



**OPTIONAL MORTGAGE COVENANTS – STANDARD
COLLATERAL MORTGAGE TERMS AND CONDITIONS**

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**OPTIONAL MORTGAGE COVENANTS - STANDARD
FOR COLLATERAL MORTGAGES**

ROYAL BANK OF CANADA

RBC - 1322

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

The terms of this set of optional mortgage covenants are included in every Mortgage of Land in which this set of optional mortgage covenants is referred to by its filing number, as provided by Section 25(7) of the *Land Titles Act* (New Brunswick).

This document sets out important terms which apply to the Mortgage and are actually part of the Mortgage. We recommend that you read it carefully. You may want to discuss the terms of the Mortgage with a lawyer.

This document describes the financial institution which is lending money to the Customer as “we” or “us”.

This document describes the person who is being loaned the money as the “Customer”, and the person who is giving the Mortgage on your Property as “you”. In some circumstances, you may be the same person as the Customer, in other circumstances you may not be the same person as the Customer.

We are lending money to or providing other forms of credit to the Customer and we protect our interests by way of the Mortgage you are giving on your Property. The Mortgage gives us certain rights if the Customer does not do what the Customer promises to do or if you do not do what you promise to do. The specific terms that apply to the Mortgage (for example, the Interest Rate) are set out in a document that you sign and that is registered. We call that document the Registered Mortgage.

Generally, when a word is capitalized, the word is defined in Section 1.

SECTION 1 – TERMS YOU NEED TO KNOW

In this document, the terms below have the following particular meanings:

- (1) **Costs** means all of our expenses and costs, including legal fees, that will compensate and fully reimburse us for everything we have to spend, to:
 - (a) prepare and register the Registered Mortgage;
 - (b) advance and secure the Principal Sum;
 - (c) investigate title to your Property;
 - (d) pay a title insurance premium;
 - (e) collect the Outstanding Amount;
 - (f) enforce the terms of the Mortgage or exercise any of our rights under the Mortgage, including efforts to make you keep your Promises;
 - (g) take and keep possession of your Property;
 - (h) repair or improve your Property;
 - (i) do anything which you promised to do but did not do;
 - (j) prepare and give you a discharge of the Mortgage when you are entitled to it under Section 11; and
 - (k) protect our interests in any other way.

(2) **Customer** means the person who owes us money (either now or in the future), and is named in the Registered Mortgage. The term **Customer** may include you, if you owe us money and you have agreed that your obligation to repay the money will be secured by the Mortgage.

(3) **Customer Liabilities** means all debts and other obligations the Customer owes to us (either now or in the future), including:

- (a) all the Customer's debts and obligations, whether the debts are owing now or in the future, whether the debts are absolute or contingent, and whether they are due now or at some time in the future;
- (b) any extensions, renewals or amendments of the debts or obligations;
- (c) debts and obligations incurred or arising inside Canada or anywhere else;
- (d) debts and obligations incurred with others; and
- (e) obligations the Customer incurred either as a principal debtor or as a guarantor or surety.

If the Customer Liabilities are reduced, or increased, or paid off, and then incurred again, the Customer Liabilities include all of those liabilities, up to the Principal Sum.

(4) **Default** refers to one or more of the events described in Section 7.1(1) occurring.

(5) **Hazardous Substances** has the meaning given to it in Section 6(1)(e).

(6) **Interest Rate** means the annual rate of interest, as shown in the Registered Mortgage.

(7) **Mortgage** means the legal agreement between you and us and includes the Registered Mortgage, this set of optional mortgage covenants, any other documents attached as schedules, and any document renewing, amending or extending the legal agreement.

(8) **Mortgage Default Insurer** means Canada Mortgage and Housing Corporation or any other institution that provides mortgage default insurance to lenders.

(9) **Outstanding Amount** means the total amount of:

- (a) Customer Liabilities, remaining to be paid, not to exceed the Principal Sum, from the date we demand payment;
- (b) plus interest on the amount demanded at the Interest Rate;
- (c) plus compound interest at the Interest Rate;
- (d) plus all Costs we have incurred.

(10) **Prime Rate** means the annual rate of interest announced by Royal Bank of Canada from time to time as a reference rate for determining interest rates on Canadian dollar commercial loans in Canada. Our notices of the Prime Rate will be conclusive.

(11) **Principal Sum** means the amount shown in the Registered Mortgage, which is the maximum amount of Customer Liabilities secured by the Mortgage.

(12) **Promises** means everything that you agree to do under the Mortgage, when it is required to be done and everything that you confirm and certify.

(13) **Property** means the land described in the Registered Mortgage and the buildings and structures now on the land or that may be constructed later and any rights associated with the land. It also includes any building, addition, attachments or fixtures (fixtures include things such as furnaces) to the land or the buildings, now or in the future. In the case of a leasehold title, it also includes your interest in the lease, except for the last day of the term of the lease, and any other interest, right, option or benefit set out in the lease.

(14) **Property Taxes** means all present and future property taxes, rates, assessments, administration fees, local improvement charges, and other amounts charged by any taxing authority on your Property. It includes interest and penalties charged by any taxing authority.

(15) **Registered Mortgage** means the Form 15.1 that you sign to give the Mortgage.

(16) **We** means the financial institution lending money or providing other forms of credit to the Customer, which is the same as the mortgagee under the Mortgage. It will also include any Mortgage Default Insurer, where applicable. If we transfer the Mortgage, the person to whom we transfer it will also be included in the term “we”. The definition of “we” also includes “us” and “our”.

(17) **You** means the person who signs or authorizes the Mortgage and agrees to be bound by its terms. The definition of “you” also includes “your”.

In these optional mortgage covenants, when we use words such as “includes” or “including” followed by a list, we mean that the listed items are just some examples of what we are referring to, but there may also be other examples that we have not listed.

SECTION 2 - HOW THE MORTGAGE WORKS

In return for our lending the Customer money or providing other forms of credit to the Customer, from time to time:

(1) You grant a mortgage of your entire interest in your Property to us. This means the Mortgage is a charge on your Property and you have mortgaged your entire interest in your Property to us.

