

**LAND REGISTRATION REFORM ACT, 1984  
SET OF STANDARD CHARGE TERMS**

**Filed by FirstOntario Credit Union Limited  
("Chargee")**

**Filing Date: July 25, 2000  
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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.

**No Set-Offs**

1. The Chargee shall be entitled to the principal monies and interest and all other amounts payable pursuant to the provisions hereof free from all equities, deductions rights or set-offs or counterclaims.

**Government Compliances**

2. The said Chargor doth release to the said Chargee all its claims upon the said lands subject to the said proviso. The Chargor covenants to observe all laws, by-laws, regulations and requirements of all government, governmental authorities and regulatory agencies relating to the charged premises or to the business of the Chargor.

**Advance of Mortgage Moneys**

3. The Chargor agrees that neither the preparation, execution nor registration of this Charge shall bind the Chargee to advance the money hereby secured, nor does the advance of a part of the monies 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, and the cost of all proceedings taken in connection with this Charge, including (without limiting the generality of the foregoing) the expense of the negotiation of this Charge, examination of the title, preparing and registering this Charge and valuation, are to be secured hereby whether or not the whole or any part of the principal sum hereof is advanced, the same being hereby charged upon the said lands and shall be without demand therefore, payable forthwith upon execution of these presents by the Chargor with interest at the rate aforesaid, and in default of payment thereof, the Chargee's power of sale hereby given, and all other remedies hereunder, shall be exercisable.

**Promise to Pay and Perform**

4. The Chargor will pay or cause to be paid to the Chargee the full principal amount and interest secured by the Chargee in the manner of payment provided by the Charge, without any deduction or abatement, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations contained in the Charge. The Chargor will comply with all orders issued by regulatory authorities and all environmental laws, regulations, and ordinances. The Chargor will pay, as they fall due, all taxes, rates, assessments and penalties, whether municipal, local, parliamentary, judicial, or administrative, which now or may hereafter be imposed, charged or levied upon the lands or against the Chargor and when required, produce for the Chargee receipts evidencing payment of the same.

The Chargee shall have the right from time to time to estimate the amount of taxes on the charged lands and premises for each year and to require the Chargor to pay in each month, a specified portion of such estimated amount in addition to the monthly instalments stipulated in this Charge (if any); and the Chargor covenants and agrees when so required to

pay to the Chargee in addition to the monthly instalments herein mentioned (if any) such specified portion of the said taxes with each of the twelve succeeding monthly instalments herein mentioned next falling due, and the Chargor shall also pay to the Chargee on demand the amount, if any, by which the actual taxes exceed such estimated amount. If the principal and interest are repayable on demand only, this amount on account of taxes shall be paid to the Chargee in each month on a day designated by the Chargee. If before any amount on account of taxes so paid to the Chargee shall have been applied against taxes, there shall be arrears in the payment of principal and/or interest due and payable under this Charge, the Chargee may apply such amount paid on account of taxes instead towards payment of the arrears of principal and/or interest. The Chargee is not obligated to pay interest to the Chargor on amounts paid to the Chargee on account of taxes for the period of time immediately preceding the date the amounts are applied against taxes.

If payment provisions in this Charge require the Chargor to make payments of principal and interest monthly, the Chargor and the Chargee may, from time to time, agree that payments of principal and interest (and any amount on account of taxes, if applicable) shall be made more frequently than monthly, in which case the Chargor shall comply with the terms of any such agreement instead of the payment provisions prescribed in this Charge.

If this Charge contains an interest adjustment date, the Chargor further covenants to pay, on such date, interest at the rate set forth in the Charge and all money advanced by the Chargee to the Chargor under the Charge, prior to such interest adjustment date.

#### **Inspection**

5. The Chargor agrees from time to time to supply to the Chargee forthwith upon demand therefor such information and documents as are within the Chargor's possession or under the Chargor's control regarding the said lands or any part thereof as the Chargee may demand and to permit the Chargee and any persons acting for the Chargee at all reasonable times to enter upon the said lands or any part thereof for the purpose of inspecting the said lands or any part thereof and further agrees that the reasonable costs of every such inspection shall be a charge upon the said lands and shall be payable forthwith upon demand therefor and bear interest at the aforesaid rate, compounded monthly until paid.

#### **Title**

6. The Chargor covenants that the Chargor has a good title in fee simple to the said land; AND that the Chargor has the right to convey to the said Chargee; AND that the said Chargor will execute such further assurances of the said lands as may be requisite; AND that the Chargor will warrant and defend his/her/its title to the said lands and to every part thereof against the claims and demands of all persons whatsoever; AND that on default the Chargee shall have quiet possession of the said lands free from all encumbrances, and in such event shall have full power and authority to carry on in the name of the Chargor the business operations of the Chargor including the power to borrow money and to advance its own monies as it deems necessary and any money so advanced by the Chargee shall bear interest at the aforesaid rate and form a charge on the Charged premises in priority to this Charge.

