

# Manulife Bank of Canada

LAND REGISTRATION REFORM ACT, 1984

ONTARIO - CONVENTIONAL

## SET OF STANDARD CHARGE TERMS

Filed By: MANULIFE BANK OF CANADA

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The following set of standard charge terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of the Act.

### 1. EXCLUSION OF STATUTORY COVENANTS

The implied covenants deemed to be included in a charge under sub-section 7(1) of the Land Registration Reform Act, 1984, and shown as paragraphs 1 and 2 of the said sub-section 7(1), shall be and are hereby expressly excluded and replaced by this Set of Standard Charge Terms which are covenants by the Chargor, for the Chargor and the Chargor's successors, with the Chargee and the Chargee's successors and assigns.

### 2. COMPOUND INTEREST

In case default shall be made in payment of any sum to become due for interest at any time appointed for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid in one month from the time of default, a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the lands.

### 3. ADVANCE OF MORTGAGE MONEYS

(a) Neither the preparation, execution, nor registration of this Charge shall bind the Chargee to advance the principal amount secured, nor shall the advance of a part of the moneys secured hereby bind the Chargee to advance any unadvanced portion thereof, but nevertheless the estate hereby conveyed shall take effect forthwith upon the execution of these presents by the Chargor. The expenses of the examination of the title and (all other steps taken in furtherance of the registration) of the lands and premises to be charged, of this Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum not being advanced, the same to be charged hereby on the said lands, and shall be without demand thereof, payable forthwith with interest at the rate provided for in this Charge, and in default the said Chargee's power of sale hereby given, and all other remedies hereunder, shall be exercisable.

(b) The Chargee shall have the right to deduct from any advance, interest from the date of advance to the interest adjustment date.

### 4. TITLE COVENANTS

(a) The Chargor, at the time of execution and delivery of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the land and the premises described in the Charge and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisos, conditions or any other matter or thing to alter, charge, change, encumber or defeat the same, except those contained in the original grant thereof from the Crown.

(b) The Chargor now has good right, full power and lawful and absolute authority to charge the land and to give the Charge to the Chargee upon the covenants contained in the Charge.

(c) The Chargor has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the land, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose.

(d) The Chargor will pay or cause to be paid to the Chargee the full principal amount and interest secured by the Charge in the manner of payment provided by the Charge, without any deduction or abatement, and shall do, observe, perform, fulfill and keep all the provisions, covenants, agreements and stipulations contained in the Charge and shall pay as they fall due all taxes, rates and assessments, municipal, local, parliamentary and otherwise which now are or may hereafter be imposed, charged or levied upon the land and when required shall produce for the Chargee receipts evidencing payment of same.

(e) And that the said Chargor will execute such further assurances on the said lands as may be requisite.

### 5. QUIET POSSESSION UPON DEFAULT

On default, the Chargee shall have quiet possession of the said lands free from all encumbrances.

### 6. INSURANCE

(a) The said Chargor will insure all structures on the said lands to the amount of not less than the lesser of :

- (i) the replacement value of the structures from time to time; or
- (ii) the principal money hereby secured if this Charge is a first Charge; or
- (iii) the total principal of this Charge and all charges ranking in priority to this Charge, if this Charge is not a first Charge;

in dollars of lawful money of Canada, with no co-insurance requirements and with the Chargee's standard charge clause or the standard clause approved by the Insurance Bureau of Canada forming part of such insurance policy.

(b) Without limiting the generality of the foregoing, the Chargor shall carry such liability, rental, boiler, fire and other insurance coverage in such amounts and against such perils and risks as required by the Chargee from time to time to be placed with such insurance companies and in such form as may be acceptable to the Chargee. Written evidence of continuance of such insurance from the insurer under such policy or policies to the effect that coverage has been extended for a minimum of at least one year and all premiums with respect to such extended term of such coverage have been paid for in full shall be produced to the Chargee at least thirty (30) days

before expiration of any term of such respective policy; otherwise the Chargee may provide therefor and charge the premium paid and interest therein at the rate provided for in the Charge to the Chargor and the same shall be payable forthwith and shall also be a charge upon the land secured by this Charge. It is further agreed that the Chargee may at any time require any insurance of the structures to be cancelled and new insurance effected in a company to be named by the Chargee and also of his own accord may effect or maintain any insurance herein provided for and any amount paid by the Chargee therefor shall be payable forthwith by the Chargor (together with any costs of the Chargee as hereinafter set out) with interest at the rate provided for in the Charge and shall also be a charge upon the said land and secured by this Charge.

(c) In the event that the evidence of continuation of such insurance as herein required has not been delivered to the Chargee within the required time, the Chargee shall be entitled to a servicing fee for each written enquiry which the Chargee shall make to the insurer pertaining to such renewal (or resulting from the Chargor's non-performance of the within covenant). In the event that the Chargee pursuant to the within provision arranges insurance coverage with respect to the said lands, the Chargee, in addition to the aforementioned servicing fee, shall be entitled to a further servicing fee for arranging the necessary insurance coverage.

(d) Notwithstanding any other provision to the contrary, statutory or otherwise, in the event of any monies becoming payable pursuant to an insurance policy with respect to structures located on the lands secured hereunder, the Chargee may at its option require the said monies to be applied by the Chargor in making good the loss or damage in respect of which the money is received, or in the alternative, may require that any or all of the monies so received be applied in or towards satisfaction of any or all of the indebtedness secured hereunder whether or not the same has become due.

(e) The Chargor, upon demand, will transfer all policies of insurance effected upon the structures, erections or fixtures on the said lands, (with the mortgage clause in a form approved by the Chargee attached) and the indemnity which may become due therefrom, to the Chargee, and the Chargee shall have a lien for its mortgage debt on all insurance on the said structures, erections or fixtures and may elect to have these insurance monies applied in reinstatement or towards payment of monies secured hereby whether due or not but shall not be bound to accept the said monies in payment of any principal not yet due.

(f) PROVIDED also that the covenant for insurance hereinbefore contained shall provide that loss, if any, shall be payable to the said Chargee, as its interest may appear, subject to the Chargee's standard form of mortgage clause of the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance and form part thereof.

