

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE

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Land Registration Reform Act

SET OF STANDARD CHARGE TERMS

DIRECTOR OF LAND REGISTRATION  
DIRECTEUR DE L'ENREGISTREMENT DES IMMEUBLES

FILED BY: FIRST NATIONAL FINANCIAL GP CORPORATION

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 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as amended, except to the extent that the provisions of these terms are modified by any additions, amendments or deletions provided for or stipulated in such charge, or in any schedule(s) annexed thereto.

1. DEFINITIONS

In this set of Standard Charge Terms the following words shall have the following meanings.

“**Applicable Laws**” means all applicable federal, provincial and municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations, approvals and all common laws or equitable principles whether now or hereafter in force and effect.

“**Balance Due Date**” means the date identified or described as such on the Charge Form, as the same may be amended by written agreement.

“**Change of Control**” has the meaning ascribed thereto in Section 15.

“**Charge**” means collectively, the Charge Form, this set of Standard Charge Terms, any Schedules attached to the Charge Form and all renewals, extensions or amendments thereof from time to time.

“**Charge Form**” means the form, stipulated by Applicable Laws, to which these Standard Charge Terms are attached or incorporated by reference or election.

“**Chargee**” means the Person or Persons named on the Charge Form as mortgagee or chargee and includes any Person to which the Chargee transfers this Charge.

“**Chargor**” means the Person or Persons named on the Charge Form as mortgagor or chargor and any successor in title to such Person or Persons with respect to the Property.

“**CMHC**” means Canada Mortgage and Housing Corporation and its successors and assigns.

“**Commitment**” means the written agreement to make and to accept the Loan entered into between First National Financial LP as lender and the Chargor prior to the execution of this Charge and includes any written communication between the parties renewing, extending or amending the terms of the Loan or any of the Loan Documents, together with all other renewals, extensions or amendments thereof from time to time.

“**Default**” has the meaning ascribed to such term in Section 20.

“**Environmental Laws**” means all Applicable Laws relating to environmental or occupational health and safety matters, including those relating to the presence, release, reporting, licensing, permitting, investigation, disposal, storage, use, remediation, clean up or any other aspect, of a Hazardous Substance.

“**Environmental Proceeding**” means any investigation, action, proceeding, conviction, fine, judgment, notice, order, claim, directive, permit, licence, approval, agreement or lien of any nature or kind arising under or relating to Environmental Laws.

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**“First Payment Date”** means the date identified or described as such on the Charge Form, as the same may be amended by written agreement, or if not so identified or described, the day that is one month from the Interest Adjustment Date.

**“Guarantor”** means each guarantor or co-covenantor with the Chargor described on the Charge Form or in any other Loan Document.

**“Hazardous Substance”** means any substance or material that is prohibited, controlled, otherwise regulated by any governmental authority or is otherwise hazardous in fact, including without limitation, contaminants, pollutants, asbestos, lead, urea formaldehyde foam insulation, polychlorinated biphenyls or hydrocarbon products, any materials containing same or derivatives thereof, explosives, radioactive substances, petroleum and associated products, underground storage tanks, dangerous or toxic substances or materials, controlled products and hazardous wastes.

**“Indebtedness”** means the outstanding Principal Amount, interest, costs and all other amounts payable by the Chargor to the Chargee under this Charge and the other Loan Documents.

**“Interest Adjustment Date”** means the date identified or described as such on the Charge Form, as the same may be amended by written agreement.

**“Interest Rate”** means the interest rate as described and defined in Section 3 hereof, as such interest rate may be amended from time to time by written agreement.

**“Loan”** means the particular loan or credit facility which this Charge is intended to secure.

**“Loan Documents”** means collectively, the Commitment, this Charge and all other agreements, documents and instruments relating to the Loan as amended, supplemented and restated from time to time.

**“Monthly Instalment”** means a payment payable each month on the Payment Date in an amount calculated in accordance with this Charge.

**“Payment Date”** means that day of each and every month from and including the First Payment Date to and including the Balance Due Date which is a monthly anniversary of the Interest Adjustment Date.

**“Person”** means a natural person, corporation, partnership, limited partnership, trust, unincorporated organization or any other legally recognized entity.

**“Prime Rate”** means the annual rate of interest published from time to time by First National Financial LP as a reference rate of interest then in effect for determining interest on Canadian dollar loans made in Canada.

**“Principal Amount”** means the principal amount of the Loan in lawful money of Canada set out on the Charge Form.

**“Property”** means the real property legally described on the Charge Form or in a Schedule to the Charge Form, if required, and includes all buildings, structures and improvements now or hereafter brought or erected thereon and all fixtures, rents and other appurtenances thereto. In the case of a strata lot or condominium, “Property” shall also include the Chargor’s interest in the common elements and any other interests of the Chargor in the assets of the strata corporation or condominium corporation.

**“Receiver”** means a receiver, a manager, a receiver and manager or other similar Person appointed in regard to the Property and the rents and profits of and from such Property, which receiver may be an officer or officers or an employee or employees of the Chargee.

**“Registry Office”** means the appropriate registry of deeds, land titles or other land registration office from time to time established under Applicable Laws for the registration, filing or similar recording of this Charge.

**“Schedule”** means any document or schedule (except these Standard Charge Terms) attached to and forming part of this Charge.

“Tax Account” has the meaning ascribed thereto in Section 7.

“Taxes” means all taxes, rates and assessments payable with respect to the Property whether provincial, municipal, school, local, parliamentary or otherwise, including, without limitation, municipal and school taxes, water rates and religious assessments, general or special.

“Term” means the period of time commencing with the Interest Adjustment Date and ending on the Balance Due Date, as the same may be amended by written agreement.

2. SECURITY

**Continuing Security.** In return for the making of the Loan to the Chargor:

- (a) the Chargor hereby grants, mortgages and charges all of his right, title, estate and interest in and to the Property to the Chargee as continuing security for the payment of the Indebtedness and performance of all obligations of the Chargor contained in this Charge and the other Loan Documents; and
- (b) if the Chargor is a tenant or lessee of the Property under a lease, the Chargor hereby grants, mortgages, charges, assigns and subleases all of his right, title and interest (including any present or future option or right of first refusal or right to renew or extend any term of the Chargor’s lease) in and to the Property and to the lease, for the unexpired residue of the term of the lease, including any renewals or extensions of the term (excepting always, in all cases, the last day of such original or renewed or extended term).

**Subsequent Interests.** By this Charge, the Chargor grants and mortgages any additional or greater interest in the Property that the Chargor may later acquire.

**No Discharge of other Loan Documents.** By entering into this Charge, the Chargor and Chargee do not intend that any other Loan Document is to be extinguished, superceded or discharged.

**No Prejudice to Other Security.** The Chargee may take guarantees and other security from other Persons, or grant time, renewals, extensions, indulgences, releases and discharges to the Chargor and other Persons, relating to the Indebtedness or the obligations secured by this Charge, without prejudicing or diminishing any of the rights and remedies of the Chargee under this Charge or the other Loan Documents.

**Discharge.** Upon the total repayment of all Indebtedness under this Charge, the Chargee shall have a reasonable period of time of at least 6 weeks, or such shorter period as required under Applicable Laws, to cause the preparation and delivery of the discharge of this Charge.

3. INTEREST RATE AND MONTHLY INSTALMENTS

**Interest Chargeable.** Interest is chargeable on and forms part of the Indebtedness and is payable by the Chargor at the Interest Rate, calculated semi-annually and not in advance, in accordance with the terms of this Charge and the other Loan Documents.

**Determination of Interest Rate.** The Indebtedness shall bear interest at a rate which will vary during the Term, without notice to the Chargor, in tandem with variances in the Prime Rate and will always be the rate which is, in any month, a rate of interest per annum calculated semi-annually, not in advance, determined for such month as a rate equal to the Prime Rate at the close of business on the first day of such month, plus or minus such percentage, if any, as may be indicated on the Charge Form (the “Interest Rate”). The Interest Rate will be adjusted once per month on the first day of each and every month during the Term and will remain in effect for the entire month.

