

LAND TITLES ACT

**MORTGAGE  
VARIABLE RATE DEMAND**

[If this Mortgage is a high ratio mortgage as defined in the *LAW OF PROPERTY ACT (ALBERTA)*, Regulation 89/2004, then the following statement applies:

"This mortgage is a high ratio mortgage to which sections 43(4.1) and (4.2) and 44(4.1) and (4.2) of the *Law of Property Act* apply. You and anyone who, expressly or impliedly, assumes this mortgage from you, could be sued for any obligations under this mortgage if there is a default by you or the person who assumes this mortgage."

A "high ratio mortgage" means, for the purposes of sections 43(4.1) and (4.2) and 44(4.1) and (4.2) of the *Law of Property Act*, and Regulation 89/2004, a mortgage of land given to secure a loan under which the specific principal sum of the mortgage, together with the specific principal sum of any existing encumbrance on or mortgage of the same land, exceeds 75% of the market value of the land at the time the mortgage is given. "Specific principal sum" means the maximum amount secured by a mortgage or encumbrance and "existing encumbrance or mortgage" means an encumbrance or mortgage that is registered and that has or will continue to have priority over or equal priority with this mortgage.]

(the "Mortgagor") of, \_\_\_\_\_, Alberta \_\_\_\_\_,  
being or being entitled to become registered as owner, subject to such encumbrances, liens and interests as are notified on the existing Certificate of Title, of those lands located in the Province of Alberta described as follows (or as described in the attached Schedule "A", if any):

(which, with the buildings and improvements located thereon, are collectively called the "Lands"), IN CONSIDERATION OF the sum of \$ \_\_\_\_\_ (the "Principal Sum") of lawful money of Canada lent to the Mortgagor by ATB FINANCIAL, (the "Mortgagee") of \_\_\_\_\_, COVENANTS with the Mortgagee as follows:

**1. REPAYMENT**

The Mortgagor will pay to the Mortgagee at its address noted above, ON DEMAND, in lawful money of Canada, the Principal Sum together with interest on all amounts of the Principal Sum remaining unpaid from time to time after the date of this mortgage, both before and after default, at a variable rate per annum equal to \_\_\_\_\_ % above the Prime Lending Rate of the Mortgagee in effect from time to time (the "Interest Rate"). Interest will be calculated daily and, prior to demand, will be payable monthly on such day of the month as may be specified by the Mortgagee.

The "**Prime Lending Rate**" means the rate of interest which is established by the Mortgagee from time to time to determine the rate of interest charged on Canadian dollar loans and designated, declared or commonly known as its prime lending rate. For greater certainty, the determination by the Mortgagee of its Prime Lending Rate and the Interest Rate at any time will be absolutely binding on the Mortgagor.

## 2. NO MERGER

The taking of a judgment or judgments under any of the covenants contained in this mortgage or in any other security for payment of the mortgage monies will not operate as a merger of such covenants or of the Mortgagee's security by way of a charge against the Lands or affect the Mortgagee's right to interest at the Interest Rate and at the stipulated times on any monies owing to the Mortgagee under any such covenants. It is distinctly understood and agreed that the Interest Rate will be payable on the amount of any judgment.

## 3. TAXES, CLAIMS AND COSTS

- (a) The Mortgagor will pay all taxes, rates, levies, assessments and impositions of the municipality or any other taxing authority which are now or hereafter levied, charged, assessed, imposed or payable against or in respect of the Lands, or on this mortgage or on the Mortgagee in respect of this mortgage, when the same are due, and will provide the Mortgagee with the receipts therefor.
- (b) The Mortgagor will pay and discharge when due all claims of and obligations to labourers, builders, material suppliers and others and all other claims, debts and obligations which by the laws of Canada or Alberta have or might have priority over the security hereby created, and will provide the Mortgagee with the receipts therefor.
- (c) If the Mortgagor fails to pay when due any of the items required to be paid by the Mortgagor pursuant to any provision of this mortgage, including but not limited to those described in paragraphs 3(a), 3(b) and 4(c), the Mortgagee may pay such items.
- (d) If the Mortgagor fails to repair as provided by this mortgage, the Mortgagee may, at such times as it deems necessary and without the concurrence of any other person, make arrangements for maintaining, restoring, repairing, finishing, adding to, or putting in order the Lands and for managing, improving and taking care of them.
- (e) All solicitor's, inspector's, valuator's, surveyor's and other fees and expenses for drawing and registering this mortgage, examining the Lands and the title thereto, and making or maintaining this mortgage a charge on the Lands, and in exercising or enforcing or attempting to enforce or in pursuance of any right, power, remedy or purpose hereunder or subsisting (including legal costs as between a solicitor and his own client on a full indemnity basis and also an allowance for the time, work and expenses of the Mortgagee or of any agent, solicitor, or servant of the Mortgagee for any purpose herein provided), together with all sums which the Mortgagee from time to time advances, expends or incurs pursuant to any provision contained in this mortgage (including but not limited to paragraphs 3(c), 3(d), 3(e), 4(g), 7(d), 8(e), 8(f)(ii), 16(c) and 18), whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise, will be added to the Principal Sum, will be secured hereby and will be a charge on the Lands, together with interest thereon at the Interest Rate calculated from the date of advance or expenditure by the Mortgagee to the date of payment to the Mortgagee. All such monies will be payable to the Mortgagee on demand. The Mortgagee will have the right to deduct the amount of any such monies from any advance made to the Mortgagor after the date such expenditures are incurred.