(g) PROVIDED further that the covenant for insurance hereinbefore contained shall apply to all structures whether now or hereafter erected on the said lands.

(h) PROVIDED further that the covenant for insurance hereinbefore contained shall be effected on such terms and with such insurer as may be approved by the Chargee.

#### 7. **CHARGOR'S RELEASE**

AND the said Chargor doth release to the said Chargee all his claims upon the said lands subject to the said proviso.

#### 8. **DEFAULT**

(a) PROVIDED that the said Chargee may on default of the Chargor enter on, take possession of, lease and enforce any right or remedy it has with respect to the mortgaged premises or on default of payment or default in the performance of any covenant in this Charge contained or implied by law or statute for at least fifteen (15) days, may on at least thirty-five (35) days' notice, sell the said lands. Such notice shall be given to such persons and in such manner and form and within such time as provided in the Mortgages Act, R.S.O. 1980 as amended. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the said lands, if occupied, or by placing it on the said lands if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his address last known to the Chargee and such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability.

(b) PROVIDED FURTHER, without prejudice to the statutory powers of the Chargee under the foregoing proviso, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for sixty (60) days after any payment of either falls due, then the Chargee may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. AND it is hereby further agreed that the whole or any part or parts of the said lands may be sold by public auction or private contract, or partly one or partly the other; and that the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the said lands or by reason of non-payment or procuring payment of moneys, secured hereby or otherwise, and that the Chargee may sell any of the said lands on such terms as to credit and otherwise as shall appear to him most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which he shall deem proper and may buy in or rescind or vary any contract for the sale of the whole or any part of the said lands and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound up to pay the Chargor only such moneys as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as he shall think fit. Any purchaser or lessee shall not be bound to see the propriety or regularity or any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

(c) PROVIDED that wherever a power of sale is hereby conferred upon the Chargee, all provisions hereof relating to exercising such power including, without in any way limiting the generality of the foregoing, the persons to whom notice of exercising such power shall be given and the manner of giving such notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no such conflict, the provisions of the Charge shall remain unchanged.

(d) PROVIDED THAT if the Chargor shall make default in payment of any part of the interest payable under the Charge at any of the dates or times fixed for the payment thereof it shall be lawful for the Chargee to distrain therefor upon the land or any part thereof and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the land, so much of such interest as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases for distress for rent. PROVIDED that the Chargee may distrain for arrears of monthly payment of taxes, if required, in the same manner as if the same were arrears of interest. PROVIDED that the Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

(e) PROVIDED that in default of the payment of the interest hereby secured and the principal hereby secured shall become payable at the option of the Chargee. PROVIDED that upon default of payment of instalments of principal promptly as the same mature, the balance of the principal and interest shall immediately become due and payable at the option of the Chargee. PROVIDED that the

Chargee may in writing at anytime or times after default waive such default and upon such waiver the time or times for payment of said principal shall be as set out in the above proviso for redemption. PROVIDED further that any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. AND it is further agreed by and between the parties that the Chargee may at his discretion at all times release any part or parts of the land or any other security or any surety for the money hereby secured under the Charge either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the land or any person from this Charge or from any of the covenants contained in the Charge and without being accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. It is agreed that every part or lot into which the land is or may hereafter be divided does and shall stand charged with the whole money hereby secured under the Charge and no person shall have the right to require the mortgage moneys to be apportioned.

(f) PROVIDED further that no sale or other dealing by the Chargor with the equity of redemption in the said lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the moneys hereby secured.

(g) In the event of the non-payment of the Principal or any part thereof at the time provided in the Charge whether with or without the consent of the Chargee, the Chargor shall not be entitled to require the Chargee to accept payment of the Principal or such part thereof that is overdue except upon payment to the Chargee of all accrued interest plus three months interest on the principal money so in arrears, as a bonus; such bonus to be in lieu of notice of intention to pay, the right to give or receive which is hereby waived; but nothing contained in the Charge shall affect or limit the right of the Chargee to recover by action or otherwise the Principal so in arrears after default has been made.

(h) The Chargor covenants with the Chargee that the Chargor will reimburse the Chargee without limitation for legal fees and disbursements, real estate commissions, appraisal fees and other costs incurred by the Chargee in exercising the powers of sale herein contained. It is further agreed that the Chargee may exercise all remedies provided for herein concurrently or in such order as it may see fit, and shall not be obligated to exhaust any remedy or remedies before exercising its rights under any other provision contained herein.

**9. RENEWAL OR EXTENSION OF TIME: ATTENTION SUBSEQUENT INTERESTS**

PROVIDED that no extension of time given by the Chargee to the Chargor, or any one claiming under him, or any other dealing by the Chargee with the owner or owners of the lands or of the equity of redemption of said lands or of any part thereof, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person liable for the payment of the money hereby secured, and that this Charge may be renewed by any agreement in writing, before, at or after maturity for any term with or without an increased rate 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 Charge so altered over any instrument registered subsequently to this Charge. PROVIDED that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.

**10. APPLICATION FOR MORTGAGE LOAN**

Provided that the whole of the principal sum outstanding and all interest accruing thereon shall immediately become due and payable without notice or demand, at the option of the Chargee, in the event that the Chargor and/or the Covenantor(s) or any of them fail to observe or perform any condition, agreement, covenant or term set out in the application for this mortgage loan and any amendments thereto, or any other document giving contractual relationship as between the Chargor and the Chargee.

**11. OBLIGATION TO REPAIR**

The Chargor will keep the said lands and buildings, structures, erections and improvements thereon in good condition and repair according to the nature and description thereof, respectively, and that the Chargee may, whenever he deems necessary, by his agent, enter upon and inspect the said mortgaged lands and make such repairs as he deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate aforesaid shall be added to the mortgage debt and be payable forthwith and be a charge upon the said lands prior to all claims thereon subsequent to this Charge. And that if the Chargor shall neglect to keep the said premises in good condition and repair, or commit or permit any act of waste on the said lands (as to which the Chargee shall be sole judge) or make default as to any of the covenants, provisos, agreements or conditions contained in this Charge or in any charge or other encumbrance to which this Charge is subject, all moneys hereby secured shall at the option of the Chargee forthwith become due and payable, and in default of payment of same with interest as in the case of payment before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.