**Monthly Instalments.** The Monthly Instalment shall consist of blended principal and interest in an amount designed to effect payment in full of the Loan by the end of the amortization period thereof. When the Interest Rate changes, the amount of the Monthly Instalment shall be recalculated by the Chargee, so that the then outstanding Principal Amount shall be repaid over the remainder of the amortization period of the Loan. The remainder of the amortization period

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shall be equal to the original amortization period less the number of months that have elapsed since the Interest Adjustment Date.

**Notice of Change in the Interest Rate.** Within a reasonable time after each change in the Interest Rate, the Chargee will mail to the Chargor, at the last known address in the Chargee's records, a notice of the changed Interest Rate and the amount of the new Monthly Instalment. The Interest Rate will still vary and the Monthly Instalment change even if the Chargee fails to send such notice or the Chargor fails to receive it.

**Calculation of Interest.**

- (a) Interest shall be payable on the Indebtedness both before and after default, maturity, acceleration and judgment until the Indebtedness has been repaid in full.
- (b) In case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, and both before and after default and judgment, shall bear interest at the Interest Rate. If the interest and compound interest are not paid within six (6) months from the time of default, a rest shall be made and compound interest at the Interest Rate 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 form part of the Indebtedness and be secured by this Charge.

**Maximum Rate of Interest.** If the Interest Rate exceeds the maximum rate permitted under Applicable Laws, then, notwithstanding the terms of any Loan Document, the Interest Rate shall be deemed to be such maximum rate.

4. **REPAYMENT OF THE LOAN**

**Repayment of Indebtedness.** The Chargor will pay to the Chargee all Indebtedness secured hereby in the manner provided in this Charge and the other Loan Documents, without any deduction, abatement, counterclaim or set-off (legal or equitable) of any kind whatsoever and shall do, observe, perform and fulfill all the provisions, covenants, agreements and stipulations contained in this Charge and the other Loan Documents.

**Monthly Instalments.** From and after the Interest Adjustment Date, the Chargor shall pay the Chargee the Principal Amount together with all interest thereon at the Interest Rate calculated semi-annually and not in advance and computed from the Interest Adjustment Date, in Monthly Instalments calculated in accordance with Section 3 above commencing on the First Payment Date and thereafter on each Payment Date to and including the Balance Due Date, at which time the balance of the Principal Amount, if any, and the interest thereon shall become due and be paid.

**Interest Payable Prior to Interest Adjustment Date.** The Chargor shall pay simple interest on advances, if any, computed from the respective dates of such advances up to the Interest Adjustment Date at the Interest Rate but calculated daily rather than semi-annually. Such payments of interest shall be made on the first day of each and every month commencing with the month next following the month in which the first advance is made and continuing to and including the Interest Adjustment Date.

**Prepayments.** This Charge cannot be prepaid in whole or in part except as otherwise expressly permitted under this Charge.

**Timing of Receipt of Payments.** All payments received by the Chargee from the Chargor or any other Person after 3 p.m. (Eastern Standard Time) or on a Saturday, Sunday or statutory holiday will be deemed to be received on the next business day.

## 5. APPLICATION OF MONTHLY INSTALMENTS

**Application of Monthly Instalments.** Each Monthly Instalment will be applied first, to pay or reduce interest calculated as provided above on the Principal Amount from time to time outstanding and the balance shall then be applied to reduce the Principal Amount. However, if the Chargor is in default under this Charge or any other Loan Document, the Chargee shall be entitled to apply the Monthly Instalments or any other money received by the Chargee on account of the Indebtedness towards any part or parts of the Indebtedness at the Chargee's discretion.

**Annual Mortgage Statement.** Each year the Chargor will receive from the Chargee an annual mortgage statement that will show the total amount of the Monthly Instalments that have been applied as aforesaid in the previous year.

## 6. REPRESENTATIONS AND WARRANTIES

The Chargor represents and warrants to the Chargee:

- (a) that the Property is free of all Taxes, same having been paid to date without subrogation in favour of any party;
- (b) that all the structures and improvements are erected entirely on the Property and that there are no structures or improvements encroaching over the Property's boundaries from neighbouring lands;
- (c) that unless the Charge indicates that he is the tenant or lessee of the Property, the Chargor is the absolute freehold owner of the Property with good title thereto and that there are no charges, mortgages, liens or other encumbrances, other than those hereby created, affecting the Property except for any liens and encumbrances that are registered against title to the Property in the applicable Registry Office at the time the Chargor signed this Charge; and
- (d) that the Chargor has the right to grant this Charge to the Chargee.

## 7. TAXES

**Tax Account.** The Chargor shall pay all Taxes promptly when due. If required by the Chargee, the Chargor will pay to the Chargee monthly, an amount which, in the opinion of the Chargee, is sufficient to enable the Chargee to pay the annual Taxes on behalf of the Chargor by the date the first instalment of Taxes for each year becomes due, based on the estimated annual Taxes and subject to adjustment based on Taxes actually levied. Such funds, when received by the Chargee, are herein referred to as the "Tax Account". The Chargee may, at its option, withhold a sufficient amount from the advance of the Loan to accumulate sufficient funds in the Tax Account to enable the foregoing. If at any time the amount in the Tax Account is not sufficient to pay all Taxes when due the Chargor shall promptly make up the difference on demand. The Chargee shall be under no obligation to pay any Taxes or instalments thereof and will not be liable for any damages or penalties that might result from its failure to do so. It is the responsibility of the Chargor to assure himself of the payment of Taxes by either himself or the Chargee. The Chargee shall not be deemed a trustee for the Chargor in respect of the Tax Account. If the Chargor is in default of its obligations hereunder, the Chargee has the right to use the Tax Account to repay all or any portion of the Indebtedness.

**Administration by Chargee.** Where the Chargee administers a Tax Account on behalf of the Chargor:

- (a) the Chargee shall allow the Chargor interest at not less than the prevailing rate published by the Royal Bank of Canada on personal savings deposits with chequing privileges on the minimum monthly balances standing in the Tax Account from time to time to the credit of the Chargor for payment of Taxes, such interest to be credited monthly to the Tax Account; and
- (b) the Chargor shall be charged interest at the rate of 2% above the Prime Rate on debit balances, if any, outstanding in the Tax Account after payment of Taxes by the Chargee, until such debit balance is fully repaid.

8. **INSURANCE**

**Property Insurance.** To secure the repayment of the Indebtedness, the Chargor shall have all the buildings and other constructions now or hereafter erected upon the Property (hereinafter in this Section collectively referred to as the "buildings") insured at their full replacement cost against loss or damage caused by fire and such other perils as are covered by standard extended coverage, both during and after construction, until such time as the Chargee is fully repaid all Indebtedness. If the Chargee so requires, the Chargor shall be further insured during said period against the risks of vandalism, floods, boiler explosions and any other risks designated by the Chargee from time to time, as well as against civil liability. If the Property generates rentals or revenues, the Chargor shall also maintain rental insurance in an amount equal to at least 12 months rental income. Prior to any disbursements whatsoever, the Chargor shall deliver to the Chargee certificates evidencing such insurance and if required by the Chargee, certified copies of the policies, and at least fifteen (15) days prior to their expiry he shall deliver proof of new policies or renewal of the existing policies. If said expiry results from the cancellation of said policies, the time allowed will be only five (5) days. The Chargee may, if it so desires, retain all policies in its possession. In any event, the insurer, and the terms of the insurance policies and their renewals, including the amount of any deductibles, shall be approved by the Chargee and the policies shall include the mortgage clauses approved by the Insurance Bureau of Canada confirming that loss proceeds are payable to the Chargee and that the Chargee has the right to receive and to have a lien on the loss proceeds in accordance with its priority established under this Charge. The Chargor hereby assigns to the Chargee all amounts payable under any of these policies. All such policies shall contain an undertaking by the insurer to notify the Chargee in writing of any material change in, cancellation of, failure to renew or termination of such policy at least fifteen (15) days prior thereto. The insurance policies shall not contain a co-insurance clause. Upon the failure of the Chargor to fulfil these insurance obligations, the Chargee may, without prejudice to its other recourses and without notice or demand, effect such insurance contracts as it deems appropriate at the cost of the Chargor to be paid forthwith by the Chargor, failing which it shall be added to the Indebtedness and shall bear interest from the date paid by the Chargee at the Interest Rate until repaid and shall be secured by this Charge. In the event of loss or damage to the buildings, the Chargor shall promptly notify the Chargee and provide the Chargee with a copy of the detailed statement of damages as well as evidence that said statement has been sent to each of the insurers. The Chargor shall allow the Chargee to inspect the buildings. The Chargee may receive the insurance proceeds without the intervention or consent of the Chargor.

