chargee of any default by it under a prior charge;

- (c) any default under a prior charge shall be deemed to be default under the Mortgage and shall entitle the Chargee to exercise any and all remedies available to the Chargee in the event of default under the Mortgage; and
  - (d) in the event of default by the Chargor under a prior charge, the Chargee shall have the right, but no obligation, to cure the same in its sole and absolute discretion;
- 4.8 The Chargor shall pay all costs, charges and expenses including without limitation legal costs on a full indemnity basis and appraiser's fees, in connection with the negotiation, preparation, registration, modification and extension of the Mortgage;
- 4.9 The Chargor shall pay all fees, costs, charges and expenses including without limitation legal fees, costs, charges and expenses on a full indemnity basis, which may be incurred by or on behalf of the Chargee 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 the Mortgage or in any way enforcing or protecting the security of the Mortgage or enforcing any of the terms of the Mortgage (including but not limited to all travelling expenses of the Chargee, the Chargee's servants and agents, and commissions on collection of rent which may be incurred by or on behalf of the Chargee 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 Chargee 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 on the Lands in favour of the Chargee and secured under the Mortgage and shall be payable forthwith by the Chargor to the Chargee with interest at the Interest Rate until paid;
- 4.10 The Chargor shall forthwith upon demand repay to the Chargee all other proper outlays incurred by the Chargee and not covered by any other covenant in the Mortgage;
- 4.11 The Chargee shall have a reasonable time after payment in full of the moneys secured under the Mortgage within which to prepare and execute a discharge of the 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 Chargee, and all legal and other expenses for the preparation and execution of such discharge shall be borne by the Chargor, and the Chargor will not be entitled to a discharge of the Mortgage unless and until the Chargor shall have kept and performed all the covenants, provisos, agreements and stipulations herein contained, whether the Chargee has taken legal proceedings thereon and recovered judgment or otherwise.

## **5. PREPAYMENT RIGHTS**

- 5.1 The Chargor has no right to prepay all or any part of the Principal Sum except as set out in the applicable Loan Agreement or as otherwise agreed to in writing between the Chargee and the Chargor from time to time.

## **6. TITLE**

- 6.1 The Chargor has good and marketable title in fee simple to the Lands, subject only to Permitted Encumbrances;
- 6.2 The Chargor has the right to charge the Lands to the Chargee;

- 6.3 The Chargor has done no act to encumber the Lands, save for Permitted Encumbrances;
- 6.4 The Lands are free of Hazardous Materials (provided that the Chargee may require that an environmental audit of the Lands be conducted at the expense of the Chargor by a Person acceptable to the Chargee 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 Chargor, (or if the Chargor is a corporation, to any of the Chargor's directors and officers) which have not been disclosed to the Chargee;
- 6.5 On default, the Chargee shall have quiet possession of the Lands free from all encumbrances, save only for Permitted Encumbrances, provided that until default the Chargor shall have quiet possession of the Lands;
- 6.6 The Chargor will execute such further assurances of the Lands as the Chargee may require including without limitation any and all documents required by the Chargee in connection with the *Personal Property Security Act* (Ontario);
- 6.7 The Chargor will not permit a lien to arise or be registered against the Lands under the *Construction Lien Act* (Ontario) or under any other statute or law at any time in force affecting the Lands;
- 6.8 If the Chargor grants any further mortgage or charge or otherwise encumbers the Lands or permits the Lands to be encumbered, save and except for the Mortgage and Permitted Encumbrances, then, at the sole discretion of the Chargee and notwithstanding the other provisions of the Mortgage, the Chargee may declare that all moneys hereby secured shall immediately become due and be paid;
- 6.9 If the Chargor holds a leasehold interest in the Lands, the Chargor covenants with the Chargee that:
- (a) the Chargor has a good, valid and marketable leasehold title to the Lands;
  - (b) the Chargor has a right to mortgage, charge and sublet the leasehold title to the Lands to the Chargee in the manner herein provided and, if required, has obtained the lessor's consent to the Mortgage;
  - (c) neither the Chargor 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 Registry Office disclose;
  - (d) the lease is a good, valid and subsisting lease and it has not been surrendered, forfeited, amended, disclaimed or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Chargor up to the date of the execution of the Mortgage by the Chargor;
  - (e) the Chargor will not amend, surrender or modify the lease without the written consent of the Chargee first had and obtained and it will not allow the lease to be terminated or forfeited;
  - (f) the Chargor 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 Chargee 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 Chargee shall be the Chargor's attorney during the continuance of the Mortgage so as to permit the Chargee to execute any document or do any act or thing which the Chargee is permitted or the Chargor 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 mortgage and charge created under the Mortgage, but the Chargor will stand possessed of the Lands for the last day of the term, or any renewal or extension term, granted by the lease, in trust for the Chargee and will sell and assign the last day of the term, or any renewal term, as the Chargee may direct, but subject to the same right of redemption and other rights as are hereby given to the Chargor with respect to the derivative term hereby granted. In the event of any sale or assignment by the Chargee as contemplated herein, the Chargor 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 Chargor will forthwith insure and during the continuance of the 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 Chargee may reasonably require (including but not limited to boiler insurance, loss of rental income and business interruption insurance);
- 7.2 The Chargor will keep and maintain third party liability insurance in an amount satisfactory to the Chargee;
- 7.3 The Chargor 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 Chargee shall be issued by insurers in form and upon terms and in amounts acceptable to the Chargee, and the Chargor shall cause the Chargee 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 Chargor and shall cause mortgage clauses in a form approved by the Chargee to be included in such policy or policies and shall provide evidence of such insurance to the Chargee forthwith upon demand;
- 7.5 The Chargor will pay all insurance premiums and sums of money necessary for such purposes as the same shall become due;
- 7.6 The Chargor will forthwith assign, transfer and deliver over to the Chargee each and every policy or policies of insurance and receipts thereto appertaining;
- 7.7 The Chargor shall forthwith on the happening of any loss or damage furnish to the Chargee at the Chargor's expense all necessary proofs and do all necessary acts to enable the Chargee to obtain payment of insurance moneys;

