



Filed by: Bank of Montreal
Address: 595 Burrard Street, Vancouver, B.C. V7X 1L7
Reference Date: 1 January 1994

BANK OF MONTREAL ALL INDEBTEDNESS MORTGAGE
LAND TITLE ACT REFERENCE NUMBER MT930048

These mortgage terms are deemed to be included in and form part of every mortgage, which incorporates them by reference, granted to Bank of Montreal.

I DEFINITIONS

In this Mortgage, the following words and phrases have the meanings indicated:

"Bank" means Bank of Montreal, which is the lender or mortgagee described in the Mortgage Form, and its successors and assigns;

"Bank's Address" means the address of the Bank described in the Mortgage Form or any other address that the Bank may notify the Mortgagor of in writing;

"Collateral" means the goods subject to the security interest created by clause 2.01(b);

"Covenantor" means the person or persons, if any, who signed the Mortgage Form as covenantor and the heirs, personal representatives, successors and assigns of the Covenantor;

"Customer" means the person or persons, if any, whose present and future indebtedness, liabilities or obligations to the Bank from time to time is or are guaranteed by the Mortgagor, and the heirs, personal representatives, successors and assigns of the Customer;

"Environmental Laws" means any and all international, federal, provincial, state, municipal or local laws, regulations, treaties, orders, judgments, decrees, ordinances, official directives and authorizations relating to the environment, Hazardous Materials or occupational health and safety from time to time having application to the Lands, the Collateral, the Mortgagor or the Mortgagor's Interest;

"Hazardous Materials" means all hazardous or toxic materials, pollutants, effluents, contaminants, radioactive materials, flammable explosives, chemicals known to cause cancer or reproductive toxicity, emissions, washes and all other chemicals, materials and substances, the handling, storage, release, transportation or disposal of which is or becomes prohibited, limited or regulated by any governmental or regulatory authority, or which, even if not so regulated, is or becomes known to pose a hazard to the health and safety of any person, including, without limitation, asbestos, petroleum and petroleum by-products, urea formaldehyde foam insulation, polychlorinated biphenyls, all substances from time to time designated as or considered to be a "contaminant", "waste", "hazardous substance", "hazardous material", "toxic substance" or a similar designation under any Environmental Law, including without limitation, the **Waste Management Act**, having application to the Lands, the Collateral, the Mortgagor or the Mortgagor's Interest;

"Indebtedness" means:

- (a) all present and future indebtedness and liability (whether absolute, contingent, direct, indirect, matured, unmatured, extended, renewed, joint or several) of the Mortgagor to the Bank, wheresoever and howsoever incurred and any ultimate balance thereof, including, without limitation, all advances on current or running account, future advances and re-advances, Interest and all costs, expenses and other moneys payable to the Bank whether or not referred to in this Mortgage; and
- (b) all other obligations of the Mortgagor to the Bank whether or not contained in this Mortgage;

"Interest" means interest at the Interest Rate owed to the Bank under this Mortgage;

“Interest Margin”, if applicable, means the percentage rate above the Prime Rate set out in the Mortgage Form;

“Interest Rate” means the interest rate described in the Mortgage Form, or such other rate or rates as the Bank and the Mortgagor may agree upon, and, if that interest rate is stated to be a rate above the Prime Rate, means the rate per annum equal to the aggregate of the Interest Margin and the Prime Rate in effect from time to time, and such rate shall change automatically, without notice to the Mortgagor, on each date the Prime Rate is changed by the Bank;

“Land” means the land described in the Mortgage Form;

“Maximum Amount” means the amount of money described in Item 5(a) of the Mortgage Form as the Principal Amount;

“Mortgage Form” means Part 1 of the form of mortgage established by regulation under the **Land Title Act** known as “Form B Mortgage” and all schedules thereto, which form refers to these Mortgage Terms and is signed by the Mortgagor and the Covenantor, if any;

“Mortgage Terms” means these filed mortgage terms;

“Mortgagor” means the person or persons described in the Mortgage Form as the borrower or mortgagor and who signed the Mortgage Form as the borrower or mortgagor, and the heirs, personal representatives, successors and assigns of the Mortgagor;

“Mortgagor’s Address” means the address of the Mortgagor described in the Mortgage Form or any other address that the Mortgagor may notify the Bank of in writing;

“Mortgagor’s Interest” means the Mortgagor’s presently held right, title and interest in and to the Land and the Collateral and any other right, title or interest that the Mortgagor may in the future acquire in the Land and the Collateral and includes, without limitation, all the Mortgagor’s right, title and interest as the registered owner of the fee simple or of any charge affecting the Land;

“Permitted Encumbrances” means charges affecting the Land or the Mortgagor’s Interest consented to in writing by the Bank;

“Person” includes an individual, a corporation and a partnership of individuals or corporations or a combination thereof;

“Place of Payment” means the place of payment described in the Mortgage Form or any other place of payment that the Bank may notify the Mortgagor of in writing;

“Prime Rate” means the floating annual prime interest rate established from time to time by the Bank as the reference rate it will use to determine rates of interest payable to the Bank by borrowers from the Bank of Canadian dollar loans in Canada and designated by the Bank as its prime rate;

“Receiver” includes a receiver, a receiver manager and a receiver and manager;

“Taxes” means the aggregate of:

- (a) all taxes, rates, duties or assessments now or hereafter existing or claimed in respect of the Land or the Mortgagor’s Interest or the use and occupation of the Land or the Mortgagor’s Interest or any machinery, equipment or improvements on the Land or arising out of any transaction between the Mortgagor and the Bank, but does not include the Bank’s income or capital taxes;
- (b) all penalties, interest and other moneys added to the amounts described in (a) by the taxing authorities; and
- (c) all utility charges including those for electricity, gas, water, telephones and cable television now or hereafter existing or claimed in respect of the Land or the Mortgagor’s Interest;

“this Mortgage” means the Mortgage Form and these Mortgage Terms.

