

Form 16

APPLICATION FOR OPTIONAL MORTGAGE COVENANT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.25

Applicant: Assomption Compagnie Mutuelle D'assurance - Vie
Assumption Mutual Life Insurance Company
770 Main Street
P.O. Box 160
Moncton, NB E1C 8L1

Optional Mortgage
Covenant: Attached hereto

The Applicant applies for the assignment of a number to the specified optional mortgage covenant.

Date: July 13, 2023

Applicant:



Stewart McKelvey
Per: Danick Poirier
Solicitor for the Applicant
644 Main Street, Suite 601
PO Box 28051
Moncton, NB E1C 9N4

Number assigned to the specified optional mortgage covenant: AML-4557

Registrar General of Land Titles

The following optional covenants are considered to be included in and form a part of every mortgage in which these optional covenants are referred to by their filing number.

Optional Mortgage Covenants – Commercial Fixed Rate Mortgage

1. Definitions and Interpretation

1.1 In this Mortgage:

- (a) **“Environmental Claim”** means enforcement or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with claims made or threatened by any third party against the Mortgagor or in respect of the Mortgaged Premises relating to the environment, health, safety, any Hazardous Materials or any Environmental Laws.
- (b) **“Environmental Law”** means laws, by-laws, rules, ordinances, regulations, notices, approvals, orders, licenses, permits, standards, guidelines and policies from time to time of any level of government or other authorized agency relating to the environment, health, safety or any Hazardous Materials.
- (c) **“Event of Default”** has the meaning set out in section 11.1.
- (d) **“Form 15 Mortgage”** means the mortgage entered into between the Mortgagee, the Mortgagor and, if applicable, the Guarantor.
- (e) **“Guarantor”** means the guarantor identified in the Form 15 Mortgage and its heirs, executors, administrators, successors and assigns.
- (f) **“Hazardous Materials”** means wastes, materials and substances the storage, manufacture, disposal, treatment, generation, use or transport of which is prohibited, controlled or licensed under any Environmental Law, or the remediation or release of which into the environment is likely, immediately or in the future, to cause harm or degradation to any of the Mortgaged Premises or the environment, including contaminants, pollutants, corrosive substances, toxic substances, special wastes, substances deleterious to fish or wildlife, explosives, radioactive materials, asbestos, urea formaldehyde, and compounds known as chlorobiphenyls.
- (g) **“Mortgage”** means, collectively, the Optional Covenants, the Other Covenants, and the Form 15 Mortgage.
- (h) **“Mortgaged Premises”** has the meaning set out in section 3.1.
- (i) **“Mortgagee”** means Assumption Mutual Life Insurance Company and its successors and assigns.
- (j) **“Mortgagor”** means the mortgagor identified in the Form 15 Mortgage and its heirs, executors, administrators, successors and assigns.
- (k) **“Optional Covenants”** means these optional covenants incorporated by reference in the Form 15 Mortgage.

- (l) **“Other Covenants”** means any other optional covenants incorporated by reference in the Form 15 Mortgage.
- (m) **“Taxes”** has the meaning set out in section 4.1(e).

1.2 In this Mortgage:

- (a) Capitalized words and expressions used in this Optional Covenant but not defined have the meaning given to them in the Form 15 Mortgage or in the Other Covenants, as the case may be.
- (b) Where the context so requires, wording importing the singular include the plural and vice-versa, and wording importing the masculine gender includes the feminine and neuter genders and vice-versa.

1.3 The Form 15 Mortgage, these Optional Covenants and the Other Covenants are to be read and interpreted as one document, as if these Optional Covenants and the Other Covenants were set out at length in the Form 15 Mortgage.

2. Secured Obligations and Application of Payments

2.1 In consideration of the Principal Sum lent by the Mortgagee to the Mortgagor, the Mortgagor promises to pay to the Mortgagee:

- (a) the Principal Sum outstanding from time to time;
- (b) interest on the Principal Sum calculated as provided for in this Mortgage, both after as well as before maturity, default and/or judgment;
- (c) protective disbursements as provided for in section 10;
- (d) interest on interest past due at the Interest Rate and calculated in the same manner as interest on the Principal Sum;
- (e) interest on each protective disbursement from the day the protective disbursement is made, at the Interest Rate and calculated in the same manner as interest on the Principal Sum; and
- (f) the Mortgagee’s then current administration fee for the following services and interest thereon at the Interest Rate and calculated in the same manner as interest on the Principal Sum:
 - (i) an administration fee for each statement of the Mortgage account provided by the Mortgagee at the request of the Mortgagor or the Mortgagor’s solicitor or agent;
 - (ii) a processing fee for each renewal of the Mortgage;
 - (iii) an administration fee for each cheque given to the Mortgagee by the Mortgagor or produced under the authorized chequing direction of the Mortgagor, or for each authorized direct debit to an account of the Mortgagor which is not honoured or not accepted by the financial institution;

(iv) an administration fee for placement of insurance coverage upon cancellation or lapse of an insurance policy and the neglect or failure of the Mortgagor to provide proof of replacing coverage; and

(v) a processing fee on repayment of the Mortgage,

it being agreed between the Mortgagor and the Mortgagee that the amount of each such fee is a liquidated amount to cover the administrative costs of the Mortgagee and not a penalty.