- 7.8 Any insurance moneys received may, at the option of the Chargee, 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 Chargor 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 Chargee, 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 Chargee may so apply such insurance moneys in the manner herein contemplated, the Chargor assigns and releases to the Chargee all rights of the Chargor to receive the insurance moneys and expressly waives all of the Chargor's rights and benefits under any statutory or common law which may require that proceeds of insurance be used to restore or rebuild the improvements on the Lands.

## **8. USE, ALTERATIONS AND REPAIRS**

- 8.1 The Chargor shall not without the express written consent of the Chargee 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 Chargor shall promptly observe, perform, execute and comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of every governmental, quasi-governmental, municipal and civil authority or agency concerning the Lands and further agrees, at the cost and expense of the Chargor, 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 with the provisions of all Hazardous Material Laws pertaining to the Lands or the business of the Chargor in connection therewith and from time to time, upon request of the Chargee, provide to the Chargee evidence satisfactory to the Chargee, acting reasonably, of such observance and compliance;
  - (b) it will, after becoming aware thereof, promptly provide the Chargee 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 or quasi-governmental or quasi-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 Chargee 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 with all applicable laws, regulations, bylaws, ordinances and orders of any governmental or quasi-governmental authority having application to the Lands or the business of the Chargor in connection therewith which pertain to health and safety or industrial hygiene;
- 8.3 The Chargor 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 Chargor will not, without the prior written consent of the Chargee, 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 Chargor 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 Chargor. The Chargor will comply with all Hazardous Materials Laws, and will cause all tenants, licensees or occupants under any lease, license or occupancy agreement affecting the Lands and all other Persons on or occupying the Lands, to comply with all Hazardous Materials Laws. Without limiting the generality of the foregoing, the Chargor 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 Chargor 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 Chargor will take such remedial action in good faith so as to minimize any impairment to the Lands and the grants, mortgages and charges created under the Mortgage. In the event the Chargor undertakes any remedial action with respect to any Hazardous Materials on, under or about the Lands, the Chargor will conduct and complete such remedial action to the satisfaction of the Chargee, 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 Chargee from time to time, the Chargor will promptly submit, at its own expense, a report, satisfactory in form and content to the Chargee and prepared by a consultant approved by the Chargee, 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 Chargor will immediately advise the Chargee 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 Chargor in response to any Hazardous Materials Claims or any Hazardous Materials on, under or about the Lands, of the Chargor's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the

Lands, of the Chargor'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 Chargor will immediately provide the Chargee with copies of all communications with federal, provincial and local governments or agencies relating to Hazardous Materials Laws and all communication with any Person relating to Hazardous Materials Claims;

- 8.8 The Chargor shall assume any and all environmental liabilities relating to the Lands, and will protect, indemnify and hold the Chargee, its directors, officers, employees and agents, and any successors to the Chargee's interest in the Lands, and any other Person who acquires the Lands at a foreclosure sale or otherwise through the exercise of the Chargee's rights and remedies, and any successors to any such other Person, and all directors, officers, employees and agents of all of the aforementioned indemnified parties, harmless from and against any and all actual, potential or threatened claims, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, legal fees and disbursements on a full indemnity basis and costs and expenses of investigation) which arise out of or relate in any way to any use, handling, production, transportation, disposal or storage of any Hazardous Materials in or on the Lands whether by the Chargor or any tenant or any other Person, including without limitation all foreseeable and all unforeseeable consequential damages directly or indirectly arising out of the use, generation, storage, discharge or disposal of Hazardous Materials by the Chargor, any prior owner, occupant or operator of the Lands or any Person on or about the Lands, or arising out of any residual contamination affecting any natural resource or the environment, and the costs of any required or necessary repair, clean-up, remediation or detoxification of the Lands and the preparation of any closure or other required plans. In addition, if any Hazardous Material is caused to be removed from the Lands by the Chargor, the Chargee or any other Person, then such Hazardous Material will be and remain the property of the Chargor and the Chargor will assume any and all liability for such removed Hazardous Material. The Chargor understands that its liability to the aforementioned indemnified parties will arise upon the earlier to occur of the discovery of the Hazardous Materials on, under or about the Lands, or the institution of any Hazardous Materials Claims, and not upon the realization of loss or damage, and that it will survive the payment and satisfaction of all of the other obligations secured under the Mortgage. The Chargor will pay to the Chargee from time to time, immediately upon the Chargee's request, an amount equal to all costs, damages, claims and expenses described or referred to in this paragraph, as reasonably determined by the Chargee;
- 8.9 The Chargee and any agent of the Chargee, may at any time and from time to time enter upon the Lands to inspect the Lands or any part or parts thereof and at any time the Chargee in its sole discretion deems necessary or advisable, and the Chargee may without the concurrence of the Chargor or any other Person make arrangements to repair, finish, and put in order the buildings, structures, erections, improvements and the like now or hereafter existing on the Lands, and to inspect, take care of, lease, collect the rents of, and generally manage the Lands as the Chargee may deem proper, and the Chargee shall not hereby become or be liable as a mortgagee in possession.