(2) By giving the Mortgage you grant and mortgage any additional or greater interest in your Property that you may acquire in the future. For example, if you are only leasing your Property and later buy it outright, the Mortgage covers your interest as the owner of the Property.

(3) You release your claim on your Property until you have kept all your Promises, the Outstanding Amount has been paid and we have no further obligation to make further advances to the Customer.

(4) You make certain Promises which you must keep and not break.

(5) You can stay in possession of your Property as long as you keep your Promises and we have not demanded payment of the Outstanding Amount from you. If you break your Promises, we have rights against you and the Property, including our rights under Sections 7.3(1)(j) and 7.3(1)(e) and by law to possess and sell your Property.

(6) You will pay us the Outstanding Amount, on demand and:

- (a) Unless we have a right to demand repayment of the Customer Liabilities or you fail to keep any of your Promises, we will not demand payment from you;
- (b) After we have demanded payment, you must pay interest at the Interest Rate on the amount demanded until we receive full payment;
- (c) All payments must be made in Canadian dollars; and
- (d) Payment can be made at any of our branches or where we tell you to make a payment in a demand letter.

(7) Our interest in your Property ends when the Outstanding Amount has been paid, we have no further obligation to make further advances to the Customer and you have kept all of your Promises. At that time, you can have a discharge of the Mortgage, which shows third parties that we no longer have any interest in your Property. Section 11 tells you what you must do to get a discharge.

(8) You promise to sign any additional documents that we ask for and to do everything else we ask you to do to protect our interest in your Property.

(9) The fact that you have given us the Mortgage and we have registered it in the land registry office does not oblige us to advance or readvance any funds to the Customer.

SECTION 3 - WHAT THE MORTGAGE COVERS

(1) At our request, you are giving us the Mortgage to secure the repayment of Customer Liabilities and the performance of your Promises.

(2) You and we agree that the Mortgage will secure the repayment of all of the Outstanding Amount and that no part of the Customer Liabilities will be unsecured.

(3) You and we agree that the Mortgage is (and will continue to be) security in our favour to secure the payment of the Outstanding Amount and to ensure that you keep your other Promises.

(4) The Mortgage will still be valid and will not be in any way affected by:

- (a) any change in the amount, nature or form of the Customer Liabilities;
- (b) any change in any accounts relating to the Customer Liabilities;
- (c) any change to the rate of interest applicable to all or part of the Customer's Liabilities;
- (d) any change to any agreements concerning the Customer Liabilities;
- (e) the reduction of the Customer Liabilities at any particular time, even if the Customer Liabilities are reduced to zero; or
- (f) any subsequent advances to the Customer.

The Mortgage will not be considered to have been released, discharged or redeemed because of any of these events.

If the Customer has a revolving line of credit, credit card account or similar account where the balance fluctuates, we do not consider the Mortgage to be discharged or released even if the balance goes down to zero. In that case the Mortgage continues to secure any further amounts borrowed by the Customer, from time to time.

(5) Your Promises will not be affected by any of the following:

- (a) if you or the Customer become disabled, legally incapacitated or die;
- (b) if you or the Customer become bankrupt or insolvent; or
- (c) if the Customer is a corporation, by:
 - (i) its dissolution or continuance;
 - (ii) its merger or amalgamation into some other corporation or legal entity; or
 - (iii) any change in its name.

(6) Nothing in the Mortgage affects or delays our other remedies concerning the Customer Liabilities.

(7) Your Promises in the Mortgage will not affect any other dealings with us, or change any other debts or liabilities owed to us, or affect anything that secures those debts or liabilities, whether involving you or anyone else.

(8) Nothing in the Mortgage affects our rights in relation to those other dealings, debts or liabilities.

SECTION 4 – WHAT YOU PROMISE TO DO OR NOT TO DO

- (1) You promise to pay the Outstanding Amount when we demand that you pay it.
- (2) You promise to keep your other Promises.
- (3) You promise that the Mortgage will continue to function as our security to ensure that the Outstanding Amount is paid and you keep your other Promises.
- (4) You promise not to further mortgage your Property without our consent.
- (5) You promise to pay all of our Costs. These Costs will:
 - (a) be added to and be part of the Outstanding Amount;
 - (b) be payable on demand;
 - (c) bear interest at the Interest Rate until fully paid; and
 - (d) be secured by the Mortgage, in the same priority as the Outstanding Amount.
- (6) You promise to comply with all laws and orders that affect your Property, including those concerning zoning, land use and environmental protection.
- (7) You promise to pay all Property Taxes on your Property as they fall due and to give us acceptable evidence, when we ask, that you have paid them. If you do not pay all Property Taxes when they are due, we can pay the unpaid Property Taxes. If we pay unpaid Property Taxes, you promise to pay to us the amount we paid when we ask.
- (8) Unless we consent, if you sell or transfer your Property then, at our option, we can treat this as a Default, and you must pay us the Outstanding Amount. Our rights against you or anyone else who is liable are not affected even if we consent to the sale or decide not to demand payment of the Outstanding Amount.

SECTION 5 - YOU PROMISE TO PAY INTEREST**5.1 Paying Interest**

You promise to pay interest on the amount demanded at the Interest Rate, from the date we demand payment, calculated monthly not in advance, both before and after Default and judgment, until the Outstanding Amount has been paid in full.

The Interest Rate is set out in the Registered Mortgage.

5.2 Prime Interest Rate

If the Interest Rate is based upon the Prime Rate (as it changes from time to time) plus a premium or minus a discount, as shown in the Registered Mortgage, the Interest Rate is a variable rate that changes automatically when the Prime Rate changes. We will not give you notice of any change in the Prime Rate.

5.3 Fixed Interest Rate

If the Interest Rate is a fixed rate, it is shown in the Registered Mortgage.

5.4 Compound Interest

(1) If you do not pay any interest when due under the Mortgage, we will add the overdue interest to the amount you owe and charge you interest on the combined amount until it is paid. This is called compound interest. We calculate compound interest at the Interest Rate using a monthly compounding period. You promise to pay this compound interest, both before and after Default and judgment, until the Outstanding Amount is paid. You promise to pay this interest immediately when we ask you to pay it.