**12. ALTERATIONS AND ADDITIONS**

THE CHARGOR covenants with the Chargee that he will not make or permit to be made any alterations or additions to the mortgaged premises without the written consent of the Chargee, and that he will promptly observe, perform, execute and comply with all legislation, laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority or agency concerning the mortgaged premises and will as his own cost and expense make any and all improvements thereon or alterations thereto, structural or otherwise, ordinary or extraordinary, and take any and all other steps which may be required at any time by such present or future law, rule, requirement, order, direction, ordinance or regulation.

**13. PAYMENTS BY CHARGE**

AND it is hereby agreed between the parties hereto that the Chargee may pay all premiums of insurance and all taxes, rates, utility and heating charges which shall from time to time fall due and be unpaid in respect of the mortgaged premises, and that such payments, together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of the said lands, and of negotiating this loan, investigating title and registering the Charge and other necessary deeds and generally in any other proceedings taken in connection with or to realize this security (including legal fees and real estate commissions and other costs incurred in leasing or selling the said lands or in exercising the power of entering, lease and sale herein contained) shall be, with interest at the rate aforesaid, a charge upon the said lands in favour of the Chargee, and that the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the said lands, which payments with interest at the rate aforesaid shall likewise be a charge upon the said lands in favour of the Chargee. PROVIDED, and it is hereby further agreed, that all amounts paid by the Chargee as aforesaid shall be added to the debt hereby secured and shall be payable forthwith with interest at the rate aforesaid and in default this Charge shall immediately become due and payable at the option of the Chargee, and all powers in this Charge conferred shall become exercisable.

**14. QUIET POSSESSION**

Until default of payment, the Chargor shall have quiet possession of the lands.

**15. TAKING OF JUDGMENTS NOT A MERGER**

The taking of judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Chargee's right to interest at the rate and times herein provided; and further that said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

16. **FIXTURES**

The Chargor agrees that all erections and improvements fixed or otherwise now on or hereafter put upon the said premises, including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, aerials, air-conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration 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 apparatus and equipment appurtenant thereto shall for all purposes of this Charge be fixtures and form part of the mortgaged premises whether or not affixed in law to the said lands.

17. **MONTHLY TAX PAYMENTS**

With respect to municipal taxes, school taxes and local improvement rates (hereinafter referred to as "taxes") chargeable against the lands hereby charged, the Chargor covenants and agrees with the Chargee that:

- (a) The Chargee may deduct from any advance of the monies secured by this Charge an amount sufficient to pay the taxes which have become due and payable during any calendar year.
- (b) The Chargee may at its sole option estimate the amount of the taxes chargeable against the said lands and payable in each year and the Chargor shall forthwith upon demand of the Chargee pay to the chargee one-twelfth (1/12) of the estimated annual amount of such taxes on the dates on which instalments of principal and interest are payable during the term of this Charge commencing with the 1st day of the first full month of the term of this Charge. The Chargee may at its option apply such payments on the taxes so long as the Chargor is not in default under any covenant or agreement contained in this Charge, but nothing herein contained shall obligate the Chargee to apply such payments on account of taxes more often than yearly. Provided however, that if the Chargor shall pay any sum or sums to the Chargee to apply on account of taxes, and if before the same shall have been so applied there shall be default by the Chargor in respect of any payment of principal or interest as herein provided, the Chargee may at its option apply such sum or sums in or towards payment of the principal and/or interest in default. If the Chargor desires to take advantage of any discounts or avoid any penalties in connection with the payment of taxes, the Chargor may pay to the Chargee such additional amounts as are required for that purpose.
- (c) In the event that the taxes actually charged for in one (1) calendar year, together with any interest and penalties thereon, exceed the estimated amount, the Chargor shall pay to the Chargee on demand the amount required to make up the deficiency. The Chargee may at its option, pay any of the taxes when payable, either before or after they are due, without notice, or may make advances therefor in excess of the then amount of credit held by the Chargee for the said taxes. Any excess amount advanced by the Chargee shall be secured as an additional principal sum under this Charge and shall bear the same rate of interest as aforesaid until repaid by the Chargor.
- (d) The Chargor shall transmit to the Chargee forthwith after receipt of same the assessment notices, tax bills and other notices affecting the imposition of taxes upon the said lands.
- (e) In no event shall the Chargee be liable for any interest on any amount paid to it as hereinbefore required and the monies so received may be held with its own funds pending payment or application thereof as hereinbefore provided; provided that in the event that the Chargee does not utilize the funds received on account of taxes in any calendar year, such amount or amounts may be held by the Chargee on account of any pre-estimate of taxes required for the next succeeding calendar year, or at the Chargee's option the Chargee may repay such amount to the Chargor without any interest.
- (f) The Chargor shall in all instances be responsible for the payment of any and all penalties resulting out of any late payment of current tax instalments or any arrears of taxes, and at no time shall such penalty be the responsibility of the Chargee.
- (g) The Chargor shall deliver to the Chargee on or before December 31st in each such calendar year, written evidence from the taxing authority having jurisdiction with respect to the municipal realty taxes levied and assessed against the lands and premises secured hereunder, such evidence to be to the effect that all taxes for the then current calendar year and any preceding calendar year have been paid in full. In the event the failure of the Chargor to comply with the covenant as aforesaid, the Chargee shall be entitled to charge a servicing fee for each written enquiry directed to such taxing authority or the relevant taxation office for the purpose of ascertaining the status of the tax account pertaining to the lands and premises secured hereunder, together with any costs payable to said taxing authority for such information. Such servicing fee is hereby agreed to be a fair and equitable one under the circumstances and is intended to cover the Chargee's administrative costs and shall not be deemed a penalty.

18. **SALE, CHANGE OF CONTROL OF ENCUMBERING**

(a) (1) in the event of the Chargor selling, conveying, transferring, optioning, or entering into any agreement of sale or transfer of title of the lands hereby Charged to a purchaser, grantee or transferee not approved in writing by the Chargee; or

(2) if such purchaser, grantee or transferee should fail to

- (i) apply for and receive the Chargee's written approval as aforesaid;
- (ii) personally assume all the obligations of the Mortgagor under this Charge; and
- (iii) execute an assumption agreement in the form required by the Chargee; or

(b) in the event of a change in control of the Chargor or a change in the beneficial ownership of the charged property, without the prior approval in writing of the Chargee; or

(c) in the event that the Chargor shall without the prior written consent of the Chargee grant, permit or cause any mortgage, charge or encumbrance whatsoever or lien other than any prior mortgage or charge to which this Charge is expressly made subject, to be registered or acquired against the lands;

then, and in each of such events, at the option of the Chargee, all monies hereby secured, with accrued interest thereon and unearned interest thereon until maturity, shall forthwith become due and payable.

