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# **MORTGAGE – RESIDENTIAL**

**pursuant to the**

***Conveyancing Act (Newfoundland & Labrador)***

**(Fixed Rate)**

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## Mortgage – Residential Fixed Rate

**BETWEEN:**

\_\_\_\_\_ *name*

\_\_\_\_\_ *address*

\_\_\_\_\_

\_\_\_\_\_ *name*

\_\_\_\_\_ *address*

\_\_\_\_\_

\_\_\_\_\_ *name*

\_\_\_\_\_ *address*

\_\_\_\_\_

the “*Mortgagor(s)*”, referred to as “*you*”  
in this Mortgage

**AND:**

\_\_\_\_\_ *name*

\_\_\_\_\_ *address*

\_\_\_\_\_

the “*Mortgagee*” referred to as “*we*” in  
this Mortgage

**AND:**

\_\_\_\_\_ *name*

\_\_\_\_\_ *address*

\_\_\_\_\_

the “*Mortgagor’s spouse*” referred to as  
“*spouse*” in this Mortgage

**AND:**

\_\_\_\_\_ *name*

\_\_\_\_\_ *address*

\_\_\_\_\_

the “*Guarantor*” referred to as  
“*Guarantor*” in this Mortgage

This document sets out the terms which apply to your Mortgage under the *Conveyancing Act* (Newfoundland & Labrador). We recommend you read it carefully. You may want to discuss the terms of this Mortgage with a lawyer.

This document describes the financial institution (mortgagee), who is lending you the money, as “we”. The definition of “we” also includes “us” and “our”.

This document describes the person who is being loaned money and giving the Mortgage on your Property as “you”. The definition of “you” also includes “your”. “You” also includes anyone who guarantees your payments and Promises.

We are lending you money and we protect our interests through the Mortgage on your Property, which gives us certain rights, if you do not do what you promise to do.

Generally, when a word is capitalized, the word is defined in Section 1. You should read these definitions carefully.

## **SECTION 1 – TERMS YOU NEED TO KNOW**

The following are used with particular meanings in this Mortgage:

- (1) **Balance Due Date** means the date shown below in Section 2.4(6) as the date when the Mortgage matures. On this date the Mortgage must be repaid or renewed.
- (2) **Closed Mortgage** means a Mortgage which limits how you can prepay the Outstanding Amount and fixes what Prepayment charges you will be charged, if you do prepay.
- (3) **CMHC** means Canada Mortgage and Housing Corporation. It administers the *National Housing Act* and provides mortgage default insurance to lenders.
- (4) **Convertible Mortgage** means a Closed Mortgage that you can change to another Closed Mortgage with a term of one year or longer at any time.
- (5) **Default** has the meaning shown in section 22.1 below and includes you not keeping a Promise under the Mortgage.
- (6) **First Payment Date** means the date for first payment shown below in Section 2.4(4).
- (7) **Guarantor** means a person who also agrees to keep your Promises under the Mortgage.
- (8) **HomeProtector<sup>®</sup> Insurance Premium** means an insurance premium paid by you for optional group creditor insurance. The premium is collected as part of your payment. It is different from property insurance which protects your home and its contents. *HomeProtector* insurance is subject to terms, conditions, exclusions and eligibility restrictions. Please see the *HomeProtector* Certificate of Insurance for full details.
- (9) **Interest Adjustment Date** means the date shown below in Section 2.4(2) as the date to which we calculate accrued interest on money advanced to you. This date will be before your first regular payment period. This is the date the Term starts.
- (10) **Interest Only Mortgage** means a Mortgage in which your payments are made up of interest only, paid regularly during the Term. Each month you pay accrued interest only. The payments do not reduce the amount we loaned to you (Principal Amount).
- (11) **Interest Rate** means the interest rate that applies to the Mortgage. The Interest Rate and how it is calculated is shown below in Section 2.4(1). It is an annual rate and will not vary over the Term.
- (12) **Last Payment Date** means the date for the last payment shown below in Section 2.4(5).

- (13) **Mortgage** means this legal agreement between you and us, which gives us rights over your Property. 'Mortgage' includes this document and any other documents attached to it as schedules, and any document renewing, amending or extending the Mortgage.
- (14) **Mortgage Default Insurer** means CMHC or any other institution that provides mortgage default insurance to lenders.
- (15) **National Housing Act** means the *National Housing Act* (Canada), a federal law that promotes the construction of new houses and the repair and modernization of existing houses. CMHC provides mortgage default insurance under this law.
- (16) **Open Mortgage** means a mortgage that lets you pay any amount you want without you having to pay a Prepayment charge. The minimum Prepayment amount is \$500.
- (17) **Outstanding Amount** means the total amount remaining to be paid on the Mortgage at any time. It includes the portion of the Principal Amount that remains unpaid, interest, additional amounts advanced, and amounts we have paid because you have not kept a Promise.
- (18) **Posted Rate** means the annual interest rates set from time to time by Royal Bank of Canada applicable to fixed rate residential mortgage loans in Canada. These rates may vary depending upon the term and Prepayment options applicable to the mortgage loan.
- (19) **Prepayment** means repaying part of the Principal Amount ahead of schedule. Depending on the type of Mortgage you have and the amount you are paying, you may have to pay a Prepayment charge when you make a Prepayment.
- (20) **Principal Amount** means the amount we originally loaned to you.
- (21) **Promises** means everything that you agree to do and all of the things you confirm and certify under the Mortgage.
- (22) **Property** means the land described in the Mortgage, as well as any buildings constructed on the land and anything attached or fixed to the land or buildings and any rights associated with the land. It also includes any future building, addition, attachments or fixtures (fixtures includes things such as furnaces) to the land or buildings and, in the case of a leasehold title, the lease, except for the last day of the term of the lease, and any other interest, right, option or benefit set out in the lease.
- (23) **Property Taxes** means all present and future property taxes, rates, assessments, local improvement charges, administration fees and other similar amounts charged by local government on your Property. It includes interest and penalties charged by a local government.
- (24) **Term** means the period of time from the Interest Adjustment Date to the Balance Due Date, which is shown below in Section 2.4.
- (25) **We** means the mortgagee under the Mortgage.
- (26) **You** means each person who signed or is bound by the Mortgage and is the person or persons who has/have to pay everything owing under the Mortgage. If you die or become incapacitated, your estate must pay us and keep your other Promises.

## SECTION 2– HOW THE MORTGAGE WORKS

### 2.1 The Property

<b>Description</b>
<i>(Insert Property description or reference appropriate schedule)</i>
<b>Interest</b>
<i>(Delete inapplicable option)</i> You have a <b>freehold / leasehold</b> interest in the Property. <i>(If freehold, delete the following. If leasehold, complete where required)</i> <b>Name of landlord:</b> <b>Name of tenant:</b> <b>Date of lease:</b> <b>Lease term: from _____ to _____.</b> <b>If renewal rights to lease, term of renewal:</b> <b>State if tenant has option to purchase:</b>

is referred to as the “**Property**” in the Mortgage.

### 2.2 The Charge

(1) In return for our agreeing to lend the Principal Amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), or as much of the Principal Amount as we advance to you, you assign, transfer and convey your interest in your Property to us to hold until you have repaid the Outstanding Amount of this Mortgage to us and until you have fulfilled all your Promises. All amounts relating to the Mortgage that you owe to us are secured by the Mortgage.

(2) It also means that you release your claims to your Property until you have repaid the Outstanding Amount and kept all your Promises.

(3) You can stay in possession of your Property, as long as you keep your Promises.

(4) We promise to assign, transfer and convey the legal title to your Property back to you, when you have repaid the Outstanding Amount and kept all your Promises to us. This means our interest in your Property ends when you have repaid the Outstanding Amount and you have kept all of your other Promises, and at that time, you can have a discharge of the Mortgage. Section 23 tells you what you must do to get a discharge.

(5) In return for our agreeing to lend the Principal Amount to you, you make certain Promises, which you must keep. Not keeping your Promises includes breaking or not keeping your Promises in any way.

(6) You promise to sign any additional documents that we ask for and do everything else we ask you to do to protect our interest in your Property.

### 2.3 Type of Mortgage

You have granted us the following Mortgage: *(delete inapplicable provisions.)*

**Your Mortgage is an Open Mortgage.**

**Your Mortgage is a Closed Mortgage.**

Your Mortgage is a Convertible Mortgage.

Your Mortgage is an Interest Only Mortgage.

Your Mortgage has blended payments of principal and interest.

Your Mortgage is insured by the CMHC and is made under the *National Housing Act*.