**Insurance Proceeds.** The Chargor shall remit to the Chargee forthwith any amount received by him from an insurer pursuant to an insurance contract described in this Section 8, up to the amount of the Indebtedness. The Chargee will have the right, at its sole discretion, to apply any proceeds of insurance wholly or in part to the following purposes:

- (a) to pay wholly or in part Taxes or any other indebtedness secured by charges or other encumbrances which have priority over the Indebtedness or this Charge; and/or
- (b) to reconstruct or repair the damaged buildings and pay for the work and materials relative thereto; and/or
- (c) to pay wholly or in part the Indebtedness secured hereby, whether or not then due including any amount the Chargor would have been required to pay upon a prepayment of the Indebtedness on such date in accordance with the terms of this Charge.

**Chargee to Consent to Repair.** No construction or repair work may be undertaken without the prior written consent of the Chargee. It is clearly understood, however, that by consenting to the Chargor effecting any reconstruction or repair the Chargee is in no way obligated to pay the costs thereof nor prevented from using all or part of said proceeds to pay the Indebtedness or any part thereof or to pay any other party whose security interest ranks prior to its own. The Chargee may, at its option, undertake any such reconstruction or repair of the damaged buildings. Any proceeds applied to pay all or any part of the Indebtedness shall only be regarded as being so applied when the Chargee has decided to so apply them.

9. **MAINTENANCE AND REPAIR**

The Chargor shall maintain the Property in a good state of maintenance and repair as would a prudent owner, and in compliance with all Applicable Laws. The Chargor may not alter or demolish or allow any other party to alter or demolish the Property without the prior written consent of the Chargee. The Chargee or any Person designated by the Chargee shall be at liberty to inspect the interior or the exterior of the Property and/or to conduct a site assessment or investigation to determine if there has been a breach of any Applicable Laws, including, without limitation, any Applicable Laws concerning environmental protection. The Chargor shall pay the cost of any such inspection or site assessment to the Chargee promptly upon demand, failing which it shall be added to the Indebtedness and shall bear interest from the date paid by the Chargee at the Interest Rate until repaid and shall be secured by this Charge. The exercise of any of the powers enumerated in this section shall not result in the Chargee or any designee conducting such inspection, assessment or investigation being deemed to be in possession, management or control of the Property.

10. **COMPLIANCE WITH APPLICABLE LAWS**

The Chargor shall comply with all Applicable Laws that apply to the Property or the use or occupation thereof, including, without limitation, those relating to zoning, land use, health, safety and environmental protection. The Chargor shall not, and shall not permit any lessee of the Property, to engage in any criminal activity on the Property including, without limitation, the cultivation or processing of marijuana or any other controlled substance.

11. **USE OF PROPERTY**

The Chargor shall not change or permit any change in the use of the Property nor will the Chargor request or support any rezoning of the Property (or any portion thereof) without the prior written consent of the Chargee.

12. **FIXTURES**

The Chargor covenants and agrees with the Chargee that all erections and improvements fixed or otherwise now on or in future put upon the Property which are the property of the Chargor, including, without limitation, all fences, heating, plumbing, air conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, window blinds, storm windows and storm doors, window screens and screen doors, dishwashers, washing machines, dryers, and all apparatus and equipment appurtenant to any of the forgoing are and shall be, in addition to other fixtures thereon, fixtures and form part of the Property and shall be a portion of the security for the Indebtedness. The Chargor hereby charges and grants to the Chargee a security interest in all of the Chargor's right, title and interest in and to all such items as additional security for repayment of the Indebtedness.

13. **OTHER ENCUMBRANCES**

The Chargor shall maintain the Property free and clear of and from any claim, charge, mortgage, lien or other encumbrance ranking prior to the charge created herein and shall cause the removal of any such prior claim or charge within ten (10) days of its creation, unless the Chargor, in good faith, contests its validity or the amount of the claim from which it results, after having given prior notice to the Chargee of his intention to such effect, and has deposited with the Chargee an amount in lawful money of Canada which shall be sufficient to guarantee all losses which the Chargee may suffer by reason of such claim, charge, mortgage, lien or encumbrance. The Chargor shall not grant any rights in the Property without the prior consent in writing of the Chargee and shall maintain all Property free and clear of any claims, charges, mortgages, encumbrances, liens or rights other than those that are created under this Charge.

14. **CHARGEЕ'S RIGHT TO PERFORM**

The Chargee may perform any obligation of the Chargor hereunder or under any other Loan Document which the Chargor fails to perform including without limitation, payment of all premiums of insurance and all Taxes, utility and heating charges and rents which shall from time to time fall due and be unpaid in respect of the Property, and may satisfy any lien, encumbrance, claim or other charge now or hereafter existing upon the Property. All amounts expended by the

Chargee in so doing shall be added to the Indebtedness, shall be secured by this Charge, shall be payable forthwith by the Chargor to the Chargee and shall bear interest from the date so paid by the Chargee at the Interest Rate until repaid.

15. **ASSUMPTION OF CHARGE**

**Requirements for Assumption.** The Chargee shall allow a purchaser of the Property to assume the Charge from the current Chargor provided the purchaser completes a new mortgage loan application, is approved by the Chargee in accordance with its then current underwriting practices and executes an assumption agreement in form and substance satisfactory to the Chargee.

**Indebtedness May Become Due.** Provided that in the event of:

- (a) the Chargor selling, conveying, transferring or entering into any agreement to sell or transfer the title of the Property to a purchaser, grantee or transferee not approved in writing by the Chargee; or
- (b) such purchaser, grantee or transferee failing to:
  - (i) apply for and receive the Chargee's written approval as aforesaid,
  - (ii) personally assume all the obligations of the Chargor under this Charge, and
  - (iii) execute an assumption agreement in the form required by the Chargee; or
- (c) in the case of a corporate Chargor, the occurrence of a change of control (within the meaning given to such term in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended from time to time) (a "**Change of Control**") of the Chargor not approved in writing by the Chargee,

then, at the option of the Chargee, the Indebtedness, together with the amount required to be paid on a prepayment of the Charge on such date pursuant to the terms of this Charge, shall forthwith become due and payable.

16. **NO RELEASE**

Notwithstanding that the Chargee may have approved any purchaser, grantee or transferee and that such Person may have executed an assumption agreement, or that the Chargor transfers or otherwise conveys or purports to transfer or otherwise convey the Property or any interest therein, the Chargor shall not thereby be released from his obligations under this Charge or any other Loan Document unless the Chargee has so released the Chargor in writing or the Chargor is otherwise released pursuant to Applicable Laws.

17. **PORTABILITY OF CHARGE**

All amounts outstanding under this Charge may be secured by a charge on replacement property of at least equal value (the "Replacement Property") on the same terms and conditions as contained in this Charge, provided the following conditions are met:

- (a) the Chargor is not in default under this Charge;
- (b) the Replacement Property is a single family dwelling which the Chargor will occupy;
- (c) the Chargor completes a new mortgage loan application for the Replacement Property for an amount not less than the then outstanding Principal Amount of this Charge;
- (d) the new loan application is approved by the Chargee in its sole discretion;
- (e) the new charge is registered as a first charge against the title to the Replacement Property and all searches, opinions and clearances required by the Chargee are obtained and, if so required by the Chargee, title insurance is in place;
- (f) the term of the new charge shall expire on the maturity date of this Charge;

- (g) the new charge shall incorporate all terms and conditions then contained in the Chargee's standard charge and other documentation in use at that time; and
- (h) the Chargor will pay all costs, charges and expenses of and incidental to the approval, taking, preparation, execution and registration of the new charge and discharge of this Charge, or, if applicable, an amending agreement, including, without limitation, any application and appraisal fees, solicitor's fees, surveyor's fees and, if applicable, mortgage insurance and title insurance premiums.