II MORTGAGE AND SECURITY INTEREST

2.01 For consideration:

- (a) the Mortgagor grants and mortgages to the Bank absolutely the Mortgagor's Interest to have and to hold to and for the use of the Bank forever; and
- (b) without in any way limiting paragraph (a), pursuant to the **Personal Property Security Act** and all regulations thereto, as amended from time to time, the Mortgagor grants to the Bank a security interest in the Mortgagor's right, title and interest in all goods which are now fixtures on the Land and in all goods which hereafter become fixtures on the Land, and the Mortgagor agrees that the security interest in such goods which are now fixtures attaches immediately and the security interest in such goods which become fixtures shall attach at the time the goods become fixtures.

2.02 This Mortgage will be void upon:

- (a) payment to the Bank on demand of the principal amount of the Indebtedness up to the Maximum Amount;
- (b) payment to the Bank on demand of Interest, both before and after maturity and before and after judgment, on the principal amount of the Indebtedness outstanding from time to time, up to the Maximum Amount;
- (c) payment of all costs, expenses and other moneys to which the Bank is entitled by virtue of this Mortgage as and when such moneys become due and payable;
- (d) payment of Taxes; and
- (e) observance and performance of all covenants, provisos and conditions herein contained.

2.03 The Mortgagor releases to the Bank all claims of the Mortgagor on the Mortgagor's Interest subject to the foregoing proviso for redemption.

2.04 Every part into which the Mortgagor's Interest is or may hereafter be divided stands and shall stand charged with the whole of the Indebtedness and no person shall have any right to require the Indebtedness to be apportioned upon or in respect of such parts but the Bank may release any part or parts of the Mortgagor's Interest with or without sufficient consideration and without releasing the Mortgagor from this Mortgage.

2.05 This Mortgage is and shall be a continuing security to the Bank for the payment of all present and future amounts owing in respect of the Indebtedness, notwithstanding that there shall have been:

- (a) any apparent change in the nature, state or form of any account of the Mortgagor or any Customer with the Bank;
- (b) any new advance or re-advance by the Bank to the Mortgagor or any Customer, whether by loan, discount, the drawing of a cheque by the Mortgagor or any Customer or otherwise;
- (c) any discount or acceptance by the Bank from or for the Mortgagor or any Customer of any promissory note, bill of exchange, other negotiable instrument or other commercial paper;
- (d) any credit of any amount to any account of the Mortgagor or any Customer by reason of deposit of moneys or otherwise; or
- (e) any renewal, replacement, substitution, alteration, reduction, satisfaction, payment, release or discharge of any promissory note, bill of exchange, other negotiable instrument or other commercial paper from time to time held by the Bank or any security held therefor;

and no such event shall be deemed to be a repayment on account of the Indebtedness or any part thereof or call for or require an application as payment on account of the Indebtedness or any part thereof, or in any way affect the security of this Mortgage, unless some officer of the Bank shall give a receipt to the Mortgagor to that effect.

III REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants to the Bank that:

- (a) the Mortgagor has the right to mortgage, charge and grant a security interest in the Mortgagor's Interest to the Bank;
- (b) the Mortgagor has good title to the Mortgagor's Interest subject only to Permitted Encumbrances;
- (c) on default the Bank shall have quiet possession of the Mortgagor's Interest free from all charges except Permitted Encumbrances;
- (d) the Mortgagor has done no act to encumber the Mortgagor's Interest except for Permitted Encumbrances; and
- (e) there are no environmental risks or liabilities, or breaches or allegations of breaches of Environmental Laws, known to the Mortgagor or, if the Mortgagor is a corporation, to the Mortgagor's directors and officers, which have not been disclosed to the Bank.

IV COVENANT TO PAY

- 4.01 The Mortgagor will pay to the Bank, on demand, the principal amount of the Indebtedness, and until such payment the Mortgagor will pay to the Bank on the last day of each and every month, Interest on the principal amount of the Indebtedness which remains unpaid from time to time, calculated daily on the basis of the actual number of days elapsed divided by 365 (or, in the case of a leap year, 366) and aggregated for that month; provided that if the Mortgagor pays the principal amount of the Indebtedness, and pays interest at the rate or rates then in effect for the Indebtedness, at the times, in the manner and upon such other terms as otherwise may be agreed upon between the Mortgagor and the Bank, the Mortgagor will not be obliged to pay the principal amount of the Indebtedness or Interest on the terms set out above.
- 4.02 If the Mortgagor fails to pay the Indebtedness, or any part thereof, including Interest, when due, the Mortgagor will pay to the Bank compound interest thereon at the Interest Rate as well after as before maturity to be computed with rests on the last day of each month.
- 4.03 All Interest payable in respect of the Indebtedness shall be calculated using the nominal rate method and not the effective rate method, and the deemed reinvestment principle shall not apply to such calculations.
- 4.04 Any portion of the Indebtedness which by its terms is payable on demand may be prepaid at any time without notice, bonus or penalty. The Mortgagor may not prepay any other portion of the Indebtedness unless the Bank agrees in writing to permit such prepayment.
- 4.05 All payments to the Bank hereunder shall be made at the Place of Payment. Any payment made after 1:00 p.m. local time at the Place of Payment shall be deemed to have been made on the next business day.
- 4.06 Notwithstanding that this Mortgage is stated to be payable on demand, the Bank will not make demand for payment of any portion of the Indebtedness which by its terms is not payable on demand unless and until one of the events of default set out in Article V has occurred and has not been waived by the Bank.

