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BB465271

2nd

**LAND TITLE ACT
FORM B**

(Section 225)

Province of
British Columbia**MORTGAGE - PART 1**

(This area for Land Title Office use)

PAGE 1 of 30 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

OWEN BIRD LAW CORPORATION
2900 - 595 Burrard Street
Vancouver, B.C. V7X 1J5
Telephone: (604) 688-0401

Client No. 010996 (File No. 27060-0004)

CELIA KLETT
AGENT
CLIENT NO. 12040

Signature of Applicant's Agent, Gina Elsey

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID)

(LEGAL DESCRIPTION)

017-490-146

Lot A Section 20 Township 17 NWD Plan LMP1741

3. BORROWER(S) [MORTGAGOR(S)]: (including postal address(es) and postal code(s))*

SEE SCHEDULE

88 07/02/07 14:54:13 01 LH
CHARGE757618
\$130.40

4. LENDER(S) [MORTGAGEE(S)]: (including occupation(s), postal address(es) and postal code(s))*

1397225 ONTARIO LIMITED (Inc. No. A0067673), having an office at 5650 Yonge Street, Suite 300,
Toronto, Ontario M2M 4H5

5. PAYMENT PROVISIONS:**

(a) Principal Amount	(b) Interest Rate:	(c) Interest Adjustment Date:	Y	M	D
\$3,700,000.00	14.00% per annum	N/A			
(d) Interest Calculation Period:	(e) Payment Dates:	(f) First Payment Date:			
Monthly, not in advance	1 st day of each month	SEE SCHEDULE			
(g) Amount of each periodic payment:	(h) Interest Act (Canada) Statement: The equivalent rate of interest calculated half yearly not in advance is N/A % per annum.	(i) Last Payment Date:			
SEE SCHEDULE		SEE SCHEDULE			
(j) Assignment of Rents which the applicant wants registered?	(k) Place of Payment	(l) Balance Due Date:			
YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> If YES, page and paragraph number: Part 2, Page 21, Paragraph 14	Postal Address in Item 4	SEE SCHEDULE			

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space in any box insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

This is Exhibit 0 referred to in the affidavit of

MARK KATZ sworn (or affirmed)

before me on [dd/mm/yyyy] 14

A Commissioner for taking Affidavits
within British Columbia
Ontario

MORTGAGE FORM - PART 1

Page 2

6. MORTGAGE contains floating charge on land? YES ☐ NO ☒ 7. MORTGAGE secures a current or running account? YES ☒ NO ☐

8. INTEREST MORTGAGED:

Freehold ☒
Other (specify) ☐ *

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

(a) Prescribed Standard Mortgage Terms ☒(b) Filed Standard Mortgage Terms ☐(c) Express Mortgage Terms ☒

D.F. No.

(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in Item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:*

N/A

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER: *

Mortgage B8 465267 and Assignment of Rents B8 465268 in favour of 1397225 Ontario Limited in the principal amount of \$25,360,000.00;

Legal Notations: This title may be affected by permits (See BV66362, BX311528) and Hereto is annexed Easement BE285794; Statutory Right of Way BE76277, Covenants BE76280, BE76282, BN43344; Easements BE247061 and BR308003

12. EXECUTION(S):** This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in Item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)

Execution Date

Y M D

07 01 17

Borrower(s) Signature(s)

682202 B.C. LTD.

by its authorized signatory(ies):

Name:

JOANNE B. CHIA
Barrister & Solicitor
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-640-4219

(AS TO BOTH SIGNATURES)

Name:

Print Name:

MICHAEL CHIA

Print Name:

Kelly Lamm

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Page 3

Officer Signature(s)

Execution Date

Y M D

Covenantor(s) Signature(s)



Robert Miller

Barrister and Solicitor
185 Sheppard Ave W
Toronto, ON M2N 1M9

AS TO ALL SIGNATURES

2007 02 01

KINGSWAY ARMS MANAGEMENT
SERVICES INC., by its authorized
signatory(ies):

Print Name:

Patrick Byrne

Print Name:

KINGSWAY ARMS HOLDINGS INC., by
its authorized signatory(ies):

Print Name:

Patrick Byrne

Print Name:

KINGSWAY ARMS HOLDINGS B.C. LTD.
LTD., by its authorized signatory(ies):

Print Name:

Patrick Byrne

Print Name:

PATRICK BYRNE

GRAHAM PARKER

2007 02 01

Robert Miller

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

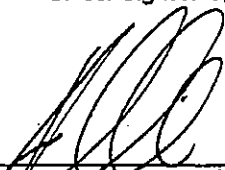
- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

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Officer Signature(s)



Name: **JO-ANNE B. CHIA**
Barrister & Solicitor
 1200 Waterfront Centre, 200 Burrard Street
 P.O. Box 48600, Vancouver, Canada V7X 1T2
 604-640-4218

(AS TO BOTH SIGNATURES)

Name:


Name:

Execution Date

Y	M	D

Covenantor(s) Signature(s)

CHAPLIN VENTURES LTD., by its
 authorized signatory(ies):


 Print Name: **MICHAEL CHAPLIN**

Print Name:


MICHAEL CHAPLIN

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Page 5

Officer Signature(s)


JO-ANNE B. CHIA
Barrister & Solicitor
 1200 Waterfront Centre, 200 Burrard Street
 P.O. Box 48800, Vancouver, Canada V7X 1T2
 604-640-4219

Name:

(AS TO BOTH SIGNATURES)

Name:

Name:

Name:

Execution Date

Y	M	D
07	01	17

Covenantor(s) Signature(s)

COLTER INVESTMENTS (GP) LTD., by its
authorized signatory(ies):

Print Name:

Print Name:

COLTER INVESTMENTS LP, by its General
Partner COLTER INVESTMENTS (GP) LTD.:

Print Name:

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

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Officer Signature(s)

Execution Date

Y M D

Covenantor(s) Signature(s)

0780293 B.C. LTD., by its authorized
signatory(ies):

Print Name: DEWDIS BIGHAM

Print Name: _____

ROBERT A. TONSOO
LAWYER & NOTARY
260 - 270 HWY 33 W
KELOWNA BC V1X 1X7
491-0206

AS TO ALL SIGNATURES

Y	M	D
07	01	24

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

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- ** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT**FORM E****SCHEDULE**

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3. BORROWER(S):

682202 B.C. LTD. (Inc. No. 682202) (as Borrower); and

KINGSWAY ARMS MANAGEMENT SERVICES INC., KINGSWAY ARMS HOLDINGS INC., CHAPLIN VENTURES LTD. (Inc. No. BC0700802), **COLTER INVESTMENTS (GP) LTD.** (Inc. No. BC0757134), **PATRICK BYRNE, GRAHAM PARKER, KINGSWAY ARMS HOLDINGS B.C. LTD.** (Inc. No. BC0775394), **MICHAEL CHAPLIN, COLTER INVESTMENTS LP and 0780293 B.C. LTD.** (Inc. No. 0780293) (collectively, as Covenantor)

all care of 1200 – 200 Burrard Street, Vancouver, B.C., V7X 1T2

5. PAYMENT PROVISIONS:**5(f) First Payment Date:**

The First Payment Date shall be the 1st day of the month which follows the month during which the Initial Drawdown occurs.

5(g) Amount of each Periodic Payment:

The Borrower shall pay interest on the 1st day of each month on the Principal Amount outstanding from time to time from the Initial Drawdown to the Balance Due Date. Provided however, at the option of the Lender, the Lender may deduct from any advance of a portion of the Principal Amount, any interest which shall have accrued on the Principal Amount outstanding at the date of such advance. If no advance is made in a calendar month, accrued interest will be billed and payable by way of pre-authorized chequing arrangements or such other arrangement approved by the Lender, on the 1st day of the month.