## 4. INSURANCE

- (a) The Mortgagor will immediately insure and keep insured during the continuance of this security the Lands to their full insurable value, with insurers approved by the Mortgagee, against loss or damage by fire, lightning, explosion, smoke, impact by aircraft or land vehicle, riot, windstorm, hail, and such other risks as the Mortgagee requires. The Mortgagor will also obtain such other insurance, of kinds and in amounts required by the Mortgagee, including but not limited to business interruption or rental loss insurance if appropriate. The Mortgagor will not do or permit anything which might impair, reduce or void such insurance.
- (b) The Mortgagor will deliver to the Mortgagee all policies of insurance with a mortgage clause attached, any loss thereunder to be payable to the Mortgagee.
- (c) The Mortgagor will pay all premiums necessary to obtain and maintain such insurance as the same become due and, if requested by the Mortgagee, will immediately deliver to the Mortgagee the receipts therefor. Evidence of the renewal of such insurance will, if requested by the Mortgagee, be provided to the Mortgagee at least seven business days before the existing insurance expires; otherwise the Mortgagee may insure as herein provided.
- (d) If there is loss or damage from any of the risks insured against, the Mortgagor will furnish proof of loss at its own expense and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. In respect of any such insurance monies received by the Mortgagee the Mortgagee may at its option:
  - (i) apply the same in or towards substantially rebuilding, reinstating or repairing the Lands; or
  - (ii) apply the same in or towards payment of any principal, interest or other monies owing under this mortgage; or
  - (iii) pay the same in whole or in part to the Mortgagor, but no such payment will operate as payment or a novation of the Mortgagor's indebtedness hereunder or as a reduction of this Mortgage; or
  - (iv) apply the same partly in one way and partly in another as the Mortgagee in its sole discretion determines.

To ensure that the Mortgagee may so apply such insurance monies in the manner aforesaid, the Mortgagor assigns and releases to the Mortgagee all rights of the Mortgagor to receive the insurance monies and expressly waives all rights and benefits, to the extent that the same is permitted by law, pursuant to any legislation which provides for a contrary application of such insurance monies.

- (e) The Mortgagor hereby constitutes and appoints the Mortgagee as its attorney for the purpose of demanding, recovering and receiving payment of all insurance monies to which it becomes entitled. Without limiting the generality of the foregoing, the Mortgagee may, in the name of the Mortgagor, file proofs of claim with any insurer who insures the Lands, settle or compromise any claim for insurance proceeds in respect of the Lands, commence and prosecute any action for recovery of insurance proceeds in respect of the Lands, and settle or compromise any such action. Notwithstanding the foregoing, it will remain the Mortgagor's responsibility to demand, recover and receive such payments. Nothing herein will render the Mortgagee liable to the Mortgagor for any act done by it in pursuance of this power of attorney or for its failure to do any act or take any step in relation thereto.
- (f) Pending application of any insurance monies by the Mortgagee, the same will be deemed to form part of the Lands and be subject to the charge hereby created.
- (g) If the Mortgagor fails to keep the Lands insured as aforesaid or to pay the said premiums and amounts necessary for such purpose or to deliver the policies or receipts as aforesaid then the Mortgagee will have the right to insure the Lands in the manner aforesaid.

## 5. IMPROVEMENTS TO BE FIXTURES

All improvements, fixed or otherwise, now on or hereafter put on the Lands (including but not limited to all buildings, erections,

mobile homes, machinery, plant, fences, furnaces, boilers, water heaters, heating, plumbing, air conditioning, cooking, refrigerating, ventilating, lighting and water-heating equipment, blinds, windows, doors and all apparatus and equipment appurtenant thereto, whether movable or stationary, with the proper, usual and necessary gears, construction and appliances) are and will, in addition to other fixtures thereon, be and become fixtures and become part of the realty and of the security and are included in the expression the "Lands".

## 6. USE OF THE LANDS

- (a) The Mortgagor will not commit or permit any act of waste on the Lands or do or permit anything which might impair their value.
- (b) The Mortgagor will sufficiently repair, maintain, restore, amend and keep the Lands in good and substantial repair.
- (c) The Mortgagee by its agents, solicitors or inspectors may enter on the Lands at any reasonable time to view their state of repair.
- (d) If in the opinion of the Mortgagee the Lands are not in a proper state of repair it may serve notice upon the Mortgagor to make such repairs or replacements as the Mortgagee deems proper within a time limited by such notice. If the Mortgagor fails to comply with such notice such failure will constitute a breach of covenant hereunder. In such case the Mortgagee or its agents, employees or contractors may enter on the Lands and repair as provided in this mortgage and will have the right to exercise all the remedies available to the Mortgagee.
- (e) The Mortgagor will not make, or permit to be made, any alterations or additions to the Lands, or change their present use without the consent of the Mortgagee. If the Mortgagor is operating a business on the Lands the Mortgagor will not change the nature of such business without the prior written consent of the Mortgagee.
- (f) If the Mortgagor rents out the Lands, the Mortgagor will perform all landlord's covenants under any leases. The Mortgagor will neither do, neglect to do, nor permit to be done, anything (other than pursuing the enforcement of the terms of such leases in accordance with the terms thereof) which may cause a material modification or termination of any leases or which may diminish the value of any leases, the rents provided for therein, or the interest of the Mortgagor or Mortgagee therein. The Mortgagor will not assign its interest in any leases or collect more than one monthly rental instalment in advance without the prior written consent of the Mortgagee. The Mortgagor will give the Mortgagee immediate notice of any material default or notice of cancellation under any such leases.
- (g) In its ownership, operation and management of the Lands the Mortgagor will observe and comply with all applicable federal, provincial and municipal by-laws, statutes, ordinances, regulations, orders and restrictions including but not limited to those referred to in paragraph 7 and all health, fire, safety and land use by-laws and building codes.
- (h) The Lands must at all times be professionally managed. If in the Mortgagee's sole opinion the Lands are not being professionally managed, the Mortgagee will have the right to appoint a property manager of its choosing. The Mortgagor will be responsible for paying all costs, fees and expenses of any such property manager. Appointment of a property manager by the Mortgagee will not relieve the Mortgagor from any of its obligations or covenants in this mortgage.

