



**Commercial Collateral Mortgage
Standard Charge Terms
Land Registration Reform Act**

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

1. DEFINITIONS

In this set of standard charge terms:

- (a) "Act" means the *Land Registration Reform Act*, (Ontario), as amended or replaced from time to time;
- (b) "Amount Secured" means the aggregate of (i) the Principal Amount, (ii) all interest and compound interest at the Interest Rate, (iii) Costs, and (iv) interest at the Interest Rate on any interest or Costs not paid when due;
- (c) "Bank" means Canadian Imperial Bank of Commerce, its successors and assigns;
- (d) "Charge" means the Charge/Mortgage of Land, any Schedules attached thereto and this set of Standard Charge Terms, as any of the foregoing may be amended or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder" and similar expressions refer to the Charge and not to any particular paragraph or other portion thereof;
- (e) "Chargor" means each party who signs the Charge as chargor, and the Chargor's heirs, executors, administrators, successors and assigns;
- (f) "Costs" means all fees, costs, charges and expenses which, pursuant to the provisions of this set of Standard Charge Terms (other than paragraph 4), the Chargor is required to pay to the Bank and which, without limiting the generality of the foregoing include all of the Bank's fees, costs, charges and expenses, including legal fees on a full indemnity basis, that will reimburse the Bank for amounts incurred to:
 - a) approve, prepare, execute and register the Charge;
 - b) advance and secure the Indebtedness;
 - c) investigate title to the Property;
 - d) collect the Indebtedness;
 - e) enforce the terms of the Charge or the obligations and liabilities of the Chargor hereunder or exercise any of the Bank's rights or remedies hereunder;
 - f) pay a title insurance premium or any mortgage insurance premium;
 - g) take and keep possession of the Property;
 - h) inspect, appraise, insure, secure, protect, repair or improve the Property;
 - i) compensate for any amount the Bank is entitled to charge to the Chargor or pay on behalf of the Chargor hereunder;
 - j) inspect the Property and obtain, including without limitation, any environmental testing, audits, inspections, site assessments, investigations or studies;
 - k) renew and cure any defaults under any leasehold interest;
 - l) appoint a receiver, a manager, a receiver and manager, administrator or other person with similar powers;
 - m) remove any Lien or construction lien from title to the Property, obtain a discharge of a construction lien or defend a construction lien action relating to the Property;
 - n) protect the Bank's interests under the Charge in any way;
 - o) provide any services of an administrative or clerical nature requested by the Chargor;
 - p) comply with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Property; and
 - q) all legal fees and disbursements in connection with the Indebtedness."Costs" include interest at the Interest Rate on all such fees, costs, charges and expenses from the date incurred until paid to the Bank.
- (g) "Fixtures" means (i) all fixtures and growing things in, on, under or in relation to the Property and (ii) all real or personal property whatsoever (whether affixed, mobile or stationary) which is now or later attached to or placed, installed or erected in, on or under the Property, including without limitation: all structures, additions, improvements, fences, plant, machinery, motors, furnaces, boilers, pressure vessels, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, gas pipes, wiring, radiators, shutters, awnings, fixed mirrors, window blinds, wall-to-wall floor coverings, screen and storm doors and windows, aerials, television antennae, satellite dishes, refrigerators, stoves, air conditioning, ventilating, plumbing, electrical, lighting, cooling, heating, cooking and refrigeration equipment, computers, telecommunications systems, security systems, elevators, central vacuum systems, waste disposal, fire and theft protection equipment and all apparatus and equipment appurtenant to the Property;
- (h) "Hazardous Substances" means any substance, mixture of substances or materials that are prohibited, controlled or regulated by any law, regulation or by-law enacted by any legislative, governmental or regulatory

body that has jurisdiction over the Property including, without limitation, any contaminants, pollutants, emissions, asbestos, lead, polychlorinated by-phenyl or hydrocarbon products, any materials containing same or derivatives thereof, underground storage tanks, dangerous or toxic substances or materials, controlled products and hazardous wastes;

- (i) "Indebtedness" has the meaning specified in the Schedule under the heading "Indebtedness";
- (j) "Interest Rate" means the interest rate specified in the Schedule under the heading "Interest Rate";
- (k) "Lease" means, in respect of any part of the Property in which the Chargor has a leasehold interest, the lease under which such leasehold interest is created and any lease with respect to all or any part of the Property which may be entered into in replacement or renewal of such lease, as any of the foregoing may be amended from time to time;
- (l) "Lien" means any mortgage, charge, pledge, assignment, lien, lease, sublease, easement, preference, priority, trust or other security interest or encumbrance of any kind or nature whatsoever with respect to any property or asset, including any title reservations, limitations, provisos or conditions;
- (m) "Prime Rate" means the variable reference interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada;
- (n) "Principal Amount" means the Principal Amount specified in the Charge, which shall be in lawful money of Canada unless otherwise specified in the Charge;
- (o) "Property" means all right, title, estate and interest in and to the lands and premises described in the Charge together with, all buildings and structures now or later placed, installed or erected on any such land and all Fixtures;
- (p) "Schedule" means, collectively, all the schedules attached to the Charge; and
- (q) "Taxes" means, in respect of the Property, all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, including municipal taxes, school taxes and local improvement charges, and all related interest, penalties and fines which at any time may be levied, imposed or be a Lien on the Property or any part thereof.

2. EXCLUSION OF STATUTORY COVENANTS

The covenants deemed to be included in a charge by Section 7(1) of the Act are excluded from the Charge.

3. BANK SECURITY

The Chargor:

- (a) if the Chargor has a freehold interest in the Property, mortgages, charges, assigns and grants a security interest in the Property to the Bank, and the Chargor's present and future interest in the Property to the Bank; or
- (b) if the Chargor has a leasehold interest in the Property, mortgages, charges, assigns and sub-leases a security interest in the Property to the Bank and the Chargor's present and future interest in the Property to the Bank for and during the unexpired residue of the term of each Lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in each Lease;

as collateral security for the payment and performance to the Bank of the Indebtedness in an amount not exceeding the Amount Secured and for the observance and performance of the Chargor of all other covenants and obligations under the Charge.

4. CONTINUING SECURITY

The Charge shall, whether or not it secures a current or running or revolving account, be a general and continuing collateral security to the Bank for payment and performance to the Bank of the Indebtedness in an amount not exceeding the Amount Secured and for the observance and performance of the Chargor's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Bank representing all or any part of the Indebtedness or in the names of the parties to such bills, promissory notes and/or other obligations or that there is no Indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

5. PAYMENT

- (a) The Chargor shall pay the Indebtedness to the Bank on demand.
- (b) Except as otherwise agreed in writing, payments or other moneys received by the Bank may be applied by it on any part of the Indebtedness and in any order as determined by it from time to time, notwithstanding any contrary stipulation by the Chargor. The Bank may from time to time revoke or alter any such application and reapply the amount in question on any other part of the Indebtedness determined by it. If the Bank is notified, or in its sole discretion believes, that the Chargor has disposed of, encumbered or otherwise created a Lien or other interest on or in all or any part of the Property or any Lease, the Bank may close any of the Chargor's accounts at the amount then owing to the Bank and open a new account or accounts for Indebtedness thereafter arising and for payments thereafter received by the Bank. No amount paid in or credited to any new account shall be applied to or have the effect of reducing or repaying any part of the Indebtedness owing at the time the Bank was so notified or opened any such new account.
- (c) The provisions of the Charge in no way prejudice or otherwise affect any right the Bank may have independently of the Charge (whether pursuant to any agreement, promissory note, other instrument, any rule of law, statute, or otherwise whatsoever) to recover all or any part of the Indebtedness from the Chargor and, if the Indebtedness exceeds the Amount Secured, the Bank may conclusively determine what part of the Indebtedness (not exceeding the Amount Secured) shall be secured by the Charge and what part shall not be so secured.