(2) If you do not pay the compound interest, we will add the compound interest to the amount you owe and charge you interest at the Interest Rate on the combined amount. We will also charge you interest on the compound interest at the Interest Rate. You promise to pay this interest both before and after Default and judgment, until the Outstanding Amount is paid. All overdue interest and compound interest is part of the Outstanding Amount. You promise to pay this interest immediately when we ask you to pay it.

SECTION 6 - YOU CONFIRM

- (1) (a) You promise and confirm that:
- (i) You own your Property, you have the right to have to give the Mortgage and you mortgage your entire interest in your Property to us;
 - (ii) There are no limitations or restrictions on the title to your Property, except those disclosed to us in writing and that we have approved; and
 - (iii) Title to your Property is subject only to:
 - (A) those interests filed in the land registry office at the time you give us the Mortgage;
 - (B) any unregistered interests we have approved; and
 - (C) zoning and building by-laws, with which you have complied;
 - (b) You release all claims on your Property to us until, the Outstanding Amount has been paid, we have no further obligation to make further advances to the Customer and you have kept all your other Promises;
 - (c) You will pay all of the Outstanding Amount to us when we demand payment and keep all of your other Promises, as provided in the Mortgage;
 - (d) You will, at your own expense, sign any documents and do anything we ask to ensure that all your interest in your Property has been mortgaged to us and that the Outstanding Amount is adequately secured by your Property;
 - (e) As far as you know, no part of your Property or of any adjoining land is, has ever been, or will in the future be, used to manufacture, store or otherwise deal with any Hazardous Substances except in compliance with all applicable laws, regulations and orders. As far as you know, no part of your Property contains, has ever contained or will, in the future, contain any Hazardous Substance, which may lower your Property's value, or adversely affect its sale;

Hazardous Substances means any substance or mixture of substances which may be detrimental to the environment or human health including all substances, chemicals or materials, declared to be hazardous or toxic under any law, regulation or by-law enacted by any legislative, governmental or regulatory body which has jurisdiction over your Property; and
 - (f) No environmental authority or anyone else has commenced or threatened an investigation, claim, action or proceeding concerning the environmental condition of your Property.
- (2) If any circumstances change on your Property which would make any of these statements untrue, you promise to give us notice immediately in writing.
- (3) You promise that you will indemnify us (including our directors, officers, employees and agents) from any costs, damages, expenses and legal fees, that result from a breach of any of your environmental Promises or that result from any environmentally harmful material being present. This means that you promise to compensate us and fully reimburse us for all that we spend. This indemnity survives the discharge or release of the Mortgage.
- (4) Nothing in the Mortgage will affect the obligations owed to us by any third party.

(5) Our ability to enforce our security for any other obligation you owe or the Customer owes will not be affected, prejudiced or delayed because we have accepted the Mortgage.

(6) We can allocate any payments received concerning the Mortgage (including interest and amounts realized from any other security) or concerning the Customer Liabilities as we see fit. We can, if we so choose, hold the payments in a separate account.

(7) If we choose to, we may take any of the following actions without affecting our rights under the Mortgage:

- (a) give you more time to pay or keep any of your Promises;
- (b) give the Customer more time to pay or keep any promises;
- (c) agree not to enforce our rights under the Mortgage or at law;
- (d) release or discharge you from some or all of your Promises;
- (e) release or discharge the Customer from some or all of the Customer's promises;
- (f) take other security or guarantees for the Customer Liabilities;
- (g) decide not to take other security or guarantees;
- (h) accept an arrangement for the payment of Customer Liabilities; or
- (i) deal with you, and with anyone else, or with guarantors, as we choose.

SECTION 7 - ENFORCING OUR RIGHTS

7.1 Defaults

(1) A "Default" occurs if:

- (a) you fail to pay the Outstanding Amount (this includes the Customer Liabilities) when we demand payment;
- (b) you do not keep any of your other Promises;
- (c) you default under any prior encumbrance referred to in Section 8.2;
- (d) you become insolvent or bankrupt; or
- (e) your Property is abandoned or is left unoccupied so that your insurance policy could be cancelled.

(2) Not keeping your Promises includes breaking or not keeping your Promises in any way.

7.2 Our Rights if You Default

(1) If you do not keep your Promises, then if we choose:

- (a) the Outstanding Amount will immediately become due and payable; and
- (b) we may spend money to do anything you promised to do, but did not do.

7.3 Results of a Default

(1) If a Default occurs, in addition to any other rights we may have, we can, if we choose and subject to the applicable law, do any one or more of the following, in any order we choose:

- (a) ***Demand Payment*** – demand that you immediately pay us the Outstanding Amount;

- (b) ***Sue You*** – take action in court to make you pay the Outstanding Amount or make you keep your Promises;
- (c) ***Take Rental Payments*** – we may take the money you are to receive under a lease or other form of tenancy agreement for the use of your Property. This means the tenant will be required to pay the rent to us. We may apply any rents paid to us to reduce any part of the Outstanding Amount;
- (d) ***Lease Your Property*** – on 15 days notice to you, enter on and lease your Property. We may apply the net rent to reduce any part of the Outstanding Amount. You must pay us the difference between the net rent and the Outstanding Amount;
- (e) ***Private Right to Sell Your Property*** – enter your Property and, on at least four (4) weeks prior notice in writing to you (and any other party entitled to notice as required by applicable law), sell your Property or any part of your Property and:
 - (i) We can sell by public auction or private sale, or partly by one way and partly by the other;
 - (ii) We can sell all or part of your Property for cash or on credit, or partly for cash and partly on credit, and otherwise on whatever terms we negotiate;
 - (iii) If we sell on credit, we will not be required to reduce the Outstanding Amount, or pay any sale proceeds to you in any situation where you are entitled at law to receive them, until we receive payment of the Outstanding Amount;
 - (iv) We may also buy your Property ourselves, or terminate or amend any agreement we enter into for the sale of your Property and resell it if we choose;
 - (v) After we sell your Property in the manner outlined above, we will use the money we receive from the sale to pay:
 - (A) any amounts required to be paid to any party with a higher ranking interest or right in your Property than ours;
 - (B) any auctioneer's fees or real estate agent's commission;
 - (C) all adjustments usually made on the sale of property;
 - (D) the Outstanding Amount;
 - (E) any amounts owed to any party holding a mortgage, lien or other security on your Property with a lower ranking interest or right in your Property; and
 - (F) any surplus to you.