The Chargee shall be entitled to charge a servicing fee to process each application for approval as herein contemplated, which fee shall be payable forthwith upon demand. Failure by the Chargor to pay such servicing fee shall be deemed to be an act of default hereunder.

It is further understood and agreed that any approval given pursuant to subparagraphs (a) or (b) of the herein paragraph shall in no way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor any other person liable for payment of the moneys hereby secured.

**19. PRE-AUTHORIZED CHEQUING PLAN**

The Chargor shall deliver to the Chargee upon the first advance of monies hereunder a Pre-Authorized Payment Plan Request Form with a blank cheque attached for the purpose of allowing the Chargor's account to be debited on a monthly basis with respect to all payments required under this Charge. If so requested, the Chargor shall deliver postdated cheques in accordance with the monthly payments under the Charge.

**20. INSPECTION**

The Chargee shall have access to and the right to inspect the charged premises at all reasonable times.

**21. CHANGE OF USE**

The Chargor shall not change or permit to be changed the use of the charged premises, without the written consent of the Chargee and further that at no time shall the lands and premises herein charged be used in a manner that would contravene the legislation, laws, rules, requirements, orders, directions, ordinances and regulations in force from time to time of any applicable governmental authority.

**22. MORTGAGE STATEMENTS**

(a) The parties hereto agree that the Chargor shall be entitled to receive free of charge upon written request a statement of account with respect to the within Charge, as of any payment date under this Charge, once in each calendar year of the term of this Charge. In the event that the Chargor or any other party requires a further statement with respect to the account pertaining to this Charge, the Chargee shall be entitled to a servicing fee for each such additional statement given out in any one year of the term of this Charge. Chargee will provide, annually, at the end of each year, a Statement to the Chargee detailing all payments made in respect of the Charge during the prior year.

(b) Provided that if and whenever the Chargee requests an acknowledgement from the Chargor as to the status of the charge account or the status of the terms and covenants of this Charge, the Chargor shall execute such an acknowledgement in the Chargee's standard form provided that same be true, and shall do so forthwith upon request and without cost to the Chargee and shall return the acknowledgement duly executed within seventy-two (72) hours. Failure to do so shall be considered an act of default within the meaning of this Charge.

**23. ASSIGNMENT OF RENTS**

(a) To further secure the indebtedness secured hereunder, the Chargor hereby assigns and transfers unto the Chargee all rents, income, profits and other benefits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal or any letting of, or of any agreement for the use or occupancy of the lands and premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to, or which may be granted, it being the intention of the parties to establish an absolute transfer and assignment of all such rents, income, profits and other benefits under such leases and agreements and all the avails thereunder unto the Chargee.

(b) The Chargor further covenants and agrees to execute and deliver at the request of the Chargee all such further assurances and assignments with respect to such tenancies as the Chargee shall from time to time require, and shall do all other acts with respect to such tenancies as requested by the Chargee.

(c) In the event that the Chargee collects any payments of rent due to the Chargor's default, the Chargee shall be entitled to receive from such rent a management fee of ten percent (10%) of all the gross receipts from such rent, it being understood for greater certainty that the Chargor and Chargee have agreed that in the circumstances a management fee equal to ten percent (10%) of gross receipts received by the Chargee in the collection of such rents is a just and equitable fee having regard to the circumstances.

(d) The Chargor covenants and agrees that no rent has been or will be paid by any person in possession of any portion of the premises described herein, in advance and that the payment of none of the rents to accrue for any portion of the said lands and premises have been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Chargor.

(e) Provided further that the Chargor will not perform any act or do anything or omit to do any thing which will cause the default of any lease in or of the buildings or structures erected on the charged lands, unless consented to by the Chargee.

(f) And the Chargor agrees that all leases, offers to lease and agreements to lease shall be bona fide and shall be at rates and on terms consistent with comparable space in the area of the lands and premises secured hereunder and provided further that the Chargor shall obtain the consent of the Chargee prior to the execution of any lease, offer or agreement to lease or any tenancy agreement.

(g) Nothing contained under this paragraph shall have the effect of making the Chargee a Chargee in possession.

**24. ADDITIONAL SECURITIES**

In the event that the Chargee, in addition to the premises secured hereunder, holds further additional securities on account of the indebtedness secured herein, it is agreed that no single or partial exercise of any of the Chargee's powers hereunder or under any of such securities, shall preclude other and further exercise of any other right, power or remedy pursuant to any of such securities. The Chargee shall at all times have the right to proceed against, all, any, or any portion of such security or securities, in such order and in such manner as it shall in its sole discretion deem fit, without waiving any rights which the Chargee may have with respect to any and all of such securities, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Chargor under the remaining securities.

**25. INTERPRETATION**

If any of the forms of words contained herein are also contained the Column One of Schedule "B" of the short Forms of Mortgages Act, R.S.O. 1980 Ch. 474 and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the Short Forms of Mortgages Act were still in full force and effect.

**26. CHARGE MAY ENTER**

Upon default in payment of principal or interest under this Charge, or in performance of any of the terms and conditions hereof, the Chargee may enter into and take possession of the Land hereby charged free from all manner of former conveyances, mortgages, charges, or encumbrances without the let, suit, hindrance, interruption or denial of the Chargor or any other person whatsoever.

**27. CONSTRUCTION LIENS**

PROVIDED also that upon there registration of any lien pursuant to the Construction Lien Act, S.O. 1983, as amended from time to time, against the said lands, and the Chargor having been given notice by the Chargee to remedy same and default having continued for a further period of ten (10) days beyond such notice, then in such event the principal and interest hereby secured shall, at the option of the Chargee, forthwith become due and payable.