5(i) Last Payment Date:

The earlier of:

- (i) on demand; or
- (ii) Twelve (12) months after the Balance Due Date of the First Mortgage; or
- (iii) Forty-eight (48) months after the Initial Drawdown.

5(l) Balance Due Date:

The earlier of:

- (i) on demand; or
- (ii) Twelve (12) months after the Balance Due Date of the First Mortgage; or
- (iii) Forty-eight (48) months after the Initial Drawdown.

Land Title Act
MORTGAGE TERMS – PART 2

Page 8

Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

EXPRESS MORTGAGE TERMS

1. Definitions and Interpretation

1.1 In This Mortgage:

- (a) The "Act" means the *Community Care and Assisted Living Act*, SBC 2002, as amended from time to time;
- (b) "Borrower" means each Person who is named as and who executes the Mortgage Form as a borrower or mortgagor;
- (c) "Business Day" means any day that is not a "holiday" as that word is defined in the Interpretation Act, R.S.B.C. 1996 ch. 238 and the Lender is open for business at its Place of Payment;
- (d) "Commitment Letter" means the letter from the Lender to the Borrower dated October 24, 2006 (and any assignments or amendments to the letter) setting out the terms and conditions of the loan to be secured by this Mortgage;
- (e) "Covenantor" means each Person who is named as and who executes the Mortgage Form as a covenantor;
- (f) "Date of Advance" means the earlier of the date of any advance or readvance of money under this Mortgage or the date at which the Lender has at the Borrower's request made funds available to make an advance or readvance of money;
- (g) "Default" includes each of the events of default listed in Section 10.1;
- (h) "First Mortgage" means, collectively, the mortgage and assignment of rents securing the principal sum of \$25,360,000.00 granted by the Borrower in favour of the Lender to be registered as a first charge against the Land;
- (i) "Fixtures" includes, but is not limited to, all buildings, erections, improvements, machinery, plant furnaces, oil burners, boilers, air conditioning, ventilation, cooling equipment, water heaters, electric fixtures, window blinds, plumbing and heating equipment, hot water tanks, wall to wall carpeting, screen and storm doors, storm windows, aerials, television antennae, satellite dishes, refrigerators, stoves, telecommunication systems, security systems, elevators, central vacuum systems, now or hereafter placed or installed on the Land;
- (j) "Indebtedness" means the Principal Amount plus all Other Money, all of which is secured by this Mortgage;

Land Title Act
Form E
SCHEDULE

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Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

- (k) **"Initial Drawdown"** means the date on which the first Date of Advance occurs. In accordance with the Commitment Letter, the Initial Drawdown shall occur no later than April 30, 2007, or such other date as may be mutually agreed to by the Borrower and the Lender;
- (l) **"Land"** means all the Borrower's present and future interest in the land described in item 2 of the Mortgage Form, including every incidental right, benefit or privilege attaching to that land or running with it and all Fixtures that are now or later attached to the Land;
- (m) **"Lender"** means the Person designated in item 4 of the Mortgage Form;
- (n) **"Loan Payment"** means the amount of each periodic payment designated in item 5 (g) of the Mortgage Form;
- (o) **"Mortgage"** means the Mortgage Form;
- (p) **"Mortgage Form"** means Form B under the Land Title (Transfer Forms) Regulation and all schedules and addenda to Form B;
- (q) **"Other Money"** means all money other than the Principal Amount, that the Borrower owes to the Lender and the payment of which is secured by this Mortgage and includes all accrued interest;
- (r) **"Payment Dates"** means the payment dates designated in item 5 (e) of the Mortgage Form;
- (s) **"Permitted Encumbrance"** means the Prior Charges referred to in item 11 of the Mortgage Form;
- (t) **"Person"** includes an individual, a corporation, a governmental or quasi-governmental body, a partnership of individuals or corporations, or a combination thereof;
- (u) **"Place of Payment"** means the place of payment designated in item 5(k) of the Mortgage Form or such other address as the Lender may advise by written notice;
- (v) **"Principal Amount"** means the amount of money specified as the principal amount in item 5 (a) on the Mortgage Form reduced by payments made by the Borrower from time to time and applied against the Principal Amount or increased by the advance or readvance of monies to the Borrower by the Lender from time to time and includes all money that is later added to the Principal Amount pursuant to the terms of this Mortgage;
- (w) **"Strata Property Act"** means the "Strata Property Act, SBC 1998, C43, as amended or replaced from time to time;
- (x) **"Taxes"** includes all taxes, rates or assessments of every kind which are:
 - (i) payable to any Person in respect of the Land, its use and occupation or this Mortgage; or
 - (ii) levied, charged or assessed upon and in respect of:
 - a) any machinery and equipment on the Land;

Land Title Act
Form E
SCHEDULE

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Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

- b) local improvements and sewers;
- c) the lending of the Principal Amount;
- d) any transaction between the Borrower and the Lender; or
- e) the provision of materials, goods and services, including legal services rendered in connection with this Mortgage or the Land,

but does not include any tax payable on the income of the Lender.

1.2 Paragraph titles are inserted for convenience only and are not to be taken into account or looked at for the purposes of interpreting and giving full effect to the true meaning and intent of any of the terms of this Mortgage.

1.3 The division of this Mortgage into paragraphs has been made for the purposes of convenience and such divisions shall not, unless the express provisions of this Mortgage provide or the context clearly requires, be taken into account for the purposes of interpreting and giving full effect to the true meaning and intent of the terms of this Mortgage.

1.4 All references in this Mortgage to the words "herein" or "hereunder" shall be construed to being referred to this Mortgage as a whole and shall not be construed to refer only to a specific paragraph or clause of this Mortgage unless the context clearly requires such construction.

1.5 This Mortgage, including the covenants of the Covenantor provided herein shall be governed by and construed in accordance with the laws of the Province of British Columbia. This mortgage is made pursuant to the Land Transfer Form Act, Part 3, R.S.B.C. 1996 and amendments.

1.6 All grants, covenants, provisos and agreements, rights, powers, privileges and liabilities contained in this Mortgage are to be read and held as if made by, with, granted to and imposed upon the parties hereto and their respective heirs, executors, administrators, successors and assigns as if the words had been inscribed in all the necessary places.

1.7 Wherever the singular or masculine is used throughout this Mortgage, the same shall be construed as meaning the plural or the feminine, or body corporate where the context or the parties hereto so require.

1.8 If any of the terms of this Mortgage are held to be unenforceable or otherwise invalid, such holding will not, in any way, affect the enforceability or validity of the remaining terms of this Mortgage.

1.9 If any party to this Mortgage is comprised of two or more Persons, then all the covenants and agreements of such party shall be joint and several covenants or agreements of each such Person.

1.10 Time is of the essence of this Mortgage.

2. Grant and Mortgage

Land Title Act
Form E
SCHEDULE

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Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

2.1 In consideration of the Lender agreeing to lend the Principal Amount to the Borrower on the terms of this Mortgage, the Borrower grants and mortgages the Land to the Lender as security for the repayment of the Principal Amount and Other Money and for the performance of all the Borrower's covenants and agreements under this Mortgage.

3. **Redemption and Discharge**

3.1 If the Borrower has performed all the Borrower's covenants and agreements and all the terms of this Mortgage have been complied with, then the Borrower shall be entitled, within a reasonable period of time, at the Borrower's cost, to receive a discharge of this Mortgage.