- (d) The records maintained by the Bank as to the date and amount of any Indebtedness advanced to or otherwise incurred by the Chargor from time to time (including any interest accrued thereon), and as to the amount of any payment thereof, shall constitute *prima facie* evidence of such dates and amounts.
- (e) Any demand for payment made by the Bank pursuant to the Charge may be delivered personally to the Chargor or any employee or officer thereof or may be mailed, postage prepaid, to the address of the Property or to the Chargor's most recent address appearing in the Bank's records relating to the Charge. ANY SUCH DEMAND SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN GIVEN AND RECEIVED ON THE DATE OF SUCH DELIVERY OR THE FIFTH DAY AFTER SUCH MAILING.
- (f) The Chargor shall not, without the Bank's express written consent, be entitled to pay all or any part of the Indebtedness prior to the date the same is payable pursuant to the provision of the Charge.

6. ADVANCES BY THE BANK

If the Bank decides, for any reason, not to advance any moneys or other accommodation, it shall not be required to do so whether or not the Charge has been signed and registered and whether or not any moneys or other accommodation have been previously advanced. Whether or not any advances are made, the Chargor shall immediately pay the Bank's costs, including, without limitation, lawyers' fees (on a full indemnity basis), and expenses for investigating title to the Property and for preparing, signing and registering the Charge and any other related instruments or documentation.

7. ADDITIONAL SECURITY; JUDGMENTS

- (a) The Charge is in addition to and not in substitution for any other security now or later held by the Bank for all or any part of the Indebtedness. The Chargor agrees that the Charge shall not create any merger or discharge of any part of the Indebtedness or any other debt owing to the Bank or of any Lien, bond, promissory note, bill of exchange or other security now or later held by the Bank (whether from the Chargor or any other person). The Chargor further agrees that the Charge shall not in any way affect any other security now or later held by the Bank for all or any part of the Indebtedness or the liability of any endorser or any other person, or any of the Bank's remedies, in respect of any such Lien, bond, bill of exchange, promissory note or other security, or any renewal thereof, held by the Bank for or on account of all or any part of the Indebtedness.
- (b) The taking of a judgment or judgments against the Chargor in respect of any of the agreements or obligations contained in the Charge, or in respect of all or any part of the Indebtedness, or otherwise, shall not operate as a merger of such agreements or obligations or all or any part of the Indebtedness, or operate as a merger of or in any other way affect the security created by the Charge or any other security or Lien or the Bank's right to pursue the Bank's other remedies or to enforce the Chargor's other obligations (whether hereunder or otherwise) or the Bank's right to interest on the Indebtedness at the Interest Rate. Any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment is fully paid and satisfied.
- (c) The obligations of the Chargor under the Charge shall in no way be affected by the bankruptcy, insolvency, incapacitation, dissolution, continuance, merger or amalgamation or change of name of the Chargor.

8. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Bank may increase, reduce, discontinue or otherwise vary the Chargor's credit arrangements, grant extensions of time or other indulgences, take and give up securities, abstain from taking, perfecting or registering securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Chargor and other persons (including without limitation any person to whom all or any part of the Property is transferred) and with any securities as the Bank may see fit without affecting any of the Bank's rights or remedies (hereunder or otherwise), the Chargor's liability under the Charge or the Chargor's liability to pay the Indebtedness. The Bank may delay enforcing any of its rights under the Charge or any other document relating to the Indebtedness without losing or impairing those rights and may waive any breach of the Chargor's obligations under the Charge or any such document without affecting the Bank's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Bank. The Bank may release others from any liability to pay all or any part of the Indebtedness without releasing the Chargor. The Bank may release its interest under the Charge in all or any part of the Property or any Lease (or any other collateral) whether or not the Bank receives any value and shall be accountable to the Chargor only for moneys which the Bank actually receives. If the Bank releases its interest in part of the Property, the remainder of the Property shall continue to secure the Indebtedness in an amount not exceeding the Amount Secured and the Chargor's obligations under the Charge will continue unchanged. No sale or other dealing with all or any part of the Property or any Lease, and no amendment of the Charge or any other security, agreement or instrument, and no amendment relating to the Indebtedness, will in any way affect the obligation of the Chargor or any other person to pay the Indebtedness.

9. REPRESENTATIONS, WARRANTIES AND AGREEMENTS RESPECTING THE PROPERTY

- (a) The Chargor represents and warrants with the Bank that:
 - (i) unless the Chargor is the lawful tenant or lessee of the Property, the Chargor is the lawful owner and sole registered owner of the Property and has a good and marketable title to the Property, free and clear of any Liens or claims except any the Chargor has reported to the Bank in writing;
 - (ii) each Chargor: (a) which is a corporation is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (b) which is a partnership is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; (c) which owns an interest in the Property has full power, authority and legal right to own the Property and to carry on its business thereon in compliance with all applicable laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (d) has full power, authority and legal right to enter into this Charge and any other security or loan documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (e) has taken all necessary action and proceedings to authorize the execution, delivery and performance of this Charge and any other security or loan documents to which it is a party and to observe and perform the provisions of each in accordance

with its terms; and (f) shall maintain in good standing its existence, capacity, power and authority as a corporation or partnership, as the case may be, and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith;