**28. BUILDING MORTGAGE**

Provided that the Chargor and the Chargee agree that if the purpose of this Charge is to finance improvements on the lands, the following conditions shall apply:

- (a) All construction on the said lands shall be carried out by reputable contractors with sufficient experience in a project of this nature and size, which contractors and contracts must be prior approved by the Chargee in writing, such approval not to be unreasonably withheld.
- (b) The renovations to the building and structures located on the said lands having been commenced shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the Plans and Specifications delivered to the Chargee and to the satisfaction of all governmental and regulatory authorities having jurisdiction.
- (c) Provided that should construction on the project on the said lands cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Chargor excepted) for a period of ten (10) consecutive days (Saturdays, Sundays and statutory holidays excepted), then this Charge, at the option of the Chargee shall immediately become due and payable. In the event that construction does cease, then the Chargee shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Chargee and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) added to the principal amount of the this Charge, shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Chargee shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of principal and interest hereunder or at law.
- (d) At all times there shall be sufficient funds advanced under this Charge and retained by the Chargee to complete the construction and/or renovation of the project on the said lands as well as a holdback of ten percent (10%) with respect to work already completed.
- (e) All advances which are made from time to time hereunder shall be based on Certificates of an Architect or other person satisfactory to the Chargee and/or retained by the Chargee at the expense of the Chargor, which Certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such Certificates shall further certify that such completed construction and/or renovation to the date of such Certificate shall be in accordance with the approved Plans and Specifications for the said construction and further, in accordance with the Building Permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the said lands. Such Certificates with respect to any values shall not include materials on the site which are not incorporated into the building.
- (f) The Chargor covenants and agrees upon completion of the project to be erected on the said lands to deliver as further security for the loan herein secured, a Chattel Mortgage or Security Agreement covering the goods, equipment, proceeds, inventory and chattels to be installed in the said building, said Chattel Mortgage or Security Agreement to be in a form approved by the solicitor of the Chargee.

**29. SPOUSAL CONSENT**

The spouse hereby consents to the transaction evidenced by this Instrument and releases all his/her interest in the said lands to the extent necessary to give effect to the rights of the Chargee hereunder.

**30. CHANGE OF MARITAL STATUS**

AND the Chargor covenants and agrees with the Chargee that forthwith after any change or happening affecting any of the following, namely, (a) the spousal status of the Chargor, (b) the qualification of the said lands as a family residence or as a matrimonial home within the meaning of The Family Law Act, 1986, as amended, and (c) the ownership of the equity of redemption in the said lands, the Chargor will advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the Chargee shall be kept fully informed of the names and addresses of the legal and beneficial owner or owners for the time being of the said equity of redemption and of any spouse who is not an owner but who has a right of possession in the said lands by virtue of the said Act or any successor Act. In furtherance of such intention, the Chargor covenants and agrees to furnish the Chargee with such evidence in connection with any of (a), (b), or (c) above as the Chargee may from time to time request.

**31. APPOINTMENT OF A RECEIVER**

(a) Notwithstanding anything herein contained, it is declared and agreed that at any time and from time to time when there shall be default under the provision of these presents, the Chargee may at such time and from time to time and with or without entering into possession of the charged premises appoint in writing a receiver (which term shall include a receiver/manager) of the charged premises, or any part thereof, and of the rents and profits thereof and with or without security, and may from time to time by similar writing remove any such receiver and appoint another in his place and stead, and in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby agrees and consents to the appointment of such receiver of the Chargee's choice and without limitation, whether pursuant to this Charge, the Mortgages' Act, the Construction Lien Act or pursuant to the Courts of Justice Act (as the Chargee may at its sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the charged premises or any part thereof.

- (b) Upon the appointment of any such receiver or receivers from time to time the following provisions shall apply:
  - (i) That a statutory declaration of an officer of the Chargee as to default under the provisions of these presents shall be conclusive evidence thereof;
  - (ii) That every such receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect to the charged premises, or any part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
  - (iii) That the Chargee may from time to time fix the remuneration of every such receiver who shall be entitled to deduct same out of the charged premises or the proceeds thereof;
  - (iv) That each such receiver shall, so far as concerns responsibility and liability for this acts or omissions, be deemed to be the agent or attorney of the Chargor and in no event the agent of the Chargee;
  - (v) That the appointment of every such receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the charged premises or any part thereof;

- (vi) That the receiver shall have the power to rent any portion of the charged premises for such term and subject to such provisions as he may deem advisable or expedient and in so doing such receiver shall be acting as the attorney or agent of the Chargor and shall have the authority to execute any lease of any such premises in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever acts such receiver may do in the charged premises;
- (vii) That every such receiver shall have full power to complete any unfinished construction upon the charged premises;
- (viii) That any such receiver shall have full power to carry on or concur in the carrying on of the business of the Chargor, and to employ and discharge such agents, workmen, accountants and other individuals or companies as are required to carry on the said business, upon such terms and with such salaries, wages or remuneration as he shall think proper, and to repair and keep in repair the lands and to do all necessary acts and things for the carrying on of the business of the Chargor and the protection of the said lands of the Chargor;
- (ix) That any such receiver shall have the power to sell or lease or concur in selling or leasing any or all of the said lands, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as to him may seem best and any such sale may be made from time to time as to the whole or any part or parts of the lands; and he may make any stipulations as to title or conveyance or commencement of title or otherwise which he shall deem proper;
- (x) That any such receiver shall have the power to borrow money to carry on the business of the Chargor or to maintain the whole or any part of the lands, in such amounts as the receiver may from time to time deem necessary and in so doing the receiver may issue certificates that may be payable when the receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the lands in priority to this Charge;
- (xi) That any such receiver shall have the power to execute and prosecute all suits, proceedings and actions which the receiver in his opinion considers necessary for the proper protection of the lands, to defend all suits, proceedings and actions against the Chargor or the receiver, to appear in and conduct the prosecution and defense of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;
- (xii) That any such receiver shall have the full power to manage, operate, amend, repair, alter or extend the charged premises, or any part thereof, in the name of the Chargor for the purpose of securing the payment of rental from the charged premises or any part thereof;
- (xiii) That any such receiver or trustee shall not be liable to the Chargor to account for monies or damages other than cash received by him or it in respect to the charged premises or any part thereof and out of such cash so received every such receiver shall pay in the following order:
  - (A) his remuneration;
  - (B) all payments made or incurred by him in connection with management, operation, amendment, repair, alteration or extension of the charged premises or any part thereof;
  - (C) in payment of interest, principal and other money which may from time to time be or become charged upon the charged premises in priority to monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by him in respect to the charged premises or any part thereof;
  - (D) in payment of all interest and arrears of interest and any other monies remaining unpaid hereunder; and
  - (E) the residue of any monies so received by him shall be applied on the principal sum or any other amounts from time to time owing under this Charge.