## 7. CARE OF THE LANDS

- (a) In this mortgage:
  - (i) "environment" includes the Lands and surroundings;
  - (ii) "pollutant" means any substance, class of substances, mixture of substances, form of energy or combination thereof that is capable of entering the environment in a quantity or concentration or under conditions that may cause an immediate or long term adverse effect, and includes anything defined as a hazardous substance, hazardous waste, toxic substance, dangerous goods, hazardous chemical, contaminant, or agricultural chemical under any federal, provincial or municipal laws or by-laws now or hereafter in force;
  - (iii) "release" includes the noun or verb form of spill, discharge, spray, inject, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place, exhaust and words of like or similar meaning.
- (b) Neither the Mortgagor, nor, to the knowledge of the Mortgagor after diligent inquiry and investigation, any other person, has ever caused or permitted any pollutant to be placed, handled, stored or disposed of on, under or at the Lands, or on, under or at adjacent lands, except as disclosed to the Mortgagee in writing.
- (c) The Mortgagor will not allow any pollutant to be placed, handled, stored or disposed of on, under or at the Lands without the prior written consent of the Mortgagee, which consent may be arbitrarily or unreasonably withheld.
- (d) To the extent that any pollutant is placed, handled, stored or disposed of on, under or at the Lands:
  - (i) the Mortgagor has, and will continue to have, all necessary federal, provincial and municipal licenses, certificates and permits and is and will continue to be in compliance with all applicable federal, provincial and municipal laws and by-laws;
  - (ii) the Mortgagor will not cause or permit to exist, as a result of an intentional or unintentional act or omission on its part (or on the part of its agents, contractors or any other person or entity for whose acts or omissions it is responsible), a release of any pollutant on, under or at the Lands, unless such release is pursuant to and in compliance with the conditions of a permit issued by the appropriate governmental authority;
  - (iii) if the Mortgagor receives any verbal or written notice of an unauthorized release, or any complaint, order, citation or notice with regard to a release or any other environmental, health or safety matter affecting the Lands ("environmental complaint") from any person or entity, including without limitation Alberta Environment or Environment Canada, then the Mortgagor will give immediate oral and written notice (with a copy of the environmental complaint) of such release to the Mortgagee;
  - (iv) the Mortgagor will promptly take all necessary remedial action in response to the unauthorized release; provided, however, that the Mortgagor will not, without the Mortgagee's prior written consent, take any such remedial action nor enter into any settlement agreement, consent decree, or other compromise in respect of any related claims, proceedings, lawsuits or action commenced or threatened pursuant to any environmental, health or safety laws or in connection with any third party, if such remedial action, settlement, consent or compromise might impair the value of the Mortgagee's security hereunder. The Mortgagee's prior consent will not, however, be necessary if the release either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain the Mortgagee's consent prior to undertaking such action. If the Mortgagor undertakes any remedial action the Mortgagor will immediately notify the Mortgagee of any such remedial action in compliance with all applicable federal, provincial and municipal laws and by-laws, and in accordance with the orders and directives of all governmental authorities, to the satisfaction of the Mortgagee;
  - (v) in addition to and not in limitation of the Mortgagee's rights under this mortgage, the Mortgagee will have the right to take such actions, including without limitation hiring consultants and undertaking sampling and testing, as it deems necessary or advisable to remedy, remove, resolve or minimize the impact of, or otherwise deal with, any pollutant or environmental

complaint upon its receipt of any notice from any person or entity, including without limitation Alberta Environment or Environment Canada, asserting the happening of an unauthorized release on, under or at the Lands which, if true, could result in any order, suit or other action against the Mortgagor or Mortgagee or any part of the Lands by any governmental agency or otherwise which, in the sole opinion of the Mortgagee, could jeopardize its security under this mortgage. All costs and expenses incurred by the Mortgagee in the exercise of any such rights will be added to the Principal Sum and will be payable by the Mortgagor upon demand;

(vi) the Mortgagee may require that the Mortgagor from time to time promptly cause such tests and procedures as the Mortgagee deems appropriate to be conducted by professionals in a manner satisfactory to the Mortgagee, for the purpose of assuring compliance with all federal, provincial and municipal laws and by-laws, and having such compliance certified to the Mortgagee. Such tests and procedures will be commenced promptly and completed with results reported to the Mortgagee within thirty days following written notice from the Mortgagee. All costs incurred in respect of such procedures will be paid by the Mortgagor. If the Mortgagee incurs any expense in respect thereof the amount thereof will be added to the Principal Sum and the Mortgagor will reimburse the Mortgagee for all such sums upon demand; and

(vii) the Mortgagor agrees to defend, indemnify, and hold the Mortgagee harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, legal costs as between a solicitor and his own client on a full indemnity basis, including those arising by reason of any of the aforesaid or an action under this indemnity) arising directly or indirectly from, out of or by reason of any release, environmental complaint, or any environmental health, fire, safety, and land use law governing the Mortgagor, its operations or the Lands. This indemnity will apply notwithstanding any negligent or other contributory conduct by or on the part of the Mortgagee or any one or more other parties or third parties and will survive the payment of and the satisfaction of this mortgage.