## 2.4 Payment Provisions

The following payment provisions apply to the Mortgage:

- (1) **Interest Rate:** \_\_\_\_\_% per year, calculated semi-annually not in advance
- (2) **Interest Adjustment Date:** \_\_\_\_\_
- (3) **Payment Date:** the \_\_\_\_\_ day of each month in each year until the Balance Due Date.
- (4) **First Payment Date:** \_\_\_\_\_
- (5) **Last Payment Date:** \_\_\_\_\_
- (6) **Balance Due Date:** \_\_\_\_\_
- (7) **Payment Amount:** \_\_\_\_\_
- (8) **Calculation Period:** Semi-annually, not in advance.

## SECTION 3 – INTEREST

### 3.1 Interest Rate

(1) The Interest Rate you promise to pay is set out in Section 2.4(1) above. The Interest Rate is an annual rate that is calculated semi-annually, not in advance. Using a semi-annual calculation of interest the first semi-annual calculation of interest after the Interest Adjustment Date will be for the six-month period starting with the Interest Adjustment Date. That calculation will be made six months after the Interest Adjustment Date. Semi-annual calculations of interest will be made every six months after that.

(2) We calculate interest for each payment period using an interest rate factor that is equivalent to the Interest Rate. Interest is payable at the payment frequency set out in Section 2.4(3) above, unless you select another payment frequency.

(3) You promise to pay interest on the Outstanding Amount at the Interest Rate both before and after the Balance Due Date, Default and judgment, until the Outstanding Amount has been paid in full.

### 3.2 Compound Interest

If you do not pay any interest when due under the Mortgage, we will add the overdue interest to the Outstanding Amount and charge you interest on the combined amount until it is paid. This is called compound interest. We calculate compound interest at the Interest Rate. You promise to pay it at the same frequency as your regular payments, both before and after the Balance Due Date, Default and judgment, until the Outstanding Amount is paid in full.

We will also charge you interest on compound interest at the Interest Rate both before and after the Balance Due Date, Default and judgment, until the Outstanding Amount is paid in full. All overdue interest and compound interest is part of the Outstanding Amount. You promise to pay this interest immediately when we ask you to pay it.



## **SECTION 4 – YOUR REGULAR PAYMENTS**

- (1) You promise to repay the Principal Amount and interest to us on the payment dates set out in Section 2.4(3) above or another payment frequency that you select starting with the First Payment Date until and including the Last Payment Date. Your payments will be for the amounts set out in Section 2.4(7) above. You promise to pay the Outstanding Amount on the Balance Due Date. We may, if you ask us to, agree to change your payment date or payment frequency.
- (2) If you are not in Default, we apply your payment as follows:
  - (a) to pay your *HomeProtector* Insurance Premium, if you have it, including any applicable sales taxes or similar taxes;
  - (b) to pay Property Taxes, if we pay them on your behalf;
  - (c) to pay interest due and payable; and
  - (d) to reduce the Principal Amount, unless you have an Interest Only Mortgage in which case your payments never reduce the Principal Amount.
- (3) If you are in Default, we may apply your payment, or any other money we receive from you, as we choose.
- (4) All payments must be in Canadian dollars.
- (5) If we advance all or part of the Principal Amount before the Interest Adjustment Date, you promise to pay accrued interest on the money we advance at the Interest Rate from the day we lend you the money until the Interest Adjustment Date. You promise to pay this interest on the first day of each month until the Interest Adjustment Date. If your Interest Adjustment Date is not the first day of a month, you promise to also pay us interest from the first of the month until the Interest Adjustment Date.

## **SECTION 5 – BANK ACCOUNT FOR PAYMENTS**

- (1) You promise to have a deposit account at a Canadian financial institution and authorize us to withdraw from that account automatically for each payment when it is due.
- (2) You will keep enough funds in the account to make each payment. You will not cancel your authorization to withdraw, or close the account without our consent.
- (3) If your financial institution refuses the pre-authorized withdrawal, we will charge you for the fee your financial institution charges us. This may include situations where you do not have enough money in your account, or you closed your account.

## **SECTION 6 – PREPAYING A MORTGAGE BEFORE THE MATURITY DATE**

### **6.1 Restriction**

None of the following Prepayment options apply if you are in Default.

### **6.2 Prepaying an Open Mortgage**

If you have an Open Mortgage you may prepay \$500 or more of the Outstanding Amount at any time without a Prepayment charge. If you have an Open Mortgage and you prepay it, you must pay back a portion of any cash back amount you received from us, as called for under Section 6.7.

### **6.3 Annual Prepayment Option**

- (1) If the Mortgage is a Closed Mortgage you may, once in each twelve month period starting on the Interest Adjustment Date or the anniversary of that date, pay up to 10% of the Principal Amount.

- (2) Subject to Section 6.3(4), you can exercise this option without notice and without paying any Prepayment charge.
- (3) If you do not exercise this option in any twelve-month period, you cannot carry it over to any future twelve-month period.
- (4) If you prepay more than 10% of the Principal Amount, you promise to pay a Prepayment charge on the **entire amount** of the Prepayment.

**6.4 Increasing Payments Option**

- (1) You may once in each twelve-month period, starting on the Interest Adjustment Date, or the anniversary of that date, increase your payment by an amount that is not more than 10% of the principal and interest portion of what is or would be your monthly payment amount. This option does not apply if you have an Interest Only Mortgage.
- (2) If you do not exercise this option in any twelve-month period, you cannot carry it over to any future twelve-month period.

**6.5 Prepaying More Than 10% of a Closed Mortgage**

If you have a Closed Mortgage, you may pay off more than 10% of the Principal Amount, but you promise to pay a Prepayment charge on the **entire amount** of the Prepayment.

(1) **Prepaying your Mortgage**

- (a) You may at any time during the Term prepay all or part of the Outstanding Amount, but if you prepay more than 10% of the Principal Amount, you promise to pay a Prepayment charge calculated on the amount you prepay.
- (b) The Prepayment charge will be the greater of:
  - (i) Three months interest on the amount prepaid, at the Interest Rate; or
  - (ii) Interest for the remainder of the Term on the amount prepaid calculated using the “interest rate differential”. The interest rate differential is the difference between the Interest Rate and our Posted Rate on the prepayment date for a mortgage with a term similar to the time remaining in the Term and having the same prepayment options. If you received a rate reduction below our Posted Rate when you gave us the Mortgage, we will deduct the amount of this rate reduction from the Posted Rate before calculating the difference between the interest rates.

The chart below indicates how we calculate a term similar to the time remaining in the Term.

<u>TERM REMAINING</u>	<u>USE FOLLOWING RATES</u>
0 months – 8 months	6 month rate
8 months and 1 day – 17 months	1 year rate
17 months and 1 day – 29 months	2 year rate
29 months and 1 day – 41 months	3 year rate
41 months and 1 day – 53 months	4 year rate
53 months and 1 day – 71 months	5 year rate
71 months and 1 day – 95 months	7 year rate

95 months and 1 day – 143 months	10 year rate
143 months and 1 day and over	25 year rate

(2) You must also pay back a portion of any cash back amount you received, as called for in Section 6.7, if you prepay all of the Outstanding Amount.

(3) If you renew or extend the Mortgage before the end of the Term, or if you amend the Interest Rate before the end of the Term, you promise to pay a Prepayment charge, calculated in the same way as in Section 6.5(1)(b) above based on the Outstanding Amount on the date of the renewal, amendment or extension.

### 6.6 Prepaying a Mortgage With a Term of More than Five Years

If the Term is more than five years and you are an individual, you may prepay the entire Outstanding Amount at any time after the end of the fifth year of the Term. If you do, your Prepayment charge will be three months interest calculated on the Outstanding Amount at the Interest Rate. You agree that the Interest Adjustment Date will be deemed to be the date of the Mortgage for this purpose.

### 6.7 Incentive Program

(1) We may, at our option, offer you an incentive to give the Mortgage to us. This incentive may be cash, a gift certificate or other item having a value (for example a voucher that you may redeem at a retail store). We will tell you the value of the incentive. We will call this a “cash back amount”. If you repay the Outstanding Amount before the end of the Term or if you change the Term of the Mortgage, you promise to repay a portion of the cash back amount to us. You must pay this proportionate amount in addition to any Prepayment charge. You must pay it, even if you have an Open Mortgage.

(2) Here is how we calculate the amount you must repay:

your cash back amount divided by the number of months in the Term, times the number of months remaining in the Term (including the month in which the repayment is made).

