



**LEAGUE SAVINGS
AND MORTGAGE**
A Credit Union Company

Form 15.1

COLLATERAL MORTGAGE

Land Titles Act, S.N.B. 1981, c.L-1.1, s.25
Standard Forms of Conveyances Act, S.N.B. 1980, c.S-12.2, s.2

Parcel Identifier: _____

Mortgagor: _____

Mortgagee: LEAGUE SAVINGS AND MORTGAGE COMPANY
6074 Lady Hammond Road
Halifax, NS B3K 2R7

Manner of Tenure: NOT APPLICABLE

Particulars of Security: General and continuing collateral security for the payment and performance of any and all present and future indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee (including interest thereon), of whatsoever nature or kind, whether incurred prior to or at the time of or after the signing of this Mortgage, absolute or contingent, joint or several, direct or indirect, matured or not, extended or renewed, as principal or as surety, liquidated or unliquidated, alone or with others, wheresoever and howsoever incurred, and any ultimate balance thereof, including all future advances and re-advances and for all obligations of the Mortgagor to the Mortgagee whether or not contained in this Mortgage.

Statutory Covenants and Conditions Excluded: All

Optional Covenants and Conditions Included: BCUFS-922 **(Add BCUFS-1159 for Assignment of Leases and Rents if necessary)**

The mortgagor mortgages to the mortgagee in the specified manner of tenure the specified parcel to secure repayment of the indebtedness with interest as well after as before maturity as specified.

The mortgagor acknowledges receipt of the text of the covenants and conditions which are contained in this mortgage by reference to a distinguishing number or by virtue of subsection 25(4) of the *Land Titles Act*, and agrees to be bound by them to the same extent as if set out at length herein.

Date: _____

Witness:

Mortgagor:

Form 44

CERTIFICATE OF EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Notary Public: _____

Jurisdiction: Province of New Brunswick

Place of Residence of
Notary Public: _____

Person Who Executed the
Instrument: _____

Place of Execution: _____, New Brunswick

Date of Execution: _____

I, the notary public, a Notary Public in and for the jurisdiction specified above and residing at the place of residence specified above, do hereby certify:

1. That the person who executed the attached instrument personally appeared before me;
2. That the person is known to me or her identity has have been proved to my satisfaction;
3. That I explained to the person the contents of the attached instrument to the best of my professional abilities;
4. That, after receiving the explanation, the person executed the attached instrument voluntarily at the place and on the date specified above;
5. That the person acknowledged that they were both of the age of majority;
6. That I have ascertained that the names by which the persons are identified in the attached instrument are the persons' names in accordance with the *Naming Conventions Regulation* under the *Land Titles Act*; and
7. That I have signed the attached instrument next to the signatures of the persons for whom this Certificate of Execution has been prepared, with my name printed legibly underneath my signatures.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal.

Place: _____, New Brunswick

Date: _____

Notary Public: _____
Seal

Form 55

AFFIDAVIT OF MARITAL STATUS

Land Titles Act, S.N.B. 1981, c.L-1.1, s.81

Deponent: _____

(Spouse of Deponent: _____)

(Date of Domestic Contract: _____)

(Date of Court Order: _____)

I, the deponent, make oath and say:

1. That I am a person conveying an interest in the attached instrument and have personal knowledge of the matters hereinafter deposed to;

DELETE INAPPLICABLE CLAUSES

2. That I am not married;
OR
That the name of my spouse is as specified above;
3. That I have no former spouse with a right under the *Marital Property Act* to any interest in or possession of the subject land;
4. That the subject land has (not) been occupied by me and my spouse as our marital home;
5. That my spouse has joined in this instrument and has consented to the disposition for the purpose of complying with section 19 of the *Marital Property Act*;
OR
The signature of my spouse is not required because

my spouse has released all rights to the marital home by reason of a domestic contract dated as specified above.
OR
the marital home has been released by order of The Court of Queen's Bench of New Brunswick dated as specified above, pursuant to paragraph 23(1)(b) of the *Marital Property Act*.
OR
this disposition has been authorized by The Court of Queen's Bench of New Brunswick by order dated as specified above.
6. That I am not a "non-resident of Canada" as defined by the Income Tax Act, R.S.C.
7. That I am not now, nor have I ever been a "collector" or "taxpayer" pursuant to the Revenue Administration Act, R.S.N.B., 1973.
8. That I am of the full age of 19 years.
9. That I am not now, nor have I ever been a director of a company that was a "collector" or "tax payer" as defined by the Revenue Administration Act of New Brunswick.