(e) Without restricting the generality of the foregoing, if gasoline or other storage tanks are located on, under, or at the Lands, the Mortgagor will:

- (i) maintain and repair such storage tanks in compliance with applicable laws, including the Fire Code, and
- (ii) at the request of the Mortgagee, as additional security assign to the Mortgagee any warranties or guarantees received from the manufacturer or installer of such storage tanks.

(f) Upon request from the Mortgagee, the Mortgagor will:

- (i) provide the Mortgagee with all information which the Mortgagee reasonably requests as to the proposed use of the Lands by any tenant, and
- (ii) incorporate into any proposed lease any provisions which the Mortgagee requires to be incorporated.

## 8. CONSTRUCTION

If the Principal Sum is to be advanced from time to time upon the progress of construction of buildings or other improvements which are to be erected on the Lands, then:

- (a) such buildings or improvements will form part of the security for the full amount of the monies secured by this mortgage;
- (b) all advances on this mortgage will be made from time to time in accordance with the progress of construction of such buildings or improvements and will be made in such manner, at such times, and in such amounts as the Mortgagee in its sole discretion determines, subject always to the Mortgagee's discretion to advance or not advance as it sees fit;
- (c) the Mortgagor will construct such buildings or improvements in accordance with plans and specifications which have been or are hereafter approved by the Mortgagee and will diligently carry on the completion of the same;
- (d) the Mortgagee will be entitled to retain such sums as it deems necessary in respect of builders' lien holdbacks pursuant to the *Builders' Lien Act* of (Alberta) or any other applicable legislation, which sums will be held for such length of time as the Mortgagee sees fit;
- (e) the Mortgagee may pay any builders' liens which may exist or be claimed and it will not be liable or responsible to determine the validity or correctness of any such claim;
- (f) if the Mortgagor fails to complete such buildings or improvements with reasonable diligence:
  - (i) the Mortgagee may, without notice to the Mortgagor, enter upon the Lands and take possession thereof with power to carry on the completion of such buildings or improvements and with discretion to alter the plans and specifications if it deems necessary in order to complete the same, and
  - (ii) if the Mortgagee is unable to complete the same properly with the amount of the Principal Sum, the Mortgagee may in its sole discretion advance such further monies as may be required.

## 9. COVENANTS UNDER THE LAND TITLES ACT

- (a) The Mortgagor has a good title to the Lands;
- (b) The Mortgagor has the right to mortgage the Lands;
- (c) On default the Mortgagee will have quiet possession of the Lands;
- (d) The Lands are free from all encumbrances except as noted on the Certificate of Title thereto;
- (e) The Mortgagor will execute such further assurances of the Lands as may be required by the Mortgagee; and
- (f) The Mortgagor has done no act to encumber the Lands except as noted on the Certificate of Title thereto.

## 10. POWER OF ATTORNEY

At any time when there is default under any of the provisions of this mortgage, the following power of attorney will take effect: the Mortgagor hereby irrevocably appoints the Mortgagee, or such person or corporation as may be designated by the Mortgagee, as attorney on behalf of the Mortgagor to sell, lease, mortgage or otherwise dispose of or encumber the Lands, and to execute all instruments and do all acts, matters and things that may be necessary or convenient for carrying out the powers hereby given and for the recovery of all sums of money owing for or in respect of the Lands, and for the enforcement of all contracts and covenants in respect of the Lands, and for the taking and maintaining of possession of and the protection and preservation of the Lands.

## 11. RIGHT TO SEIZE

If the Mortgagor defaults in performing or fulfilling any of the covenants set forth in this mortgage it will be lawful for, and the Mortgagor hereby grants full power and licence to, the Mortgagee to enter, seize and distress 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 and other monies as is from time to time in arrears, together with all costs, charges and expenses attending such levy or distress as in like cases of distress for rent.

## 12. APPOINTMENT OF RECEIVER OR RECEIVER-MANAGER

- (a) At any time when there is default under any of the provisions of this mortgage the Mortgagee may, with or without entering into possession of the Lands, appoint in writing a receiver or a receiver-manager (the "Receiver") of the Lands and of the rents and revenues therefrom with or without security. The Mortgagee may from time to time by similar writing remove any Receiver and appoint another in its place. In making any such appointment or removal the Mortgagee will be deemed to be acting as agent or attorney for the Mortgagor. The statutory declaration of an officer of the Mortgagee as to the existence of such default will be conclusive evidence of such default. Every Receiver will be the irrevocable assignee or attorney of the Mortgagor for the collection of all rents falling due in respect of the Lands. Every Receiver may, in the discretion of the Mortgagee exercised in writing, be vested with all or any powers and discretions of the Mortgagee. The Mortgagee may from time to time fix the remuneration of every Receiver, who will be entitled to deduct the same from the income or proceeds of sale of the Lands. Every Receiver will, as far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Mortgagor and in no event the agent of the Mortgagee. The appointment of every Receiver by the Mortgagee will not incur or create any liability on the part of the Mortgagee to the Receiver in any respect. Such appointment or anything which may be done by the Receiver or the removal of any Receiver or the termination of any receivership will not have the effect of constituting the Mortgagee a mortgagee in possession of the Lands. Every Receiver will from time to time have the power to rent any portion of the Lands which may become vacant for such term and subject to such provisions as it may deem advisable or expedient. In so doing every Receiver will act as the attorney or agent of the Mortgagor and will have the authority to execute any lease of any such premises in the name of and on behalf of the Mortgagor. The Mortgagor undertakes to ratify and confirm whatever any Receiver does in respect of the Lands. Every Receiver will have full power to manage, operate, amend, repair, alter or extend the Lands in the name of the Mortgagor for all purposes including securing the payment of rental for the Lands. In exercising such powers the Receiver will have all incidental powers, including the power to borrow such funds as may be required in connection therewith. No Receiver will be liable to the Mortgagor to account for monies or damages other than cash received by it in respect of the Lands. Out of such cash so received every Receiver will in the following order pay:
- (i) its remuneration,
  - (ii) all payments made or incurred by it in connection with the management, operation, amendment, repair, alteration or extension of the Lands, and
  - (iii) interest, principal and other money which may from time to time be charged upon the Lands in priority to this mortgage, and all taxes, insurance premiums and every other expenditure made or incurred by it in respect of the Lands.
- (b) Notwithstanding the provisions of subparagraph (a) above and in addition to the right of private appointment contained therein, the Mortgagee will have the right to apply to a court of competent jurisdiction for the appointment of a receiver or a receiver-manager, whether such application is made prior to or after the appointment of a Receiver pursuant to subparagraph (a). The right to apply to a court for the appointment of a receiver or receiver-manager may be exercised at any time by the Mortgagee in its sole discretion.