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

- 9.1 Any payments to be made by the Chargor shall become due and be payable at the times provided under the Mortgage notwithstanding that at the due date of any payment the full amount of the Principal Sum which the Mortgage is expressed to secure has not been

advanced, but when the full amount is not advanced, the payments may in the sole discretion of the Chargee be reduced proportionately;

- 9.2 The Chargee may deduct accrued interest and costs, charges, and expenses payable hereunder from any advance of the Principal Sum and the Chargee 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 Chargee by issuing letters of credit or letters of guarantee or accepting bills of exchange or other negotiable instruments at the request of the Chargor is required to make advances or re-advances of money thereunder, the Chargor agrees that neither the preparation, execution or registration of the Mortgage, nor the advance or re-advance in part of the Principal Sum secured under the Mortgage, nor any course of conduct of the Chargee or of any of its officers, agents or employees shall bind the Chargee to advance or re-advance the Principal Sum or any unadvanced portion thereof to the Chargor or to any other Person the obligations of whom are guaranteed by the Chargor, it being understood and agreed that the advance or re-advance of the moneys secured under the Mortgage or any part thereof from time to time shall be in the absolute discretion of the Chargee and not exercised or deemed exercised unless and until that advance or re-advance has actually been made to the Chargor, but nevertheless the security created by the Mortgage shall take effect in accordance with the terms of the Mortgage forthwith upon the execution hereof by the Chargor. NOTICE IS HEREBY GIVEN to every Person dealing with the title to the Lands that the Mortgage secures or may secure a revolving line of credit that entitles the Chargor to obtain advances of the Principal Sum, repay all or a portion of such Principal Sum, and reborrow the amounts previously paid to the Chargee. The Mortgage secures all advances and re-advance of the Principal Sum pursuant to the Mortgage;
- 9.4 Any portion of the Principal Sum may be advanced or re-advanced by the Chargee all or in part at any future date or dates and the amount of those advances and re-advances when so made shall be secured by the Mortgage and be repayable with interest at the Interest Rate and the Mortgage shall be deemed to be taken as security for the moneys secured under the Mortgage arising from the current and running accounts represented by advances and re-advances hereunder under a line of credit or a current loan or otherwise, and the charge and mortgage created by the Mortgage shall take effect forthwith on the execution of the HOMEWORKS FACILITY LETTER;
- 9.5 If the Mortgage is redeemed by the Chargor, it shall be cancelled and shall not be re-issued, but neither:
- (a) any partial payment made thereon by the Chargor to the Chargee; nor
  - (b) any ceasing by the Chargor to be indebted to the Chargee;

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

## **10. CHARGEES ELECTION TO MAKE PAYMENTS AND CURE DEFAULTS**

- 10.1 If the Chargor fails to make any payment which the Chargor has covenanted or agreed to make by the terms of the Mortgage or any Loan Agreement or to provide proof of the

making of any such payment to the Chargee upon demand, the Chargee may make any such payment;

- 10.2 If the Chargor fails to perform any covenant or agreement contained in the Mortgage or any Loan Agreement on the part of the Chargor or to provide proof of performance to the Chargee upon demand, the Chargee may in its sole discretion perform or cause to be performed any such covenant or agreement and may do such acts as it considers are reasonable to protect the interests of the Chargee and for such purposes the Chargee and its authorized representatives may, at its option, enter onto the Lands. Without limiting the generality of the foregoing, the Chargee may:
- (a) insure the buildings on the Lands in accordance with the provisions of the Mortgage if the Chargor neglects to insure or to deliver policies and receipts in accordance with the Mortgage;
  - (b) repair and reinstate the buildings and improvements on the Lands if the Chargor fails to repair in accordance herewith or demolishes or alters such buildings or improvements in contravention of the Mortgage;
  - (c) without any order or direction of the Chargor, pay to contractors, sub-contractors, material men, labourers, and other Persons supplying or having a claim for work, services, or materials supplied in and about the construction, repairing, altering or replacing of any buildings, structures, erections or improvements and the like now or hereafter constructed on the Lands, any moneys due to them for such work, services or materials; and
  - (d) if the Lands are governed, in whole or in part, by the Condominium Act, pay common expenses, assessments, contributions or levies required to be paid in connection with any condominium unit comprising the Lands;

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

- 10.3 If the Chargee shall make payment to any creditor of the Chargor or any encumbrance holder in respect of the Lands pursuant to the provisions of the Mortgage, the Chargee shall be entitled to all equities and securities held by such creditor or encumbrance holder in respect of the indebtedness or encumbrance paid or satisfied;
- 10.4 All payments made and all sums of money expended by the Chargee under this paragraph 10, including incidental costs, charges, expenses and outlays incurred in doing anything under this paragraph 10, shall be forthwith payable by the Chargor on demand with interest at the Interest Rate from the time or respective times of the payment thereof until paid, and until paid shall be added to the Principal Sum and shall be secured by the Mortgage prior to all claims thereon subsequent to the Mortgage;
- 10.5 Nothing done by the Chargee in reliance on the provisions of this paragraph 10 shall in any manner prejudice the remedies of the Chargee in respect of any default of the Chargor or otherwise.