All of the foregoing are referred to as the “**Secured Obligations**”.

2.2 Monies received by the Mortgagee under this Mortgage shall be applied as follows:

(a) first, to bring into good standing any accounts in which funds are held pending payment to this parties or amounts that are debited in respect of this Mortgage; including tax accounts, if any;

(b) second, to interest as provided for in section 2.1(b);

(c) third, to the Principal Sum then outstanding.

2.3 Notwithstanding section 2.2, if the Mortgagor is in default under this Mortgage, the Mortgagee may apply any payments received during the period of default in whatever order it may elect as between the Secured Obligations.

2.4 The Mortgagor acknowledges and agrees that there is no privilege or right vested in the Mortgagor to prepay or to accelerate prepayment of the monies advanced under this Mortgage to a date or dates earlier than the Maturity Date.

3. Security

3.1 The specified parcel shall be deemed to include all buildings belonging or in any manner appertaining including all erections and improvements, and, without limiting the general nature of the foregoing, shall be deemed to include all buildings, fences, heating, piping, plumbing, aerals, air-conditioning, ventilation, lighting and water heating equipment, cooking and refrigeration equipment, cleaning and drying equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings, and all related apparatus and equipment, and all improvements, fixed or otherwise and even though not attached otherwise than by their own weight, now or hereafter put upon the specified parcel (which, together with the specified parcel are herein collectively called the “**Mortgaged Premises**”)

4. Covenants of the Mortgagor

4.1 The Mortgagor covenants and agrees with the Mortgagee:

(a) Title – The Mortgagor has a good title in fee simple to the Mortgaged Premises and the right to convey the Mortgaged Premises as hereby conveyed.

(b) First Charge – The Mortgage constitutes a first charge on the Mortgaged Premises, except for any encumbrance that the Mortgagee approves in writing in advance.

- (c) Further Assurances – The Mortgagor shall, at its expense, provide such further assurances as the Mortgagee may reasonably require.
- (d) Payment – The Mortgagor shall pay the Secured Obligations payable under this Mortgage in the manner set out in this Mortgage.
- (e) Taxes – The Mortgagor shall pay all taxes, rates and assessment chargeable against or upon the Mortgaged Premises (the “**Taxes**”) as and when they become due and payable and shall provide the Mortgagee with receipts confirming same as the Mortgagee may require. The Mortgagor shall also transmit to the Mortgagee the assessment notices, tax bills and other notices affecting the imposition of Taxes, forthwith after the receipt of same by the Mortgagor.
- (f) Insurance – The Mortgagor shall purchase and maintain insurance in favour of the Mortgagee on every building and structure, including all fixed improvements and chattels, now or hereafter located or erected on the Mortgaged Premises, as more specifically set out in section 8.
- (g) Repair and Waste – The Mortgagor shall keep the Mortgaged Premises in good condition and repair.
- (h) Alterations – The Mortgagor shall not make nor permit any demolition, alterations or additions to the Mortgaged Premises without the prior written consent of the Mortgagee, and shall not use the lands, buildings and improvements on the Mortgaged Premises or permit them to be used without the written consent of the Mortgagee for a purpose other than as disclosed to the Mortgagee on or before the date of this Mortgage.
- (i) No Transfer – The Mortgagor shall not sell, convey, or transfer all or part of the Mortgaged Premises, or enter into an agreement to do any of the foregoing, without the prior written approval of the Mortgagee, in its sole discretion.
- (j) Parking Area – If a parking area forms part of the Mortgaged Premises, the Mortgagor shall not allow or cause the parking area to be used for any purpose other than the parking of motor vehicles on a daily basis, except with the prior written approval of the Mortgagee.
- (k) Discharge of Debt or Obligation – The Mortgagor shall discharge:
 - (i) any debt or obligation that forms a lien, charge or other encumbrance on the Mortgaged Premises or any part of them or that may be the subject of a demand upon the Mortgagee or an agent of the Mortgagee in the event the Mortgagee enforces one of the remedies; and
 - (ii) any debt or obligation in respect of which the Mortgaged Premises or any part of them may be deemed to be held in trust; and
 - (iii) generally, any debt or obligation that may affect the net amount the Mortgagee can realize through enforcement of one of the remedies.
- (l) Construction – The Mortgagor shall not allow or cause any building being erected on the Mortgaged Premises to remain unfinished, nor allow that no work be done on such building for a period of 10 days.