#### **Insurance**

7. (a) The Chargor, does hereby covenant and agree that it shall keep all buildings whether now or hereafter to be

erected on the said lands and that it will keep the buildings on the said lands constantly insured for the benefit of the Chargee against loss or damage for the amounts referred to in the Charge and referred to herein and shall maintain such other insurance for the full insurable value until the monies hereby secured are fully paid, and will assign, transfer and deliver all such insurance policies to the Chargee and deliver renewals therefor to the Chargee no later than one week in advance of the expiration of any such policies or renewal thereof, stamped "paid" by the agent or company issuing the same. In the event the Chargor shall, for any reason, fail to keep the said lands 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 underwritten 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 days after the payment by the Chargee. In default thereof, the whole principal sum and interest and insurance premium with interest on such sum paid for insurance from the date of payment at the aforesaid rate may be and shall become due at the election of the Chargee, anything herein to the contrary notwithstanding; and should the Chargee by reason of any such insurance against loss as aforesaid receive any sum or sums of money, the amount thereof may be retained and applied by it toward payment of the amount hereby secured; provided however, that unless the amount received by the Chargee is applied expressly by it in reduction of the amount owing hereunder, the receipt by the Chargee of such proceeds shall not operate as payment of the Chargor's indebtedness hereunder; or, at the option of the Chargee, the same may be paid over, either wholly or in part, to the Chargor to enable it to repair said buildings or to erect new buildings in their place or for any other purpose or object satisfactory to the Chargee without affecting the amount of this Charge for the full amount secured hereby before such loss or payment ever took place.

- (b) The Chargor shall insure the buildings (including all fixed improvements thereof and thereto) forming part of the Charged Premises against loss or damage by fire and also against loss or damage by or from such additional perils, risks or events including extended coverage, and in such amounts as the Chargee may require at any time and from time to time but in any event in an amount sufficient to cover the Chargee's interest, and, the Chargor shall insure against general liability of at least **\$1,000,000.00** and against business interruption arising out of the business operations of the Chargor on the Charged Premises for an amount to cover the average of Six (6) months income on the property, and, if a steam boiler, pressure vessel or any other object generating steam or operated by steam or if an oil or gas burner or coal blower or stoker or if a sprinkler system shall be operated on the Charged Premises, the Chargor shall also insure against loss or damage by explosion of or caused by such boiler, vessel or other object and loss or damage caused by such burner, blower or stoker and such sprinkler system;

- (c) The Chargee may require any such insurance to be cancelled and new insurance to be effected in a company or companies named by the Chargee and also may without reference to the Chargor and without any obligation or liability to do so, effect or maintain any insurance herein provided for;
- (d) The Chargor shall, as and when required by the Chargee, deliver to the Chargee each policy of insurance;
- (e) Except as set out in paragraph 7 (a) herein, evidence of the renewal of every policy or insurance shall be left with the Chargee at least fifteen (15) days before the termination thereof or the Chargee may without any obligation or liability to so do provide therefor;
- (f) The Chargee shall have a lien for all moneys secured by this Charge on all such insurance whether effected under the foregoing provisions or not;
- (g) The Chargee may require that all or any portions of moneys received on any insurance be applied in discharge of any or all of the moneys hereby secured whether due or not or be used to fulfil any of the obligations contained herein on the part of the Chargor or as the Chargee may determine, or be used to replace or restore the Charged Premises to a condition satisfactory to the Chargee, or be released to the Chargor;
- (h) The Chargee is hereby irrevocably appointed by the Chargor as attorney of the Chargor to assign any policy of insurance in the event of the foreclosure of this Charge or other extinguishment of the indebtedness secured hereby;
- (i) Charge clauses, in a form approved by the Chargee, will be attached to all insurance policies; and
- (j) The foregoing provisions as to insurance shall apply to all buildings and fixtures whether now or hereafter forming part of the Charged Premises.

#### Remedies of Chargee on Default

- 8. (a) Provided that the Chargee on default of payment for at least **fifteen (15) days** may, on at least **thirty-five days' notice**, enter on and lease the said lands or, on default of payment 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, 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 an adult 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 its last known address, or by publishing it

once in a newspaper published in the county or district in which the lands are situate; and such notice shall be sufficient 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 the said principal or interest or any part thereof of any sum of money that is, by the terms hereof, a charge upon the said lands and such default continues for two months after any payment of either principal or interest 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.
- (c) And it is hereby further agreed that the Chargee may sell any of the said lands on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to the title or evidence or commencement of title or otherwise which it shall deem proper, and may terminate or vary any contract for the sale of the whole or any part of the said lands and re-sell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies 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 it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of 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.
- (d) The Chargor covenants to deliver to the Chargee forthwith upon demand therefor at any time after the power of sale has become exercisable, all deeds and documents in the Chargor's possession or power relating to the said lands, or to the title thereto, which the Chargee would have been entitled to demand and recover if the said lands had been conveyed, appointed, surrendered or assigned to and was then vested in the Chargee for all the estate and interest of the Chargor and of which the Chargor had power to dispose, and the Chargor agrees that if the legal estate is outstanding to a trustee, the Chargee, or any purchaser from it, the Chargee shall be entitled to call for a conveyance of the legal estate to the same extent as the Chargor could have called for such a conveyance if this Charge had not been made. The Chargor hereby appoints the Chargee the irrevocable attorney of the Chargor for the purpose of making the foregoing sale and executing such deed and other instruments as may be desirable to effect such sale.