- (iii) the Chargor has the right to execute and deliver the Charge and charge the Property and the Chargor's interest in it to the Bank in accordance with the terms hereof. Furthermore, this Charge and any other security or loan documents constitute valid and legally binding obligations of the Chargor enforceable against the Chargor in accordance with their terms and are not subject to any right of rescission, and at the date of entering into this Charge and any other security or loan documents, the Chargor has no right of set-off, counterclaim or defence in respect of the Bank, the Indebtedness, this Charge, or any other security or loan documents. Neither execution and delivery of the this Charge and any other security or loan documents, nor compliance with the terms and conditions of any of them (a) has resulted or will result in a violation of the constating documents governing the Chargor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors, shareholders or partners, as the case may be, of any Chargor, (b) has resulted or will result in a breach of or constitute a default under applicable laws or any agreement or instrument to which any Chargor is a party or by which it or the Property or any part thereof is bound, or (c) requires any approval or consent of any person except such as has already been obtained;
- (iv) the Chargor has not done, omitted nor permitted anything whereby the Property or any Lease or the Chargor's interest in it or any part of it is or may be subject to any Lien or claim except any the Chargor has reported to the Bank in writing;
- (v) there are no limitations affecting title to the Chargor's interest in the Property, except any the Chargor has reported to the Bank in writing and except for building and zoning by-laws which have been and will continue to be complied with or with respect to which the Property is a legal non-conforming use;
- (vi) the Chargor shall, from time to time, both before and after this Charge has become enforceable, sign any document and take any further action at the Chargor's expense as the Bank may think necessary in order to carry out the intention of the Charge;
- (vii) no part of the Property is, has ever been or will in the future be insulated with urea formaldehyde foam insulation;
- (viii) upon the Chargor being in default of its obligations under this Charge, the Bank shall have quiet possession of the Property free from all Liens and claims, except any referred to in paragraphs 9(a)(i), 9(a)(iv) and 9(b)(i);
- (ix) no conveyance, assignment, transfer, sale or other disposition of the Charge or any interest in the Property or any part thereof shall be made or permitted to be made by the Chargor without the prior written consent of the Bank. The Bank shall have the right to convey, assign, transfer, sell, or otherwise dispose of the Charge or any part thereof to a third party without the prior written consent of or notice to the Chargor;
- (x) the Property is in good condition and repair, complies with all applicable laws, permits, licenses and approvals and the present location, occupancy, operation and use of the buildings, structures and other improvements on the Property either comply with all applicable laws or to the extent of any non-compliance, such non-compliance is legally permitted under the applicable laws;
- (xi) the Bank, its servicer and their respective agents and employees shall have the right to enter and inspect the Property at all reasonable times upon reasonable notice (which notice shall not be required to be in writing) to the Chargor. The Bank shall not be considered to have taken possession of the Property or to otherwise become a mortgagee or chargee in possession of the Property by reason of its exercise of any such right;
- (xii) the Chargor shall defend title to the Property for the benefit of the Bank from and against any actions, proceedings and claims;
- (xiii) no Liens shall be created, issued, incurred or permitted to exist on any part of the Property or any interest therein (except in favour of the security of the Indebtedness), without the prior written consent of the Bank in its sole discretion;
- (xiv) the Chargor will not change the use or operation of or abandon the Property, commit or permit any waste of the Property or remove or permit the removal of any building, structure or other improvement from the Property;
- (xv) the manager of the Property and each management agreement shall each be subject to the approval of the Bank in its sole discretion from time to time. The manager shall not be removed or replaced and the management agreement shall not be terminated or amended without the prior consent of the Bank in its sole discretion. Upon the Charge becoming enforceable, the Bank may terminate or require the Chargor to terminate such management agreement and may retain, or require the Chargor to retain, a new manager approved by the Bank (in each case at the Chargor's sole expense). Each management agreement shall contain termination provisions consistent with this paragraph;
- (xvi) the Chargor (i) has obtained all permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "**Permits**") necessary to permit the lawful construction, occupancy, operation and use of the Property; (ii) is not in default under such Permits and shall maintain all such Permits in good standing and in full force and effect; (iii) shall not terminate, amend or waive any of its rights and privileges under any Permits without the Bank's prior written consent in its sole discretion; and (iv) is not aware of any proposed changes or any notices or proceedings relating to any Permits (including pending cancellation, termination or expiry thereof). The Chargor shall promptly notify and deliver to the Bank particulars of any such changes, notices or proceedings that may arise from time to time;
- (xvii) the Chargor is not now a non-resident of Canada within the meaning of the *Income Tax Act* (Canada). The Chargor also covenants that it will not be any time prior to the discharge of this Charge, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (xviii) all services and utilities (including storm and sanitary sewers, water, hydro, telephone and gas services) necessary for the use and operation of the Property are located in the public highway(s) abutting the

Property (or within easements disclosed to and approved by the Bank in writing prior to the date of this Charge) and are connected and available to the Property. The Property has unrestricted and unconditional rights of public access to and from public highways (completed, dedicated and fully accepted for public use by all applicable governmental authorities) abutting the Property at all existing access points. The Chargor is not aware of any proposed changes affecting such access or public highways. The Chargor is not aware of any existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof; and

- (xvii) there are no existing or threatened actions, proceedings or claims against or relating to the Property or the Chargor except as disclosed to and accepted by the Bank in writing prior to the date of registration of the Charge. Upon becoming aware of any threatened or actual action, proceeding or claim against or relating to the Property or the Chargor, the Chargor shall promptly notify the Bank of same and shall provide the Bank with reasonable information concerning such action, proceeding or claim as the Bank may require from time to time.
- (b) If the Chargor is a tenant or lessee of the Property, the Chargor also represents, warrants and agrees with the Bank that:
- (i) the Chargor is the lawful tenant or lessee of the Property and has a good and marketable leasehold title to the Property, free of any Liens or claims, except any the Chargor has reported to the Bank in writing;
 - (ii) the Property is leased to the Chargor under a good, valid and subsisting lease which is in full force and effect on the date of this Charge (a complete copy of which the Chargor has given to the Bank);
 - (iii) all rents and other moneys payable under each Lease have been paid and the Chargor has not defaulted in respect of any of the Chargor's other obligations set out in such Lease, in both cases up to the date the Chargor signed the Charge;
 - (iv) the Chargor has obtained the consent of the Chargor's landlord or lessor, or the Chargor has the right without such consent, to charge and sublet the Chargor's leasehold interest in the Property to the Bank in the manner provided in the Charge;
 - (v) the Chargor shall pay rent and all other amounts, and perform and observe all other obligations of the lessee or tenant, all as required by each Lease, in default of which the Bank may (but shall not be obligated to) make any such payments or perform or observe any such obligations, and the Chargor shall immediately pay the Bank the amount of any payments made or costs and expenses incurred by the Bank in so doing;
 - (vi) the Chargor shall not surrender the Lease or cause or allow it to be terminated or forfeited;
 - (vii) the Chargor shall not agree to any amendment of any Lease without first obtaining the Bank's written consent;
 - (viii) the Chargor shall promptly give the Bank a copy of any notice, demand or request which the Chargor may receive relating to any Lease or the Property;
 - (ix) the Chargor shall stand possessed of the Property for the last day of the term or of any renewal term granted by each Lease in trust for the Bank, and will assign and sell it as the Bank may direct, but subject to the Chargor's rights herein;
 - (x) there are no limitations on the Chargor's interest in the Lease except as set out in the Lease;
 - (xi) if the Property is located in a national or provincial park, the Lease contains all terms necessary in order for the appropriate governmental authority to consent, if necessary to this Charge;
 - (xii) the Chargor shall not permit any rights of renewal or options to lapse and will exercise all such rights of renewal or options so that the Lease continues as long as the Charge is outstanding;
 - (xiii) if the Chargor subsequently buys the Property from the owner, the Charge will automatically become a Charge on the entire interest in the Property, as if the Chargor had owned the Property when the Charge was originally granted. If requested, the Chargor shall re-mortgage and charge its interest in the Property to the Bank and execute and authorize a registered Charge/Mortgage of Land and any other documentation requested by the Bank;
 - (xiv) the Chargor irrevocably appoints the Bank as its attorney so that it can, on behalf of the Chargor, enforce its rights and remedies under the Lease and exercise any options or renewal rights, options to purchase or assign the Lease on the last day of the term and transfer the Chargor's interest in the Property; and
 - (xv) the Chargor authorizes the Bank to obtain and request information directly from the landlord under the Lease.

