

## Standard Form Mortgage

### *Land Titles Act*

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### General Mortgage Terms

In the mortgage, **you** are each person by whom security is given under the mortgage (and your and yours refer to that person). **We** are each person to whom security is given under the mortgage (and us, our and ours refer to that person). The **mortgage** is the mortgage or charge in which these terms are included, and includes these terms. Other expressions have the meanings set out at the end of these terms.

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## 1. Preliminary matters.

1.1 **Your verifying your knowledge.** A promise by you to us in the mortgage may be limited to what you know. Where this is so, you promise that you have done what a reasonable person would do to verify the promise.

1.2 **Information you have supplied.** You promise that, as far as you know, all information that you have supplied to us for the mortgage is substantially accurate and complete.

1.3 **Your legal obligations.** You promise that you are not a party to a legal proceeding (except one that you have informed us about in writing), and are not in serious default under your legal obligations.

1.4 **Your documents.** You promise that you have given us a copy of all of the following documents relating to the property that are in your possession or control. Documents affecting the title (except those available in the land registration office). And surveys, tests and reports.

1.5 **Work on the real estate.** You promise that you are not giving the mortgage to secure the financing of work on the real estate. This statement is subject to anything as to which you have informed us in writing.

1.6 **Your obligations under the mortgage.** You promise that you are complying with all of your obligations under the mortgage when it is given.

1.7 **Condition of the property.** You promise that, as far as you know, the property has no defect that cannot be found by a reasonable inspection.

1.8 **Legal requirements.** You promise that, as far as you know, the property and its use comply substantially with every law. If we are making a loan for work on the real estate, you promise that, as far as you know, the law permits the work and its use.

1.9 **Environmental.** You promise that, as far as you know, no part of the 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 (as defined under **Meaning of terms used** at the end of these terms) except in compliance with all applicable laws. As far as you know, no part of the property contains, has ever contained or will in the future contain, any hazardous substance, which may lower the value of the property or adversely affect its sale. You promise that no environmental authority or anyone else has commenced or threatened an investigation, claim, action or proceeding relating to the environmental condition of the property. You agree that we may, whenever we deem it necessary, enter and inspect the property and conduct any environmental testing, site assessment, investigation or study that we think is necessary. You will pay us on demand our reasonable costs for such inspections, testing, assessments, investigations and studies.

## 2. Payment obligations.

### 2.1 Obligations secured.

2.1.1 **What obligations the mortgage secures.** The mortgage secures all obligations to pay money described in the mortgage and in the Operating Agreement for your Account. Without limiting this, the obligations secured include every liability described in the mortgage, owing by a person whose liability the mortgage shows that it secures. Where, as a result of the mortgage, the law requires you to make a payment, it secures your obligation to make the payment. And it secures compensation that is or may become payable because of a breach of your obligations under the mortgage or under any other agreement that relates to mortgage.

2.1.2 **Current or running account obligations.** If the mortgage secures a current or running account, it secures the ultimate balance. The security under the mortgage is continuing, and continues, for its full amount, until we give a complete discharge of the mortgage. The mortgage is not reduced or affected

by any of the following before we give the complete discharge: (a) our not advancing the full amount when you give the mortgage; (b) your making payments under the mortgage; and (c) a payment reducing the balance of the mortgage to nil.

2.2 **Obligations under collateral security.** The mortgage also secures the obligations described in this section. The obligations secured are every liability described below, owing by you or another person described below, to us or another person described below.

2.2.1 **Liability.** Where this part refers to a liability owing by a person (which in this subsection includes you), it includes a liability remaining unpaid by the person. Where this part refers to a liability of a person, it applies whether the liability is present or future, direct or indirect, absolute or contingent, or matured or not. It applies to a liability in any currency. It applies whether a liability arises from dealings between the person and the person to whom the liability is owed, or from any other dealings or proceedings by which the person to whom the liability is owed may be or become the creditor of the person in any way. It applies to a liability wherever incurred. It applies to a liability whether incurred by the person alone or with another or others, and whether as principal or guarantor. It applies to a liability even if incurred by the person under another name. The liabilities secured include all interest, commissions, costs, charges and expenses in connection with any of the above.

2.2.2 **Persons whose liability is secured.** The liabilities secured include those of the following persons. They include all of your liabilities. Where the mortgage shows that the mortgage secures the liability of a person (other than you or us), including a spouse or guarantor, the liabilities secured include all of that person's liabilities. The liabilities secured also include those of a current or future spouse, partner or living companion of a person whose liabilities are secured, which terms are defined under **Meaning of terms used** at the end of these terms. The liabilities secured include all of the liabilities of every future owner, as defined under **Meaning of terms used** at the end of these terms. And where a future agreement to which we (or the holder of the mortgage) and the owner or owners are parties shows that the mortgage secures the liability of a person, they include all of that person's liabilities.

2.2.3 **Liability secured until notice.** Where the liabilities secured include those of a person at a time, they include the liabilities of the person at all future times, even if the person ceases to come within the description in the mortgage. However, if the person ceases to come within the description in the mortgage, the liabilities secured exclude the person's liabilities after a valid notice described below takes effect and until the person again comes within the description in the mortgage. The notice is valid only if it meets all of the following requirements. It must be given by an owner and be in writing. It must be handed personally to a senior officer of ours (or of the holder of the mortgage). It must clearly refer to the mortgage. And it must give the name of the person whose liabilities are not covered and clearly state its purpose. If a valid notice is given, the liabilities secured exclude those of the person named that are incurred or arise after thirty days after the notice was given, except as set out above and below. The liabilities secured include those of the person named that are incurred or arise before or within the thirty days, even if they have not then matured. And the liabilities secured include those of the person named based on an express or implied agreement made before or within the thirty days.

2.2.4 **Additional terms.** The following terms apply to this section. Where the liabilities secured include those of a person (including you), they include all the liabilities of a person for whom the person acts as trustee or agent. Where the liabilities secured include those of more than one of the person (including you), they include the liabilities of both or all (or either or any) of them.

When the liabilities secured start to include those of a person, they secure the existing liabilities of the person. The liabilities are those owed to us or the other persons described in this section. Where we permit a person to incur a liability honestly believing that the person is a person whose liability the mortgage secures, the person must be treated as such a person. A statement of a relevant fact, made by a person that we believe to be an owner at the time, is conclusive. It is sufficient if our belief under this subsection is honest, even if it is negligent.

## 2.2.5 Persons to whom the secured liability is owed.

2.2.5.1 The liabilities secured include those owed to the following persons. They include those owed to us. Where a person other than us holds the mortgage, they include those owed to the holder. (We or the holder will notify you in writing after a change in the holder, but not doing so does not change the effect of this subsection.) They include those owed to another member of the group of companies of us or the holder of the mortgage. (For a liability not otherwise included, this applies only if we or the holder notify you in writing of this before the liability is incurred and give you the member's name.) They include those owed to a person who holds the benefit of the liability for us or the holder, or a member, referred to above. (For a liability not otherwise included, this applies only if we or the holder notify you in writing of this before the liability is incurred and give you the person's name.) They include those owed to us or the holder and held for the benefit of another person. In every case, if there are more than one of us or the person to whom the liability is owed, they include a liability owed to both or all (or either or any) of us or them. After a change in the holder of the mortgage, the liabilities secured continue to include existing and future liabilities owed to previous holders (including us).

2.2.5.2 A person holds the mortgage even if the person only has a right to the benefit of the mortgage, or a right to receive a transfer of it, and even if the change in the holder is not registered. A second company is a member of the group of a first company if the second directly or indirectly controls the first; or the first directly or indirectly controls the second; or both are directly or indirectly controlled by the same person. Where this subsection refers to us, it means the person or persons to whom you give the mortgage (but that does not limit the section headed How others are affected by the mortgage).

2.2.5.3 We or the holder of the mortgage may decide whether, or how far, the mortgage secures a liability to a person other than us or the holder, and we or the holder may change a decision. We or the holder may do so in our or its absolute discretion and for our or its own benefit. We or the holder owe no duty to you or the other person in the decision. You must still deal with us or the holder in all matters relating to the security.

2.2.6 **When the liability is payable.** Where a law requires the mortgage to state the date on which a liability is payable and the mortgage does not do so, the liability is payable on demand. Despite this, we (or the holder of the mortgage) must not make a demand for an obligation unless it has become payable under its terms, and the obligation may not be prepaid unless permitted by its terms.

## 2.3 Amounts.

2.3.1 For payment obligations, other than interest or costs (including interest on overdue interest), the mortgage secures a principal sum owing or remaining unpaid at any time, of up to the amount set out in the mortgage.

2.3.2 For payment obligations secured by the mortgage that are interest (including interest on

overdue interest), the mortgage secures an amount owing or remaining unpaid at any time up to either: (i) the Base Rate (as defined below), plus 5% per annum, calculated monthly not in advance and payable monthly (both before and after demand, maturity, default or judgment) and interest on overdue interest up to the same rate and calculated and payable in the same way; or (ii) the Prime rate (as defined below), plus 7%, per annum, calculated and payable as set out in section 2.6 below (both before and after demand, maturity, default or judgment) and interest on overdue interest up to the same rate and calculated and payable in the same way.

2.3.3 For costs, the mortgage secures them without limit.

2.3.4 The obligations secured by the mortgage are payable on demand.

2.4 **Limit.** Where the amount secured by the mortgage is limited, the following terms apply. A payment does not reduce the limit. The limit does not affect our right to recover an obligation over the limit. It does not affect our right to enforce other security (and any limit in other security must be considered to be additional). And it does not limit a guarantee or indemnity. If obligations secured exceed the limit, we may decide what part of the obligations are secured by the mortgage.

## 2.5 Base Rate.

2.5.1 The **Base Rate** means the variable rate of interest that has all of the following characteristics. It is expressed as a percentage per year. It is determined by us from time to time. It is a reference rate for loans made in Canadian dollars in Canada.

2.5.2 Interest at or based on the Base Rate is calculated monthly, not in advance. The interest is calculated for the actual number of days elapsed. The Base Rate is the floating rate on unpaid payment obligations for the purpose of the mortgage.

## 2.6 Prime Lending Rate.

2.6.1 The **Prime rate** means the variable rate of interest per year announced by us from time to time as being a reference rate then in effect for Canadian dollar loans made by us.

2.6.2 Variable interest rates ("**Variable Rates**") are calculated by adding a premium to or subtracting a discount from the Prime rate. After the date that funds are disbursed on your mortgage under the Select Account, the applicable Variable Rate corresponds to the rate as indicated in your Operating Agreement for your Select Account, which applies until the Prime rate changes. Variable Rates are calculated and compounded monthly, not in advance.