- (e) Provided that the Chargee may distrain for arrears of interest.
- (f) Provided that the Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

#### **Additional Fees**

9. In addition to, and not in substitution for, all costs, charges and expenses for which the Chargor may be responsible hereunder, the Charger shall pay to the Chargee the following fees:
- (a) whenever any cheque or other document, including, without limitation, any pre-authorized debit instrument, is presented for payment of any principal, interest or other amount hereunder, and such cheque or other document is not honoured, the Chargor shall pay to the Chargee an NSF fee in the amount established from time to time by the Chargee;
  - (b) whenever any amount payable by the Chargor hereunder is not paid when due, the Chargor shall pay to the Chargee a Collection Fee in respect of the Chargee's collection efforts, in the amount established from time to time by the Chargee;
  - (c) whenever the Chargor is in default hereunder, the Chargor shall pay to the Chargee an Inspection Fee in the amount established from time to time by the Chargee in respect of each inspection of the lands made by or on behalf of the Chargee; and
  - (d) whenever the Chargor is in default hereunder and the Chargee decides to exercise its right to sell the lands or to have them sold, whether or not such rights are exercised in full, the Chargor shall pay to the Chargee an Administration Fee in the amount established from time to time by the Chargee (which fee may be a per diem rate) for overhead or administrative expenses associated therewith.

All the foregoing fees shall be payable on demand to the Chargee and shall be a charge on the said lands and shall be added to the principal and bear interest at the said rate and, in default of payment, the powers of sale herein given may be exercised.

#### **Acceleration**

10. (a) Provided that in default of the payment of the interest hereby secured the principal hereby secured shall become payable.
- (b) 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.
- (c) Provided that if any order shall be made or a resolution passed for the winding-up of the Chargor or if the Chargor shall go into liquidation either voluntarily or by order of a Court or if a petition shall be filed under the Bankruptcy Act by or against the Chargor or an assignment made by it or if an interim receiver is appointed under the Bankruptcy Act or if a receiver or

manager or agent is appointed by or on behalf of a secured creditor of the Chargor privately or judicially or if an application is made under The Companies Creditors Arrangement Act or similar statute or if a proposal or an arrangement is made by the Chargor to its creditors under the Bankruptcy Act, or if the Chargor commits any act of bankruptcy, the balance of the principal and interest shall immediately become due and payable at the option of the Chargee.

- (d) Provided that any change in use of the property charged hereby from that set out in the Commitment without the written consent of the Chargee shall constitute a default under this Charge and the balance of the principal and interest shall immediately become due and payable at the option of the Chargee.

#### **Waiver of Default**

11. Provided that the Chargee may in writing at any time or times after default waive any default hereunder and such waiver shall be effective in accordance with its terms. 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.

#### **Release of Land by Chargee**

12. And it is further agreed by and between the parties that the Chargee may, at its discretion, at all times release any part or parts of the said lands or any other security or any surety for the money hereby secured either with or without sufficient consideration therefor, without responsibility therefor, and without thereby releasing any part of the said lands or the Chargor or any other person from this Charge or from any of the covenants herein contained, it being agreed that every part or lot into which the said lands are or may hereafter be divided does and shall stand charged with the whole money hereby secured and no person shall have the right to require the Charge monies to be apportioned and the Chargee shall not be accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee.

#### **Application of Payments**

13. In case less than the total principal amount of this Charge becomes due and payable and is paid at any time prior to maturity, the principal amount so paid shall be credited against the principal instalments payable hereunder in inverse order of their maturity date, so that no credit shall be made against a principal instalment of a stated maturity date until credits have been made against all principal instalments of later maturity dates.

#### **Repairs and Waste**

14. Provided further that no sale or other dealings 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 person liable for payment of the monies hereby secured. The Chargor covenants with the Chargee that it will keep the said lands and the buildings, erections and improvements thereon in good condition and repair according to the nature and description thereof respectively and will not commit or permit any act of waste on the said

lands or remove, destroy or dispose of any of the said buildings or any of the chattels of a fixed or permanent nature now or hereafter situate on the said lands save and except that the Chargor may remove any such chattels if it replaces the same with a comparable chattel which shall forthwith become a part of the said lands. If the Chargor neglects to keep the said lands in good condition and repair, or commits or permits any act of waste on the said lands (as to which the Chargee shall be sole judge) or makes default as to any covenants or provisoes herein contained, the principal 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 may be exercised and the Chargee may make such repairs as it deems necessary, and the cost thereof with interest thereon shall be a charge upon the said lands prior to all claims thereon subsequent to these presents.