The Chargor hereby irrevocably appoints the Chargee as his attorney to execute such consent or consents and all such documents may be required in the sole discretion of the Chargee and/or its solicitor so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargee and/or the receiver or trustee and/or with respect to the charged premises in the same manner as if such documentation was duly executed by the Chargor himself.

### 32. **FINANCIAL STATEMENTS**

At the option of the Chargee, the Chargor shall within ninety (90) days of the end of each fiscal year of the operation of the charged lands and premises by the Chargor, furnish to the Chargee an audited annual operating statement prepared at the expense of the Chargor, which statement notwithstanding the generality of the foregoing shall set forth the gross rents and other revenue derived by the Chargor from the charged lands and premises, the costs and expenses of the operation and maintenance of the charged lands and premises and such information and explanation in respect of the foregoing as may be required by the Chargee and such statements shall be required to be prepared by a duly qualified chartered accountant and/or a certified public accountant suitable to the Chargee and the correctness of such statements shall be duly supported by the affidavit of a director or officer of the Chargor.

### 33. **DISCHARGE**

THE CHARGEES shall have a reasonable period of time after payment of the mortgage monies in full within which to prepare and execute a discharge of the Charge; and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee; and all legal and other expenses for the preparation and execution of such discharge shall be borne by the Chargor.

### 34. **SERVICES CHARGES**

The Chargor shall pay to the Chargee the then current fee of the Chargee for the following matters:

- (a) providing and preparing mortgage statements;
- (b) amending its records to reflect the assumption of this Charge;
- (c) endeavouring to collect any money overdue under this Charge including without limiting the generality of the foregoing an allowance for time and service of any employee of the Chargee or other person appointed for such purposes

- (d) executing any cessation or discharge of this Charge notwithstanding that said cessation or discharge may have been prepared by the Chargor;
- (e) entering into an agreement to amend the interest rate or any other provision in this Charge;
- (f) entering into an agreement to extend the maturity date of this Charge;
- (g) handling any dishonoured cheque;
- (h) placing insurance on the charged property;
- (i) such other administrative matters as the Chargee may perform with regards to this Charge or with regards to any collateral or additional security.

The charges contained in this proposal shall be forthwith payable to the Chargee and shall become part of the debt secured hereby and shall bear interest at the rate of interest expressed in this Charge.

### 35. CONDOMINIUM

In the event that the mortgaged premises are registered under the Condominium Act or are proposed to be registered under the Condominium Act, it is agreed that the following definitions and provisions shall apply to this Charge;

- (a) "Declaration" means the Declaration which, together with a description, was registered under the Condominium Act to subject to the Condominium Act the lands comprised in the condominium of which the premises hereby mortgaged are or will constitute part, and extends to and includes all amendments thereto;
- (b) "Condominium Corporation" means the Corporation which was or will be created by the registration of the Declaration and the description relating thereto;
- (c) "Common Expenses" means the expenses of the performance of the objects and duties of the Corporation and any expenses specified as common expenses in the Declaration;
- (d) "Insurance Trustee" means the insurance trustee if any, appointed pursuant to the Declaration.

### A. INSURANCE - CONDOMINIUM

- (i) Notwithstanding anything hereinbefore contained to the contrary, the Chargor covenants with the Chargee that the Chargor or the Condominium Corporation or both of them shall forthwith insure and, during the continuance of his Charge, keep insured in favour of the Chargee, against loss or damage by fire, the aforementioned unit and its appurtenant common interest, as well as each and every building which may hereafter be erected thereon both during erection and thereafter, for an amount of not less than the greater of the full insurable value of each and every building or the principal money hereby secured in dollars of lawful money of Canada.
- (ii) The Chargor further covenants with Chargee that the Chargor or the Condominium Corporation or both of them shall forthwith insure and, during the continuance of this Charge, keep insured, as the Chargee may require, the aforementioned unit and its appurtenant common interest, as well as each and every building and structure on the said land and each and every building and structure which may hereafter be erected thereon, both during erection and thereafter, against loss or damage by tempest, tornado, cyclone, lightning and such other risks and perils as the Chargee may deem expedient. In the case of commercial properties, this covenant shall, in addition, include boiler, plate glass, rental and public liability insurance in an amount satisfactory to the Chargee. The Chargor shall also maintain improvements and betterments insurance for the unit, and ensure that adequate business interruption or loss of rental insurance is in place if the unit is either used for business by the Chargor, or rented out by the Chargor. Prior to the making of any advance by the Chargee, the Chargor or the Condominium Corporation or both of them shall forthwith assign, transfer and deliver over unto the Chargee each such policy and receipts relating thereto and evidence of payment of all premiums due. Should notice of cancellation of any such policy be given, the Chargor or the Condominium Corporation or both of them shall deliver to the Chargee evidence of renewal or replacement one week in advance of the expiration of the same. Every policy of insurance shall be effected on such terms and with such insurer as may be approved by the Chargee. Mortgage clauses, stated amount co-insurance clauses and all such other clauses as the Chargee may require, all in a form approved by the Chargee, will be attached to and form part of all insurance policies. Loss under each policy shall be made payable to the Chargee as its interest may appear with reference in its favour over any claim of any other person.
- (iii) Each policy shall be retained by the Chargee during the currency of this loan. Should an insurer at any time cease to have the approval of the Chargee, the Chargor or the Condominium Corporation or both of them shall effect such new insurance as the Chargee may require. In the event that the Chargor shall for any reason fail to keep the said premises so insured or fail to deliver the policies of insurance to the Chargee or fail to pay the premiums thereon, the Chargee, if it so elects, may have such insurance placed and pay the premiums thereon, and any premiums so paid shall be secured by this Charge and repaid by the Chargor in lawful money of Canada within ten (10) days after payment by the Chargee. In default thereof, the whole principal sum and interest and insurance premium with interest on such sum may be and shall become due at the election of the Chargee, anything herein to the contrary notwithstanding.
- (iv) In the event of loss or damage, the Chargor, the Condominium Corporation or both of them shall notify the Chargee, and the Chargor and the Condominium Corporation shall forthwith upon such event comply fully with the terms of the policy or policies of insurance, and without limiting the generality of any clause in this Charge or the obligation of the Chargor to observe and perform all the duties and obligations imposed by the Condominium Act and by the Declaration and By-laws of the Condominium Corporation, shall comply with the insurance provisions of the Declaration. Further, the Chargor shall furnish at his own expense all necessary proofs and do all necessary acts to enable the Condominium Corporation or the Insurance Trustee (if any) pursuant to the insurance trust agreement between the Condominium Corporation and the Trustee to obtain payment of the insurance moneys in accordance with this Declaration.
- (v) In the event of loss or damage, the Chargee shall have the right to apply the proceeds arising from the insurance policy wholly or in part in reduction of any principal then remaining unpaid, notwithstanding that no amount at such time may be due and payable under the terms of repayment and/or of any other sums owing to it and/or in meeting costs or repair or reconstruction and/or to pay such proceeds in whole or in part to the Chargor or to the assigns of the Chargor, in which event the sum shall not be credited on the mortgage account, or partly in one and partly in other or others of said manner. No damage may be repaired nor any reconstruction effected without the approval in