## 11. DEFAULT AND ACCELERATION

11.1 If any default at any time be made of or in any payment of the Principal Sum or interest secured by the Mortgage, or intended so to be, or any part thereof, at the times and in the amounts provided, or in payment of any of the Taxes, rates, levies, charges, rents, assessments or other impositions whatsoever, or under the covenant to insure provided in the Mortgage or any Loan Agreement, or as to any other covenant or proviso contained in the Mortgage or any Loan Agreement, or if the Chargor becomes bankrupt or insolvent or makes or demonstrates an intention to make an assignment for the benefit of its creditors or makes a proposal or takes advantage of any provision of the *Bankruptcy and Insolvency Act* (Canada) or any other legislation for the benefit of insolvent debtors or if the whole or any portion of the Lands become the subject of expropriation proceedings, then and in every such case and in the sole discretion of the Chargee:

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

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

11.3 If:

- (a) the Lands or any part thereof are used by any Person for any illegal or prohibited purpose or in connection with any illegal or prohibited activity whatsoever, or
- (b) any activity takes place on the Lands or any part thereof which constitutes an offence under or breaches any section or provision of the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or any other federal or provincial statute of any application to the Lands, then

at the option of the Chargee in its unrestricted and absolute discretion, the Principal Sum and interest then outstanding shall immediately become due and payable in full by the Chargor.

## 12. REMEDIES OF CHARGEЕ ON DEFAULT

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

12.2 The Chargee's remedies are:

- (a) Go to Court – The Chargee may take court proceedings to obtain a judgment against the Chargor to pay the Chargee the amounts secured under the Mortgage.
- (b) Foreclosure or Sale by a Court – The Chargee may take court proceedings to foreclose the Chargor's equity of redemption in the Lands. If the Chargee obtains a final order of foreclosure from the court, the Lands will become the Chargee's. The Chargee may also ask the court to order the sale of the Lands under its supervision. The net proceeds from the sale of the Lands will be applied to reduce the amounts secured under the Mortgage. If the net proceeds are less than the amounts secured, the Chargor must pay the Chargee the difference, and the Chargee may obtain a judgment against the Chargor to pay the Chargee the difference.
- (c) Lease the Property – If the Chargor's default continues for 15 days, the Chargee may, on 15 days' notice to the Chargor, lease the Lands; if the Chargor's default continues for 30 days, the Chargee may, without notice to the Chargor, lease the Lands. The Chargee may apply the net proceeds of any lease to reduce any part of the amounts secured under the Mortgage. If the net proceeds of any lease are less than the amounts secured, the Chargor must pay the Chargee the difference.
- (d) Power of Sale – If the Chargor's default continues for 15 days, the Chargee may, on at least 35 days' written notice to the Chargor delivered in accordance with the *Mortgages Act* (Ontario), enter on and sell the whole or any part of the Lands. Any sale can be for cash or on credit, or partly for cash and partly on credit, by private sale or public auction and on such terms as can be obtained. The Chargee may cancel, amend or not complete any contract of sale without being responsible for any resulting loss. The net proceeds from any sale of the Lands will be applied to reduce the amounts secured under the Mortgage. If the net proceeds are less than the amounts secured, the Chargor must pay the Chargee the difference, and the Chargee may obtain a judgment against the Chargor to pay the Chargee the difference.
- (e) Enter on the Lands – The Chargee can enter on the Lands at any time without the Chargor's permission and inspect, collect rents or manage the Lands, repair or complete construction of any building or other improvement on the Lands and do anything else that the Chargee is entitled as mortgagee to do. Any costs the Chargee incurs will be added to the Principal Sum and will bear interest at the Interest Rate.
- (f) Possession – The Chargee can take possession of the Lands at any time, without the Chargor's permission, and take all necessary action to recover and keep possession of the Lands. The Chargee will not be considered to be a mortgagee in

possession unless the Chargee actually takes possession of the Lands. The Chargee may lease or sell the Lands without actually entering into possession of the Lands. While in possession, the Chargee will only be accountable for money actually received by the Chargee.