We may make these payments in any order we choose; and
 - (vi) After payment of the amounts referred to in paragraphs 7.3(1)(e)(v)(A) to (E) above, if the remaining money is not enough to pay all the Outstanding Amount, you promise to pay the remaining unpaid Outstanding Amount to us when we demand it;
- (f) ***Statutory Right to Sell Your Property*** – In addition to our rights to sell the Property under Section 7.3(1)(e) above, we also have certain rights under the *Property Act* (New Brunswick). These rights include the power of sale. All powers conferred on us by the *Property Act* (New Brunswick) are incorporated into the Mortgage, as if the Mortgage were made by deed;

- (g) **Court Sale** – apply to the court for an order for the sale of your Property under the supervision of the court. If the net proceeds of sale are not enough to pay the Outstanding Amount, you promise to pay the remaining unpaid Outstanding Amounts to us when we demand it;
- (h) **Foreclose** – apply to the court to foreclose your interest in your Property, so that when the court makes its final order of foreclosure, all your interest in your Property will be absolutely transferred to, and belong to, us and you will no longer have any interest in your Property;
- (i) **Appoint a Receiver** – appoint a receiver (which includes a receiver and manager appointed by either us or court) to collect any income from your Property or take any other action concerning your Property which we could take; and
 - (i) We will appoint a receiver by giving you notice in writing;
 - (ii) We can also remove a receiver and appoint a new receiver to replace one that we have appointed;
 - (iii) The receiver will be your agent, not ours, and you alone will be responsible for all of the receiver's acts or omissions. If the receiver defaults, its actions will be considered to be solely your actions;
 - (iv) Nothing that the receiver does will cause us to be considered to be in possession or control of your Property or to be considered to be managing your Property;
 - (v) We will not be accountable for any money received by the receiver, except to the extent that we actually receive it;
 - (vi) The receiver may use every available remedy that we have under the Mortgage, including:
 - (A) having unlimited access to your Property;
 - (B) collecting income from your Property;
 - (C) taking possession of all or part of your Property and managing your Property;
 - (D) keeping your Property in good condition;
 - (E) finishing any buildings under construction on your Property, or completing any construction or improvements;
 - (F) leasing your Property, on any terms the receiver considers appropriate; and
 - (G) selling your Property;
 - (vii) From the income collected from your Property, or the proceeds of the sale of your Property, the receiver may:
 - (A) pay all rents, Property Taxes, utility charges, insurance premiums, maintenance expenses, construction expenses, applicable interest, and other expenses required to keep your Property in good condition;
 - (B) pay all amounts required to keep in good standing any charge or liability to which your Property is subject and which has priority over the Mortgage;
 - (C) repay any money it has borrowed for the purposes of your Property, including interest and any penalties on borrowed money;

- (D) pay any amounts required to be paid to any party with a higher ranking interest or right in your Property than ours;
 - (E) pay its own compensation as receiver;
 - (F) pay any costs or expenses spent to collect the income;
 - (G) pay all costs concerning any leasing or sale of your Property; and
 - (H) pay any part of, or all of, the Outstanding Amount;
- (viii) We may grant the receiver whatever rights or powers we choose; and
- (ix) You promise to ratify and confirm whatever the receiver does on your Property;
- (j) **Take Possession** – take possession of your Property, without any interference by you or anyone else living on your Property, and free from any other mortgages, charges, liens or easements, limitations or restrictions that we did not approve and:
- (i) If we take possession, we can ask you to leave your Property with all your personal property. If you do not leave, the court will order you to leave and if you refuse, the court will have you forcibly removed. Once in possession, we may do anything we consider necessary to:
 - (A) inspect, collect rents, manage or lease your Property;
 - (B) complete the construction of any building on your Property;
 - (C) repair any building on your Property; or
 - (D) take any other action permitted under the Mortgage or by law;
 - (ii) If we take possession, we will not be responsible for maintaining and preserving your Property. We will only account to you for any money we actually receive in connection with the Mortgage or your Property;
 - (iii) If you vacate your Property, we may dispose of personal property abandoned on your Property, and we do not have to account to you for the proceeds;
 - (iv) We can assume that you have abandoned any personal property that remains on your Property for a period of 15 days after we or a receiver take possession of your Property;
 - (v) We may remove, store, dispose of or otherwise deal with abandoned personal property as we choose; and
 - (vi) We may also recover from you the cost of removal, storage and disposal of abandoned personal property, and if you do not pay, those costs will be added to the Outstanding Amount and will be secured by the Mortgage; and
- (k) **Other Action** – take any other necessary action to take, recover and keep possession of your Property.

7.4 Non-interference

- (1) If we take possession of your Property, you promise not to do anything to interfere with our possession.
- (2) Your Promise to refrain from interfering with our possession also extends to any receiver we may appoint or to any person to whom your Property may be leased or sold.
- (3) You promise not to make any claim against any person to whom your Property may be leased or sold.

7.5 Remedies after a Court Order

(1) Even if we obtain judgment against you, the judgment will not operate as a merger or cancellation of your Promises. This means:

- (a) You must still keep your Promises;
- (b) We may continue to use the remedies described in the Mortgage to make you keep your Promises; and
- (c) We will be entitled to continue to receive interest and compound interest at the Interest Rate on the Outstanding Amount until the judgment is paid in full.

(2) If we obtain judgment against the Customer for the Customer Liabilities, the judgment will not operate as a merger or cancellation of your Promises. This means we may continue to use the remedies in the Mortgage to make you keep your Promises.