writing of the Chargee. All of the foregoing covenants and provisions as to insurance shall apply to all building and structures whether now or hereafter erected on the said lands. The Chargor, as a member of the Condominium Corporation, shall seek the full compliance by the Condominium Corporation of the aforementioned covenants.

**B. OBSERVANCE - DECLARATION AND BY-LAWS; COMMON EXPENSES**

- (i) The Chargor covenants and agrees at all times and from time to time to observe and perform all duties and obligations imposed on him by the Condominium Corporation and by the Declaration and the By-laws as amended from time to time, of the Condominium of which this unit forms a part by virtue of his ownership of the said parcel. Any breach of the said duties and obligations shall constitute a breach of covenant under this Charge.
- (ii) Without limiting the generality of the foregoing, the Chargor covenants to pay on or before the dates for payment, all monies due and payable pursuant to the provisions of the Declaration and By-laws, including any special assessments or common expenses required of him as an owner of the said lands. Upon failure of the Chargor to make said payments, the Chargee may, at its option, pay any such moneys owing, whether or not any payment in default has priority to this Charge or any part of the moneys secured hereby, and the amount paid by the Chargee shall be forthwith due and payable to the Chargee by the Chargor, together with interest at the aforesaid rate and shall be a charge upon the said lands to the same extent and effect as the principal moneys and interest hereby secured. The Chargor covenants to transmit to the Chargee forthwith upon the demand of the Chargee, satisfactory proof that all common expenses or special assessments levied or assessed against the unit have been paid as assessed.

Further, failure to make any such payment shall be deemed to be a default under the terms of this Charge and the Chargee may proceed to exercise its rights under the terms of this Charge as if and to the extent that the Chargor had failed to make the other payments required herein, whether or not such payments have actually been made by the Chargee.

- (iii) The Chargor acknowledges that he has received a copy of the Declaration and By-laws (individually a "By-law" and collectively the "By-laws") of the Corporation of which this unit forms a part and agrees to comply with the stipulations, restrictions, covenants and provisions therein and with the By-laws or Rules & Regulations passed pursuant thereto from time to time.
- (iv) The Chargor covenants with Chargee to deliver to the Chargee in person or by prepaid registered mail, a copy of the following:
  - (A) each Notice of Meeting sent to the Chargor pursuant to the provisions of the Declaration and By-laws or the Condominium Act, either as owner of the unit or as a member of the Corporation, which copy is to be received by the Chargee at least five (5) clear days prior to the date upon which such meeting is fixed to convene;
  - (B) every claim against the Chargor or demand for payment from the Chargor, which claim or demand is pursuant to the provisions of the Declaration and By-laws, which copy is to be received by the Chargee least five (5) clear days prior of the date upon which such claim or demand becomes due and payable;
  - (C) every notice received by the Chargor of a breach by the Chargor of the provisions, restrictions, terms, specifications or stipulations set out in the Declaration and By-laws, which copy is to be received by the Chargee within five (5) days of the date upon which such notice is received by the Chargor;
  - (D) every request or claim for the consent of the Chargor affecting the unit or the common elements of the condominium plan, which copy is to be received by the Chargee within five (5) days of the date upon which such demand or request is received by or made of the Chargor;
  - (E) any information known to the Chargor concerning the termination of a Management Agreement or Insurance Trust Agreement for the Corporation, such information to be delivered to the Chargee immediately upon the Chargor learning of such information.
- (v) The Chargor by these presents does hereby charge his interest in the assets of the Corporation, which assets are now owned or may hereinafter be acquired by the Corporation, in a like manner as the lands charged in this Charge.
- (vi) The Chargor covenants that he will not without permission in writing from the Chargee, do any act or fail to do any act which will or may have the effect of furthering any of the following:
  - (A) the engagement by the Corporation of a management company or other person for the property who is not or who has not been actively engaged in the field of professional property management; or
  - (B) the leasing by the Corporation of any of the common elements of the property.

The Chargor hereby grants unto the Chargee the right to inspect at reasonable times, and from time to time, all of the Corporation's records as provided in the Declaration and By-laws and, if requested by the chargee, shall direct and authorize the Corporation to do all things to enable the Chargee to so inspect the records.

Provided, and it is hereby agreed by and between the Chargor and the Chargee that, in the event that the government of the property included in the Condominium Plan is terminated, or in the event of the sale of the property or of a part of the common elements of the Condominium Plan being authorized by a vote of the owners of the units on the said Plan, then in such event, the moneys hereby secured shall forthwith become due and payable, at the option of the Chargee, and all the powers in and by this Charge conferred shall become exercisable, notwithstanding any consent given by the Chargee to such termination or sale.