THE BORROWER COVENANTS AND AGREES WITH THE LENDER AS FOLLOWS:

4. **Interest**

4.1 The Borrower shall pay the Lender interest on the Principal Amount and Other Money at the Interest Rate calculated in accordance with the Interest Calculation Period from the Date of Advance to the date of payment, both before and after default, judgement, or the Maturity Date.

4.2 If the Borrower fails to make a Loan Payment on a Payment Date or any other payment as required by this Mortgage when the same become due, then the Lender may charge compound interest on arrears of the Principal Amount and on arrears of interest and any Other Money until the same are paid by the Borrower at the Interest Rate.

4.3 If the Interest Rate stipulated in this Mortgage or charge on the Indebtedness would, except for this clause, be a criminal rate, or void for uncertainty, or unenforceable for any other reason, or not be able to be ascertained, or is determined by a court to be subject to deemed reinvestment of interest, then the Interest Rate (the "Backup Rate") chargeable on the credit so advanced or secured will be one (1.0%) percent per annum less than the maximum rate that would not be a criminal rate calculated in accordance with generally accepted actuarial practices and principles; NOTWITHSTANDING any other provision of this Mortgage, the Borrower will not pay or tender for payment any interest, cost, fee, bonus, fine, penalty, commission or other similar charge or expense that would result in payment of interest at a rate higher than the Backup Rate. If any such payment is tendered contrary to this clause, it will be applied to the Principal Amount or, if no Principal Amount is then outstanding, refunded by the Lender to the Borrower without interest on demand.

5. **Covenant to Pay**

5.1 The Borrower shall pay the Lender interest on the Principal Amount, calculated at the Interest Rate, from the Date of Advance, to the Interest Adjustment Date and thereafter, the Borrower shall pay the Lender the Loan Payments, on the Payment Date, commencing on the first Payment Date and continuing in consecutive monthly instalments to and including the Maturity Date, when the Indebtedness will be due and payable in full.

5.2 The Borrower shall make all payments due under this Mortgage to the Lender at the Place of Payment.

Land Title Act
Form E
SCHEDULE

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Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

5.3 The Borrower shall pay the Lender the Principal Amount, and Other Money without any setoff, deduction, or abatement whatsoever.

5.4 Any payments made under this Mortgage whether of the Principal Amount or Other Money received by the Lender after 2:00 p.m. Vancouver, British Columbia time on any date shall be deemed to have been received by the Lender and credited to the Borrower's account under this Mortgage on the next following Business Day.

5.5 The Lender will apply each Loan Payment firstly to pay interest calculated as provided in this Mortgage and the balance of any payment (if any) shall be applied to reduce the Other Money and the Principal Amount.

5.6 The Borrower shall have no right to prepay all or any part of the Principal Amount for a period of twenty-four (24) months from the Initial Drawdown (the "Closed Period"). After the Closed Period, the Borrower shall have the right to prepay all, but not part, of the Indebtedness owing under this Mortgage without notice, bonus or penalty, upon providing the Lender with sixty (60) days prior written notice.

5.7 The Borrower shall pay, as they fall due and before any penalty attaches for non-payment thereof all Taxes and without limiting the provisions of this paragraph:

- (a) the Lender may deduct from an advance of any part of the Principal Amount a sum of money sufficient to pay Taxes or any portion thereof which have become or shall become due and payable and are unpaid at the Date of Advance hereunder;
- (b) the Lender may also deduct from an advance of any part of the Principal Amount a sum of money, which, when added to the total of monthly instalments provided for in clause 5.7(c) falling due prior to the next due date for the payment of Taxes, shall be sufficient to enable the Lender to pay the whole amount of the annual Taxes as estimated by the Lender on the next due date for payment thereof or if the Taxes are payable in instalments on the next due date for the payment of the first instalment thereof;
- (c) the Borrower shall, at the option of the Lender pay the Lender in monthly instalments, 1/12th of the amount as estimated by the Lender of the annual Taxes and the Borrower will also pay the Lender on demand, the amount if any, by which the annual taxes exceed the annual amount;
- (d) the Borrower shall transmit to the Lender all assessment notices, Tax bills and other notices concerning the imposition of Taxes forthwith after receipt by the Borrower;
- (e) the Lender shall not be liable to pay the Borrower interest on any amounts paid to the Lender on account of Taxes;
- (f) all sums paid to the Lender pursuant to this paragraph may be accumulated by the Lender and shall constitute a pledge for the execution of all obligations in the Lender's favour arising out of this Mortgage. In the event of any default under this Mortgage by the Borrower, the Lender shall have the right to apply such sums in whole or in part in discharge of any amounts owing to the Lender hereunder, but the Lender undertakes that when the Taxes fall due, and if the Borrower has transmitted the assessment notices, tax bills or other notices concerning the imposition of Taxes to the Lender, as

Land Title Act
Form E
SCHEDULE

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Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

provided pursuant to this paragraph, then, the Lender shall apply any sums so accumulated in payment of the Taxes thereof.

6. Covenants as to Title

- 6.1 The Borrower has good title to the Land subject only to the Permitted Encumbrances.
- 6.2 The Borrower has the right to convey the Land to the Lender, subject to the Permitted Encumbrances.
- 6.3 The Borrower is the legal and beneficial owner of the Land.
- 6.4 On default, the Lender shall have quiet possession of the Land, free from all encumbrances save only for the Permitted Encumbrances provided that until default of payment, the Borrower shall have quiet possession of the Land.
- 6.5 The Borrower shall execute such further assurances as the Lender may reasonably require including, without limitation, any and all documents required by the Lender in connection with the Personal Property Security Act of British Columbia.
- 6.6 The Borrower has done no act to encumber the Land, save and except the Permitted Encumbrances.

7. Insurance

- 7.1 The Borrower shall insure and until this Mortgage is discharged shall keep insured each and every building, structure, Fixture, and replacement thereof now on the Land or which may hereafter be erected against loss or damage by fire and such other perils as the Lender may reasonably require (including but not limited to boiler insurance, loss of rental income, and business interruption insurance).
- 7.2 The Borrower shall keep and maintain third party liability insurance in an amount satisfactory to the Lender.
- 7.3 All insurance coverage required by the Lender shall be issued by insurers in a format and upon terms and in amounts acceptable to the Lender and the Borrower shall cause the Lender to be named as a loss payee as its interest may appear in respect to the Land on the policy or policies of insurance effected by the Borrower and shall cause mortgage clauses in a form approved by the Lender to be included in such policy or policies and shall provide evidence of such insurance forthwith upon demand.
- 7.4 The Borrower shall pay all insurance premiums as the same become due.
- 7.5 The Borrower shall forthwith assign, transfer and deliver over to the Lender the interest of the Borrower in the insurance policy.
- 7.6 The Borrower shall forthwith, on the happening of any loss or damage furnish or cause to be furnished to the Lender at the Borrower's expense all necessary proofs and do all necessary acts to enable the Lender to obtain payment of insurance monies.

Land Title Act
Form E
SCHEDULE

Page 14

Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

7.7 Any insurance monies received may, at the option of the Lender be applied to a suspense account or in or to rebuilding, reinstating or repairing all or any portion of the Land or be paid to the Borrower or any other Person appearing by the registered title to be or to have been the owner of the Land or be applied or paid partly in one way and partly in another or such monies may be applied, in the sole discretion of the Lender in whole or in part, in repayment of the Indebtedness, whether due or not then due.

7.8 To ensure that the Lender may apply for insurance monies in the manner herein contemplated, the Borrower shall assign and release to the Lender as the Lender deems necessary all of the Borrower's rights to receive insurance monies and expressly waives the Borrower's rights and benefits under the Insurance Act, R.S.B.C., 1996 c.226 and amendments thereto and the Fire Prevention (Metropolis) Act, 1774 and any amendments thereto and under any successor legislation.