10. ENVIRONMENTAL

The Chargor represents and warrants with the Chargee that:

- (a) The Property and all activities conducted thereon comply with all applicable federal, provincial, state and municipal laws, statutes, regulations, rules, by-laws, orders, permits, licences, authorizations, approvals, certificates, standards and requirements relating to environmental or occupational health and safety matters, including the presence, release, reporting, investigation, disposal, remediation and clean-up of Hazardous Substances (collectively, "**Environmental Laws**"). The Property is not and will not be used at any time for the principal purpose of manufacturing, storing or using Hazardous Substances. The Property contains no Hazardous Substances (except those used incidentally in the ordinary course of business of the Chargor and in compliance with all Environmental Laws), has not been previously, and is not currently, subject to any remediation or clean-up of Hazardous Substances and there has not been and is no prior, existing or threatened investigation, action, proceeding, notice, order, conviction, fine, judgment, claim, directive or Lien of any nature or kind against or affecting the Property or the Chargor arising under or relating to Environmental Laws (each, an "**Environmental Proceeding**"). All existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Bank. To the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or any Environmental Proceedings which would render illegal or affect the present use and operation of the Property. Neither the Chargor nor any other Person has

used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances or as a waste disposal site.

- (b) The Chargor shall: (i) ensure that the Property and the Chargor comply with all Environmental Laws at all times; (ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Property (except those used incidentally in the ordinary course of business of the Chargor and in compliance with all Environmental Laws); (iii) ensure that any Hazardous Substance brought onto the Property or used by any person on the Property shall be transported, used and stored only in accordance with Environmental Laws; (iv) notify the Bank promptly of any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance on, from, or under the Property; (v) notify the Bank promptly of any threatened or actual Environmental Proceedings that may arise from time to time and provide particulars thereof; (vi) remediate and cure in a timely manner any non-compliance by the Property or the Chargor with Environmental Laws, including removal of any Hazardous Substances; and (vii) provide the Bank promptly upon request with such information and documents and take such other steps (all at the Chargor's expense) as may be required by the Bank to confirm and/or ensure compliance by the Property and the Chargor with Environmental Laws.
- (c) The Chargor shall indemnify and pay, protect, defend and save the Bank and its directors, officers, employees and agents harmless from and against all actions, suits, fines, sanctions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees and disbursements on a full indemnity or equivalent basis) (collectively "**Environmental Claims**") occurring, imposed on, made against or incurred by the Bank arising from or relating to, directly or indirectly, whether or not disclosed by any environmental assessment obtained by the Bank prior to the initial advance and whether or not caused by the Chargor or within its control: (i) any actual or alleged breach of Environmental Laws relating to or affecting the Property, (ii) the actual or alleged presence, release, discharge or disposition or 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, (iii) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof, or (iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws.
- (d) The Bank or agent of the Bank may, at any time, before and after the Charge becomes enforceable and for any purpose deemed necessary by the Bank, enter upon the Property to inspect the Property. Without limiting the generality of the foregoing, the Bank or agent of the Bank may enter upon the Property to conduct any environmental testing, audits, inspections, site assessments, investigations or studies deemed necessary by the Bank. The exercise of any powers enumerated in this paragraph shall not deem the Bank or agent of the Bank to be in possession, management or control of the Property.

11. INSURANCE

- (a) The Chargor will, at its sole expense, in accordance with the provisions of this paragraph 11, insure and keep insured for their full insurable value all buildings and Fixtures now or later forming part of the Property, and all present and future crops and other produce of the land forming part of the Property for the benefit of the Bank until the Indebtedness has been paid in full and the Charge has been discharged. The risks so insured against shall include loss or damage by or from fire (with extended perils coverage), explosion, tempest, lightning and other perils usually covered in fire insurance policies and such additional risks as the Bank may from time to time require, including without limitation, loss of rental and other income and public liability insurance, in each case in amounts satisfactory to the Bank.
- (b) If a steam boiler, pressure vessel, oil or gas burner, coal blower, stoker or air conditioning or sprinkler system is at any time operated on the Property, the Chargor will also insure and keep insured against loss or damage by explosion of or otherwise caused by any such apparatus or system.
- (c) Each insurance policy will be carried with a company or companies, and contain a mortgage clause and a loss payee clause in favour of the Bank as its interest may appear, approved by the Bank. The Chargor shall immediately give the Bank a certified copy of each insurance policy and, not less than ten days before any policy expires or is terminated, evidence of its renewal or replacement. The Bank may require cancellation of any insurance required by the Charge and new insurance effected by an insurer to be approved by the Bank.
- (d) The Bank has the right, but shall not be obligated, to obtain and maintain any insurance if the Chargor fails to do so or fails to comply with any of the obligations set forth in paragraph 11(c). The Chargor shall immediately pay the Bank all premiums paid and all costs and expenses incurred by the Bank to effect such insurance.
- (e) If any loss or damage occurs to any part of the Property, the Chargor shall immediately notify the Bank and, at the Chargor's expense, do everything necessary to enable the Bank to obtain the insurance proceeds. The Bank may require that all or any part of such proceeds, or the proceeds of any other insurance required hereby or otherwise effected with respect to all or any part of the Property, be applied towards all or any part of the Indebtedness, whether or not due, or be used to repair such loss or damage.
- (f) As additional security for payment of the Indebtedness and performance of the Chargor's other obligations under the Charge, the Chargor assigns to the Bank all of the Chargor's interest in or under (i) any policy of insurance effected with respect to all or any part of the Property, whether or not effected in accordance with the provisions of this paragraph 11 and (ii) any insurance trust agreement referred to in paragraph 15(f). The Chargor hereby irrevocably appoints each officer of the Bank (with power of substitution) as attorney of the Chargor to endorse on behalf of the Chargor any cheques issued by any insurer with respect to any policy of insurance effected pursuant to this paragraph 11 or otherwise with respect to all or any part of the Property.
- (g) The Bank may also require that other risks be covered by insurance, depending on the nature or location of the Property.

12. TAXES AND UTILITY CHARGES

The Chargor shall pay or cause to be paid, when due, all Taxes and utility charges relating to all or any part of the Property. Upon request, the Chargor shall give the Bank receipted invoices or other evidence of payment including copies of all utility bills, tax bills, notices of assessment and other notices relating to property taxes and utility charges. If the Chargor fails to make any such payment, or to pay any related penalties, fines or interest, the Bank may, but shall not be obligated to, do so and the Chargor shall immediately pay the amount of such payment to the Bank.

13. REPAIRS, MAINTENANCE AND INSPECTION

- (a) The Chargor shall maintain, use, manage, operate and repair the Property in good condition and in a safe, insurable and state of good repair and shall not do, fail to do or permit anything to be done which, in the opinion of the Bank, will lower its value. The Chargor shall not commit or permit any act of waste on the Property nor allow any part of the Property to become or remain vacant without the Bank's written consent.
- (b) The Chargor shall perform and observe the requirements of every present and future statute, law, by-law, ordinance, regulation and order affecting the operation, condition, maintenance, repair, construction, use or occupation and environmental protection or regulation of all or any part of the Property.
- (c) If any part of the Property is farmland, the Chargor shall in each year either put into crop or summer fallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Chargor shall also keep such Property clean and free from all noxious weeds and generally see that it does not depreciate in any way as farmland.
- (d) The Chargor authorizes the Bank to enter on and inspect the Property at all reasonable times whenever the Bank deems it necessary or advisable to do so. The Bank shall not be considered to have taken possession of the Property or to otherwise become a mortgagee in possession of the Property by reason of its exercise of any such right.
- (e) If, in the sole opinion of the Bank, the Chargor does not observe or perform any of the foregoing provisions of this paragraph 13, the Bank may from time to time (but shall not be obligated to) enter on and inspect the Property at any time and make such repairs and do such other acts or things it believes are necessary to protect or preserve the Property and to carry out the Chargor's obligations under this paragraph 13 including, without limitation, if the Property is farmland, the farming, improvement and general management thereof. The Chargor shall immediately pay the Bank all amounts, costs and expenses paid or incurred by it in connection with any of the foregoing.
- (f) If the Chargor fails at any time for a period of ten consecutive days to diligently carry on any Improvement (as defined in paragraph 14) to or on any part of the Property or without the written consent of the Bank departs from the plans and specifications approved by the Bank with respect thereto or from the generally accepted standards of construction in the locality of the Property, or if the Chargor is in default of its obligations under this Charge, the Bank from time to time may enter on the Property and have exclusive possession of all materials, plant and equipment thereon, free of interference from or by the Chargor, and complete the Improvement either according to such plans and specifications or according to such other plans, specifications or design as the Bank in its absolute discretion shall determine. The Chargor shall immediately pay the Bank all costs and expenses incurred by it in connection with any of the foregoing. In exercising any of the foregoing rights, the Bank shall be deemed not to be a mortgagee or chargee in possession.
- (g) Any entry which may be made by the Bank pursuant to any provision of the Charge may be made by any agents, representatives, employees and/or contractors thereof.