18. LEASES AND RENTALS

Where the Property generates rentals or revenues the following provisions shall apply.

- (a) As general and continuing security for repayment of the Indebtedness, the Chargor hereby assigns, transfers and sets over to the Chargee, as and by way of a fixed and specific assignment and security interest, all legal and beneficial right, title and interest of the Chargor in and to (i) all present and future leases, offers to lease, subleases, licences and other agreements affecting the use, enjoyment and/or occupancy of the Property or any part thereof and all related guarantees, indemnities and security deposits, and (ii) any and all rents, revenues and receipts of any kind from the Property now or hereafter due and payable, with full benefit and advantage thereof, including the benefit of all covenants and agreements contained in the leases and full power and authority to demand, collect, sue for, recover, receive and give receipts for the rents in the name of the Chargor or owner from time to time of the Property or in the name of the Chargee, in the Chargee's sole discretion.
- (b) Upon request by the Chargee, the Chargor shall provide to the Chargee (i) a list containing the name of all tenants, and details as to their leases; (ii) a copy (or the original, when requested by the Chargee) of all leases, present and future, relating to the Property and any document and any useful information in connection therewith; and (iii) a written acknowledgment by the tenants, present and future, of the charge on rentals hereby created in the form required by the Chargee.
- (c) The Chargee may require that all leases be subject to its approval, that they be subordinated to its rights herein and that the Chargor provide it on a yearly basis with a statement of revenues and expenditures concerning the Property. All leases shall be on market terms and conditions.
- (d) The Chargee hereby authorizes the Chargor to collect all rents; however, the Chargor shall not collect more than one month's rent in advance nor shall he grant more than one month's free rent. Such authorization may be revoked at any time by the Chargee and in such case, the Chargee shall be at liberty to exercise as it may deem appropriate, to the exclusion of the Chargor, all rights of the Chargor in order to maintain, renew, grant, modify or terminate any lease, and to collect rentals and revenues from the Property including, without limitation, the bringing of an action for recovery of rentals; provided however, that the Chargee shall be under no obligation to exercise such right and shall not be liable for any loss or damage which may result from its failure to collect such rentals.
- (e) With respect to leases of the Property, the Chargor hereby represents and warrants that the rents payable under same are legal, that no proceedings exist which could result in a decrease in the legal rents chargeable, that no orders exist prohibiting rent increases and that no work orders exist which could result in the issuance of an order prohibiting rent increases.
- (f) The Chargor hereby agrees to indemnify and save the Chargee harmless from any and all demands, claims, damages, actions, proceedings, lawsuits, costs, expenses or payments which the Chargee may sustain or incur by reason of the Chargor's failure to charge legal rents or by reason of successful reduction claims by any tenant under any lease in the building on the Property or by any former tenant of the building. The Chargor agrees that all rents charged with respect to the Property or any part thereof will be lawful rents pursuant to any applicable legislation from time to time respecting residential housing and further agrees that he will file all items required to be filed by such legislation in a timely, accurate and complete way. All amounts so indemnified will be payable

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forthwith upon demand, shall be added to the Indebtedness, shall bear interest at the Interest Rate from the date of the expenditure until paid in full and shall be secured by this Charge. This indemnity shall survive the exercise of any rights and remedies of the Chargee hereunder including foreclosure and shall survive the repayment of the Indebtedness and/or the discharge of this Charge.

19. **ENVIRONMENTAL MATTERS**

**Chargor to Indemnify.** The Chargor shall indemnify and save the Chargee harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees) (collectively "**Environmental Claims**") occurring, imposed on, made against or incurred by the Chargee arising from or relating to, directly or indirectly, and whether or not caused by the Chargor or within its control, (a) any actual or alleged breach of Environmental Laws relating to or affecting the Property; (b) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Property or surrounding lands, including any personal injury or property damage arising therefrom; (c) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof; and (d) any assessment, investigation, containment, monitoring, remediation and/or removal of any Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws. This indemnity shall survive the exercise of any rights and remedies of the Chargee hereunder including foreclosure and shall survive the repayment of the Indebtedness and/or the discharge of this Charge.

**Amounts Relating to Environmental Claims.** All amounts expended by the Chargee in connection with any such Environmental Claims shall be payable by the Chargor forthwith upon demand, shall be added to the Indebtedness, shall bear interest at the Interest Rate from the date expended until paid in full and shall be secured by this Charge.

20. **EVENTS OF DEFAULT**

The Chargor shall be in default (a "**Default**") under this Charge in each of the following events:

- (a) the Chargor fails to pay any monies payable under this Charge or under any other Loan Document when due;
- (b) the Chargor fails to perform any of its covenants or obligations under this Charge or under any other Loan Document;
- (c) the Chargor fails to comply with any other term or condition of this Charge or any other Loan Document;
- (d) any of the representations, statements, certifications or declarations of the Chargor, whether contained in this Charge or any other Loan Document, is found to be untrue or misleading;
- (e) if any other mortgage or any lien, charge or other encumbrance is registered against title to the Property or if the Chargee receives written notice of any lien that is created as a result of unpaid property taxes, unpaid strata or condominium fees, judgments, construction liens, builders' liens or similar encumbrances;
- (f) the Chargor becomes insolvent or becomes subject to any insolvency, bankruptcy, reorganization, arrangement, compromise of debts or similar proceedings affecting the rights of any creditor, or a petition in bankruptcy is taken against the Chargor, or a receiver or an administrator takes possession of his property, or a resolution is adopted with respect to the liquidation of his property;
- (g) in the case of a corporate Chargor, it fails to remain in good standing with government authorities having jurisdiction over it or if the corporation loses any of its rights or attributes as a corporation;
- (h) in the case of a corporate Chargor, there is a Change of Control of the Chargor without the prior written consent of the Chargee;

- (i) any activity which violates the *Criminal Code*, R.S.C. 1985, c. C-46 (as amended from time to time) or any other law or regulation of any authority having jurisdiction is conducted on the Property;
- (j) if the Loan is insured, whether under the *National Housing Act*, R.S.C. 1985, c. N-11 (as amended from time to time) or by any other insurer, any requirement of such insurance has not been complied with by the Chargor;
- (k) if the Property is under construction, the construction works are halted for a continuous period exceeding ten (10) days, for reasons other than a fortuitous event or force majeure or construction holidays;
- (l) if a default occurs under any other mortgage or any lien, charge or encumbrance affecting the Property or any part of it including without limitation, any of the foregoing which has priority over this Charge and whether or not the Chargee has agreed to such priority;
- (m) the Property is subject to foreclosure proceedings, judicial sale, or otherwise seized by another mortgagee, encumbrancer, writ holder, receiver or any agent of the any of the foregoing or any other Person performing similar functions; or
- (n) an event occurs which is stated to be a Default under Section 25 of this Charge.