V DEFAULT

Unless waived by the Bank in writing, each of the following shall be an event of default under this Mortgage:

- (a) default of payment of the Indebtedness, or any part thereof, when due;
- (b) breach by the Mortgagor of any other covenant or agreement herein contained which breach is not rectified within 10 days of notice thereof to the Mortgagor;

- (c) default of payment of any moneys payable under, or in the observance or performance of any covenant, agreement, term or condition of, any charge on the Mortgagor's Interest or any instrument creating or pertaining to the Mortgagor's Interest;
- (d) breach by the Mortgagor, the Covenantor or any Customer of any covenant or agreement in any other agreement between the Bank and any of them which breach is not rectified within the time provided for therein or, if no such time for rectification is specified, within 10 days of notice thereof to the Mortgagor;
- (e) any of the Mortgagor, the Covenantor or any Customer makes an assignment for the benefit of its or his creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the **Bankruptcy and Insolvency Act**, the **Companies' Creditors Arrangement Act** or similar legislation in any jurisdiction, or makes an authorized assignment;
- (f) a Receiver of all or any part of the Mortgagor's Interest is appointed;
- (g) an order of execution against the Mortgagor's Interest or any part thereof remains unsatisfied for a period of 10 days;
- (h) any representation or warranty, whether or not contained herein, by or on behalf of the Mortgagor, the Covenantor or any Customer to the Bank is untrue;
- (i) without the prior written consent of the Bank, the Mortgagor creates or permits to exist any mortgage, lien or charge on, claim against, or security interest in, the Mortgagor's Interest which ranks or could in any event rank in priority to or pari passu with any charge or security interest created by this Mortgage;
- (j) the holder of any other mortgage, lien or charge on, claim against, or security interest in, the Mortgagor's Interest does anything to enforce or realize on such mortgage, lien, charge, claim or security interest;
- (k) all or any portion of the Mortgagor's Interest is expropriated;
- (l) if the Mortgagor sells, conveys, transfers or enters into an agreement for sale of or transfer of title to the Mortgagor's Interest or any part thereof;
- (m) if the Mortgagor, the Covenantor or any Customer is a corporation:
 - (i) an order is made or an effective resolution is passed for winding up any of them;
 - (ii) any of them enters into an amalgamation, a merger or other similar arrangement with any other person, without the prior written consent of the Bank;
 - (iii) any of them ceases, or threatens to cease, to carry on its business; or
 - (iv) there is a change in control of any of them;
- (n) if the Mortgagor, the Covenantor or any Customer is an individual, any of them dies or is declared incompetent to manage his or her affairs.

VI BANK'S REMEDIES

- 6.01 Upon the occurrence of an event of default as set out in Article V, the Bank may declare all or any portion of the Indebtedness which is not by its terms payable on demand to become immediately due and payable, and the Bank may enforce and realize on the security of this Mortgage by any action permitted by law or in equity, and in particular the Bank may do any one or more of the following:
- (a) apply to Court for an order that the Mortgagor's Interest be sold on terms approved by the Court;
 - (b) apply to Court to foreclose the Mortgagor's Interest;
 - (c) take whatever action is necessary to take, recover and keep possession of the Mortgagor's Interest;

- (d) without notice sell the Mortgagor's Interest or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor, and on such terms as to credit and otherwise, and with such conditions of sale and stipulations as to title or evidence of title or otherwise as it shall in its discretion deem proper; and in the event of any sale on credit or for part cash and part credit, the Bank shall not be accountable for or charged with any moneys until actually received; and the Bank may rescind or vary any contract of sale and may buy in and resell the Mortgagor's Interest or any part thereof without being answerable for loss occasioned thereby; and no purchaser shall be bound to inquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety; and no lack of default or want of notice or other requirement, or any irregularity or impropriety of any kind shall invalidate any sale; and the Bank may take sale proceedings hereunder, notwithstanding that other mortgage proceedings have been taken or are then pending; and for the purposes of this clause the Mortgagor hereby appoints the Bank as its irrevocable attorney to exercise the aforesaid powers and to execute and do all deeds, documents and things as may be necessary in the circumstances;
 - (e) appoint a Receiver of the Mortgagor's Interest and of all the properties, assets, effects and undertakings (hereinafter all together called the "Undertakings") of the Mortgagor related to or arising out of the Land and the Mortgagor's Interest and may from time to time remove any Receiver so appointed and appoint another in his stead, but the Bank shall be under no liability to the Receiver for his remuneration or otherwise, and a Receiver so appointed shall be the agent of the Mortgagor and shall have power:
 - (i) to take possession of and get in the Mortgagor's Interest and the Undertakings;
 - (ii) to sell or lease or concur in selling or leasing the Mortgagor's Interest and the Undertakings;
 - (iii) to make any arrangement or compromise which he shall think expedient;
 - (iv) to the extent permitted by law or to such lesser extent permitted by his appointment, to carry on, or concur in the carrying on of, any development or improvement then in progress or otherwise contemplated by the Mortgagor related to the Mortgagor's Interest or the business of the Mortgagor relating to the Mortgagor's Interest and for such purpose from time to time to borrow money either secured or unsecured, and if secured by security on the whole or any part of the Mortgagor's Interest and the Undertakings which security may rank before or pari passu with or behind this Mortgage as such security may specify and if it does not so specify it shall rank before this Mortgage; and
 - (f) in respect of the Collateral, exercise the remedies of a secured party under the **Personal Property Security Act**.
- 6.02 The net proceeds of any sale or lease, or both, hereunder shall be applied, subject to the claims of all secured and unsecured creditors (if any) ranking in priority to the mortgage and security interest created by this Mortgage, as the Bank, in its absolute discretion, may direct:
- (a) in payment of any costs, charges, expenses and legal fees (between solicitor and his own client):
 - (i) incurred in taking, recovering or keeping possession of all or part of the Mortgagor's Interest or by reason of non-payment of the Indebtedness; and
 - (ii) of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including his reasonable remuneration and all outgoings properly payable by him;
 - (b) in or toward payment to the Bank of the principal amount of Indebtedness up to the Maximum Amount;
 - (c) in or toward payment of Interest and compound interest;