14. IMPROVEMENTS; DEMOLITION

- (a) In this paragraph 14, the term "Improvement" has the meaning given to it in the Construction Lien Act (Ontario), as amended or replaced from time to time, and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Property and the demolition or removal of any building or part of any building on the Property.
- (b) The Chargor agrees that no Improvement to or on the Property will be made or commenced (by the Chargor or any other person) unless the Chargor first provides a copy of all proposed plans, blueprints and specifications to the Bank and obtains the Bank's prior written consent thereto. The Improvement shall form part of the Property but, nevertheless, it is expressly agreed that the Charge is not and shall not be a building mortgage under section 21 of the Mortgages Act (Ontario), as amended or replaced from time to time. Subject to paragraph 6, the Bank may, subject to its satisfaction as to compliance with any applicable builder's lien or analogous legislation, make advances to the Chargor under the Charge based on progress in completing the Improvement or upon its completion or, in the case of a building, its occupation or sale or otherwise. The Chargor shall construct and complete the Improvement in accordance with the plans and specifications approved by the Bank and all applicable governmental building standards, codes and requirements as quickly as possible and make all payments for the Improvement that it is required to make, and shall provide the Bank with proof of such payments on request.
- (c) The Bank may retain funds from any advance or advances under the Charge until the Bank is completely satisfied that all statutory holdback provisions have been fully complied with, and may give information in accordance with the Bank's statutory obligations as mortgagee.

15. CONDOMINIUM PROVISIONS

- (a) This paragraph 15 shall apply, in addition to the other provisions of the Charge, if all or any part of the Property is a condominium unit. The Chargor agrees that the common elements pertaining to the Property and any other interest that the Chargor may have in the assets of the Condominium Corporation form part of the Property and are subject to the Charge.
- (b) The Charge is made pursuant to the Condominium Act. The Chargor shall comply with the Condominium Act (Ontario), the Declaration and the by-laws, rules and regulations of the Condominium Corporation as they exist from time to time.
- (c) The Chargor shall pay, when due, all amounts (including without limitation Common Expenses) which, by the terms of the Condominium Act, the Declaration or the by-laws of the Condominium Corporation, are payable by the Chargor or with respect to the Property and provide the Bank on request with proof of such payment. If the Chargor does not make any such payment, the Bank may (but shall not be obligated to) do so, and the Chargor shall immediately pay the Bank any amount so paid.
- (d) The Chargor shall mail to the Bank, by prepaid registered mail, or deliver to the Bank, copies of every notice, assessment, claim or demand for payment, rule, regulation, request or demand of the Bank to consent to any matter, and every other communication relating to all or any part of the Property or the common elements of the

Condominium Corporation so that the Bank receives them at least five days before any such claim or demand is payable or, in the case of other communications, within five days after receipt by the Chargor.

- (e) The Chargor irrevocably appoints, authorizes and empowers the Bank to vote, consent or not consent respecting all matters relating to the affairs of the Condominium Corporation provided that:
- (i) the Chargor shall be entitled to exercise such right to vote or consent or not consent unless the Bank gives notice of its intention to exercise such right, which notice may be for an indeterminate period of time, a limited period of time or a specific meeting or matter;
 - (ii) the Bank's right to vote, consent or not consent does not impose any obligation on the Bank to do so or to protect the Chargor's interests; and
 - (iii) the Bank's exercise of its right to vote, consent or not consent shall not constitute the Bank a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Bank.
- (f) The Chargor shall insure all improvements which at any time the Chargor or any previous owner makes or made to the Property and the Chargor's common or other interest in buildings which are part of the condominium property or common elements pertaining to the Property, against such risks as the Bank may require. If the Condominium Corporation fails to obtain or maintain the insurance it is required to by the Condominium Act, the Declaration, the by-laws or rules of the Condominium Corporation or otherwise to obtain and maintain with respect to all or any part of the Property, the condominium property or common elements pertaining to the Property, or the assets of the Condominium Corporation, the Chargor shall do so. If the Chargor fails to so insure, the Bank may (but shall not be obligated to) do so and the Chargor shall immediately pay the Bank all premiums paid by it. All policies of insurance required to be effected pursuant to this paragraph 15(f) upon or in respect of the buildings on the Property shall provide for any loss to be payable to the Bank and a trustee approved by the Bank pursuant to an insurance trust agreement approved by the Bank, the terms of which shall not be altered without the Bank's prior written consent. Without limiting the generality of paragraph 15(a), it is expressly agreed that the provisions of this paragraph 15(f) are in addition to the Chargor's obligations and the Bank's rights set out in paragraph 11.
- (g) The Chargor will observe all provisions of, and perform all obligations imposed upon the Chargor by, the Condominium Act, the Declaration, the by-laws of the Condominium Corporation and any rule made pursuant to the Condominium Act. The Bank may (but shall not be obligated to) observe and perform such provisions or obligations if the Chargor fails to do so and the Chargor shall immediately pay the Bank all costs and expenses incurred by the Bank in so doing.
- (h) The Bank shall have the right, but not the obligation, at its option to collect the Chargor's contribution to the Common Expenses or any special assessment and the Chargor shall make such payment to the Bank upon request. The Bank shall then forward such payments on to the Condominium Corporation as required.
- (i) The Chargor shall not sell, transfer, convey or otherwise dispose of any parking or storage unit that forms part of the Property while still retaining ownership of the unit.
- (k) The Chargor shall, and does hereby, direct and authorize the Condominium Corporation to permit the Bank to inspect the Condominium Corporation's records at any reasonable time.

16. EFFECT OF SUBDIVISION

If the Property is subdivided, each part of the Property shall continue to secure payment of the total amount of the Indebtedness in an amount not exceeding the Amount Secured and no person shall have any right to require the Indebtedness to be apportioned upon or in respect of any part of the Property.