**C. RIGHT TO VOTE**

Whether or not the Chargor is in default or in breach of any of the covenants or obligations contained in this Charge, the Chargee is hereby irrevocably authorized and empowered to exercise the right of the Chargor as an owner of the said lands to vote or to consent or to not vote or to refuse to consent in all matters relating to the affairs of the said Corporation without in anyway consulting the Chargor in the manner in which the vote shall be exercised or not exercised and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Corporation was exercised or not exercised and provided that:

- (i) The Chargee shall not have the right to vote or consent as set forth in this paragraph unless it gives notice in writing to the Chargor and the said Condominium Corporation that the Chargee does intend to exercise the said right to vote or consent and in that event, until the Chargee revokes the said notice, the Chargor shall not exercise the right to vote or consent and the Chargee shall have such rights. Should the Chargee not give notice as aforesaid of its

intention to exercise its right to vote or give consent, then until the giving of such notice, the Chargor may exercise the right to vote or consent. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter.

- (ii) The Chargee shall not by virtue of the assignment to the Chargee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests of the Chargor or to give the notice contemplated by clause (1) above.
- (iii) The exercise of the right to vote or consent shall not constitute the Chargee a chargee in possession.

#### 36. PAYMENTS

(a) Any payment of principal, interest or principal and interest combined made after 1:00 p.m. shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day.

(b) Any payment to be made hereunder which is not made by the Chargor within the time limited for such payment hereunder shall be added to the debt hereby secured and shall be payable forthwith, with interest, at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargee and all powers in this Charge conferred shall become exercisable.

(c) Any payment made by the Chargee on account of realty taxes and insurance premiums, or otherwise, as provided in this Charge, shall be added to the debt hereby secured and shall be payable forthwith, with interest, at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargee and all powers in this Charge conferred shall become exercisable.

#### 37. HEADINGS

The headings with respect to the various paragraphs of this Charge are intended to be for identification of the various provisions of this Charge only, and the wording of such headings is not intended to have any legal effect.

#### 38. INVALIDITY

IF ANY of the terms, covenants or conditions in this Charge contained shall be void for any reason, such shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

#### 39. GENDER AND NUMBER

In construing these covenants, the words "Charge", "Chargee", "Chargor", "land" and "successor" shall have the meanings assigned to them in section 1 of the Land Registration Act, 1984 and the words "Chargor" and "Chargee" and the personal pronouns "he" and "his" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees" and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor or Chargors, Chargee or Chargees, shall be equally secured and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

#### 40. ADVANCES

(a) If this Charge secures a construction loan, then advances secured by this Charge will be advanced in stages on a cost to complete basis as construction of the building(s) or other structure(s) on the said lands proceed(s) or as the conditions as enumerated by the Letter of Commitment are complied with.

(b) The Chargor shall pay to the Chargee on each occasion when an inspection of the property is required to confirm:

- (i) construction costs to date and/or
- (ii) the cost to complete and/or
- (iii) compliance with conditions for further advances, an inspection fee in such reasonable amount as the Chargee may charge from time to time for each such inspection and the Chargee's solicitors shall be paid their reasonable fees and disbursements for each subsearch and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Chargee shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.

#### 41. NON-MERGER

NOTWITHSTANDING the registration of this Charge and the advance of funds pursuant hereto, the terms and/or conditions of the Letter of Commitment pertaining to the loan transaction evidenced by this Charge shall remain binding and effective on the parties hereto, and shall not merge in this Charge nor in any document executed and/or delivered on closing of this transaction, and the terms thereof are incorporated herein by reference. In the event of any inconsistency between the terms of such Letter of Commitment and this Charge, the Chargee shall decide in its sole and unfettered discretion which shall prevail.

#### 42. COVENANTORS

THE COVENANTOR(S) (if any) named in this Charge, in consideration of the Chargee making the said loan herein and the sum of One (\$1.00) now paid to said Covenantor(s) by the said Chargee (the receipt of which is hereby acknowledged) do hereby covenant jointly and severally with the said Chargee and, if more than one, with each other, as principal debtors and not as sureties that said Covenantor(s) will pay and truly cause to be paid to the said Chargee the principal monies and interest hereby secured as and when such monies fall due, all taxes, rates and assessments, municipal, local or parliamentary and otherwise which now or which may hereafter be imposed, charged or levied upon the said lands and the Covenantor(s) will observe, keep and perform the conditions and covenants herein contained by and on the part of the said Chargor to be kept, performed and observed.

AND the said Covenantor(s) do(es) further covenant and agree to and with the Chargee that should default be made hereunder and so often as the same may occur, the Covenantor(s) will forthwith pay unto the Chargee the amount or amounts that may be in default.

IT IS FURTHER AGREED that the said Chargee may at anytime or times and from time to time extend or agree to extend the time for payment of any or all the monies secured by this Charge or may refrain from enforcing payments thereof and may alter the terms and times of payment thereof or the rate or time of payment of interest thereon and may release any part of the said lands or any other person liable on any covenant or any other security, collateral or otherwise, or otherwise deal with this Charge and with the Chargor in whatsoever manner that the Chargee shall think proper from time to time without notice to the Covenantor(s) and without the

consent of the Covenantor(s) and notwithstanding same, the Covenantor(s) shall remain fully liable under the foregoing covenants so long as any monies are remaining due or unpaid to the Chargee on this loan.

THE FOREGOING shall be binding upon the Covenantor(s), and said Covenantors' heirs, executors, administrators, successors and assigns.

43. **UREA FORMALDEHYDE FOAM INSULATION**

The Chargor warrants that the building, erection, addition or improvement on the Property has not been insulated with urea formaldehyde foam insulation and has not been constructed with, or upon lands containing, any toxic or noxious materials that reduce or will reduce if known, the fair market value of the Property. The Chargor will not insulate or allow any buildings, erection, addition or improvement to be insulated with that type of insulation. The Indebtedness will immediately become due and payable if at any time it is determined that any building, erection, addition or improvement subject to this Charge contains urea formaldehyde foam insulation, or has been constructed with or upon lands containing any toxic or noxious materials that reduce or will reduce if known, the fair market value of the Property.