8. Use, Alterations and Repairs

8.1 The Borrower shall not, without the express written consent of the Lender change the present use of the Land or permit the Land to be unoccupied or unused.

8.2 The Borrower shall comply with all laws, ordinances, regulations, orders and directions of every governmental, municipal, and civil authority or agency concerning the Land and further agrees at the cost and expense of the Borrower to do and perform all the acts and things which may be required at any time under any present or future laws, ordinances, regulations, orders and directions.

8.3 The Borrower shall keep the Land and all buildings, structures, and Fixtures in good condition and repair according to the nature and description thereof respectively, and shall not commit any act of waste or allow any act of waste to be committed upon the Land.

8.4 The Borrower shall not remove or demolish any buildings, structures or improvements on the Land or commence any structural alterations, improvements, or additions without the prior written consent of the Lender.

9. Lender's Election to Make Payments and Cure Defaults

9.1 If the Borrower fails to make any payment which the Borrower has covenanted or agreed to make by this Mortgage, or if the Borrower fails to provide proof of making such payment to the Lender upon demand, then the Lender may make such payment on behalf of the Borrower.

9.2 If the Borrower fails to perform or cause to be performed any covenant or agreement herein contained on the part of the Borrower, or the Borrower fails to provide proof of performance to the Lender upon demand, the Lender may in its sole discretion perform or cause to be performed any such covenant or agreement and may do such acts as it considers are reasonable, to protect the interest of the Lender and for such purposes, the Lender and its authorized representatives may enter onto the Land. Without limiting the generality of the foregoing, the Lender may also:

- (a) Insure the buildings, structures, and Fixtures on the Land in accordance with the provisions hereof if the Borrower neglects to insure or deliver policies and receipts in accordance herewith;

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- (b) Repair and reinstate the buildings, structures, and Fixtures on the Land if the Borrower fails to repair in accordance herewith or demolishes or alters such buildings, structures, or Fixtures in contravention hereof;
- (c) Without any order or direction of the Borrower pay to contractors, sub-contractors, material men, labourers and other Persons supplying or having a claim for work, services or materials supplied in or about the construction, repairing, altering or replacing of any building, structure, or Fixture any monies due to them for such work, services or materials;
- (d) Pay common expenses, assessments, contributions, or levies required to be paid in connection with any strata lot comprising the Land;

Provided that the Lender shall not be bound to exercise its rights hereunder and if the Lender exercises its rights hereunder, it shall not be liable to the Borrower for any loss or damage suffered by the Borrower.

9.3 If the Lender makes payment to any creditor of the Borrower or encumbrance holder in respect of the Land, the Lender shall be entitled to all equities and securities held by such creditor or encumbrance holder in respect of the indebtedness or encumbrance paid or satisfied.

9.4 All payments made and all sums of money expended by the Lender under this paragraph 9, including incidental costs, charges, and expenses and outlays incurred in doing anything under this paragraph 9, shall forthwith be payable by the Borrower on demand with interest at the Interest Rate until paid and until paid shall form part of the Indebtedness.

9.5 Nothing done by the Lender in reliance on the provisions of this paragraph 9 shall in any manner prejudice the remedies of the Lender in respect of any default of the Borrower or otherwise.

10. **Acceleration of Payment**

10.1 Each of the following events set out in paragraph 10.1 (a) to (q) shall be considered to be an event of Default:

- (a) There is default in payment of any of the Principal Amount, interest, or Other Money due under this Mortgage;
- (b) There is a breach of any of the Borrower's covenants or other obligations contained herein;
- (c) The Borrower or the Covenantor becomes bankrupt or insolvent or makes an assignment for the benefit of, or a proposal to, or an arrangement with its creditors or any action is taken or proceeding instituted, whether by the Borrower or any other Person whereby the Borrower may be dissolved, wound up, reorganized, or declared bankrupt or insolvent;
- (d) An encumbrancer takes possession of the Land or any part thereof or a receiver is appointed with respect to all or any part of the Land;
- (e) The whole or any part of the Land is expropriated or becomes subject to an order of expropriation;

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- (f) In the sole opinion of the Lender the Borrower in any way causes or permits the value of the Land to diminish;
- (g) The Borrower fails to observe or perform any of the provisions of any agreement or Commitment Letter pursuant to which any monies secured by this Mortgage were advanced or there is any default by the Borrower or the Covenantor under any other loan agreement to which the Borrower or the Covenantor is a party with the Lender;
- (h) Any warranty or representation made by the Borrower or the Covenantor in connection with the loan secured by this Mortgage is or becomes untrue in any material respect;
- (i) The Borrower is a company and without the prior written consent of the Lender there is any change in the ownership of the shares of the Borrower;
- (j) The Borrower sells, conveys or otherwise transfers the Borrower's title to the Land or any part thereof without the prior express written consent of the Lender;
- (k) The Borrower grants any mortgage, charge or encumbrance against the Land or any part thereof including an option to purchase or right of first refusal without the prior written consent of the Lender;
- (l) There occurs any material change in the financial position of the Borrower or any Covenantor;
- (m) The Land become comprised of in whole or in part one or more strata lots and:
 - (i) the building is destroyed or is considered to be destroyed within the meaning of Part 16 of the Strata Property Act;
 - (ii) the strata corporation fails to comply with any provision of the Strata Property Act and the Lender in its sole opinion considers such failure to be material; or
 - (iii) strata plans are amended, whether by division consolidation or redesignation of the strata lots, the common property, or any limited property or otherwise or the boundaries of the strata lots, the common property, or any limited property are modified or removed and the Lender in its sole discretion considers such amendment, modification or removal to be material;
- (n) The Land is left vacant or unoccupied for a period exceeding 20 days;
- (o) The holder (including the Lender, if such be the case) of any mortgage, charge or encumbrance on the Land, whether or not ranking prior to or pari passu with the charges created by this Mortgage, does anything to enforce or realize on such mortgage, charge or encumbrance;
- (p) The Borrower sells, conveys or otherwise transfers all or any portion of the Borrower's beneficial interest in the Land without the express written consent of the Lender;
- (q) There is a breach of any of the Borrower's covenants or obligations under the Permitted Encumbrances.

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10.2 On the happening of an event of Default, then, at the option of the Lender:

- (a) The Principal Amount, interest, and all Other Monies owing hereunder shall forthwith become due and payable and the security constituted hereby shall become enforceable without notice as if the Maturity Date had fully come and expired and notwithstanding this Mortgage is to be declared to be made in pursuance of Part 3 of the Land Transfer Form Act, R.S.B.C., 1996 c.252 and amendments thereto, it is expressly understood and agreed by the Borrower that the reinstatement provisions in the form of the words numbered 15 in column 2 of Schedule 6 in the Land Transfer Form Act Part 3 shall have no force and effect in respect to this Mortgage or any part of the money hereby secured, and the provisions relating to a default under this Mortgage by the Borrower shall be as set out herein and the Borrower shall not be relieved from the consequences of default by payment of monies of which default of payment has been made and costs and charges related thereto;
- (b) The Lender shall have possession of the Land, free and clear from all encumbrances subject only to the Permitted Encumbrances;
- (c) The Lender may exercise any and all remedies to enforce this Mortgage.