## 21. CHARGEES REMEDIES UPON DEFAULT

**Chargee's Rights on Default.** If a Default occurs, the Chargee shall have no obligation to make any further advances and may, at its option, do any one or more of the following:

- (a) demand immediate repayment of the Indebtedness, in which case all Indebtedness will become immediately due and payable and, to the extent permissible under Applicable Laws, the prepayment provisions set out in this Charge will apply as if the Chargor had elected to prepay the Indebtedness at such time;
- (b) subject to Applicable Laws, take such action as is necessary or desirable to collect the Indebtedness or any portion thereof;
- (c) enter upon and take possession of the Property and any personal property thereon;
- (d) make any arrangements the Chargee considers necessary or advantageous to inspect, lease, collect rents or manage the Property, complete construction of any building on the Property or repair any building on the Property;
- (e) take proceedings in court or otherwise as may be permitted by Applicable Laws to sell the Property or any part thereof or, if the Property is a leasehold interest, to sell the unexpired term of years demised by the lease with respect to the whole or any part of the leasehold interest in the Property, by public auction or private sale and on such terms as the Chargee considers most advantageous, including selling the Property or unexpired term of the lease for cash or credit or any combination of the two:
  - (i) on thirty-five days notice to the Chargor if the Default has continued for fifteen days (or such longer or other period as may be required by Applicable Laws); or
  - (ii) without notice to the Chargor if the Default has continued for sixty days or more (if and to the extent permitted by Applicable Laws);
- (f) lease the Property on such terms as the Chargee considers most advantageous:
  - (i) on fifteen days notice to the Chargor if the Default has continued for fifteen days (or such longer or other period as may be required by Applicable Laws); or
  - (ii) without notice to the Chargor if the Default has continued for thirty days or more (if and to the extent permitted by Applicable Laws);
- (g) apply to a Court for an order that the Property be sold on terms approved by the Court;

- (h) apply to a Court to foreclose the Chargor's interest in the Property so that when the Court makes its final order of foreclosure, the Chargor's interest in the Property will be absolutely vested in and belong to the Chargee;
- (i) apply to the Court to have a Receiver appointed with respect to the Property or appoint a Receiver of the Property under this Charge;
- (j) with respect to personal property charged by this Charge, exercise any or all of the rights and remedies granted to secured parties under applicable personal property security legislation and any other applicable statute, or otherwise available to the Chargee at law or in equity; and
- (k) take any other action and exercise any other remedies which are described elsewhere in this Charge or the other Loan Documents or which are available to the Chargee under Applicable Laws upon a default by the Chargor including without limitation, non-judicial foreclosure.

**Additional Payments.** Where a prepayment or redemption takes place following a Default hereunder by the Chargor, there shall, coincident therewith, be due and owing to the Chargee, to the extent permissible under Applicable Laws, any amount which would have been payable by the Chargor had he elected to prepay the Indebtedness pursuant to the prepayment provisions set out in this Charge at the time of such prepayment or redemption.

**Payment of Chargee's Costs When Default is Remedied.** If the Chargor avails himself of the right to remedy any Default, he shall pay all costs then incurred by the Chargee, and such costs shall include, without limitation, all administrative costs incurred by the Chargee by reason of the Default and all legal fees (determined on a solicitor and client full indemnity basis) and fees paid to experts.

**Chargee's Rights to Administer and Manage Property.** If the Chargee elects to take possession of the Property, it shall be at liberty to administer and manage it and hire a manager or caretaker, use all means at its disposal in order to enter into the Property with or without a locksmith, contract or renew leases or terminate them, in the name of the Chargor, for the amounts and upon terms and conditions, including, without limitation, the payment of tenant inducements, which the Chargee shall consider appropriate, maintain the Property in good condition, carry out repairs and renovations and undertake or complete any work, all at the Chargor's expense. The Chargor agrees that he will not interfere with the Chargee's or any Receiver's possession of the Property.

**Accounting for Monies Received.** The Chargee shall only be required to account to the Chargor for any monies actually received by the Chargee in connection with the Property.

**Payment of Chargee's Costs and Expenses.** To the maximum extent permitted by Applicable Laws, all sums disbursed by the Chargee in enforcing any of its remedies or in connection with the protection, enforcement or realization of its security, including, without limitation, legal fees, realtor's fees, fees incurred in relation to any inspection or valuation of the Property, protective disbursements, fees and expenses incurred in connection with taking such steps as are deemed necessary by the Chargee to protect its interests in proceedings commenced by other Persons in relation to the Property and any sums expended in connection with actions taken under Section 21 hereof, shall be repayable by the Chargor on demand, shall be added to the Indebtedness, shall bear interest at the Interest Rate from the date funds were expended by the Chargee and shall be secured by this Charge.

22. **JUDGMENTS AND DEFICIENCY**

**Chargee's Rights After Judgment.** If a judgment is obtained from a Court concerning some or all of the Indebtedness or obligations, the remaining Indebtedness or obligations will not be extinguished, superceded or discharged nor will the Chargee be prevented from exercising any of its remaining rights under this Charge, any other Loan Document or under Applicable Laws.

**Deficiency After Sale.** To the maximum extent permitted by Applicable Laws, the Chargor shall remain liable for payment to the Chargee of all of the Indebtedness, notwithstanding that the

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Chargee may have exercised one or more of its remedies under this Charge including, without limitation, sale of the Property.

### 23. APPOINTMENT OF RECEIVER

**Appointment of Receiver.** Upon Default, the Chargee or the Chargee as agent or attorney for the Chargor (with such appointment not being revocable by the Chargor), with or without entering into possession of the Property or any part thereof, may appoint in writing a Receiver and may remove any such Receiver and appoint a new Receiver in the place and stead of any previously appointed Receiver.

**Powers of Receiver.** Subject to Applicable Laws, the Receiver:

- (a) will be deemed to be the Chargor's irrevocable agent or attorney, vested with all rights, powers and discretions of the Chargor, and the Chargor will be solely responsible for the Receiver's acts or omissions and for the Receiver's remuneration and expenses;
- (b) has power, in the Chargor's name or in the name of the Chargee, to take possession of the Property, to demand, recover and receive income from the Property and to start and carry on any action or court proceeding to collect that income;
- (c) may lease or sublease the Property or any part of it on terms and conditions that the Receiver chooses, including without limitation, the payment of tenant inducements, and for that purpose execute contracts in the name of the Chargor, which contracts will be binding on the Chargor;
- (d) may make arrangements for the completion of the construction of or repair any improvement on the Property, notwithstanding that the resulting cost may exceed the Principal Amount;
- (e) may manage the Property and maintain it in good condition;
- (f) has the power to perform, in whole or in part, the Chargor's duties under the terms of the Loan Documents;
- (g) has the power to do anything that, in the Receiver's opinion, will maintain and preserve the Property or will increase or preserve the value or income potential of the Property; and
- (h) has the power to exercise any of the Chargee's rights and remedies referred to in Section 21 hereof.

**Use of Income by Receiver.** Neither the Receiver nor the Chargee shall be liable to the Chargor to account for monies other than monies actually received by it, in respect of the Property. From income received from the Property, the Receiver may, subject to Applicable Laws, in any order the Receiver chooses, (i) retain enough money to pay or recover the cost to collect the income and to cover other disbursements; (ii) retain its commission, fees and disbursements as receiver; (iii) pay all Taxes and the cost of maintaining the Property in good repair, completing the construction of any building or improvement on the Property, supplying goods, utilities and services to the Property, insuring the Property and taking steps to preserve the Property from damage by weather, vandalism or any other cause; (iv) pay any money for matters required to be paid by the Receiver under Applicable Laws, or that might, if not paid, result in a default under any charge or encumbrance having priority over this Charge or that might result in the sale of the Property if not paid; (v) pay taxes in connection with anything the Receiver is entitled to do under this Charge; (vi) pay all or part of the Indebtedness to the Chargee whether or not it is due and payable; and (vii) pay any other money owed by the Chargor under this Charge and the other Loan Documents.

**Receiver May Borrow.** The Receiver may borrow money for the purpose of doing anything the Receiver is authorized to do. Any money borrowed by the Receiver from the Chargee and any interest charged on that money and all the costs of borrowing will form part of the Indebtedness and will bear interest at the interest rate and shall be paid with the frequency provided under the applicable terms under which such money was borrowed.

**Receiver's Costs and Expenses.** The fees and disbursements of the Receiver, if paid by the Chargee, shall form part of the Indebtedness and will bear interest at the Interest Rate from the date paid by the Chargee and shall be secured by this Charge.

**Chargee Not Responsible.** Nothing done by the Receiver under this Section 23 shall render the Chargee a mortgagee in possession, and the Chargor hereby releases and discharges the Chargee and every Receiver and each of their respective successors and assigns from every claim of every nature, whether for damages for negligence or trespass or otherwise, which may arise or be caused to the Chargor or any Person claiming through or under the Chargor by reason or as a result of anything done by the Chargee or any Receiver under the provisions of this Charge. The Chargor hereby agrees to ratify and confirm all actions of any Receiver taken or made pursuant to this Charge and agrees that neither the Receiver, the Chargee nor their respective successors and assigns will be liable for any loss sustained by the Chargor or any other Person from such actions or failure to act.