- (g) Personal Property – It shall be lawful for the Chargee to, and the Chargor hereby grants full power and license to the Chargee to enter, seize and distrain upon any goods upon the Lands and by distress warrant to recover by way of rent reserved as in the case of a demise of the Lands as much of the Principal Sum, interest or other moneys secured by the Mortgage as shall from time to time be or remain in arrears or unpaid, together with all costs, charges and expenses of the Chargee in connection therewith (including without limitation legal fees, costs, charges and expenses on a full indemnity basis);
- 12.3 The obtaining of a judgment or judgments in any action to enforce the Mortgage or any of the covenants contained therein or any covenant contained in any other security for payment of the moneys secured by the Mortgage or performance of the obligations contained in the Mortgage shall not, subject to applicable laws, operate as a merger of the Mortgage or of the moneys secured by the Mortgage or any of the said covenants or affect the right of the Chargee to interest at the Interest Rate and at the times aforesaid on any moneys owing to the Chargee under any covenant therein, and any judgment shall provide that interest shall be computed at the Interest Rate and in the same manner as provided in the Mortgage until the judgment or judgments shall have been fully paid and satisfied;
- 12.4 Upon any default or defaults in the payment of the moneys secured by the Mortgage or of any instalment thereof or of interest thereon, as they become due, or upon any default by the Chargor in the performance or observance of any of the terms of the Mortgage, any Loan Agreement, or of any of the assignments of rents or leases or other deeds or instruments from time to time given by the Chargor to the Chargee as additional or collateral security for the moneys hereby secured, then on the happening of any one or more of such events, the Chargor shall refrain from collecting and receiving all rents accruing as aforesaid and, upon notice from the Chargee, all tenants shall thereafter pay all such rents to the Chargee, and any payment made otherwise will not discharge the obligations of such tenant, and the Chargee may immediately cause default proceedings to be commenced under the Mortgage in the manner prescribed by law, and the Chargee shall be entitled to have a receiver, receiver-manager or a receiver and manager (each, a “Receiver”) 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 Chargor, including, without limiting the generality of the foregoing, the right to rent the same and receive and collect the rents, issues and profits thereof, and any amount so collected by such Receiver shall be applied to the payment of any judgment rendered, or amounts found due, according to the terms of the Mortgage, including the costs of collection and legal fees, costs, charges and expenses on a full indemnity basis, and in the event of any default or defaults in the payment of the moneys hereby secured or of any instalment thereof or of interest thereon or in the performance or observance of any of the terms of the Mortgage or any Loan Agreement, the Chargee 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 Chargee may appoint by instrument in writing a Receiver of the Lands, with or without bond, and may from time to time remove the Receiver and appoint another in his stead. A Receiver appointed by the Chargee as aforesaid will be deemed to be the agent of the Chargor and the Chargor shall be solely responsible for the Receiver's acts or defaults and the Chargee shall not be in any way responsible therefor and the Chargee shall not be liable to the Receiver for his remuneration, costs, charges or expenses.
- 12.6 It is further specifically understood and agreed that the Receiver appointed by the Chargee shall have the following powers, subject to any limitations in the instrument in writing or any order of a court of competent jurisdiction appointing him, namely to:
- (a) take possession of the Lands;
  - (b) rent the Lands or any portion thereof and receive and collect the rents, issues and profits thereof;
  - (c) carry on or concur in carrying on the business of the Chargor in operating the business comprised of the Lands or which is conducted thereon by the Chargor;
  - (d) pay any or all debts and liabilities in connection with the Lands;
  - (e) sell or lease or concur in selling or leasing any or all of the Lands;
  - (f) make any arrangements or compromises which the Receiver considers expedient;
  - (g) borrow money, upon the security of the whole or any part of the Lands, to carry on the business of the Chargor comprised of the Lands or which is conducted thereon by the Chargor or to maintain the whole or any part of the Lands in a manner that will be sufficient to obtain the amounts from time to time required in the opinion of the Receiver, and in so doing the Receiver may issue certificates (each herein called a "Receiver's Certificate") that may be payable as the Receiver considers expedient and bear interest as stated therein, and the amounts from time to time payable under any Receiver's Certificate shall charge the Lands in priority to the Mortgage and the Chargor hereby charges the Lands with the debt, if any, owing from time to time under any Receiver's Certificate; and
  - (h) institute and prosecute all suits, proceedings and actions which the Receiver considers necessary or advisable for the proper protection of the Lands, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted, and appeal any suit, proceeding or action;
- 12.7 In exercising his powers hereunder, any Receiver will be free to deal with the Lands and any assets of the Chargor related thereto in such order or manner as he may be directed by the Chargee, any rule of law or equity to the contrary notwithstanding, including, without limitation, the equitable principle or doctrine of marshalling;
- 12.8 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 the Mortgage, as follows:

- (a) firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable to him;
- (b) secondly, in payment to the Chargee of all costs and charges owing hereunder and interest and arrears of interest remaining unpaid hereunder;
- (c) thirdly, in payment to the Chargee of the outstanding Principal Sum; and
- (d) fourthly, any surplus shall be paid to the Chargor;

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

- 12.9 Neither the provisions of the Mortgage nor the exercise of the powers provided in the Mortgage shall render the Chargee a mortgagee in possession, and the Chargee shall not be accountable except for the moneys actually received by the Chargee;
- 12.10 All remedies available to the Chargee herein shall be in addition to and not restrictive of the remedies of the Chargee at law and in equity and by statute;
- 12.11 Each remedy of the Chargee may be enforced in priority to or concurrently with or subsequent to any other remedy or remedies of the Chargee;
- 12.12 The Chargee may realize on various securities and any parts thereof in any order that the Chargee may consider advisable, and any realization, whether by foreclosure or sale, on any security or securities shall not bar realization on any other security or securities.

