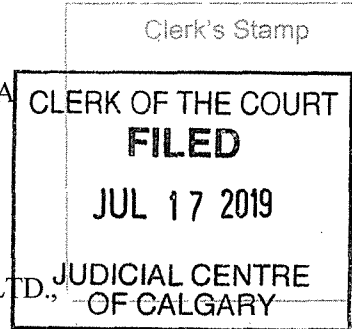


COURT FILE NUMBER 1901 - 05545  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S) CANADIAN WESTERN BANK  
  
DEFENDANT(S) AAA WINDOWS LTD., AAA HOLDINGS LTD.,  
AAA DOORS LTD., RANBIR SANDHU,  
MOHINDER SANDHU, SUKHDEV SANGHA,  
AND BALDEV SANGHA  
  
DOCUMENT **AFFIDAVIT OF DEFAULT**  
  
ADDRESS FOR **Burnet, Duckworth & Palmer LLP**  
SERVICE AND 2400, 525 – 8 Avenue S.W.  
CONTACT Calgary, Alberta T2P 1G1  
INFORMATION OF Lawyer: David LeGeyt / Natasha Wood  
PARTY FILING THIS Phone Number: (403) 260-0210 / (403) 260-0159  
DOCUMENT Fax Number: (403) 260-0332  
Email: [dlegeyt@bdplaw.com](mailto:dlegeyt@bdplaw.com) / [nwood@bdplaw.com](mailto:nwood@bdplaw.com)  
File No: 45003-553



### AFFIDAVIT OF TYSON HARTWELL

Sworn on July 16, 2019

I, Tyson Hartwell, of Calgary, Alberta, swear THAT:

1. I am an Assistant Vice-President, High Risk, Prairie Region of Canadian Western Bank (the "**Plaintiff**" or "**CWB**") and as such have personal knowledge of the matters herein deposed to except where stated to be based upon information and belief, in which case I verily believe the same to be true.

#### **The First Mortgage**

2. The Plaintiff and AAA Holdings Ltd. ("**Holdings**") are parties to a demand collateral mortgage dated February 24, 2014 (the "**First Mortgage**"). A copy of the First Mortgage is attached at Exhibit "1".
3. Pursuant to the First Mortgage, Holdings encumbered, mortgaged and charged the lands described as Plan 8011265 Block 10 Lot 17 excepting thereout all mines and minerals and the right to work the same (the "**Lands**") to secure repayment of among others:

- a. a principal sum not exceeding \$4,500,000 together with interest at a rate of 15% per annum;
  - b. all amounts owing by Holdings to CWB from time to time; and
  - c. all indebtedness, liabilities and obligations of Holdings to CWB, whether as principal, guarantor or surety (together the "**First Mortgage Monies**").
4. Holdings covenanted, pursuant to the First Mortgage, to comply with all terms, conditions and covenants set forth in a commitment letter entered into between the Plaintiff and Holdings dated February, 2014 as amended, restated or replaced from time to time.
5. On September 12, 2018, the Plaintiff extended credit facilities and related services to Holdings pursuant to a commitment letter (the "**Holdings Loan Agreement**"). A copy of the Holdings Loan Agreement is attached at Exhibit "2"
6. The First Mortgage provides that on default of the observance or performance of any covenant contained in the First Mortgage or the Holdings Loan Agreement, the whole of the First Mortgage Monies shall become due and immediately payable.

#### **Default under the First Mortgage and the Second Mortgage**

7. Holdings has breached and is in default of the terms of the Holding Loan Agreement, the First Mortgage, and the Second Mortgage (defined below). The defaults of Holdings are set out in a letter of demand dated March 14, 2019 (the "**Holdings Demand Letter**") and include but are not limited to:
  - a. a failure to make scheduled payments to the Plaintiff in accordance with the Holdings Loan Agreement;
  - b. failure to pay property taxes and priority payables when due and owing; and
  - c. breaches of the general conditions set out in Schedule "D" of the Holdings Loan Agreement.
8. As of March 13, 2019, the First Mortgage Monies outstanding were \$4,037,335.54, representing funds borrowed under the Holdings Loan Agreement.

9. Pursuant to the Holdings Demand Letter, the solicitor for the Plaintiff has demanded from the Holdings payment of the outstanding First Mortgage Monies, but the Holdings has refused or neglected to pay the said sum, or any part thereof, and this entire indebtedness remains outstanding, due and owing.
10. Attached hereto and collectively marked as Exhibit "3" is a copy of the Holdings Demand Letter and Notice of Intention to Enforce Security under and pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the "**BIA**").

### **The Second Mortgage and Holdings Guarantees of Windows and Doors**

11. The Plaintiff and Holdings are also party to a second demand collateral mortgage dated July 4, 2014 (the "**Second Mortgage**"). A copy of the Second Mortgage is attached at Exhibit "4".
12. Pursuant to the Second Mortgage, Holdings encumbered, mortgaged and charged the Lands to secure repayment of the mortgage monies which include, among others:
  - a. a principal sum not exceeding \$4,500,000 together with interest at a rate of 15% per annum;
  - b. all amounts owing by Holdings to CWB from time to time; and
  - c. all indebtedness, liabilities and obligations of Holdings to the Plaintiff, including as guarantor or surety.
13. On July 4, 2014, pursuant to a Full Liability Guarantee, Holdings guaranteed to the Plaintiff payment on demand of all indebtedness and liabilities at any time owing by AAA Windows Ltd. ("**Windows**") arising under any agreement or dealings between Windows and the Plaintiff (the "**Windows Guarantee**"). A copy of the Windows Guarantee is attached as Exhibit "5".
14. On October 25, 2018, pursuant to a Full Liability Guarantee, Holdings guaranteed to the Plaintiff payment on demand of all indebtedness and liabilities at any time owing by AAA Doors Ltd. ("**Doors**") arising under any agreement or dealings between Doors and the Plaintiff (the "**Doors Guarantee**"). A copy of the Doors Guarantee is attached as Exhibit "6".

15. Under the terms of the Second Mortgage, the Second Mortgage secures the liability of Holdings to CWB as borrower and also pursuant to the Windows Guarantee and the Doors Guarantee.

#### **Demand under the Window Guarantee**

16. Windows is in default of its obligations to the Plaintiff and on March 14, 2019, the Plaintiff demanded repayment from Windows in the amount of \$525,754.56 plus all accrued and accruing interest and legal fees (the "**Windows Indebtedness**").
17. On March 14, 2019, pursuant to the terms of the Windows Guarantee, the First Mortgage, and the Second Mortgage, the Plaintiff demanded from Holdings payment of the Windows Indebtedness (the "**Windows Demand Letter**"). Holdings has refused or neglected to pay the Windows Indebtedness, or any part thereof, and this entire indebtedness remains outstanding, due and owing.
18. Attached hereto and collectively marked as Exhibit "7" is a copy of the Windows Demand Letter and Notice of Intention to Enforce Security under and pursuant to section 244 of the BIA.

#### **Demand under the Doors Guarantee**

19. Doors is in default of its obligations to the Plaintiff and on March 14, 2019, the Plaintiff demanded repayment from Windows in the amount of \$1,272,642.36 plus all accrued and accruing interest and legal fees (the "**Doors Indebtedness**").
20. On March 14, 2019, pursuant to the terms of the Doors Guarantee, the First Mortgage, and the Second Mortgage, Plaintiff has demanded from the Holdings payment of the Doors Indebtedness (the "**Doors Demand Letter**"). Holdings has refused or neglected to pay the Doors Indebtedness, or any part thereof, and this entire indebtedness remains outstanding, due and owing.
21. Attached hereto and collectively marked as Exhibit "8" is a copy of the Doors Demand Letter and Notice of Intention to Enforce Security under and pursuant to section 244 of the BIA.

**Summary and Conclusion**

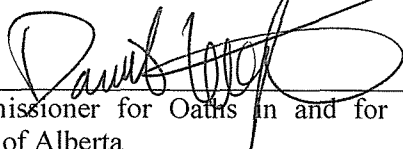
22. As of June 25, 2019, Holdings is indebted to the Plaintiff as follows:

Type of Indebtedness	Amount
As borrower	\$4,089,027.55 (Being principal of \$4,013,912.82 and interest of \$75,114.73, with per diem interest of \$501.10)
As guarantor of Windows	\$536,079.13
As guarantor of Doors	\$1,121,775.65
<b>Total</b>	<b>\$5,746,882.33</b>

23. This total indebtedness is now due and owing, and is secured against the Lands by the First Mortgage and the Second Mortgage.

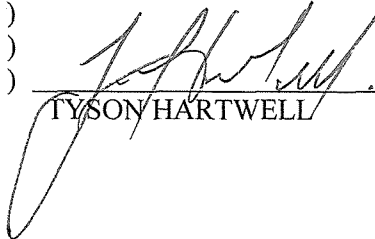
24. I make this Affidavit in support of the Plaintiff's Application for an Order, among other things (i) declaring the First Mortgage and the Second Mortgage one valid and enforceable, (ii) declaring the amount owing to the Plaintiff, (iii) granting summary judgement against Holdings, (iv) setting a redemption period of one day, followed by a judicial listing, and related relief.

SWORN BEFORE ME at the City of Calgary, )  
in the Province of Alberta this 16 day of )  
July, 2019. )



A Commissioner for Oaths in and for the Province of Alberta

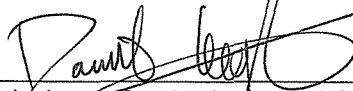
**David LeGeyt**  
Barrister & Solicitor



TYSON HARTWELL

THIS IS EXHIBIT "1" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.



A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor

Doors

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**\$4,500,000.00 DEMAND MORTGAGE BY  
AAA HOLDINGS LTD.  
IN FAVOUR OF CANADIAN WESTERN BANK**

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# MORTGAGE

*The Land Titles Act*

## RECITALS

### WHEREAS:

- A. The Mortgagor is or is entitled to become the registered owner of the Lands;
- B. The Mortgagee has agreed to lend an amount not to exceed the Principal Sum to the Mortgagor on the terms and conditions set out herein; and
- C. As security for repayment of the Principal Sum together with interest and performance of the covenants contained herein, the Mortgagor has agreed to grant this Mortgage in favour of the Mortgagee.

**NOW THEREFORE** in consideration of the covenants and promises contained herein, the Mortgagor and Mortgagee covenant each with the other as follows:

## ARTICLE 1

### 1.1 Definitions

In this Mortgage:

- (a) "**Business Days**" means days other than Saturdays, Sundays and statutory holidays in the Province of Alberta;
- (b) "**Collateral Security**" means the additional and collateral security, if any, which may be required by the Mortgagee to be granted by the Mortgagor or others pursuant to the provisions of this Mortgage or the Commitment Letter including, but without limiting the generality of the foregoing, the following:
  - (i) \$4,200,000 Demand Promissory Note granted by the Mortgagor to and in favour of the Mortgagee;
  - (ii) General Security Agreement granted by the Mortgagor;
  - (iii) Assignment of Rents and Leases granted by the Mortgagor;
  - (iv) Unconditional and Unlimited Environmental Agreement and Indemnity granted by the Mortgagor; and
  - (v) such other additional and collateral security as provided by the Mortgagor or others to the Mortgagee, from time to time;
- (c) "**Commitment Letter**" means that certain commitment letter from the Mortgagee to the Mortgagor, dated February 13, 2014 and accepted by the Mortgagor on February 13,



2014 as may be amended, modified, supplemented, restated or replaced, from time to time;

- (d) "**Hazardous Substances**" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
- (i) radioactive materials;
  - (ii) explosives;
  - (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
  - (iv) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
    - (1) endangers the health, safety or welfare of persons or the health of animal life;
    - (2) interferes with normal enjoyment of life or property; or
    - (3) causes damage to plant life or to property;
  - (v) toxic substances including, without restriction, urea formaldehyde foam insulation, asbestos and poly-chlorinated biphenyls; and
  - (vi) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Mortgagor, the Mortgagee or the Lands;
- (e) "**Improvements**" means all improvements of every kind whether or not affixed to the Lands including without limitation all buildings, erections, improvements, machinery and plant, furnaces, boilers, elevators, escalators, mobile homes, plumbing, air conditioning, ventilating and refrigerating equipment, water heaters, wall to wall carpeting, plate glass, storm doors, storm windows, screens and screen doors and all apparatus and equipment appurtenant thereto whether moveable or stationery, with all proper, usual and necessary gears, tools, accessories, equipment and appliances, which are now or may hereafter be placed or installed upon the Lands;
- (f) "**Interest Rate**" means interest on the Principal Sum or on such portion thereof as remains unpaid both before and after maturity or default at the rate of FIFTEEN PERCENT (15.0%) percent per annum (or such other rate or rates as agreed to between the Mortgagor and Mortgagee in writing), calculated, compounded and payable monthly, not in advance;
- (g) "**Interest Adjustment Date**" has the meaning ascribed to such term in section 2.2(a) hereof;
- (h) "**Lands**" means that parcel or parcels of land situate in the Province of Alberta and legally described in Schedule "A" attached hereto, together with all Improvements;