10. That I acquired the property under the name _____ and am conveying the property under the name _____ in order to conform with the Naming Conventions Regulation – *Land Titles Act*.

SWORN TO at _____,)
on _____,)
before me:)
)
)
)
)
_____)
Commissioner of Oaths,)
_____)

OPTIONAL MORTGAGE COVENANT
BCUFS-922

1. **GRANT OF MORTGAGE**

For consideration and as security for the payment and performance of the Obligations referred to in section 2 hereof, the Mortgagor hereby mortgages, charges, assigns, pledges, grants and transfers to the Mortgagee all the Mortgagor's right, title and interest in and to the parcel specified on the first page of this Mortgage (the "Property").

2. **OBLIGATIONS SECURED**

This Mortgage is in addition to and not in substitution for any other mortgage, charge, assignment or security interest now or hereafter held by the Mortgagee from the Mortgagor or from any other person whomsoever and shall be general and continuing collateral security for the payment and performance of any and all present and future indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee (including interest thereon), of whatsoever nature or kind, whether incurred prior to or at the time of or after the signing of this Mortgage, absolute or contingent, joint or several, direct or indirect, matured or not, extended or renewed, as principal or as surety, liquidated or unliquidated, alone or with others, wheresoever and howsoever incurred, and any ultimate balance thereof, including all future advances and re-advances and for all obligations of the Mortgagor to the Mortgagee whether or not contained in this Mortgage (all of which indebtedness, liability, and obligations are hereinafter collectively called the "Obligations").

3. **REPRESENTATIONS AND WARRANTIES**

The Mortgagor represents and warrants to the Mortgagee that:

- (a) if a corporation, the Mortgagor is a corporation incorporated and organized and validly existing and in good standing under the laws of the jurisdiction of its incorporation; it has the corporate power to own or lease its property and to carry on the business conducted by it; it is qualified as a corporation to carry on the business conducted by it and to own or lease its property and is in good standing under the laws of each jurisdiction in which the nature of its business or the property owned or leased by it makes such qualification necessary; and the execution, delivery and performance of this Mortgage are within its corporate powers, have been authorized and do not contravene, violate or conflict with any law or the terms and provisions of its constating documents or its by-laws or any shareholders agreement or any other agreement, indenture or undertaking to which the Mortgagor is a party or by which it is bound;
- (b) if it is a corporation, the Mortgagor's name as set forth on the first page of this Mortgage is its full, true and correct name as stated in its constating documents and if such name is in English, it does not have or use a French language form of its name or a combined English language and French language form of its name and vice versa, and the Mortgagor has provided a written memorandum to the Mortgagee accurately setting forth all prior names under which the Mortgagor has operated;
- (c) if it is a partnership, the Mortgagor's name as set forth on the first page of this Mortgage is its full, true and correct name and where required or voluntarily registered its registered name; it is a partnership validly created and organized and validly existing under the laws of the jurisdiction of its creation; it has the power to carry on the business conducted by it; it is qualified as a partnership to carry on the business conducted by it and is in good standing under the laws of each jurisdiction in which the nature of its business makes such qualification necessary; and the execution, delivery and performance of this Agreement are within its powers, have been authorized, and do not contravene, violate or conflict with any law or the terms of its partnership agreement or any other agreement, indenture or undertaking to which the Mortgagor is a party or by which it is bound, and a complete list of the names, addresses and (if individuals) the dates of birth of the partners of the partnership have been delivered to the Mortgagee;