11. **Remedies on Default**

11.1 In the event of a Default by the Borrower under the terms and conditions of this Mortgage, then:

- (a) The Lender may enter into possession, either by itself or by its agent of the Land and whether in or out of possession collect the rents thereof and make any other demise or lease of the Land or any part thereof for such terms, periods and at such rents as the Lender shall think proper and the power of sale thereunder may be exercised either before or after and subject to any demise or lease;
- (b) The Lender may sell and dispose of the Land with or without entering into possession of the Land and with or without notice to the Borrower or any other party interested in the Land and all remedies may be resorted to and all rights, powers and privileges granted to or conferred upon the Lender under and by virtue of any statute or by this Mortgage may be exercised;
- (c) No want of notice or publication, nor any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Land hereunder, but the vendor alone shall be responsible;
- (d) If the Borrower's interest in the Land is a leasehold interest, then the Borrower irrevocably appoints the Lender as the Borrower's substitute to be the Borrower's attorney during the continuance of this Mortgage. In the event of default and on the giving of the notice (if any) contemplated herein to the Borrower for and on behalf of the Borrower, the Lender may assign the lease and convey the Land and the last day of the term granted by the lease as the Lender shall at any time direct and, in particular, upon any sale made by the Lender under the statutory power or power of sale herein contained to assign the lease and convey the Land in the said reversion to a purchaser;
- (e) If the Borrower's interest in the Land is a leasehold interest, then the Borrower shall, with respect to the lease at the request of the Lender but at the cost, charge and expense of the Borrower, grant and assign to the Lender or to whom the Lender may appoint the last day of the term of the lease hereinbefore

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- excepted or any renewal or substituted term and further, in the event of the Lender making any sale under power of sale herein contained, the Borrower shall stand seized and possessed of the Land for the last day of the said term hereinbefore excepted and of any renewal or substituted term and all rights of renewal in trust for the purchaser.
- (f) The Lender may sell the Land or any part thereof or if the Borrower's interest in the Land is a leasehold interest, sell the unexpired term of years demised by the lease or any part thereof by public auction or private sale and on such terms as to credit or part cash and part credit secured by contract or agreement for sale or mortgage or otherwise as shall appear to it to be the most advantageous and for such price as can be reasonably obtained thereof and make such stipulations as to title or otherwise which it thinks proper and may buy in or rescind or vary any contract for sale of any of the Land and resell without being answerable to the Borrower for any loss occasioned thereby and for any of the said purposes may make and execute all agreements and assurances which it thinks reasonably necessary and the purchaser shall in no case be bound to inquire whether notice of intention to sell has been given or default made or otherwise to the regularity or validity of any sale or lease made hereunder. In the event of a sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Lender is not to be accountable for or charged with any monies until the same shall actually be received in cash. Sales may be made from time to time of part of the Land to satisfy interest or part of the Principal Amount overdue leaving the Principal Amount or parts thereof to run with interest payable as aforesaid and the Lender may make any stipulations as to title or evidences or commencement of title or otherwise as the Lender shall deem proper and may buy in or rescind or vary any contract of sale on and sale or resale the Lender will not be answerable for any loss occasioned thereby and for such purposes may make and execute all agreements and assurances it shall deem necessary or advisable.
- (g) Any sale or lease by the Lender shall be valid as regards the purchaser or lessee and the remedy of the Borrower shall be in damages only against the Lender and any sale or lease hereunder shall not, in any way, be affected thereby;
- (h) The cost of any sale proceedings hereunder whether such sale proves abortive or not incurred in taking, recovering, or keeping possession of the Land or enforcing the personal remedies under this Mortgage or by reason of non payment of for curing payment of the indebtedness shall be payable by the Borrower whether any action or proceeding has commenced or not.

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11.2 The taking of a judgement or judgements on any of the covenants herein contained shall not operate as a merger of those covenants or affect the Lender's right to interest at the Interest Rate and times herein provided and any judgement may provide that interest thereon be computed at the Interest Rate and in the same manner until judgement is fully paid and satisfied.

11.3 All remedies stipulated for the Lender herein shall be in addition to and not restricted to the remedies of a lender at law and in equity.

11.4 Each remedy of the Lender may be enforced in priority to or concurrently with or subsequent to any other remedy or remedies of the Lender.

11.5 The Lender may realize upon various securities and the parts thereof in any order that the Lender may determine and any realization upon any security or securities shall not bar realization of any other security or securities. Unless the Land is residential premises as defined by the Residential Tenancy Act R.S.B.C., 2002 c.78 and amendments, the Lender may distrain for arrears of interest or the Principal Amount or Other Moneys secured hereby and the powers of the Lender herein may be exercised to enforce the payment of any instalment and in respect of any other default of the covenants, conditions and terms hereof.

12. Receiver

12.1 If the Borrower commits an act of default, then the Lender may, in writing appoint a Person (whether an officer or employee of the Lender or not) to be a receiver of the Land and the rents and profits derived therefrom and may remove the receiver so appointed and appoint another in his place. The term "receiver" as used in this Mortgage shall include a receiver and manager.

12.2 A receiver so appointed shall be conclusively the agent of the Borrower and the Borrower shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Lender shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct payment thereof from proceeds collected.

12.3 Nothing contained herein and nothing done by the Lender or by the receiver shall render the Lender a mortgagee in possession, or be responsible as such.

12.4 Any monies received by the receiver after providing for payment of Permitted Encumbrances and for all applicable costs, charges and expenses as to the exercise of any other powers of the receiver as herein set forth shall be applied in or towards satisfaction of the Indebtedness.

12.5 The receiver shall have the power to:

- (a) take possession of and collect rents and profits from the Land and for that purpose may take any proceedings be they legal or other proceedings in the name of the Borrower or otherwise;
- (b) carry on or concur in carrying on the business which the Borrower is conducting on and from the Land and for that purpose, with court approval where required, borrow money on the security of the Land in priority to this Mortgage; and

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- (c) lease all or any portion of the Land and for that purpose execute contracts in the name of the Borrower, which said contracts shall be binding upon the Borrower;

12.6 The rights and powers conferred herein are supplemental to and not in substitution for any other rights which the Lender may have from time to time.

13. **Strata Lot Provisions**

13.1 If the Land now, or at any other time hereafter, are comprised of one or more strata lots, then the provisions of this paragraph shall apply.

13.2 Where used in this paragraph 13, the term "buildings", "facilities", "common property", "Form F Certificate", "Form B Certificate", "owner", "strata corporation", "strata lot" and "strata plan" have the meanings attributed to them in the Strata Property Act;

13.3 The Borrower shall observe and perform all the covenants, agreements, conditions and provisos required to be observed and performed under the Strata Property Act and any bylaws, rules or regulations that may be passed by the strata corporation or any special interest section thereof, of which the Borrower is a member by virtue of the strata lots hereby charged;

13.4 The Borrower shall pay, on or before the due dates, the share of the common expenses and each and every assessment, contribution or levy made by the strata corporation thereof against the strata lot(s) and interest in the Land and shall not permit or cause to permit a situation under which the strata corporation may register a Form G Certificate in the land title office.