24. **LEASEHOLD PROVISIONS**

This Section 24 applies if the Chargor is a tenant or lessee of the Property.

**Definition.** For the purposes of this Section 24, "Lease" means a lease or a sublease pursuant to which the Chargor has a leasehold interest in the Property.

**Representations.** The Chargor represents that:

- (a) the Property is leased to him under a valid Lease (a copy of which has been provided to the Chargee);
- (b) that the Chargor has a good leasehold title to the Property free and clear of all mortgages, liens, charges and encumbrances other than liens registered against the leasehold title to the Property in the applicable Registry Office at the time the Chargor signed this Charge;
- (c) all rents and other moneys payable under the Lease have been paid and the Chargor has complied with all of his obligations set out in the Lease, in both cases up to the date the Chargor signed this Charge; and
- (d) the Chargor has the right to charge and sublet the leasehold title to the Property to the Chargee as set out in this Charge and, if required, has obtained the lessor's unconditional consent to this Charge (or if such consent has been issued under conditions, the Chargee has agreed to same, in writing) and any such consent is in writing and has been provided to the Chargee.

**Covenants.** The Chargor also covenants and agrees as follows:

- (a) that the Lease will at all times while this Charge is not discharged, be a valid lease in full force and effect;
- (b) the Chargor will not amend, surrender or modify the Lease without written consent of the Chargee and will pay the rents and other payments required by the Lease as they fall due and perform and observe the covenants and other obligations contained in the Lease on the lessee's part to be performed;
- (c) the Chargor will renew the Lease when the Lease gives the Chargor that right so that the term of the Lease will continue at all times while this Charge is not discharged;
- (d) the Chargor will promptly give the Chargee a copy of any notice, demand or request which the Chargor may receive relating to the Lease;
- (e) the Chargor will, at his cost, upon request by the Chargee, obtain and deliver to the Chargee estoppel certificates from the lessor under the Lease in form and content satisfactory to the Chargee;
- (f) the Chargor will sign any other document or take any further action as the Chargee may reasonably require, to ensure that all of the Chargor's interest in the Property and in the

Lease have been fully charged to the Chargee and that the Indebtedness is adequately secured;

- (g) the Chargor shall indemnify the Chargee and its successors and assigns against all actions, claims, costs (including legal costs, and on a solicitor and client full indemnity basis), demands and liabilities which the Chargee and its successors and assigns may suffer or sustain by virtue of any default by the Chargor under the Lease, and the Chargor agrees that this indemnity shall survive the exercise of any rights and remedies of the Chargee hereunder including foreclosure and shall survive the repayment of the Indebtedness and/or the discharge of this Charge;
- (h) the Chargor will stand possessed of the Property for the last day of the term or any renewal term granted by the Lease in trust for the Chargee;
- (i) at the Chargee's request, the Chargor will transfer to the Chargee (or to any other Person to whom the Chargee transfers the Chargor's interest in the Property) the last day of the term of the Lease or of any renewal;
- (j) the Chargor hereby appoints the Chargee as his attorney so that the Chargee, on his behalf and in the name of the Chargor, may assign the Lease and the last day of the term of the Lease or of any renewal and convey the Chargor's interest in the Property as the Chargee may require to perfect any transfer made under the default provisions of this Charge; and
- (k) if the Chargor acquires the lessor's interest in the Property (whether by exercising any option to purchase there may be in the Lease or any renewal thereof or otherwise), this Charge will automatically extend to such interest and the Chargor agrees that at the Chargee's request the Chargor will deliver to the Chargee a new charge against such additionally acquired interest substantially on the same terms and conditions as those set forth in this Charge.

25. STRATA/CONDOMINIUM PROVISIONS

This Section 25 applies if the Property is or becomes a strata or condominium property created under Applicable Laws.

**Compliance with Strata/Condominium Rules.** The Chargor shall comply with all of the terms and conditions of the declaration pertaining to the Property as same may be amended from time to time (the "Declaration") together with all rules, regulations and by-laws relating thereto as well as all orders and resolutions passed at meetings of the strata/condominium corporation (together with the Declaration, collectively, the "Constituting Documents").

**Expenses and Taxes.** The Chargor shall pay promptly when due his share of all common expenses, levies and administrative charges in the amounts determined by the board of directors of the strata corporation or condominium corporation (hereinafter the "strata/condominium corporation"); if any such payments are not made when due and regardless of any other action or proceeding taken or to be taken by the strata/condominium corporation, the Chargee may make such payments on behalf of the Chargor pursuant to Section 14 hereof.

**Voting Rights.** The Chargor authorizes the Chargee in the Chargor's name and on the Chargor's behalf, to exercise all rights under Applicable Laws and the Constituting Documents to vote at any meeting (or to vote otherwise than at any meeting) of the strata/condominium corporation, and to consent to anything having to do with the management, sale or other dealings with the Property or assets of the strata/condominium corporation. This authorization includes voting on or any consent to the termination of the strata/condominium corporation. Notwithstanding this authorization, the Chargee may choose not to vote or not to consent at any particular time or on any particular issue. Until the Chargee gives notice to the Chargor and/or the strata/condominium corporation that the Chargee intends to exercise its right to vote or consent, the Chargor may vote or consent. Any notice the Chargee gives may be for an indeterminate or limited period of time, or for a specific meeting or matter. The Chargee shall not be under any obligation to exercise such rights, even though notice may have been given of its intention to do so and shall not be liable to the Chargor or any other Person for the manner in which such rights are exercised or for the failure to exercise same.

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**Insurance.**

- (a) At the request of the Chargee, the Chargor shall obtain and deliver to the Chargee a certificate of insurance issued under the master insurance policy placed by the strata/condominium corporation in accordance with the terms of the Declaration and showing the Chargee as mortgagee.
- (b) In addition to the insurance maintained by the strata/condominium corporation, the Chargor will insure all improvements which have been or at any future time are made to the dwelling unit charged herein and, as well, insure against such additional risks as may be required by the Chargee, will provide the Chargee with certified copies of every such insurance policy naming the Chargee as loss payee and, not less than 15 days before any policy expires, evidence of its renewal. If any loss or damage occurs the Chargor will immediately, at its expense, do everything necessary to enable the Chargee to obtain the insurance proceeds. These proceeds may, at the option of the Chargee, be applied in whole or in part to repair the damage, be paid to the Chargor, or be applied to reduce any part of the Indebtedness whether or not yet due, in which latter case, to the extent permissible by Applicable Laws, the prepayment provisions set out in this Charge will apply as if the Chargor had elected to make a prepayment at such time. The obligation to insure the entire structure of which the Property forms part may be performed by the strata/condominium corporation and the proceeds of such insurance may be payable in accordance with the Constituting Documents related thereto. Upon the occurrence of loss or damage, the Chargor will fully comply with the terms of all insurance policies and with the insurance provisions of such Constituting Documents.

**Notices and Other Documents.** At the request of the Chargee, the Chargor will give the Chargee copies of all notices, financial statements and other documents given by the strata/condominium corporation to the Chargor.

**Chargee May Require Payment.** At the option of the Chargee, and subject to compliance with Applicable Laws, there is a Default if:

- (a) governance of the property of the strata/condominium corporation under the Constituting Documents is terminated or wound up;
- (b) a vote of the strata/condominium owners authorizes the sale of the property of the strata/condominium corporation or of a material part of its common property (or common elements);
- (c) the strata/condominium corporation fails to comply with Applicable Laws or the Constituting Documents;
- (d) the strata/condominium corporation fails to insure the strata/condominium units and common property (or common elements) against destruction or damage by fire and other perils usually insured against for full replacement cost; or
- (e) the strata/condominium corporation fails, in opinion of the Chargee, to manage its property and assets in a careful way or to maintain its assets in good repair.