- (m) Property Management – The Mortgagor shall, at the Mortgagee's request, retain the services of a professional independent property management firm for the management of the Mortgaged Premises. The Mortgagor may not retain the services of a property management firm without the Mortgagee's prior approval.
- (n) Quiet Enjoyment – On default, the Mortgagee may enter and have quiet enjoyment of the Mortgaged Premises.
- (o) Compliance with Laws – The Mortgagor shall at all times promptly observe, perform, execute and comply with all applicable laws, rules, requirements, orders, directions, by-laws, ordinances, work orders and regulations of every governmental authority and agency whether federal, provincial, municipal or otherwise, including, without limiting the general nature of the foregoing, those dealing with zoning, use, occupancy, subdivision, parking, historical designations, fire, access, loading facilities, landscaped areas, environmental pollution, toxic materials or other environmental hazards, building construction, public health and safety, and all private covenants and restrictions affecting the Mortgaged Premises; and the Mortgagor shall from time to time, upon request of the Mortgagee, provide to the Mortgagee evidence of such observance and compliance.
- (p) Books and Records – The Mortgagor shall maintain proper records and books of account with respect to the revenues and expenditures arising from or out of the Mortgaged Premises, and shall not alter or destroy them or allow an incorrect entry therein.
- (q) Financial Statements with Respect to the Mortgaged Premises – If the Mortgaged Premises are used for rental purposes, the Mortgagor shall, within 60 days of the end of each calendar year, deliver to the Mortgagee detailed financial statements of the income and expenses of the Mortgaged Premises, including a current rent roll, for each calendar year. The statements shall be prepared by a chartered accountant acceptable to the Mortgagee.
- (r) Financial Statements – If they are corporations, the Mortgagor and Guarantor shall, within 120 days of the year end of their business, deliver to the Mortgagee annual financial statements accurately stating the assets and liabilities and the income and expenses of their business and such other information as the Mortgagee may direct, and containing, if the Mortgagee so requests, the opinion of an independent, qualified auditor. The Mortgagor shall also provide such other additional financial information as may be requested by the Mortgagee from time to time.
- (s) Financial Statements – If they are individuals, the Mortgagor and Guarantor shall, by May 30 of each year, deliver to the Mortgagee a statement of net worth, a copy of current tax returns and a copy of Revenue Canada assessment notices. The Mortgagor shall also provide such other additional financial information as may be requested by the Mortgagee from time to time.
- (t) Extensions of Time – No extension of time given by the Mortgagee to the Mortgagor, or anyone claiming under the Mortgagor, or any other dealings with the owner of the Mortgaged Premises, shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor or any other person liable for payment of the amounts hereby secured.

- (u) Access – The Mortgagor shall do all acts necessary to give the Mortgagee access from time to time to the Mortgaged Premises, all property in control of the Mortgagor and all books and records of the Mortgagor.

5. Real Property Taxes

- 5.1 The Mortgagee may, at its discretion, deduct from the final advance of the Principal Sum an amount sufficient to pay the Taxes that have become or will become due and payable on that date or the Interest Adjustment Date (as the case may be).
- 5.2 After the Interest Adjustment Date, the Mortgagee may require that the Mortgagor pay in monthly instalments on the Payment Dates, sums sufficient, in the Mortgagee's opinion, to enable the Mortgagee to pay the Taxes on or before the due date for payment thereof.
- 5.3 The Mortgagee may allow the Mortgagor interest on any balances standing in the mortgage account from time to time to the credit of the Mortgagor for payment of Taxes, at a rate per annum, and at such times, as the Mortgagee may determine in its sole discretion, and the Mortgagor shall be charged interest, at the Interest Rate, on the debit balance, if any, for Taxes in the mortgage account outstanding after payment of Taxes by the Mortgagee, until such debit balance is fully repaid, and

6. Construction

- 6.1 In the event that the Mortgagor erects buildings upon the Mortgaged Premises:
 - (a) The Mortgagor agrees that it will proceed with due diligence with the erection and completion of the said buildings in accordance with the plans and specifications thereof approved or to be approved by the Mortgagee and any mortgage default insurer that has insured this Mortgage;
 - (b) The Mortgagee may, in its absolute discretion, advance the Principal Sum under this Mortgage in such amounts from time to time as the inspector or valuator of the Mortgagee may approve and the Mortgagee may deem proper, it being the intention that the Principal Sum may be advanced as the buildings progress in such amounts as the Mortgagee may in its absolute discretion deem prudent;
 - (c) The Mortgagee shall be at liberty to retain out of any and all advances made such sums as it may deem necessary to cover any liens for work or labour done or materials or services provided in or for the said buildings until any and all such liens are discharged, and the Mortgagee may also retain out of any and all advances made a sum sufficient to provide for and indemnify it against such liens which may exist or be claimed; and it shall not be liable or responsible to the Mortgagor for the validity or correctness of any such claim;
 - (d) In case the Mortgagor should fail in the erection of the said buildings or should neglect to carry on the work of erecting said buildings with reasonable diligence, the Mortgagee may, at its absolute discretion, enter upon the Mortgaged Premises with power, to alter the plans and specifications if it deems it necessary to do so in order to complete the said buildings, and may complete the same and apply all or any unadvanced portion of the Principal Sum towards payment of the costs (and interest thereon, if any) of completing the buildings, without thereby becoming liable as mortgagee in possession. If it is unable to properly complete the building(s) with the unadvanced portion of the Principal Sum, and its advances or