7.6 Set-Off

You promise that all payments made to us when we demand payment of the Outstanding Amount will be payment of the Outstanding Amount in full without any set-off or counterclaim and without any deductions or withholdings. For example, even if we owe you or the Customer money, you cannot deduct that amount from the payment that you have to make to us.

7.7 Delay in Enforcing our Rights

If a Default occurs, and we do not exercise any of our rights or do not ask you to remedy the Default, we are not prevented from making you remedy the Default later or exercising any of our rights concerning that Default or any later Default.

7.8 How We Make Demand

When we refer to making demand in the Mortgage, we mean giving you notice in writing requiring you to pay or take some other action immediately.

7.9 Legal Fees and Expenses

When we say that you will compensate and fully reimburse us for our legal fees and expenses this means that you will pay our legal fees and expenses on what is known as a “solicitor and own client” basis.

SECTION 8 – PAYING OFF OTHER INTERESTS

8.1 Claims or Liens

(1) You promise not to allow any construction lien to remain undischarged on the title to your Property for more than 30 days, unless you:

- (a) diligently dispute the validity of the construction lien by taking all necessary legal steps to do so;
- (b) give us reasonable security by depositing money, bonds or other types of security to pay the construction lien and associated legal costs in full, including compensating us and fully reimbursing us for our legal costs; and
- (c) authorize us to use the security to pay the construction lien and any of our legal and other costs and those of the lien claimant in full, if the construction lien is found to be valid.

(2) We can pay off the claims of other creditors who have an interest in your Property. These may include construction and other liens, government claims or encumbrances.

(3) If we pay off a claim, you promise to pay the amount of the claim to us when we ask.

(4) Any amount we pay to the other creditor that you do not repay will be added to the Outstanding Amount.

8.2 Prior Encumbrances

- (1) You promise to pay any money which, if not paid, would result in a default under any mortgage or claim that has a higher ranking interest or right in your Property than the Mortgage or that may result in the sale of your Property if not paid.
- (2) You promise to pay and cause to be discharged any other mortgages, charges, liens, security interests, claims or other interests, which we are not willing to have remain on your Property.
- (3) If you fail to keep any promises in any other mortgage that binds your Property (meaning you have defaulted under the other mortgage), the Outstanding Amount will, if we so choose, become payable immediately, and we can exercise all our rights under the Mortgage and by law.
- (4) We can, if we choose, pay off any mortgages, charges, interests, claims or liens that have priority over the Mortgage, including Property Taxes, utility charges, construction liens, or any amounts payable to any condominium corporation.
- (5) When we pay off any amounts, we will have all the rights and security of the persons whose interest we paid off. We may retain any assignment or discharge of such debt, if we so choose. We do not have to register the assignment or discharge, if we do not choose to.
- (6) Any amount we pay on your behalf will be added to the debt that is secured by the Mortgage, be secured by the Mortgage in the same priority to ensure repayment, and will bear interest at the Interest Rate after demand for payment. You promise to pay this amount immediately when we ask you to pay it.
- (7) If you do not pay any of these amounts when we demand that you pay them, this will be a Default under the Mortgage and we can then exercise all our rights under the Mortgage and by law.

SECTION 9 – INSURING YOUR PROPERTY

- (1) You promise to maintain adequate insurance on your Property until the Outstanding Amount has been paid in full.
- (2) The insurance must be with a licensed insurance company and must be for the full replacement value of your Property in Canadian dollars. The insurance policy must contain mortgage clauses approved by The Insurance Bureau of Canada. These clauses must provide that loss proceeds are payable to us first, and we have the first right to receive the loss proceeds and to have a first lien on them. You must also assign your insurance policy to us.
- (3) The insurance policy must cover all buildings on your Property, whether before, during or after construction, and all fixtures attached to the buildings or your Property.
- (4) The insurance policy must protect against the following risks: fire, lightning, windstorm, hail, explosion, impact, vandalism, malicious acts, civil disturbance or riot, smoke and falling objects.
- (5) We may also require that other risks be covered, depending on the nature or location of your Property.
- (6) You promise, if we ask, to give us a certified copy of your insurance policy and evidence that it has been renewed not less than 15 days before the policy expires.
- (7) We can, if we choose to, place and pay for any insurance policy if you fail to. Any money which we pay for insurance will be immediately payable by you to us, and will be added to the Outstanding Amount if not paid.
- (8) If any loss or damage occurs, you will, at your expense, immediately do everything necessary to allow us to receive the insurance proceeds.

(9) If we show an insurance company a copy of the Mortgage, this will be sufficient authority for it to pay the proceeds to us. You direct the insurance company to pay the proceeds to us.

(10) Insurance proceeds may, as we choose, be:

- (a) used to repair or rebuild your Property;
 - (b) used to repay any part of the Outstanding Amount, whether due or not; or
 - (c) paid to you,
- in whole or in part.

SECTION 10 – SAFEGUARDING THE VALUE OF YOUR PROPERTY

10.1 Your Promises to Maintain Your Property

(1) You promise:

- (a) To keep all of the buildings and improvements on your Property in a good condition and state of repair and to repair them as we require. If you do not make the repairs when we ask, we can make whatever repairs we think are needed. You must immediately pay the costs of any repairs we make and of any inspections. If you do not pay those costs, we will add them to the Outstanding Amount;
- (b) You will not tear down any building or structure, or part of any building or structure, on your Property without our approval;
- (c) You will not do, or let anyone else do, anything that may reduce the value of your Property;
- (d) You will not construct, alter or add to any buildings or improvements on your Property without our approval and, if the Mortgage is insured by a Mortgage Default Insurer, without its approval. Also:
 - (i) Any construction or renovation must meet all applicable construction standards, building codes and municipal or government requirements;
 - (ii) You must build or renovate using only new materials and according to the plans and specifications we have approved and, if the Mortgage is insured by a Mortgage Default Insurer, it must approve the plans and specifications;
 - (iii) You agree to carry out the construction only in accordance with the approved plans and specifications;
 - (iv) You will provide us, and any Mortgage Default Insurer, with any information or material, such as plans, specifications, building permits, insurance and like information, that we require to decide whether to give approval or not;
 - (v) We and any Mortgage Default Insurer, may set certain requirements which you must comply with as a condition of giving approval; and
- (e) Only after we and any Mortgage Default Insurer have given approval, will you then demolish, if required, and start on the construction or renovation. You promise to complete the work as quickly as possible. You promise that you will not stop construction or let work remain unfinished for more than 20 days. If money is advanced under the Mortgage to pay for the construction or renovation, amounts may be held back from the advance, if required by law.