17. LEASES AND RENTS

- (a) The Chargor assigns to the Bank, as additional security for payment of the Indebtedness (i) all leases heretofore or hereafter granted by the Chargor (or any predecessor in title) of all or any part of the Property and (ii) any rents payable from time to time under such leases and the benefit of the terms and conditions contained therein and of the reversion thereunder. The Chargor shall, on request from time to time, execute a formal assignment of any of the foregoing in a form acceptable to the Bank and, if requested by the Bank, suitable for registration. The Chargor agrees to give the Bank executed copies of all such leases promptly after their execution and to perform all of the Chargor's obligations thereunder. No such assignment or any act of the Bank pursuant thereto shall operate to delay, hinder or prejudice any of the Bank's rights or remedies under the Charge. The Chargor shall also, from time to time, execute and deliver to the Bank such notices to lessees or others and such other documents as the Bank may request for the purpose of protecting or enforcing its rights in respect of such assignments.
- (b) The Bank shall not be responsible for the collection of any rents assigned to it or the performance of the terms and conditions of any lease referred to in this paragraph 17. The Bank shall be responsible to account only for rents actually received, less reasonable collection charges, and may apply such rents to the repayment of the Indebtedness, whether or not due. The Bank shall not by reason of any such collection or any assignment referred to in this paragraph 17 be deemed a mortgagee or chargee in possession.
- (c) Notwithstanding this paragraph 17, no lease of all or any part of the Property shall be made by the Chargor without the prior written consent of the Bank. Notwithstanding any such consent, no such lease shall have priority over this Charge unless the Bank expressly agrees to such priority in writing. For the purposes of the Charge, every action or omission by the lessee under any lease of all or any part of the Property shall be conclusively deemed to be the action or omission of the Chargor.

18. OTHER LIENS; RENEWAL OF LEASES

- (a) Unless the Bank otherwise consents, the Chargor will not create or permit to exist any Lien on or against all or any part of the Property, any Lease or any leases or rents referred to in paragraph 17, other than Liens (i) for taxes which are not due or (ii) incidental to construction, repairs or current operations which have not been registered against the Property, which relate to obligations which are not due and written notice of which has not been given to the Bank. The Chargor shall pay, when due, all amounts payable under, in respect of or secured

by any Lien or other claim on, against or relating to all or any part of the Property or any Lease or any lease or rents referred to in paragraph 17 and shall comply with all obligations contained in the document or statute under which any such Lien or other claim arose. The Bank may, but shall not be obligated to, pay any such amount and/or cure any default under any such document or statute and the Chargor will immediately pay the Bank all amounts, costs and expenses paid or incurred in so doing. To the extent the Bank pays any such amount, it shall be entitled to all equities and securities of the person or persons so paid and it may retain any discharge or cessation of charge unregistered until paid. The Chargor shall immediately notify the Bank in writing of the creation or coming into existence of any Lien on or against all or any part of the Property or any Lease or any lease or rents referred to in paragraph 17 and of the terms and conditions thereof.

- (b) The Bank may from time to time obtain a court order vacating any construction lien registered against all or any part of the Property and, if the Bank considers it necessary, provide financial guarantees or other security to facilitate the obtaining of any such order. The Chargor shall immediately pay the Bank all costs and expenses paid or incurred by the Bank to obtain such order or to provide such guarantees or security.
- (c) If the Chargor has a leasehold interest in the Property and the Chargor refuses or neglects to renew any Lease, the Bank may (but shall not be obligated to) from time to time effect any such renewal in its own name or otherwise. The Chargor shall immediately pay the Bank all costs and expenses incurred by the Bank in connection with any such renewal. In so doing, the Bank shall not be considered a mortgagee or chargee in possession.

19. POSSESSION

Until the Charge becomes enforceable, the Chargor shall be entitled to possession of the Property, subject to the terms of the Charge.

20. DEFAULT

Where the Indebtedness of the Chargor to the Bank is: (a) of a demand nature, then the Chargor shall be in default under this Charge if it fails to pay on demand by the Bank all or any part of the Indebtedness; (b) not of a demand nature, then the Chargor shall be in default under this Charge if any of the following events or circumstances (collectively, "**Events of Default**") shall occur and be continuing:

- (a) the Chargor fails to pay when due all or any part of the Indebtedness or any amount payable pursuant to any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into, with or in favour of or held by the Bank in respect of or representing all or any part of the Indebtedness;
- (b) the Chargor fails to observe or perform any provisions or obligations hereunder or under any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into with or in favour of or held by the Bank except as contemplated in paragraph 20(a);
- (c) the Chargor fails to pay when due any indebtedness for borrowed money except as contemplated in paragraphs 20(a) and (b);
- (d) any statement, representation or warranty the Chargor has given or made or hereafter gives or makes to the Bank (whether in the Charge or otherwise) in respect of the Property, the Charge, any Lease, the Indebtedness or the affairs of the Chargor including any financial statement or other document at any time delivered by or on behalf of the Chargor to the Bank in connection with the Indebtedness that is untrue, incorrect or misleading in any material way on the date made or given;
- (e) any Lien is created or otherwise exists in respect of the Property or any Lien or notice of a Lien is registered against the Property without the Bank's prior written consent;
- (f) the Property is abandoned or any act of waste is committed as to all or any part of the Property; or any building or other structure now or later being erected on the Property remains unfinished and without any work being done on it for a period of ten consecutive days;
- (g) the Chargor sells, transfers, leases or otherwise disposes of or conveys all or any part of the Property or any Lease or any interest in any of the foregoing, or agrees to do so, without the Bank's prior written consent;
- (h) the Chargor changes the use of the Property or ceases to carry on the business ordinarily carried on from the Property without the Bank's prior written consent;
- (i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Chargor (if the Chargor is a corporation), or there is a change in the membership or a dissolution of the Chargor (if the Chargor is a partnership);
- (j) in the opinion of the Bank, there is a change in effective control of the Chargor (if the Chargor is a corporation);
- (k) the Chargor makes an assignment for the benefit of creditors, or any proceedings shall be instituted by or against the Chargor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its property (excluding proceedings which are being contested by the Chargor in good faith, which have been outstanding for fewer than 30 days and in respect of which any enforcement proceedings are stayed), or the Chargor is declared bankrupt, or a receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Property, or power of sale or foreclosure proceedings are commenced against all or any part of the Property;
- (l) all or any part of the Property is expropriated;
- (m) in the opinion of the Bank, an adverse change shall occur in the financial condition of the Chargor or in respect of the Property;
- (n) the Chargor or its representative or any other person or municipality or other governmental authority should attempt to rezone the Property or otherwise attempt or cause to be made any changes to the Official Plan or other secondary plans or site plan or development agreements relating to the Property without the Bank's prior written consent;

- (o) the Property is subject to a restraint order under the *Controlled Drugs and Substances Act* or a similar order under any law or the Chargor or any other person uses or has used the Property for any purpose in violation of the *Controlled Drugs and Substances Act* or any similar law;
- (p) the Chargor fails to pay utility charges and Taxes when due;
- (q) the Chargor fails to comply with its obligations under paragraph 11 with respect to insurance;
- (r) the Chargor increases the principal amount owing under any prior mortgage or re-borrows any amount repaid under a prior mortgage without the prior written consent of the Bank;
- (s) any default by the Chargor under any mortgage, charge, hypothec, security interest or other financial encumbrance of all or any part of the Property ranking in priority, to or subsequent to the Charge which is not cured within any cure periods applicable thereto;
- (t) any attornment of rents or withdrawal of consent to collect rents, power of sale or other sale by creditor, judicial sale, foreclosure, taking payment, taking possession or other enforcement or realization (whether or not permitted hereunder) proceedings are commenced against or in respect of the Chargor, the Property or any part thereof under or in respect of such mortgage, charge, hypothec, security interest or other financial encumbrance or any holder thereof takes possession or control of any part of the Property; and
- (u) any writ of execution, distress, attachment or other similar process is issued or levied against the Chargor or all or any part of its assets, or any judgement or order is made against the Chargor by a court of competent jurisdiction and such writ, distress, attachment process, judgement or order relates to or otherwise includes the Property or any part thereof;

provided that where loan documentation provides for one or more events of default that are inconsistent or conflict with the terms of one or more Events of Default, then the Events of Default in this Charge shall prevail, unless the loan documentation explicitly states that such loan documentation prevails over this Charge in the event of inconsistency. If the loan documentation states that it prevails over this Charge in the event of inconsistency, it shall only prevail to the extent specifically stated in such loan documentation. Notwithstanding the foregoing, if the loan documentation contains events of default that are in addition to any Events of Default set forth in this Charge, the existence of such additional events of default shall not in itself constitute a conflict or inconsistency.