## 13. DUE ON SALE

If, without the prior written consent of the Mortgagee:

- (a) the Mortgagor sells, conveys, transfers or assigns all or any part of its interest in the Lands, or
- (b) where the Mortgagor is a corporation, there is a change in the control of such corporation;

the full amount then secured by this mortgage will, at the option of the Mortgagee, become immediately due and payable upon notice to the Mortgagor. For the purposes of this clause:

- (c) a change of control of a corporation will be deemed to occur if:
  - (i) there is a change of control in fact of the corporation within the meaning of section 256(5.1) R.S.C. 1985, c.1 (5<sup>th</sup> Supp) and related sections of the *Income Tax Act* (Canada), or
  - (ii) more than 10% of the issued shares of the corporation carrying voting rights in respect of the election of directors of the corporation become owned by a body corporate, person or group of persons other than that or those which own or owns the issued voting shares in the corporation as at the date of this mortgage; and
- (d) the giving or withholding of consent will be solely within the Mortgagee's discretion. As a condition of consent the Mortgagee may require or impose such conditions as it sees fit, including but not limited to the requirement that any purchaser, transferee or assignee execute an assumption agreement in favour of the Mortgagee on such terms and conditions as the Mortgagee requires.

## 14. ASSIGNMENT OF RENTALS

As further security to the Mortgagee for repayment as aforesaid, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee all rents and other revenues from the Lands now or hereafter due or to become due, provided that:

- (a) the Mortgagor will be entitled to receive and recover such rents and other revenues until default under this mortgage;
- (b) if the Mortgagor defaults, all monies received by the Mortgagor in respect of the Lands after the default will be received by the Mortgagor in trust for the Mortgagee. Immediately after receiving such monies the Mortgagor will pay them to the Mortgagee;
- (c) the Mortgagee will have no obligation to collect any such rents or other revenues at any time and will be liable only for monies actually received;
- (d) nothing contained in this clause nor the exercise by the Mortgagee of any rights or remedies arising herefrom will place or be deemed to place the Mortgagee in possession of the Lands;
- (e) neither this assignment, nor the collection of rents pursuant to it, will be construed as a recognition or acceptance of any lease with respect to the Lands;
- (f) the Mortgagor will not accept any rents in excess of one monthly instalment in advance;

- (g) whenever requested by the Mortgagee the Mortgagor will assign to the Mortgagee its interest in each specific lease of the Lands and will execute such further specific or general assignments as may be requested by the Mortgagee from time to time; and
- (h) the Mortgagee or its agents may separately register this assignment wherever the Mortgagee in its discretion deems appropriate.

## 15. CONDOMINIUM

If the Lands are or hereafter become subject to a condominium plan duly created pursuant to the provisions of the *Condominium Property Act*, RSA 2000, c.C-22 (which, as amended from time to time, together with any legislation substituted therefor is herein collectively called the "Act"), then:

- (a) the Mortgagor fully and absolutely assigns, transfers and sets over to the Mortgagee all of the Mortgagor's voting rights now existing or which may hereafter come into existence with respect to the Lands and with respect to the Condominium Corporation of which the Mortgagor is a member by virtue of the Mortgagor's ownership of the condominium unit or units being charged by this mortgage (the "Condominium Corporation"), whether such voting rights arise under the Act, under the By-laws of the Condominium Corporation, under any agreement with the Condominium Corporation, or otherwise howsoever. The Mortgagor will execute any documentation which in the sole opinion of the Mortgagee is necessary or advisable to give full effect to the foregoing. Provided however, that if the Mortgagee is not present in person or by proxy, or, if present, does not wish to vote, then the Mortgagor may without further authority exercise all voting rights other than the right to vote on any matter requiring a unanimous resolution. Provided further that the Mortgagee may, by written notice to the Mortgagor, terminate all voting rights and privileges of the Mortgagor;
- (b) notwithstanding anything to the contrary herein contained:
  - (i) The Mortgagor will observe and perform every covenant and provision required to be performed under or pursuant to the terms of this mortgage, the Act, the By-laws of the Condominium Corporation in effect from time to time, and under any agreement between the Mortgagor and the Condominium Corporation; and
  - (ii) without limiting the generality of the preceding subparagraph, the Mortgagor will pay promptly when due all assessments, instalments or payments owing by it to the Condominium Corporation; and
- (c) where the Mortgagor defaults in the Mortgagor's obligations to contribute to the common expenses assessed or levied by the Condominium Corporation or any authorized agent on its behalf, or any assessment, instalment or payment owing to the Condominium Corporation, or upon breach of any covenant or provision contained in this section, then regardless of any other action or proceeding taken or to be taken by the Condominium Corporation, the Mortgagee, at its option and without notice to the Mortgagor may pay such contribution owing to the Condominium Corporation or rectify any such default or breach by the Mortgagor.