Here is an example:

If you received a \$1,000 cash back amount for a 5 year (60 months) mortgage and repay the mortgage in full after 3 years (36 months), the calculation of the amount would be as follows:

$$\$1,000 \div 60 \text{ months} \times 24 \text{ months remaining} = \$400$$

### 6.8 Double-Up<sup>®</sup> Option

You may increase your regular payment by an amount up to 100% of the principal and interest portions of your regular payment (but not less than \$100) on any payment date. This is called a “**Double-Up**”. If you have a non-monthly payment frequency, the total amount of your *Double-Up* payments in any one calendar month cannot be more than the amount of principal and interest portions of what would be your monthly payment. If you do not *Double-Up*, you may not save this option to be used on a later payment date. You cannot *Double-Up* if you have an Interest Only Mortgage.

Here is an example of how to calculate the maximum permitted monthly *Double-Up* payments for a mortgage with non-monthly payments.

$$\text{Weekly payments} = \frac{\text{principal and interest portions of payment}}{52/12}$$

$$\text{Bi-Weekly} = \frac{\text{principal and interest portions of payment}}{26/12}$$

Semi-monthly = principal and interest portions of payment x 2

## 6.9 General Provisions On Prepayment

- (1) If you use any Prepayment option, the schedule of payment dates will not change. Your payment amounts will also not change, unless you exercised an option to increase the payment amount.
- (2) You promise to continue to make payments until the Outstanding Amount is paid in full.

## SECTION 7 – DELAYING A PAYMENT

If you meet the conditions set out in this Section, you can Skip-A-Payment<sup>®</sup>, which means not making a regular payment on its payment date.

### 7.1 Skip-A-Payment Option

- (1) This Section applies only if:
  - (a) the Term is less than 10 years;
  - (b) the Mortgage is not an Interest Only Mortgage;
  - (c) the Mortgage is not insured by CMHC (see Section 7.2 for the *Skip-A-Payment* rules for CMHC insured mortgages); and
  - (d) you are not in Default.
- (2) *Skip-A-Payment* means not making a payment under the following conditions:
  - (a) Once in every 12 month period during the Term (starting on the Interest Adjustment Date or the anniversary date of the Interest Adjustment Date), you may *Skip-A-Payment* if the interest portion of the skipped payment, plus the Outstanding Amount, is not more than the Principal Amount.
  - (b) You may *Skip-A-Payment* up to the amount of any *Double-Up* payments made by you. The total amount of all skipped payments must not be more than the total of your *Double-Up* payments.
  - (c) If you *Skip-A-Payment* you must still pay the portion of your payment that covers your Property Taxes and *HomeProtector* Insurance Premium.
  - (d) The interest portion of any skipped payment is added to the Outstanding Amount and interest is charged on that amount at the Interest Rate.
- (3) You may repay any skipped payment at any time during the Term. We will not charge you any costs for repaying a skipped payment.

### 7.2 Skip-A-Payment Option For CMHC-Insured Mortgages

- (1) This part applies only if:
  - (a) the Term is less than 10 years;
  - (b) the Mortgage is not an Interest Only Mortgage;
  - (c) the Mortgage is insured by CMHC; and
  - (d) you are not in Default.

(2) If the “loan to value ratio” is equal to or less than 90%, you may *Skip-A-Payment* as long as the Outstanding Amount plus the interest part of the skipped payment is not more than the Principal Amount.

- (a) By way of explanation, “loan to value ratio” means the ratio of the Principal Amount to the lesser of:
- (i) the price paid to buy your Property; and
  - (ii) the value of your Property, as we determine, on the date of the Mortgage.
- (b) If the Mortgage is insured under CMHC’s “95% Insurance” program or any related or successor program and the loan to value ratio is more than 90%, you may *Skip-A-Payment* only if, after having skipped the payment, the total of the Outstanding Amount plus the interest part of the skipped payment is equal to or less than 90% of the “loan to value ratio”. To see whether you fit these conditions, you will need to know what the Outstanding Amount is, as a result of your repayments of principal. For example, Helen and Henry have a mortgage for a 5 year term, at a 6% interest rate, with a 20 year amortization period. Their house cost \$200,000 and they borrowed \$190,000 under the mortgage. Helen and Henry want to *Skip-A-Payment* in their first year as homeowners and in the fourth year. Can they do so? Follow the calculations:

	<b>Year 1</b>	<b>Year 4</b>
Principal amount	\$190,000	\$190,000
Value of property	\$200,000	\$200,000
Principal amount repaid	\$5,130	\$22,400
Outstanding amount	\$184,870	\$167,580
Interest part of skipped payment	\$1,115	\$1,105
	\$185,985	\$168,685
<b>Ratio of total outstanding amount plus interest part of skipped payment to principal amount</b>	<b>98%</b>	<b>89%</b>
	<b>So they cannot <i>Skip-A-Payment</i> because of a ratio of more than 90%</b>	<b>So they can <i>Skip-A-Payment</i> because of a ratio of less than 90%</b>

- (c) You may not *Skip-A-Payment* if, as a result of the skipped payment, the original amortization period of the Mortgage would be extended or you have skipped the equivalent of four monthly payments at any time during the Term and you have not yet repaid them.
- (d) When you *Skip-A-Payment* under this Part, you must still pay the portion of your payment that covers your Property Taxes and *HomeProtector* Insurance Premium. The interest portion of any skipped payment is added to the Outstanding Amount and interest is charged on that amount at the Interest Rate.
- (e) You may repay any skipped payment at any time during the Term. We will not charge you any costs for repaying a skipped payment.

### 7.3 Convertible Mortgage

(1) If you have a Convertible Mortgage, you may extend the Term without paying a Prepayment charge or repaying any incentive, as long as you have kept your Promises and you convert to the term shown below. The conversion will take place on the date we select.

(2) The term you may convert to is:

(a) a fixed rate Closed Mortgage having a term of 1 year or longer at the Posted Rate for the term you choose.

### SECTION 8 – MOVING THE MORTGAGE

(1) If you sell your Property, and you are not in Default and we agree in writing, you can either move the Mortgage to your new property or the person who buys your Property can apply to assume the Mortgage.

(2) To be eligible to move the Mortgage to your new property, you must:

(a) meet our mortgage approval and mortgage transfer criteria;

(b) give us a new mortgage; and

(c) pay any processing and administration fees, legal costs and property valuation fees, and any other expenses we incur.

(3) If you meet the above conditions and our policies permit it, you may then transfer the principal amount outstanding at that time to a mortgage on a new property or you may combine that amount with additional amounts. Your new mortgage will be based on our then current terms and conditions for the transfer of a mortgage to a new property.

(4) If we agree to let you move the Mortgage and the principal amount of the new mortgage is less than the Outstanding Amount when you sell your Property, you must pay us: (i) the difference between your new principal amount and the Outstanding Amount; (ii) the Prepayment charge that applies to the difference; and (iii) any cash back amount owing. You must pay the applicable Prepayment charge and any cash back amounts owing under Section 6.7 when you sell your Property.

(5) If the Mortgage has mortgage default insurance, ask us to see if the mortgage default insurance can be moved. You should also ask if you can move your *HomeProtector* insurance.

### SECTION 9 – DUE ON SALE, ASSUMPTION OF MORTGAGE AND RELEASE OF OBLIGATIONS

(1) You must still keep your Promises even if you sell your Property.

(2) If you either agree to, or actually do, transfer your interest in your Property, either directly or indirectly, to a new owner without our approval, at our option the Outstanding Amount will immediately become due and payable in full and you will be required to pay the applicable Prepayment charge on the Outstanding Amount.

(3) If we accept payment from the new owner even though we did not approve the new owner, it will not mean that we have approved the transfer or that we have given up our right to require you to pay the Outstanding Amount and any Prepayment charge.

(4) You must give us any information we ask for, to allow us to decide whether or not we want to give our approval. We will review that information and will tell you what we decide.

(5) We may set certain requirements that you and the new owner must meet as a condition of our approval. Our conditions will include the new owner signing our form of assumption agreement.

(6) Even if you sell the Property or transfer your interests, or we make any new agreement with the new owner with respect to any of the terms and conditions of the Mortgage, or if we accept payments from the new owner, that will not affect our rights against you or any Guarantor, unless we decide, at our discretion that we will release you from your Promises. If we do not release you, you must still keep your Promises. You agree that we can renew or change the terms of the Mortgage in an agreement with the new owner, and that you will still have to keep your Promises, even though the Mortgage has been renewed or its terms have changed without your knowledge or consent.

#### **SECTION 10 – RENEWAL OR AMENDING AGREEMENT**

(1) If we send you a mortgage renewal agreement and you do not sign and return it to us before the date required, the Mortgage will at our option be renewed on the terms we indicate in the mortgage renewal agreement.

(2) We may agree with you to change any of the terms of the Mortgage. We call this amending the Mortgage. If we do, you will still have to keep all your Promises.