10.2 Our Right to Inspect Your Property

- (1) We may at any reasonable time inspect your Property, including the buildings and structures. We may also use an agent to inspect your Property. Inspections may include environmental testing, site assessments, investigations and studies.
- (2) If the Mortgage has mortgage default insurance, the Mortgage Default Insurer and its agents can also inspect your Property.
- (3) You promise to pay for the costs of the inspection including any tests or studies, immediately when we demand that you do so. If you do not pay the costs, we may add the costs to the Outstanding Amount.

10.3 Authorization to Enter Your Property

You authorize us and, if the Mortgage is insured, the Mortgage Default Insurer, to enter your Property at all reasonable times to inspect, repair or conduct tests, but we will not be considered to be in possession, control or considered to be managing your Property simply because we or the Mortgage Default Insurer exercised this right.

SECTION 11 – GETTING A DISCHARGE

11.1 Full Discharge

- (1) If you meet the conditions in this Section, you can get a discharge of the Mortgage, which shows third parties that we no longer have any interest in your Property.
- (2) We will discharge the Mortgage when:
 - (a) You have paid all amounts owing as and when required under the Mortgage;
 - (b) You have kept all other Promises under the Mortgage;
 - (c) We have no further obligation to make further advances to the Customer or we have agreed that you are no longer liable for the Customer Liabilities; and
 - (d) You have paid our fee to administer the payment and any costs to prepare and register the discharge.
- (3) If we fully discharge the Mortgage we will no longer be entitled to enforce our rights under the Mortgage. We will not give you notice if we intend to discharge the Mortgage.
- (4) We will prepare the discharge and register it, if we choose to. If we register the discharge, we will send you a letter telling you it has been registered.

11.2 Partial Discharge

- (1) We may release our interest in all or any part of your Property, if we choose, from being security for the Outstanding Amount and:
 - (a) We can do this whether or not we receive any payment;
 - (b) We will only be accountable to you for a payment we actually receive; and
 - (c) If we receive a payment, we will apply it to the Outstanding Amount.
- (2) If we release our interest in part of your Property:
 - (a) The part remaining will continue to secure the Outstanding Amount;
 - (b) Your Promises will continue unchanged; and
 - (c) The release will not affect any other security or your Promises.

SECTION 12 – OTHER SECURITY

12.1 The Mortgage is Additional Security

- (1) The Mortgage supplements and does not replace any other security we hold for any debt or other liability of you or the Customer.
- (2) You agree that we may pursue our remedies, either at the same time, or one remedy at a time, as we choose.
- (3) The fact that we do obtain a judgment or other remedy under a particular security for the money secured by the Mortgage will not affect our rights to enforce any other security.

12.2 Consolidation

Our right of consolidation applies to the Mortgage and to any other mortgages you give us. This means that if you default under any of your mortgages to us, then we can, as a condition of your repaying any mortgage, require that you repay all mortgages.

SECTION 13 – IF THIS IS A CONDOMINIUM MORTGAGE

- (1) If your Property is a condominium unit, “Property” includes your interest in the common elements and any other interest that you may have in the assets of the condominium corporation, and references to the “Property” mean all or any part of it.
- (2) If your Property is a condominium unit, you promise to meet these obligations, in addition to your other Promises under the Mortgage:
 - (a) You will comply with the *Condominium Property Act* (New Brunswick) and the declaration, by-laws and rules of the condominium corporation. You will provide proof of compliance, if we ask you to;
 - (b) You will pay the common expenses and any special assessments for your Property to the condominium corporation on the due dates. You will provide proof of payment, if we ask you to;
 - (c) We have the right to give you notice that we will collect your contribution to the common expenses or a special assessment from you and you agree to make that payment. We can accept a statement from the condominium corporation as conclusive evidence of how much is owed for common expenses or a special assessment and when it must be paid;
 - (d) You will forward to us any notices or assessments from the condominium corporation;
 - (e) You will maintain all improvements made to your Property in good condition and state of repair;
 - (f) You will repair your Property after damage;
 - (g) You will not sell or transfer any parking or storage unit that forms part of your Property while still retaining ownership of the living accommodation. If you sell or transfer the living accommodation to someone, you will also sell or transfer the parking or storage unit to them;
 - (h) You will ensure that the condominium corporation complies fully with:
 - (i) The terms of all insurance policies on the condominium or held by the condominium corporation;
 - (ii) All obligations imposed by the *Condominium Property Act* (New Brunswick);
 - (iii) The by-laws and rules of the condominium corporation; and
 - (iv) The insurance provisions of the declaration of the condominium corporation;