#### Chargee's Costs

15. (a) It is hereby agreed between the parties hereto that if the Chargor shall be in default as to any of the covenants or provisoes herein contained the Chargee may in its discretion perform any of the same capable of being performed by it but shall be under no obligation so to do and that all payments, costs, charges, expenses, and reasonable compensation payable to the Chargee which may be incurred in or attributable to such performance shall, with interest at the rate aforesaid, be a charge upon the said lands.
- (b) It is hereby further agreed that the Chargee may pay any liens, (without being obliged to enquire into the validity or priority of the same and without taking or defending any action or proceedings to determine the rights or priorities of any lien claimants to or under any such lien), rents, taxes, claims, charges or encumbrances, of any nature whatsoever upon the said lands and premises for insurance, and Charge or income tax imposed, or that may be imposed, on the Chargee in respect of the said lands or this Charge or the monies hereby secured, and the amount so paid together with all costs, charges, and expenses, including, without limiting the generality of the foregoing, costs as between solicitor and client, travelling expenses of the Chargee and all servants and agents of the Chargee and commissions on collections of rent, which may be incurred in taking, recovering and keeping possession of the said lands or in inspecting or managing the same and generally in any other proceedings, matter or things taken or done in connection with or to collect, protect or realize upon this security or any security collateral hereto, or to perfect the title of the said lands, shall be a charge on the said lands in favour of the Chargee and shall be payable forthwith by the Chargor to the Chargee with interest at the aforesaid rate until paid and in default the power of sale hereby given shall be exercisable in addition to all other remedies.
- (c) The Chargor covenants and agrees with the Chargee that in the event of default in the payment of any instalment or any other monies payable hereunder by the Chargor or on breach of any covenant, proviso or agreement herein contained after all or any part of the monies hereby secured have been advanced, the Chargee may, at such time or times as the Chargee may deem necessary and without the concurrence of any person, enter upon the



said lands and may make such arrangement for completing the construction of, repairing or putting in order of any buildings or other improvements on the said lands or for inspecting, taking care of, leasing, collecting the rents and managing generally the said lands, as the Chargee may deem expedient and all reasonable costs, charges and expenses, including allowances for the time and service of any employee of the Chargee, or any other person appointed for the above purposes, shall be a charge upon the said lands, shall be payable forthwith upon demand therefor and shall bear interest at the aforesaid rate, compounded monthly until paid or may be added to the debt.

- (d) Provided also that upon the registration of any construction lien against the said lands, or in the event of any buildings being erected thereon being allowed to remain unfinished or without any work being done on them for a period of ten (10) days, the principal and interest hereby secured shall, at the option of the Chargee, forthwith become due and payable.

#### Assignment of Leases

16. The Chargor hereby assigns, transfers and sets over unto the Chargee its successors and assigns, all leases on all or any part of the lands now existing or hereafter made and the full benefit and advantage thereof and all rents and monies thereby reserved or payable thereunder and hereafter to become due and owing provided that so long as the Chargor is not in default hereunder all such rents and monies shall continue to be paid to the Chargor. The Chargor covenants to give such further assurances as may be required by the Chargee to perfect the foregoing assignment and transfer.

#### Guarantee

17. The following provisions of this paragraph have force and effect only if a party signs this Charge as Guarantor.

The Guarantor, in consideration of such advance or advances as the Chargee may make under this Charge and in consideration of the sum of **ONE (\$1.00) DOLLAR** now paid to him by the Chargee, the receipt whereof is hereby acknowledged,

- (a) Hereby covenants and agrees with the Chargee, as principal debtor and not as surety, to well and truly pay or cause to be paid to the Chargee the principal money, interest, taxes and all other monies which the Chargor has by this Charge covenanted to pay to the Chargee or which are secured by this Charge or intended so to be secured, the said payments to be made on the days and times and in the manner provided for in this Charge;
- (b) Hereby further covenants and agrees to keep, observe and perform the covenants, terms, provisoes, stipulations and conditions of this Charge which are to be kept, observed and performed by the Chargor and at all times to indemnify, protect and save harmless the Chargee from all loss, costs and damage in respect of the advances of the Charge money and every matter and thing contained in this Charge;
- (c) Further agrees that the Chargee may from time to time without notice extend the time for payment of all monies secured by this Charge, amend the terms and times of payment and the rate of interest with respect to the said monies, refrain from enforcing

payment of the said monies, release any portion or portions of the Charged premises and waive or vary any of the covenants and conditions in this Charge to be kept observed and performed by the Chargor and grant any indulgence to the Chargor in respect of any default by the Chargor which may arise under this Charge, and that notwithstanding any such act by the Chargee, the guarantor, shall be bound by the provisions of this Charge until all of the monies secured under this said Charge shall have been fully paid and satisfied;

- (d) Further acknowledges that the Chargee may at any time grant or refuse any additional credit to the Chargor, accept or release or renounce any collateral or other security, administer or otherwise deal with the land and premises described in this Charge, take an Assignment of the Rentals with respect to the said lands and premises and apply any and all monies at any time received from the Chargor or from any other person or from the proceeds of any securities given in connection with this Charge in any manner the Chargee may deem appropriate. The Chargee may also utilize any and all insurance proceeds in reduction of the principal monies and interest secured by this Charge or for the refurbishing of the lands and premises or in any other manner that the Chargee may in its absolute discretion deem advisable;
- (e) Agrees that all of the matters mentioned herein may be performed by the Chargee without notice the Guarantor without releasing or in any modifying, altering, varying or in any way affecting the liability of the Guarantor, herein; and
- (f) Agrees that all of the covenants and agreements of the Guarantor contained herein shall be binding upon him and his respective successors and assigns and shall accrue to the benefit of the Chargee, its successors and assigns and that the Guarantor's liability as Guarantor, hereunder and the liability of its successors and assigns shall be joint and several.