(3) We do not have to register any renewal, amendment or extension to the Mortgage. The Mortgage, as renewed, amended or extended will continue to have the same priority. For the purposes of Section 10 of the *Interest Act* (Canada), the date of the Mortgage will be the date the mortgage renewal, amendment or extension takes effect.

(4) You do not have a right to renew, amend or extend the Mortgage. Renewal, amendment or extension of the Mortgage is at our discretion.

#### **SECTION 11 – ADDITIONAL AMOUNTS**

(1) If you have paid part of the Principal Amount, we may if we want to and if you meet our requirements, allow you to borrow additional amounts up to a maximum of the difference between the Outstanding Amount and the Principal Amount. If we allow you to borrow any additional amounts, all amounts borrowed will be secured by the Mortgage, in the same priority, and will bear interest at an interest rate set by us at the time you requested to borrow the additional amounts.

(2) If we let you borrow additional amounts, whenever this document refers to the Outstanding Amount, it will refer to all amounts owing, including all additional amounts.

#### **SECTION 12 – WE DO NOT HAVE TO MAKE ADVANCES**

(1) We do not have to advance or re-advance all or any part of the Principal Amount to you, if we decide not to, even though:

- (a) you have signed the Mortgage;
- (b) the Mortgage is registered in the land registry office; or
- (c) we have advanced part of the Principal Amount.

(2) We may deduct from any advance:

- (a) any Property Taxes that are due;
- (b) any interest that is due and payable on the date of the advance; and
- (c) any mortgage default insurance premium and application fees.

## **SECTION 13 – YOUR PROMISES**

### **13.1 Your Property Tax Promises**

- (1) You promise to pay to us, if we require you to do so:
  - (i) on each payment date the amount of money that we estimate will be enough to permit us to pay Property Taxes when they are due; and
  - (ii) the balance owing in addition to the money you have already paid towards Property Taxes so that we can pay the Property Taxes in full.
- (2) You promise to pay to us on each payment date one-twelfth of the amount we estimate will be required to provide enough money to pay all Property Taxes for the calendar year. We may re-estimate this amount from time to time. You agree to pay any additional amounts, when we ask you to, that are required because of this re-estimate.
- (3) If you do not keep your Promises, any payments you make for Property Taxes may, at our option, be applied to pay the Outstanding Amount.
- (4) As long as we require you to make Property Tax payments, and as long as you have kept your Promises, we will forward the amount required to pay Property Taxes to the local government as they fall due or at any time we choose. If the amount in the tax account is not enough to pay Property Taxes, we may advance amounts to the tax account to cover the shortfall or add the amount of the shortfall in the tax account to the Outstanding Amount. If you are sent a Property Tax notice, you must send it to us. If you do not send the notice to us and extra charges are imposed for Property Taxes, you must pay those charges. We are not responsible for any extra charges imposed because we did not receive a notice.
- (5) We will charge you interest on any shortfall in the tax account at the Interest Rate. If you have a surplus in the tax account, we will pay you interest on that surplus at a rate that we choose.
- (6) If at any time the Property Taxes we have paid exceed the amount you have paid us for Property Taxes, or we have to pay any fees because we have paid the Property Taxes on your behalf, we may demand that you immediately pay the shortfall to us. If you do not pay, we will add the shortfall to the Outstanding Amount.
- (7) We may decide not to require you to make payments of Property Taxes through us. In that case, you agree to pay all Property Taxes on your Property as they fall due and will give us acceptable evidence, when we ask, that you have paid them.

### **13.2 Your Other Promises**

- (1) You also promise:

To pay, on demand, all of our costs and expenses, including all legal fees, on a full indemnification basis, to

  - (i) Prepare the Mortgage, including all necessary steps to advance and secure the Principal Amount, investigate title, pay a title insurance premium, register the Mortgage and to report to us;
  - (ii) Collect the Outstanding Amount;
  - (iii) Enforce the terms of the Mortgage, including efforts to make you keep your Promises;
  - (iv) Do anything which you promised to do but did not do;
  - (v) Defend the validity of the Mortgage against anyone who contests it; and
  - (vi) Prepare and give you a discharge of the Mortgage when you have paid all amounts owing under the Mortgage, as required by the Mortgage.



(2) If any taxes (other than our income taxes) are imposed on your payments of the Principal Amount, interest and any other amount secured by this Mortgage and we are required to pay these taxes, you promise to reimburse us on our demand, including any interest at the Interest Rate from the date we paid these taxes.

(3) You promise to comply with all laws and orders applicable to the Property, including those concerning zoning, land-use and environmental protection.

(4) You promise to use and occupy the Property primarily for residential purposes.

(5) You agree that we may add any expenses and costs that we pay to the Outstanding Amount if you do not pay them.

### **13.3 No Deductions**

You promise that all payments that you make to us or that we ask you to make will be made in full without any set-off or counterclaim and without any deductions or withholdings whatsoever. You promise that you will not cancel, offset or reduce any payments that you make.

## **SECTION 14 – YOU CONFIRM**

In return for our agreeing to lend the Principal Amount to you, you promise and confirm that:

- (a) You own your Property, you have the right to give the Mortgage and you mortgage your entire interest to us.
- (b) The Mortgage is given to secure repayment of the Outstanding Amount and to ensure that you keep all your Promises. You release all claims on your Property to us, until all amounts owing under the Mortgage have been repaid as required by the Mortgage and you have kept your other Promises.
- (c) You will pay all of the Outstanding Amount to us and keep all of your other Promises, as provided in the Mortgage.
- (d) There are no limitations or restrictions on your title to your Property, except those disclosed to us in writing and that we approved.
- (e) Your title to your Property is subject only to:
  - (i) Those interests filed in the land registry office at the time you give us the Mortgage; and
  - (ii) Any unregistered interests we have approved.
- (f) As far as you know, no part of your Property or of any adjoining land is, has ever been or will in the future be used to manufacture, store or otherwise deal with any hazardous substances except in compliance with all laws, regulations and orders. No part of your Property contains, has ever contained or will in the future contain any hazardous substance, which may lower the value of, or adversely affect the sale of, your Property.
- (g) You will, at your own expense, sign any documents and do anything we ask to ensure that all your interest in your Property has been mortgaged to us and that the Outstanding Amount is adequately secured by your Property.

## **SECTION 15 – OUR RIGHTS**

### **15.1 Approval and Consent**

Whenever this Mortgage talks about “approval” or a “consent”, we mean approval or consent in writing, given by us before you act.

## 15.2 Money we Spend

We may spend money to do anything you promised to do, but did not do. You must continue to keep your Promises, even if we have spent money to do something you promised to do. Any money we spend because you did not keep a Promise will be added to the Outstanding Amount, will be payable on demand, will bear interest at the Interest Rate from the date that we spend the money until fully paid and will be secured by the Mortgage with the same priority. It shall be immediately due and payable to us.

## 15.3 Additional Interests in Property

By the Mortgage you grant and mortgage any additional or greater interest in your Property that you may later acquire.

## 15.4 Other Security

If you have mortgaged, charged or given us a security interest in anything else to better secure payment of the Outstanding Amount (“**Other Security**”), we may take legal proceedings under any of the Other Security in any order that we choose and at the same time as we are enforcing our rights under the Mortgage. If we get a judgment from the court, or recover any money under the Other Security, this will not affect our rights to enforce our rights under the Mortgage.

## 15.5 Consolidation

Our right of consolidation applies to the Mortgage and to any other mortgages given by you to us. This means that if you have mortgaged other property to us you will not have the right, after Default, to pay off the Mortgage or any mortgage of other property unless you pay us the money owed by you under both the Mortgage and the Other Security.

## SECTION 16 – PAYING OFF CLAIMS OR LIENS

(1) You promise not to allow any mechanics’ lien to remain undischarged on the title to your Property for more than 30 days, unless you:

- (a) diligently dispute the validity of the mechanics’ lien by taking all necessary legal steps to do so;
- (b) give us reasonable security by depositing money, bonds or other types of security acceptable to us (the “Security”) to pay the mechanics’ lien and associated legal costs in full, including our legal costs on a full indemnification basis; and
- (c) authorize us to use the Security to pay the mechanics’ lien and any of our legal costs on a full indemnification basis and those of the mechanics’ lien claimant in full, if the lien is found to be valid.

(2) We can pay off the claims of other creditors, who have an interest in your Property. These may include mechanics’ liens and other liens, government claims or encumbrances. If we pay off a claim you promise to pay the amount to us when we ask. Any amount we pay to the other creditor that you do not repay will be added to the Outstanding Amount. We can, if we think it is necessary, pay off any mortgages, charges, interests, claims or liens that have priority over the Mortgage, including realty taxes, utility charges, mechanics’ liens, or any amounts payable to a condominium corporation.