2.6.3 The interest rate during the term on the principal owing on a Fixed Rate Mortgage under your Select Account is set by us in our sole discretion at the time your Fixed Rate Mortgage is set up and is shown in your Operating Agreement for your Select Account. The interest rate is a nominal percentage per year and is calculated semi-annually, not in advance.

2.7 **How interest is calculated.** All rates of interest under the mortgage (including compound interest) apply both before and after demand, maturity, default or judgment. Where a rate is plus or minus a percentage, the added or deducted percentage is a percentage of principal, not a percentage of the rate. Interest must be calculated (or compounded) in the manner agreed, and the section headed **Compound interest** below does not impair our right to that. For example, if you need not pay interest at or before the end of a period over which interest is calculated (or payments that you are to make for interest do not cover all the interest that accrues), you are liable for interest on the interest (or the shortfall) at the same rate and calculated in the same way as interest on principal, and for interest on that interest, and so on. Where the mortgage does not set the date for the end of the period, we may choose the date, having regard to any other dates for payments under the mortgage.

2.8 **Compound interest.** If interest is not paid on the day that it is payable, interest must be paid on the unpaid interest. This interest must be paid at the same rate as the unpaid interest, is calculated in the same way, and must be paid on the same days. If interest on unpaid interest is not paid on the day that it is payable, interest must be paid on that interest as provided above, and so on.

## 2.9 **Costs.**

2.9.1 You agree that we are to receive payment under the payment obligations free from every cost other than the costs referred to below. You agree to pay every other cost and, specifically, every other cost relating to the property, even if it does not arise during the security. You agree to pay every cost payable under the mortgage, including these terms. We are however responsible for our costs in receiving payment in the normal course of the payment obligations. Where the mortgage refers to a specific cost, that does not limit this subsection.

2.9.2 You must pay us our costs in taking our security, whether an advance is made or not. The costs include costs for negotiating the security, searching title to the property, obtaining title insurance, and preparing or registering the security.

2.9.3 You must pay us our costs for the following. Renewing a filing or registration. Providing a statement other than a statement sent to you regularly. Giving a consent or approval under the mortgage and checking that conditions are met. Protecting our security or ourselves from claims relating to it, for example, under liens of those who do work on the real estate. Giving effect to a right you may exercise at your option. Doing anything relating to the mortgage that we are not required to do and that you want us to do, for example, entering into an agreement.

2.9.4 Wherever the mortgage requires you to pay a cost, the following terms apply. If it was caused by an act of ours, it is payable if we acted honestly. Its amount must be reasonable. It includes lawyers' fees and disbursements, charged on the basis that applies between a lawyer and his or her own client, and even though we may not have taken court proceedings. It includes fees and expenses for other professionals or agents. It includes a fee for the time and services of an employee or agent of ours. It includes a usual service charge of ours. If the cost is for something we do, and doing the thing is part of our business, it includes our normal charge. You must pay it to us as soon after it has been incurred as we ask in writing for it. You must pay interest on it from when it is incurred. Where the interest rate on any of the unpaid payment obligations is a floating rate, the interest rate is the floating rate (or, if there is more than one, the highest floating rate), plus 2% per annum. Where the interest rate on none of the unpaid payment obligations is a floating rate, the interest rate is the rate on the unpaid payment obligations (or, if there is more than one, the highest rate).

2.10 **General terms as to payments.** Except where the mortgage provides otherwise, all amounts are expressed in Canadian money and are payable in Canadian money. All payments must be made to us at our head office in Canada. But if we ask in writing for payments to be made to us at another place in Canada, payments must be made there. Payments must be made while we are open for business where they must be made. If we ask in writing, you must authorize your bank to make payments, or you must make any other reasonable arrangement for them to be paid. If a payment is made on a day after 3 p.m. Toronto time, it is treated for calculating interest as made on the next business day. Payments must be made without set-off, counterclaim or deduction. A payment is not made until we have actually and irrevocably received the full amount in immediately available funds.

2.11 **How we may apply payments.** Except where we specifically agree otherwise, we may apply a payment made to us to reduce whatever part of the payment obligations we choose. After doing so, we may apply the payment to reduce a different part of the payment obligations as we choose.

## 3. **Advances.**

3.1 **Separate and distinct loans.** Each advance under the obligations secured by the mortgage, including advances under your Operating Agreement (or any amendment thereto), referred to in these terms as a mortgage portion, Variable Rate mortgage portion, Fixed Rate mortgage portion, Main Account, or Sub-Account, is deemed to be a separate and distinct loan.

3.2 **Priority.** Any loans that are financed from time to time under the *National Housing Act* shall, upon default, have priority of payment, collection and enforcement over any other obligation secured or to be secured under the mortgage.

## 4. **Guarantees or other support.**

4.1 **Introduction.** A person may be giving a guarantee for another person's liability. Or the mortgage may, wholly or in part, secure another person's liability. This part refers to the guarantee, or the mortgage where it does so, as **support**. It refers to a person whose liability is supported as a **debtor**. It refers to a liability to which the support applies as a **supported liability**. A liability can be a supported liability, even if recourse for it is limited. It applies wherever, under the mortgage, a person (including you or an owner) gives support. It applies whether we are getting the benefit of the support or another person is. Where another person is, references to us in this part must be read as being to the other person, except where this part specifically says they must not.

4.2 **Guarantee.** Where, under the mortgage, a person gives a guarantee by signing the mortgage as a guarantor, the person guarantees all of the payment obligations and every other liability under the mortgage. A person giving support also agrees to pay to us every loss (including a liability) that we suffer if a supported liability is not paid or complied with, and even if a debtor becomes bankrupt. The support is unconditional and irrevocable. The support continues until every supported liability has been fully and irrevocably discharged. It does so as if it was a liability of the person giving support as a principal, and as if every debtor was the agent of the person giving support. It does so despite anything that might discharge the support because the person giving support was a guarantor or in the position of a guarantor. The person agreeing to these things towards us does not detract from the person's rights against anyone other than us.

4.3 **Effect of dealings etc.** The support applies despite any dealing by us with a debtor or anyone else, or any circumstance, which might otherwise have affected the support. If the dealing or circumstance changes or replaces a supported liability, the support applies to the changed liability or replacement, and even if a change is material or fundamental. This is so even though the person giving support may not know of or consent to the dealing. The dealings or circumstances include the following. Our giving more time to comply with the liability, or our giving any other waiver. Our agreeing to vary the liability. Our releasing anyone, accepting a part payment in satisfaction of the liability or entering into any other kind of settlement of the liability. Our releasing or agreeing to vary a security, or an obligation of another person, even if the person is a guarantor, or the person and the person giving support were jointly and severally liable. Our renewing the liability or extending the time for payment, even if other terms are changed (for example, the interest rate is increased). Our dealing in any of these ways with a new owner after a transfer of property. Our taking other rights such as security or guarantee. The liability being postponed, discharged, reduced or affected, or not being provable due to an insolvency, liquidation or dissolution proceeding or any law.

4.4 **Other rights.** The support applies to a supported liability even though we may not for any reason have the full benefit of a right against, or security over assets of, the debtor or anyone else. This section applies even if our not having that benefit was caused by our being unwilling to act, or our lack of care or other fault. This section applies in the following cases, for example. Our not enforcing a liability.

Our not taking advantage of other rights such as a guarantee or a security. Or our not taking, protecting, preserving, registering, perfecting or enforcing any security, guarantee or other right from a debtor or anyone else. The support applies to the liability, and we are not liable to the person giving support, even if we do not provide credit or comply with an obligation to the debtor or anyone else.

**4.5 Defects in supported liabilities.** If we act on the basis that a supported liability exists and anything causes it not to be a liability, the support applies as if the liability had existed. It applies to the following causes, for example. A debtor lacking legal capacity, such as being under age, not having mental capacity, having died, or being bankrupt. A debtor dying, being dissolved, not being a legal person, not having power to enter a liability or not having authority to exercise a power. A lack of authority or fraud of anyone purporting to act on behalf of a debtor. Or a liability or a term of a liability or a part of them being illegal, invalid, unenforceable, not provable or discharged under any law. This section does not apply if a manager of ours actually knew of the cause when the liability would have arisen, but it applies even if we acted negligently.

**4.6 Enforcement.** We cannot enforce the support until we have given a demand to the person giving support. Where the support applies to a liability that arises after a demand, we can give more than one demand. We can enforce the support even if we have not enforced rights against the debtor or anyone else, or under any security. We can enforce the support and those rights in any order we choose. A certificate from a manager of ours stating the amount owing by the debtor is conclusive proof of the amount as against the person giving support. If a debtor settles, states or admits an account with us, the person giving support is bound by it.

**4.7 Termination.** The person giving support may give notice which, if it is valid, may end the support for future liabilities. In this section references to us must not be read as being to another person getting the benefit of the support. The notice is valid only if it meets all of the following requirements. It must be in writing. It must be handed personally to a senior officer of ours (or of the holder of the mortgage). It must clearly refer to the mortgage. And it must give the name of every debtor and clearly state its purpose. If a valid notice is given, the support ends for a liability of the debtor that is incurred or arises after thirty days after the notice was given, except as set out below. It does not end for a liability that is incurred or arises before or within the thirty days, even if it has not then matured. And it does not end for a liability based on an express or implied agreement with the debtor or anyone else made before or within the thirty days.

**4.8 Other terms.** Where more than one person gives support for a liability, both or all of them do so jointly and severally. The support is continuing, is of an ultimate balance, and is not affected even if a payment before it ends reduces a balance to nil. The terms under the heading **Costs** applies this part. The person giving support must comply with the terms under the heading **Information**. This part is the whole agreement between person giving support and us on the subject matter of this part, and supersedes all representations on that subject matter. The support is not subject to any escrow or condition. Where more than one person is to give support, each person gives the support even if another does not. The support adds to any other rights we may have. The obligations of a person giving support under this part are binding on a legal or personal representative and successor of the person. This part benefits a legal or personal representative, successor in interest or assignee of ours, and every other person who after the mortgage is given becomes the holder of an interest or right in the mortgage or a part of it. Wherever the part refers to us, that includes every such person, where the context allows. The person has the powers that the mortgage gives to us.

## 5. Our security.

**5.1 Real estate.** The following terms apply wherever the mortgage includes land or an interest in land in the security. They do not apply where your interest in the land is as a tenant under a lease.