#### Receiver

18. If the security hereby created shall become enforceable as herein provided and the Chargor shall have failed to pay the Chargee the amount declared to be due pursuant hereto, the Chargee may in its discretion, appoint a receiver or manager or receiver and manager of the property Charged hereby, or any part hereof, and may remove any receiver or manager or receiver and manager so appointed by it and appoint another in his stead, and the following provisions shall take effect:

- (a) Such appointment may be made at any time after the security shall have been enforceable and either before or after the Chargee shall have entered into or taken possession of the property Charged hereby or any part thereof but such appointment shall be revoked upon the direction in writing of the Chargee;
- (b) Every such receiver or manager or receiver and manager may be vested with all or any of the powers and discretion of the Chargee;
- (c) such receiver or manager or receiver and manager may carry on the business of the Chargor or any part thereof and may exercise all the powers conferred upon the Chargee under this Charge;
- (d) The Chargee may from time to time fix the remuneration of every such receiver or manager or receiver and

manager provided that the remuneration shall be at existing commercial rates for such services and direct the payment thereof out of the property Charged hereby or the proceeds thereof;

- (e) The Chargee may, from time to time, require any such receiver or manager or receiver and manager to give security for the performance of his duties and may fix the nature and amount thereof, but it shall not be bound to require such security;
- (f) Every such receiver or manager or receiver and manager may, with the consent in writing of the Chargee, borrow money for the purpose of carrying on the business of the Chargor or for the maintenance of the purposes approved by the Chargee and may issue certificates (herein called "Receiver's Certificates) for such sums as will in the opinion of Chargee be sufficient for obtaining upon the security of the property Charged hereby the amounts from time to time required, and such may be payable at such time or times as the Chargee may determine, and shall bear interest as shall therein be declared, and the receiver or manager or receiver and manager or the Chargee may sell, pledge or otherwise dispose of the same in such manner as the Chargee may deem advisable, and may pay such commission on the sale thereof as to the Chargee may appear reasonable, and in the name of and as attorneys for the Chargor may hypothecate, Charge, pledge, charge or otherwise grant security upon the whole or any part of the property Charged hereby, in priority over the security created hereunder, as security for the repayment of the moneys borrowed upon such Receiver's Certificates, and interest thereon which security may be granted either at the time of or subsequent to the borrowing of the said moneys, and the said moneys shall be secured by the security created hereby and shall be a first charge upon the property Charged hereby in priority to this Charge;
- (g) Save so far as otherwise directed by the Chargee, all moneys from time to time received by such receiver or manager or receiver and manager shall be paid over to the Chargee to be held by it on the trust of this Charge;
- (h) Every such receiver or manager or receiver and manager shall so far as concerns responsibility for his acts and omissions be deemed the agent of the Chargor and not of the Chargee.

#### **Chargee Managing Business**

19. In the event that the security hereby constituted shall become enforceable as herein provided, and the Chargor shall have failed to pay the Chargee the amounts declared to be due pursuant hereto, the Chargee may in its discretion by its officers, agents or attorneys, enter into and upon and take possession of all or any part of the property Charged hereby, with full power to carry on, manage and conduct the business operations of the Chargor, including the power to borrow moneys or advance its own moneys for the purpose of such business operations, the maintenance and preservation of the property charged hereby or any part thereof, the payment of taxes, wages and other charges ranking in priority to this Charge and current operating expenses incurred not more than sixty (60) days prior to such taking of possession (and moneys so borrowed or advanced shall be repaid by the

Chargor on demand and until repaid shall, with interest thereon at the aforesaid rate, form a charge upon the property charged hereby in priority to this Charge) and to receive the revenues, incomes, issues, and profits of the property charged hereby and pay therefrom all its expenses, charged and advances in carrying on the said business operations or otherwise, and all taxes, assessments and other charges against the property Charged hereby ranking in priority to this Charge, or payment of which may be necessary to preserve the property Charged hereby together with interest thereon, and to apply the remainder of the moneys so received, first in payment of principal and then in payment of interest due and unpaid and interest thereon: Provided that the Chargee shall, if it waives all events of default hereunder, restore the said property and business to the Chargor, and pay to it any balance of income so received after such payment of all amounts due to the Chargor, the security hereby constituted shall no longer be deemed to have become enforceable by reason of the events of default which theretofore existed, but the rights which may arise upon a subsequent event of default shall not be affected thereby.