(3) Once we have paid off any such claims we are entitled to all the rights, equities and securities of the creditor. We can retain any discharge, if we need to.

(4) You promise to pay any money which, if not paid, would result in a default under any mortgage or claim that legally ranks ahead of the Mortgage or that may result in the sale of your Property if not paid.

(5) You promise to pay and cause to be discharged any other mortgages, charges, mechanics' liens, security interests, claims or other interests that we are not willing to have remain on your Property.

#### **SECTION 17 – PROPERTY INSPECTIONS**

(1) We or our agents may at any reasonable time inspect your Property, including the buildings.

(2) If the Mortgage has mortgage default insurance, the Mortgage Default Insurer and its agents can also inspect your Property.

(3) Inspections may include environmental testing, site assessments, investigations and studies.

(4) You promise to pay for the costs of the inspection including any tests or studies.

(5) If you do not pay our costs, we may add the costs to the Outstanding Amount.

(6) If we, our agents, the Mortgage Default Insurer, or its agents do conduct an inspection, neither we nor they will be considered to be in possession or control of, or managing, your Property.

#### **SECTION 18 – ADVANCES OF MONEY FOR CONSTRUCTION MORTGAGES**

(1) If the money we loaned is to be used to pay for any construction, alteration or addition on your Property, we may make advances of the Principal Amount to you based on the progress of construction.

(2) We will decide whether or not any advances will be made, the amount of the advances and when they will be made.

(3) Subject to Section 12, we may make advances to you based on how much of the construction, alteration or addition has been completed and the amount of money you need to complete.

(4) We may retain funds from any advance until we are completely satisfied that the holdback provisions of the *Mechanics' Lien Act* (Newfoundland & Labrador) have been complied with.

(5) If this Mortgage is a construction mortgage, we may require that accrued interest on progress advances from the date of these advances be paid in monthly instalments starting on the first day of the next month after the first advance, and on the first day of each following month. The balance of the interest must be paid on the Interest Adjustment Date. Interest will be payable at the Interest Rate and calculated daily. We may, if we want to, retain accrued interest out of the proceeds of each partial advance of the Principal Amount. If the Principal Amount is not advanced in full on the Interest Adjustment Date, the Interest Adjustment Date will change to the date of the final advance. This means the Last Payment Date and Balance Due Date will also change. If the final advance is not made within 12 months of the date of your application for the Mortgage, we will automatically set your Interest Adjustment Date to a date that is approximately 12 months from the date of your application for the Mortgage and the Term will start on that date.

#### **SECTION 19 – SAFEGUARDING THE VALUE OF YOUR PROPERTY**

You promise:

(1) To keep all of the buildings and improvements on your Property in a good condition and state of repair and to repair them as we require. If you do not make the repairs when we ask, we can make whatever repairs we think are needed. You must immediately pay the costs of any repairs we make and of any inspections. If you do not pay those costs, we will add them to the Outstanding Amount.

- (2) You will not tear down any building or structure, or part of any building or structure, on your Property without our approval.
- (3) You will not do, or let anyone else do, anything that may reduce the value of your Property.
- (4) You will not construct, alter or add to any buildings or improvements on your Property without our consent, and if the Mortgage is insured by a Mortgage Default Insurer, without its consent. Any construction or renovation must meet all applicable construction standards, building codes and municipal or governmental requirements. You must build or renovate using only new materials and according to the plans and specifications we have approved and if the Mortgage is insured by a Mortgage Default Insurer, it must approve the plans and specifications.
- (5) You will provide us, and any Mortgage Default Insurer, with any information or material, such as plans, specifications, building permits, insurance and like information, as required to decide whether to give approval or not.
- (6) We and any Mortgage Default Insurer, may set certain requirements which you must comply with as a condition of giving approval.
- (7) Once we and any Mortgage Default Insurer have given approval you will only then demolish, make such alterations, additions or improvements in accordance with the approved plans and specifications and all applicable construction standards, building codes and municipal or other government requirements and you will complete the work as quickly as possible.
- (8) You authorize us and, if your Mortgage is insured, the Mortgage Default Insurer, to enter your Property at all reasonable times to inspect and repair, but we will not be considered to be in possession or control of the Property by exercising this right.

## **SECTION 20 – WITHHOLDING TAXES**

- (1) If you are not a Canadian resident for income tax purposes, the country where or in which you are a resident for income tax purposes may charge a withholding tax on the interest portion of your payment to us. We must receive interest payments free and clear of any withholding tax.
- (2) You are responsible for paying any withholding tax. If you must pay withholding tax, you promise to remit the withholding tax to the tax authority of the country of which you are a tax resident when it is due. You promise to give to us the withholding tax receipt issued by the foreign tax authority as proof you paid the withholding tax.

If you do not pay the withholding tax and the foreign tax authority makes us pay it, you promise to pay the withholding tax to us when we ask for it. If you do not pay it to us, the amount will be added to the Outstanding Amount. In some circumstances, we may tell you that we will collect and remit the withholding tax on your behalf. If we tell you this, we will remit the withholding tax to the foreign tax authority from the interest we collect.

## **SECTION 21 – PROPERTY INSURANCE**

- (1) You promise to maintain adequate insurance on your Property until the Outstanding Amount has been repaid in full.
- (2) You promise, if we ask, to give us certified copies of the insurance policy and evidence of its renewal not less than 15 days before the policy expires.
- (3) The insurance must be with a licensed insurance company and must be for the full replacement value of your Property in Canadian dollars. The insurance policy must contain mortgage clauses approved by The Insurance Bureau of Canada. These clauses must provide that loss proceeds are payable to us first, and we have the first right to receive and to have a first lien on the loss proceeds. You must also assign your insurance policy to us.

- (4) The insurance policy must protect against the following risks: fire, lightning, windstorm, hail, explosion, impact, vandalism, malicious acts, civil disturbance or riot, smoke and falling objects.
- (5) We may also require that other risks be covered, depending on the nature or location of the Property.
- (6) The insurance policy must cover all buildings on your Property, whether before, during or after construction, and all fixtures attached to the buildings.
- (7) We can, if we want to, place and pay for any insurance policy if you fail to do so. Any money which we pay for insurance will be immediately payable by you to us, and will be added to the Outstanding Amount if not paid.
- (8) If any loss or damage occurs, you promise, at your expense, to immediately do everything necessary to allow us to receive the insurance proceeds.
- (9) Production of the Mortgage will be sufficient authority for the insurance company to pay proceeds to us and the insurance company is directed to pay the proceeds to us.
- (10) Insurance proceeds may, at our option, in whole or in part be:
  - (i) used to repair or rebuild your Property;
  - (ii) used to repay any part of the Outstanding Amount, whether due or not, and any Prepayment charge on the amount repaid; or
  - (iii) paid to you.

## **SECTION 22 – ENFORCING OUR RIGHTS**

### **22.1 Defaults**

A Default occurs if

- (a) You do not make any payment when required;
- (b) You do not keep any of your other Promises;
- (c) You become insolvent or bankrupt; or
- (d) Your Property is abandoned or is left unoccupied so your insurance policy could be cancelled.

Not keeping your Promises includes breaking or not keeping any of your Promises in any way.

### **22.2 Consequences of a Default**

If a Default occurs we can, if we wish, and subject to applicable law, do any one or more of the following, in any order that we want:

- (a) ***Demand Payment*** – demand that you immediately pay the Outstanding Amount.
- (b) ***Sue You*** – take action in court to make you pay the Outstanding Amount or make you keep your Promises.
- (c) ***Lease Your Property*** – we may, on 30 days notice to you, with or without entering into possession of your Property, lease your Property. We may apply the net rent to reduce any part of the Outstanding Amount. If the net rent is not sufficient to pay the Outstanding Amount in full, you must pay us the difference.

- (d) ***Sell Your Property*** – we may, with or without entering into possession of your Property and, on at least 30 days prior written notice to you, sell your Property or any part of your Property under the provisions of the *Conveyancing Act* (Newfoundland & Labrador). We can sell by public auction or private sale, or partly by one way and partly by the other. You agree we may sell all or part of your Property for cash or on credit, or partly for cash and partly on credit, and otherwise on whatever terms we negotiate. If we sell on credit, we will not be required to reduce the Outstanding Amount, or pay any sale proceeds to you in any situation where you are entitled at law to receive them, until we receive payment of the Outstanding Amount. We may also buy your Property ourselves, or terminate or amend any agreement we enter into for the sale of your Property and resell if we decide to do so. After we sell your Property under power of sale, we will use the money we receive from the sale to pay:
- (i) any amounts required to be paid to any party with a higher ranking interest in your Property than us;
  - (ii) any auctioneer's fees or real estate agent's commission;
  - (iii) all adjustments usually made on the sale of property;
  - (iv) all of our expenses and costs as described in Section 22.4;
  - (v) the Outstanding Amount;
  - (vi) any amounts owed to any party holding a mortgage, lien or other security on your Property with a lower priority to the Mortgage; and
  - (vii) any surplus to you.