**5.1.1 Described land.** You grant, mortgage, charge, bargain, sell, and release all your claims on, the land described in the mortgage to and to the use of us and our heirs and successors, together with all rights that go along with the land.

**5.1.2 Abutting land.** Where the law would make security under the mortgage invalid because you have an interest in abutting land, you grant, mortgage, charge, bargain, sell, and release all your claims on all abutting land that must be included in the mortgage to make the security valid, to and to the use of us and our heirs and successors, together with all rights that go along with the land.

**5.1.3 Security on other related land.** If you are entitled to an interest in other land and the other land or interest is used in connection with land described in the mortgage, you grant, mortgage, charge, bargain, sell, and release all your claims on, your interest in the other land to and to the use of us and our heirs and successors, together with all rights that go along with the land. You also agree that, if you obtain, or become entitled to obtain, an interest in other land, and the other land or interest is used in connection with land described in the mortgage, you must grant, mortgage, charge, bargain, sell, and release all your claims on, your interest in the other land to and to the use of us and our heirs and successors, together with all rights that go along with the land. Land is subject to this subsection only if it is used directly and exclusively in connection with the land that is covered by the mortgage.

**5.2 What is included in land.** The land includes the land to which the mortgage relates and fixtures on the land, whether they exist when the mortgage is given or come into existence after then. Without limiting this, the land includes the things listed below, whether they exist when the mortgage is given or come into existence after then. You agree that these things are intended to be fixtures on the land. The things are the following. Buildings on the land; other structures on the land; and fences on the land or improvements to the land. A structure on the land that is being used like a building, even if the structure is mobile or designed to be made mobile, or was wholly or partly made before being placed on the land. Equipment on the land for heating, ventilating or air-conditioning a building. Fixed machinery and mechanical equipment on the land serving a building, including elevators and escalators. Equipment on the land for supplying electricity, gas, steam, hot or cold water and communications. Lighting equipment on the land, including bulbs and tubes. Window or door screens, storm windows and window blinds, shutters and awnings for a building on the land. Antennas, satellite dishes and similar equipment on the land. Fire alarm and security systems on the land. Wall to wall floor covering in a building on the land and fixed mirrors. Crops and plants on the land. Built-in appliances on the land such as a stove or dishwasher. And a sculpture or other work of art on the land outside a building.

**5.3 Rights to insurance.** You assign and give us a security interest in the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, the following rights. The rights under every insurance policy covering loss of or damage to property. The rights under every insurance policy covering loss of present and future income, rents or profits from the property. And the rights under any insurance policy covered by the mortgage. This applies whether the right exists when the mortgage is given, or comes into existence after then. We are not bound to enforce a right under an insurance policy or comply with your obligations in respect of it. We need only account for money we actually receive.

**5.4 Rights to income.** You assign and give us a security interest in the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, the rights set out below. This applies whether the right exists when the mortgage is given, or comes into existence after then. The landlord's rights under every lease. The landlord's rights to rent and other money payable under every lease and every other right to income from the real estate. And the landlord's rights in respect of every lease, including a guarantee or indemnity, a security and a right to insurance.

Lease includes a lease specifically covered by the mortgage. We are not bound to collect the income from the property, to enforce a lease or to comply with the landlord's obligations under a lease. We need only account for income we actually receive. This section and anything we do under it do not put us in possession of real estate. Nor do they authorize you to enter into a lease. Nor do they give the interest of a tenant priority over the mortgage or create a relationship of landlord and tenant between a tenant and us.

**5.5 Other rights.** You grant and assign to us, and you give us a security interest in, the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, every right of yours described below. This applies whether your right exists when the mortgage is given, or comes into existence after then. A right under an encumbrance to which your interest in the property is subject. A right to repayment of a property tax. A right to occupy, use or enjoy a benefit over adjacent or other land in connection with land described in the mortgage. This includes a licence, an encroachment agreement or a right to park. A right to require anyone to make good a defect in the property or to pay any loss you may suffer because of a defect. This includes a warranty. A right to require anyone to provide a service for maintaining or operating the property. A right to a supply of services or materials for work on the real estate or relating to work on the real estate. This includes an approval, permit or similar right. It also includes a construction contract or consultant's agreement. A right under a trust or other agreement relating to an insurance policy that covers loss of or damage to any part of the real estate. A right under an agreement to sell or dispose of an interest in the property or part of it. And any other right covered by the mortgage. You also assign to us the full benefit of all of your rights in connection with these rights, including a guarantee, indemnity, letter of credit or bond, a security and a right to insurance. You irrevocably appoint us as your attorney to exercise at any time the rights. We are not bound to enforce a right or comply with your obligations in respect of it. We need only account for money we actually receive. This section does not authorize you to enter into an agreement that binds us or our interest in the property. Where your giving the security under this section would be a breach of the agreement, it is effective when it can be made without a breach. You must if we ask in writing use your best efforts to make the security effective.

**5.6 Movable property and other security.** Except where your interest in property is as a tenant under a lease, you give us a security interest over the following. Your interest in all property that is needed for or relates exclusively to the real estate. Where work is being done on the real estate, your interest in materials and equipment for the work. Any property covered by the mortgage. You grant, mortgage, charge, assign, bargain, sell, and release all your claims on, your interest in that interest or property, to us and our heirs and successors. This applies whether the property or your interest exists when the mortgage is given, or comes into existence after then. The word "property" in this section has its ordinary meaning, and includes rights under agreements, intellectual property, goodwill and a claim for damages.

**5.7 When security attaches and waiver of copy.** The time for attachment of a security interest under the mortgage has not been postponed. For property in which you have an interest when the mortgage is given, the security interest attaches then. For property in which you have an interest after then, the security interest attaches when you acquire the interest. You waive any right to receive a copy of a financing statement or financing change statement for the mortgage.

**5.8 Encumbrances, Liens and Other Interests.** The real estate is subject to the encumbrances, liens and other interests, if any, listed in the mortgage or shown in the Certificate of Title and encumbrances, liens and other interests for which both of the following conditions are met: (a) it is shown by a document of which you have given a true copy to us or our lawyer or title insurer before the mortgage was given; and (b) we have specifically accepted that the mortgage will be subject to it. You will not be liable for a breach of your obligations under the terms of the mortgage merely because such encumbrances, liens and other interests exist.

**5.9 Electronic Registration.** You irrevocably appoint us your attorney to apply to amend a register for the real estate in a land registration office. We must not exercise this right until we can enforce the security. You irrevocably authorize us, and a person we authorize, to agree to, sign and register for you an electronic document needed to register the mortgage or further register it. Where the mortgage is in electronic format, we may also hold a written mortgage. If so, the mortgage in electronic format registers the written mortgage in electronic format, as far as the mortgage in electronic format contains the particulars of the written mortgage. Despite a mortgage being in another format, or any term of the mortgage, or any law, the mortgage in each format continues in force. Where a person named in the mortgage signs the mortgage electronically, each other person signing electronically or otherwise is bound to the mortgage.

**5.10 Existing mortgage.** You agree that no advance has been made, or obligation created, after it was agreed that the mortgage would be given, that is secured by an encumbrance that is either prior to the mortgage or has the same priority as the mortgage. You agree that no such advance will be made or obligation created. For example, you have not borrowed again, or drawn on a line of credit, under a prior mortgage, and will not do so.

**5.11 Subsequent encumbrances.** You agree not to enter into, cause or permit an encumbrance (as defined under **Meaning of terms used** at the end of these terms) affecting in any way the property, including charging or encumbering the property, without our prior written consent. As a condition of our consent, we will require the holder of the encumbrance to provide us with and register against the property at your expense a postponement and subordination agreement in accordance with our own standard form. In the event of a breach of this provision you and the holder of the encumbrance agree that any advances under the encumbrance will not have priority over the mortgage or advances under the mortgage which are made before or after the breach of this provision.

**5.12 Our priority.** Our security under the mortgage has priority for the payment obligations over every interest in the property created after the mortgage in favour of any other person, including a spouse. It has priority even if we make an advance after the other person's interest was created. It has priority even if an agreement creating or changing payment obligations is entered after the mortgage was given, and even if the agreement is not registered. If there are any executions, encumbrances or other claims or interests registered, filed or obtained against the property in addition to the mortgage, we may require them to be discharged, withdrawn or formally postponed. You must pay us our costs for the preparation, execution and registration of such discharges, withdrawals or postponements, including before we offer to renew or amend the mortgage or the Operating Agreement. This is required in order to preserve the priority of the mortgage. Where the law limits our priority after we have notice of an interest in the property in favour of another person, a notice is not valid unless it is in writing, is handed personally to a senior officer of ours, clearly refers to the mortgage, and clearly states its purpose. Every person acquiring an interest in the property must be taken to agree to the terms of this section. This section does not limit any other term of the mortgage or right of ours under it.

**5.13 Future interests of yours.** You agree that, if after the mortgage is given you acquire another interest in the property, the interest will be security for the payment obligations. This also applies if your interest increases, for example, through a joint owner's right of survivorship. Our security under this section has priority over any interest in the property in favour of anyone else created after you acquire your interest. This section does not limit any other term of the mortgage or right of ours under it.

**5.14 Other parties or interests.** Every person who is a party to the mortgage, other than you and us, and including a spouse or guarantor, agrees with us as follows. Where the person has an interest in the property or its proceeds, and the interest is not being mortgaged under other terms of the mortgage, the person gives us security over the interest in the same way as if the person was you, or agrees to do so.

This applies whether the interest exists when the mortgage is given, or comes into existence after then. As to the interest, the person grants, mortgages, charges, bargains, sells, releases all claims on, assigns, gives a security interest in, transfers, and subleases, the property to us and our heirs and successors in the ways set out in the mortgage. As to the interest, the person agrees to be subject to all of the terms of the mortgage, and gives us all of the powers under the mortgage, as if the person was you. Where the person has a claim on money that leads to payment obligations, the person releases us from any liability for the claim. The person enters into the mortgage in return for, among other things, one dollar, which the person has received.

**5.15 Rights included and proceeds.** Where you give us security over property, our security covers every claim of yours on the property, interest of yours in it, or right of yours over it. For example, if you are a co-owner, partner or trustee, it includes your rights as co-owner, partner or trustee. Our security covers the proceeds of an interest of yours in all or part of the property intended to be subject to security under the mortgage.