- (i) "**Maturity Date**" means the Business Day that the Mortgage Monies are due for repayment pursuant to the Commitment Letter, any Collateral Security or hereunder;
- (j) "**Mortgage**" means this mortgage together with all Recitals and all Schedules attached hereto;
- (k) "**Mortgage Monies**" means the Principal Sum with interest thereon at the Interest Rate, together with all other monies secured by this Mortgage, including without restriction, any advances, fees or expenses made or incurred by the Mortgagee;
- (l) "**Mortgagee**" means CANADIAN WESTERN BANK;
- (m) "**Mortgagee's Address**" means Canadian Western Bank, 2810, 32<sup>nd</sup> Avenue N.E., Calgary, Alberta T1Y 5J4 or such other address as the Mortgagee shall from time to time advise in writing;
- (n) "**Mortgagor**" means AAA HOLDINGS LTD.;
- (o) "**Mortgagor's Address**" means Bay 26, 3530 – 32<sup>nd</sup> Street NE, Calgary, Alberta, T1Y 6G7 or such other address as the Mortgagor shall from time to time advise in writing;
- (p) "**Permitted Encumbrances**" means those encumbrances described in Schedule "A" attached hereto;
- (q) "**Prime Rate**" means the variable reference rate of interest per annum established by the Mortgagee from time to time as the Mortgagee's prime lending rate for Canadian dollar loans made by the Mortgagee in Canada;
- (r) "**Principal Sum**" means the sum not to exceed \$4,500,000.00 in lawful money of Canada;
- (s) "**Prior Charge**" means any mortgage, lien, agreement for sale, encumbrance, interest in land or other charge or claim upon or with respect to the Lands which has or may have or which may acquire priority to this Mortgage, including, without restriction, the Permitted Encumbrances;
- (t) "**Real Estate Taxes**" means all taxes, local improvement charges, rates, assessments, levies, liens and penalties which are now or may hereafter be imposed or charged or be chargeable against or payable in respect of the Lands and shall include any levy or mortgage tax or principal and interest tax imposed or which may be imposed on this Mortgage or on the Mortgagee in respect of this Mortgage or on the monies secured by this Mortgage or on the Lands;
- (u) "**Receiver**" means any person or persons appointed by the Mortgagee in accordance with section 6.1 herein and includes a receiver, and a receiver and a manager; and
- (v) "**Term**" means the period of time from the first advance of the Principal Sum hereunder to and including the Maturity Date.

## 1.2 Preamble and Schedule Incorporated

The parties hereby confirm and ratify the matters contained and referred to in the preamble to this Mortgage and agree that same and Schedule "A" attached hereto are expressly incorporated into and form part of this Agreement.

### **1.3 Schedule**

The schedule to this Agreement is as follows:

Schedule "A" - Lands and Permitted Encumbrances

## **ARTICLE 2**

### **2.1 Loan of Principal Sum**

The Mortgagee agrees to lend an amount not to exceed the Principal Sum to the Mortgagor upon the terms and conditions contained herein and as set forth in the Commitment Letter.

### **2.2 Repayment**

- (a) The Mortgagor shall pay to the Mortgagee at the Mortgagee's Address, **ON DEMAND**, the Principal Sum together with interest at the Interest Rate, calculated monthly and payable monthly, not in advance, before and after maturity, default and judgment, with overdue interest at the Interest Rate from the date of advance of the Principal Sum, or such portion thereof (the "**Interest Adjustment Date**"), with the Mortgagor acknowledging that this Mortgage is given and taken as general and continuing collateral security and may secure a promissory note or note(s), a current or running account or a revolving line of credit, and the Mortgagor agrees that the Mortgage Monies shall include all amounts owing to the Mortgagee from time to time in respect of any such promissory note, note(s), current or running account or revolving line of credit and all indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee, whether present or future, direct or indirect, absolute or contingent, matured or not, and whether arising within or outside Canada, and whether incurred by or arising from any agreement or dealing between the Mortgagee and the Mortgagor or by or from any agreement or dealing with any third party by which the Mortgagee may be or become in any manner whatsoever a creditor of the Mortgagor, or however otherwise incurred or arising, and whether the Mortgagor be bound alone or with another or others, and whether as principal, guarantor or surety; and
- (b) the Principal Sum and all other Mortgage Monies, or the amount thereof remaining unpaid, shall become due and be paid on the Maturity Date.

### **2.3 Payment of Interest, Principal under Commitment Letter**

The Mortgagor shall pay to the Mortgagee interest at the Interest Rate in the manner aforesaid on the Mortgage Monies or on so much thereof as shall from time to time remain unpaid. In the event of non-payment of any of the Mortgage Monies at the time provided in the Commitment Letter, the Collateral Security or as herein set for payment thereof, the Mortgagor shall, so long as any part thereof remains unpaid, pay interest thereon at the Interest Rate from day to day on the same. All interest on becoming overdue shall be forthwith treated (as to payment of interest thereon) as principal and shall bear compound interest at the Interest Rate after as well as before maturity, default and the obtaining of any

judgment by the Mortgagee to be payable on demand and all such interest and compound interest shall be a charge on the Lands.

#### 2.4 Construction Loan Advances

If advances under this Mortgage will be made from time to time for the purposes of construction, it is agreed between the Mortgagor and Mortgagee as follows:

- (a) Advances will, at the option of the Mortgagee, be based on a certificate from an architect, engineer or the Mortgagee's cost consultant approved by the Mortgagee, certifying the value of the work in place and that construction is proceeding in accordance with the Plans and Specifications (as hereinafter defined) as may be approved by the Mortgagee;
- (b) Funds may, at the option of the Mortgagee, be held back to ensure that sufficient funds are available to complete the Development (as hereinafter defined) based on then estimated costs;
- (c) Advances may be made subject to the Mortgagor providing evidence of compliance with the *Builders' Lien Act* (Alberta) and the Mortgagee may holdback from advances an amount sufficient to satisfy all holdbacks required under and in accordance with the terms of the *Builders' Lien Act* (Alberta);
- (d) The Mortgagee shall have the right, at its option, to make an advance not otherwise requested by the Mortgagor, the proceeds of which are used, inter alia, to pay accrued interest, legal and other costs that have been incurred by the Mortgagee and which the Mortgagor has agreed to pay;
- (e) Advances may, at the option of the Mortgagee, be made directly to the contractors, sub-contractors and/or suppliers of the Development (as hereinafter defined);
- (f) The Mortgagee shall have no obligation to make more than one advance per month as outlined in the Commitment Letter; and
- (g) Advances must be preceded by a report from the Mortgagee's counsel which confirms that title to the Lands are clear of all encumbrances except this Mortgage and those expressly consented to by the Mortgagee.

### ARTICLE 3

#### 3.1 Insurance

- (a) The Mortgagor shall forthwith insure the Lands and all chattels located thereon and during the continuance of this Mortgage keep insured in favour of the Mortgagee to the extent of the full insurable value thereof, or sufficient to protect the Mortgagee, as the Mortgagee may reasonably request, in lawful money of Canada, with a company or companies approved by the Mortgagee against:
  - (i) all risks of loss or damage including that caused by fire, windstorm, flooding, hail, lightning, explosion, theft, vandalism, malicious damage, riot, earthquake, impact by aircraft or vehicles, smoke damage; and

- (ii) to the extent applicable, against loss or damage caused by any defect in or the bursting or explosion of any steam boiler or other object generating or operated by steam or any closed circulation hot water system or any pressure vessel or by the escape of water from any sprinkler system or other piping within or operated upon the Lands;

such policies of insurance to contain the usual "Extended Coverage" and "Replacement Cost" endorsements.

- (b) The Mortgagor will maintain comprehensive general liability insurance in such amounts as the Mortgagee may reasonably require.
- (c) The Mortgagee may in the event of any default effect such insurance and insure the Lands against loss or damage from any other cause whatsoever.
- (d) The Mortgagor will not do or permit anything to be done whereby the policy or policies may be voided, and will pay all premiums and sums of money necessary for maintaining every such insurance as aforesaid, as the same become due, and will assign and deliver unto the Mortgagee the policy or policies of insurance and the receipt or receipts relating thereto.
- (e) The policies shall to the extent applicable, bear endorsements in a form satisfactory to the Mortgagee making all proceeds thereunder payable to the Mortgagee. All policies shall contain either the Insurance Bureau of Canada standard mortgage clause or the Mortgagee's special mortgage clause.
- (f) The policies of insurance and renewals thereof, if applicable, shall be delivered to the Mortgagee at such times as are requested by the Mortgagee, but without limitation, evidence of renewal shall be delivered not less than thirty (30) Business Days prior to expiration of the insurance.
- (g) The Mortgagee may require any such insurance to be written by insurance companies acceptable to it, and may, at its option, cancel existing policies and require that new insurance be effected, and may, in the event of failure by the Mortgagor to deliver policies or renewals thereof to the Mortgagee as herein provided, effect and maintain any insurance herein provided for. Any amount or amounts paid by the Mortgagee in respect thereof shall be payable by the Mortgagor to the Mortgagee forthwith on demand, and shall be added to the Principal Sum and will accrue interest at the Interest Rate as if the money were interest in arrears and shall bear interest at the Interest Rate until payment is received by the Mortgagee. Such interest shall run from the date of payment by the Mortgagee and shall be added to the Principal Sum and be a charge upon the Lands until repaid with interest as aforesaid. However, nothing set out herein shall obligate the Mortgagee to obtain such insurance and doing so is solely at the option of the Mortgagee.
- (h) The Mortgagor shall forthwith on the happening of any loss or damage, furnish at its own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies, and all monies received by virtue of any policy or policies of insurance may at the sole option of the Mortgagee:
  - (i) be applied in or towards substantially rebuilding, reinstating and repairing the Lands;

- (ii) be applied wholly or in part in reduction of the Mortgage Monies then remaining unpaid, notwithstanding that no amount at such time may be due and payable under the terms of this Mortgage;
- (iii) be paid over in whole or in part to the Mortgagor but no such payment shall operate as payment or a novation of the Mortgagor's indebtedness hereunder or as reduction of this Mortgage; or
- (iv) be applied partly in one way and partly in another as the Mortgagee in its sole discretion may determine.

Pending application of the insurance monies for the purpose aforesaid, the same shall be deemed to form part of the Mortgage Monies and be subject to the charge hereby created.

- (i) The Mortgagor hereby irrevocably appoints the Mortgagee as its attorney for the purpose of demanding, recovering and receiving payment of any and all insurance monies to which it may be or may become entitled. Without limiting the generality of the foregoing, the Mortgagee may, in the name of the Mortgagor:
  - (i) file proofs of claim with any insurer who shall insure the Lands;
  - (ii) settle or compromise any claim for insurance proceeds in respect of the Lands;
  - (iii) commence and prosecute any action in the name of the Mortgagor for recovery of insurance proceeds in respect of the Lands; and
  - (iv) settle or compromise any such action in the name of the Mortgagor for recovery of insurance proceeds in respect of the Lands.

Notwithstanding anything herein contained it shall remain the responsibility of the Mortgagor to demand, recover and receive such payment and nothing herein shall render the Mortgagee liable to the Mortgagor for any act done by it in pursuance of the power of attorney hereby granted or for its failure to do any act or take any step.

- (j) The Mortgagor acknowledges that it is aware of the provisions of the *Fire Prevention (Metropolis) Act* of 1774, which provides that, in the case of loss or damage by fire, the Mortgagor at its discretion, may require that the insurance proceeds be utilized to rebuild, reinstate and repair the Lands, and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof. It is further agreed, that in the event that the Mortgagee at its sole discretion has insurance monies applied to the Principal Sum secured hereby the payment of such sums will be subject to any prepayment provisions contained in this Mortgage.

### **3.2 Payment of Real Estate Taxes**

The Mortgagor shall pay as they become due all Real Estate Taxes and shall submit to the Mortgagee tax receipts evidencing payment within thirty (30) days after they become due, provided that:

- (a) the Mortgagee may deduct from any advance of the Principal Sum an amount sufficient to pay any Real Estate Taxes;

- (b) the Mortgagor will transmit to the Mortgagee all assessment notices, tax bills and other notices affecting the imposition of Real Estate Taxes forthwith after the receipt of same by the Mortgagor;
- (c) if the Mortgagor defaults in payment of the Real Estate Taxes, the Mortgagee may, but shall not be obliged to, pay all Real Estate Taxes and all monies expended by the Mortgagee for such purpose, together with interest thereon at the Interest Rate, shall be added to the Principal Sum (such interest to run from the date of payment by the Mortgagee), and shall be a charge upon the Lands and shall be repaid by the Mortgagor to the Mortgagee forthwith upon demand;
- (d) the Mortgagor shall, at the option of the Mortgagee, pay to the Mortgagee on the days appointed for payment of principal and interest, such sums in addition thereto as the Mortgagee shall compute to be required to provide a fund sufficient to pay in full the Real Estate Taxes when such taxes become due and payable and the Mortgagee shall be at liberty to exercise its discretion at any time during the currency of this Mortgage. A forbearance by the Mortgagee to exercise its discretion, either at the commencement of the Term or at any other time thereafter, shall in no way affect or preclude the Mortgagee from requiring the Mortgagor to pay instalments for Real Estate Taxes at any subsequent time. The following provisions shall apply to this subsection:
  - (i) in the event that the Real Estate Taxes actually charged for any particular year exceed the estimated amount or in the event of any part of the estimated amount paid to the Mortgagee being applied by the Mortgagee in or towards principal and interest or other monies in default, the Mortgagor will pay to the Mortgagee on demand the amount required to satisfy the deficiency;
  - (ii) so long as there is no default under any covenant or agreement contained in this Mortgage or in any Collateral Security, the Mortgagee shall apply such payments on the Real Estate Taxes chargeable against the Lands, but the Mortgagee shall be under no obligation to apply such payments more often than yearly;
  - (iii) if before any such sum or sums in the hands of the Mortgagee shall have been so applied there shall be default in respect of the payment of any of the Mortgage Monies or in any Collateral Security, the Mortgagee may, at its option, apply such sum or sums in or towards payment of principal, interest or other monies so in default; and
  - (iv) if the Mortgagor desires to take advantage of any discounts or avoid any penalties in connection with the payment of Real Estate Taxes, then it shall pay to the Mortgagee such additional amounts as in the opinion of the Mortgagee are required for that purpose; provided always, that the Mortgagee may, at its option, decide to prepay either in whole or in part any Real Estate Taxes.