#### **Non-Merger**

20. The Chargor covenants and agrees to and with the Chargee that in case of any foreclosure proceedings or other proceedings to enforce the security hereby created, judgment may be entered against it in favour of the Chargee for any amount which may remain due in respect of this Charge and the interest thereon after the application of the payment of the proceeds of any sale of the said lands or any part thereof. Neither the taking of any judgment nor the exercise of any power or seizure of sale shall operate to extinguish the liabilities of the Chargor to make payment of the principal sum hereby secured or interest thereon; nor shall the same operate as a merger of any covenant herein contained or affect the right of the Chargee to interest at the rate hereinbefore specified; nor shall the acceptance of any payment or other security operate as payment or novation of the Chargor's indebtedness under this Charge or as a reduction of the charges and pledges hereby created, notwithstanding any law, usage or custom to the contrary, and it is further agreed that the taking of a judgment or judgments under provision 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 time as herein provided. No remedy herein conferred upon or reserved to the Chargee is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist at law or in equity or by statute.

#### **Dealing with Other Security**

21. The security hereby constituted is in addition to and not in substitution for any other security for the monies secured hereby now or hereafter held by the Chargee. The taking of any action or proceedings or refraining from so doing or any other dealings with any other security for the money secured hereby or the release or reconveyance of any such security or any part thereof to the person giving such security shall not release or affect the charge created by this Charge and the taking of the security hereby created shall not release or affect any other security held by the Chargee for the repayment of the monies hereby secured. The Chargee is at liberty to take any action or proceedings separately or simultaneously with regard to this security, any additional security or any collateral security.

#### **Prior Mortgage**

22. If the Charge should, at any time, be subject to any prior Mortgage, charge, agreement for sale or other encumbrance (in this paragraph called the "Prior Mortgage"), the Chargor will pay or caused to be paid as they

become due all payments whether for principal, interest, taxes or otherwise under or by virtue of the Prior Mortgage and will otherwise observe, perform and comply with the covenant, provisions and agreements therein contained. Any default thereunder shall be deemed to be a default under this Charge and shall entitle the Chargee to exercise any and all remedies available to the Chargee in the event of default under the Charge. The Chargee may at its option make any payment or cure any default under the Prior Mortgage, and any such payment or cost incurred by the Chargee in curing such default shall be added to the Principal Sum and shall bear interest at the rate aforesaid and shall be payable forthwith by the Chargor to the Chargee, and shall be secured by the Charge.

#### **Demolition and Alterations**

23. The Chargor shall not demolish all or any part of the buildings or fixed improvements forming part of the Lands without the prior written consent of the Chargee and the Chargor will not proceed with any substantial alteration, remodelling or rebuilding of or addition to any buildings or change in use of the premises without the prior written consent of the Chargee.

#### **Expropriation**

24. If the lands or any part thereof shall be expropriated by any government, authority or corporation clothed with the powers of expropriation, all moneys payable in respect of such expropriation shall be paid to the Chargee and, if received by the Chargor, shall be received in trust for the Chargee and forthwith paid over to the Chargee. Such moneys shall, at the option of the Chargee, be applied against the indebtedness secured by the Charge or such part thereof as the Chargee may determine.

#### **Extensions**

25. Provided that the Charge may be renewed by any agreement in writing at maturity for any term with or without an increased interest rate notwithstanding that there may be subsequent encumbrances; and it shall not be necessary to register any such agreement in order to retain priority for the Charge so altered over any instrument registered subsequently to the Charge. Provided that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.

#### **Discharge of Charge**

26. Upon payment of the Principal Sum, interest and all other amounts payable by the Chargor under the charge (otherwise than by reason of this paragraph) or at any time when there is no indebtedness or liability of the Chargor to the Chargee, the Chargor may request in writing a discharge or an assignment of the Charge and upon payment of all legal and other expenses incurred by the Chargee for the preparation, execution and delivery of such discharge or assignment of the Charge (including the Chargee's usual fee for providing such services) the Chargee shall deliver such document to the Chargor. All such expenses are secured by this Charge.

#### **Fixtures**

27. The Chargor agrees that all furnaces, boilers, tanks, oil and gas burners, stokers, blowers, water heaters, television antennae, electric light fixtures, sprinklers, machinery, motors, window blinds, screen doors and windows, storm doors and windows, air conditioning, ventilating, electrical, plumbing, cooling, lighting, heating, cooking and refrigeration equipment, and all apparatus and equipment appurtenant thereto now or hereafter placed or installed upon the Lands shall, for all purposes of this Charge, be fixtures and an accession to the freehold and form part of the realty, whether or not affixed in law to the Lands.

**Notice**

28. All payments, notices, demands, requests, approvals and consents which may be or are required to be given by either party to the other herein, shall be in writing and delivered or sent by prepaid registered mail to the parties at their respective addresses. Unless notice of change of address shall be given by either party to the other, their respective addresses shall be:

If to the Chargor, to him, her, it or they at:

The Chargor's address for service contained in Box 13 to the Charge/Mortgage of Land

If to the Chargee, to it at:

FIRSTONTARIO CREDIT UNION LIMITED  
148 Niagara Street, P.O. Box 982,  
St. Catharines, Ontario  
L2R 6Z4

and if any such payment, notice, demand, request, approval or consent is sent by prepaid registered mail, it shall be deemed to have been given on the third business day following the mailing thereof and if personally served shall be deemed to have been given on the date it was personally served.