- (i) You will carry adequate insurance and:
 - (i) This means you must insure all improvements made to your Property;
 - (ii) The insurance policy must cover your Property against destruction or damage by fire and by other perils usually covered in fire insurance policies, as well as those perils listed in Section 9; and
 - (iii) You must obtain insurance for any additional risks that we require;
- (j) The policy must cover your Property for its full replacement cost, which means the maximum amount for which it can be insured;
- (k) You will insure the common or other interest in both planned and existing buildings, which form part of the condominium property if the condominium corporation fails to insure them;
- (l) You will assign your insurance policies to us. As far as it is legal to do so, you will assign your interest in any insurance policies held by the condominium corporation;
- (m) You will provide us with proof that the insurance for the condominium corporation and your insurance is in force. If the policy is renewed or replaced, you must inform us at least thirty days before the insurance expires;
- (n) You will do everything that is necessary to collect any insurance proceeds;
- (o) You authorize us, in your name and on your behalf, at all times, to exercise your rights under the *Condominium Property Act* (New Brunswick) to vote at any meeting of the condominium corporation, and to consent to anything having to do with the management, sale or other dealings with the property or the assets of the condominium corporation and:
 - (i) This authorization includes voting on or any consent to the termination of the condominium corporation;
 - (ii) In exercising these rights, we can choose not to vote or consent at any particular time or on any particular issue;
 - (iii) If we do vote or consent for you, we do not as a result become a mortgagee in possession. We are not responsible to protect your interests. We are also not responsible for the way we vote or consent, or if we fail to do so;
 - (iv) Our right to vote and consent will be effective when we give you and the condominium corporation notice that we intend to vote or consent; and
 - (v) Any notice we may give may be for an unlimited or fixed period of time, or for a specific meeting or matter; and
- (p) If we choose, the Outstanding Amount will become payable immediately if:
 - (i) Your Property is no longer governed by the condominium corporation under the *Condominium Property Act* (New Brunswick). This means your Property is no longer part of a condominium;
 - (ii) The unit owners vote to authorize the sale of all or any material part of the property of the condominium corporation, including a material part of its common elements;
 - (iii) The condominium corporation fails to comply with the *Condominium Property Act* (New Brunswick) or the declaration, by-laws or rules and regulations of the condominium corporation;

- (iv) The condominium corporation fails to:
 - (A) insure the units and common elements against destruction or damage by fire and other perils usually insured against, for full replacement cost, which means the maximum amount for which it can be insured;
 - (B) insure all the condominium units and common elements as required by law and any additional requirements we may have; or
 - (C) do all that is necessary to collect insurance proceeds; and
- (v) The condominium corporation fails, in our opinion, to manage the condominium property and assets in a careful way or to maintain its assets in good repair.

SECTION 14 – IF THIS IS A LEASEHOLD MORTGAGE

- (1) If you rent or lease your Property from someone else, you certify that:
 - (a) You lease your Property under a valid lease, you have given us a copy of that lease and you have good leasehold title to your Property;
 - (b) You have paid all rents and other payments required under the lease and you have kept all of your other promises in the lease, up to the date you sign or authorize the Mortgage;
 - (c) You have either the consent of your landlord to the Mortgage, or the right to charge your interest in the lease to us, without consent;
 - (d) If your 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 the Mortgage; and
 - (e) There are no limitations on your interest in the lease except for any set out in the lease, or restrictions registered in the land registry office.
- (2) From now on, if you rent or lease your Property from someone else, you promise to meet the following obligations:
 - (a) You will pay rents and other payments required by the lease when due;
 - (b) You will do everything you are required to do under the lease;
 - (c) You will not surrender or transfer your interest in the lease or cause it to be terminated or transferred;
 - (d) You will not make any change in the lease without our approval;
 - (e) You will immediately give us a copy of any notice or demand you receive about the lease;
 - (f) You will, at your expense, do anything that we think necessary to ensure that all your interest in your Property and in the lease as covered by the Mortgage and that the Outstanding Amount is adequately secured;
 - (g) If you default under the lease, and we have to pay anyone else, as required by law or to protect our security, you will pay us that amount immediately (together with interest at the Interest Rate) when we demand it. If you do not pay us, the amount we paid will be added to the Outstanding Amount;
 - (h) You will hold the last day of the term of the lease or of any renewal term in trust for us and will only deal with it as we require. At our request, but at your expense, you will transfer to us the last day of the term of the lease or of any renewal;

- (i) We may remove you or any other person as trustee of this trust and appoint a new trustee;
- (j) You will not let any renewal or other options lapse. Unless we tell you otherwise, you must renew the lease or exercise any other option so that the lease will continue as long as the Mortgage is outstanding, and provide us with evidence that you have done so when we ask for it;
- (k) If you subsequently buy the Property from the owner, the Mortgage will automatically become a Mortgage on the entire interest in your Property, as if you had owned the Property when you gave us the Mortgage. If we ask, you agree to re-mortgage and charge your interest in your Property to us, and to execute or authorize a Registered Mortgage and any other documents we ask;
- (l) If you have broken any of your promises or breached any of your obligations or undertakings under the lease, we can treat that as if you had defaulted under the Mortgage and we can exercise our rights under the Mortgage; and
- (m) If we enforce our rights under the Mortgage, then you will hold in trust the last day of the term of the lease and of any renewal for any person to whom we sell your interest in your Property.

(3) You irrevocably appoint us as your attorney so that we, on your behalf and in your name, may enforce your promises under the lease, exercise any options to renew or purchase, or assign the lease and the last day of the term and of any renewal, and transfer your interest in your Property.

(4) You authorize us to obtain information directly from your landlord on the rents you have paid and whether you have kept your promises as or fulfilled your obligations and undertakings set out in the lease.

(5) You authorize us to receive any information or documents the landlord may have which you are entitled to. You will cooperate in getting the landlord to give them to us.

SECTION 15 – IF YOU WANT TO RENT YOUR PROPERTY TO SOMEONE ELSE

(1) You promise that you personally will live in your Property. If you want to rent, lease or enter into any form of tenancy agreement covering all or any part of your Property, you promise to get our consent. We may refuse to give it, if we choose.

(2) If you have told us that your Property is, or will be, used only as an owner-occupied residential property, you confirm that no part of your Property is rented or occupied by a tenant.

(3) If you do not keep any of these Promises, at our option, the Outstanding Amount will immediately become due and payable and we will be entitled to enforce any of our rights. In this case, we can pay any amount we think is needed to any tenant, to obtain the co-operation of the tenant in selling your Property, showing your Property and obtaining possession of all or part of your Property from the tenant. You agree that any amount we pay to a tenant will be added to the Outstanding Amount.

(4) Nothing we do under this Section will cause us to be considered to be in possession or control of your Property or to be considered to be managing your Property.

(5) We do not have to, if we choose not to, collect any rent or income from your Property, or comply with any terms of any lease or agreement.