(d) in or toward payment of other moneys owing hereunder; and,

subject to applicable laws, the Bank's right to payment of any amount of the Indebtedness that exceeds the Maximum Amount and the rights of other creditors, any surplus shall be paid to the Mortgagor.

VII GENERAL COVENANTS

- 7.01 The Mortgagor will execute such further assurances of the Mortgagor's Interest as the Bank may require.
- 7.02 The Mortgagor will forthwith pay or cause to be paid:
- (a) all Taxes when due, and upon request will furnish the Bank with a copy of receipts for payment;
 - (b) all mortgages, liens, charges and security interests including Permitted Encumbrances, whether or not registered against the Mortgagor's Interest at the time the Mortgage Form is executed, which rank or could in any event rank in priority to the mortgage and security interest created by this Mortgage, and upon request will furnish the Bank with a copy of receipts for payment;
 - (c) all costs, charges, expenses and legal fees (between solicitor and his own client) which may be incurred by the Bank in:
 - (i) inspecting and investigating the Land;
 - (ii) investigating title to the Mortgagor's Interest;
 - (iii) negotiating, preparing and registering this Mortgage and other necessary instruments;
 - (iv) taking, recovering and keeping possession of the Mortgagor's Interest;
 - (v) all other actions and proceedings taken in connection with or to realize on the security of this Mortgage, or to protect or enforce the Bank's rights hereunder (including the Bank's cost of the time and services of the Bank's employees); and
 - (vi) preparing and executing a discharge of this Mortgage.
- 7.03 If the Bank pays and satisfies the whole or any part of any Taxes, or of any mortgages, liens, charges or security interests now or hereafter existing or claimed in respect of the whole or any part of the Mortgagor's Interest, the Bank shall be entitled to all the equities and securities of the person or persons so paid and the Mortgagor hereby authorizes the Bank to retain any discharge thereof without registration for so long as the Bank may think fit so to do.
- 7.04 The Mortgagor will:
- (a) obtain and maintain insurance, or cause insurance to be obtained and maintained, against such insurable risks and perils as the Bank may direct including, without limitation, insurance against loss or damage by fire and other risks and perils to the Collateral and all other improvements now and hereafter on the Land, to the extent that such improvements form part of the Mortgagor's Interest, in amounts not less than their full insurable value and, if such improvements include a steam boiler or any other object generating steam or operated by steam, the Mortgagor will insure and keep insured such improvements against loss or damage by explosion of such boiler or other object;
 - (b) effect such insurance with such insurer and on such terms as may be approved by the Bank with loss payable to the Bank in priority to every person except the holder of any Permitted Encumbrances;
 - (c) upon execution of the Mortgage Form, deliver to the Bank a copy of the policy or policies evidencing such insurance and a copy of receipts for the premiums thereon;

(d) at least 15 days prior to the expiry of an insurance policy and, should notice of cancellation be given, at least 5 days prior to the date fixed for cancellation of an insurance policy, deliver to the Bank evidence of renewal or replacement as the case may be;

(e) effect such new insurance as the Bank may require if the insurer or the insurance ceases to have the approval of the Bank; and

the Mortgagor waives any statutory right to require the insurance proceeds to be applied in any particular manner.

- 7.05 If the whole or any part of the Collateral or any other improvements now or hereafter on the Land, to the extent that such improvements form part of the Mortgagor's Interest, is damaged the Mortgagor shall forthwith notify the Bank.
- 7.06 All improvements now or hereafter on the Land, to the extent that such improvements form part of the Mortgagor's Interest, including but without limiting the generality of the foregoing, all buildings and all apparatus and equipment appurtenant to such improvements, are and, in addition to other fixtures thereon, shall be subject to the mortgage and security interest created by this Mortgage.
- 7.07 Without the prior written consent of the Bank, the Mortgagor will not permit any part of the Land which is subject to the Mortgagor's Interest to remain unoccupied or unused.
- 7.08 The Mortgagor will not do anything that has the effect of reducing the value of the Mortgagor's Interest or permit waste to be committed or suffered on the Land and will maintain or cause to be maintained all Collateral and all other improvements now or hereafter on the Land, to the extent that such improvements form part of the Mortgagor's Interest, in good order and repair to the satisfaction of the Bank.
- 7.09 The Bank may at such time or times as it may deem necessary and without the concurrence of the Mortgagor or any other person make such arrangements for repairing, finishing and maintaining the Collateral and any other improvements now or hereafter on the Land, to the extent that such improvements form part of the Mortgagor's Interest, and for investigating, inspecting, taking care of, leasing, collecting of rents of and managing generally the Mortgagor's Interest, as it may deem expedient, without thereby becoming liable as a mortgagee in possession.
- 7.10 If the Mortgagor fails to make all payments required by clause 7.02 or clause 9.01(b) or to insure pursuant to clause 7.04, the Bank, without in any way being obliged to do so, may make such payments and effect such insurance, and all amounts so paid by the Bank together with all costs, charges, expenses and legal fees (between solicitor and his own client) incurred by the Bank in connection therewith and in connection with the exercise by the Bank of its rights under clause 7.09, including an allowance for the time and services of any officer of the Bank or other persons appointed for the above purpose, shall be added to and form part of the Indebtedness and shall be payable by the Mortgagor forthwith.
- 7.11 The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of such covenants or affect the Bank's right to Interest and any such judgment shall provide that interest thereon be computed at the same rate or rates and in the same manner as herein provided until that judgment has been fully paid and satisfied.
- 7.12 Any portion of the Indebtedness may be advanced or re-advanced by the Bank in one or more sums at any future date or dates by:
- (a) direct advances to the Mortgagor or any Customer;
 - (b) the issue of letters of credit or letters of guarantee at the request of the Mortgagor or any Customer and payment under such letters of credit or letters of guarantee to the beneficiaries thereof; or