## 16. SUBROGATION

The Mortgagee may pay off any charges or encumbrances against the Lands and in such cases will be subrogated to the rights of, stand in the position of, and be entitled to all the equities of the person so paid off whether the same are or are not discharged.

## 17. PRIOR CHARGE

If the Mortgagor defaults in the performance of any covenants, payments or conditions contained in any mortgage, lien, agreement for sale, encumbrance, interest in land or other charge or claim upon or with respect to the Lands which has or may have or which may acquire priority to this mortgage (any and all of which are herein called the "Prior Charge") then such default will constitute a default under this mortgage and the full amount then secured by this mortgage will, at the option of the Mortgagee, become immediately due and payable without notice or demand. The Mortgagee will be entitled to pay any arrears or other sums payable under the Prior Charge, or to pay off all or any portion of the amount thereby secured. For the purposes of tendering any arrears or other sums payable to a holder of a Prior Charge, the Mortgagor hereby irrevocably appoints the Mortgagee its agent and irrevocably directs the Mortgagee to tender such monies upon the holder of a Prior Charge in the name of and on behalf of the Mortgagor. In this regard the Mortgagor hereby assigns to the Mortgagee its equity of redemption, if any, with respect to the Prior Charge, together with the statutory right of redemption given to the Mortgagor by the provisions of Section 38 of the *Law of Property Act*, RSA 2000, c.L-7, as in force and amended from time to time. It is the intention of the parties that the Mortgagee will have the same rights and powers, but not the liabilities, as the Mortgagor under and pursuant to the terms of the Prior Charge so that the Mortgagee will be in a position to take whatever steps are necessary to bring the Prior Charge into good standing once default has occurred thereunder. This assignment is not intended to encompass the Mortgagor's entire interest in the Prior Charge, but only to the extent above stipulated. Nothing herein contained will create any obligation on the Mortgagee to cure any default on behalf of the Mortgagor.

## 18. PARTIAL RELEASE

The Mortgagee may release any part of the Lands at any time at its discretion, or may release any person from this mortgage or from any of the covenants herein contained or contained in any collateral security, either with or without any consideration therefor, without responsibility therefor and without releasing any other part of the Lands, any other person or any collateral security.

## 19. ATTORNMENT

For better securing the punctual payment of the sum secured by this mortgage the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Lands at a monthly rental equivalent to the amount of interest accrued on the outstanding Principal Sum during such month, the same to be paid on demand. If any judgment, execution or attachment is issued against any of the Mortgagor's goods or lands or if the Mortgagor becomes insolvent or bankrupt or commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or any legislation substituted therefor or takes the benefit of any statute relating to bankrupt or insolvent debtors then such rental, together with the rental for the next two months, will, without demand, be payable immediately. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor. Neither this clause, nor anything done by virtue hereof, will render the Mortgagee a mortgagee in possession or accountable for any monies except those actually received. The Mortgagee may at any time after default hereunder enter on the Lands and determine the tenancy hereby created without giving any notice to quit.

## 20. MORTGAGEE IN POSSESSION

If the Mortgagee exercises any of its rights hereunder, or goes into possession of the Lands for any purpose under the powers conferred upon it by this mortgage or by law, it will not be deemed to be a mortgagee in possession nor responsible in any way for anything other than monies actually received by it.

## 21. APPROPRIATION OF PAYMENTS

Any payments made by the Mortgagor on account of this mortgage will be applied firstly to interest calculated as aforesaid on so much of the Principal Sum as from time to time remains unpaid and the balance, if any, of any payments will be applied on account of the Principal Sum; except, however, in the case of default by the Mortgagor, in which case the Mortgagee may apply any payments received during the period of default in whatever order it may elect as between the Principal Sum, interest or other monies secured by this mortgage.

## 22. EXPROPRIATION AND CONDEMNATION

- (a) Notwithstanding anything to the contrary contained herein, if the Mortgagee receives a notice of intention to expropriate (as referred to in the *Expropriation Act*, RSA 2000, c.E-13) the Lands or the estate or interest of the Mortgagee in the Lands, or the Lands are condemned by any authority having jurisdiction in that regard, then the Principal Sum, interest and other monies hereby secured will at the option of the Mortgagee automatically become due in full on demand by the Mortgagee.
- (b) The damages, proceeds, consideration and award, whether awarded by the Land Compensation Board, the Surface Rights Board, a court or otherwise, resulting from any expropriation are, to the extent of the full amount of the monies and obligations secured by this mortgage and remaining unpaid on the date of such expropriation, hereby assigned by the Mortgagor to the Mortgagee and will be paid immediately to the Mortgagee.
- (c) The Mortgagor acknowledges that it is aware of the provisions of Sections 49 and 52 of the *Expropriation Act*, RSA 2000, c.E-13; and any amendments thereto, and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof. The Mortgagor covenants to pay to the Mortgagee the difference between the amount owing under this mortgage and the monies paid by the expropriating authority to the Mortgagee, together with interest thereon at the Interest Rate both before and after maturity, default, acceleration and the obtaining of any judgment by the Mortgagee.