lays out any further sum therefore, such further sum shall be deemed to be a further advance under this Mortgage and shall bear interest at the Interest Rate, and shall immediately be repayable by the Mortgagor and shall be added to the monies secured by this Mortgage and shall be a charge on the Mortgaged Premises;

- (e) In case of such default in the erection of the buildings, or in case any lien is registered against the Mortgaged Premises, the monies secured by this Mortgage shall, at the option of the Mortgagee immediately become due and payable and the Mortgagee may (whether it proceeds with the completion of the buildings as above mentioned or not) exercise its remedies under this Mortgage; and
- (f) This Mortgage shall take effect forthwith upon the execution of this Mortgage by the Mortgagor, and the expenses of the examination of the title and of this Mortgage and valuation are to be secured by this Mortgage in the event of the whole or any balance of the Principal Sum not being advanced, the same to be a charge upon the Mortgaged Premises and shall immediately become due and payable with interest at the stipulated Interest Rate and in default all remedies under this Mortgage or at law shall be exercisable by the Mortgagee.

7. Residential Real Property

7.1 Notwithstanding anything contained in this Mortgage to the contrary, if the Mortgaged Premises are occupied or are used as a residential rental property, the Mortgagor represents and warrants to the Mortgagee that with respect to the Mortgaged Premises, except as permitted under laws applicable to residential housing:

- (a) No demolition, conversion, renovation, repair or severance has taken place with respect to any part of the Mortgaged Premises;
- (b) there have been no increases in the rental charged for residential rental unit or units on the Mortgaged Premises except as permitted by law;

and, as provided in laws applicable to residential housing:

- (c) all rents charged with respect to the Mortgaged Premises or any part thereof are lawful rents and all required rebates have been paid;
- (d) all required filings have been made and were timely, accurate and complete;

and, pursuant to laws applicable to residential housing:

- (e) no applications, investigations or proceedings have been commenced or made; and
- (f) there are no outstanding orders or decisions made by any ministry, board or commission with respect to the Mortgaged Premises or any residential rental unit or units on the Mortgaged Premises.

7.2 The Mortgagor further agrees to comply with the provisions of all laws applicable to residential housing during the term of the Mortgage. In the event of a breach of this covenant or in the event that any of the representations and warranties contained in this

provision are false, the outstanding principal amount and any accrued interest shall, at the option of the Mortgagee, become immediately due and payable.

8. Insurance

8.1 The amount of property insurance required under section 4.1(f) shall be at least equal to the full replacement value of the Mortgaged Premises on a new construction basis for each and every existing building or for any building being built, during construction and after construction, and each policy shall include a specific endorsement covering 100% replacement cost of all such buildings, structures, improvements and chattels now or hereafter erected on the Mortgaged Premises (the "full replacement cost endorsement"). Each insurance policy shall be in a form acceptable to the Mortgagee. Without limiting the foregoing, such policy or policies shall include, as a minimum, the following coverages and conditions:

- (a) Broad Form or All Risks property insurance, including coverage for collapse, earthquake, flood, sewer back-up and water escape and by-laws, each being subject to the full replacement cost endorsement;
- (b) Equipment breakdown insurance providing coverage on a comprehensive basis and insuring all objects on a blanket basis, including production machinery coverage and repair or replacement options;
- (c) Commercial general liability insurance in an amount no less than \$2,000,000 per occurrence and in the aggregate, and insuring against claims arising out of the premises and operations of the Mortgagor, including, without limitation, non-owned automobile coverage;
- (d) Business interruption insurance, written on Profits form or Actual Loss Sustained form. In the event that Mortgaged Premises are entirely leased to one or more third parties, Rental Income/Rental Value insurance is acceptable. Such coverages shall provide for a minimum 12 month indemnity period.