### **3.3 Maintenance and Repair of the Lands**

- (a) The Mortgagor will not commit any act of waste upon the Lands nor do or permit to be done any act which may impair the value thereof.
- (b) The Mortgagor will take good and reasonable care of all buildings, structures and improvements now or hereafter from time to time erected on the Lands and without cost

and expense to the Mortgagee will manage, operate, maintain and keep or cause the same to be kept in good order, repair and condition throughout, both exterior and interior, structural or otherwise, and will promptly make all required or necessary repairs and replacements thereto, including without limitation, the roof, walls, foundations and appurtenances, pipes and mains, and all other fixtures, machinery, facilities and equipment that belong to or are used in connection with the Lands, all of the foregoing to the extent that a prudent owner would do. Notwithstanding the foregoing, the Mortgagor shall not be obligated to repair any damage caused by reasonable wear and tear which does not affect the use and enjoyment of the improvements except as and when such damage would be ordinarily repaired by a prudent owner.

- (c) The Mortgagee by its agents, solicitors or inspectors may enter upon the Lands at any reasonable time to view the state of repair.
- (d) Should, in the opinion of the Mortgagee, the Lands not be in a proper state of repair, the Mortgagee may serve notice upon the Mortgagor to make such repairs or replacements as the Mortgagee deems proper within a period of twenty (20) Business Days and in the event of the Mortgagor not having complied or not being in the process of diligently complying with such request, the Mortgagee may deem the Mortgagor to be in default hereunder and may authorize the making of such repairs or replacements by its agents, employees or contractors and they may enter upon the Lands for the purpose of doing such work with or without the Mortgagor's concurrence and the cost thereof shall be paid for by the Mortgagor upon demand and until paid shall be secured by this Mortgage, bear interest at the Interest Rate and be a charge upon the Lands in priority to the interest of the Mortgagor. Provided always, that should the Mortgagor have vacated or abandoned the Lands, or, should the Lands be occupied by a tenant or tenants who are failing to properly maintain and repair the same, and, the Mortgagee, in its sole discretion, deems it necessary to enter upon the Lands in order to properly maintain and preserve its security, then in such event, the Mortgagee shall be entitled to so enter and such action by the Mortgagee shall not constitute it a mortgagee in possession nor liable as such.
- (e) In the ownership and development of the Lands, the Mortgagor will observe and comply with all applicable federal, provincial and local bylaws, statutes, rules, ordinances, permits, regulations, orders, directions and restrictions affecting the Lands in force from time to time.

### **3.4 Miscellaneous Affirmative and Negative Covenants**

- (a) The Mortgagor covenants and agrees that for so long as there shall remain any amount of the Mortgage Monies outstanding hereunder:
  - (i) The Mortgagor will:
    - (1) comply with all terms, conditions and covenants set forth in the Commitment Letter;
    - (2) permit the Mortgagee to inspect the business premises, the property, assets and the books and records of the Mortgagor at all reasonable times;



- (3) keep the Lands of the Mortgagor free and clear of all taxes, assessments, liens and encumbrances, other than Permitted Encumbrances, and notify the Mortgagee promptly of any loss or damage of or to the Lands or any material asset located thereon. The Mortgagee may pay off the whole or any part of any lien, mortgage, contract, debt, charge and encumbrance with which the Lands or any part thereof may be charged or affected, whether validly or not, and all moneys so paid by the Mortgagee together with all expenses of the Mortgagee in connection with any such payment shall be forthwith added to the Principal Sum and shall bear interest at the Interest Rate per annum and shall be forthwith due and payable by the Mortgagor to the Mortgagee and default in payment thereof shall constitute default thereunder; and
  - (4) provide safe storage and properly care for the property and assets of the Mortgagor and make all proper repairs thereto and at all times use, operate and enjoy the same strictly in accordance with all laws from time to time in force;
- (b) The Mortgagor covenants and agrees that for so long as there shall remain any amount of the Mortgage Monies outstanding hereunder, it will not, without the prior written consent of the Mortgagee:
- (i) amend its Articles of Incorporation, By-Laws or constating documents, amend any material agreement or commitment of the Mortgagor or enter into any agreement or commitment, the effect of which would be to prohibit or make improper payment of the Mortgage Monies created hereby;
  - (ii) sell, convey, transfer, lease or otherwise dispose of all or substantially all of the Lands, its assets or enter into any arrangement to merge, consolidate, or permit the sale of all or substantially all of the shares of the Mortgagor; or
  - (iii) permit any change in any of its business objectives, purposes or operations other than changes which in the aggregate would have no material adverse effect on the Mortgagor.

### **3.5 Change of Use**

The Mortgagor will not change or permit to be changed the use of the Lands without the prior written consent of the Mortgagee.

### **3.6 Fixtures**

All Improvements shall, immediately upon being placed on the Lands, become fixtures and form a part of the realty and of the security of these presents, and are included in the expression the "Lands", where used in this Mortgage.

### **3.7 Hazardous Substances**

The Mortgagor represents, covenants and warrants to and in favour of the Mortgagee that:

- (a) neither the Mortgagor, nor, to the best knowledge of the Mortgagor, any other person has ever caused or permitted any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands, save and except as disclosed to the Mortgagee in writing;
- (b) it shall not allow any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands without the prior written consent of the Mortgagee which consent may be arbitrarily or unreasonably withheld;
- (c) it shall not allow the Lands to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the disposal and emission of Hazardous Substances;
- (d) to the extent, that Hazardous Substances are, with the Mortgagee's consent, placed, held, located or disposed of on, under or at the Lands in accordance with the terms hereof, the Mortgagor shall:
  - (i) comply with, or cause to be complied with, all applicable laws and regulations relating to the use, storage and disposal of the Hazardous Substances; and
  - (ii) at the request of the Mortgagee, provide evidence to the Mortgagee of compliance with all applicable laws and regulations, such evidence to include inspection reports and such tests as the Mortgagee may reasonably require, all at the expense of the Mortgagor;
- (e) without restricting the generality of the foregoing, in the event that gasoline or other storage tanks are located under or on the Lands, the Mortgagor shall:
  - (i) maintain and repair such storage tanks in a manner satisfactory to the Mortgagee; and
  - (ii) at the request of the Mortgagee, assign any warranties or guarantees received from the manufacturer or installer of such storage tanks in favour of the Mortgagee as additional security.

### 3.8 Indemnity

The Mortgagor hereby indemnifies and saves harmless the Mortgagee and its successors and assigns from and against any and all losses, liabilities, damages, costs and expenses of any kind whatsoever, including, without limitation:

- (a) the costs of defending, counter-claiming or claiming against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;
- (b) any cost, liability or damage arising out of a settlement of any action entered into by the Mortgagee with or without the consent of the Mortgagor; and
- (c) the costs of repair, clean-up or restoration paid by the Mortgagee and any fines levied against the Mortgagee;

which at any time or from time to time may be paid, incurred or asserted against the Mortgagee, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release, of Hazardous Substances from the Lands either onto any lands (including the Lands), into the atmosphere or into any water. This indemnification shall survive the satisfaction, release or enforcement of this Mortgage or Collateral Security and the full repayment of the Mortgage Monies.

### 3.9 Development of the Lands

If the principal sum or any part thereof is to be used in development of the Lands, the Mortgagor further covenants and warrants and represents to the Mortgagee that:

- (a) All buildings being renovated, erected or to be erected on the Lands (the "Development") form part of the security for the full amount of the Principal Sum.
- (b) This Mortgage shall be considered a building or construction mortgage by all persons having or hereinafter securing or becoming entitled to any interest in the Lands and the Principal Sum is to be advanced from time to time, in the discretion of the Mortgagee, in accordance with the state of construction of the Development and upon the fulfilling of any other conditions or requirements stipulated by the Mortgagee.
- (c) The Mortgagor will construct the Development in accordance with Plans and Specifications, including without limitation architectural, mechanical, electrical, structural and landscaping plans and specifications (herein referred to as the "Plans and Specifications") which have been or which may hereafter be delivered to, and approved by the Mortgagee or by such other party as the Mortgagee may designate so to do in accordance with applicable building codes and in accordance with the construction industry work requiring inspection by the Mortgagee until the Mortgagee has inspected the same, and any defects in the construction or variation in construction as reported to the Mortgagee by its consultants shall be promptly corrected by the Mortgagor to the satisfaction of the Mortgagee and the Mortgagor shall continuously carry on construction of the Development until completion.
- (d) No extra work or materials or change in Plans and Specifications which will result in a cumulative variation in the cost of the Development shall be ordered or authorized by the Mortgagor without the prior written consent of the Mortgagee.
- (e) All of the personal property, fixtures, attachments and equipment delivered upon or attached to the Development or intended to become a part of the Development will be kept free and clear of all chattel mortgages, conditional vendors liens and all liens, encumbrances and security interests other than as may be granted to the Mortgagee, and that Mortgagor will be the absolute owner of said personal property, fixtures, attachments and equipment, and will, from time to time on the reasonable request of the Mortgagee, furnish the Mortgagee with satisfactory evidence of such ownership, including searches of applicable public records; and upon the Mortgagee's request, the Mortgagor will forthwith execute and deliver a chattel mortgage or other security instrument upon furniture, furnishings, fixtures and equipment to the extent so required and other supporting documents which the Mortgagee may require in connection therewith, including financing statements and searches of records under any applicable legislation.
- (f) If any proceedings are commenced seeking to enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Lands

or any portion thereof, the Mortgagor will cause such proceedings to be vigorously contested in good faith, and in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom and will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered 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.

- (g) The authority herein conferred upon the Mortgagee and any action taken by the Mortgagee in exercise of such authority in making inspections of the Lands, procuring sworn statements, approving permits, contracts, subcontracts and Plans and Specifications will be taken by the Mortgagee for its own protection only, and the Mortgagee does not assume any responsibility to the Mortgagor or any other person and in so doing the Mortgagee shall not be acting in partnership with the Mortgagor in respect of the development of the Development.
- (h) The Mortgagor will pay or cause to be paid as soon as the same are due all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, Workers' Compensation assessments or other charges of any nature or kind (hereinafter called "Charges") which could in any circumstances constitute a lien or charge having priority over this Mortgage or any future advance on this Mortgage and the Mortgagor will from time to time, on demand, provide the Mortgagee with such books, payrolls or other records, receipts, certificates and declarations as the Mortgagee may deem necessary to satisfy itself that such charges have been paid as soon as the same are due.
- (i) The Mortgagee shall not be obliged to hold back advances or any portion of advances to provide the lien fund or other protection to the Mortgagor under the *Builders' Lien Act* of Alberta; provided that if the Mortgagee makes a hold back in a manner similar to the way the said Act provides for an owner to make holdbacks then, notwithstanding such holdbacks by the Mortgagee, such holdbacks shall not constitute the lien fund under the said Act and the Mortgagee shall not be a mortgagee authorized by the owner to disburse money secured by a mortgage as referred to in the said Act.
- (j) The Mortgagor has and will have, until the release hereof, the power, authority and legal right to construct the Development on the Lands.
- (k) In the event of default hereunder, in addition to any other remedies which the Mortgagee may have hereunder, the Mortgagee personally or by its agents, servants, contractors or attorneys may enter into and upon the Lands or any part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom and may inspect, use, operate, manage, lease and control the Lands and conduct the business thereof and, in addition, the Mortgagee, from time to time, may repair, renew, replace, maintain and restore the Lands and may complete the development and in the course of such completion may make such changes in the contemplated Development as it may deem desirable.
- (l) Unless otherwise expressly agreed to in writing by the Mortgagee, the Mortgagor shall:
  - (i) employ any monies advanced hereunder for construction costs, professional fees, property taxes, interest costs, insurance premiums and other costs necessarily incurred to complete construction (and sale, if applicable) of the Development (hereinafter collectively called "Construction Project Costs"); and