**Post-Dated Cheques**

29. The Chargor shall make payment of each monthly instalment by way of a post-dated cheque. The Chargor shall deliver at the inception of this Charge twelve (12) post-dated cheques for the first twelve (12) monthly instalments payable hereunder, and shall deliver another series of twelve (12) post-dated cheques on the anniversary dates of this Charge for the remainder of the monthly instalments payable hereunder unless the Chargee agrees to waive this requirement.

**Assumption of Charge**

30. The Chargor covenants and agrees with the Chargee that in the event of the Chargor selling, conveying, transferring or entering into an agreement for sale or of transfer of title of the property hereby charged to a purchaser or transferee not approved of in writing by the Chargee, which approval shall not unreasonably be withheld, all monies hereby secured together with accrued interest thereon and any applicable bonus on prepayment shall, at the option of the Chargee, forthwith become due and payable.

**Environmental Provisions**

31. The Provisions of this Section 31, to the extent they are inconsistent with any other provisions of this Charge, shall prevail over any such other provisions:

1. **Definition of Hazardous Material**

"Hazardous Material" means any contaminant, pollutant or waste and any substance that when released into the natural environment is likely to cause at some immediate or future time, material harm or degradation to the natural environment or material risk to human health and without restricting the generality of the foregoing, includes any contaminant, pollutant, waste, hazardous waste or dangerous goods as defined by applicable federal, provincial or municipal laws or regulations enacted for the protection of the natural environment or human health.

2. **Representations and Warranties**

The Chargor represents and warrants that as of the date hereof:

- (a) Neither the Chargor, nor, to its knowledge, any other person, has ever caused or permitted any Hazardous Material to be disposed of, placed, or stored on, in, into, under or through the charged premises or any part thereof;
- (b) Its businesses and assets are operated in compliance with applicable laws, regulations, licences and permits respecting the protection of the natural environment or human health (including, without limitation federal, provincial and municipal laws and regulations respecting the removal and disposal of asbestos and the discharge, deposit, emission, leakage, spill or disposal of any Hazardous Material (all such laws, regulations, licences and permits hereinafter referred to as "Environmental Laws");
- (c) No enforcement or civil action in respect of any Environmental Law or liability related to an environmental matter is threatened or pending and the Chargor knows of no circumstances that may give rise to such actions in the future; and
- (d) The Chargor has not received nor is subject to any notices or orders for violations of Environmental Laws or any claims or demands for remedial action or damages based upon any Environmental Laws and the Chargor knows of no circumstances that may give rise to such actions in the future.

3. **Survival of Representations and Warranties**

The representations and warranties made above shall be deemed to be repeated as of the date of each advance under this Charge and shall survive the execution and delivery of this Charge and shall continue in full force and effect until all sums owing hereunder are paid in full, notwithstanding any investigation made at any time by or on behalf of the Chargee, provided that the Chargee may, at its discretion, waive any representation and warranty at any time. The Chargor shall notify the Chargee of any change to the representations and warranties set out above and the Chargee may, at its sole discretion, from time to time accept any such changes thereto of which it shall have been notified in writing by the Chargor or waive or vary the requirements for any of the representations and warranties set out above or any part of any representation or warranty, but the Chargee shall have no obligation to do so.

4. **Further Covenants of Chargor**

- (a) The Chargor shall use or cause to be used the charged premises in compliance with all Environmental Laws.

- (b) The Chargor authorizes the Chargee to have access to the charged premises to conduct environmental inspections and to conduct all sampling and testing connected therewith.
- (c) The Chargor authorizes the Chargee to make good faith inquiries with federal, provincial and municipal governmental agencies respecting environmental matters.
- (d) The Chargor shall notify the Chargee of any change in use of the charged premises and any material change to production processes resulting in alteration to the discharge of contaminants, generation of wastes or to the presence of Hazardous Materials on the charged premises.
- (e) The Chargor shall, at the Chargee's request, provide the Chargee with a compliance certificate prior to each advance certifying compliance with all representations and warranties.
- (f) If the Chargor:
  - (i) receives notice that any violation of any Environmental Law or regulation may have been committed or is about to be committed by the Chargor;
  - (ii) receives notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Chargor alleging violations of any Environmental Law or regulation or requiring the Chargor to take any action in connection with the release of any Hazardous Material; or
  - (iii) receives any notice from a federal, provincial or municipal government agency or private party alleging that the Chargor may be liable or responsible for costs associated with a response to or clean up of any Hazardous Material or any damages caused thereby;

then the Chargor shall provide the Chargee with a copy of such notice within fifteen (15) days of the Chargor's receipt thereof. The Chargee may, at its option, but without any obligation so to do, take any action necessary to remedy any such violation or to comply with any such complaint or order or to undertake any such response or clean up, and any amounts paid as a result of such action shall be immediately due and payable by the Chargor and shall be a charge upon the said lands and shall bear interest in accordance with the provisions of this Charge. Within fifteen (15) days of the Chargor having learned of the enactment or promulgation of any Environmental Law or regulation which may result in any material adverse change in the condition, financial or otherwise, of the Chargor, the Chargor shall provide the Chargee with notice thereof.