- (d) if the Mortgagor is an individual, the Mortgagor's full name as set out on the first page of this Mortgage is the Mortgagor's full and correct name as described on the individual's birth certificate a true copy of which has been provided to the Mortgagee or, if no birth certificate issued from any jurisdiction in Canada exists, as described on the documents provided to the Mortgagee; the Mortgagor's address as set out on the first page of this Mortgage is the Mortgagor's full and correct address;
- (e) there is no litigation or governmental proceedings commenced or pending against or affecting the Property or the Mortgagor, in which a decision adverse to the Mortgagor would constitute or result in a material adverse change in the business, operations, properties or assets or in the condition, financial or otherwise, of the Mortgagor; and the Mortgagor agrees to promptly notify the Mortgagee of any such future litigation or governmental proceeding;
- (f) the Mortgagor does not have any information or knowledge of any facts relating to the Mortgagor's business, operations, property or assets or to its condition, financial or otherwise, which it has not disclosed to the Mortgagee in writing and which, if known to the Mortgagee, might reasonably be expected to deter the Mortgagee from extending credit or advancing funds to the Mortgagor;
- (g) the Mortgagor has good title and lawfully owns and possesses the Property, free from all security interests, charges, encumbrances, liens and claims except as disclosed to and approved by the Mortgagee;
- (h) this Mortgage is granted in accordance with resolutions of the directors (and of the shareholders as applicable) of the Mortgagor, if the Mortgagor is a corporation, or, if the Mortgagor is a partnership, of the partners of the Mortgagor, and all other requirements have been fulfilled to authorize and make the execution and delivery of this Mortgage, and the performance of the Mortgagor's obligations valid and there is no restriction contained in the constating documents of the Mortgagor or in any shareholders agreement or partnership agreement which restricts the powers of the authorized signatories of the Mortgagor to borrow money or give security.

4. COVENANTS OF THE MORTGAGOR

- (a) The Mortgagor covenants that at all times while this Mortgage remains in effect the Mortgagor will:
 - (i) promptly pay and satisfy the Obligations as they become due or are demanded and shall observe all conditions and covenants herein contained;
 - (ii) defend the title to the Property for the benefit of the Mortgagee against the claims and demands of all persons;
 - (iii) maintain insurance on the Property with an insurer, of kinds, for amounts and payable to such person or persons, all as the Mortgagee may require;
 - (iv) maintain the Property in good condition, order and repair and not permit the value of the Property to be impaired and not to demolish any part of the buildings now or at any time located on the Property without the prior written consent of the Mortgagee and not to proceed with any substantial alterations, remodeling or rebuilding of or any addition to the buildings on the Property without the prior written consent of the Mortgagee;
 - (v) forthwith pay and satisfy;
 - (A) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon the Mortgagor or the Property when due, unless the Mortgagor shall in good faith contest its obligations so to pay and shall furnish such security as the Mortgagee may require; and

- (B) all security interests, charges, encumbrances, liens and claims which rank or could in any event rank in priority to the Mortgage, other than the charges or security interests, if any, consented to in writing by the Secured Party;
- (vi) if required by the Mortgagee make installment payments to the Mortgagee on account of taxes, rates, levies and assessments upon the lands and premises, such payments to be an estimate by the Mortgagee of the sum required to accumulate a fund sufficient to pay such taxes, rates, levies and assessments when they become due; the Mortgagee may apply any such payment against the indebtedness secured or any money payable hereunder.
- (vii) forthwith pay and satisfy all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Mortgagee in:
 - (a) inspecting the Property;
 - (b) negotiating, preparing, perfecting and registering this Mortgage and other documents, whether or not relating to this Mortgage;
 - (c) maintaining the intended priority of the Mortgage;
 - (d) investigating title to the Property;
 - (e) taking, recovering, keeping possession of and insuring the Property;
 - (f) maintaining the Property in good repair and preparing the Property for disposition;
 - (g) any inspection, appraisal, investigation or environmental audit of the Property and the cost of any environmental rehabilitation, treatment, removal or repair necessary to protect, preserve or remedy the Property including any fine or penalty the Mortgagee becomes obligated to pay by reason of any statute, order or direction of competent authority;
 - (h) any sums the Mortgagee pays as fines, or as clean up costs because of contamination of or from the Property; and
 - (i) all other actions and proceedings taken in connection with the preservation of the Property and the Mortgage and the enforcement of this Mortgage and of any other security interest held by the Mortgagee as security for the Obligations;
- (viii) at the Mortgagee's request at any time and from time to time, execute and deliver such further and other documents and instruments and do all acts and things as the Mortgagee in its absolute discretion requires in order to better and more perfectly and absolutely convey and assure the Property with the appurtenances, unto the Mortgagee as the Mortgagee or his counsel may reasonably require;
- (ix) notify the Mortgagee promptly of:
 - (a) any change in the information contained herein relating to the Mortgagor, its address, its business or the Property;
 - (b) any material loss or damage to the Property;
 - (c) any claims against the Mortgagor relating to the Property or any part thereof;
- (x) deliver to the Mortgagee from time to time promptly upon request:
 - (a) any documents of title or instruments relating to the Property;