We may make these payments in any order we want to.

After payment of the amounts referred to in paragraphs (i) to (iv) above, if the remaining money is not enough to pay all the Outstanding Amount, you promise to pay the remaining unpaid Outstanding Amount to us on written demand to do so.

- (e) ***Court Sale*** – apply to the court for an order for the sale of your Property to us or to a third party under the supervision of the court. If the net proceeds of sale are not enough to pay the Outstanding Amount, you promise to pay the remaining unpaid Outstanding Amount to us on written demand to do so.
- (f) ***Foreclose*** – apply to the court to foreclose your interest in your Property, so that when the court makes its final order of foreclosure, all your interest in your Property will be absolutely transferred to, and belong to, us and you will no longer have any interest in your Property.
- (g) ***Appoint a Receiver*** – appoint a receiver (which includes a receiver and manager) to collect any income from your Property or take any other action with respect to your Property which we could take. We will appoint a receiver by written notice to you. The receiver will be your agent, not ours, and you alone will be responsible for all of the receiver's acts or omissions. We will not be accountable for any money received by the receiver, except to the extent that we actually receive the money. The receiver may use every available remedy that we have under the Mortgage, including collecting income from your Property, taking possession of all or part of your Property, managing your Property, keeping your Property in good condition, finishing any buildings under construction on your Property, leasing your Property and selling your Property. From the income collected from your Property, or the proceeds of the sale of your Property, the receiver will pay:
- (i) all rents, taxes, rates, insurance premiums and other expenses required to keep your Property in good condition;

- (ii) all amounts necessary to repay any money it has borrowed for the purposes of your Property, including interest and any penalties on borrowed money;
  - (iii) all amounts required to keep any encumbrances ranking in priority to the Mortgage in good standing;
  - (iv) its own compensation as receiver;
  - (v) all costs with respect to any leasing or sale of your Property; and
  - (vi) any part of or all of the Outstanding Amount, whether it is due or not, together with any Prepayment charge.
- (h) **Take Possession** – take possession of your Property, without any interference by you or anyone else living on your Property, and free from any other mortgages, charges, liens or easements, limitations or restrictions that we did not approve. If we take possession, we can ask you to leave your Property with all your belongings. If you do not leave, the court will order you to leave and if you refuse, the court will have you forcibly removed. Once in possession, we may do anything we consider necessary to:
- (i) inspect, collect rents, manage or lease your Property;
  - (ii) complete the construction of any building on your Property;
  - (iii) repair any building on your Property; or
  - (iv) take any other action permitted under the Mortgage or by law.

If we take possession, we will not be responsible for maintaining and preserving your Property. We will only account to you for any money we actually receive in connection with the Mortgage or your Property.

- (i) **Other Action** – take any other necessary action to take, recover and keep possession of your Property.
- (j) **Non-interference** – if we take possession of your Property, you will not interfere with our possession, with that of any receiver we may appoint or with that of any person to whom your Property may be leased or sold, and you will not make any claim against any person to whom your Property may be leased or sold.
- (k) **Abandoned Personal Property** – any furniture, appliances, or household or personal belongings which remain on your Property for a period of 15 days after we or a receiver take possession of your Property shall be deemed abandoned and we may remove, store, dispose of or otherwise deal with such abandoned goods in such manner as we choose.

### 22.3 Remedies after a Court Order

Even if we obtain judgment against you,

- (1) You must still keep all your Promises and we may continue to use the remedies described in Section 22.2 to make you keep your Promises; and
- (2) We will be entitled to continue to receive interest and compound interest at the Interest Rate on the Outstanding Amount until the judgment is paid in full.

### 22.4 Our Expenses

- (1) You promise to pay us all reasonable expenses and costs we incur to enforce the Mortgage or exercise any of our rights under the Mortgage when we ask you to.

(2) Expenses and costs will include our costs of taking and keeping possession of your Property, any costs of removal, storage or disposal of goods, any costs of repairs or improvements to your Property, legal fees and disbursements on a full indemnification basis and all other costs and expenses we incur to protect our interests.

(3) These expenses and costs will be added to the Outstanding Amount, will be payable on demand, will bear interest at the Interest Rate until fully paid and will be secured by the Mortgage, in the same priority.

## **22.5 Delay in Enforcing our Rights**

If you Default, and we do not exercise any of our rights or do not ask you to remedy the Default, we are not prevented from making you remedy the Default later or exercising any of our rights in connection with the Default later or any other Default.

## **SECTION 23 – DISCHARGE**

(1) Full discharge – We will discharge the Mortgage when:

- (a) You have paid all amounts owing as and when required under the Mortgage, including any Prepayment charge;
- (b) You have kept all other Promises under the Mortgage; and
- (c) You have paid our fee and costs to prepare and register the discharge.

(2) If we fully discharge the Mortgage we will no longer be entitled to enforce our rights under the Mortgage. We will not give you notice if we intend to discharge the Mortgage.

(3) We will prepare the discharge and register it, if we want to. If we register the discharge, we will send you a letter telling you it has been registered. You will pay us the administration fee that we charge when a mortgage is paid in full. If we register the discharge, you will also pay the registration costs.

(4) Partial discharge

- (a) We may release our interest in all or any part of your Property, if we wish. We can do this whether or not we receive any money. We will only be accountable to you for money we actually receive. If we receive money, we will apply it to what you owe us, including the applicable Prepayment charge.
- (b) If we release our interest in part of your Property, the part remaining will continue to secure the Outstanding Amount and your Promises, as well as the Promises of any Guarantor, will continue unchanged.

## **SECTION 24 – RENTING YOUR PROPERTY**

(1) You promise that you will occupy your Property. If you want to rent, lease or enter into any form of tenancy agreement covering all or any part of your Property, you promise to get our prior consent. We may refuse to give it, at our option.

(2) If you have told us that your Property is, or will be, used only as an owner-occupied residential property, you confirm that no part of your Property is rented or occupied by a tenant.

(3) If you do not keep any of these Promises, at our option, the Outstanding Amount will immediately become due and payable and we will be entitled to enforce any of our rights.

(4) In this case, we can pay any amount we think is needed to any tenant, to obtain the co-operation of the tenant in selling your Property, showing your Property and obtaining



possession of your Property or any part of your Property from the tenant. You agree that any amount we pay to a tenant will be added to the Outstanding Amount.

(5) Nothing we do under this Section 24 will put us in possession, control or management of your Property and we are not obliged to collect any rent or income from your Property, or comply with any terms of any lease or agreement.

(6) If you rent all or any part of your Property without our approval, we will have the same rights and remedies as if you had tried to discourage us from taking possession of your Property if you had defaulted under the Mortgage or adversely affected the value of your Property.

(7) If you rent your Property with our consent, you will assign to us:

- (a) All leases, lease agreements and their renewals, whether current or future;
- (b) All rents payable under the leases and lease agreements; and
- (c) All rights under the leases or lease agreements that affect your Property.

## **SECTION 25 – ENFORCING OUR RIGHTS**

If you do not keep your Promises, then at our option

(1) The Outstanding Amount will immediately become due and payable together with any Prepayment charge and a portion of any cash back amount that you promise to repay, as explained in Section 6.7; and

(2) We may spend money to do anything you promised to do, but did not do. Any money we spend because you did not keep a Promise will be added to the Outstanding Amount. It will be immediately due and payable, will bear interest at the Interest Rate until fully paid to us and will be secured by the Mortgage, in the same priority.