## 23. GENERAL CLAUSES

- (a) Any notice required or permitted to be given to the Mortgagor in connection with this mortgage may be delivered or mailed to it by registered mail addressed to it at its last address as shown on the records of the Mortgagee. Such notice will be conclusively deemed to have been received on the date of delivery or three business days after the date of mailing. No want of notice or publication when required by this mortgage or by any statute, nor any impropriety or irregularity, will invalidate any sale made or purported to be made under this mortgage.
- (b) Whenever the Mortgagee is given the right, permission or discretion to take some step or to exercise some remedy pursuant to this mortgage, the Mortgagee will have no obligation to exercise or act on the right, permission, discretion or to do anything whatever pursuant thereto. The Mortgagee will have no liability whatsoever for choosing not to exercise or act, in whole or in part, on such right, permission, discretion or remedy.
- (c) No waiver by the Mortgagee of the performance of any covenant, proviso, condition or agreement herein contained will take effect or be binding on the Mortgagee unless the same is in writing from the Mortgagee or its duly authorized agent. Such waiver will not nullify such covenant, proviso, condition or agreement, affect its future enforcement or be a waiver of any subsequent breach of the same.
- (d) A default in the due observance or performance by the Mortgagor of any of its covenants contained in any promissory notes, collateral security or securities which may now or at any time be held or taken by the Mortgagee in respect of the monies secured hereby will in addition to its usual effect have the same effect and give rise to the same rights and remedies as a default under the terms of this mortgage. If the Mortgagee becomes entitled to take legal proceedings of any nature whatsoever against the Mortgagor in respect of this mortgage or in respect of any of the said promissory notes or securities, the Mortgagee may either concurrently with such suit, successively or otherwise pursue any or all of its other remedies. If the Mortgagee pursues one or other of the said remedies this will not constitute an election by the Mortgagee to abandon any of the other remedies.
- (e) Neither the execution nor registration of this mortgage nor the advance or re-advance of all or any part of the monies hereby intended to be secured will bind the Mortgagee to advance or re-advance the said monies or any unadvanced part thereof. The advance or re-advance of the said monies or any part thereof from time to time will be in the sole discretion of the Mortgagee. The lien and charge hereby created will take effect immediately on the execution of this mortgage and will be a continuous charge for the full amount of the monies secured by this mortgage, notwithstanding that the balance owing may fluctuate, may from time to time be reduced to a nil balance, or that monies advanced may be repaid and further advances made.
- (f) If the Mortgagor is a body corporate it will maintain its separate corporate existence and do all such things as are required in order to permit it to carry on its business.
- (g) If the Mortgagor operates a business on the Lands or otherwise derives revenue therefrom the Mortgagor will:
  - (i) maintain proper records and books of account with respect to revenue and expenses related to the Lands. The Mortgagor will allow the Mortgagee's representatives at all reasonable times to inspect all such records and books of account as such representatives may deem necessary;
  - (ii) maintain an operating account at a branch of the Mortgagee; and
  - (iii) provide to the Mortgagee:
    - (a) such financial statements for the Mortgagor as may be requested by the Mortgagee; and
    - (b) such other information, financial or otherwise, as to the business and affairs of the Mortgagor, in relation to the Mortgagor being able to observe and perform its obligations to the Mortgagee under this mortgage, as the Mortgagee from time to time reasonably requests.
- (h) The Mortgagor will fulfil or comply with such additional terms, conditions and covenants, if any, as are contained on any Schedules to this mortgage.

## 24. REVOLVING CREDIT

For the purposes of Section 104(2) of the *Land Titles Act*, RSA 2000, c.L-4, as amended or replaced from time to time, it is hereby declared by and agreed between the Mortgagor and the Mortgagee that this mortgage may be held by the Mortgagee as security for a revolving line of credit up to a specific Principal Sum equal to the sum identified in paragraph 1 of this mortgage as being the Principal Sum lent or to be lent to the Mortgagor.

## 25. INTERPRETATION

- (a) If the context so requires, wherever the neuter is used it will include the feminine and masculine, and wherever the singular is used it will include the plural.

- (b) Wherever the word "Lands" is used it will be deemed to include the phrase "or any part thereof" where the context so permits.
- (c) If more than one person or other legal entity signs this mortgage as Mortgagor, then all covenants and stipulations herein contained or implied will apply to and be binding upon all signatories jointly and severally; provided always, and it is expressly agreed, that all covenants, provisos, powers, privileges and licences herein expressed or implied will be binding upon and enure to the benefit of the respective legal personal representatives, successors and permitted assigns of the Mortgagor and the Mortgagee.
- (d) The provisions contained in any schedules to this mortgage are incorporated by reference and form a part of this mortgage as fully as if set out in the body of this mortgage. The covenants and obligations of the Mortgagor and the rights and remedies of the Mortgagee contained in this mortgage are in addition to those granted or implied by statute or otherwise imposed or granted by law.
- (e) If any provision of this mortgage is held to be invalid or unenforceable by a Court of competent jurisdiction it will be deemed to have been deleted from the mortgage and the remaining provisions of this mortgage will continue in full force and effect and be enforced to the greatest extent permitted by law.
- (f) The headings contained in this mortgage are inserted for ease of reference only and will not be construed so as to limit or restrict the obligations of the Mortgagor or the rights and remedies of the Mortgagee.
- (g) This mortgage may be granted pursuant to or in connection with a commitment letter, loan agreement or other agreement or security entered into by the Mortgagor with the Mortgagee. In such case neither the execution nor registration of this mortgage or any additional or other security or documentation will act as a merger of or otherwise affect the enforceability thereof or hereof. All agreements and securities now or hereafter entered into by the Mortgagor with or in favour of the Mortgagee, whether related to the within transaction or otherwise, will be in addition to and not in substitution for any agreements or securities previously granted, unless expressly provided to the contrary therein.