- (c) the acceptance of bills of exchange issued by the Mortgagor or any Customer and payment of such bills of exchange to the holders thereof;

and the amount of such advances, re-advances and payments when so made shall be secured by this Mortgage and be repayable with Interest and this Mortgage shall be deemed to be taken as security for the ultimate balance of the Indebtedness, whether arising from the current and running accounts represented by advances, re-advances and payments as aforesaid by the Bank to the Mortgagor or any Customer under a line of credit or a current loan, or otherwise, and the mortgage and security interest created by this Mortgage shall take effect forthwith on the execution of the Mortgage Form. If this Mortgage is redeemed by the Mortgagor, it shall be cancelled and shall not be re-issued but:

- (d) any partial payment made thereon by the Mortgagor or any Customer to the Bank; or
- (e) any ceasing by the Mortgagor or any Customer to be indebted to the Bank;

shall be deemed not 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 Bank to the same extent as if such advance or re-advance had been made on the execution of the Mortgage Form.

- 7.13 Except to the extent that the Bank issues letters of credit or letters of guarantee or accepts bills of exchange or other negotiable instruments at the request of the Mortgagor or any Customer and is required to make payments thereunder:
 - (a) neither the execution nor the registration of the Mortgage Form shall bind the Bank to advance any moneys;
 - (b) the advance of moneys or any part thereof under this Mortgage shall be in the sole discretion of the Bank;
 - (c) the advance of moneys from time to time shall not bind the Bank to advance any further moneys.
- 7.14 Any and all payments made in respect of the Indebtedness and the moneys or other proceeds realized from any securities held therefor (including this Mortgage) may be applied, and re-applied, notwithstanding any previous application, on such part or parts of the Indebtedness or such other indebtedness and liability of the Mortgagor or any Customer to the Bank as the Bank may see fit.
- 7.15 This Mortgage shall not nor shall anything herein contained operate so as to create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange, guarantee or other security held by or which may hereafter be held by the Bank from the Mortgagor, the Covenantor or any Customer or from any other person or persons whomsoever, and this Mortgage shall not in any way prejudicially affect any security held or which may hereafter be held by the Bank for such indebtedness or the Indebtedness or any part or parts thereof or the liability of any endorser or any other person or persons upon any such lien, bond, promissory note, bill of exchange, guarantee or other security or any renewal thereof or replacement or substitution therefor held by the Bank for or on account of such indebtedness or the Indebtedness or any part or parts thereof.
- 7.16 The taking of this Mortgage shall not operate as a merger of the remedies of the Bank for payment of the Indebtedness or of the remedies of the Bank under any lien, bond, promissory note, bill of exchange, other negotiable instrument, other commercial paper or guarantee and notwithstanding this Mortgage or anything contained herein such remedies shall remain intact and be capable of enforcement against the Mortgagor, the Covenantor, any Customer and all other persons liable for the Indebtedness or any part or parts thereof in the same manner and to the same extent as if the Mortgage Form had not been executed.

- 7.17 The Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with, the Mortgagor, the Covenantor, any Customer and all other persons and securities as the Bank may see fit without prejudicing the rights of the Bank under this Mortgage.
- 7.18 No sale or other dealing by the Mortgagor with the equity of redemption in the Mortgagor's Interest shall in any way change the liability of the Mortgagor or in any way alter the rights of the Bank as against the Mortgagor, the Covenantor, any Customer or any other person liable for payment of the Indebtedness.
- 7.19 The Mortgagor will observe and perform all covenants, agreements, terms and conditions in all instruments creating or pertaining to the Mortgagor's Interest.
- 7.20 The Mortgagor will adhere to and comply with all laws, regulations, rules, notices and orders of Canada, British Columbia or any municipality or other authority having or claiming jurisdiction over the Land and affecting the Land or the Mortgagor's Interest including, without limitation, Environmental Laws.
- 7.21 The Mortgagor shall indemnify the Bank, and its officers, directors, employees, agents and shareholders, in their capacities as such, and hold each of them harmless from and against any and all losses, liabilities, damages, costs, expenses and claims of any and every kind whatsoever, including, without limitation:

- (a) the cost, liability or damage arising out of defending, counterclaiming or claiming over against third parties in respect of any action or matter;
- (b) any cost, liability or damage arising out of a settlement of any action or proceeding entered into by the Bank; and
- (c) the costs of complying with the order, direction or request of any governmental or regulatory authority having jurisdiction;

which at any time or from time to time may be paid, incurred or asserted against any of them for, with respect to or as a result of:

- (d) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Land or into or upon any land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Material where it has been proven that the source of the Hazardous Material is the Land; and
- (e) any Environmental Laws.