(6) If you rent all or any part of your Property without our approval, we will have the same rights and remedies as if you had tried to discourage us from taking possession of your Property, if you had defaulted under the Mortgage or adversely affected the value of your Property.

(7) If you rent your Property with our consent, you assign to us:

- (a) All leases, lease agreements and their renewals, whether current or future;
- (b) All rents payable under the leases and lease agreements; and
- (c) All rights under the leases or lease agreements that affect your Property.

SECTION 16 – OUR RIGHTS

16.1 Approval and Consent

Whenever the Mortgage talks about “approval” or a “consent”, we mean approval or consent in writing, which we must give before you act.

16.2 Money We Spend

We may spend money to do anything you promised to do, but did not do. You must continue to keep your Promises even if we have spent money to do something you promised to do. Any money we spend because you did not keep a Promise will be added to the Outstanding Amount, will bear interest at the Interest Rate from the date that we spend the money until fully paid and will be secured by the Mortgage with the same priority as the Mortgage. You promise to pay these amounts to us, when we demand payment of them.

16.3 Administration Fees

You promise to pay us, when we ask, our administration and processing fees we charge at that time to prepare an information statement, a payout statement or any other document and any fee we pay to register a discharge of the Mortgage. If you do not pay a fee it will be added to the Outstanding Amount. Unpaid fees will be charged interest at the Interest Rate.

SECTION 17 – APPLICABLE LEGISLATION

17.1 New Home Warranty

If any new home warranty or similar legislation applies to your Property, you promise to comply with its requirements and to reimburse us for any costs that we incur in complying or enforcing your rights on your behalf if you fail to do so.

17.2 National Housing Act

If the Mortgage is insured by Canada Mortgage and Housing Corporation, the Mortgage is made under the *National Housing Act* (Canada).

17.3 Expropriation

- (1) If your entire Property is expropriated, the Outstanding Amount will immediately become due and payable.
- (2) If only a part of your Property is expropriated, you promise to pay us the amount you are awarded for the partial expropriation and we will credit it to the Outstanding Amount.
- (3) If we consider that the remainder of your Property is not adequate security for the Outstanding Amount, then the Outstanding Amount, or such part of the Outstanding Amount as we decide, will immediately become due and payable.
- (4) You will hold any amount awarded in the event of expropriation in trust for us.

17.4 Spousal Consent

- (1) You promise:
 - (a) to advise us whether you are a spouse, as that term is defined in the *Marital Property Act* (New Brunswick), and any change in your marital status;
 - (b) to advise us on the status of the Property as a marital home, within the meaning of the *Marital Property Act* (New Brunswick), and any change in the status;
 - (c) to give us the name, address, date of birth and any other information on your spouse that we may require;

- (d) if we ask, to provide written evidence of anything mentioned in this section and authorization from you and/or your spouse requiring the Registrar General under the *Vital Statistics Act* (New Brunswick) to give us information on the marriage, divorce or death of you and/or your spouse.

If you do not keep any of these Promises, at our option, the Outstanding Amount will immediately become due and payable and we will be entitled to enforce any of our rights.

- (2) If you have a spouse, your spouse, by signing or authorizing the Mortgage, consents to the Mortgage and releases all interest in your Property to the extent necessary to give effect to our rights under the Mortgage. Your spouse also agrees that we may, without further notice, deal with your Property and the Mortgage as we choose.

SECTION 18 – WHO IS BOUND BY THE MORTGAGE

- (1) The Mortgage is binding on every party who signs it, authorizes it or agrees to be bound by it, regardless of when the signature is written, or the authorization or agreement occurs.

- (2) In addition to your obligations under the Mortgage,

- (a) If you die or become incapacitated, your legal and personal representatives, executors, administrators, successors and assigns, and your heirs will also be bound by the Mortgage;
- (b) If you transfer your Property, anybody else to whom your Property is transferred will also be bound by the Mortgage; and
- (c) Your Promises will not be changed by either your bankruptcy or insolvency or that of the Customer.

- (3) If more than one person signs, authorizes or agrees to be bound by the Mortgage, then all such persons are jointly and severally liable to comply with all Promises under the Mortgage. By way of explanation, the term “jointly and severally” means that if there is more than one person signing or agreeing to be bound, each is collectively and individually liable with all others for keeping all the Promises. This means that each is liable for the full amount of the Outstanding Amount and you do not have the right to pay only a proportionate part. For example, if the full amount of the Outstanding Amount is \$100,000 and there are three other persons who sign or agree to be bound by the Mortgage, we can demand that you pay the full \$100,000, not just \$25,000.

SECTION 19 – INTERPRETATION

19.1 Partial Invalidity

If any provision of the Mortgage is illegal or unenforceable, this will not affect the validity or enforceability of the other provisions.

19.2 All Agreements

The Mortgage (which includes the Registered Mortgage, this set of optional mortgage covenants, any other documents attached to it as schedules, and any document amending the Mortgage) sets out all the terms of the agreement between you and us relating to the Mortgage and it overrides any statements or promises that we or any of our employees might have made to you.

19.3 Paragraph and Section Headings

Paragraph and Section headings do not form part of the Mortgage, but are used only for easy and convenient reference. They do not affect the meaning or interpretation of the Mortgage.

19.4 Statutes and Regulations

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

19.5 Number and Gender

Unless the context requires otherwise, words in the singular include the plural, and vice versa, and words specifying a gender include all genders.

19.6 Communicating With You

(1) If we mail documents to you the documents will be sent to you at the address for service indicated in the Registered Mortgage or we will mail the documents to another address, if you have given us written instructions to mail documents to that other address.

(2) Documents mailed to you will be considered to have been received by you by the fifth day after mailing.

(3) If more than one person signs or agrees to be bound by the Mortgage, we can rely on communications we receive from any one of you, whether these communications are received electronically, in writing, orally or otherwise. We will consider communications from any one of you to be communications from all of you.

(4) In addition, communications from us to any of you, whether these communications are delivered electronically, in writing, orally or otherwise, will be considered to be communications to all of you.