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

- 13.1 No extension of time given by the Chargee to the Chargor, nor anyone claiming under the Chargor, nor any other dealing by the Chargee with the owner of the equity of redemption of the Lands, shall in any way affect or prejudice the rights or remedies of the Chargee against the Chargor or any other Person liable either in whole or in part for the payment of the moneys secured by the Mortgage or the performance of the obligations of the Chargor under the Mortgage;
- 13.2 Every part, lot, condominium unit or common element into which the Lands are or may hereafter be subdivided does and shall stand as charged with the whole of the moneys secured by the Mortgage, and no Person shall have any right to require the moneys secured by the Mortgage to be apportioned upon or in respect of any such part, lot, condominium unit or common element;
- 13.3 The Chargee may at all times release any part or parts of the Lands or any other security or any surety for payment of all or any part of the moneys secured by the Mortgage or may release the Chargor or any other Person from any covenant or other liability to pay the moneys secured by the Mortgage or any part thereof, either with or without any consideration therefor and without being accountable for the value thereof or for any moneys except those actually received by the Chargee, and without thereby releasing any other part of the Lands or any other securities or covenants contained in the Mortgage, it being agreed that, notwithstanding any such release, the Lands, securities and covenants

remaining unreleased shall stand charged with the whole of the moneys secured by the Mortgage;

- 13.4 The Chargee may waive any default under the Mortgage provided that no such waiver, nor any failure to enforce at any time or from time to time any of the rights of the Chargee under the Mortgage, shall prejudice the Chargee's rights in the event of any future default or breach;
- 13.5 The provisions of the Mortgage and the security of the Mortgage are in addition to, but not in substitution for, any other security now or hereafter held by the Chargee for the Principal Sum, interest and other amounts secured by the Mortgage or any part thereof;
- 13.6 Any act done or omitted to be done by any of the parties hereto regarding any other securities held by the Chargee for the Principal Sum, interest and other amounts secured by the Mortgage or any part thereof shall not in any way affect or prejudice the Mortgage, and the Mortgage shall remain and be in force until satisfaction thereof is made by payment of all sums hereby secured as if no other security was held by the Chargee for such sums.

#### **14. SALE OR TRANSFER**

- 14.1 If the Lands or any part thereof are sold, transferred, conveyed or assigned or otherwise disposed of, or the Chargor enters into any agreement to effect any of the foregoing, whether by registered or unregistered instrument and whether for valuable or nominal consideration or otherwise, then the Chargee at its option may declare the Principal Sum then secured by the Mortgage, all accrued interest and all other moneys then secured by the Mortgage, to become immediately due and payable in full and the Chargor shall pay the same forthwith.
- 14.2 The word "assigned" as used in paragraph 14.1 shall include any transfer, sale, assignment, bequest, inheritance, encumbrance or other disposition of shares of any body corporate comprising the Chargor, in whole or in part, having the result of changing the identity of the Person(s) who during the term of the Mortgage exercise the effective voting control of such body corporate.

#### **15. CONDOMINIUM**

- 15.1 If the Lands comprise a condominium unit, the Chargor agrees to comply with the provisions of this paragraph 15 in addition to the other provisions of this set of standard charge terms.
- 15.2 The Chargor will comply with the Condominium Act and with the declaration, by-laws and rules and regulations of the condominium corporation in effect from time to time and the Chargor will cause any of the Chargor's guests to do so as well.
- 15.3 The Chargor will pay all amounts required by the Condominium Act, the declaration, the by-laws of the condominium corporation and the condominium corporation's budget on or before the date such amounts are due, including, but not limited to, all common expenses, contributions, levies or assessments. If the Chargee requests, the Chargor will give the Chargee proof that it has done so. If the Chargor does not make any payments which it is obligated to pay, the Chargee may do so on the Chargor's behalf and add such amounts to the amounts secured under the Mortgage and such amounts will bear interest at the Interest Rate.

- 15.4 The Chargor will mail to the Chargee by prepaid registered mail or deliver to the Chargee a copy of every notice, assessment, claim or demand for payment, rule or regulation, request or demand of the Chargee to consent to any matter, and every other communication relating to the Chargor's unit or the common elements of the condominium property so that the Chargee receives such communications at least five days before any claim or demand is payable or, in the case of other communications, within five days of the date the Chargor receives them.
- 15.5 The Chargor irrevocably authorizes the Chargee, in the Chargor's name and on the Chargor's behalf, to exercise the Chargor's rights under the Condominium Act and under the declaration and by-laws of the condominium corporation to vote at any meeting of the condominium corporation and to consent to any matter relevant to the management, sale or other dealings with the property or assets of the condominium corporation or the termination of the application of the Condominium Act to the condominium corporation. However, the Chargor may exercise such rights to vote or consent unless the Chargee notifies the Chargor in writing that the Chargee wishes to use the Chargee's rights to vote or consent, in which case the Chargee may also notify the condominium corporation. The Chargee's wish to vote or consent can be for a limited period of time or for a particular meeting or matter. When the Chargee votes or consents in the Chargor's place, the Chargee does not then become a mortgagee in possession and is not responsible for protecting the Chargor's interests or for the way the Chargee votes or consents or fails to do so.
- 15.6 At the Chargee's option, the amounts secured under the Mortgage will become payable immediately if:
- (a) the condominium of which the Lands forms a part, including, without limitation, the common elements and the assets of the condominium corporation (collectively, the "**condominium property**") is no longer governed by the Condominium Act;
  - (b) a vote of the unit owners authorizes the sale of the condominium property or any part thereof;
  - (c) the condominium corporation fails to comply with the Condominium Act, the declaration, by-laws, rules and regulations or any other reciprocal or shared facilities agreement to which it is a party;
  - (d) the condominium corporation fails, in the Chargee's opinion, to manage the condominium property in a careful way or to maintain the condominium property in good repair;
  - (e) the condominium corporation fails to insure the condominium property according to law, the Condominium Act and any additional requirements the Chargee may have or fails to do all that is necessary to collect insurance proceeds;
  - (f) the condominium corporation makes or permits to be made any substantial modification to the condominium property or any part thereof without the Chargee's approval; or
  - (g) there has been substantial damage to the condominium property and the owners have voted for termination of the condominium corporation.