- (ii) pay from sources other than this mortgage such portion of Construction Project Costs as may be necessary so that the monies unadvanced under this Mortgage from time to time shall, in the opinion of the Mortgagee, at all times be sufficient to pay all Construction Project Costs necessary to complete construction (and sale, if applicable) of the Development.
- (m) The Mortgagor shall provide to the Mortgagee construction completion schedules indicating projected dates and amounts of progress advances and shall ensure that such schedules are updated and maintained in a current form from time to time during the course of construction.
- (n) The Mortgagor shall provide to the Mortgagee prior to each advance a statutory declaration that all advances previously provided by the Mortgagee have been disbursed to pay for costs associated with the construction of the Development or that the funds from such previous advances remain in a specially designed account with the Mortgagee.
- (o) The Mortgagor shall provide to the Mortgagee prior to each advance reports from an architect, engineer acceptable to the Mortgagee, or to be provided by the Mortgagee's cost consultant, at the Mortgagor's expense stating, inter alia:
  - (i) that construction to date complies with the approved Plans and Specifications;
  - (ii) that construction to date is of acceptable standards;
  - (iii) that construction has progressed on schedule; and
  - (iv) the percentage of work completed to date and the cost to complete the Development does not exceed the unadvanced monies under this Mortgage.
- (p) If at any time during construction of the development that actual costs incurred exceed that cost budgeted by the Mortgagor and approved by the Mortgagee, the Mortgagor shall immediately so notify the Mortgagee and if the Mortgagee shall conclude that the aggregate undisbursed balance of the loan shall be or become insufficient to pay for the completion of construction of the Development and all expenses and charges of every account in connection therewith, the Mortgagor shall pay the amount of such deficiency into the Development before any further disbursement of funds shall be made, or shall otherwise satisfy the Mortgagee that such deficiency shall be met.
- (q) The Mortgagor shall at all times during the course of construction maintain a Builder's all-risk insurance policy covering all of the construction in progress for the full replacement cost of the construction in progress and the total amount of advances taken from time to time hereunder, with loss payable, firstly, to the Mortgagee, and the insurance provisions of this Mortgage shall be and are hereby modified to such extent as is necessary to give full force and effect to this provision.

#### ARTICLE 4

##### 4.1 Mortgagor's Representations and Warranties

The Mortgagor represents and warrants to the Mortgagee that:

- (a) the Mortgagor has a good title to the Lands;
- (b) the Mortgagor has the right to mortgage the Lands;
- (c) on default, the Mortgagee shall have quiet possession of the Lands, free from all encumbrances (except the Permitted Encumbrances);
- (d) the Mortgagor will execute such further assurances with respect to the Lands as may be required by the Mortgagee;
- (e) the Mortgagor has done no act to encumber the Lands (except the Permitted Encumbrances);
- (f) all balance sheets, statements of profit and loss and other financial data that have been furnished by the Mortgagor to the Mortgagee fairly present the financial condition of the Mortgagor and the results of its operations; all other information, reports, papers and data furnished to the Mortgagee are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the Mortgagee a true and accurate knowledge of the subject matter; and there has been no change in the assets, liabilities or financial condition of the Mortgagor from that set forth in the most recent financial statements furnished by the Mortgagor to the Mortgagee other than changes in the ordinary course of business, none of which changes has been materially adverse; and
- (g) having due regard to all restrictions contained in the Articles of Incorporation, By-Laws or constating documents of the Mortgagor and all outstanding agreements and commitments of the Mortgagor, the Mortgagor has the power and authority to become indebted to the Mortgagee in the manner provided herein, and the Board of Directors or other governing body of the Mortgagor has taken all steps necessary to make proper the creation of the indebtedness evidenced hereby and the Mortgagor's performance hereunder in accordance with the terms and conditions hereof including, but not limited to the mortgaging, pledging, assigning, charging or encumbering of the Lands of the Mortgagor.

## ARTICLE 5

### 5.1 Events of Default

Without in any manner restricting the demand nature of the indebtedness secured hereunder or any other provision with regard to default, the following shall be deemed as events of default hereunder. Time is of the essence of this Mortgage. The whole or any part of the unpaid balance of the Mortgage Monies shall become due and be immediately payable and the security hereby constituted shall become enforceable at the option of the Mortgagee in each and every of the events following:

- (a) If the default shall be made in the due and punctual payment of all or any portion of any payment of principal or interest or any other amounts due or to become due hereunder or under any other agreement between the Mortgagor and the Mortgagee; or
- (b) If default shall be made in the observance or performance of any covenant, agreement or condition herein contained required to be observed or performed by the Mortgagor; or

- (c) If any representation or warranty made by the Mortgagor to the Mortgagee shall have been determined by the Mortgagee to be untrue in any material respect as of the date that such representation or warranty was made; or
- (d) If the Mortgagor shall fail to pay the rent arising out of the lands and premises upon which the property and assets of the Mortgagor are situate promptly when such rent becomes due; or
- (e) If any default should occur under any other mortgage or charge, whether prior or subsequent to this Mortgage; or if the possession of the Mortgagor to its property and assets or any part thereof shall be interfered with or threatened with interference by seizure of receivership pursuant to any other mortgage or charge, whether prior or subsequent to this Mortgage or the interest of the Mortgagor therein terminated by foreclosure or sale; or
- (f) If a resolution is passed or if a petition is filed or if any order is made for the winding-up of the Mortgagor; or
- (g) If the Mortgagor becomes insolvent or makes an assignment in bankruptcy or files a proposal or if a bankruptcy petition is filed or presented against the Mortgagor or the Mortgagor takes or threatens or proposes to take the benefit of any provision of the *Companies Creditors Arrangement Act* or any similar legislation now or hereafter in force; or
- (h) If the Mortgagor commits or threatens or proposes to commit any act of bankruptcy; or
- (i) If any execution, sequestration or any other process of any court becomes enforceable against or if a distress or analogous process is levied upon the property and assets of the Mortgagor or any material part of them.

## 5.2 Remedies on Default

In addition to the provisions of Article 6, in the event of default being made in any of the covenants, agreements, provisos, payments or stipulations expressed or implied herein, then:

- (a) the Mortgagee may, at its option, and at the Mortgagor's expense and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenant, agreement, proviso or stipulation;
- (b) the Mortgagee may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Lands and a solicitor to examine and report upon the title to the same, all at the expense of the Mortgagor;
- (c) it shall and may be lawful for, and the Mortgagor does hereby grant full power, right and license to the Mortgagee to enter, seize and distrain upon the Lands or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Lands as much of the Mortgage Monies as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent;

- (d) the Mortgagee may, at its option, sell, lease, mortgage or otherwise dispose of or deal with the Mortgagor's interest in and to the Lands, without entering into possession of the same. Any sale, lease or mortgage made under the powers hereby given may be on such terms as to credit or otherwise as shall in the opinion of the Mortgagee be most advantageous and for such price as can be reasonably obtained therefor and such sale may be made of any portion or portions of the Lands, from time to time. The Mortgagee may make any stipulation as to title or otherwise as the Mortgagee may deem proper and the Mortgagee may rescind or vary any contract for sale of any of the Lands and resell without being responsible for any loss occasioned thereby. The proceeds of any sale shall be applied in payment of the Mortgage Monies, all legal costs of the Mortgagee as between a solicitor and his own client on a full indemnity basis and the balance, if any, to be paid to the Mortgagor. Any such sale shall be absolutely conclusive as against the Mortgagor or any persons claiming by, from, through or under the Mortgagor and its assigns and in the event of a sale on credit or for part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable or charged with any monies until the same shall be actually received by it in cash;
- (e) the whole of the Mortgage Monies shall, at the option of the Mortgagee, become due and payable;
- (f) the Mortgagee may take such proceedings to realize on the Mortgagee's security created by this Mortgage or the Collateral Security by foreclosure or otherwise as the Mortgagee may by law be entitled to do;
- (g) the Mortgagee may exercise each of the foregoing powers, together with all other rights and powers provided for in this Mortgage, without notice to the Mortgagor; and
- (h) the exercise or the attempted exercise of one or more of the Mortgagee's rights or remedies hereunder shall not affect, delay or prejudice any other rights or remedies nor operate as a waiver thereof, and any or all of the said rights or remedies may be exercised concurrently or successively.

### **5.3 Remedies Cumulative**

Each and every right, remedy, and power granted to the Mortgagee hereunder shall be cumulative and in addition to any other right, remedy, or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute, or otherwise and may be exercised by the Mortgagee from time to time concurrently or independently and as often and in such order as the Mortgagee may deem expedient. Any failure or delay on the part of the Mortgagee in exercising any such right, remedy, or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect the Mortgagee's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy, or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, or power.

### **5.4 No Merger**

- (a) The giving and taking of this Mortgage shall in no way merge or affect any other security or securities, including the Collateral Security, that may have been, or that may hereafter be given in respect of any amount secured by this Mortgage, or any part thereof, or impair or affect any such security or securities or any remedy thereunder, and all rights



and remedies which the Mortgagee now has or may hereafter have against the Mortgagor or any other person or entity are hereby reserved. The Mortgagor agrees that the taking of a judgment or judgments on any covenant contained herein or on any covenant which is set forth in any other security for payment of the Mortgage Monies or performance of the obligations hereby secured or the entering into of any arrangement, including the granting of time, compromise, release or discharge or the termination of any causes of action, claim or right whatsoever by the Mortgagee against the Mortgagor or any other person or entity, whether prejudicial or beneficial to any one or more of them, shall not operate as a merger of such covenant or affect the rights or remedies of the Mortgagee including, without limitation, or affect the Mortgagee's right to interest at the Interest Rate on any monies which are owing to the Mortgagee and such judgment shall provide that interest thereon shall be computed at the Interest Rate in the same manner as provided for herein until the judgment has been paid in full.

- (b) The Mortgagor acknowledges that it is aware of the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, dealing with the aware of interest from the date a cause of action arises to the date of judgment, and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof, and agrees to pay interest in accordance with the terms of this Mortgage, both before and after default, maturity and judgment.

#### **5.5 Release**

The Mortgagee may at any time release any part of the Lands, or any of the covenants and agreements herein contained, or any Collateral Security, either with or without any consideration therefor and without being accountable either for the value thereof, or for any money except that which is actually received, and without thereby releasing or affecting any other of the Lands or any of the other covenants or agreements herein contained or releasing any guarantor or any other security.

#### **5.6 No Obligation to Advance**

Subject to the Commitment Letter, neither execution nor registration nor acceptance of this Mortgage, nor the advance of part of the Principal Sum shall bind the Mortgagee to advance the Principal Sum or any unadvanced portion thereof, but nevertheless this Mortgage shall take effect forthwith on its execution and if the Principal Sum or any part thereof shall not be advanced at the date hereof, the Mortgagee may advance the same in one or more sums to or on behalf of the Mortgagor at any future date or dates and the amount of such advances when so made shall be secured hereby and repayable with interest as herein provided. In all events, the advance of the Principal Sum or any part thereof from time to time shall be in the sole, absolute, unfettered and unqualified discretion of the Mortgagee.

#### **5.7 Additional Charges**

All solicitor's, inspector's, valuator's and surveyor's fees and expenses for drawing and registering this Mortgage and for examining the Lands and the title thereto, and for making or maintaining this Mortgage as a valid and subsisting charge (subject only to the Permitted Encumbrances) on the Lands, together with all sums which the Mortgagee may and does from time to time advance, expend or incur hereunder as principal, insurance premiums, Real Estate Taxes, rates or in or toward payment of any Prior Charge, or in maintaining, repairing, restoring or completing the development of the Lands, and in inspecting, leasing, managing, or improving the Lands, including the price or value of any goods of any sort or description supplied to be used on the Lands, and in exercising or enforcing or attempting to enforce or in pursuance of any right, power, remedy or purpose hereunder or subsisting, and legal costs as between a

solicitor and his own client, and also an allowance for the time, work and expenses of the Mortgagee, or of any agent, solicitor or servant of the Mortgagee, for any purpose herein provided or whether or not such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise, are to be secured hereby and shall be a charge on the Lands, together with interest thereon at the Interest Rate, and all such monies shall be repayable to the Mortgagee on demand. It is the express intention and agreement of the Mortgagor and Mortgagee that the Mortgagor shall fully and totally indemnify the Mortgagee for all costs, expenses, charges and monies of any nature whatsoever either directly or indirectly arising out of or associated with this Mortgage.

### **5.8 Right of Subrogation**

In the event of the Principal Sum advanced hereunder or any part thereof being applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights of, and stand in the position of and be entitled to all the equities of the party so paid whether such charge or encumbrance has or has not been discharged, and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under this Mortgage or of any claim so paid shall be final and binding on the Mortgagor.

### **5.9 Monies Received or Collected**

The Mortgagee shall not be charged with any monies receivable or collectable out of the Lands or otherwise except those actually received, and all revenue of the Lands received or collected by the Mortgagee from any source other than payment by the Mortgagor may at the option of the Mortgagee be retained in a suspense account or used in maintaining or insuring or improving the Lands, or in payment of Real Estate Taxes or other charges against the Lands, or applied on the mortgage account, and the Mortgagee shall not be under any liability to pay interest on any sums in a suspense account.