## **SECTION 26 – CONDOMINIUM MORTGAGES**

(1) If your Property is a condominium unit, you promise to meet these obligations, in addition to your other Promises under the Mortgage:

- (a) You must comply with the *Condominium Act* (Newfoundland & Labrador), and the declaration, by-laws and rules of the condominium corporation. We may ask you to provide proof of compliance.
- (b) You must pay the common expenses for your Property to the condominium corporation on the due dates. We may ask you to provide proof of payment.
- (c) We have the right to give you notice that we will collect your contribution to the common expenses from you and you agree to make that payment. We can accept a statement from the condominium corporation as conclusive evidence of how much is owed for common expenses and when it must be paid.
- (d) You will forward to us any notices or assessments from the condominium corporation.
- (e) You must maintain in good condition and state of repair all improvements made to your Property.
- (f) You must repair your Property after damage.
- (g) You must ensure that the condominium corporation complies fully with:
  - (i) The terms of all insurance policies on the condominium;

- (ii) All obligations imposed by the *Condominium Act* (Newfoundland & Labrador);
  - (iii) The by-laws of the condominium corporation; and
  - (iv) The insurance provisions of the declaration of the condominium corporation.
- (h) You must carry adequate insurance. This means you must insure all improvements made to your Property. The insurance policy must cover your Property against destruction or damage by fire and by other perils usually covered in fire insurance policies, as well as those perils listed in Section 21(4) of the Mortgage. You must obtain insurance for any additional risks that we require.
- (i) The policy must cover your Property for its full replacement cost: this means the maximum amount for which it can be insured.
- (j) You must insure the common or other interest in both planned and existing buildings, which form part of the condominium property if the condominium corporation fails to insure them.
- (k) You must assign your insurance policies to us. As far as it is legal to do so, you must assign your interest in any insurance policies held by the condominium corporation.
- (l) You must provide us with proof that the insurance for the condominium corporation and your insurance is in force. If the policy is renewed or replaced, you must inform us at least thirty days before the insurance expires.
- (m) You must do everything that is necessary to collect any insurance proceeds.
- (n) (i) You authorize us, in your name and on your behalf, at all times, to exercise your rights under the *Condominium Act* (Newfoundland & Labrador) to vote at any meeting of the condominium corporation, and to consent to anything having to do with the management, sale or other dealings with the property or assets of the condominium corporation. This authorization includes voting on or any consent to the termination of the condominium corporation;
- (ii) Our right to vote or consent shall be effective upon our giving notice to you and to the condominium corporation at any time that we intend to exercise our right to vote or consent. Any notice we may give may be for an indeterminate or limited period of time, or for a specific meeting or matter;
- (iii) In exercising these rights, we can choose to not vote or consent at any particular time or on any particular issue; and
- (iv) If we do vote or consent for you, we do not as a result become a mortgagee in possession. We are not responsible to protect your interests. We are also not responsible for the way we vote or consent, or if we fail to do so.
- (o) If we wish, the Outstanding Amount will become payable immediately if:
- (i) the governing of your Property by the condominium corporation under the *Condominium Act* (Newfoundland & Labrador) is terminated. This means your Property is no longer part of a condominium;
  - (ii) a vote of the unit owners authorizes the sale of all or any material part of the property of the condominium corporation, including a material part of its common elements;

- (iii) the condominium corporation fails to comply with the *Condominium Act* (Newfoundland & Labrador), or the declaration, by-laws or rules and regulations of the condominium corporation;
- (iv) the condominium corporation fails to insure the units and common elements against destruction or damage by fire and other perils usually insured against, for full replacement cost;
- (v) the condominium corporation fails, in our opinion, to manage the condominium property and assets in a careful way or to maintain its assets in good repair; or
- (vi) the condominium corporation fails to insure all the condominium units and common elements according to law and any additional requirements we may have, or fails to do all that is necessary to collect insurance proceeds.

## **SECTION 27 – LEASEHOLD MORTGAGES**

- (1) If you rent or lease your Property from someone else, you certify that:
- (a) You lease your Property under a valid lease, you have given us a copy of that lease and you have good leasehold title to your Property;
  - (b) You have paid all rents and other payments required under the lease and you have kept all of your other promises in the lease, up to the date you sign the Mortgage. You authorize us to obtain information on the rents you paid and your promises in the lease directly from the landlord. You release to us any information or documents the landlord may have and to which you are entitled;
  - (c) You either have the consent of your landlord to the Mortgage, or you have the right to charge your interest in the lease to us, without consent;
  - (d) If the Property is located in a national or provincial park, you have obtained consent from the appropriate government authority, if necessary, to the Mortgage; and
  - (e) There are no limitations on your interest in the lease except for any set out in the lease, or restrictions registered in the land registry office.
- (2) From now on, you promise that:
- (a) You will pay rents and other payments required by the lease when due;
  - (b) You will do everything you are required to do under the lease;
  - (c) You will not surrender or transfer your interest in the lease or cause it to be terminated or transferred;
  - (d) You will not make any change in the lease without our approval;
  - (e) You will immediately give us a copy of any notice or demand you receive about the lease;
  - (f) You will, at your expense, do anything that we think necessary to ensure that all your interest in your Property and in the lease is covered by the Mortgage and that the Outstanding Amount is adequately secured;
  - (g) If you default under the lease, and we pay anyone else, as required by law or to protect our security, you will pay us back. If you do not pay us back, the amount we paid will be added to the Outstanding Amount;

- (h) You will hold the last day of the term of the lease or of any renewal term in trust for us and will only deal with it as we require. At our request, but at your expense, you will transfer to us the last day of the term of the lease or of any renewal;
- (i) We may remove you or any other person as trustee of this trust and appoint a new trustee;
- (j) You must not let any renewal or other options lapse. Unless we tell you otherwise, you must renew the lease or exercise any other option so that the lease will continue as long as the Mortgage is outstanding, and provide us with evidence as we may require;
- (k) If you subsequently buy the Property from the owner, the Mortgage will automatically become a Mortgage of your entire interest in the Property, as if you had owned the Property at the time that we advanced you the Principal Amount. If we ask, you agree to re-mortgage and charge your interest in your Property to us, and to execute a mortgage and any other documents we ask;
- (l) If you fail to keep any of your promises under the lease, we can treat that as if you had defaulted under the Mortgage and we can exercise our rights under Section 22;
- (m) If the leasehold estate in this Mortgage ceases to exist or is terminated for any reason, it will be considered a Default under Section 22 above;
- (n) If we enforce our rights under the Mortgage, then you will hold the last day of the term of the lease and of any renewal in trust for any person to whom we sell your interest in your Property; and
- (o) You irrevocably appoint us as your attorney so that we, on your behalf and in your name, may enforce the lessor's promises under the lease, exercise any options to renew and assign the lease and the last day of the term and of any renewal, and transfer your interest in your Property. This is a right coupled with an interest.

## **SECTION 28 – EXPROPRIATION**

(1) If your entire Property is expropriated, the Outstanding Amount will immediately become due and payable, together with any applicable Prepayment charge. You promise to hold all amounts you are awarded for the expropriation of your Property in trust for us.

(2) If only a part of your Property is expropriated, you promise to pay to us the amount you are awarded for the partial expropriation and we will credit it to any Prepayment charge applicable to that amount and to the Outstanding Amount. Until you have paid us, you promise to hold the amount you are awarded in trust for us.

(3) If we consider that the remainder of your Property is not adequate security for the Outstanding Amount, then the Outstanding Amount, or the part of the Outstanding Amount as we decide, will immediately become due and payable together with the Prepayment charge applicable to that amount.

(4) Any amount you pay us because of an expropriation must include the Prepayment charge applicable to that amount.

## **SECTION 29 – GUARANTEE**

(1) In this Section the term “Borrower” means the person we loaned money to and who gave us the Mortgage.

(2) In return for us having made a loan to the Borrower and advancing all or part of the Principal Amount, each person who signs the Mortgage as “Guarantor” agrees with us, as a

principal debtor and not as a surety, to pay us the Principal Amount and all other amounts secured by this Mortgage, together with interest at the Interest Rate on the days and at the times the Borrower is required to pay them under the Mortgage and to observe and keep all of the Borrower's other Promises under the Mortgage, without our having to ask the Guarantor to do so.

(3) Each Guarantor, if there is more than one, will be jointly and severally liable with each other and with the Borrower for keeping all the Promises. This means that if there are 2 or more Guarantors, each is collectively and individually liable with each other and with the Borrower for keeping all the Promises.

(4) We may at any time and from time to time do the following without the consent of, or notice to, any Guarantor:

- (a) give extensions of the time to pay any amount owing under the Mortgage or the keeping of any other Promises or waive the Borrower's obligation to keep any particular Promise;
- (b) give extensions of the Term, including any renewals of the Mortgage or its Term for further periods of time, whether any extension or renewal is by way of a written agreement with the Borrower or otherwise;
- (c) increase or decrease the Interest Rate, either during the Term or any renewal or extension period of the Mortgage;
- (d) release the whole or any part of the Property from the Mortgage;
- (e) waive any provisions of the Mortgage or change any terms or conditions of the Mortgage at any time during the Term, or during any future extension or renewal period;
- (f) shorten or lengthen the amortization period of the Mortgage;
- (g) advance and re-advance amounts of Principal Amount to the Borrower;
- (h) permit any prepayment of Principal Amount, the skipping of any payment or the making of multiple payments by the Borrower, whether or not these payments are allowed under the Mortgage; and
- (i) release any Guarantor from any promise made in this Section or release the Borrower or any future owner of the Property from any Promise made in the Mortgage;

without in any way affecting the guarantee or the obligations of any Guarantor. The obligations of the Guarantor under this guarantee will extend to and include the Promises of the Borrower as so amended, renewed, extended, varied or waived.