13.5 The Borrower will forward to the Lender within 10 days of demand by the Lender a Form F Certificate certifying that no monies are owing to the strata corporation by the Borrower;

13.6 The Borrower, shall not without the prior written consent of the Lender:

- (a) assign any of the Borrower's rights, powers, duties or obligations under the Strata Property Act or bylaws; or
- (b) give possession of any strata lot hereby charged to any Person whether on the basis of an agreement providing for the purchase of the strata lots by or on the basis of a lease, sublease, or assignment of lease for a term of one year or more or otherwise;

13.7 The Borrower shall grant to the Lender all rights and powers to vote conferred on the Borrower but neither this section nor anything done by virtue thereof shall render the Lender a mortgagee in possession;

13.8 The Borrower shall acknowledge receipt of express written notice that the Lender intends to exercise the power to vote on any matters relating to insurance, maintenance, finance or other matter affecting the security for the mortgage hereby granted;

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13.9 The Lender may, at any duly called meeting of the strata corporation of which the Lender has received express written notice, exercise the vote on matters; if the Lender or its authorized representative, agent, or proxy is present at that meeting;

13.10 The right and power to vote granted in this Mortgage to the Lender does not impose on the Lender any duty or obligation whatsoever to protect the interest of the Borrower and the Lender shall not be responsible for any consequence of any exercise of the right to vote or any failure to exercise the right to vote;

13.11 The Lender is the Borrower's agent to examine, inspect, and obtain copies of any and all records books, minutes and accounts or other documents of every nature and kind whatsoever which the Borrower is entitled to examine or inspect.

14. **Assignment of Rents**

14.1 The Borrower assigns and sets over to the Lender all rents payable from time to time under all leases of the Land or any part thereof whether presently existing or arising in the future together with the benefit of all covenants, agreements, and provisos contained in the leases.

14.2 Forthwith after making any lease of the Land or any part thereof, the Borrower will execute and deliver to the Lender an assignment in a form acceptable to the Lender of all rents payable under such lease, the benefit of all covenants, agreements, and provisos herein contained on the part of the tenant to be observed or performed and the reversion of such lease and will also execute and deliver to the Lenders all such notices and other documents as may be required in order to render such an assignment effectual in law. Neither this provision, nor the exceptions by the Lender of any such assignment shall be taken to confer upon the Borrower any power to grant a lease which is valid against the Lender unless the Lender specifically authorizes in writing the granting thereof.

14.3 Nothing contained herein shall make the Lender responsible for the collection of rents payable under any lease of the Land or any part thereof or for the performance of any covenants terms or conditions contained in any such lease.

14.4 The Lender shall not by virtue of these presents be deemed to be a mortgagee in possession of the Land.

14.5 The Lender shall be liable to account only for such rents as actually received by the Lender, less proper collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness.

14.6 No lease of the Land or any part thereof made by the Borrower shall have priority over this Mortgage without the express written consent of the Lender

15. **Construction Provisions**

If all or any portion of the proceeds of this Mortgage are to be used by the Borrower in the construction of buildings or improvements on the Land, then the following provisions shall apply:

15.1 Subject to acts of God, strikes, lockouts or other labour or industrial disturbances, the Borrower shall forthwith commence construction of the buildings and improvements on the Land (hereinafter called "the Project") in

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accordance with the plans and specifications submitted to and approved by the Lender ("the Plans and Specifications") and shall carry on such construction and installation continuously, and diligently and with dispatch until completed and the Borrower will devote its full efforts and energy to the development, construction and sale of the Project and will not, save as herein set out, depart from the Plans and Specifications, and the judgment and determination of the Lender under this paragraph shall be final and conclusive.

15.2 The Project shall be constructed in a good workmanlike manner, using first quality materials in accordance with the Plans and Specifications and shall comply with all restrictions, conditions, ordinances, codes, regulations, and laws applicable to the Land, and to the building or improvements.

15.3 All utility services necessary for the construction of the Project and operation and use thereof for its intended purpose, including but not limited to, the water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities are available to the boundaries of the Land.

15.4 The Land is contiguous to the publicly dedicated streets, roads or highways and vehicular and pedestrian access thereto is permitted or, if not, is the dominant tenement of a registered easement or easements creating the perpetual right of such access to any such publicly dedicated streets, roads or highways.

15.5 Any defects in the construction or variation of the construction in the Project as reported to the Lender by its consultants shall be promptly corrected by the Borrower to the satisfaction of the Lender.

15.6 All personal property, furniture, furnishings, Fixtures, attachments and equipment (hereinafter collectively called "the Chattels") delivered upon, attached to the Project or intended to become part of the Project shall be kept free and clear of all chattel mortgages, conditional sales agreements, vendors' liens, and all liens, encumbrances, and security interests other than as may be granted to the Lender and the Borrower shall have the absolute ownership of the Chattels and shall, from time to time, furnish the Lender with satisfactory evidence of such ownership, including searches of applicable public records.

15.7 If any proceedings are commenced seeking to enjoin or otherwise to prevent or declare invalid or unlawful the construction, occupancy, maintenance, or operation of the Project or the Land, or any portion thereof, the Borrower shall cause such proceedings to be contested in good faith and in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom and shall, without limiting the generality of foregoing resist the entry or seek the stay of any temporary or permanent injunction that may be entered and use its best efforts to bring about a favourable and speedy disposition of all such proceedings. Should the Lender in its absolute discretion deem it advisable to take proceedings either judicial or otherwise for the enforcement of the contracts and permits (as hereinafter defined) the Borrower shall join the Lender in such proceedings and does hereby grant to the Lender irrevocable authority to join the Borrower in such proceedings.

15.8 The Borrower shall forthwith provide the Lender with such documents, agreements, contracts and other materials in connection with the construction or proposed construction of the Project as the Lender may require.

15.9 The authority conferred upon the Lender and any action taken by the Lender in the exercise in such authority in making inspections of the Land procuring sworn statements, approving permits, contracts, sub-contracts and plans and specifications shall be taken by the Lender for its own protection only and the Lender shall not assume any responsibility to the Borrower or to any other Person or waive any of the obligations of the Borrower by such approval or otherwise.

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15.10 The Borrower shall cause to be paid as soon as the same are due, all claims and demands of contractors and material men and all wages, salaries, holiday pay, workers' compensation, assessments, or other charges of any nature or kind (hereinafter called "charges"), which could, on any circumstances, constitute a lien or charge having priority over this Mortgage or any future advance hereunder and the Borrower will, from time to time on demand provide the Lender with such books, payrolls or other records, receipts, certificates and declarations as the Lender may deem necessary to satisfy itself that such charges have in fact been paid as the same are due.

15.11 On default by the Borrower under the Mortgage, the Lender shall have the right in addition to any other remedies which the Lender may have to:

- (a) enter upon the Land and complete the Project with such changes as the Lender may deem appropriate in its absolute discretion, which work will be done at the cost and expense of the Borrower;
- (b) discontinue at any time any work commenced on the Land or change any course of action taken by the Borrower;
- (c) assume any of the contracts made by the Borrower and take over and use all of the labour, material, supplies and equipment contracted by the Borrower;
- (d) engage builders, contractors, architects, engineers and other staff and trades as may be necessary for the purpose of completing construction of the Project;
- (e) pay, settle, or compromise all bills or claims which may become liens against the Land; and
- (f) generally to take all or refrain from taking all such action hereunder as the Lender may, from time to time determine.

The Borrower shall be liable to the Lender for all sums paid by the Lender or incurred to construct or complete the Project and all such payment or liabilities incurred by the Lender shall be paid by the Borrower to the Lender upon demand with interest at the Interest Rate from the date of payment by the Lender to the payment date of such sums to the Lender. The Borrower hereby irrevocably constitutes and appoints the Lender as its true and lawful attorney in order to complete such acts.

15.12 Unless otherwise expressly agreed to in writing by the Lender, the Borrower shall:

- (a) utilize and pay any sums advanced hereunder for "Project Costs" which include all costs which may be incurred for the construction, interest, taxes, professional fees, insurance promotion, maintenance, and other items in connection with the erection and sale of the Project, but does not include any element of profit, interest, bonus, salary, or wage, other than such salary, wage or bonus that would normally be paid, return of invested capital, repayment of loans, withdrawal of equity to for or by the Borrower or for any "insider", "associate", or "affiliate", including controlled and subsidiary companies (as defined from time to time in the Securities Act of British Columbia) of the Borrower; and
- (b) to pay from sources, other than funds advanced hereunder such portion of the Project Costs as may be necessary so that the monies unadvanced hereunder from time to time shall, in the opinion of the

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Lender at all times be sufficient to pay all Project Costs necessary to complete the construction and the sale of the Project.