- (b) all financial statements prepared by or for the Mortgagor regarding the Mortgagor's business;
- (c) all policies and certificates of insurance relating to the Property; and
- (d) such information concerning the Property, the Mortgagor and the Mortgagor's business and affairs as the Mortgagee may require;
- (xi) observe and conform to all valid requirements of any governmental authority relative to any of the Property and all covenants, terms and conditions upon or under which the Property is held;
- (xii) carry on and conduct its business and undertaking in a proper and businesslike manner so as to preserve and protect the Property and the earnings, income, rents, issues and profits of the Property, including maintenance of proper and accurate books of account and records;
- (xiii) observe and perform all its obligations under:
 - (a) leases, licenses, undertakings, and any other agreements to which it is a party;
 - (b) any statute or regulation, federal, provincial, territorial or municipal to which the Mortgagor is subject;
- (xiv) without the consent of the Mortgagee, not create or permit to exist any mortgage, charge, assignment or security interest in, charge, encumbrance or lien over, or claim against the Property or any part thereof which ranks or could rank in priority to or pari passu with this Mortgage;
- (xv) if the Mortgagor is an individual, advise the Mortgagee of any change in marital status;
- (xvi) not at any time, directly or indirectly, sell, transfer, convey or dispose of the Property or parts thereof or interest therein or enter into any agreement to do so or change or permit a change in the legal or beneficial ownership of the Property without the prior written consent of the Mortgagee.
- (b) The Mortgagor, if a corporation, covenants that at all times while this Mortgage remains in effect, without the prior written consent of the Mortgagee:
 - (i) it will not declare or pay any dividends;
 - (ii) it will not purchase or redeem any of its shares or otherwise reduce its share capital;
 - (iii) it will not become guarantor of any obligation;
 - (iv) it will not become an endorser in respect of any obligation or otherwise become liable upon any note or other obligation other than bills of exchange deposited to the bank account of the Mortgagor;
 - (v) it will maintain its corporate existence; and
 - (vi) it will not change its name, merge or amalgamate with any other entity.

5. ENVIRONMENT

The Mortgagor represents and agrees that:

- (a) it operates and will continue to operate in conformity with all applicable environmental laws, regulations, standards, codes, ordinances and other requirements of any jurisdiction in which it carries on business and will ensure its staff is trained as required for that purpose;

- (b) it has an environmental emergency response plan and all officers and employees are familiar with that plan and their duties under it;
- (c) it possesses and will maintain all environmental licenses, permits and other governmental approvals as may be necessary to conduct its business and maintain the Property;
- (d) there has been no complaint, prosecution, investigation or proceeding, environmental or otherwise, respecting the Mortgagor's business or assets including without limitation the Property;
- (e) it will advise the Mortgagee immediately upon becoming aware of any environmental problems relating to its business or the Property;
- (f) it will provide the Mortgagee with copies of all communications with environmental officials and all environmental studies or assessments prepared for the Mortgagor and it consents to the Mortgagee contacting and making enquiries of environmental officials or assessors; and
- (g) it will from time to time when requested by the Mortgagee provide to the Mortgagee evidence of its full compliance with the Mortgagor's obligations in this section.