**5.16 Your enjoyment of the property.** Until we can enforce the security, you may remain in possession of your interest in the real estate and continue to use movable property that is subject to the mortgage. Until we can enforce the security, we authorize you to collect the rent currently due under a lease. This authorization does not detract from the legal effect of an assignment in the mortgage. You may not do anything beyond these things, and we are not bound by anything beyond them that you do.

#### **5.17 Your title obligations.**

**5.17.1 Nature of your interest.** Where you give us security over property, you will be taken to give security over the absolute ownership of or absolute right to the property. Where this section refers to your interest in property, it refers to that ownership or right. For real estate, this is an estate in fee simple. For all property it is the absolute ownership or absolute right, both legally and beneficially. However, where the mortgage specifically says that you have another interest, this section refers to the interest described in the mortgage.

#### **5.17.2 Your obligations.**

**5.17.2.1** You promise that you have a good title to your interest in the property, free from encumbrances or defects. Where the mortgage refers to your interest in the property as being less than the absolute ownership, you give us the following promises as to your interest and every interest on which your interest depends. The interest conforms to every description in the mortgage and has not been changed. The person that created the interest had a good title to the interest required to create a valid interest, free from encumbrances. The interest is valid and in force. The interest has not been terminated or surrendered, and is not voidable. And there is no outstanding default in complying with obligations relating to the interest. Where the property is a right, such as a right to income or an insurance policy, you promise that the right is valid.

**5.17.2.2** You promise that you have the right, power and authority (including any required approval or consent) to mortgage, charge, bargain, grant security interest in and sell, assign or deal with your interest in the property in the manner set out in the mortgage, free from encumbrances. Where the mortgage refers to your interest in the property as being less than the absolute ownership, you promise that the person that created every interest on which your interest depends had the right, power and authority (including any required approval or consent) to create the interest, free from encumbrances.

**5.17.2.3** You promise that you have not done, omitted or permitted anything by which your interest in the property is or may be affected or made subject to an encumbrance. You agree that, while we are entitled under the terms of the mortgage to

possess or enjoy your interest in the property, we will have quiet possession or enjoyment of your interest in the property free from encumbrances. You must at our request do anything that we think is necessary or advisable to confirm any of our rights under the mortgage and pay our costs for that, and you irrevocably appoint us your attorney to do the thing for you. You must defend your title to the property. You must not create or attempt to create an encumbrance that is prior to the mortgage or has the same priority as the mortgage. You must give us a copy of all of the documents relating to the property that are in your possession or control affecting the title (except those available in the land registration office), including surveys.

**5.17.2.4** You promise that the real estate conforms to every description or plan given to us, and that it includes all buildings and improvements in every description.

If your interest in the property is subject to an encumbrance, you promise that the encumbrance conforms to every description given to us.

**5.18 Discharge.** When the payment obligations have been paid on the dates they were due and in accordance with their terms, and you ask us in writing to do so, we must give a discharge of the mortgage and a reassignment to you any rights that you have assigned to us in the mortgage. Or, if you are entitled to and do require us to assign the mortgage and rights to someone else, we must do so. You must give us a reasonable time after payment to verify our records and complete the discharge or assignment. You must pay our costs for doing what this section requires. You are responsible for registering the discharge or assignment.

## **6. Condominium and leasehold property.**

### **6.1 Condominium.**

**6.1.1 Meaning of terms used.** In this part, **condominium law** is a condominium, strata or similar law. A **unit** is land that is a unit governed by a condominium law, or that is a part that you have a right to occupy, or from which you have the right to income, of real estate held by or for more than one person or by a corporation. A **complex** is the land governed by the condominium law of which real estate is a part, or of which a unit is a part. **Documents** are documents by which the complex or part of it is governed, for example, a declaration, bylaw, resolution, regulation, rule or agreement. The **entity** is a person, partnership, trust, association, syndicate or other body holding or managing the complex. **Common expenses** are the expenses, contributions to reserves or other payments that the condominium law or the documents require you to pay. Where the condominium law or the documents impose an obligation on or give a right to an owner of your interest in the real estate but do not treat you as the owner of the interest, or impose obligations of an owner on us, you will for the purpose of the mortgage be treated as the owner under the condominium law or documents. Where under the terms in this section a thing is to be substantial, it is so where it is in fact so or the condominium law treats it as so.

**6.1.2 Where this section applies.** This section applies where real estate is governed by a condominium law when the mortgage is given or becomes so governed after then, or is or becomes a unit. All of the other terms of the mortgage apply, except where stated below. We do not consent to real estate becoming governed by a condominium law.

#### **6.1.3 Our security.**

**6.1.3.1** Our security on land or an interest in land includes an interest that, under the condominium law or documents, goes along with the land or interest or is to go along with it. Where your interest in property is as a tenant under a lease, the terms that apply to our security are those in this part 6 under the heading **Leasehold property**.

6.1.3.2 Except where your interest in property is as a tenant under a lease, you transfer to us the benefit of, and irrevocably appoint us your attorney to exercise, all your rights relating to the complex. In particular, we may exercise your right to vote or consent, or to require or call a meeting. The rights include a right to proceeds of a sale, expropriation or insurance; a right to fair market value after a sale; and a right to assets of the entity. If we give you instructions about how we require you to exercise a right of yours, you must follow the instructions. When we exercise a right of yours, or give instructions, under this part 6, that does not mean that we have taken possession of property. We have no obligation to exercise any of your rights.

6.1.4 **Voting.** If we arrange for you to vote, we may at any time cancel the arrangement. You must give us written notice if you are asked to exercise the rights listed below and you must not exercise those rights without first obtaining our written consent. The rights are to give a consent (as distinct from voting); to vote on anything that requires more than a simple majority of those present at a meeting; to have any interest of yours purchased, dealt with or changed; or to receive assets or a payment from the entity. You must not without our prior written consent vote for any action that might reduce the value of your unit or interest or our security. Where we are not in a position to exercise your right to vote, you may do so, provided you comply with these terms.

6.1.5 **Insurance.** The entity may be responsible for insurance that the mortgage requires. Despite this, you must comply with all of your obligations under other terms of the mortgage as to insurance as far as the entity does not in fact comply with the obligations. However, the amount of your insurance for a building need only be your share of the cost of replacing it. We will regard the entity as having complied even though its insurance limits our rights as the holder of a mortgage, provided that the law or the documents impose the limit despite anything you and we have agreed to. We have the rights as to insurance given to us by other terms of the mortgage. For example, if we have a valid requirement to which the entity's insurance does not conform, you must insure in conformity with our requirement. Where the entity's insurance does not cover an improvement, your own insurance must cover it. We may require you to insure against risk caused by a failure of the entity to insure.

6.1.6 **Common expenses.** Your obligation under the terms of the mortgage to pay taxes and other charges extends to common expenses. Whenever we ask in writing, you must allow us to pay the common expenses. The terms of the mortgage as to our paying property taxes apply to common expenses with the necessary changes. When we pay a common expense, we can rely on any statement that appears to be issued by the entity showing the amount of the common expense and the date it is due.

6.1.7 **Maintenance.** The entity may be responsible for repairs or replacements that the mortgage requires. Despite this, you must comply with your obligations under other terms of the mortgage as to repair or replacement as far as you have the right to do so. Where the entity is not responsible for repairing or replacing an improvement, you must keep it in good repair or replace it if it cannot be repaired.

6.1.8 **Other obligations.** You must comply with all of your obligations under the condominium law and the documents. Your obligations under the condominium law include obligations that the condominium law causes you to enter. You must give us any proof of compliance that we reasonably ask in writing for. You must not do anything that materially increases your obligations under the condominium law and the documents.

6.1.9 **Notice and information.** You must give the entity and others notice of the mortgage in a way that protects our right to vote, our rights in insurance

and our other rights. You must forward to us a copy of notices, assessments, bylaws, rules, financial statements and other documents that you receive from the entity. You must if we ask in writing give us any information or document that you are entitled to obtain from the entity. You authorize us to obtain any information or document from the entity.

6.1.10 **Our costs.** You must pay us our costs relating to the following. A bylaw, resolution, rule or other matter (other than a resolution for which only a majority present at a meeting is required). The enforcement of a right to have the entity or another owner comply with the condominium law or the documents. And our exercising rights to vote or consent.

6.1.11 **Immediate payment if certain events occur.** We may require immediate payment of payment obligations, if any of the following events occurs. The entity fails to comply with a material obligation under the condominium law or the documents. A court makes a judgment or order against the entity. The entity in our opinion seriously fails to manage the complex in a prudent manner. A court appoints an inspector, administrator or similar officer under the condominium law. The entity becomes insolvent (and that term has the meaning given in part 8 under the heading **When we can enforce the security**). An amount is added to the common expenses that is not added to the common expenses of all owners, or a step is taken for that. Substantial work is started on the complex, or there is a substantial increase in the common expenses or a substantial decrease in the services that the entity provides, or a step is taken for any of those things. An obligation of an owner of your interest in the real estate is enforced against us, or a step is taken for that. There is substantial damage to the complex. There is a material change to any of the documents, or a step is taken for that. The complex or part of it ceases to be governed by the condominium law or the documents, or is sold or expropriated, or the entity is amalgamated, or a step is taken for any of those things. Or the entity passes a resolution or makes a decision for which more than a simple majority present at a meeting is required. We may require immediate payment even if we voted for or consented to any of the above.

6.1.12 **Your transfers.** Before you transfer your interest in the real estate, you must have the transferee agree with us to comply with the terms of this part.

6.2 **Leasehold property.** The following terms apply where you give us security over property in which your interest in the property is as a tenant under a lease.

6.2.1 **Meaning of terms used.** We refer in this section to the property leased by you under the lease as the **leased property**. We refer to your interest in the leased property as your **leasehold interest**.

6.2.2 **Lease.** If you lease the property under a lease, you certify to us as follows. You lease the leased property under a valid, existing lease, you have given us a true and complete copy of the lease and you have good leasehold title to the leased property. You have paid all rents and made all other payments required under the lease and you have kept all of your other promises in the lease, up to the date you signed or authorized the mortgage. You have the right to mortgage or charge the lease and, if required under the lease, you have obtained the consent of your landlord to the mortgage. You certify that there are no limitations on your leasehold interest except for any restrictions set out in the lease or restrictions registered in the land registry office.

6.2.3 **How the mortgage applies to a leasehold interest.** You give us the security in the leasehold interest as provided for below. Notwithstanding part 5, you do not absolutely assign to us your leasehold interest because our interest in the property is security only for your undertakings and other obligations herein.