This clause 7.21 shall survive the repayment of the Indebtedness and all other amounts owing under this Mortgage and the granting of an order absolute of foreclosure of the Land and shall continue in full force and effect so long as any possibility of any such liability, claim or loss exists and shall apply notwithstanding any knowledge which any of the foregoing persons may have concerning such liabilities, claims or losses either now or in the future.

- 7.22 The Mortgagor waives any right it may have in any jurisdiction to pay any part of the Indebtedness in a currency (a "Payment Currency") other than that which the Mortgagor or any Customer has agreed to pay (an "Agreed Currency"), and if:
- (a) any part of the Indebtedness is received by the Bank in a Payment Currency, whether as a result of any judgment or order or the enforcement thereof, the liquidation, receivership, bankruptcy, or insolvency of the Mortgagor or for any other reason; and
 - (b) the amount of Agreed Currency which results from the conversion of the Payment Currency so received is less than the amount of the Agreed Currency which the Bank is entitled to receive;

the Mortgagor shall indemnify the Bank for the deficiency and any loss sustained as a result. Such conversion shall be made at such prevailing rate of exchange on such date and in such market as is determined by the Bank as being most appropriate for such conversion. The Mortgagor shall pay the costs of conversion. The obligations created by this clause 7.22 are in addition to all other obligations of the Mortgagor under, and are secured by, this Mortgage.

VIII INTERPRETATION AND MISCELLANEOUS

- 8.01 Every certificate signed by an officer of the Bank purporting to show:
- (a) the amount of Indebtedness at any particular time due and payable under this Mortgage shall be prima facie evidence as against the Mortgagor of the amount due and payable at such time under this Mortgage; and
 - (b) the Prime Rate at any particular time shall be conclusive evidence of the Prime Rate at that time.
- 8.02 The invalidity or unenforceability of the whole or any part of any clause of this Mortgage shall not affect the validity or enforceability of any other clause or the remainder of such clause.
- 8.03 The headings for clauses of these Mortgage Terms have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Mortgage.
- 8.04 A reference in these Mortgage Terms to a particular clause, unless otherwise specified, means a clause of these Mortgage Terms.
- 8.05 Time shall be of the essence hereof.
- 8.06 The Bank may from time to time and at any time waive in whole or in part the benefit to it of any provision in this Mortgage or any default by the Mortgagor, but such waiver on any occasion shall be deemed not to be a waiver of such provision thereafter or of any subsequent default but no waiver shall be binding on the Bank unless it is in writing.
- 8.07 If there is any conflict between these Mortgage Terms and the Mortgage Form, the provisions of the Mortgage Form shall govern.
- 8.08 In accordance with the **Property Law Act**, the doctrine of consolidation is not abolished with respect to this Mortgage.
- 8.09 All provisions hereof shall have effect to the maximum extent permitted by law, notwithstanding any agreement to the contrary.
- 8.10 Whenever the singular or masculine is used in this Mortgage the same shall be deemed to include the plural or the feminine or the body corporate as the context may require.
- 8.11 This Mortgage shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 8.12 Any demand or notice herein referred to, or any notice or document relating to any action or other proceeding concerning this Mortgage, may be effectively given to the Mortgagor by the Bank:
- (a) by leaving the same with an adult person on the Land, if occupied, or placing the same on some portion thereof, if unoccupied;
 - (b) by delivering the same or mailing the same by prepaid registered post to the Mortgagor at the Mortgagor's Address;
 - (c) if the Mortgagor is a corporation, by delivering the same or mailing the same by prepaid registered post to the Mortgagor at its registered office; or
 - (d) by publishing the same twice in some newspaper published or circulating in the county or district in which the Land are situate;

and to the Bank by the Mortgagor by mailing such notice by prepaid registered post to the Bank at the Bank's Address. If the Mortgagor consists of more than one person, notice to any one of them shall be deemed to be notice to all of them.

- 8.13 The Mortgagor waives all rights to receive from the Bank a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this Mortgage.
- 8.14 All covenants and liabilities entered into or imposed upon the Mortgagor, if more than one, shall be joint and several.

IX SPECIAL INTERESTS

9.01 **Strata Lot:** If the Land, or any part thereof, forms part of a strata title development:

- (a) the Mortgagor shall comply with all provisions of the **Condominium Act**, its regulations and the by-laws, rules and regulations of the strata corporation (the "Strata Corporation") constituted by the deposit of the appropriate strata plan from time to time in force;
- (b) the Mortgagor shall pay, on or before the due dates thereof, each and every assessment, contribution, charge, fine or levy made by or on behalf of the Strata Corporation in respect of the Land;
- (c) the Bank is hereby authorized to apply to the Strata Corporation at any time and from time to time for certification of the matters referred to in sub-clauses (a) and (b) above in connection with the Land, or that no moneys are owing to the Strata Corporation by the Mortgagor or to inspect or obtain copies of any records or other documents of the Strata Corporation that the Mortgagor is entitled to inspect or obtain;
- (d) the Mortgagor's power and right to vote conferred on it by or under the **Condominium Act** may be exercised by the Bank in respect of all matters in relation to which the **Condominium Act** allows or provides that the Bank may vote, such power and rights being hereby assigned, transferred and set over unto the Bank, and in respect of all other matters, the Mortgagor hereby irrevocably appoints the Bank as proxy for the Mortgagor to attend, speak and vote for and on behalf of the Mortgagor, but in the discretion of the Bank, at all meetings of the Strata Corporation; provided the Bank shall not be obliged to vote or to protect the interests of the Mortgagor and shall not be liable to the Mortgagor in connection with any consequences of the Bank's exercise or failure to exercise such right to vote;
- (e) if for any reason whatsoever the Mortgagor votes at any meeting of the Strata Corporation, the Mortgagor shall, if directed by the Bank, vote in such manner as the Bank directs with respect to each and every matter to be voted;
- (f) if requested by the Bank, the Mortgagor shall deliver to the Bank, at least five days prior to each general meeting of the Strata Corporation, written notice of the meeting specifying the place, date, hour and purpose of the meeting;
- (g) at the request of the Bank, the Mortgagor will deliver to the Bank copies of all notices, financial statements and other documents given by the Strata Corporation to the Mortgagor;
- (h) if the Strata Corporation transfers, charges or adds to the common property, or amends its bylaws without the consent of the Bank, and if, in the Bank's opinion, the value of the Land is reduced, the Indebtedness shall, at the option of the Bank, become immediately due and payable.