6. INSURANCE

- (a) The Mortgagor covenants that while this Mortgage is in effect the Mortgagor shall:
 - (i) maintain or cause to be maintained insurance on the Property with a reputable insurer, of kinds, for amounts and payable to such person or persons, all as the Mortgagee may require, and in particular maintain insurance on the Property to its full insurable value against loss or damage by fire and all other risks of damage, including an extended coverage endorsement;
 - (ii) cause the insurance policy or policies required by this Mortgage to be assigned to the Mortgagee, including a standard mortgage clause or a mortgage endorsement, as the Mortgagee may require;
 - (iii) pay all premiums respecting such insurance, and deliver all policies to the Mortgagee, if it so requires.
- (b) If proceeds of any required insurance becomes payable, the Mortgagee may, in its absolute discretion, apply these proceeds to the Obligations as the Mortgagee sees fit or release any insurance proceeds to the Mortgagor to repair, replace or rebuild, but any release of insurance proceeds to the Mortgagor shall not operate as a payment on account of the Obligations or in any way affect this Mortgage.
- (c) The Mortgagor will forthwith, on the happening of loss or damage to the Property, notify the Mortgagee and furnish to the Mortgagee at the Mortgagor's expense any necessary proof and do any necessary act to enable the Mortgagee to obtain payment of the insurance proceeds, but nothing shall limit the Mortgagee's right to submit to the insurer a proof of loss on its own behalf.
- (d) The Mortgagor hereby authorizes and directs the insurer under any required policy of insurance to include the name of the Mortgagee as loss payee on any policy of insurance and on any cheque or draft which may be issued respecting a claim settlement under and by virtue of such insurance, and the production by the Mortgagee to any insurer of a notarial or certified copy of this Mortgage (notarized or certified by a notary public or solicitor) shall be the insurer's complete authority for so doing.
- (e) If the Mortgagor fails to maintain insurance as required, the Mortgagee may, but shall not be obliged to, maintain or effect such insurance coverage, or so much insurance coverage as the Mortgagee may wish to maintain.

7. PERFORMANCE OF OBLIGATIONS

If the Mortgagor fails to perform its Obligations hereunder, the Mortgagee may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Mortgagee hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Mortgagor to the Mortgagee forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall be a charge upon the Property in favour of the Mortgagee prior to all claims subsequent to this Mortgage.

8. QUIET POSSESSION

Until default in payment of some part of the money payable hereunder or on breach of any covenant, agreement or proviso herein contained, the Mortgagor shall have quiet possession of the land and premises.

9. SUMS OWING

The Mortgagor covenants with the Mortgagee that any sum owing or required by this Mortgage to be paid by the Mortgagor to the Mortgagee shall be added to the indebtedness secured and shall form a charge upon the lands and premises and shall bear interest at the highest rate borne by any of the Obligations until paid.

10. APPROPRIATION OF PAYMENTS

Any and all payments made respecting the Obligations and monies realized on any enforcement of this Mortgage may be applied to such part or parts of the Obligations as the Mortgagee sees fit, and the Mortgagee may at any time change any appropriation as the Mortgagee sees fit.

11. EXTENSION OF TIME

No extension of time given by the Mortgagee to the Mortgagor, or anyone claiming under him or any other person, or any other dealing by the Mortgagee with the owner of the equity of redemption shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor or any other person liable for performance of the Obligations.

12. DEFAULT

The Mortgagor shall be in default under this Mortgage and shall be deemed to be in default under all other agreements between the Mortgagor and the Mortgagee, unless waived by the Mortgagee, in any of the following events:

- (a) the Mortgagor defaults, or threatens to default, in payment when due of any of the Obligations of the Mortgagor to the Mortgagee; or
- (b) the Mortgagor is in breach of, or threatens to breach, any term, condition or covenant of the Obligations to the Mortgagee, whether or not contained in this Mortgage; or
- (c) the Mortgagor or a guarantor of the Mortgagor declares itself to be insolvent or admits in writing its inability to pay its debts generally as they become due, or makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors' Arrangement Act* (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment or any order of judgment is issued by a court granting any of the foregoing; or