The provisions relating to assignment of rights in part 5 do not apply to your leasehold interest or the lease. All other terms of the mortgage apply to the leased property. However, if the lease gives you both a leasehold interest and some other interest in the leased property, this section applies to the leasehold interest and part 5 applies to the other interest.

**6.2.4 Our security.** You grant us the following security over the leased property. You mortgage or charge the leasehold interest to us as security and not as a complete or absolute assignment of your leasehold interest. Where the effect of any term of the mortgage would be to assign your leasehold interest to us, that term does not apply. To the extent required by law you sublease the leased property to us for the rest of the term of the lease, except the last day of the term. Because you have not assigned the lease to us, your giving us the security does not put us under an obligation to you or your landlord to comply with your obligations under the lease. Although you have not assigned the lease to us, you must hold the last day of the term of the lease in trust for us. You must, when we can enforce the security, dispose of or deal with the last day of the term of the lease, as we require. We may at any time after we become entitled to enforce the security appoint anyone as a new trustee in place of you or any other trustee, and we may use every power given by law to a person who appoints a new trustee to transfer the leasehold interest to the new trustee. To the extent applicable the security in this section is in addition to the security granted to us in part 5.

**6.2.5 Your obligations.** You agree that you will do everything you are required to do under the lease, including paying rents and making other payments required by the lease when due. You will not surrender or transfer your interest in the lease, cause the lease to be terminated or transferred or make any change in the lease, without our prior written consent, which we can refuse for any reason in our sole discretion. You will immediately give us a copy of any notice or demand you receive about the lease. You will, at your expense, do anything that we think necessary to ensure that all of your interest in the leased property and in the lease is covered by the mortgage and that advances are adequately secured by the mortgage. If you have not kept any of your promises or breached any of your obligations or undertakings under the lease, we can treat that as if you had defaulted under the mortgage and we can exercise our rights under the mortgage.

**6.2.6 Landlord's interest.** You agree that, even if you acquire the landlord's interest under the lease, the lease will continue to exist and will not merge and to the extent permitted by law the mortgage will attach to the landlord's interest under the lease that you acquired as if such interest was mortgaged and charged under part 5. If you have a right to acquire the interest of any landlord in the leased property when the mortgage is given or after then, you must give us security over the interest.

**6.2.7 Renewal.** If you have an option to renew or extend the lease, you must exercise the option and do everything needed to obtain the new lease or extension. If you have a right to obtain a new lease of the leased property or to extend the lease when the mortgage is given or after then, you must give us security over the new lease or extension.

**6.2.8 Power of attorney to us.** You irrevocably appoint us as your attorney to do for you everything that this section requires you to do. We may authorize anyone to exercise this power for us.

**6.2.9 Information.** You authorize us to obtain information directly from your landlord on the rents you have paid and whether you have kept your promises or fulfilled your obligations and undertakings as set out in the lease. You authorize us to receive any information or documents the landlord may have which you are entitled to and you will cooperate in ensuring the landlord provides such information and documents to us.

## 7. Your other responsibilities.

### 7.1 Insurance.

**7.1.1 Kinds of insurance required.** You must insure your interest in every building and other improvement on the real estate against loss or damage by fire, extended perils and other risks normally covered by a fire insurance policy. In addition, you must carry that insurance for all of the property that a careful owner would usually carry when insuring a similar property, and using it in a similar way and in a similar locality. You must also carry any insurance that any other agreement between you and us requires you to carry. If we ask in writing, you must carry any kind of insurance relating to the property that we reasonably require you to carry.

**7.1.2 Insurance against damage.** Your insurance against loss of or damage to a building or other property must be for the cost in Canadian dollars of replacing all of the building or property with a similar building or property. The policy must provide that the proceeds of any loss are payable to us and the insurer must, if we ask in writing, consent to the transfer of the benefit of the policy to us. Insurance on a building must contain a mortgage clause in the standard form approved by the Insurance Bureau of Canada. The policy must also contain any other usual term for the protection of the holder of a mortgage and a provision for us to receive at least 30 days' notice before the policy is cancelled or materially altered.

**7.1.3 Company and terms.** All insurance required by the mortgage must be with a reputable insurer. If we ask in writing, insurance must be with an insurer we reasonably require. The policy must be for an amount and contain terms that a careful owner would usually require when insuring similar property, using it in a similar way and in a similar locality. If we ask in writing, the policy must also be for any amount or contain any other terms that we reasonably require. If we at any time ask in writing, you must cancel a policy and replace it with a policy approved by us and issued by an insurer approved by us.

**7.1.4 Compliance.** You must promptly pay the premiums and other costs for all insurance required by the mortgage, comply with all of your obligations in relation to the policy and comply with all of the terms relating to your right to collect under the policy. You must, if we ask in writing, ensure that we receive a certified copy of every policy for the insurance required by the mortgage and every amendment to the policy. Where a policy expires, you must, if we ask in writing, ensure that we receive proof of the renewal or replacement at least 30 days before the expiry. You must also, if we ask in writing, provide us with a receipt for the premium and other proof that you are complying with your obligations as to insurance.

**7.1.5 Claims and proceeds.** If any of the property that is insured is lost or damaged, you must notify us in writing, make a claim in accordance with the insurance policy, and ensure that the proceeds are paid to us. Despite the loss or damage, you remain liable under your obligations to us, and you must pay the payment obligations as agreed. Despite any law, we may require the proceeds of all insurance against loss of or damage to property (including income) to be used either to reduce or pay payment obligations (even though they may not then have become payable), or to restore or replace the property, or partly in one way and partly in the other.

**7.1.6 Our right to insure.** If you do not comply with any of your obligations as to insurance in the mortgage, we may obtain any insurance that the mortgage requires you to obtain or any insurance that we think is needed to protect our interest. We are not obliged to do so and have no responsibility to you for any insurance we obtain. Anything we pay under this subsection is a cost that you must pay.

## 7.2 Taxes and other charges.

**7.2.1 Payment by you.** You must pay all property taxes when they are due. You must pay all other charges on the property when they are due. The charges include amounts under an encumbrance on the property. If we ask in writing you must give us a receipt or other proof that you have paid every property tax and other charge.

**7.2.2 Payment by us.** Whenever we ask in writing, you must allow us to pay the property taxes on the real estate. You must then promptly forward to us all bills for property taxes that you receive. We may decide to pay property taxes once or twice a year in advance, even if they can be paid more frequently. We may pay the property taxes in two ways. Under the first, we may debit an account of yours with each payment. Under the second, we may require you to pay instalments to us to enable us to pay property taxes. We may estimate the amount needed to pay any property taxes and decide when to pay them. We may choose the period over which we wish to collect instalments. We may then require you to pay us the estimated property taxes by instalments at any intervals that we choose. If the period started before we began collecting the instalments, we may require you to pay a lump sum to cover previous instalments. We must use the instalments to pay the property taxes. However, if any of the payment obligations has not been complied with, we may use the instalments to reduce the payment obligations. If we have not collected enough to pay the property taxes, you must pay the shortfall when we ask in writing for it, or we may debit an account of yours with it. We need not credit you with interest on the instalments except in accordance with our general administrative practice at the time for the same kind of mortgage.

**7.3 Maintenance and replacement of property.** You must put and keep the property in good repair. You must restore or replace property that cannot be repaired.

**7.4 Alterations or additions.** You must not, without our prior written approval do any of the following things, even if the work was proposed or in progress when the mortgage was given. Make or permit a structural alteration, structural addition or major change to the real estate. Remove any machinery or equipment that serves a building on the real estate. Demolish a building on the real estate. Or do or permit anyone else to do anything that lowers the value of the real estate. We may make our approval subject to conditions.

**7.5 Work on real estate.** Where you do work on the real estate, you must comply with the following obligations. You must do the work in a good and workmanlike manner, using good materials. You must conform to any contracts, plans, specifications or other description that we may have approved, and you must comply with any conditions to which our approval is subject. You must do the work with reasonable speed and without interruption until it is completed, and you must not abandon it.

**7.6 Liens.** You must comply with all your legal obligations as to payment for any work on the real estate and you must comply with laws relating to encumbrances of those who do the work. If a claim is made for an encumbrance against your interest in the real estate, you must if we ask in writing immediately have it removed, by court order if necessary. If you fail to do so, we may have the encumbrance removed and provide any security needed for the purpose. Anything we pay under this section is a cost that you must pay.

**7.7 Obligations affecting property.** You must comply with every covenant, condition and other obligation that affects your interest in the property. If your interest in the property is subject to an encumbrance, they include those under the encumbrance. If property is leased to you, they include those under the lease. You agree that nothing will be done or omitted under them that might impair your interest in the property. This includes anything that could accelerate an amount owing under an encumbrance.

**7.8 Preferred claims.** This section applies to a preferred claim. This is an amount to which any of our rights under the mortgage is or may become subject,

which takes or may take away any of those rights or which impairs or may impair those rights. It includes an amount that does or may do so in any of the following ways, for example. It causes a lien, implied lien, charge, trust, deemed trust or other claim on the property, or on the income or any other benefit from the property. It prevents us from receiving, or a receiver, manager from giving us, the full benefit of our security. It runs with the property or imposes an obligation on anyone who acquires an interest in the property from us. Or it may allow a person supplying an important service for the property to cut off the service. You must pay every preferred claim when it is due. If the claim became due before the mortgage was given and is unpaid, you must pay it immediately. Where anything that you do may create a preferred claim in the future, you must set and keep money aside to pay the claim.

**7.9 Legal requirements and environmental.** You must ensure that the property and its use comply with every law. You must not put or allow anyone else to put a hazardous substance in or on any part of the real estate (including water) that causes or is likely to cause harm to the life or health of a human being. You must not, without our prior written approval, use the real estate or allow it to be used, in a way that creates or increases a risk of a breach of this section, even if the use was proposed or in progress when the mortgage was given. We may make our approval subject to conditions, including security for clean-up costs, and you must comply with those conditions. You must give us prompt written notice of any material fact of which you become aware and which relates to the status of the real estate under any law or to any hazardous substance on or in the real estate, and a copy of any report that you prepare or receive on that. You agree to pay to the persons described below all loss that they suffer and that is caused by any of the causes listed below, and the persons are not liable to you for any loss so caused. The loss includes loss from a liability or from a cost relating to the liability. The causes are a breach of any law relating to the real estate or its use, or a hazardous substance in or on the real estate (including water), even if the breach occurred, or the hazardous substance was in or on the real estate, when the mortgage was given. The persons are as follows. Us, a person for whom we hold the payment obligations, a person for whose benefit we or the person hold any of the payment obligations, and a receiver or receiver and manager appointed under the mortgage. A shareholder, director, officer, employee and agent of us, the person or the receiver or receiver and manager. And an heir, legal representative, successor or assignee of anyone listed in the previous two sentences. This section does not limit a right of us or a person who benefits under this section under any other term of the mortgage.