(5) We may require any Guarantor to make a payment or keep any Promise from any Guarantor before we try to get the Borrower to make the payment or keep any Promise.

(6) The Guarantor's promises and obligations under this guarantee will not be affected by any of the following:

- (a) the Borrower's or any Guarantor's disability, incapacity or death;
- (b) any invalidity in the Mortgage or Promises of the Borrower;
- (c) any release of Promises, except if the Outstanding Amounts are paid in full, including any Prepayment charge;
- (d) our getting a court order against the Borrower, or our taking any steps to realize on the Mortgage (or not taking any steps), or by our exercising any remedy against the Borrower or the Borrower's assets;

- (e) any law which might affect any terms of the Mortgage or this guarantee, or the Borrower or any Guarantor;
  - (f) any failure by us to enforce our rights under the Mortgage or Other Security; and
  - (g) any other fact or occurrence which may change the Guarantor's risk, or might constitute a discharge of the Guarantor.
- (7) Until the Borrower has kept all of the Borrower's Promises, including paying everything the Borrower owes us, the Guarantor will not have any guarantee rights and the Guarantor agrees that it will not have the right to reimbursement from the Borrower for any payments the Guarantor makes to us until such time.
- (8) The Guarantor acknowledges having received a copy of the Mortgage.
- (9) All obligations of any Guarantor will also be those of the Guarantor's heirs, executors, administrators, personal representatives, successors and assigns and will not be altered by the insolvency or bankruptcy of any Borrower or Guarantor.
- (10) The Guarantor's liabilities and obligations under this Guarantee are absolute and unconditional in all circumstances.

### **SECTION 30 – ADMINISTRATION FEES**

You promise to pay to us, when we ask: (i) our administration and processing fees we charge at that time to prepare an assumption statement, information statement, payout statement, amending or other agreement, a transfer of the Mortgage; (ii) any fees referred to in Section 23; and (iii) any other additional fees we may charge from time to time relating to the Mortgage. If you do not pay a fee it will be added to the Outstanding Amount. Interest at the Interest Rate will be charged on these unpaid fees.

### **SECTION 31 – APPLICABLE LEGISLATION**

#### **31.1 New Home Warranty**

You agree to comply with any new home warranty legislation or program providing for new home warranty protection and to reimburse us for any costs which we incur in complying or enforcing your rights on your behalf if you fail to do so.

#### **31.2 Spousal Consent (where applicable)**

- (1) You agree:
  - (a) to advise us whether you are a spouse, as that term is defined in the *Family Law Act* (Newfoundland & Labrador), and any change in your marital status;
  - (b) to advise us on the status of the Property as a matrimonial home, within the meaning of the *Family Law Act* (Newfoundland & Labrador), and any change in that status;
  - (c) to give us the name, address, date of birth and any other information that we may require on your spouse;
  - (d) if we ask, to provide written evidence of anything mentioned in this section or authorization(s) from you and/or your spouse requiring the Registrar under the *Vital Statistics Act* (Newfoundland & Labrador) to give us information on the marriage, divorce or death of you or your spouse.

If you do not keep any of these Promises, at our option, the Outstanding Amount will immediately become due and payable and we will be entitled to enforce any of our rights.

(2) Your spouse, by signing the Mortgage, consents to the Mortgage and releases all of his/her interest in the Property to the extent necessary to give effect to our rights under the Mortgage. Your spouse also agrees that we may, without further notice, deal with the Property and the debt created by the Mortgage as we wish.

**SECTION 32 – WHO IS BOUND BY THE MORTGAGE**

(1) Not only are you bound by everything in the Mortgage, but also your heirs, executors, administrators, personal representatives, successors and assigns and anybody else to whom your Property is transferred are bound.

(2) If more than one person signs or authorizes the Mortgage as borrower, then all persons who sign or authorize are jointly and severally liable to keep all Promises under the Mortgage.

(3) If more than one person signs or authorizes the Mortgage as Guarantor or signs or authorizes a guarantee of the Mortgage, then all persons who sign or authorize are jointly and severally liable to keep all Promises under the Mortgage.

(4) By way of explanation, the term “jointly and severally” means that if there is more than one person signing the Mortgage as borrower or as Guarantor, each is collectively and individually liable with all other persons signing for keeping all the Promises.

**SECTION 33 – INTERPRETATION**

**33.1 Partial Invalidity**

If any provision of the Mortgage is found to be illegal or unenforceable, this will not affect the validity or enforceability of the other provisions.

**33.2 Paragraph and Section Headings**

Paragraph and Section headings do not form part of the Mortgage, but are used only for easy and convenient reference. They do not affect the construction or interpretation of the Mortgage.

**33.3 Number and Gender**

Unless the context requires otherwise, words in the singular include the plural, and vice versa, and words specifying a gender include all genders.

**33.4 Statutes**

Any reference to any statutes shall be deemed to be a reference to such statute and any and all regulations from time to time made under such statute and to such statute and regulations as amended or re-enacted from time to time. Any references in this document to a specific section or sections, paragraph or clause of any statute or regulation shall be deemed to include a reference to any corresponding provision of future law.

The Mortgagor(s) has/have executed this Mortgage on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Mortgagor*

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Mortgagor*

The Mortgagor(s) spouse has signed this Mortgage on \_\_\_\_\_.

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Spouse*

The Guarantor(s) has/have executed this Mortgage on \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Guarantor*

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Guarantor*

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**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Newfoundland & Labrador, make oath and say as follows:

1. THAT I was present and did see the signature(s) of \_\_\_\_\_ and \_\_\_\_\_ affixed to the enclosed document and that I am the subscribing witness to the signature(s).

2. THAT this document was signed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**SWORN TO** at \_\_\_\_\_, )

in the Province of Newfoundland & Labrador)

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, )

before me: )

)

)

)

)

\_\_\_\_\_ )  
A BARRISTER, COMMISSIONER OF )

OATHS or NOTARY PUBLIC )

[Designate singular or plural throughout]

CANADA  
NEWFOUNDLAND & LABRADOR

**FAMILY LAW ACT AFFIDAVIT**

I/We, \_\_\_\_\_, of  
the \_\_\_\_\_ of \_\_\_\_\_, in the Province of  
Newfoundland & Labrador, make oath and say as follows:

1. **THAT** I am/we are the Mortgagor described in the enclosed Mortgage and as such have full knowledge of the facts stated in the Mortgage.

2. **THAT** for the purposes of this Affidavit, "spouse" shall mean either of a man and woman who (i) are married to each other, (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

[Choose appropriate paragraph 3 and delete others]

3. **THAT** we are spouses of each other as defined by *The Family Law Act* (Newfoundland & Labrador) at the time of the execution of the enclosed Mortgage, the property we are mortgaging is/is not [delete inapplicable option] a matrimonial home and to the best of our knowledge, information and belief, there are no other persons who have vested rights in the property being mortgaged under the attached Mortgage pursuant to *The Family Law Act* (Newfoundland & Labrador).

3. **THAT** my spouse has released all rights to the matrimonial home by a separation agreement, marriage contract or a designation made under *The Family Law Act* (Newfoundland & Labrador);

3. **THAT** I am not a spouse and I have not made a cohabitation agreement under Part IV of *The Family Law Act* (Newfoundland & Labrador);

4. **THAT** I am/we are [delete inapplicable option] at least nineteen (19) years of age.

5. **THAT** I am/we are [delete inapplicable option] a resident of Canada within the intent and meaning of *The Income Tax Act*, Canada, as amended and intend to remain residents until the completion of this transaction.

6. **THAT** when I/we [delete inapplicable option] signed the attached Mortgage, I was/we were [delete inapplicable option] not and will continue not to be liable for any tax imposed under Section 33 (1) (2) of *The Retail Sales Tax Act* (Newfoundland & Labrador) as amended or Goods and Services Tax under the *Excise Tax Act* (Canada) as amended at least until the registration of this Mortgage.

7. **THAT** to the best of my/our [delete inapplicable option] knowledge, information and belief, at this date there are no statutory liens of any kind whatsoever charging or encumbering our assets and specifically the property described in the enclosed Mortgage.

SWORN TO at \_\_\_\_\_, )  
in the Province of Newfoundland & Labrador) )  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, )  
before me: )  
)  
)  
)  
\_\_\_\_\_)  
A BARRISTER, COMMISSIONER OF )  
OATHS OR NOTARY PUBLIC )

\_\_\_\_\_