- (d) a receiver, receiver and manager or receiver-manager of all or any part of the Property is appointed; or
- (e) the Mortgagor or a guarantor of the Mortgagor ceases or threatens to cease to carry on all or a substantial part of its business or makes or threatens to make a sale of all or substantially all of its assets; or
- (f) distress or execution is levied or issued against the Property or any part thereof; or
- (g) without the prior written consent of the Mortgagee, the Mortgagor creates or permits to exist any charge, encumbrance or lien on or claim against or any security interest in the Property which ranks or could in any event rank in priority to or pari passu with any security interest created by this Mortgage; or
- (h) the holder of any other charge, encumbrance or lien on or claim against, or security interest in, any of the Property does anything to enforce or realize on such charge, encumbrance, lien, claim or security interest; or
- (i) any representation or warranty made by the Mortgagor to the Mortgagee, whether or not contained in this Mortgage is untrue; or
- (j) a default occurs under any agreement, promissory note, debt obligation, guarantee or other document now or hereafter granted to any other bank or financial institution by the Mortgagor; or
- (k) if the Mortgagor or a guarantor of the Mortgagor is a company or a partnership, an order is made or an effective resolution is passed for the dissolution, liquidation or winding up of the Mortgagor or the guarantor of the Mortgagor; or
- (l) the Mortgagor, if a company, enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person, without the Mortgagee's prior written consent; or
- (m) the Mortgagor, if an individual, dies or is declared incompetent by a court of competent jurisdiction; or
- (n) if the Mortgagor or a guarantor of the Mortgagor is a corporation and its voting control changes without the Mortgagee's written consent; or
- (o) the Mortgagor uses any monies advanced by the Mortgagee to the Mortgagor for any purpose other than as agreed upon by the Mortgagee; or
- (p) the Mortgagor cause or allows hazardous materials to be brought upon any lands or premises occupied by the Mortgagor or to be incorporated into any of its assets, or the Mortgagor causes, permits or fails to remedy any environmental contamination upon, in or under any of its lands or assets, or fails to remedy any environmental contamination upon, in or under any of its lands or assets, or fails to comply with any abatement or remediation order given by a responsible authority; or
- (q) if any encumbrance or construction lien is registered upon the Property and is not discharged within 10 days of being registered;
- (r) if any part of the Property is condemned or expropriated, provided that in respect of any expropriation, only if such expropriation gives rise to proceeds of expropriation in excess of 20% of the appraised value of the Property established as of the date of this Mortgage or if such expropriation materially impairs (i) the value of the Property or any other security delivered to the Mortgagee in connection with the Mortgage or (ii) the ability of the Mortgagor to fulfill its obligations under this Mortgage;
- (s) the Mortgagee in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Property or any part thereof is or is about to be placed in jeopardy.

13.

ENFORCEMENT

(a) Upon any default under this Mortgage, the Mortgagee may withhold any future advances and may declare the full amount of any or all of the Obligations, whether or not payable on demand, to become immediately due and payable. To enforce and realize on the Mortgage, the Mortgagee may take any action permitted by law or in equity, as it may deem expedient, and in particular without limiting the generality of the foregoing, the Mortgagee may do any of the following:

- (i) appoint by instrument a receiver, a receiver and manager or a receiver-manager (the person so appointed is hereinafter called the "Receiver") of the Property, with or without bond as the Mortgagee may determine, and from time to time in its absolute discretion remove such Receiver and appoint another in its stead;
- (ii) enter upon any premises of the Mortgagor and take possession of the Property with power to exclude the Mortgagor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
- (iii) hold, preserve, protect and maintain the Property and make such replacements thereof and repairs and additions thereto as the Mortgagee may deem advisable; and
- (iv) if the Mortgagee enters into and takes possession of the Property, it shall be entitled to have, hold, use, occupy, possess and enjoy the Property without let, suit, hindrance, interruption or denial of the Mortgagor or any other person and without charge. The Mortgagee may maintain, repair and complete the construction of any improvements thereon, inspect, manage, take care of, collect rents and lease the Property for such terms and on such conditions and provisions (including providing any leasehold improvements and tenant inducements) as the Mortgagee may determine in its sole discretion, which lease shall have the same effect as if made by the Mortgagor, and all costs, charges and expenses incurred by the Mortgagee in the exercise of such rights (including allowances for the time, service or effort of any person appointed by the Mortgagee for the above purposes, and all reasonable legal fees and disbursements incurred as between a solicitor and his own client), together with interest thereon at the highest rate applicable to the Obligations shall be payable forthwith by the Mortgagor to the Mortgagee, and until paid shall be added to the Obligations and shall be secured by this Mortgage. Each lease or renewal of lease made by the Mortgagee while in possession of the Property shall continue for its full term notwithstanding the termination of the Mortgagee's possession;
- (v) whether or not the Mortgagee has entered into possession the Mortgagee may in its discretion, carry on, or concur in the carrying on of all or any part of the business or undertaking of the Mortgagor relating to the Property;
- (vi) raise money on the security of the Property or any part thereof in priority to this Mortgage or otherwise, as reasonably required for the purpose of the maintenance, preservation or protection of the Property or any part thereof or to carry on all or any part of the business of the Mortgagor relating to the Property;
- (vii) sell, lease or otherwise dispose of all or any part of the Property, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Mortgagee may seem reasonable, provided that if any sale, lease or other disposition is on credit the Mortgagor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received;

(viii) the Mortgagee may exercise the power of sale and all other powers conferred on the Mortgagee by virtue of the *Property Act*, R.S.N.B. 1973, c.P-19, and such powers are incorporated herein, as if the Mortgage was made by deed.