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

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

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

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

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

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

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

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

the insurance provisions of the declaration and by-laws and that, as a member of the condominium corporation, the Chargor will insist that the condominium corporation fully complies with these terms.

## 16. COVENANTOR

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

- (a) to duly and punctually pay the Principal Sum, interest and all other moneys from time to time owing on the security of the Mortgage and to observe and perform or cause to be observed and performed all the covenants, agreements, terms, provisos, stipulations, and conditions herein contained on the part of the Chargor to be observed and performed and to indemnify, protect and save harmless the Chargee from all loss, costs and damage in respect of the Mortgage and every matter and thing herein contained;
- (b) that no release or releases of any portion or portions of the Lands and no indulgence shown by the Chargee in respect of any default by the Chargor which may arise under the Mortgage and no extension or extensions granted by the Chargee to the Chargor for payment of the moneys secured by the Mortgage, or for the doing, observing or performing of any covenant, agreement, matter or thing contained in the Mortgage, to be done, observed or performed by the Chargor, nor any variation in or departure from the provisions of the Mortgage including but not limited to any variation or increase of the Interest Rate or any extension of the term of payment of the moneys secured by the Mortgage, nor any taking of further security from the Chargor nor any other dealings between the Chargee and the Chargor, shall in any way prejudice the Chargee or modify, alter, vary or affect the liability of the Covenantor in any way under this covenant, which shall continue and be binding on the Covenantor, as well after as before default under, judgment upon, or maturity of the Mortgage, until the outstanding Principal Sum, interest and other moneys owing under the Mortgage are fully paid and satisfied;
- (c) that the Chargee shall not be bound to exhaust its recourse against the Chargor or the Covenantor or any other Person before enforcing its rights against the Covenantor;
- (d) that any failure on the part of the Chargee to perfect, maintain or enforce its rights, whether due to default, negligence or otherwise on the part of the Chargee, with respect to the Mortgage, or any other security granted to the Chargee relating to the Mortgage or the moneys secured by the Mortgage, shall not prejudice the Chargee with respect to its rights pursuant to this covenant and shall not discharge or limit or lessen the liability of the Covenantor pursuant to the terms hereof;
- (e) that the release of any Person or Persons comprising the Covenantor from his or her or its liability hereunder, in whole or in part, shall not affect the liability of any Person or Persons remaining as Covenantor above, which liability shall in each instance remain unimpaired and still in full force and effect as if each Person being so released had not been party to the Mortgage; and

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

## **17. PROMISSORY NOTE**

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

## **18. OTHER OBLIGATIONS**

- 18.1 Any default by the Chargor in the performance of any contractual obligation to the Chargee under any agreement or legal instrument collateral or supplemental to the Mortgage, and any default by any Person or Persons in the performance or observance of any provision or covenant under the Mortgage or under any other security for the payment of the moneys secured by the Mortgage and any material adverse change in the financial condition of the Chargor and/or any other Person executing the Mortgage, and the making of any mis-statement by any Person in any statutory declaration or certificate at any time delivered in connection with the Mortgage, shall be deemed to be a default hereunder and shall entitle the Chargee to exercise all remedies available to the Chargee in the event of default by the Chargor hereunder;
- 18.2 All covenants, agreements, representations and warranties of the Chargor and/or any other Person executing the Mortgage as contained in the HOMEWORKS FACILITY LETTER, the Loan Agreement, loan application, commitment letter or similar application for the Loans (the "Application") shall be deemed incorporated and made part of the Mortgage as if the same covenants, agreements, representations and warranties of the Chargor and any such other Person were fully repeated in the Mortgage and in the event of any breach by the Chargor or any such other Person of any of the covenants, agreements, representations and warranties contained in the Application, all of which shall survive throughout the term of the Mortgage, the breach shall be deemed to be a default under the Mortgage and shall entitle the Chargee to exercise all of the rights and remedies of the Chargee including, but without limiting the generality of the foregoing, the right to demand payment of the moneys secured under the Mortgage. In the event any conflict between the provisions of the Application and the Mortgage, the provisions of the Mortgage shall govern.

## **19. ESTOPPEL CERTIFICATE**

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

## **20. INTEREST RATE ALTERNATIVE**

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

**21. ASSIGNMENT OF RENTS**

21.1 To further secure the Principal Sum and interest and all other sums which may become due and payable under the Mortgage, the Chargor hereby transfers and assigns all rents payable by any tenants of any and all parts of the Lands. It is understood and agreed that the Chargee may, without notice to the Chargor or to any other party hereunder, exercise at any time the powers hereby conferred. It is further understood and agreed that neither the existence of this paragraph nor the exercising of any of the powers conferred by this assignment of rentals nor the collection of any rents hereunder shall constitute the Chargee a mortgagee in possession, nor shall they render the Chargee liable to account to any of the parties hereunder for failure to collect or for neglect in collecting any of the rentals, nor shall they impose any obligation whatsoever on the Chargee to take any proceedings whether in a court of law or otherwise to enforce payment of the said rentals, nor shall they render the Chargee liable for any neglect to repair or to supply heat or electricity or any other service to the tenants or to pay taxes but such responsibility, notwithstanding the collection of any rentals as aforesaid, shall rest entirely with the Chargor.