### **5.10 Discharge**

Any discharge of this Mortgage shall be prepared by the solicitor of the Mortgagee and the Mortgagee shall have a reasonable time after receipt of payment in full within which to have prepared and to execute such discharge.

### **5.11 Exercise of Discretion**

Any discretion, option, decision or opinion hereunder on the part of the Mortgagee shall be sufficiently exercised or formed if exercised, or formed by or subsequently ratified by the manager or acting manager for the time being of the Mortgagee at Calgary, Alberta or by an executive officer of the Mortgagee, or any officer or agent appointed by the Mortgagee for that purpose.

### **5.12 Default Under Prior Charge**

If the Mortgagor makes default in the performance of the covenants, payments or conditions contained in any Prior Charge then such default shall constitute a default hereunder and the Mortgage Monies shall, at the option of the Mortgagee, become forthwith due and payable without notice or demand. The Mortgagee shall be at liberty in the event of such default, but shall not be obligated, to pay any arrears or other sums payable under the Prior Charge, or pay off all or any portion of the principal or interest thereby secured. Any amounts so paid by the Mortgagee shall:

- (a) be added to the Mortgage Monies;

- (b) bear interest at the Interest Rate until paid;
- (c) be a charge upon the Lands; and
- (d) unless repaid to the Mortgagee upon demand, shall be recoverable from the Mortgagor in the same manner as if such sum had been originally advanced and secured hereby.

For the purposes of tendering any arrears or other sums payable to a holder of a Prior Charge, the Mortgagor hereby irrevocably appoints the Mortgagee its agent for such purpose and irrevocably directs the Mortgagee to tender such monies upon the holder of a Prior Charge, in the name of and on behalf of the Mortgagor, and in this regard the Mortgagor hereby assigns unto the Mortgagee, its equity of redemption, if any, with respect to the Prior Charge together with the statutory right of redemption given to the Mortgagor by the provisions of Section 38 of the *Law of Property Act*, R.S.A. 2000, c. L-7. It is the intention of the parties that the Mortgagee shall have the same rights and powers but not the liabilities as the Mortgagor under and pursuant to the terms of the Prior Charge so that the Mortgagee will be in a position to take whatever steps are necessary to bring the Prior Charge into good standing once a default has occurred thereunder. This assignment is not intended to encompass the Mortgagor's entire interest in the Prior Charge, but only to the extent hereinbefore stipulated. Nothing herein contained shall create an obligation upon the Mortgagee to cure any default on behalf of the Mortgagor.

#### **5.13 Attornment**

For better securing the punctual payment of the Mortgage Monies, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Lands at a monthly rental equivalent to the proportionate monthly amount of the Mortgage Monies secured hereby, the same to be paid on each day appointed for the payment of the Mortgage Monies pursuant to the Commitment Letter, and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or shall take the benefit of any statute relating to bankruptcy or insolvent debtors then such rental shall, if not already payable, be payable immediately thereafter. The legal relationship of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor. The Mortgagee may at any time after default hereunder enter upon the Lands, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit; but neither this clause nor anything done by virtue thereof shall render the Mortgagee a mortgagee in possession or accountable for any monies except those actually received.

#### **5.14 Expropriation and Condemnation**

- (a) If the Lands or any part thereof be condemned under any power of eminent domain or be acquired by expropriation, the damages, proceeds, consideration and award for such acquisition, to the extent of the full amount of the Mortgage Monies and obligations secured hereby remaining unpaid, are hereby assigned by the Mortgagor and shall be paid forthwith to the Mortgagee and its successors and assigns. If a portion only of the Lands be taken in the expropriation without resulting damage to the buildings and improvements or any part thereof, or if a portion of the Lands shall be taken in such expropriation proceedings with resulting damage to the buildings and improvements and the amount of the award made therein is based on a determination that the portion of the buildings and improvements remaining on the portion of the Lands not so taken can practicably be rehabilitated then the provisions of this Mortgage relating to insurance proceeds in case of loss or damage shall apply to the award in the said expropriation and the same shall be applied accordingly.

- (b) The Mortgagor acknowledges that it is aware of the provisions of Sections 49 and 52 of the *Expropriation Act*, R.S.A. 2000 c. E-13, and any amendments thereto and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof and in addition the Mortgagor covenants to pay to the Mortgagee the difference between the Mortgage Monies and the monies paid by the expropriating authority to the Mortgagee together with interest thereon at the Interest Rate both before and after maturity, default, acceleration and the obtaining of any judgment by the Mortgagee.
- (c) Notwithstanding the foregoing subsections (a) and (b) the Mortgagee shall be at liberty, at its sole option, to declare the whole of the Mortgage Monies as being immediately due and payable in the event that any portion of the Lands shall be the subject matter of an expropriation proceeding.
- (d) Any monies awarded by an order of either the Land Compensation Board or the Surface Rights Board with respect to all or any part of the Lands to the extent of the full amount of the Mortgage Monies are hereby assigned by the Mortgagor and shall be paid forthwith to the Mortgagee, its successors and assigns.

## ARTICLE 6

### 6.1 Appointment of Receiver

If the Mortgagor shall be in default under this Mortgage or under any Collateral Security given by the Mortgagor to the Mortgagee, then the Mortgagee may by instrument in writing or by obtaining an order of the court, appoint any person or persons, whether an officer or officers or employee or employees of the Mortgagee, or not, to be a Receiver of the Lands and assets which are charged in favour of the Mortgagee and the rents and profits derived therefrom or any portion or part thereof, at the Mortgagee's sole discretion. The Mortgagee may remove any Receiver so appointed and appoint another or others in his or their stead. The following provisions shall apply to this paragraph:

- (a) a Receiver so appointed is conclusively the agent or agents of the Mortgagor and the Mortgagor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the Receiver. The Mortgagee shall not be in any way responsible for any misconduct or negligence on the part of any Receiver;
- (b) nothing contained herein and nothing done by the Mortgagee or by a Receiver shall render the Mortgagee a mortgagee in possession or responsible as such;
- (c) all monies received by the Receiver, after providing for payment and charges ranking prior to this Mortgage and for all costs, charges and expenses of or incidental to the exercise of any of the powers of the Receiver as hereinafter set forth, shall be applied in or towards satisfaction of the monies owing pursuant to this Mortgage;
- (d) the Receiver so appointed may but shall not be obligated to:
  - (i) take possession of, collect and get in the property, rents and profits charged by this Mortgage and any Collateral Security granted by the Mortgagor to the Mortgagee and for that purpose to take any proceedings, be they legal or otherwise, in the name of the Mortgagor or otherwise;

- (ii) carry on or concur in carrying on the business which the Mortgagor is conducting on and from the Lands;
- (iii) lease or re-lease all or any portion of the Lands for any term, and on any condition, and with or without a premium, and for this purpose may execute contracts in the name of the Mortgagor which said contracts shall be binding upon the Mortgagor;
- (iv) borrow monies for the purpose of carrying on the business of the Mortgagor on the Lands, the maintenance and preservation of the Lands or any part thereof, the payment of taxes, wages and other charges ranking in priority to this Mortgage or for other purposes approved by the Mortgagee and any money so borrowed shall be repaid by the Mortgagor on demand and until repaid shall bear interest thereon at the Interest Rate and form a charge upon the Lands;
- (v) receive the revenues, incomes, issues and profits of the Lands and to pay therefrom all expenses, charges and borrowings incurred or payable 'n carrying on the business as it relates to the Lands and all taxes, assessments and other charges against the Lands, payment of which may be necessary to preserve the Lands and the balance, if any, shall be held and applied in the same manner as if the same arose from a sale or realization of the Lands;
- (vi) sell and dispose of any or all of the Lands at public auction or by tender at such time and on such terms and conditions as the Receiver shall determine or to sell and dispose of any or all of the Lands by private contract and in any event for ~~cash or upon credit and secured or otherwise as the Receiver may deem proper~~ and to deliver to the purchaser or purchasers of the Lands good and sufficient deeds or title document for the same, the Receiver being hereby constituted the irrevocable attorney of the Mortgagor for the purpose of making such sale and executing such deeds and transfer documents and any such sale shall be absolute and conclusive as against the Mortgagor or any persons claiming by, from, through or under the Mortgagor and its assigns and in the event of a sale on credit or for part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable or charged with any monies until the same shall be actually received by it in cash; and the Receiver may vary and rescind any contract for sale made by virtue of these presents and may buy and resell the Lands or part thereof, either by private sale or public auction without the Mortgagee or Receiver being responsible for any loss or deficiency on resale or expense occasioned thereby and for such purposes the Receiver may make and execute all agreements and assurances that the Receiver shall deem advisable or necessary;
- (vii) make any arrangement or compromise which the Receiver shall deem expedient;
- (viii) sue or defend any action in the name of the Mortgagor;
- (ix) exercise all or any of the powers or rights incident to the ownership of the Lands;
- (x) employ or retain for the execution of the duties and powers conferred upon the Receiver hereunder, such agents, assistants, professional advisors or other

persons as required on the terms and at the remuneration the Receiver considers proper;

- (xi) carry on and complete any construction commenced by the Mortgagor and be in charge of completion of any further construction on the Lands;
  - (xii) release any of the Lands which in the Receiver's opinion are unprofitable or unrealizable or a source of loss or danger to the Mortgagor or the Mortgagee;
  - (xiii) exercise all rights and powers of the Mortgagor hereunder and to act generally in relation to the Lands in such manner and on such terms as may seem expedient in the best interests of the Mortgagee;
  - (xiv) assent to the modification of any contract or agreement which may be subsisting in respect of the Lands; or
  - (xv) enter into, make, execute and sign all such contracts, agreements, transfers, conveyances, assurances, instruments, and do all such things and bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Lands as the Mortgagee may deem expedient;
- (e) the rights and powers conferred by this section are supplemental to and not in substitution for any other rights which the Mortgagee may have from time to time;
  - (f) the Receiver appointed hereunder shall not be obligated to take possession or control of the whole of the business of the Mortgagor. Rather, the Mortgagee's right to appoint shall be restricted to the Lands and the rents, profits and any business deriving therefrom;
  - (g) the Mortgagor shall yield up possession of the Lands and the conduct of its business in connection therewith to the Receiver so appointed upon demand and shall facilitate by all legal means the actions of the Receiver and shall not interfere with the carrying out of the powers hereby granted to the Receiver and the Mortgagor shall forthwith by and through its officer and directors execute such documents and transfers as may be necessary to place the Receiver in legal possession of the Lands and thereupon all the powers and functions, rights and privileges of each and every of the directors and officers of the Mortgagor shall cease and determine with respect to the Lands; and
  - (h) the Mortgagee may from time to time fix the remuneration of every such Receiver and direct the payment thereof out of the Lands or the proceeds thereof and if paid by the Mortgagee, such remuneration and all expenses incurred by any Receiver shall be a charge upon the Lands and shall be repaid by the Mortgagor to the Mortgagee forthwith upon demand, and shall bear interest at the Interest Rate until paid.

## **6.2 Appointment of Attorney**

If the Mortgagor shall be in default in the observance or performance of any of the terms, covenants, conditions or payments described herein, then the Mortgagor hereby irrevocably appoints the Mortgagee, or its agent or employee or any Receiver appointed as aforesaid (the choice of which shall be at the election of the Mortgagee, in its sole and absolute discretion) to be its attorney, in its name and on its behalf to execute and perform any conveyances, assurances and things which the Mortgagor ought to execute and perform under the covenants herein contained and generally to use the name of the

Mortgagor in the exercise of any of the powers hereby conferred on the Mortgagee and any Receiver and without limiting the generality of the foregoing, the Mortgagee and any Receiver appointed as aforesaid are hereby appointed pursuant to Section 115 of the *Land Titles Act*, R.S.A. 2000 c. L-4 as amended or replaced by substitute legislation from time to time, as the Mortgagor's attorney to execute and deliver, under seal of the Mortgagor, or by the hand and under the seal of the Mortgagee or the Receiver, any agreements, instruments and assurances as the Mortgagee sees fit, for any and all purposes and for the purpose of carrying out the Mortgagee's power of sale contained herein. Any attorney appointed pursuant to this section shall be entitled, in its capacity as attorney, to exercise all of the powers conferred upon a Receiver hereunder, in addition to any other powers the attorney may have hereunder.

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## ARTICLE 7

### 7.1 Assignment of Rents and Leases

As security for payment of the Mortgage Monies, the Mortgagor does hereby fully and absolutely assign, transfer and set over to the Mortgagee all of the rents due or to accrue due and to be payable in respect of the Lands and any and every part thereof and any and all leases, offers to lease and rental agreements of every nature, kind and description, present and future, and all benefits and advantages to be derived therefrom, together with all the rights of the Mortgagor to enforce the same, by way of distress or otherwise.