21. REMEDIES ON DEFAULT

- (a) If the Chargor is in default of its obligations under this Charge, the Bank may (but shall not be obligated to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any one or more of the following remedies:
 - (i) sue the Chargor for all or any part of the Indebtedness;
 - (ii) distrain for arrears of all or any part of the Indebtedness;
 - (iii) take judicial proceedings to foreclose the Chargor's and/or any other person's interest in all or any part of the Property or any Lease, to take possession of it and/or to sell, lease or otherwise deal with it;
 - (iv) enter on and take possession of all or any part of the Property;
 - (v) sell and/or lease all or any part of the Property or sell the unexpired term of any Lease;
 - (vi) assign any Lease and sell the last day of the term granted by the Lease and/or remove the Chargor or any other persons from being a trustee of the last day of the term of any Lease and appoint a new trustee or trustees in its place;
 - (vii) appoint in writing a receiver (which term as used herein includes a receiver and manager) of all or any part of the Property and the rents and other income thereof and from time to time remove any receiver and appoint another in its place;
 - (viii) exercise in respect of the insurance policies, insurance trust agreements, leases, rents and benefits assigned pursuant to paragraphs 11(f) and 17(a) the remedies exercisable by the Bank in respect of all or any part of the Property; and
 - (ix) exercise any other rights or remedies which the Bank may have, whether pursuant to the Charge, at law, in equity, by contract or otherwise.
- (b) Nothing contained herein and nothing done by the Bank or any receiver, other than taking possession of the Property in fact, shall render the Bank or such receiver a mortgagee or chargee in possession.
- (c) The Chargor hereby waives the right to claim any exemption with respect to the Bank's right of distress and agrees that the Bank shall not be limited as to the amount for which it may distrain.
- (d) Any sale contemplated or permitted herein may be for cash or for credit, or partly for cash and partly for credit, by tender, private sale or public auction, as a whole or in separate parcels, with or without a reserve bid, with or without advertisement and at any time or times and on such terms as the Bank thinks reasonable. The Bank will be accountable for sale proceeds or rent only when received in cash. The Bank may use the services of any real estate agent in connection with any sale or lease (including any agent affiliated with the Bank). The Bank may apply the net proceeds of any lease or sale to any part of the Indebtedness determined by the Bank and the Chargor will pay the Bank any part of the Indebtedness remaining unpaid.
- (e) The Bank may cancel or amend any contract of sale or lease and sell or lease again, or adjourn any such sale from time to time, all as the Bank thinks reasonable, without being responsible for any resulting loss.
- (f) Any purchaser or lessee from the Bank or a receiver pursuant hereto shall not be required to see to the validity, legality, regularity or propriety of such sale or lease, or that the default has happened on account of which the sale or lease is being made. The Chargor agrees that each such purchaser and lessee will receive good title to or a valid lease of that part of the Property sold or leased, and that the Chargor will not make any claims concerning the validity, legality, regularity or propriety of the sale or lease against the purchaser or lessee or their successors in title. The Chargor's only claim respecting such validity, legality, regularity or propriety will be made against the Bank and will be in damages only.

- (g) The Bank may lease or sell without entering into actual possession of the Property and, while in possession, shall only be accountable for moneys actually received by it.
- (h) Without limiting the generality of paragraph 21(a), sales may be made from time to time of parts of the Property to satisfy any part of the Indebtedness, leaving the balance thereof secured under the Charge on the remainder of the Property.
- (i) If the Chargor has a leasehold interest in the Property, the Chargor irrevocably appoints each officer of the Bank (with power of substitution) to be the Chargor's attorney during the continuance of the Charge so as to permit the Bank to execute any document or do any act or thing which the Bank is permitted or the Chargor is required to execute or do pursuant to the provisions hereof.
- (j) If the Chargor has a leasehold interest in the Property, the Chargor shall (i) at the request of the Bank and at the cost and expense of the Chargor, sell and assign to the Bank or any person appointed by the Bank, the last day of the term of the Lease or any renewal term, and (ii) in the event of any sale by the Bank as contemplated herein, hold such last day in trust for the purchaser, and the purchaser's heirs, executors, administrators, successors and assigns.
- (k) Neither the Chargor nor any person claiming an interest in the Property through the Chargor shall interfere in any way with the Bank's possession of the Property obtained pursuant to the provisions hereof nor with the possession of anyone to whom all or any part of the Property is sold or leased by the Bank or any receiver appointed pursuant to the provisions hereof.
- (l) In appointing a receiver pursuant to the provisions hereof, the Bank shall be deemed to be acting as the Chargor's agent and attorney so that the receiver shall, with respect to responsibility for the receiver's acts or omissions, be considered the Chargor's agent. The Bank may from time to time fix the remuneration of the receiver and direct its payment out of the income of the Property, but in no event shall the Bank incur any liability for such remuneration. The receiver shall, in the Bank's discretion, be vested with and may enforce all or any of the Bank's rights and discretions under the Charge with the same effect as if exercised by the Bank (including without limitation the rights and discretions set out in paragraph 8) and such other rights as the Bank may confer in writing. The receiver shall have the power to borrow on the security of the Property in priority to the Charge or otherwise, to collect rent and other income of the Property and to carry on or concur in carrying on any business carried on by the Chargor on the Property. From the rent and other income collected, and from the proceeds of all other realization hereunder, the receiver shall, in such order as the Bank sees fit: pay all the rents, taxes, rates, insurance premiums and other outgoings affecting the Property and any other amount the Bank is permitted to pay hereunder; pay the receiver's own remuneration and the cost of repairs; pay all amounts required to keep in good standing any Liens ranking in priority to the Charge; and pay the Bank all or any part of the Indebtedness.

22. EXPENSES

The Chargor shall immediately pay to the Bank all amounts the Bank is permitted to pay under the Charge and all costs and expenses of or relating to inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Property, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the Indebtedness, the exercise of any of the rights of a receiver appointed pursuant to the provisions hereof, such receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a full indemnity basis, and any other costs and expenses of exercising or protecting the Bank's rights (hereunder or otherwise) or all or any part of the Property. The Chargor shall pay the Bank on demand interest at the Interest Rate on such amounts, costs and expenses (and on all other Costs) from the date they are paid by the Bank until they are repaid by the Chargor, which interest shall be calculated as provided in the schedule.