16. Current or Running Account - Advance of Funds

16.1 This Mortgage secures a current or running account and any portion of the Principal Amount secured by this Mortgage may be advanced or readvanced by the Lender in one or more sums at any future date or dates, and the amount of such advances and readvances when so made shall be secured by this Mortgage and shall be repayable with interest as provided herein;

16.2 Neither the execution nor registration of this Mortgage, nor the advance of any monies by the Lender shall bind the Lender to advance any unadvanced portion thereof but nevertheless the Mortgage hereby created shall take effect forthwith on the execution of this Mortgage.

17. Corporate Status

17.1 If one or more Borrower is a corporation then the Borrowers covenant and agree with the Lender that each corporate Borrower:

- (a) is incorporated, licensed, or authorized to carry on business in the Province of British Columbia and is duly authorized to enter into this Mortgage and to borrow funds advanced to it by the Lender or secured hereunder and to grant this Mortgage; and
- (b) is not now in default with respect to the filing of any annual reports or other reports or notices with the Registrar of Companies for the Province of British Columbia and is in good standing and will, until this Mortgage is fully repaid and discharged, remain in good standing as aforesaid and will carry on its business and administer its affairs in accordance with the provisions of the Company Act of British Columbia and amendments thereto (or such other statute from time to time govern its affairs) and any regulations thereunder.

18. Financial Statements

18.1 The Borrower shall deliver to the Lender annually, not later than 120 days after the end of each fiscal year of the Borrower, review engagement or, if required by the Lender, audited financial statements of the Borrower for the immediately preceding fiscal year including a balance sheet and supporting schedules, a statement of income and expenditures and supporting schedules, a statement of change in cash flow and statements of operations, including those operations carried on from the Land. All such statements shall be prepared in accordance with generally accepted accounting principals and format by a duly qualified chartered accountant, or certified general accountant and, if required by the Lender, such statements shall be audited at the cost of the Borrower. Each of the Persons described herein as a Covenantor, shall deliver to the Lender signed, updated financial statements of each Covenantor, at least annually, during the term of this Mortgage and, if required by the Lender, such statements shall be audited.

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19. **Additional Covenants**

19.1 The doctrine of consolidation shall apply to this Mortgage, notwithstanding Section 31 of the Property Law Act R.S.B.C. 1996, c.377 or any similar statutory provision in force from time to time.

19.2 The Borrower, without in any way affecting or releasing its liability to the Lender, for the repayment of the indebtedness, hereby assigns transfers and sets over to the Lender all its right, title, claim, demand and interest whatsoever at law or in equity or otherwise to indemnification or express or implied of and from payment of any and all monies due to the Borrower by any purchaser of the Land from the Borrower.

19.3 This Mortgage may be renewed or extended by an agreement in writing for any term and with or without an increased rate of interest notwithstanding that there may be subsequent encumbrances and it shall not be necessary to register any such agreement in order to retain priority for this Mortgage so altered over any instrument registered subsequent to this Mortgage. Nothing contained in this paragraph, however, shall concur any right of renewal or extension upon the Borrower.

19.4 The Borrower shall pay forthwith, upon demand, the costs, charges and expenses of the Lender of and incidental to :

- (a) The preparation, execution and registration of the Mortgage and any other instruments connected herewith and every renewal hereof;
- (b) The collection enforcement and realization of the security herein contained;
- (c) Procuring payment of the Indebtedness by exercise of the Lender's remedies on default, including foreclosure, power of sale or execution proceedings commenced by the Lender or any other party;
- (d) Any inspection required to be made of the Land;
- (e) All necessary repairs required to be made to and fuel, fixtures, and goods of any sort supplied to be used on the Land;
- (f) The Lender having to go into possession of the Land to secure, complete and equip the building or buildings in any way in connection therewith;
- (g) The Lender's renewal of any leasehold interest;
- (h) The exercise of any powers of receiver contained herein;
- (i) All solicitors costs, charges and expenses of any necessary examination of title to and evaluation of the Land. The costs, charges and expenses shall extend to and include any legal costs incurred by the Lender as between solicitor and his own client.

The costs, charges and expenses shall bear interest at the Interest Rate until paid, and until paid, shall form part of the Indebtedness.

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19.5 Default by the Borrower under any other loan with the Lender shall be deemed to be a default under this Mortgage and the entire balance of the indebtedness under this Mortgage shall, at the sole option of the Lender shall immediately become due and payable.

20. **Covenantor's Provisions**

20.1 As the lending of the Principal Amount will benefit the Covenantor, the Covenantor wishes the Lender to lend the Principal Amount to the Borrower and the Lender has agreed to do so and pay the sum of TEN (\$10.00) DOLLARS to the Covenantor, on the condition that the Covenantor makes the covenants set out in this paragraph 20. The Covenantor acknowledges receipt and sufficiency of such consideration and covenants with the Lender and agrees:

- (a) To pay the Principal Amount and Other Monies when due; and
- (b) To keep and perform all of the Borrower's covenants and agreements in the Mortgage.

20.2 The Covenantor agrees that with or without receiving notice or providing its consent, the following shall in no way affect any of the covenants of the Covenantor or affect the liability of the Covenantor to the Lender:

- (a) The discharge of the Land or any part of the Land from this Mortgage;
- (b) Any disregarding or waiver of an event of Default;
- (c) The giving of extra time to the Borrower to do something that the Borrower has agreed to do or to cure a Default; or
- (d) Any other dealing between the Borrower and the Lender that concerns this Mortgage or the Land.

20.3 All the Covenantor's covenants and agreements shall be binding upon the Covenantor until the indebtedness has been fully paid to the Lender, the Borrower has performed all the Borrower's covenants and agreements contained in this Mortgage and any other agreements made in connection with this Mortgage and the Lender has no obligation to advance or readvance monies to or on behalf of the Borrower.

20.4 The Covenantor is a primary debtor to the same extent as if the Covenantor had signed the Mortgage as Borrower and not merely as guarantor or surety and the Covenantor's covenants and agreements are joint and several with the covenants and agreements of the Borrower.

21. **Debts and Liabilities**

22.1 All debts and liabilities present and future of the Borrower (the "Liabilities") to the Covenantor are hereby assigned to the Lender and are hereby postponed to the debt and liability of the Borrower to the Lender for the money hereby secured. If the Covenantor receives payment from the Borrower on the Liabilities, then the Covenantor shall hold the same in trust for the Lender and forthwith remit the payment to the Lender.

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22. **Right of First Refusal**

22.1 The Lender shall have the first right of refusal with respect to any mortgage loan commitment from another lender that the Borrower is prepared to accept in respect of the replacement of the loan or any part thereof secured by this Mortgage on the Balance Due Date. The Borrower shall provide the Lender with a copy of any such mortgage commitment, and the Lender shall have the right, exercisable by notice in writing delivered to the Borrower within three (3) Business Days of receipt of the commitment, to provide the financing offered therein on substantially the same terms and conditions as therein set out. Any loan commitment from another lender which the Borrower accepts with respect to the replacement of this Mortgage shall be conditional for three (3) Business Days following delivery of such loan commitment to the Lender in order to allow the Lender to exercise this first right of first refusal.