## ARTICLE 8

### 8.1 Condominium

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If the Lands or any portion thereof is now subject to or becomes subject to a condominium plan duly created pursuant to the provisions of the *Condominium Property Act*, R.S.A. 2000 c. C-22, and amendments thereto, then:

- (a) the Mortgagor hereby fully and absolutely assigns, transfers and sets over unto the Mortgagee, any and all of the Mortgagor's voting rights now existing or which may come into existence with respect to the Lands, and with respect to the condominium corporation of which the Mortgagor is a member by virtue of the Mortgagor's ownership of the condominium unit being charged by this Mortgage (herein sometimes called the "**Condominium Corporation**") whether such voting rights arise under the *Condominium Property Act*, R.S.A. 2000, c. C-22, or any amendments thereto, or any legislation passed in addition thereto, or in substitution therefor, under the Bylaws of the Condominium Corporation, under any agreement with the Condominium Corporation or otherwise howsoever. The Mortgagor covenants and agrees to execute any materials or documentation which in the sole opinion of the Mortgagee are necessary or advisable to give full effect to such assignment, transfer and setting over of the voting rights. Provided, however, that if the Mortgagee is not present in person or by proxy, or if present, does not wish to vote, then the Mortgagor may without further authority exercise all voting rights other than the right to vote on any matter requiring a unanimous resolution. Provided further that the Mortgagee may, by notice in writing to the Mortgagor, revoke and terminate all voting rights and privileges of the Mortgagor;
- (b) it is further stipulated, provided and agreed that notwithstanding anything to the contrary herein contained;

- (i) the Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall observe and perform each and every one of the covenants and provisions required to be performed under or pursuant to the terms of this Mortgage, the *Condominium Property Act*, R.S.A. 2000, c. C-22, and all amendments thereto and any legislation passed in addition thereto or in substitution therefor, the bylaws of the Condominium Corporation and any amendments thereto, and under any agreement between the Mortgagor and the Condominium Corporation; and
  - (ii) without limiting the generality of the foregoing subsection, the Mortgagor covenants to pay promptly when due any and all assessments, instalments or payments owing to the Condominium Corporation by an owner of a condominium unit;
- (c) the Mortgagor further covenants and agrees that where the Mortgagor defaults in the Mortgagor's obligations to contribute to the common expenses assessed or levied by the Condominium Corporation or any authorized agent on its behalf, or any assessment, instalment or payment owing to the Condominium Corporation, or upon breach of any covenant or provision hereinbefore in this Section contained, then regardless of any other action or proceeding taken or to be taken by the Condominium Corporation, the Mortgagee, at its option and without notice to the Mortgagor:
- (i) may, but shall not be obliged to, pay such contribution to the common expenses, assessment, instalment or payment owing to the Condominium Corporation or rectify any such default or breach by the Mortgagor and all monies so paid and expended by the Mortgagee shall be secured hereby and shall be a charge on the Lands together with interest thereon at the Interest Rate and all such monies shall be repayable to the Mortgagee on demand; and
  - (ii) may deem such default to be a default under the terms of this Mortgage and proceed to exercise its rights hereunder; and
- (d) upon default herein and notwithstanding any other right of action of the Condominium Corporation or the Mortgagee, the Mortgagee may distrain for arrears of any assessments, instalments and payments due to the Mortgagee or arising under any of the foregoing paragraphs.

## ARTICLE 9

### 9.1 Interpretation

Wherever the singular number or masculine gender is used in this instrument the same shall be construed as including the plural and feminine and neuter respectively where the fact or context so requires. In any case, where this Mortgage is executed by more than one party, all covenants and agreements herein contained shall be construed and taken as against such executing parties as joint and several. The respective heirs, executors, administrators, successors and assigns of any party executing this Mortgage are jointly and severally bound by the covenants, agreements, stipulations and provisos herein contained. The covenants, agreements, stipulations and provisos herein stated shall be in addition to those granted or implied by statute.



## 9.2 Permitted Encumbrances

The parties acknowledge that this Mortgage is to be registered subject only to the Permitted Encumbrances.

## 9.3 Renewal or Extension

If the Mortgagee shall agree to renew or extend the term of this Mortgage, then such renewal or extension and the rate of interest, term, payments and other stipulations of such renewal or extension shall be binding upon the Mortgagor, the Mortgagor's successors in title, encumbrancers and others interested in the Lands, whether or not the renewal or extension is registered as an amending agreement or by way of caveat at the Land Titles Office, and whether or not the rate of interest, payments or amortization period applicable during the renewal or extension term is greater than or less than the rate, payments or amortization period stipulated in this Mortgage. The Mortgagor shall forthwith upon request by the Mortgagee, provide to the Mortgagee, at the Mortgagor's expense, all postponements and other assurances as the Mortgagee may require in order to ensure the foregoing. All renewals shall be done at the Mortgagor's legal expense on a solicitor and his own client basis. Such renewal, even if made by a successor in title to the Mortgagor named herein, shall in no way release or abrogate or render unenforceable the covenants or obligations of the Mortgagor named herein, which shall continue notwithstanding such renewal. In the event that the Mortgage is renewed as aforesaid, the Mortgage, as renewed, shall be deemed to be dated as at the date of maturity of this Mortgage or the Mortgage as previously renewed, as the case may be, for the purposes of prepayment only.

No extension of time given by the Mortgagee to the Mortgagor or alteration of interest rate or principal payments or any other dealing by the Mortgagee with the owner of the Lands shall in any way prejudice or affect the rights of the Mortgagee against the Mortgagor or the Mortgagor's assigns, or anyone claiming under the Mortgagor or any other persons.

## 9.4 Commitment Letter Not Merged

The provisions of the Commitment Letter are not superseded by or merged in the execution or registration of the Mortgage or any Collateral Security and the provisions of the Commitment Letter shall remain in full force and effect until all of the conditions thereof to be observed and performed by the Mortgagor have been fully paid and satisfied, provided however that in the event of a conflict between the terms of the Commitment Letter and the terms of this Mortgage or the Collateral Security, the Mortgagee, in its sole discretion, may determine which provisions shall prevail.

## 9.5 Governing Law

This Mortgage shall be governed by and construed in accordance with the Laws of the Province of Alberta and the Courts of the Province of Alberta shall have exclusive jurisdiction over any dispute or matter arising herefrom.

## 9.6 Administration Fee

Should the Mortgagor be in default in the observance or performance of and of the covenants, agreements, conditions or payments set forth in this Mortgage, then the Mortgagee shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements an administration and management fee not to exceed Five Hundred (\$500.00) Dollars for each month or part thereof for which the Mortgagor remains in default. This administration and management fee is intended to reimburse the Mortgagee for time and trouble in the management and

administration of this Mortgage and of the Lands. The said sum or sums are agreed to be a liquidated amount to cover the Mortgagee's administration and management costs and are not intended nor shall be construed to be a penalty. All such sums payable to the Mortgagee shall be a charge upon the Lands and shall bear interest at the Interest Rate until paid.

### 9.7 Financial Records

If the Mortgagor carries on a commercial or industrial enterprise upon the Lands then:

- (a) The Mortgagor shall provide the information contemplated by the Commitment Letter;
- (b) The Mortgagor covenants and agrees during the continuance of this Mortgage to maintain proper records and books of account with respect to the revenues and expenditures in relation to the Lands and to permit the Mortgagee or any person appointed by the Mortgagee for that purpose to examine such records and books at all reasonable times and to make copies or extracts therefrom, and to give to the Mortgagee all information with regard to the revenues and expenditures in relation to the Lands which the Mortgagee may reasonably require;
- (c) The Mortgagor shall during the continuance of this Mortgage furnish to the Mortgagee annually within ninety (90) days of the end of each of the fiscal years of the Mortgagor, the following statements or information prepared in a manner acceptable to the Mortgagee by a recognized firm of accountants approved by the Mortgagee, namely:
  - (i) a balance sheet and a statement of operations for the preceding year for the Lands;
  - (ii) a detailed statement of income and expenditures and a statement of earned surplus, in each case with supporting schedules and an explanation of any items of an unusual nature;
  - (iii) such additional information as the Mortgagee may from time to time require;
  - (iv) an annual statement of income and expenditures with supporting schedules and an explanation of any items of an unusual nature respecting the Lands, certified by an officer of the Mortgagor;
  - (v) copies of every audited statement or statements as may be prepared from time to time with respect to the Lands; and
- (d) The Mortgagee shall at any time and from time to time at its own expense, be at liberty to have an audit made of the books and accounts of the Mortgagor, related to the Mortgagor's operations with respect to the Lands, and for such purposes the Mortgagor shall make available to the Mortgagee and its accountants all books of account and records and all vouchers, books, papers and documents which may relate to the Lands.

### 9.8 Collateral Security

As additional and collateral security for the repayment of the monies hereby secured and the performance of the covenants contained herein, the Mortgagor shall execute and deliver or cause to be delivered to the Mortgagee the Collateral Security. None of the rights or remedies of the Mortgagee under this Mortgage

or under the Collateral Security shall be merged in, waived, delayed, impaired, prejudiced or suspended by any such additional security or any act of the Mortgagee pursuant thereto.

### **9.9 Default Under Collateral Security**

- (a) If the Mortgagor or any guarantor makes default under any Collateral Security then the same shall constitute default under this Mortgage and the Mortgagee shall be at liberty to exercise its rights under this Mortgage and under any Collateral Security, either successively or concurrently, to the same extent as if the time for payment of the Principal Sum and other monies hereby secured had fully come and expired.
- (b) It is understood and agreed that a default by the Mortgagor hereunder or under the Collateral Security shall constitute a default under all other instruments or agreements, if any, securing or evidencing the loan herein or any indebtedness, present or future, of the Mortgagor to the Mortgagee and a default by the Mortgagor under any such instruments or agreements shall constitute a default hereunder.

### **9.10 Notices**

- (a) All notices, requests, demands, pleadings, judicial documentation and any other communications required to be served or given by the terms of this Mortgage or by the Rules of Court of Alberta, the *Judicature Act*, R.S.A. 2000, C. J-2, and any amendments thereto, the *Law of Property Act*, R.S.A. 2000, C. L-7, and any amendments thereto, or any other statute, as a result of a default by the Mortgagor including but not restricted to any Statement of Claim issued by the Mortgagee or a Mortgagee's Notice of Motion requesting enforcement of its rights hereunder (the "Notice"), shall be sufficiently served either personally or by prepaid registered mail addressed to the Mortgagor at the Mortgagor's Address or, if to the Mortgagee, at the Mortgagee's Address. The Notice shall be conclusively deemed to have been received by the addressee three (3) Business Days after mailing thereof as aforesaid; provided that in the case of any real or reasonably apprehended interruption of the mail, service may be by telegraph, telex, facsimile or other operative form of electronic written telecommunication (in which case the addressee shall be conclusively deemed to have received the same on the day upon which, in the ordinary course of such telecommunication, the same would have been received).
- (b) No want of notice or publication when required by this Mortgage or by any statute nor any impropriety nor irregularity shall invalidate any sale made or purported to be made under this Mortgage.

### **9.11 Receipt Acknowledged**

The Mortgagor acknowledges receipt of a true copy of this Mortgage.

### **9.12 Charge**

For better securing to the Mortgagee repayment of the Mortgage Monies, the Mortgagor hereby mortgages to the Mortgagee all of its right, title, estate and interest in the Lands.

### **9.13 Due on Sale**

In the event that the Mortgagor shall sell, convey, transfer or assign (or purport to do so) the Lands or any portion thereof or interest therein to a purchaser, transferee or assignee without first obtaining the Mortgagee's consent in writing, then, at the Mortgagee's option, the Mortgage Monies shall become immediately due and payable, without the necessity of a prior demand. Such consent may not be unreasonably or arbitrarily withheld. Failure to exercise the aforesaid option shall not be deemed or construed to be an acceptance by the Mortgagee of the aforesaid purchaser, transferee or assignee, nor shall such failure be or constitute or operate as a release, waiver or discharge of any personal covenants contained in this Mortgage or any Collateral Security, nor shall such failure prejudice or affect the enforcement of such personal covenants, nor shall such failure operate as a release or discharge of this Mortgage or any surety of or for this Mortgage. Any promise to pay, written or verbal acknowledgement of the indebtedness outstanding hereunder, or part payment of the Mortgage Monies by any of the Mortgagor's successors in title to the Lands shall be conclusively deemed to be made on behalf of the Mortgagor and any successors in title, as the case may be, as its agent for the purpose of furnishing a fresh starting point for the running of any limitation period.

If the Mortgagor or any other party who becomes liable to perform and observe the covenants herein should be a corporation, then any direct or indirect transaction or dealing whatsoever which affects the share structure or share ownership of such corporation and which results in a change in control, either legal or beneficial, of the shareholdings of that corporation shall constitute an event as hereinbefore described such that the Mortgagee's prior written consent as aforesaid is to be obtained, failing which, at the Mortgagee's sole option, the Mortgage Monies shall become immediately due and payable, without the necessity of a prior demand.

### **9.14 Unenforceable Terms**

If any term, covenant or condition of this Mortgage or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent the remainder of this Mortgage or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Mortgage shall be valid and shall be enforceable to the fullest extent permitted by law.