**26. CHARGE**

For better securing to the Mortgagee the repayment in the manner aforesaid of the Principal Sum, interest and other monies hereby secured, and for the due performance by the Mortgagor of all of the covenants, provisos and conditions herein expressed or implied, the Mortgagor hereby mortgages to the Mortgagee all its estate and interest in the Lands.

**27. RENEWAL, EXTENSION OR AMENDMENT**

If the Mortgagee agrees to renew, extend or amend this mortgage, such renewal, extension or amending agreement need not be registered against the title to the Lands. Such agreement will be binding upon the Mortgagor, its assignees and all subsequent mortgagees, encumbrancers or other parties claiming an interest in the Lands. Such agreement will take priority as against such assignees and subsequent mortgagees, encumbrancers and other parties. It will not be necessary to register such agreement in order to retain the priority of this mortgage so altered; provided however that the Mortgagee may at any time, in its discretion, register such agreement or a caveat pursuant to such agreement. It is expressly acknowledged that such agreement may increase the rate of interest chargeable hereunder.

**28. DISCHARGE**

The Mortgagee will have a reasonable time after receipt of payment in full to provide the Mortgagor with a registrable discharge of this mortgage. All costs related to such discharge will be borne by the Mortgagor to the extent permitted by law.

IN WITNESS WHEREOF the Mortgagor has executed this mortgage on

SIGNED AND DELIVERED )  
 by the Mortgagor in the presence of: )  
 )  
 )

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Witness:

**AFFIDAVIT**

I, \_\_\_\_\_, of \_\_\_\_\_ Alberta, make oath and say:

1. I am the mortgagor named in the within instrument.
2. (a) I am not married.  
or  
(b) Neither myself nor my spouse have resided on the within mentioned land at any time since our marriage.  
or  
(c) I am married to \_\_\_\_\_ being the person who executed release of dower rights registered in the Land Titles Office on \_\_\_\_\_, as instrument number \_\_\_\_\_  
or  
(d) A judgement for damages was obtained against me by my spouse and registered in the Land Titles Office on \_\_\_\_\_, as instrument number \_\_\_\_\_.

SWORN before me at \_\_\_\_\_ )  
in the Province of Alberta on \_\_\_\_\_ )  
\_\_\_\_\_ )

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires:

**CONSENT OF SPOUSE**

I, \_\_\_\_\_, being married to \_\_\_\_\_, do hereby give my consent to the disposition of our homestead, made in this instrument, and I have executed this document for the purpose of giving up my life estate and other dower rights in the property given to me by the *Dower Act*, RSA 2000, c.D-15 to the extent necessary to give effect to the disposition.

\_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE**

1. This document was acknowledged before me by \_\_\_\_\_ apart from \_\_\_\_\_
2. \_\_\_\_\_ acknowledged to me that
  - (a) is aware of the nature of the disposition,
  - (b) is aware that the *Dower Act*, RSA 2000, c.D-15 gives \_\_\_\_\_ a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent,
  - (c) consents to the disposition for the purpose of giving up the life estate and other dower rights in the homestead given to \_\_\_\_\_ by the *Dower Act*, RSA 2000, c.D-15 to the extent necessary to give effect to the said disposition,
  - (d) is executing the document freely and voluntarily without any compulsion on the part of \_\_\_\_\_.

Dated at \_\_\_\_\_ in the Province of Alberta on \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Alberta MAKE OATH AND SAY:

1. I was personally present and did see \_\_\_\_\_ who is known to me be the person named in the within (or annexed) instrument, duly sign the instrument;  
or  
I was personally present and did see \_\_\_\_\_ who, on the basis of the identification provided to me, I believe to be the person named in the within (or annexed) instrument, duly sign the instrument;
2. The same was executed at \_\_\_\_\_ in the Province of Alberta, and that I am the subscribing witness thereto.
3. I know the said \_\_\_\_\_, \_\_\_\_\_ in my belief of the full age of eighteen years.

SWORN before me at \_\_\_\_\_ )  
in the Province of Alberta \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_ )

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_ of \_\_\_\_\_ in the Province of Alberta MAKE OATH AND SAY:  
1. I was personally present and did see \_\_\_\_\_ named in the within instrument, who  
personally known to me to be the \_\_\_\_\_ named therein, duly sign and execute the same for the purpose named therein.  
2. The same was executed at \_\_\_\_\_ in the Province of Alberta, and that I am the subscribing witness thereto.  
3. I know the said \_\_\_\_\_, and \_\_\_\_\_ in my belief of the full age of eighteen years.

SWORN before me at \_\_\_\_\_ )  
in the Province of Alberta )  
this \_\_\_\_\_ day of \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_

**AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_, of \_\_\_\_\_ in the Province of Alberta, MAKE OATH AND SAY:  
1. I am an officer or director of \_\_\_\_\_ named in the within or annexed instrument.  
2. I am authorized by the Corporation to execute the instrument without affixing a corporate seal.

SWORN before me at \_\_\_\_\_ )  
in the Province of Alberta )  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_

**AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_, of \_\_\_\_\_, in the Province of Alberta, MAKE OATH AND SAY:  
1. I am an officer or director of \_\_\_\_\_ named in the within or annexed instrument.  
2. I am authorized by the Corporation to execute the instrument without affixing a corporate seal.

SWORN before me at \_\_\_\_\_ )  
in the Province of Alberta )  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_