**Chargee Not Responsible.** Nothing done by the Chargee or its agents under this Section 25 will make the Chargee a mortgagee in possession.

26. **EXPROPRIATION**

**Prepayment of Indebtedness.** In the event of a prepayment of all or any portion of the Indebtedness as a result of an expropriation of all or part of the Property, the prepayment provisions set out in this Charge will apply as if the Chargor had elected to make a prepayment of the amount prepaid at such time.

**Expropriation of the Property.** In the event of the expropriation of all or substantially all of the Property the Indebtedness will, at the option of the Chargee, become immediately due and payable together with any applicable prepayment charge. All amounts received by the Chargor in connection with such expropriation shall, to the extent of the Indebtedness and such prepayment charge, be paid to the Chargee and until so paid shall be deemed to be held by the Chargor in trust for the Chargee.

**Partial Expropriation.** In the event of the expropriation of only a portion of the Property, all amounts received by the Chargor in connection with such expropriation shall, at the option of the Chargee, be paid to the Chargee to be credited towards the Indebtedness and any applicable prepayment charge in respect of such amount. Until such amounts have been paid to the Chargee they shall be deemed to be held by the Chargor in trust for the Chargee. If the Chargee, in its sole discretion, is of the view that the remainder of the Property is inadequate security for the remainder of the Indebtedness, then the Chargee may declare all the Indebtedness together with any applicable prepayment charge immediately due and payable.

27. **ADVANCES AND READVANCES UNDER CHARGE**

Neither the preparation, execution nor registration of this Charge shall bind the Chargee to advance the Principal Amount intended to be secured hereby, nor shall the advance of a part of the Principal Amount bind the Chargee to advance any unadvanced portion thereof, but nevertheless the charges hereby created shall take effect forthwith upon the execution of this Charge by the Chargor. This Charge and the charges granted herein shall operate until all the Indebtedness is fully paid to the Chargee and all covenants of the Chargor herein have been performed in full, in each case in the manner contemplated herein and until the Chargee has delivered a complete discharge hereof in writing to the Chargor. This Charge shall not cease to operate although the Chargor may not be indebted to the Chargee at any time and the Chargee may accept repayment of all or a portion of the Indebtedness and may allow the Chargor to reborrow the amounts previously paid to the Chargee, and this Charge and the charges, mortgages, assignments, security interests and liens granted herein shall stand as security for all such amounts borrowed and reborrowed, whether or not the Indebtedness has at any time been reduced to zero.

28. **RENEWAL AND AMENDMENT OF CHARGE**

**Registration of Agreements Not Required.** Any agreement in writing between the Chargor and the Chargee after the date of this Charge, relating to the payment of the unpaid Indebtedness, or to the Interest Rate, or to both, or any other matter, need not be registered in any Registry Office. Such agreement shall be effective and binding on the Property and upon the Chargor, the Chargee and upon any subsequent encumbrancer or transferee of the Property to the same extent and effect as if such agreement in writing had been executed, delivered and registered in the appropriate Registry Office prior to the making of such subsequent encumbrance or transfer.

**No Implied Agreement.** No agreement for renewal hereof or for extension of time for payment of the Indebtedness hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the Term or of any subsequent term.

29. **PRINCIPAL FAMILY RESIDENCE**

**Consent of Spouse.** Any spouse who is signing the Charge Form consents to the granting of this Charge by the Chargor and releases to the Chargee any claim or interest that the spouse has or may have in the Property under Applicable Laws as far as such release is necessary to give effect to the Chargee's rights under this Charge.

**Change in Marital Status.** If the Chargor is not married at the time of execution of this Charge, but marries thereafter with the result that the Property becomes a principal family residence or if the Property becomes a principal family residence under Applicable Laws or by reason of the registration of a declaration of family residence or of a judicial award, the Chargor agrees that he will forthwith notify the Chargee of same and cause his spouse to subordinate to the rights of the Chargee all of such spouse's rights in the Property as the principal family residence, by signing a written agreement in the form required by the Chargee.

30. FEES PAYABLE BY CHARGOR

**Chargee's Fees and Expenses.** The Chargor shall promptly pay all lawyers' and experts' fees related to this Charge and every renewal or amendment thereof, including, without limitation, fees related to any examination of title to the Property, as well as any costs of evaluation, any survey fees and any costs pertaining to mortgage insurance and/or title insurance, if applicable. The Chargor shall also pay any costs and expenses incurred by the Chargee in responding to any court actions, directives, orders, notices or requests for information brought against the Chargee as a result of or relating to this Charge.

**Chargee's Administrative Fees.** The Chargor shall also pay an administration fee to the Chargee for every dishonoured cheque or preauthorized cheque debit. The fee will automatically be debited to the Chargor's Tax Account balance, or sundry account, or added to the pre-authorized cheque debit upon reissue unless a separate payment of such administration fee is received with a replacement cheque. The Chargee also reserves the right to charge reasonable fees in accordance with industry standards for other administrative services such as, but not limited to, discharges, assumptions, transfers, payment frequency changes, mortgage statements, etc. and the Chargor agrees to pay such fees. These fees may vary from time to time and will be published in the Chargee's schedule of fees, which may be obtained by the Chargor upon request.

31. INSURED INDEBTEDNESS

In the event that all or any portion of the Indebtedness is insured by a mortgage insurer in favour of the Chargee, the contractual relations between the Chargee and the mortgage insurer will be taken into account before effecting any disbursement of funds, or before acceptance of any purchaser or transferee of the Property can become valid, even if already accepted by the Chargee. If this Charge is insured by CMHC, it shall be deemed to be made pursuant to the *National Housing Act*, R.S.C. 1985, c. N-11 (as amended from time to time).

32. GENERAL CONDITIONS

**Assignment.** The Chargor may not assign or transfer the rights that he has or may have to any advance of the Loan without the prior written permission of the Chargee.

**No Partial Discharge.** The Chargor shall not be entitled to obtain a partial discharge of the Property in the event the Property is subdivided and sold notwithstanding that the Chargee has been paid the sale proceeds thereof.

**Pre-Authorized Payments.** The Chargor explicitly authorizes the Chargee to withdraw from any bank account in his name, details of which have been provided to the Chargee in accordance with a pre-authorized chequing plan, the sums necessary to satisfy the payments the Chargor must make by virtue of this Charge as well as the life insurance premiums related to same, if applicable.

**Investment of Funds.** The Chargee shall be at liberty to deposit any monies or instruments received or held by it pursuant to this Charge in a non-interest bearing account or invest them, without having to comply with any legal provisions concerning the investment of the property of others, in any certificate of deposit issued by an institution chosen by the Chargee, for any term which it may choose.

**Limited Responsibility of Chargee.** The Chargee is only liable to the Chargor or any Guarantor for the Chargee's or its employees' wilful misconduct or gross negligence.

**Right to Delegate.** The Chargee shall be at liberty to delegate to any Person or Persons the exercise of its rights, actions or the performance of any covenant resulting from this Charge or under Applicable Laws; in such case the Chargee is hereby authorized to supply such Person with any information it holds relating to the Chargor or the Property.

**Power of Attorney.** In consideration of the making of the Loan to the Chargor, the Chargor hereby grants to the Chargee, with full power of substitution, an irrevocable power of attorney of the Chargor coupled with an interest to carry out any and all acts and to execute any and all deeds, instruments or other documents which it may deem useful in order to exercise its rights. The Chargor ratifies in advance all actions of the Chargee pursuant to such power of attorney and confirms that the Chargee is not liable for any loss sustained by the Chargor or any other Person resulting from any such action or failure to act.

**Rights and Remedies.** The acceptance by the Chargee, as a result of default on the part of the Chargor, of all or part of the sums to which it is entitled, or the exercise by the Chargee of any right or remedy, shall not be held to preclude it from exercising any other right or remedy; all rights and remedies accruing to the Chargee are cumulative and not alternative.