8.2 Each property insurance policy shall provide that every loss, if any, shall be payable to the Mortgagee as its interest may appear in accordance with this Mortgage, subject to the Insurance Bureau of Canada approved Standard Mortgage Clause or similar clause approved by the Mortgagee. The Mortgagor shall forthwith assign, transfer and deliver to the Mortgagee the insurance policy or policies and all renewal receipts thereto appertaining. No insurance shall be carried on improvements or buildings on the Mortgaged Premises other than such as is made payable to the Mortgagee in accordance with the provisions of this paragraph. The Mortgagor shall not do or omit or cause or suffer anything to be done, omitted, caused or suffered whereby the insurance policy or policies, as aforesaid, may be voided or become void. The Mortgagor shall pay all premiums and sums of money necessary for such purposes promptly as the same shall become due and shall deliver proof of renewal to the Mortgagee at least 15 days prior to the expiration of any insurance policy.

8.3 Forthwith on the happening of any loss or damage, the Mortgagor shall furnish at his own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. The production of this Mortgage shall be sufficient authority for such insurance company to pay every such loss to the Mortgagee, and such insurance company is hereby directed thereupon to pay the same to the Mortgagee. Any insurance monies received may, at the option of the Mortgagee, be applied in rebuilding,

reinstating or repairing the Mortgaged Premises or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Premises or be applied or paid partly in one way and partly in another, or it may be applied, at the sole discretion of the Mortgagee, in whole or in part on the Mortgage debt or any part thereof whether due or not then due.

- 8.4 All cancellation clauses in the above referenced policies, including those contained in the mortgage clause insurance endorsement, are to provide for at least 30 days prior notice to the Mortgagee of such cancellation. Such policies shall also provide that the Mortgagee shall receive at least 30 days prior notice of any material alteration of such policy. The Mortgagor shall direct its insurer(s) to provide certified copies of the policies of insurance to the Mortgagee.

9. Environmental Matters

- 9.1 The Mortgagor represents, covenants and agrees that:

- (a) the Mortgagor is not aware of any environmental risks or liabilities in connection with the Mortgaged Premises which have not been disclosed to the Mortgagee and approved by the Mortgagee in writing, including, without limiting the generality of the foregoing, the presence of Hazardous Materials in, on or under the Mortgaged Premises;
- (b) the operations on the Mortgaged Premises are and shall be kept in compliance with all Environmental Laws;
- (c) the Mortgagor possesses and shall maintain all environmental licences, permits and other governmental approvals as may be necessary for the conduct of its business;
- (d) the Mortgaged Premises are and shall remain free of environmental damage or contamination;
- (e) the Mortgagor shall provide the Mortgagee with copies of all communications from or to any person relating to Environmental Laws and any Environmental Claims in connection with the Mortgaged Premises that become known to the Mortgagor, and all environmental studies or assessments prepared for the Mortgagor, and the Mortgagor consents to the Mortgagee contacting and making enquiries of environmental officials or assessors;
- (f) the Mortgagor shall advise in writing the Mortgagee immediately upon becoming aware of any situation which would or could cause any of the representations and covenants contained in this section 9.1 to become untrue; and
- (g) the Mortgagor shall not permit or create, nor allow anyone else to permit or create, any circumstance on the Mortgaged Premises which would or could constitute a violation of an Environmental Law.

- 9.2 The Mortgagor agrees to assume and be responsible for any and all environmental liabilities relating to the Mortgaged Premises, including any liability for the clean-up of any Hazardous Materials in, on or under the Mortgaged Premises, and the Mortgagor agrees to save harmless and indemnify the Mortgagee and any receiver and the Mortgagee's respective directors, officers, employees and agents, direct and indirect successors and

assigns, and the Mortgagee's interest in the Mortgaged Premises, from any against any and all claims, demands, liabilities, losses, damages and expenses, including legal fees and expenses on a solicitor and client basis, suffered by any of such persons arising out of or in connection with any and all environmental liabilities relating to the Mortgaged Premises. The Mortgagor's liability will arise upon the earlier of the discovery of any Hazardous Materials and the institution of any Environmental Claims, and will not be dependent upon the realization of any loss or damage or the determination of any liability. This indemnity and the Mortgagor's liability hereunder will survive after this Mortgage and the charges created hereby have been discharged.

10. Protective Disbursements

10.1 The Mortgagee may, without notifying the Mortgagor, purchase any material or service and make any payments to preserve, protect or enhance the Mortgaged Premises or to remedy any default by the Mortgagor in respect of any promise or covenant contained in this Mortgage and, without restricting the generality of the foregoing, the Mortgagee may make such purchases or payments to:

- (a) retire fees, expenses and borrowings or a receiver;
- (b) acquire insurance against direct damage, liability to third parties or any other risk associated with the lands on such terms and at such limits as the Mortgagee may find advisable;
- (c) discharge any lien, mortgage or encumbrance which, in the opinion of the Mortgagee, has priority over this Mortgage;
- (d) improve the title of the Mortgagee or of any purchaser of the Mortgaged Premises who purchases them through a sale having the effect of foreclosing the Mortgagor's interest in the Mortgaged Premises or who purchases them from the Mortgagee after the Mortgagor's interest in the Mortgaged Premises has been foreclosed;
- (e) discharge any debt or obligation which the Mortgagee may find should be discharged in order to better market, sell or protect the Mortgaged Premises;
- (f) cause the Mortgaged Premises to be appraised, surveyed or subdivided;
- (g) cause the Mortgagor's books and records to be audited and the financial health of the Mortgagor's business to be investigated;
- (h) retire the fees, commission or expenses of any agent retained by the Mortgagee to market the Mortgaged Premises;
- (i) retire all costs and expenses, including legal fees on a solicitor and client basis, in relation to the preparation, execution and delivery of this Mortgage and any amendment or discharge of it, in relation to the collection of any amount due hereunder and in relation to the enforcement of any remedy including the actual fees and expenses of solicitors who act on behalf of the Mortgagee in proceedings for the appointment of a receiver, foreclosure and sale, judicial sale, sale by power of sale or possession of the Mortgaged Premises;

- (j) pay the fees and expenses of a trustee in bankruptcy in the event of the bankruptcy of the Mortgagor, should the Mortgagee determine to make itself liable for such; and
- (k) retire all costs and expenses, including fees on a solicitor and client basis, in respect of any suit concerning this Mortgage, any lands that may be mortgaged hereunder, the Mortgagee's title to the Mortgaged Premises, or the priority of the Mortgagee's interest in the Mortgaged Premises.

10.2 A purchase or payment mentioned in this section 10 is referred to in this Mortgage as a "protective disbursement". The Mortgagee is not obliged to make any protective disbursement. All protective disbursements, including solicitor and client fees and expenses upon foreclosure and sale, are secured by this Mortgage and are payable out of the proceeds of the exercise of any remedy, notwithstanding that the Mortgagee's liability for the protective disbursement arises after or is discharged after a sale of the lands.

11. Acceleration

11.1 If any of the following occur (each an "**Event of Default**"), all of the money hereby secured remaining unpaid shall, at the option of the Mortgagee without notice to the Mortgagor, become due and payable:

- (a) the Mortgagor or any of its assets become subject to the control of a third party through bankruptcy, receivership, distress, winding up, execution, foreclosure or other process;
- (b) the Mortgagor fails to make any payment when due hereunder;
- (c) the Mortgagor breaches any promise or covenant made herein or in the Other Covenants;
- (d) the Mortgagor fails in the performance of any promise or covenant contained in any other mortgage or charge registered against the Mortgaged Premises;
- (e) the Mortgagor fails in the performance of any promise or covenant contained any other existing or future security or agreement in favour of the Mortgagee related to the Mortgaged Premises; or
- (f) the Mortgagee, in its discretion, determines that the Mortgaged Premises or any part of them or any structure is in danger of being or has been seized, sold removed, assigned, liquidated, destroyed, lost or otherwise taken out of the control of the Mortgagor or the Mortgagee.

11.2 If, in respect of an Event of Default, the Mortgagee chooses not to exercise the option hereby given to it or waives its right to call in the balance of the loan, such does not constitute a waiver of the Mortgagee's rights under this section in respect of any other default.

12. Notice Respecting Default and Enforcement

12.1 The Mortgagee may exercise any remedy or remedies immediately, upon the happening of any Event of Default without making a demand for payment or giving time for payment

or notifying the Mortgagor of the Mortgagee's intention to exercise the remedy or remedies. If the Mortgagee chooses to notify the Mortgagor or such an intention or to demand payment, it shall not thereby be taken to have waived its rights under this section or to have subjected itself to a duty to give a reasonable notice to the Mortgagor respecting the Mortgagee's intention or to give the Mortgagor reasonable time for payment.

13. Remedies

13.1 On the happening of any Event of Default, the Mortgagee may immediately thereupon seek or exercise any remedy as may be available to it in law or equity and it may exercise any of the following remedies:

- (a) Possession – The Mortgagee may take possession of the Mortgaged Premises or any part of them and upon doing so the Mortgagee may do such things as it deems advisable in order to maintain, protect or preserve the Mortgaged Premises, it may make improvements or alterations to the Mortgaged Premises and the Mortgagee may lease the Mortgaged Premises to third parties on such terms as the Mortgagee deems advisable;
- (b) Power of Sale – The Mortgagee may, without notice to the Mortgagor or those claiming by, through or under it, sell the Mortgaged Premises by way of public auction, private sale, tender or any other method as the Mortgagee may choose and according to such terms as the Mortgagee may choose to accept and any conveyance by the Mortgagee pursuant to this power conveys to the purchaser the right, title, interest, property and demand of the Mortgagor at the time of the making of this Mortgage or any time since and that of any person claiming by, through, from or under the Mortgagor of, in and to the Mortgaged Premises sold;
- (c) Judgment – The Mortgagee may sue the Mortgagor or any person jointly liable with it or any Guarantor and recover judgment, without having exhausted the other remedies available to it and no other remedy or right of the Mortgagee merges in any such judgment;
- (d) Receivership – The Mortgagee may appoint a receiver, including a receiver manager, of the Mortgaged Premises, and in doing so the Mortgagee may appoint any person it chooses including one of the Mortgagee's employees, and the Mortgagee may remove and replace the person so appointed. A receiver appointed by the Mortgagee is the agent of the Mortgagor and its actions are binding upon the Mortgagor and not upon the Mortgagee. Notwithstanding that the receiver is the agent of the Mortgagor, the Mortgagee may instruct the receiver as regards the exercise of its powers and the discharge of its duties, and the Mortgagee may make such arrangements as it may choose in respect of the receiver's expenses and fees; and