**7.10 Entering into leases.** Before entering into a lease of the real estate, you must obtain our written approval to the lease. Our approving a lease does not mean that our interest is bound by it.

**7.11 Proceedings affecting the property.** You must immediately notify us in writing if you or anyone else takes or threatens any action under any law or encumbrance relating to the property. This includes anyone taking a step to enforce a claim for work on the real estate, a court action, a proceeding before an administrative body (such as a zoning hearing or environmental assessment), an official action (such as an expropriation or order to comply with a bylaw), or a notice of default under an encumbrance.

**7.12 Our rights to inspect and get reports, including environmental.** We may at any time, before or after we can enforce the security, inspect the real estate, make appraisals of it, make tests of it, take samples from it, conduct environmental testing of it, or monitor any activity on it. We may have another person do these things for us. Where a person has done any of the things for you, you consent to the person doing them for us or giving us any information. You must permit us and anyone we authorize to enter the real estate at reasonable times, before or after default and for any purpose we think is necessary. You must pay us our reasonable costs for exercising our powers under this section when we ask in writing for them. Exercising the powers in this section does not put us or our agent in possession, management or control of the real estate. Nor does it give you any rights against us or a person we have to do the things for us. This section does not limit any other right of ours under the mortgage.

7.13 **Your giving us proof.** Where the mortgage requires you to make a payment to anyone other than us, or comply with another obligation, you must if we ask give us proof that you have made the payment or complied. You must do so within a reasonable time, and in any event within 30 days.

7.14 **Your giving us information.** You must give us and anyone we authorize any financial, tax or other information that you have or can reasonably obtain and that we ask for in writing, about the following. About you, everyone who is responsible for payment obligations, every guarantor and, where property is held by a trustee, every beneficial owner. About the property. Or about how you are complying with your obligations. You authorize anyone else to give us that information. You must permit us and anyone we authorize to inspect the information at reasonable times and make a copy of it.

7.15 **No change in use of real estate.** You must not, without our prior written approval, make a major change in the use of the real estate. You must not abandon the real estate or leave a building on it vacant.

7.16 **Other agreements.** You must comply with your obligations to us under any other agreement that relates to payment obligations.

## 8. Enforcing security.

8.1 **When we can enforce the security.** We can enforce the security after any of the events listed below has occurred. We can do so even if the cause of the event is outside anyone's control. We can do so without presentment, protest, demand or notice, all of which you waive. If you are more than one person, an event for each person is an event of default for both or all of you. The events are:

8.1.1 A payment, or part of a payment, under any of the payment obligations is not made when it is due. This applies whether the amount is due on demand or a fixed date and by acceleration or otherwise.

8.1.2 Any other obligation to us under the mortgage is not complied with. Or where you are to do or not to do something, on or to the property, or as to its use, another person does the thing.

8.1.3 Anything happens that impairs any of our security or any interest of yours in the property.

8.1.4 Any of the promises made, or information given, to us under or in connection with the mortgage is materially incorrect or incomplete. A promise or information may have been limited to what the person who made or gave it knew. However, we can enforce the security if we find that the matters in the promise or information are materially incorrect, even though the person making the promise or giving the information did not know that it was incorrect, or had done what was reasonable to verify it.

8.1.5 Any obligation to us under any other agreement that relates to payment obligations is not complied with, or an event of default occurs under such an agreement.

8.1.6 At any time during the mortgage the property or its use does not comply substantially with every law. Or a part of the real estate (including water) is composed of a hazardous substance which may be detrimental to the environment or human health.

8.1.7 You become insolvent (or, if you are more than one person, any of you does). Or anyone who is responsible for all or part of the payment obligations becomes insolvent, including a guarantor or indemnifier. A person becomes insolvent when any of the following happens. The person becomes a bankrupt or an insolvent, or is found in a legal process to be bankrupt or insolvent. The person makes an assignment for the benefit of creditors. Anyone enforces a judgment, distress or similar process against an asset of the person. A liquidator, receiver, trustee or similar officer is appointed for all or part of the person's assets or income. The person or anyone else starts

a bankruptcy, arrangement or readjustment of debt, dissolution, liquidation or similar proceeding relating to the person under any law, including a proposal. And the person admits in writing the person's inability to pay the person's debts as they become due.

8.1.8 Any other event occurs after which the mortgage says we can enforce the security.

8.2 **We may require obligations to be paid immediately.** When we can enforce the security, we may require immediate payment of all payment obligations (including obligations that have not become payable). The obligation to make the payment is however subject to any provision of a law which applies despite what you and we have agreed to in this section and which gives you a right to avoid the consequences of this requirement.

8.3 **We may take action.** We may take legal action to collect the payment obligations.

8.4 **We may take possession.** When we can enforce the security, we may take possession of the property.

8.5 **We may collect income.** When we can enforce the security, we may collect income from the property.

8.6 **We may sell.** When we can enforce the security, we may sell or dispose of the interest in the property covered by our security, without going to court. We may also ask a court to order a sale of that interest.

8.7 **We may divide property.** When we are in a position to sell the interest in the property covered by our security, we may, if any other person also has an interest in the property, agree with that person to divide the property between persons who have interests in it or to acquire an interest of the person. We may pay or receive money for the purpose and money we pay is a cost that you must pay.

8.8 **We may exercise the powers of an owner.** When we take possession of or collect income from the property we may exercise all the powers of an owner of the interest in the property covered by our security and you are bound by our actions. These powers include the following. We may manage and operate the property and carry on a business relating to the property. We may make or continue a repair, alteration or addition to the property. We may take legal proceedings relating to the property. We may borrow money or advance money for the purpose of exercising our powers. We may enter into contracts for the purpose of exercising our powers.

8.9 **We may appoint a receiver (or receiver and manager).**

8.9.1 **Appointment and removal.** When we can enforce the security, we may in writing appoint anyone to be a receiver or a receiver and manager as to the property, on any terms, including remuneration, that we think are reasonable. References in the mortgage to a receiver include a receiver and manager. We need not obtain security from the receiver and are not limited by any law in our choice of the receiver. We may make the appointment even if we have taken possession of property and, when we do so, we will be treated as having gone out of possession. We may also in writing remove a receiver appointed by us. When we remove a receiver, we may appoint a new receiver. We may also ask a court to appoint a receiver.

8.9.2 **Effect of appointment.** A receiver appointed by us is considered to be your agent and not ours; the receiver's acts and defaults are considered your acts and defaults and not ours; and you alone are responsible for the receiver's acts and defaults. Neither the appointment nor anything done by the receiver puts us in possession of property or makes us accountable for money except money we actually receive. You release every receiver appointed by us from all claims against the receiver as receiver, unless they are caused by the receiver's dishonesty or gross neglect. You agree to pay every receiver all losses suffered by the receiver under liabilities the receiver incurs as receiver, except as far as they are caused by the receiver's dishonesty or gross neglect.

**8.9.3 Receiver's powers.** A receiver appointed by us has the following powers. The receiver may exercise any right or power that we can exercise, except where the appointment restricts the receiver from exercising a right or power. The receiver may use any legal right or remedy of yours or ours, in your name or ours, to collect income from the property. The receiver may borrow money on the security of the interest in the property covered by our security in priority to the mortgage for the purpose of exercising the receiver's powers. We may require the receiver to pay money received to us, or we may direct the receiver to use it as follows. To pay the receiver's remuneration and expenses. To pay rents, property taxes, insurance premiums, costs of repair and other expenses relating to the property. To pay money owing under an encumbrance having priority over the mortgage. To pay or reduce any of the payment obligations. To pay any of the money that remains to the person who, if the receiver had not been appointed, would have been entitled to it.

**8.10 We may lease.** When we can enforce the security, we may do the following things. We may grant a lease. We may terminate a lease, accept a surrender of a lease or agree to amend a lease.

**8.11 We may become the owner.** When we can enforce the security, we may take proceedings to foreclose your right to redeem the real estate, and ourselves become the owner of the interest in the property covered by our security.

**8.12 We may ourselves carry out an obligation of yours.** When we can enforce the security, we may carry out any obligation with which you have failed to comply. We or anyone we authorize may enter the real estate for the purpose. We may pay an amount under an encumbrance on the property, if we decide it has priority over the mortgage, or a property tax. We may prepay the encumbrance and compensate its holder. We may settle with the holder the amount to be paid and any compensation. Nothing we do under this section puts us in possession of the interest in the property covered by our security. Anything we pay under this section is a cost that you must pay.

**8.13 We may distraint.** When we can enforce the security, we may distraint for arrears of payment obligations, as if they were rent and the real estate was leased to you. The arrears include, not only interest, but also principal, taxes and costs. The right to distraint is a right to take and dispose of goods. Our power is subject to any law that applies despite what you and we have agreed to, for example, where the real estate is a home. You waive any exemption from our right to distraint and any limit on it. Distraint does not put us in possession of the real estate and we need account only for money we actually receive. The right can be exercised by anyone who, after the mortgage is given, becomes the holder of the mortgage.

**8.14 We may consolidate another mortgage.** Where a principle of equity would give us a right to refuse a discharge of the mortgage, until another mortgage is paid (that is, to consolidate mortgages), you agree that we have the right despite any statute.

**8.15 We may recover costs.** You must pay us all our expenses and costs in collecting under the payment obligations and exercising our rights under the mortgage, even if we do not completely do so.

**8.16 Your privileges end.** While we can enforce the security, you do not have the benefit any right not to comply with a term of the mortgage, or the benefit any other privilege of yours, under the terms of the mortgage.

**8.17 How we may exercise our powers.** When we exercise any of our powers under the mortgage, the following terms apply.

**8.17.1** We may exercise the power as to all or part of the property or as to any interest in all or part of the property. We may exercise the power without obtaining any consent or cooperation from you. We may exercise the power in your name or ours. We may exercise the power even if we have not taken possession of the property. We may exercise the power to enter into

a sale, lease or other transaction in any way and on any terms that we think are reasonable. For example, we may do so by private contract as well as by public auction or tender, and we may sell on credit as well as for cash. If we sell on credit, we need not account for the proceeds until we receive them.