9.02 **Mortgage of Mortgage:** If the Mortgagor's Interest, or any part thereof, is as a mortgagee of the Land, or any part thereof, under a mortgage (in this clause called the "Head Mortgage"):

- (a) the Mortgagor transfers and assigns to the Bank absolutely all the right, title and interest of the Mortgagor in and to the Head Mortgage and the moneys now and hereafter owing thereunder, together with the full benefit of all powers and all covenants and provisions in the Head Mortgage, including any guarantee contained in the Head Mortgage, and also, full power and authority to use the name of the Mortgagor for enforcing the performance of the covenants and other matters and things contained in the Head Mortgage;
- (b) the Mortgagor represents and warrants to the Bank that the Head Mortgage is good and valid security;
- (c) the Mortgagor represents and warrants to the Bank that the Mortgagor has not done, nor permitted any act, matter or thing whereby the Head Mortgage has been released or discharged, either in whole or in part;
- (d) the Mortgagor covenants and agrees that default of any kind under the Head Mortgage or the Mortgagor becoming entitled to take any action or proceeding under the Head Mortgage shall be an event of default under this Mortgage;
- (e) the Mortgagor shall not accept any prepayment of the moneys owing under the Head Mortgage other than in accordance with the terms thereof; provided that, if the Mortgagor is obliged to accept a prepayment, the amount thereof shall be paid to the Bank as a prepayment of the Indebtedness unless the Bank waives such prepayment.

9.03 Vendor's Interest in Right to Purchase: If the Mortgagor's Interest, or any part thereof, in the Land, or any part thereof, is the full fee simple subject to a right to purchase (in this clause called the "Right to Purchase"):

- (a) the Mortgagor transfers and assigns to the Bank absolutely all the right, title and interest of the Mortgagor in and to the Right to Purchase and the moneys now and hereafter owing thereunder, together with the full benefit of all powers and all covenants and provisions in the Right to Purchase, and full power and authority to use the name of the Mortgagor for enforcing the performance of the covenants and other matters and things contained in the Right to Purchase; and
- (b) the Mortgagor shall not accept any prepayment of the Right to Purchase other than in accordance with the terms thereof, provided that, if the Mortgagor is obliged to accept a prepayment, the amount thereof shall be paid to the Bank as a prepayment of the Indebtedness unless the Bank waives such prepayment.

9.04 Assignment of Rents: If the Mortgagor's Interest is or becomes subject to any lease, agreement to lease, tenancy, right of use or occupation, or licence (all of which leases, agreements to lease, tenancies, rights and licences are in this clause collectively called the "Leases"):

- (a) the Mortgagor transfers and assigns to the Bank absolutely all rents and moneys of whatsoever nature or kind (in this clause called the "Rents") now due and payable or which may hereafter become due and payable:
 - (i) under all existing and future Leases in respect of the whole or any portion of the Land; and
 - (ii) under every existing and future guarantee of each and every one of the obligations of each and every existing or future tenant, user, occupier, or licensee of the whole or any portion of the Land;

together with the benefit of all covenants and rights therein, and, specifically, in the Leases contained, and the full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for the Rents and to enforce payment thereof in the name of the Mortgagor, as security for payment of the Indebtedness;

- (b) the Mortgagor covenants and agrees with the Bank that:
- (i) it has not and will not do or omit to do any act having the effect of terminating, cancelling or accepting surrender of any of the Leases or of waiving, releasing, reducing or abating any rights or remedies of the Mortgagor or obligations of any other party thereunder or in connection therewith;
 - (ii) none of such rights, remedies or obligations are or will be affected by any other agreement, document or understanding or by any reduction, abatement, defence, set-off, or counterclaim, except as herein expressly provided;
 - (iii) none of the Leases or the Mortgagor's rights thereunder including the right to receive the Rents, will be amended, assigned, encumbered, discounted or anticipated;
 - (iv) none of the Rents has been or will be paid in advance for a period exceeding one month;
 - (v) none of the remainder of the Rents has been or will be paid prior to the due date for payment thereof;
 - (vi) there is no existing default in payment of rent under any of the Leases by any of the parties thereto;
 - (vii) there is no outstanding dispute under any of the Leases between the Mortgagor and any other party thereto;
 - (viii) the Mortgagor will observe and perform all of its obligations under each of the Leases;
 - (ix) a true copy of each of the Leases will be delivered by the Mortgagor to the Bank upon demand by the Bank;
 - (x) the Mortgagor will execute such further assurances as may be required by the Bank from time to time to perfect this assignment, including without limiting the generality of the foregoing, whenever any lease not now existing is made or arises, the Mortgagor will, upon demand by the Bank at any time, forthwith give the Bank a specific assignment of the rents and guarantees thereunder, if any, similar to this assignment and will give any other parties thereto notice of such assignment and will obtain from them acknowledgments of such notice;
 - (xi) the Mortgagor will not lease or agree to lease or grant any licence or user of any part of the Land except at a rent and on terms and conditions and to tenants which are not less favourable or desirable to the Mortgagor than those which a prudent landlord would expect to receive for the premises to be leased;
 - (xii) nothing herein contained shall have the effect of making the Bank responsible for the collection of the Rents, or any of them, or for the performance of or in respect of the Leases, or any of them, to be observed or performed by the Mortgagor and the Bank shall not, by virtue of this assignment or its receipt of the Rents or any of them, become or be deemed a mortgagee in possession of the Land and the Bank shall not be under any obligation to take any action or exercise any remedy in the collection or recovery of the Rents, or any of them, or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the Leases, or any of them, and the Bank shall be liable to account only for such monies as shall actually come into its hands, less proper collection charges, and such monies may be applied on account of any indebtedness of the Mortgagor to the Bank; and
 - (xiii) upon demand by the Bank at any time, the Mortgagor shall, and the Bank, at any time, may notify each and every one of the parties so obligated to pay the Rents, or any part thereof, that the same have been assigned to the Bank; and
- (c) the Bank may enforce its rights under this clause 9.04 independently of its rights under clause 6.01.