13.2 In this Mortgage, the term "remedies" means the remedies prescribed in this section 13 and such other remedies as the Mortgagee may have in law or equity. The remedies are cumulative; the exercise of one does not preclude the use of others. The Mortgagee may exercise any of the remedies against the Mortgaged Premises in whole or in part, it may enforce one remedy against one part of the Mortgaged Premises and other remedies against other parts and it may abandon or discharge whatever parts of the Mortgaged Premises as it chooses. Where the exercise of a remedy involves the sale of the lands or part of them, the party making the sale may accept cash, credit or part cash and part credit

and, if a sale is made on credit, the Mortgagee need apply, in reduction of the Secured Obligations, only such payments as are actually made.

14. Receivership

14.1 Any receiver appointed under this Mortgage may:

- (a) exercise any of the powers of the Mortgagee pursuant to this Mortgage, save for the appointment of a receiver, and make any protective disbursements as the mortgagee may make under section 10;
- (b) carry on any business for which the Mortgaged Premises are used and conduct the affairs of the Mortgagor in respect of such business;
- (c) do any act or thing as could be authorized by the board of directors or the shareholders of the corporation if the Mortgagor is a corporation;
- (d) do all things necessary to control the Mortgaged Premises, manage them or produce income from them;
- (e) where the Mortgagee holds security over personal property in respect of any of the Secured Obligations and the Mortgagee has not appointed an agent or receiver under such security, do any act or thing that may be done by an agent or receiver under such security but, in so doing or acting, the receiver is agent of the Mortgagor as provided in section 13.1(d);
- (f) borrow money to carry on any business for which the Mortgaged Premises are used, to carry out any power of the receiver or for protective disbursements;
- (g) retain and instruct counsel, real estate agents, appraisers, property managers and any person who the receiver may find to be helpful in the discharge of its powers; and
- (h) generally, do anything it finds to be necessary for the orderly management or liquidation of the Mortgaged Premises.

14.2 The following conditions shall apply to the appointment of any receiver under this Mortgage:

- (a) The Mortgagee may fix the reasonable remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Mortgaged Premises.
- (b) The appointment of any receiver by the Mortgagee shall not result in or create any liability or obligation on the part of the Mortgagee to the receiver or to the Mortgagor or to any other person and no appointment or removal of a receiver and no actions of a receiver shall make the Mortgagee a mortgagee in possession of the Mortgaged Premises.
- (c) No receiver shall be liable to the Mortgagor to account for monies other than monies actually received by him in respect of the Mortgaged Premises, or any part thereof, and out of such monies so received the receiver shall, in the following order, pay:

- (i) the receiver's aforesaid remuneration;
 - (ii) all costs and expenses of every nature and kind incurred by the receiver in connection with the exercise of the receiver's power and authority hereby conferred;
 - (iii) interest, principal and other money which may, from time to time, be or become charged upon the Mortgaged Premises in priority to this Mortgage, including taxes;
 - (iv) to the Mortgagee all interest, principal and other monies due hereunder to be paid in such order as the Mortgagee, at its discretion, shall determine, and thereafter, every receiver shall be accountable to the Mortgagee for any surplus.
- (d) The remuneration and expenses of the receiver shall be paid by the Mortgagor on demand and shall be a charge on the Mortgaged Premises and shall bear interest from the date of demand at the stipulated Interest Rate.
- (e) The statutory declaration of an officer of the Mortgagee as to default under the provisions of this Mortgage and as to the due appointment of the receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with a receiver who is ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual.
- (f) The rights and powers conferred herein in respect of the receiver are supplemental to and not in substitution of any other rights and powers which the Mortgagee may have.

15. Liability Respecting Enforcement of Security

- 15.1 Once the Mortgagee has determined to exercise a remedy or remedies, it may deal with and dispose of the Mortgaged Premises as it may see fit and neither the Mortgagor nor those claiming by, through, from or under it shall maintain any action, advance any claim or rely on any set-off by reason of the order of enforcement of remedies against parts of the Mortgaged Premises, the abandonment or discharge of the Mortgaged Premises or part of them, the Mortgagee's failure to maintain or insure the Mortgaged Premises, the Mortgagee's failure to secure an adequate price for the Mortgaged Premises or anything relating to the manner in which the Mortgaged Premises are dealt with or disposed of. In this section, "mortgagee" includes the receiver.