5. **Indemnity re Hazardous Materials**

The Chargor hereby indemnifies the Chargee, its officers, directors, employees, agents and its shareholders and agrees to hold each of them harmless from and against any and all losses, liabilities, damages, costs, expenses and claims of any and every kind whatsoever, (including, without limitation:

- (a) the costs of defending and/or counterclaiming, cross-claiming or claiming over against third parties in respect of any action or matter; and



- (b) any costs, liabilities or damages arising out of a settlement of any action entered into by the Chargee with the consent of the Chargor which consent shall not be unreasonably withheld or delayed);

which at any time or from time to time may be paid, incurred or asserted against any of them for, with respect to, or as a direct result of, the presence on or under, or the discharge, deposit emission, leakage, spill or disposal from, the charged premises or into or upon any land, the atmosphere, or a watercourse, body of water or wetland, of any Hazardous Material; and furthermore, if the Chargee or its agents or any receiver, manager, receiver-manager, liquidator or similar person takes possession of any of the charged premises or any improvements thereon or any equipment owned by the Chargor or used by it in connection with the operation of its business (the "Equipment"), or commences proceedings with respect to any of the charged premises any improvements thereon or any Equipment, the Chargor hereby indemnifies and agrees to save harmless each such person in the manner set out above except insofar as the losses referred to above are solely attributable to the acts of such person, it being understood that the indemnifications and agreements of the Chargor set out in this provision shall survive the satisfaction and release of any document providing a security interest in the charged premises or any improvements thereon or any Equipment and the payment and satisfaction of any indebtedness hereunder; it being the intention that such indemnifications and agreements shall continue in full force and effect so long as the possibility of any such losses, liabilities, damages, costs, expenses or claims exists.

#### Interpretation

32. (a) Provided and it is hereby agreed that in construing these presents the words "Chargor" and "Chargee" shall be read and construed as "Chargor or "Chargors". "Chargee or Chargees", respectively as the number of the party or parties referred to 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, their administrators, successors and assigns; and that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be binding upon and enure to the benefit of the parties hereto and their respective administrators, successors and assigns, and all such covenants and liabilities and obligations shall be joint and several.
- (b) The paragraph headings in these Standard Charge Terms are deemed not to form part of the Charge and have been inserted for convenience of reference only.
- (c) "lands", where referred to herein, shall mean the lands described in the Charge, unless the context requires otherwise.
- (d) Except where otherwise stated, this Charge and

everything herein contained shall extend to and bind and enure to the benefit of the respective heirs, executors, administrators, successors in office, successors and assigns, as the case may be, of each and every of the parties hereto, and where there is more than one Chargor or Guarantor or there is a female party or corporation, the provisions hereof shall be read with all grammatical changes thereby rendered necessary, and all covenants shall be deemed to be joint and several.

- (e) If any provision of this Charge is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this Charge which shall remain in force and be binding as though such provision had never been included.
- (f) All of the provisions of this Charge on the part of the Chargor to be performed and observed shall be deemed to be covenants and agreements on the part of the Chargor in favour of the Chargee.
- (g) The Chargor covenants to observe and perform all covenants, provisoes and conditions herein contained on its part to be observed or performed.
- (h) If any of the forms of words contained herein are also contained in Column One of Schedule B of the Short Forms of Mortgages Act R.S.O. 1990, 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. The implied covenants deemed to be included in a Charge under subsection 7 (1) of the Land Registration Reform Act, R.S.O. 1990 shall be and are hereby expressly excluded from the terms of this Charge.

#### **Additional Provisions**

- 33. (a) This Charge is not a building mortgage, within the meaning of the Construction Lien Act, R.S.O. 1990 and the funds to be advanced by the Chargee are not being used to repay a building mortgage.
  - (b) In the event the Chargor shall cease to be a member in good standing of the Chargee, the Chargee may, in its sole discretion and at any time following the said cessation of membership require the Chargor to pay, within three (3) months following said demand, the balance of the principal sum together with interest owing hereunder; and the interest rate applicable at the time of demand by the Chargee shall continue to be charged against the outstanding indebtedness to the Chargee until payment in full is made by the Chargor.
34. The Chargor covenants and agrees to ensure that the property charged herein will remain free and clear of all encumbrances, liens, mortgages, charges, personal property security interests and financing save and except for the within charge throughout the term of this charge and any renewal or renewals thereof except those in writing approved by the Chargee.

**Acknowledgement of Receipt**

I/We the undersigned, hereby acknowledge receipt of a true copy of these Standard Charge Terms, this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

Witness

\_\_\_\_\_  
(Chargor)

\_\_\_\_\_  
(Chargor)

\_\_\_\_\_  
(Guarantor)

\_\_\_\_\_  
(Guarantor)