9.05 Leasehold Mortgage: If the Mortgagor's Interest, or any part thereof, is as a lessee of the Land, or any part thereof, under a lease, agreement to lease, tenancy, right of use or occupation, or licence or any renewal, replacement or extension thereof (all of which leases, agreements to lease, tenancies, rights, licences, renewals, replacements and extensions are in this clause collectively called the "Lease"):

- (a) the Mortgagor grants and mortgages to the Bank by sub-demise the Mortgagor's Interest and the Lease but the last 10 days of the Mortgagor's right to occupy or use the Land under the Lease are excepted out of the charge created by this Mortgage;
- (b) if the Lease cannot be effectively charged without consent, any charge intended to be created by this Mortgage upon the Lease shall not become effective until, but shall become effective immediately when, all consents necessary for the validity and effectiveness of such charge have been obtained;
- (c) the Mortgagor represents and warrants to the Bank that the Lease is in good standing, the Mortgagor has the right to mortgage the Lease to the Bank, all rents or other moneys payable under the Lease have been paid and all other obligations under the Lease, whether of the Mortgagor or the landlord, have been performed or complied with;
- (d) the Mortgagor covenants and agrees that any default under the Lease is a default under this Mortgage;
- (e) without the prior written consent of the Bank, the Mortgagor will not surrender or terminate the Lease or permit any amendment of the terms of the Lease; and
- (f) unless otherwise permitted by the Bank, the Mortgagor shall exercise every renewal of the Lease.

9.06 Development Mortgage: If the Mortgagor is borrowing all or part of the Indebtedness in order to purchase the Land or construct utilities or buildings thereon, or both (in this clause called the "Development"), the Mortgagor covenants and agrees with the Bank that:

- (a) the Development being or to be carried out on the Land forms part of the security for the Indebtedness;
- (b) the Mortgagor will carry on construction of the Development continuously, diligently and with dispatch until completed and will devote its full efforts and energy to the development and construction of the Development and shall not abandon or delay completion of the Development or, without the prior written consent of the Bank, depart from any plans and specifications provided to the Bank in connection with the Development;
- (c) the Mortgagor will construct the Development in a good and workmanlike manner using first class quality materials in accordance with the aforesaid plans and specifications and will comply with all restrictions, conditions, ordinances, codes, regulations and laws of governmental authorities having direction over, or an interest in, the Land or the Development including, without limitation, all Environmental Laws; and
- (d) the Mortgagor will pay or cause to be paid as soon as the same are due all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, workers' compensation assessments and other charges of any nature and kind (in this clause collectively called the "Liens") which could in any circumstances constitute a lien or charge having priority over this Mortgage and will from time to time on demand provide the Bank with such books, payrolls and other records, receipts, certificates and declarations as the Bank may deem necessary to satisfy itself that such Liens have been paid as soon as they are due, and if a builder's lien or Lien is filed against the Land, the Mortgagor will cause that lien or Lien to be removed forthwith upon notice by the Bank.

X COVENANTOR

10.01 For consideration, the Covenantor covenants and agrees with the Bank that:

- (a) the Covenantor will at all times pay, or cause to be paid, the Indebtedness;
- (b) the Covenantor adopts each and every covenant and agreement of the Mortgagor as set out in this Mortgage and covenants and agrees with the Bank to observe and perform all such covenants and agreements;
- (c) for greater certainty:
 - (i) the taking of this Mortgage shall not operate as a merger of the remedies of the Bank for payment of the Indebtedness or of the remedies of the Bank under any lien, bond, promissory note, bill of exchange, other negotiable instrument, other commercial paper or guarantee and notwithstanding this Mortgage or anything contained herein such remedies shall remain intact and be capable of enforcement against the Mortgagor, the Covenantor, any Customer and all other persons liable for the Indebtedness or any part or parts thereof in the same manner and to the same extent as if the Mortgage Form had not been executed;
 - (ii) the Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with, the Mortgagor, the Covenantor, any Customer and all other persons and securities as the Bank may see fit without prejudicing the rights of the Bank under this Mortgage;
- (d) all covenants and liabilities entered into or imposed upon the Covenantor, if more than one, shall be joint and several; and
- (e) demand may be made upon, and notice may be given to, the Covenantor in the same manner as to the Mortgagor under this Mortgage.

10.02 The Covenantor waives all rights to receive from the Bank a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this Mortgage.

END OF SET