**8.17.2** We may do everything that we think proper relating to a sale, lease or other transaction. For example, we may enter into an agreement to enter into the transaction, bring an agreement to an end, enter into a new agreement or amend an agreement. At an auction we may set a reserve price or buy in to prevent a sale that we think is inappropriate. We may give all documents that we think are necessary for the above purposes.

**8.17.3** We may transfer or deal in any other way with every interest in the property that you had the power to dispose of or deal with. You must at our request do everything that we think is necessary or advisable to transfer your interest in the property or deal in any other way with it and you must pay our costs for that. You irrevocably appoint us as your attorney to do at any time anything we decide is needed or desirable to exercise a right under the mortgage. Wherever you appoint us as your attorney, you also appoint anyone we authorize or substitute, as your attorney for the same purpose.

**8.17.4** Where your interest in property is a right, or is affected by an obligation, we may decide or settle a question as to the right or obligation.

**8.17.5** Where a receiver exercises a right or power, this section applies as if all references to us were to the receiver.

## **8.18 Other terms relating to our rights.**

**8.18.1 Legal powers.** Where a power that the mortgage gives to us goes beyond what is permitted by a law that applies despite what you and we have agreed to, we have the power as far as that law permits.

**8.18.2 Legal requirements apply.** Our rights in the mortgage are subject to our giving any notice or taking any other step that is required by a law that applies despite what you and we have agreed to. Subject to this and to the other terms of the mortgage, we can enforce our security without giving any notice or taking any other step.

**8.18.3 Other rights.** The rights set out in the mortgage are not exhaustive; we may exercise any other right given to us by the mortgage, any other agreement, or the law. We may exercise more than one of the rights given to us by the mortgage, any other agreement, or the law, at the same time, at different times and in any order we choose.

**8.18.4 Use of proceeds.** We may use money that we receive from enforcing the security to reduce or pay any of the payment obligations in whatever way we decide.

**8.18.5 Shortfall.** If money we receive from enforcing the security falls short of the total payment obligations owing, we retain the right to recover the shortfall.

**8.19 Things left on the real estate.** If, when we enforce the security over real estate, there is anything on it over which we do not have security, you must pay a reasonable charge for storing the thing. You must also pay any costs we incur for it. We may remove it from the real estate. We may sell it. We are not liable for loss of it or damage to it, however caused, even if intentionally or by gross negligence.

## **8.20 Protection of persons who deal with us or a receiver.**

**8.20.1** When we sell, grant a lease, collect income or enter into any other kind of transaction authorized by the mortgage with another person, that person and any person deriving title under that person need only be satisfied that a discharge of the mortgage has not been registered and that the transaction is of a kind that we have the power to enter.

When a receiver appointed by us enters into any kind of transaction with another person, that person and any person deriving title under that person need only be satisfied that a discharge of the mortgage has not been registered, that we have entered a document purporting to appoint the receiver, that the transaction is of a kind that we have the power to enter and that the transaction is not of a kind that the document entered by us restricts the receiver from entering. A statutory declaration by us or an officer of ours as to any fact set out in this subsection is conclusive evidence in favour of every person referred to above. Every such person may assume without inquiry that we can enforce the security, that we are using our powers properly and that the receiver is using the receiver's powers properly. The person is not affected by the fact that a transaction is improper, even if the person actually knows of the fact. In particular, the person may do the following things. The person may assume that there are outstanding payment obligations under the mortgage. The person may assume that an event has occurred which puts us in a position where we can enforce the security, that we have given any required notice and that any required time has passed. Where we or the receiver can enforce the security on terms that we or the receiver think are reasonable, the person may assume that the terms on which we or the receiver enforce the security are reasonable. The person may pay money to us or the receiver without being concerned about what we or the receiver do with it.

8.20.2 Any transaction that conforms to the previous subsection binds you. You must not make any claim against the person who deals with us or the receiver or that person's successors on the ground that the transaction does not conform to other terms of the mortgage. If you do have a claim for anything done by us, it is restricted to a claim for compensation against us, and is subject to all terms limiting our liability.

8.21 **Our protection.** We are not responsible for any loss arising in the course of our enforcing the security or exercising a right under any other term of the mortgage, even if it was caused by negligence, unless it results from our dishonesty or our gross neglect.

## 9. Other terms.

9.1 **Additional terms as to our obligation to lend (including terms as to liens).** Our taking the mortgage, or our advancing money under it, does not put us under an obligation to lend money or to extend credit. Nor does it add to any such obligation that we may have. Despite any agreement, we need not lend money or extend credit while we can enforce the security. Or while we could have enforced the security if we had not been required to give notice or allow time to pass. Despite any agreement, we may reduce an amount we must lend, or for which we must extend credit, by what we think is needed to remove a prior encumbrance. We may do this only where our security is to have priority over the encumbrance and we think it may not, for example, where you are constructing a building and we think a lien may have priority.

9.2 **Effect of law or other transactions.** The mortgage adds to our rights. Nothing in the mortgage takes away or reduces our rights under any law or other transaction. Nothing in any other transaction between you and us takes away or reduces our rights under the mortgage. If there is a conflict between the mortgage and a law or another transaction, it must be resolved to give us the rights under both or, where there is a conflict, the better rights. Subject to the above, the terms of an agreement for the mortgage continue in force (and do not merge into the mortgage).

9.3 **Effect of your selling or dealing with the property.** If you sell or deal in any other way with your interest in the property or part of it, you continue to be liable for your obligations under the mortgage, and our rights against you or anyone else are not affected. Nothing that we do in connection with a sale or dealing (including our having a buyer agree to assume a liability or give us a guarantee or indemnity) impairs those rights.

9.4 **Your obligation to notify us after a transfer.** After a transfer of the interest in the real estate or any part of it of an owner or beneficial owner, you must promptly notify us in writing of the transfer. The notice must include the date of the transfer, the price or consideration, the full name and address of every transferee and where the transferee is a trustee, the same information for a beneficial owner.

9.5 **Effect of subdivision of the real estate.** If any of the real estate is divided into a lot, condominium unit or other part, every part of the property secures the total payment obligations. This section applies whether the division exists when the mortgage is given, or takes place after then. The obligations must not be apportioned to parts of the real estate. You cannot require us to discharge a part of the real estate for part of the payment obligations. You waive any right given to you by law that is inconsistent with this section.

9.6 **Effect of our giving releases or discharges.** If we release anyone from an obligation or if we release any security, our rights against anyone else or under any other security are not affected. This applies when we agree to extend the time for payment of any of the payment obligations or to change their terms in any other way. It also applies when we discharge part of the property from the mortgage; if we do, the property not discharged secures the total payment obligations that remain owing. This section applies whatever are the terms on which we give the release or discharge and even if we receive nothing in return. We are not liable to you for money that we both actually receive and accept to reduce the payment obligations.

9.7 **Effect of our delaying enforcing the security or waiving rights.** If we delay enforcing a right under the mortgage or any other agreement, or do not exercise the right, or do not exercise a right against anyone, we do not lose or impair the right or any other right. If we waive a breach of any obligation under the mortgage or any other agreement, we do not lose a right of ours in respect of any other breach of the obligation. If we waive a right, we do not lose or impair any other right of ours. We are not bound by an agreement that contains a waiver unless it is in writing and is signed by us.

9.8 **Effect of our dealings with future owners.** After the mortgage is given, a person may become an owner of the property and we may enter into an agreement with that person extending the time for payment of the payment obligations or changing the payment obligations in some other way. If so, we do not lose or impair our rights against anyone who had agreed to pay or had guaranteed the payment obligations or given an indemnity. The same applies if we deal in any other way with a new owner or deal in any way with any other person who has an interest in the property or part of it.

9.9 **Effect of our obtaining a judgment.** If we obtain a court judgment for a failure to pay any of the payment obligations or to perform any other obligation, the judgment does not supersede the obligation, or impair the obligation or our right to enforce our security. We continue to be entitled to interest under the payment obligations, calculated and payable as agreed, and the judgment may so provide.

9.10 **Effect of our paying security.** If we pay an amount under an encumbrance on the property, we not only have the rights given to us by the mortgage, but we are also entitled to the rights of the person paid. If a person paid gives a discharge, we may hold it, without registering it, for longer than any period during which any law might otherwise require us to register it.

9.11 **Your liability.** Where more than one of you are liable for an obligation under the mortgage, both or all of you are jointly and severally liable for the obligation.

9.12 **Spousal consent.** If a person who is a party to the mortgage is a spouse, the person consents to the mortgage where it affects the interest of the person's spouse and postpones every claim and interest of the person in and to the property in favour of us. You and your spouse agree as follows:

9.12.1 You and your spouse, by signing the mortgage, consent to the mortgage and release all interest in your property to the extent necessary to give effect to our rights under the mortgage. You and your spouse also agree that we may, without further notice, deal with your property and the debt created by the mortgage as we choose.

9.12.2 You and your spouse will promptly advise us of any change in your marital status or your right to occupy the property. While any existing or future law gives your spouse any right if we enforce the security, you must keep us informed in writing of the full name and address of your spouse. Spouse includes anyone whom the law treats like a spouse for the purpose of the security.

9.13 **Effect of expropriation.** This section applies where all or part of your interest in all or part of the real estate is expropriated, that is, taken without your consent by a government or anyone else in the exercise of a statutory power. It also applies where there is "injurious affection" to all or part of your interest in all or part of the real estate, that is where its value is reduced by an expropriation or other action under a statutory power. Despite an expropriation or injurious affection, you remain liable under your obligations to us, and you must pay the payment obligations as agreed. Our security under the section headed **Other rights**, in the part headed **Our security**, also covers the benefit of your rights to compensation for the expropriation or injurious affection. We may require all or part of the compensation to be used to reduce or pay payment obligations (even though they may not then have become payable). The events after which we can enforce the security under the section headed **When we can enforce the security** include the expropriation or injurious affection.

9.14 **How the mortgage is affected if a term is invalid or unenforceable.** If a term of the mortgage is or becomes invalid or unenforceable, that does not make the mortgage or other terms invalid or unenforceable. If our security is invalid or unenforceable as to part of the property or an interest in property, it remains valid or enforceable as to the remaining part or interest. If the mortgage is or becomes invalid or unenforceable as to any payment obligations, that does not make the mortgage invalid or unenforceable as to other payment obligations.

9.15 **Changes to the mortgage must be in writing.** We are not bound by any change to the terms of the mortgage that detracts from our rights unless it is in writing and signed by us.