23. **Employee Pensions And Benefits And Statutory Taxes**

23.1 The Mortgagor shall provide to the Mortgagee annually, or more frequently if required by the Mortgagee, confirmation satisfactory to the Mortgagee that the Mortgagor is not in arrears with respect to the collection and/or remittance of any employee pensions and other benefits, including, but not limited to, Workers' Compensation Board premiums, Medical Services Plan premiums, Canada Pension Plan contributions, Employment Insurance premiums and all other statutory remittances, including but not limited to income tax, employee source deductions, provincial sales tax, goods and services tax, social services tax and corporation capital tax.

24. **Alterations**

24.1 The Borrower shall not make or permit to be made, any alterations to the Land without the consent of the Lender, and the Borrower shall not use the Land or permit them to be used for the purposes of any business, except as an independent living facility licenced under the Act and the Lender or agent of the Lender may, at any time, enter upon the Land to inspect the Land and buildings thereon.

25. **Operation of Land**

25.1 The Borrower hereby warrants to the Lender that the licence (the "Licence") issued or to be issued to the Borrower under the Act will be for the operation of an independent living facility (referred to herein as the "Facility") on the Land.

25.2 The Borrower hereby covenants and agrees with the Lender that the Borrower shall:

- (a) ensure that the Licence and any other licence issued pursuant to the Act, or any legislation in replacement thereof is at all times kept in good standing and, except as directed or required by the Lender, does not lapse or become suspended, revoked or cancelled.
- (b) cause the Facility to be operated at all times in accordance with the provisions of the Act and all legislation amending or replacing such Act and all regulations made thereunder;

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- (c) not sell, transfer, charge, encumber or otherwise dispose of the Licence or any other licence issued pursuant to the Act or any legislation in replacement thereof without the prior written consent of the Lender;
- (d) ensure that the Facility on the Land is operated in accordance with all laws, statutes, regulations, licences and permits which have application thereto;
- (e) upon default under this Mortgage and to the extent permitted by law, use its best efforts to obtain any required approvals under the Act or any legislation in replacement thereof and all regulations thereunder for the transfer of the Licence to the Lender or any other party as directed by the Lender and upon obtaining such consent to forthwith cause the Licence to be so transferred; and
- (f) if not possible at law to effect the transfer of the Licence to the Lender under paragraph (e) above, and at the request of the Lender, take all necessary steps to effect the surrender, cancellation or revocation of the Licence.

26. **Collective Agreements**

26.1 The Borrower agrees that it will advise the Lender of any grievances arising from any collective agreements and will keep the Lender apprised of the status of each such grievance until it is resolved to the satisfaction of all parties.

27. **Access to Health Records**

27.1 The Borrower agrees to provide the Lender, its agents or its assignees access to any and all provincial financial records pertaining to the hospital on the Land and shall execute on demand all such further consent documentation that may be required by any governmental authority for access to such financial records.

28. **Commitment Letter**

28.1 The Lender and the Borrower agree that the Commitment Letter shall survive the execution, registration and funding of this Mortgage and continue to be in full force and effect after said execution, registration and funding. Default by the Borrower of any of the terms or requirements contained in the Commitment Letter shall constitute a default hereunder. In the event there is a conflict between the terms and conditions of this Mortgage and the Commitment Letter, then the Lender, at its discretion, shall determine which document shall prevail. There will be no conflict if the terms and conditions of the Commitment Letter should enlarge or clarify the terms and conditions of this Mortgage.

29. **Notice**

29.1 Notwithstanding any other term or condition of the Mortgage or the Standard Mortgage Terms, notice, if required, may be served on the Mortgagor or the Mortgagee in the following manner:

- (a) By sending it through post by pre-paid registered letter addressed to the Mortgagor at:

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C/O C/O 2100 – 200 Burrard Street, Vancouver, B.C., V7X 1T2

or to the Mortgagee by pre-paid registered letter addressed to the Mortgagee at:

c/o 5650 Yonge Street, Suite 300, Toronto, Ontario, V2M 4H5
- Attention: The Manager, Mortgage Service Centre

or at such other address as other party may specify in writing to the other and any notice so given shall be deemed to be given and received at the expiration of four business days after posting, provided that, if a postal strike is in effect, notice must be effected by delivering to the party in accordance with Paragraph (b) below; and

- (b) By delivering it addressed to the Mortgagor or the Mortgagee, as the case may be, at the above address or at such other address as other party may specify in writing to the other, and any notice so given shall be deemed to be given and received on the day of delivery.

30. Equity Retention

30.1 The Mortgagor will not declare, set apart for payment or pay any management fees or dividends, or redeem, reduce, purchase or retire any of its shares, at any time outstanding, or otherwise distribute to the persons entitled through the Mortgagor to any payment or amount, of any nature, or in any other way, at any time make or permit payment to its shareholder, partners or participants, or otherwise reduce its issued or paid-up capital, or its net worth, or equity, or repay any loans from its shareholders, without the prior written consent of the Mortgagee, which consent may be arbitrarily withheld.

31. Priority and Subsequent Financing

31.1 This mortgage is subject to that certain Mortgage in favour of the Lender dated January __, 2007, to be registered in the Victoria Land Title Office as a first charge against the Land (hereinafter called the "First Mortgage") securing the principal sum of \$25,360,000.00 and interest thereon as therein provided; and the Lender covenants and agrees that the First Mortgage and any monies secured or to be secured thereunder and interest thereon shall be a charge upon the Land in priority to this Mortgage, whether or not all or any part of the monies secured or to be secured by the First Mortgage were or shall be advanced before or after all or any part of the monies secured by this Mortgage all of which to the intent that the interest of the Lender in the Land shall be subject at all times to the rights of the lender under the First Mortgage with respect to any monies advanced or to be advanced and interest thereon under the First Mortgage.

31.2 The Borrower covenants and agrees to pay all monies payable pursuant to the terms of the First Mortgage as and when the same shall be due and to observe or perform the Borrower's covenants contained in the First Mortgage and in the event the Borrower shall default in payment of the First Mortgage as aforesaid or shall fail to observe or perform the Borrower's covenants therein contained then such default or failure shall constitute a default under the terms of this Mortgage and the whole of the Indebtedness then remaining unpaid hereunder shall at the option of the Lender forthwith become due and payable. And it is agreed that in the event of default payment by the Borrower of monies due and payable under and pursuant to the First Mortgage the Lender herein may pay the same and any monies so paid by the Lender shall be forthwith due and payable by the Borrower to the

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Lender herein and shall bear interest at the rate aforesaid until paid, and shall be added to the balance of monies due and owing pursuant to this Mortgage.

31.3 No subsequent financing is to be registered against title to the Land without the prior, written, express consent of the Lender. Should a subsequent mortgage be registered against the Land, such subsequent mortgage must contain partial discharge provisions acceptable to the Lender and such subsequent lender shall deliver to the Lender priority, standstill and postponement agreements acceptable to the Lender in its sole discretion, and executed and registerable partial discharges after subdivision of the Land, if applicable.

32. Creation of a Strata Corporation

32.1 The Mortgagor agrees, and it is a condition of the loan secured by this Mortgage that if the Mortgagor fails to register the required documentation and take whatever steps are required to create a strata corporation (the "Strata Corporation") on the said lands hereby secured by September 30, 2008, all monies owing under this Mortgage, including principal and interest, shall immediately become due and payable, provided that if the Mortgagor fails to bring the Strata Corporation into existence by the said date for reasons that are, in the opinion of the Mortgagee, beyond the Mortgagor's control, the Mortgagee may, at its sole discretion extend the said date for such period of time as it deems necessary.

END OF DOCUMENT