23. RENEWING OR AMENDING CHARGE

The Charge (or any agreement referred to in this paragraph 23) may from time to time be renewed or amended by one or more written agreements with the Chargor, or with any successor or successors in title to the Chargor, with or without any increase or decrease in the Interest Rate or extension of time for payment. Whether or not there are any other instruments registered on title to the Property after the Charge at the time any such written agreement is entered into, it will not be necessary for the Bank to register the written agreement on title to the Property in order to retain priority for the Charge, as renewed or amended, over any other instrument registered after the Charge. The Chargor acknowledges that the provisions of this paragraph 23 shall not confer any right of renewal upon the Chargor.

24. DISCHARGE

The Charge shall only terminate upon payment in full of the Indebtedness and complete performance of the Chargor's other obligations hereunder, provided that such termination shall be effective only if the Bank shall have received a written notice from the Chargor requesting a discharge or assignment hereof and if no further Indebtedness becomes outstanding prior to the delivery of such discharge or assignment. Upon termination of the Charge, the Chargor may request in writing that the Bank provide the Chargor with a discharge of the Charge or an assignment of the Charge to a third party and the Bank shall sign such document and send it to the Chargor within a reasonable time. The Chargor shall pay immediately the Bank's usual administration fee for preparing, reviewing, signing and/or delivering any such discharge or assignment and the Bank's legal and other expenses, whether such documentation is prepared by the Chargor's lawyer or by the Bank's lawyer. It is the Chargor's responsibility to register the discharge or assignment on title and to pay the registration fee.

25. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY

- (a) The Charge is binding on and enures to the benefit of the Chargor and the Bank and their respective heirs, executors, administrators, legal representatives, successors and assigns, and any person(s) to whom the Chargor's interest in all or any part of the Property, or the Bank's interest in the Charge, may be transferred.
- (b) If more than one person signs the Charge as chargor, such persons are jointly and severally liable to observe and perform all of the Chargor's obligations herein.

26. INTERPRETATION AND HEADINGS

Paragraph headings do not form a part hereof but are used only for ease of reference. Any reference herein to the singular or the neuter shall also mean the plural or the masculine or the feminine where the context or the parties to the Charge so require. If any provision hereof is illegal or unenforceable it shall be considered separate and severable from the remaining provisions hereof which shall remain in force and be binding as though such first mentioned provision was not included.

27. SET-OFF

All payments made by the Chargor to the Bank under the Charge will be made in respect of the Indebtedness without any legal or equitable set-off or counterclaim and without any deduction or withholdings of any kind.

28. STATUTES AND REGULATIONS

Any reference to a statute herein is a reference to both the statute and any regulations made under the statute. Any reference to a statute also includes any amendments to or re-enactments of the statute or regulations. If a specific section, subsection, paragraph or clause of a statute or regulation is referred to, that reference includes the corresponding provision in any amended or re-enacted statute or regulation.

29. CONSENTS AND DISCLOSURE

The Chargor hereby consents to the Bank transferring, selling, assigning or syndication of the Indebtedness, the Charge and all of its rights under the Charge. If the Bank does so, it may disclose information about the Chargor, the Charge and the Indebtedness to anyone to whom the Bank transfers, sells, assigns or syndicates or proposes to transfer, sell, assign or syndicate its rights. The Bank may also disclose information about the Chargor, the Charge and the Indebtedness to an insurer or other third party from whom the Bank may obtain benefits to protect its security. The Chargor hereby consents to insurers and other third parties that provide benefits or services to the Bank for the Charge obtaining information about the Chargor from credit bureaus and other lenders to evaluate the Chargor and the Charge.

30. SECURITY INTEREST IN PERSONAL PROPERTY

The Chargor covenants and agrees to execute and deliver to the Bank, on demand, a security interest in all chattels, furnishings, equipment, appliances and all other personal property owned now or in the future by the Chargor and situate in or about the Property. The form and content of such security interest shall be acceptable to the Bank. The Chargor agrees to pay all legal and other expenses incurred by the Bank in connection with the preparation and registration of the security interest and any renewals thereof forthwith upon demand and such fees and expenses, together with interest thereon at the Interest Rate, shall be added to the Indebtedness and secured by this Charge.

31. FARM DEBT MEDIATION ACT

- (a) The Chargor represents and warrants that except as previously disclosed to the Bank it is not a "farmer" as defined in the *Farm Debt Mediation Act*, S.C. 1997, c.21, as amended and/or restated from time to time.
- (b) In the event that the Chargor is not a "farmer" as defined by the said act, the Chargor covenants that it will promptly notify the Bank in writing if the Chargor becomes a "farmer" as defined by the said act.

32. ONTARIO NEW HOME WARRANTIES PLAN ACT

If the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, applies to the Property, the Chargor covenants and agrees to meet all of its requirements under said act. The Chargor also covenants and agrees to immediately reimburse the Bank for any costs that the Bank incurs in meeting the Chargor's obligations or enforcing the Chargor's rights on the Chargor's behalf under said act, if the Bank chooses to do so.

33. FAMILY LAW

The Chargor represents and warrants that all information given to the Bank in connection with this Charge concerning marital and spousal status was, when given and when then Charge was delivered to the Bank, completely truthful and accurate. If any change in such status occurs, the Chargor covenants to inform the Bank immediately in writing.

34. COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

The Chargor acknowledges and agrees that during the course of the relationship between the Chargor and the Bank, the Bank may collect financial and related information about the Chargor and/or its employees, officers, and directors (if applicable) (the "**Personal Information**"). Personal Information includes the following:

- information about this Charge, the Amount Secured, and any related documents;
- information about the Chargor's transactions using the Bank's products and services;
- information to identify the Chargor and/or its employees, officers or directors (if applicable) or to qualify the Chargor for products and services; and
- information required by the Bank for regulatory purposes.

The Bank may collect Personal Information from a number of different sources, including the Chargor's application for this Charge and for the Indebtedness, references provided by the Chargor, credit reporting agencies, other financial institutions, service providers, the Bank's internal records, and from individuals authorized to act on the Chargor's behalf.

The Bank may use the Personal Information to open, process, service, maintain and collect upon this Charge and any related agreements. The Bank will use and disclose the Personal Information according to the Bank's privacy policies, as such policies may be amended, replaced or supplemented from time to time.

The Chargor acknowledges and agrees that the Bank may enter into the Charge and any related agreements on behalf of another entity, as an agent or nominee, and also that the Bank may assign this Charge and any related agreements to another entity. In these cases, the entity is known as the "beneficial owner". The Bank may disclose the Personal Information to the beneficial owner, its agents, and any person or entity to which the beneficial owner assigns this Charge or any related agreements. The Bank may also disclose the Personal Information to any service provider. Service providers are any person or entity that:

- is involved in the servicing, maintenance, collection or operation of this Charge or any of the related agreements; or
- provides services or benefits to the Chargor under this Charge or any of the related agreements, including loyalty programs.

35. CONSOLIDATION

The Chargor acknowledges and agrees that the Bank has a right of consolidation that applies to the Charge and to any other mortgages and/or charges given by the Chargor to the Bank. As a result of such right of consolidation, if the Chargor has mortgaged other property to the Bank and the Chargor is in default of its obligations under this Charge, the Chargor shall not have the right to pay off the Charge or any mortgage or charge of other property unless the Chargor pays to the Bank the Amount Secured.