9.16 **Your responsibility.** A right of ours under the mortgage does not relieve you from a duty as to the property or put a duty on us. Nor does our exercising the right. In particular, the right or exercise does not mean that we take over a duty based on possession, management or control. This section does not limit our rights.

9.17 **We assume no additional responsibility.** Nothing we do relating to the mortgage puts us under a duty of care towards you. You should not rely, for example, on an appraisal we make as showing the value of property, on our requiring insurance as showing that it is appropriate, on an inspection as showing that property is without defect, or on our approving a lease as showing that it is advisable.

#### 9.18 **Notices or other communications.**

9.18.1 **How we may give notices.** Where the mortgage requires or allows us to give a notice in writing to any person (including you) or to communicate in any other way in writing with any person (including you), we may give the notice or communication in any of the following ways. We may deliver it personally to the person. If the person is a corporation or partnership, we may deliver it personally to anyone we reasonably believe to be a director, officer, general partner or responsible employee or agent of the corporation or partnership. We may leave it at the person's address last known to us with a grown-up person there or in a place where it should reasonably be seen by anyone at that address. We may mail it by prepaid mail addressed to the person at the person's mailing address last

known to us, and we may choose whether to send it by ordinary, certified or registered mail. Every party to the mortgage consents to our providing it in an electronic form (including fax) to any person or, if the person is a corporation or partnership, to a director or other person described above. We may advertise it in a newspaper published or generally read in the area where any part of the real estate is situated.

9.18.2 **Time of receipt.** A notice or communication delivered, left or advertised in any of the ways set out above is regarded as given to the person when it is so delivered, left or published. A notice or communication mailed as set out above is regarded as given on the fourth business day after it was mailed, whether the person actually receives it or not. If there is a mail strike on the day that it is mailed or before it would be regarded as given, the mailed notice is not given until it is delivered. A notice or communication sent by fax on a business day and before 3 p.m. in the place to which it is sent is regarded as given on that day; otherwise it is regarded as given on the next business day after it was sent. A notice or communication provided in another electronic form is given, if the person (including a director or other person) has designated an information system for the purpose of receiving information, or has used an information system for the purpose of sending us information, when it enters the system last so used and becomes capable of being retrieved and processed by the person.

9.18.3 **Addressee.** A notice or communication is valid even though it is not addressed to anyone by name or description. It is also valid even though the person affected by it is not known, has not been identified or is under a disability.

9.18.4 **Who is entitled to a notice of communication.** Where the mortgage requires or allows us to give a notice to you or communicate with you in any other way, the notice or communication is valid if we give or make it to a person last known to us to be an owner of your interest in the real estate, as defined under **Meaning of terms used**. This is so even though the expression "you" may include others or the notice of communication relates to property other than real estate. Where there are more than one owner, the notice or communication is valid if we give or make it to either or any of them.

9.18.5 **Law.** This section does not take from us the benefit of any provision of the law dealing with a notice or communication. In particular, a notice of sale is validly given if it would be regarded as properly given under any law.

9.19 **Amendment.** We may, from time to time at our discretion, amend the terms of the mortgage as they apply generally to people who have similar mortgages with us, by giving you at least thirty days' notice of the amendment.

9.20 **Effect of transfer by us.** We may transfer or otherwise deal with the benefit of all or part of our rights, or any interest in or power relating to all or part of our rights, under the mortgage, or any guarantee or other right relating to the mortgage, free from any set-off, counterclaim or other equity or claim. You must at our expense do everything to facilitate the transfer or dealing that we may ask for in writing. If a transferee of all or part of our rights agrees with us to assume an obligation of ours relating to the rights, we are after the transfer released from liability for the obligation. We may delegate powers or responsibilities of ours, for example, to a person servicing the mortgage. When we do anything under this section, or propose to do so, we may disclose any information we have received.

#### 9.21 **How others are affected by the mortgage.**

9.21.1 Your obligations under the mortgage are binding on, and our obligations under it benefit, a legal or personal representative, successor in interest or assignee of yours, and every other person who after the mortgage is given becomes the holder of an interest or right in the property or a part of it. Wherever the mortgage refers to you, that includes every such person, where the context allows.

9.21.2 The mortgage is binding on and benefits a legal or personal representative, successor in interest or assignee of ours, and every other person who after the mortgage is given becomes the holder of an interest or right in the mortgage or a part of it. Wherever the mortgage refers to us, that includes every such person, where the context allows. The person has the powers that the mortgage gives to us.

9.22 **Our approvals, consents and other actions.** Where under the mortgage we have a right to approve or consent to anything, or to be satisfied about anything, or to make any other decision, we have the sole discretion in exercising the right, except where the mortgage expressly provides otherwise. Where the mortgage expressly provides that we must act reasonably or in another way, we must be taken to have done so, unless you have shown us that we are acting unreasonably or not in that way. Where we act unreasonably or not in that way, we need not compensate you for any loss caused.

9.23 **Conflict between these terms and the mortgage.** If there is a conflict between any of these terms, or between these terms and the rest of the mortgage in which these terms are included, it must be resolved to give us the rights under both, or the better rights.

9.24 **Governing law.** The mortgage is governed by the law of the jurisdiction in which the real estate is located, including federal law in force in that jurisdiction. The courts of that jurisdiction have jurisdiction in matters under the mortgage.

9.25 **Consideration.** You agree that you are giving the mortgage in return for, among other things, one dollar, which you have received. Every other person entering the mortgage agrees that the person is doing so in return for, among other things, one dollar, which the person has received.

9.26 **Counterparts.** The mortgage may be signed in counterparts.

## 10. Meaning of terms used.

10.1 **What certain terms mean.** Terms used in the mortgage have the following meanings:

10.1.1 **“Account”** means the account described in the Operating Agreement and which is subject to the terms and conditions set out in the Operating Agreement.

10.1.2 **“business day”** means any day other than a Saturday, Sunday or public holiday in the jurisdiction in which the real estate is located.

10.1.3 **“cost”** includes every payment obligation that is referred to in the mortgage, or in any agreement containing payment obligations or relating to the mortgage, as a cost, charge or expense including those that, as a result of the mortgage, the law requires you to pay.

10.1.4 **“encumbrance”** includes the following. An exception, reservation or condition. Any agreement intended to create security or raise finance, including a mortgage, charge, conditional sale, lien, pledge, assignment or lease. A lease, right of way or other easement or restrictive covenant. A reversion or trust. A claim under a marriage or family law. A claim by adverse possession or use. Or any other encumbrance (as that word is ordinarily understood). It includes any of these things even if it is inchoate, potential, unregistered or unperfected or affected property before it became part of other property.

10.1.5 **“General Terms”** means the terms that apply generally to all Accounts, as amended by us from time to time at our discretion and without notice to you.

10.1.6 **“hazardous substance”** means any substance or mixture of substances which may be detrimental to the environment or human health including all substances, chemicals or materials, declared to be hazardous or toxic under any law enacted by any

legislative, governmental or regulatory body which has jurisdiction over the property.

10.1.7 **“including”** means including without limitation, and the terms **“include”** and **“includes”** have corresponding meanings.

10.1.8 **“land”** includes real property. It includes buildings and the other things that land includes and that are referred to in part 5.

10.1.9 **“landlord”** means the person whose interest is subject to the right of a tenant to occupy or use all or part of the real estate under a lease.

10.1.10 **“law”** includes law that is either enacted or part of the common law. Enacted law includes law made by the federal, provincial or other government, by a municipality, or by any other governmental body and includes regulations and by-laws. Law also includes a governmental action, such as an order, notice or approval.

10.1.11 **“lease”** means a lease of all or part of the real estate, an agreement to give a lease of all or part of the real estate and an agreement giving anyone a right to occupy or use all or part of the real estate (except a right of way or other easement). If there has been an agreement changing the terms of such a lease or agreement, it means the lease or agreement as so changed. In all cases lease includes a sublease.

10.1.12 **“living companion”** of a person is anyone of the other or same sex who lives with the person where both use a common account for living expenses.

10.1.13 **“Operating Agreement”** means the operating agreement, including any amendment thereto, between you and us which sets out the terms and conditions of your Account. The Operating Agreement includes the General Terms (as defined in this part 10) and is subject to the General Terms. A reference in these terms to the Operating Agreement includes the General Terms.

10.1.14 **“owner”** of an interest in a property that is subject to our security means a person who would ordinarily be regarded as an owner or holder of the interest. Where there is a mortgage on the interest subsequent to ours, it excludes the holder of the mortgage, and means a person whose interest is subject to the mortgage (or last mortgage), or who holds the equity of redemption under that mortgage (or last mortgage). Where the interest is subject to a lease, it excludes the tenant. Where a person holds the interest in trust, it means the trustee, and excludes a beneficiary. When an owner or holder of an interest dies, it means the person who controls or represents the estate, and excludes a beneficiary, while the person does so. Where more than one person is an owner, it includes both or all (or either or any) of them.

10.1.15 **“partner”** of a person is anyone of the other or same sex who cohabits with the person.

10.1.16 **“payment obligations”** are the obligations to pay money which are intended to be secured by the mortgage. Where the amount secured by the mortgage is limited, payment obligations are the obligations without regard to the limit.

10.1.17 **“person”** includes corporation

10.1.18 **“property”** means any property an interest in which is intended to be subject to security under the mortgage. It includes real estate.

10.1.19 **“property tax”** means every kind of tax, rate, duty, levy, charge, imposition, assessment and fee, general or special, on the property or any part of it or in respect of the property or any part of it, whether it is in favour of a federal, provincial or other government, a municipality, a church authority, or any other governmental body, and whether it is of a kind that exists when the mortgage is given or comes into existence after then.

It does not include a tax on us in respect of our overall net income or gains or a tax in respect of a transfer by us of our interest in the mortgage or of the payment obligations.

10.1.20 “**real estate**” means the land which, or an interest in which, is intended to be subject to security under the mortgage.

10.1.21 “**spouse**” of a person is anyone treated under any law as a spouse of that person.

10.1.22 “**tenant**” means anyone given a right to occupy or use all or part of the real estate under a lease.

10.1.23 “**work**” on real estate includes constructing anything that becomes part of the real estate, altering the real estate, adding to the real estate, repairing the real estate and demolishing a part of the real estate.

10.2 **Interpretation generally.** Where under the mortgage you or we promise, you or we must be taken to represent and warrant. Where under the mortgage you or we must do or not do anything, you or we agree and covenant to do or not do the thing. Where under the mortgage we may do anything, you give us the power to do the thing. Your liability under your obligations in the mortgage continues after the payment obligations have been paid or the mortgage has been discharged.