### **9.15 Further Advances and Readvances by Mortgagee**

This Mortgage shall be a continuing security and charge for the Principal Sum and all sums of money owed by the Mortgagor to the Mortgagee from time to time pursuant to the provisions of this Mortgage, notwithstanding the balance hereunder may be fluctuating and even may from time to time be or have been reduced to a "nil" balance, and notwithstanding monies advanced may be repaid and further advances made and shown from time to time. This Mortgage shall remain in full force and effect until discharged by the Mortgagee, it being the intention of the parties that the amount owing under this Mortgage may be either increased or decreased from time to time but not to exceed the total Principal Sum. For the purposes of subsection 104(1) of the *Land Titles Act*, R.S.A. 2000 c. L-4 as amended or replaced by substitute legislation from time to time, it is hereby declared by and agreed between the Mortgagor and the Mortgagee that this Mortgage shall be held by the Mortgagee as continuing collateral security for a revolving line of credit up to the Principal Sum.

### **9.16 General**

Mortgagor further covenants and agrees that:

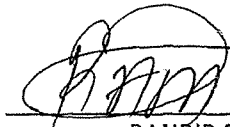
- (a) This Mortgage and all its provisions shall enure to the benefit of the Mortgagee, its successors and assigns, and shall be binding upon the Mortgagor, its successors and assigns.
- (b) The Mortgagee shall at all times have the right to offset and apply any and all credits, moneys and properties of the Mortgagor in the Mortgagee's possession or control against any obligations of the Mortgagor to the Mortgagee. All payments by the Mortgagor or other funds of the Mortgagor held or received by the Mortgagee, other than regular monthly instalments of principal and interest on this Mortgage, and applied by the Mortgagee to any indebtedness hereunder, shall be applied to the last maturing instalments under this application without penalty.
- (c) In the absence of default in any obligation of the Mortgagor to the Mortgagee, voluntary prepayment may be made by the Mortgagor on the Principal Sum (or such lesser amount) owing hereunder at any time and from time to time, without penalty, on two (2) Business Days prior notice to the Mortgagee, with such notice to specify the amount of any such prepayment of the Principal Sum.
- (d) The Mortgage Monies hereby secured will be paid without regard to any equities between the Mortgagor and the Mortgagee or any set-off or cross-claim, and the receipt of the Mortgagee from time to time hereof for payment of such principal and interest will be a good discharge to the Mortgagor for the same.

**9.17 Reference Date**

This Mortgage is dated February 24, 2014 for reference purposes only.

**IN WITNESS WHEREOF** the Mortgagor has affixed its corporate seal duly attested to by its authorized signing officers this 24<sup>th</sup> day of February, 2014.

**AAA HOLDINGS LTD.**

Per:  (c/s)  
Name: RANBIR SANDHU  
Title: PRESIDENT

SCHEDULE "A"**I. LANDS**

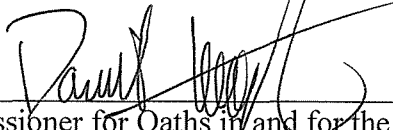
PLAN 8011265  
 BLOCK 10  
 LOT 17  
 EXCEPTING THEREOUT ALL MINES AND MINERALS  
 AND THE RIGHT TO WORK THE SAME

**PERMITTED ENCUMBRANCES**

Registration Number	Date (D/M/Y)	Particulars
771 147 064	20/10/1977	Zoning Regulations Subject to Calgary International Airport Zoning Regulations
801 178 750	30/10/1980	Utility Right of Way Grantee – The City of Calgary

THIS IS EXHIBIT "2" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.

A handwritten signature in black ink, appearing to read "David LeGeyt", written over a horizontal line.

A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor



CANADIAN  
WESTERN BANK

September 12, 2018

AAA Holdings Ltd.  
26, 3530 32 Street NE  
Calgary, AB T1Y 6G7

Attention: **Ranbir (Rana) Sandhu**  
President

**Mohinder (Nicky) Sandhu**  
Director

Dear Sir and Madam:

On the basis of the financial statements and other information provided by AAA Holdings Ltd. (the "Borrower"), and by Ranbir Sandhu and Mohinder Sandhu (the "Guarantors") in connection with your request for financing, Canadian Western Bank (the "Bank") has authorized the following loans subject to the terms and conditions outlined in this Commitment Letter (the "Agreement").

This Agreement amends and restates all prior commitment letters and commitments, and with the documents referred to in this Agreement, contains all the terms and conditions pertaining to the availability of the credit facilities from the Bank.

1. **LOAN AMOUNT:**

- 1.1. Loan Segment (1): Term Loan \$3,770,305.76
- 1.2. Loan Segment (2): Term Loan \$303,550.70

Collectively referred to as "the Loans".

2. **PURPOSE OF LOAN:**

Amounts advanced by the Bank are to be used by the Borrower as follows:

- 2.1. Loan Segment (1): To provide term financing over property legally described as Plan 8011265 Block 10 Lot 17 and civically known as 3530 32<sup>nd</sup> Street NE, Calgary, AB
- 2.2. Loan Segment (2): To provide term financing over property legally described as Plan 8011265 Block 19 Lot 17 and civically known as 3530 32<sup>nd</sup> Street NE, Calgary, AB

3. **INTEREST RATE:**

Loans shall bear interest while outstanding before and after maturity and default at the following rates:

- 3.1. Loan Segment (1): Prime Fixed Rate of 4.49% per annum through to March 13, 2019.
- 3.2. Loan Segment (2): Prime Fixed Rate of 4.49% per annum through to February 13, 2019.

Unless otherwise specified, all interest shall be payable without demand on the dates specified by the Bank and shall be calculated daily, compounded monthly. Overdue interest shall bear interest at the same rate.

2810 - 32nd Avenue NE, Calgary, AB T1Y 5J4  
t. 403.250.8838 | f. 403.250.8806  
cwbank.com



4. **ADVANCES:**

- 4.1. Loan Segment (1): Was advanced on a lump sum basis following satisfaction of the Conditions Precedent as set forth in Schedule "C" previously provided.
- 4.2. Loan Segment (2): Was advanced on a lump sum basis following satisfaction of the Conditions Precedent as set forth in Schedule "C" herein attached.

5. **TERM AND LOAN MATURITY DATE:**

- 5.1. Loan Segment (1): The Loan is repayable in full, together with all interest, costs and charges, the earlier of March 13, 2019 (the "Loan Maturity Date") or the date payment is demanded as a result of default by the Borrower. (5 Year Fixed Rate Term)
- 5.2. Loan Segment (2): The Loan is repayable in full, together with all interest, costs and charges, the earlier of February 13, 2019 (the "Loan Maturity Date") or the date payment is demanded as a result of default by the Borrower. (3 Year Fixed Rate Term)

6. **REPAYMENT:**

- 6.1. Loan Segment (1): Monthly payment of \$23,421.42 payable on the 25<sup>th</sup> of every month
- 6.2. Loan Segment (2): Monthly payment of \$1,881.15 payable on the 25<sup>th</sup> of every month

7. **PREPAYMENT:**

- 7.1. Prepayments shall not be permitted without the prior written consent of the Bank;
- 7.2. The Borrower may prepay the whole, but not part, of the sum unpaid principal balance under the loans at any time, by payment of a prepayment charge equal to the greater of the following:
  - (a) three (3) months interest calculated on the unpaid principal balance at the rate provided herein; or
  - (b) a prepayment charge equal to the Bank's Unwinding Costs.

8. **AVAILABILITY:**

Subject to satisfaction or waiver by the Bank of all conditions, the Loan(s) will be advanced in one lump sum.

9. **CONDITIONS PRECEDENT TO DRAWDOWN:**

The attached Schedule "C" forms part of this Agreement.

10. **FEES:**

- 10.1. The borrower shall pay an annual review fee of \$1,500.00 each year in conjunction with the annual review (based on the Borrower's fiscal yearend financial statements) to renew outstanding loans.
- 10.2. The Borrower shall pay a late reporting fee of \$1,500 per month, or portion thereof, shall apply for late provision of annual Financial Statements/Reporting after expiry of 120 day period, as outlined in Schedule "E".
- 10.3. All other standard fees that apply.

11. **INTEREST AND FEES:**

The Bank has underwritten the Loan to the Borrower on the basis that the interest rate and fees provided for in this letter will be paid to the Bank over the period from the date of acceptance of this letter to the Loan Maturity Date and that the Loan will be fully repaid by the Loan Maturity Date. The Borrower acknowledges to the Bank that unless the Loan Maturity Date has been extended by agreement between the Borrower and the Bank by the Loan Maturity Date, then the Bank is entitled to be compensated for:

- (i) loss of ability to earn additional fee income on the Loan principal after the Loan Maturity Date;
- (ii) loss of opportunity to reinvest the Loan funds at then current market rates after the Loan Maturity Date; and
- (iii) the increased risk to the Bank of the Loan being outstanding after the Loan Maturity Date;

12. **PARTIAL DISCHARGES:**

12.1. Shall not be permitted.

13. **ASSIGNMENT BY BORROWER:**

The Borrower shall not assign or encumber its rights and obligations under the Loans, this Agreement or the whole or any part of any advance to be made hereunder, without the prior written consent of the Bank.

14. **BANK'S COUNSEL:**

Legal work and documentation to be performed at the Borrower's expense through the Bank's counsel:

Mr. Gary J. Cochrane  
Fasken Martineau DuMoulin LLP  
Suite 3400  
350 7<sup>th</sup> Ave SW Calgary  
T2P 3N9  
Tel: (403) 261-5370

15. **MATERIAL CHANGE:**

Acceptance of this Agreement by the Borrower provides full and sufficient acknowledgement that if, in the opinion of the Bank, any material adverse change in risk occurs, including without limiting the generality of the foregoing, any material adverse change in the financial condition of the Borrower, any obligation by the Bank to advance all or any portion of the loan may be withdrawn or cancelled at the sole discretion of the Bank, acting in a commercially reasonable manner.

16. **NON-MERGER:**

The terms and conditions set out herein shall not be superseded by nor merge in and shall survive the execution, delivery and/or registration of any instruments of security or evidences of indebtedness granted by the Borrower(s) and/or any Guarantor(s) hereafter, and the advancement of any funds by the Bank. In the event of a conflict between the security documents and the terms of this letter, the terms of the security documents shall govern.

17. ACCOUNTING CHANGES:

In the event that any Accounting Change (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in the Commitment Letter, then the Borrower and the Bank agree to enter into negotiations in order to amend such provisions of the Commitment Letter so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be substantially the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as an amendment shall have been executed and delivered by the Borrower to the Bank all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

Accounting Changes refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Chartered Accountants, and all events including changes resulting from implementation of the International Financial Reporting Standards to the extent required by the Canadian Accounting Standards Board.

**NOTIFICATION OF DEFAULT AND BREACH OF COVENANT:**

The Bank herein advises that the Borrower is noted of default and in breach of the following covenants and conditions:

1. Reporting Requirements as outlined under Schedule "E" of this Agreement: Late report of fiscal yearend financial statements due by November 30<sup>th</sup> annually.
2. no other loans may be secured against the Project, except the Subordinate Mortgages satisfactory to the Bank and, at the Borrower's option, a mortgage to secure Borrower's Equity contributed by the Guarantor or other affiliate of the Borrower, provided such mortgage is fully subordinated to the Security and supporting documents in accordance with a Priority and Standstill Agreement. Borrower is advised that Subordinated loans are not to be repaid without prior approval of the Bank, Bank approval is not to be unreasonably withheld: A Subordinate mortgage in amount of \$4,500,000.00 was registered by Hillsboro Ventures Inc. without Bank Approval.

Expectation for compliance to covenants going forward with this advise not implying a waiver of default.

**ACCEPTANCE:**


**We hereby confirm the continuation of the credit facilities renewed to November 30, 2018 when the annual review for AAA Holdings Ltd. is due. To become effective, this Agreement must be accepted in writing by the Borrower and all Guarantors.**


If you are in agreement with the above terms and conditions (which includes by reference, all of those terms and conditions set forth in all of the attached Schedules), please sign and return the enclosed copy of this letter. A fee of \$1,500.00 will be debited from AAA Holdings Ltd. operating account on September 12, 2018 representing the annual review fee. This Agreement will expire if not accepted by September 21, 2018.

The foregoing Agreement is offered in good faith and is to be held in strict confidence.

Yours truly,

**CANADIAN WESTERN BANK**

  
Casey Cram  
Manager, Commercial Banking

  
Terri Lawrence  
AVP & Branch Manager

**ACKNOWLEDGEMENT:**

The Borrower certifies that all information provided to the Bank is true and hereby accept the terms and conditions set forth in the above Agreement (including all Schedules attached thereto).

**BORROWER: AAA HOLDINGS LTD.**

Signed 

Signed: 

Accepted Sept. 14/18  
Date

**GUARANTORS:**

We/I acknowledge receiving advice of the Agreement described above and agree our/my guarantee is binding even if the Bank changes or waives compliance with the terms of this Agreement.