**Assignment by Chargee.** The Chargor and each Guarantor, if any, acknowledges that this Charge (or security certificates backed by or representing any interest in this Charge or a pool of loans which includes this Charge) may be assigned by the Chargee to a third party or may be sold or securitized into the secondary market without restriction and without notice to or consent of the Chargor or any Guarantor. The Chargor and each Guarantor hereby irrevocably consents to the release and disclosure of any financial or other information concerning the Chargor, each Guarantor, the Property and the Loan in the course of any such assignment, sale or securitization.

**Notices to Chargor.** Any notice to or demand upon the Chargor shall be given or made at his ordinary place of business or usual residence set out on the Charge Form or at the address of such other place of business or usual residence or electronic address of which the Chargor shall have notified the Chargee in writing.

**Place of Payment.** All payments must be made at the place of business of the Chargee, in lawful money of Canada at 100 University Avenue, Suite 700, North Tower, Toronto, Ontario, Canada, M5J 1V6, or at such other place as the Chargee may from time to time indicate to the Chargor.

**Joint and Several.** Should the Loan be granted to several Persons, each of them is jointly and severally liable to the Chargee for all the Indebtedness and the performance of all the obligations under this Charge and the other Loan Documents. The same holds for all Persons who will assume the repayment of the Indebtedness and the performance of such obligations.

**Severability.** In the event that any provision of this Charge shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Charge shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**No Amendments and Waiver.** No amendment to this Charge shall be valid or binding unless set forth in writing and agreed to by the Chargor and Chargee. No waiver of any breach of any provision of this Charge will be effective or binding unless made in writing and signed by the Chargee and, unless otherwise provided in the written waiver, will be limited to the specific breach waived. No delay or failure by the Chargee in the exercise of any right under this Charge or any other Loan Document shall operate as a waiver thereof.

**Successors and Assigns.** This Charge binds the Chargor, the Chargor's spouse (if such spouse is signing the Charge Form), the Guarantor and their respective heirs, personal representatives, successors, executors, administrators and assigns and any successor in title with respect to the Property. The rights hereby conferred upon the Chargee shall benefit the Chargee and its successors and assigns.

**References to First National Financial LP.** All references to First National Financial LP in this Charge and the other Loan Documents shall mean First National Financial LP or its successors or assigns, as the case may be.

**Further Assurances.** The Chargor agrees to execute such further assurances of title to the Property as may be required by the Chargee and to do all things and execute such additional documents as the Chargee reasonably requires to ensure that all Indebtedness and other obligations of the Chargor to the Chargee remain secured by this Charge, that this Charge has priority over any other claim, charge, mortgage, lien or other encumbrance on or against the

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Property, except as may be otherwise agreed by the Chargee, and otherwise to give full effect to the intent of this Charge.

**Conflicts Between Documents.** If there is a conflict or inconsistency between any provision of this Charge and any other Loan Document, the Chargee shall be entitled to choose which provision will prevail.

**Interpretation.** The words "hereto", "hereof", "hereby", "hereunder" and similar expressions refer to the whole of this Charge and not to any particular paragraph or portion hereof and extend to and include any and every document supplemental or ancillary hereto or in implementation hereof. Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice-versa, where the context so requires. The headings do not form part of this document and have been inserted for convenience of reference only.

### 33. CASH-BACK PROMOTION

If the Chargor received a cash incentive (the "**Cash-Back Amount**") to enter into the Loan (and notwithstanding that the Interest Rate hereunder may be higher as a result thereof), then the Chargor will repay to the Chargee all or part of the Cash-Back Amount based on the formula hereinafter set out if any of the following events (the "**Triggering Events**") occur prior to the expiry of the original Term of this Charge:

- (a) the Chargor sells the Property, prepays all or part of the Indebtedness, early renews or refinances this Charge or arranges for the assignment of this Charge to another chargee; or
- (b) the Chargee accelerates prepayment of the Indebtedness because of a default by the Chargor.

The amount that the Chargor must repay (the "**Repayment Amount**") if any Triggering Event occurs will equal:

- (c) except where the Triggering Event is the prepayment of only part of the Indebtedness, the Cash-Back Amount multiplied by the portion of the Term remaining at the time of occurrence of the Triggering Event (expressed in months) divided by the original Term (expressed in months); or
- (d) if the Triggering Event is the prepayment of only part of the Indebtedness, the number arrived at by using the formula in (c) above multiplied by a fraction having as its numerator the amount of the partial prepayment and as its denominator the original Principal Amount of this Charge.

The Repayment Amount shall be payable forthwith upon the occurrence of the Triggering Event and if not so paid shall be added to the Indebtedness, shall bear interest at the Interest Rate and shall be secured by this Charge.

### 34. GUARANTEE

The Guarantor, in consideration of the making of the Loan to the Chargor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agrees as follows:

- (a) that the Guarantor with the Chargor, as principal debtor and not as surety, will well and truly pay or cause to be paid the Indebtedness to the Chargee at the times and in the manner herein provided and appointed for the payment thereof;
- (b) that he unconditionally guarantees full performance and discharge by the Chargor of all the obligations of the Chargor under the provisions of this Charge at the times and in the manner herein provided;
- (c) that he will indemnify and save harmless the Chargee against and from all losses, damages, costs and expenses which the Chargee may sustain, incur or be or become liable for by reason of:

- (i) the failure for any reason whatsoever of the Chargor to pay the Indebtedness or to do and perform any other act, matter or thing pursuant to the provisions of this Charge; or
- (ii) any act, action or proceeding of or by the Chargee for or in connection with the recovery of the Indebtedness or the obtaining of performance by the Chargor or of any other Person liable hereunder of any other act, matter or thing pursuant to the provisions of this Charge,

and the foregoing indemnity shall survive the exercise of any rights and remedies of the Chargee hereunder including foreclosure and shall survive the repayment of the Indebtedness and/or the discharge of this Charge;

- (d) that the Chargee shall not be obliged to proceed against the Chargor or any other Person liable hereunder or to enforce or exhaust any security before proceeding to enforce the obligations of the Guarantor herein set out and that enforcement of such obligations may take place before, after or contemporaneously with enforcement of any debt or obligation of the Chargor or any other Person liable hereunder or the enforcement of any security for any such debt or obligation;
- (e) that the Chargee may grant any extension of time for payment, increase the rate of interest payable under this Charge, renew or extend the term of this Charge, release the whole or any part of the Property or other security from this Charge or otherwise deal with the Chargor, all without in any way releasing the Guarantor from his covenant hereunder;
- (f) that the Guarantor has read this Charge and the other Loan Documents and is fully aware of its terms and their terms and in particular the terms of this Section 34;
- (g) that the Chargee, as it sees fit, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and all existing securities up to, and abstain from taking securities from or perfecting securities of, and may compromise, compound, and accept compositions from, and may otherwise deal with, the Chargor and all other Persons liable upon any collateral or other security which the Chargee may at any time hold, without notice to the Guarantor and without changing or in any way affecting the undertaking of the Guarantor hereunder; and
- (h) that where there is more than one Guarantor, each Guarantor agrees with the Chargee to be jointly and severally responsible with all other Guarantors and the Chargor for all Indebtedness and obligations of the Chargor under this Charge and the other Loan Documents.

35. **SEALED COVENANTS**

Each Person signing this Charge (whether as a Chargor or a Guarantor) agrees that each promise and agreement made in this Charge shall be treated as if made by each of them respectively under seal.

36. **ADDITIONAL PROVISIONS**

**Land Registration Reform Act.** The covenants set out in Section 7(1) of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as amended from time to time, are excluded from this Charge; and

**Ontario New Home Warranties Plan Act.** If the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, as amended from time to time, applies to the Property, the Chargor agrees to comply with its requirements and to reimburse the Chargee on demand for any costs which the Chargee incurs in complying with it or enforcing the Chargor's rights on the Chargor's behalf if the Chargor fails to do so and such costs will be added to the Indebtedness and will bear interest at the Interest Rate and shall be secured by this Charge.

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DATED the 21st day of November, 2008.

**FIRST NATIONAL FINANCIAL GP  
CORPORATION**

By:



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**Stephen Smith  
President**

I have authority to bind the Corporation

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