**22. BUILDING MORTGAGE**

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

- (a) to construct a building or buildings or other improvements on the Lands in accordance with such plans and other specifications as have been or shall hereafter be approved in writing by the Chargee;
- (b) that any such construction shall be carried out diligently, and in a proper and workmanlike manner; and in conformity with the ordinances, by-laws and other requirements of any government, government agency or other body having statutory jurisdiction over construction on the Lands;
- (c) that any buildings or improvements now or hereafter erected or constructed on the Lands shall stand as and form part of the security for the full amount of the moneys secured by the Mortgage; and
- (d) that the moneys secured by the Mortgage are to be advanced from time to time in the discretion of the Chargee in accordance with the state of the buildings or other improvements being or to be erected or constructed on the Lands and upon the fulfillment of any other conditions or requirements stipulated by the Chargee, but save where the Chargee expressly undertakes in writing to the Chargor to make any advance, nothing in this paragraph shall vary or modify any provision in the Mortgage which concerns, governs or limits the Chargee's obligation to advance any monies secured by the Mortgage.

**23. MAXIMUM RETURN TO CHARGEE**

23.1 The Chargor 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 the Mortgage to be effective it must be in writing and signed by all parties to the Mortgage;
- 24.2 Any extension of the term of payment of the moneys secured by the Mortgage, or any part thereof, and any agreement increasing or decreasing the Interest Rate, prior to the execution of the discharge of the Mortgage by the Chargee need not be registered in a Land Registry Office, but shall be effectual and binding on the Chargor, the Covenantor and any other Person liable for the moneys secured by the Mortgage, in whole or in part, and it shall not be necessary to register any such agreement in order to retain priority of the Mortgage so altered over any instrument registered as a charge against the Lands subsequently to the registration of the 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 Chargor or to any encumbrancer by writing signed or purporting to be signed by or on behalf of the Chargee;
- 24.4 Any demand or notice to be made or given under the provisions of the Mortgage may be effectually made or given in writing addressed to the party to whom it is made or given and delivered or mailed by registered post to the address stated on page 1 of the Mortgage Form or to such other address as the party to whom it is made or given shall have previously specified by written notice, and shall be deemed to have been made or given on the date of delivery if delivered and on the third day after mailing if mailed;
- 24.5 The Chargee has not made and the Chargor does not rely on any representations, warranties, covenants, agreements, conditions or provisos, oral or otherwise, whether made by the Chargee or any Person acting actually or ostensibly on the Chargee's behalf, other than those contained in the Mortgage unless those representations, warranties, covenants, agreements, conditions and provisos are contained in a supplementary contract in writing duly executed by both the Chargor and the Chargee which supplementary contract is expressed to survive the closing of the transaction referred to therein and the registration of the Mortgage.

## **25. INTERPRETATION**

- 25.1 The paragraph headings in this set of standard charge terms are inserted for convenience of reference only and shall not affect the construction or interpretation of this set of standard charge terms;
- 25.2 All references in this set of standard charge terms or in the Mortgage to the words "hereof", "herein" or "hereunder" shall be construed to mean and refer to this set of standard charge terms or Mortgage as the case may be as a whole and shall not be construed to refer only to a specific paragraph or clause of this set of standard charge

- terms or Mortgage as the case may be unless the context clearly requires such construction;
- 25.3 In the event of any party being comprised of two or more Persons, all covenants and agreements of such party herein contained and in the Mortgage shall be and be deemed to be joint and several covenants or agreements of each such Person, and the heirs, executors, administrators, successors and permitted assigns of each such Person shall be jointly and severally bound by the covenants, agreements, stipulations and provisos herein stated in addition to those granted or implied by statute;
- 25.4 If any of the terms of this set of standard charge terms or the Mortgage are or are held to be unenforceable or otherwise invalid, such holding will not in any way affect the enforceability or validity of the remaining terms of this set of standard charge terms or the Mortgage;
- 25.5 This set of standard charge terms including any covenants and indemnity of the Covenantor provided for herein shall be governed by and construed in accordance with the laws of the Province of Ontario, and each party hereby submits to the jurisdiction of the courts of the Province of Ontario and agrees to be bound by any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding; provided that the foregoing shall in no way limit the right of the Chargee to commence suits, actions or proceedings based on this set of standard charge terms or Mortgage in any other jurisdiction;
- 25.6 Wherever the singular or masculine gender is used throughout this set of standard charge terms or the Mortgage, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;
- 25.7 Time shall be of the essence hereof;
- 25.8 All references in these standard charge terms to statutes, regulations or sections of statutes or regulations shall be construed as referring to those statutes, regulations or sections as amended from time to time and to all replacements thereof from time to time, unless the context otherwise requires;
- 25.9 If the Chargor has applied for and been approved by the Chargee for a National Housing Act loan, the Mortgage shall be subject to the *National Housing Act*;
- 25.10 The covenants contained in section 7(1) of the *Land Registration Reform Act* (Ontario) are excluded from the Mortgage.

**END OF SET**