(b) A Receiver appointed pursuant to this Mortgage shall be the agent of the Mortgagor and not of the Mortgagee and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Mortgagee hereunder, and in addition shall have power to:

(i) carry on the business of the Mortgagor and for such purpose from time to time to borrow money on any of the Property; such security interest may rank before or pari passu with or behind the Mortgage, and if it does not so specify such security interest shall rank before the Mortgage;

(ii) make an assignment for the benefit of the Mortgagor's creditors or a proposal on behalf of the Mortgagor under the *Bankruptcy and Insolvency Act* (Canada);

(iii) commence, continue or defend proceedings in the name of the Receiver or in the name of the Mortgagor for the purpose of protecting, seizing, collecting, realizing or obtaining possession of or payment for the Property; and

(iv) make any arrangement or compromise that the Receiver deems expedient.

(c) Subject to the claims, if any, of the creditors of the Mortgagor ranking in priority to this Mortgage, all amounts realized from the disposition of Property pursuant to this Mortgage will be applied as the Mortgagee, in its absolute discretion, may direct as follows:

(i) in payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Mortgagee in connection with or incidental to:

(A) the exercise by the Mortgagee of all or any of the powers granted to it pursuant to this Mortgage; and

(B) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to it pursuant to this Mortgage, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

(ii) in or toward payment to the Mortgagee of all principal and other monies (except interest) due in respect of the Obligations; and

(iii) in or toward payment to the Mortgagee of all interest remaining unpaid in respect of the Obligations.

Subject to applicable law and the claims, if any, of other creditors of the Mortgagor, any surplus will be paid to the Mortgagor.

14. SET OFF

Without limiting any other right the Mortgagee may have, the Mortgagee may, in its sole discretion at any time and without notice, set off any and all amounts owed to the Mortgagor by the Mortgagee in any capacity and, whether or not due, against the Obligations.

15. DEFICIENCY

If the amounts realized from the disposition of the Property are not sufficient to pay the Obligations in full the Mortgagor will immediately pay to the Mortgagee the amount of such deficiency.

16. RIGHTS CUMULATIVE

All rights and remedies of the Mortgagee set out in this Mortgage, and in any other agreement or document held by the Mortgagee from the Mortgagor or any other person to secure payment and performance of the Obligations, are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future Mortgage now or hereafter existing at law, in equity or by statute, or pursuant to any other agreement between the Mortgagor and the Mortgagee that may be in effect from time to time.

17. APPOINTMENT OF ATTORNEY

The Mortgagor hereby irrevocably appoints the Mortgagee or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Mortgagor for and in the name of the Mortgagor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Mortgagor is obliged to sign, endorse or execute and generally to use the name of the Mortgagor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Mortgagee or the Receiver, as the case may be, pursuant to this Mortgage.

18. LIABILITY TO ADVANCE

None of the preparation, execution, perfection and registration of this Mortgage or the advance of any monies shall bind the Mortgagee to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Mortgagor to the Mortgagee.

19. RENEWAL

The Mortgagor covenants with the Mortgagee that any agreement in writing between the Mortgagor and the Mortgagee for renewal of this Mortgage or extension of the term for payment of the money payable hereunder, or any part thereof, or for any change in the terms herein, prior to the execution by the Mortgagee of a discharge or release of this Mortgage, need not be registered, but shall be effectual and binding to all intents and purposes on the lands and on the Mortgagor, and on any mortgagee, assignee or transferee who acquires an interest in the lands or any part thereof subsequent to the date of this Mortgage and shall take priority as against such mortgagee, assignee or transferee when deposited with or held at the office of the Mortgagee and shall not release or affect any covenant or agreement herein or collateral hereto.