16. Discharges

- 16.1 Discharge – The Mortgagee shall have a reasonable time after payment of the amounts secured by this Mortgage in full within which to prepare and execute a discharge or assignment of this Mortgage. All legal and other expenses for the preparation, execution and registration of such discharge or assignment shall be borne by the Mortgagor
- 16.2 Partial Release – The Mortgagee may at any time release any part or parts of the Mortgaged Premises or any other security or surety for payment of all or any part of the Secured Obligations or may release the Mortgagor or any other person from any covenant or other liability to pay such amounts or any part thereof, either with or without any consideration therefore, and without being accountable for the value thereof or for any

monies except those actually received by the Mortgagee, and without thereby releasing any other part of the Mortgaged Premises, or any other securities or covenants herein contained, it being agreed that notwithstanding any such release, the lands, securities and covenants remaining unreleased shall stand charged with the whole of the monies hereby secured.

17. General

- 17.1 Severability – If at any time any provision of this Mortgage is illegal or invalid under or inconsistent with the provisions of any applicable law or regulation or would by reason of the provisions of any such law or regulation render the Mortgagee unable to collect the amount of any loss sustained by it as a result of making the loan secured by this Mortgage which it would otherwise be able to collect under such law or regulation, then such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Mortgagee unable to collect the amount of any such loss.
- 17.2 Assignment and Binding Effect
- (a) The Mortgagor acknowledges that the Mortgagee may transfer or assign this Mortgage without notice to the Mortgagor. In addition, the Mortgagee may syndicate, securitize or grant participation interests in the Mortgage. The Mortgagor and the Guarantor, if any, agree that the Mortgagee may disclose to a third party any information relating to this Mortgage, including financial information relating to the Mortgaged Premises, the Mortgagor or the Guarantor as may be required in order to effect the aforementioned transactions.
 - (b) This Mortgage is binding upon the Mortgagor, its successor, assigns, heirs, executors and administrators and is granted to and for the benefit of the Mortgagee, its successors and its assigns.
- 17.3 Preauthorized Debits – The Mortgagor agrees that all payments to be made under this Mortgage shall, unless otherwise agreed to by the Mortgagee, be made by preauthorized debits and that the Mortgagor shall execute any documents required to permit the preauthorized debits.
- 17.4 Commitment Letter – The provisions set forth in any commitment letter or other agreement between the Mortgagor and the Mortgagee relating to the loan secured by this Mortgage will not merge with this Mortgage but shall survive the execution, delivery and registration of this Mortgage.
- 17.5 Change of Control – If the Mortgagor is a corporation, the Mortgagor covenants and agrees that the Mortgagor shall supply to the Mortgagee, in a form satisfactory to the Mortgagee, such information relating to the ownership of its shares as the Mortgagee may from time to time require. The Mortgagor shall not, without the prior written consent of the Mortgagee take or authorize any action that would result in a change of effective control of the majority of the voting shares of the Mortgagor.
- 17.6 No Prejudice from Failure to Enforce Rights – No failure by the Mortgagee to enforce any of its rights under this Mortgage shall prejudice such rights or any other rights of the Mortgagee and no performance or payment by the Mortgagee in respect of any breach or default of the Mortgagor shall relieve the Mortgagor from any such breach or default under

this Mortgage; and no waiver of any such rights of the Mortgagee shall prejudice such rights in the event of any future default or breach.

- 17.7 Other Security – This Mortgage is in addition to, and not in substitution for, any other security held by the Mortgagee and it is understood and agreed that the Mortgagee may pursue its remedies thereunder and hereunder concurrently or successively at its option. Any judgment or recovery hereunder or under any other security held by the Mortgagee for the monies secured by this Mortgage shall not affect the right of the Mortgagee to realize upon this or any other such security.
- 17.8 Obligations Survive Sale – No sale or other dealing by the Mortgagor with the Mortgaged Premises or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of the amounts secured by this Mortgage.
- 17.9 Extension of Term –This Mortgage may be renewed or extended by an agreement in writing at maturity for any term with or without an increased rate of interest notwithstanding that there may be subsequent encumbrancers, and it shall not be necessary to register any such agreement in order to retain priority for this Mortgage so altered over any instrument registered subsequently to this Mortgage. The Mortgagor shall pay to the Mortgagee the amount of any renewal or extension fee charged by the Mortgagee in connection with the renewal or extension of this Mortgage and all solicitor's charges or commissions, on a solicitor and its own client basis incurred by the Mortgagee in connection with the renewal or extension. Nothing contained in this paragraph shall confer any right of renewal or extension upon the Mortgagor.