20. SUBDIVISION, RELEASE AND REPLACEMENT OF PROPERTY

The Mortgagor hereby agrees with the Mortgagee that:

- (a) Every part or lot into which the Property is or may hereafter be divided does and shall stand charged with the whole of the Obligations hereby secured and no person shall have any right to require the Obligations to be apportioned upon or in respect of any such part or lot.
- (b) The rights of the Mortgagee hereunder shall not be prejudiced nor shall the liability of the Mortgagor or any other person liable hereunder be reduced in any way or discharged by the taking of any other security, evidence of indebtedness or covenant for payment of any nature or kind whatsoever either at the time of execution of this Mortgage or at any time hereafter.
- (c) The Mortgagee may from time to time release or discharge the whole or any part or parts of the Property or any other security or any surety for the Obligations payable hereunder for such consideration as the Mortgagee shall think proper or without any or any sufficient consideration without being accountable for the value thereof or for any monies except those actually received by the Mortgagee and may at any time and from time to time without notice to or any consent or concurrence by any person make any settlement, extension or variation in terms of any obligation hereunder and no such release, discharge, settlement, extension or variation in terms nor any carelessness or neglect by the Mortgagee in asserting its rights nor any other thing whatsoever, including, without in any way limiting the generality of the foregoing, the loss by operation of law of any right of the Mortgagee against the Mortgagor or any other person or the loss or destruction of any

security shall in any way release, diminish or prejudice the security of this Mortgage as against any Property remaining undischarged or release or prejudice any covenants herein contained or release or diminish the liability of the Mortgagor or any other person liable hereunder so long as any Obligations expressed by this Mortgage to be payable remains unpaid, and no security or surety shall be deemed to be released or discharged save by a formal release or discharge executed by the Mortgagee.

21. WAIVER

The Mortgagee may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this Mortgage but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be. No waiver shall be effective unless it is in writing and signed by the Mortgagee. No delay or omission on the part of the Mortgagee shall operate as a waiver of such right or any other right.

22. NOTICE

Notice may be given to either party by delivering the same to the party for whom it is intended, at the principal address of such party provided herein or at such other address as may be given in writing by such party to the other.

23. EXTENSIONS

The Mortgagee may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security interests, and otherwise deal with the Mortgagor, sureties and others and with the Property as the Mortgagee may see fit without prejudice to the liability of the Mortgagor or the Mortgagee's right to hold and realize on the security constituted by this Mortgage.

24. NO MERGER

This Mortgage shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security interest of any form held or which may hereafter be held by the Mortgagee from the Mortgagor or from any other person whomsoever. The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the covenants contained in this Mortgage.

25. ASSIGNMENT

The Mortgagee may, without further notice to the Mortgagor, at any time assign, transfer or grant a security interest in any of the Obligations or this Mortgage. The Mortgagor expressly agrees that the assignee, transferee or secured party, as the case may be, shall have all of the Mortgagee's rights and remedies under this Mortgage and the Mortgagor will not assert any defense, counterclaim, right of set-off or otherwise against any party in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

26. SATISFACTION AND DISCHARGE

Any partial payment or satisfaction of the Obligations, or any ceasing by the Mortgagor to be indebted to the Mortgagee from time to time, shall be deemed not to be a redemption or discharge of this Mortgage. The Mortgagee may in its sole discretion grant partial discharges or releases in respect of any of the Property on such terms and conditions as it shall deem fit and no such partial discharges or releases shall affect the Mortgage on the remainder of the Property or alter the Obligations of the Mortgagor. The Mortgagor shall be entitled to a release and discharge of this Mortgage upon full payment and satisfaction of all Obligations and upon written request by the Mortgagor and payment of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Mortgagee in connection with the Obligations and such release and discharge.

27. ENUREMENT

This Mortgage shall enure to the benefit of the Mortgagee and its successors and assigns, and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Mortgagor.

28. INTERPRETATION

In this Mortgage:

- (a) "Mortgagor" and the personal pronouns "he", "his", "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Mortgagor is one or more individuals, corporations or partnerships;
- (b) each of the provisions contained in this Mortgage is distinct and severable and the invalidity or unenforceability of the whole or any part of any clause of this Mortgage shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- (c) the headings of the clauses of this Mortgage have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Mortgage;
- (d) words in the singular shall include the plural, and vice versa, and the masculine, feminine and neuter genders are used interchangeably and shall be deemed to include the other genders;
- (e) this Mortgage shall be governed by the laws of the Province of New Brunswick.

29. TIME

Time shall in all respects be of the essence.

30. JOINT AND SEVERAL

If more than one Mortgagor executes this Mortgage, the obligations of such Mortgagors shall be joint and several.