Signed   
Rarbir (Rana) Sandhu

Accepted Sept. 14/18  
Date

Signed   
Mohinder (Nicky) Sandhu

Accepted Sept. 14/18  
Date

SCHEDULE "A" – TERM LOANS/MORTGAGES

SECURITY

All security documentation described herein must be prepared, executed and registered, as required by the Bank, prior to drawdown of any funds. The types of security, supporting resolutions and agreements to be provided by the Borrower to the Bank will be in form and content satisfactory to the Bank and/or its solicitors, and without restricting the generality of the foregoing, will include:

1. Held Promissory Note in the amount of \$4,200,000;
2. Held General Security Agreement providing a perfected security interest in all of the Borrower's present and after acquired personal property, registered in all appropriate jurisdictions;
3. Held Demand Collateral Mortgage First Charge in the amount of \$4,500,000 on real property described in Section 2 and owned by the Borrower. The mortgage document contains a "Due on Sale" clause, environmental indemnity, provision to re-advance funds, as well as a clause addressing the appointment of a Receiver Manager of the property in the event of default; (notwithstanding the \$4,500,000 registration, the bank is not obligated to fund above the amount designated in item 1 above)
4. Held Assignment of Rents and/or Leases with Estoppel Certificate, registered on title;
5. Held Limited liability Guarantee for \$2,200,000 guaranteeing all indebtedness of the Borrower to the Bank provided by Ranbir Sandhu and Mohinder Sandhu joint and several.;
6. Held Assignment and Postponement of Creditor's Claim provided by all guarantors;
7. Held Acceptance of Creditor Life Insurance covering the life of principal Ranbir Sandhu;
8. Held Acceptance of Creditor Life Insurance covering the life of principal Mohinder Sandhu;
9. Held Unconditional and Unlimited Environmental Agreement and Indemnity (Form 1164) executed by the Borrower and Guarantors;
10. Held Environmental Risk and Liability Interview of Borrower (Form 1156) executed by the Borrower and Branch;
11. Held Assignment of all risk Casualty and Liability insurance as set out under "Insurance", of the Agreement;
12. Such of the following supporting documents as may be required by the Bank's solicitors:
  - (i) satisfactory Real Property Report/Surveyor's Certificate with respect to the mortgaged property previously described in Section 2;
  - (ii) satisfactory Zoning or Building Memorandum, or Letter from applicable Zoning official (Compliance Certificate), from the applicable municipal authority;
  - (iii) Tax Certificate showing all property taxes and charges paid or a holdback sufficient to pay taxes when due;
  - (iv) standard form documents relating to authorization of the borrowing and operation of the loan account;
  - (v) Statutory Declaration from the Borrower(s) or the Officer or an officer of the Borrower as to residency, title, use of premises, actions or claims and such other matters as Canadian Western Bank's counsel may advise;
  - (vi) Loan Agreement;

- 
- (vii) opinion of the Borrower's counsel on the security and supporting documents and title to the Property.
13. Such additional security instruments, assurances and supporting documents (including legal opinion of the Borrower's solicitor) as the Bank may deem necessary or advisable for the purpose of obtaining and perfecting the foregoing security.

The Borrower and Guarantors acknowledge and agree to give the Bank other reasonable documents, assurances, information and covenants as the solicitors for the Bank may reasonably require with regard to the loan or the security documents to be given hereunder.

## SCHEDULE "B" – TERM LOANS/MORTGAGES

### INSURANCE

1. All policies must show every Borrower as a named insured.
2. All policies covering physical loss or damage (that is, property, builders risk and boiler and machinery insurance) must be on a full replacement cost basis and:
  - (a) provide coverage for all risks of physical loss or damage, including earthquake, flood, sewer back-up and collapse;
  - (b) include insurance on the foundation and all parts below ground level;
  - (c) provide in case of destruction:
    - (i) that reconstruction will not be limited to "on the same or an adjacent site";
    - (ii) coverage for increased costs of reconstruction through by-law and code changes and demolition and debris removal for damaged and undamaged property and resultant loss of income;
  - (d) either contain a stated amount co-insurance clause or not be subject to co-insurance.
3. The Bank is to be shown both as mortgagee and loss payee under all policies covering physical loss or damage. Loss is to be payable using this wording:

"CANADIAN WESTERN BANK, 2810 32<sup>nd</sup> Avenue NE, Calgary, AB as First mortgagee and loss payee."



SCHEDULE "C" – TERM LOANS/MORTGAGES

CONDITIONS PRECEDENT TO DRAWDOWN

The following conditions must be fulfilled prior to the Bank having any obligations to make any drawdown:

1. the Bank shall be satisfied with the business assets and financial condition of the Borrower and Guarantors and all security documentation and supporting agreements and documents must be completed in a form satisfactory to the Bank and its solicitors, and must be executed and registered as appropriate, and the Bank shall have received a solicitor's letter of opinion with respect to same;
2. no other loans may be secured against the Project, except the Subordinate Mortgages satisfactory to the Bank and, at the Borrower's option, a mortgage to secure Borrower's Equity contributed by the Guarantor or other affiliate of the Borrower, provided such mortgage is fully subordinated to the Security and supporting documents in accordance with a Priority and Standstill Agreement. Borrower is advised that Subordinated loans are not to be repaid without prior approval of the Bank, Bank approval is not to be unreasonably withheld;
3. satisfactory review by the Bank of the Borrower's financial statements and credit reports;
4. provision of copies of all addendums to leases and current rent roll for the Project;
5. to maintain a "Cash Flow Coverage Ratio" of not less than 1.35 at all times;

defined as:

For any fiscal year the ratio of X divided by Y where:

X=

Net Operating Income is defined as

Triple Net Rental Income

Less 5%\* for vacancy

Less 2% for management/repairs/operating expenses and maintenance

\*of Current Rental Income

Y=

All principal and interest payments as if the full \$4,342,684 in facilities were to be repaid over the remaining amortization of the mortgage facility on a monthly blended payment basis.

SCHEDULE "D" – TERM LOANS/MORTGAGES

GENERAL CONDITIONS

The Borrower agrees:

1. no Event of Default has occurred and is continuing;
2. the Loan Maturity Date has not occurred;
3. the conditions of this Agreement and of all previous advances have been satisfied or waived;
4. the loan was advanced by April 30, 2014 unless otherwise extended by the Bank;
5. on or before November 30, 2018 a comprehensive and detailed action plan is to be provided to the Bank detailing all actions being taken, or to be taken, to resolve the outside project cash drain and repatriate funds to the AAA Group;
6. if said plan is not acceptable to the Bank then these credit facilities will not be renewed and the Borrower will be given until March 13, 2019 to repay the Bank in full;
7. no further cash drains such as, but not limited to, advances to related entities or repayment of shareholder's loans will be allowed until completion the 2018 annual review when this will be re-assessed based on the information received on or before the November 30, 2018 FYE financial statements of the Borrower and all Guarantors;
8. to maintain a "Cash Flow Coverage Ratio" of not less than 1.35 at all times;

defined as:

For any fiscal year the ratio of X divided by Y where:

X=

Net Operating Income is defined as

Triple Net Rental Income

Less 3%\* for vacancy

Less 3% for management/repairs/operating expenses and maintenance

\*of Current Rental Income

Y=

All principal and interest payments as if the full \$4,200,000 in facilities were to be repaid over the remaining amortization of the mortgage facility on a monthly blended payment basis.

9. no other loans may be secured against the Project, except the Subordinate Mortgages satisfactory to the Bank and, at the Borrower's option, a mortgage to secure Borrower's Equity contributed by the Guarantor or other affiliate of the Borrower, provided such mortgage is fully subordinated to the Security and supporting documents in accordance with a Priority and Standstill Agreement;
10. the Bank's opinions, approvals and decisions are in its sole discretion and are not subject to judicial review as to their reasonableness;
11. the Borrower shall remain the sole registered and beneficial owner of the Project until the Loan has been repaid in full, unless otherwise approved by the Bank;
12. to maintain adequate insurance on the property and acknowledges that failure to do so will hereby authorize the Bank to purchase insurance to protect the Bank's interest in the project to the value of the outstanding loan/mortgage. The Borrower authorizes the Bank to add the cost of said insurance to the loan/mortgage balance.

## EVENTS OF DEFAULT:

1. The full amount of the indebtedness and liability of the Borrower then outstanding, together with accrued interest and any other charges then owing by the Borrower to the Bank shall, at the option of the Bank, forthwith be accelerated and be due and payable, and upon being declared to be due and payable, the securities shall immediately become enforceable and the Bank may proceed to realize and enforce the same upon the occurrence and during the continuance of any of the following events or circumstances (which events or circumstances are herein referred to as the "Events of Default"):
  - (a) the Borrower or any Guarantor fails to make due, whether on demand or at a fixed payment date, by acceleration or otherwise any payment of interest, principal, fees, commissions or other amounts payable to the Bank;
  - (b) there is a breach by the Borrower of any other term or condition contained in this Agreement or in any other agreement to which the Borrower and the Bank are parties and the Borrower has not corrected such breach within 15 days of notice having been provided to the Borrower;
  - (c) any default occurs under the terms of any security to be provided in accordance with this Agreement or under any other credit, loan or security agreement to which the Borrower are party and the Borrower have not corrected such breach within 15 days of notice having been provided to the Borrower;
  - (d) any bankruptcy, re-organization, compromise, arrangement, insolvency or liquidation proceedings or other analogous proceedings are instituted by or against the Borrower and, if instituted against the Borrower are allowed against or consented to by the Borrower or are not dismissed or stayed within 60 days after such institution;
  - (e) a receiver is appointed over any property of the Borrower or any judgement or order or any process of any court becomes enforceable against the Borrower or any property or any creditor takes possession of any property of the Borrower;
  - (f) any adverse change occurs in the financial condition of the Borrower or any Guarantor;
  - (g) any adverse change occurs in the environmental condition of:
    - (i) the Borrower, or either of them, or any Guarantor of the Borrower, or
    - (iii) any property, equipment, or business activities of the Borrower or any Guarantor of the Borrower.
  - (h) the Borrower acknowledges that failure by any Guarantor of this Agreement to comply with the disclosure requirements set out in Section 45 of the Business Corporations Act (BCA) of Alberta shall constitute a default of the Borrower pursuant to this Agreement.

## MISCELLANEOUS CONDITIONS:

1. The rights and remedies of the Bank pursuant to this Agreement and the securities taken pursuant hereto are cumulative and not alternative, and not in substitution for any other rights, remedies, or power of the Bank.
2. Any failure or delay by the Bank to exercise, or exercise fully, its rights and remedies pursuant to this Agreement and the securities taken pursuant hereto shall not be construed as a waiver of such rights and remedies.
3. In the absence of a formal Loan Agreement being entered into, this Agreement shall continue in full force and effect and shall not merge in any securities provided by the Borrower to the Bank.
4. the Bank reserves the sole and absolute right to syndicate part or all of the loan facility contemplated herein, with various syndication partners with whom the Bank syndicates loans from time to time, on terms and conditions satisfactory to the Bank;

5. This Agreement and the security documentation to be provided by the Borrower pursuant hereto shall be construed in accordance with and governed by the laws of the Province of Alberta.

## SCHEDULE "E" – TERM LOANS/MORTGAGES

### REPORTING REQUIREMENTS

The Borrower agrees to provide the undernoted information to the Bank:

1. an Officers Compliance Certificate form 1636 annually (within 120 days of year-end), certifying that all lending conditions and requirements are being complied with;
2. Minimum Notice to Reader, annual financial statements (inclusive of Notes) of the Borrower and Non Arm's length tenants (AAA Windows Ltd. and 1249956 Alberta Ltd.) prepared by a firm of qualified professional accountants within 120 days of the borrower's fiscal year-end.
3. **on or before November 30, 2018 year-to-date in-house financial statements of the Borrower for the period ending October 31, 2018 are to be provided so that the Bank can assess if any further cash drains have occurred in the period since May 31, 2018;**
4. **biennially updated personal net worth statements of Guarantors on the Canadian Western Bank forms duly completed and signed, due November 30, 2018;**
5. **on or before November 30, 2018 annual financial statements of the Borrower and all Guarantors are to be provided so that the 2018 annual review can be completed on or before the March 13, 2019 maturity date;**
6. annual updated personal net worth statements of Guarantors on the Canadian Western Bank forms duly completed and signed;
7. project rent roll on an annual basis within 120 days of the borrower's fiscal year-end;
8. confirmation of Payable Status form 1054 on an annual basis;
9. any further information, data, financial reports and records, accounting or banking statements, certificates, evidence of insurance and other assurances which the Bank may from time to time require in its sole discretion, acting reasonably.

SCHEDULE "F" – TERM LOANS/MORTGAGES

SCHEDULE – STANDARD LOAN TERMS

ARTICLE 1 – GENERAL

- 1.1. **Interest Rate.** You will pay interest on each Loan at nominal rates per year at the rate specified in this Agreement.
- 1.2. **Floating rate of interest.** Each floating rate of interest provided for under this Agreement will change automatically, without notice, whenever the Bank's Prime Rate or the U.S. Base Rate, as the case may be, changes.
- 1.3. **Payment of interest.** Interest is calculated on the daily balance of the Loan at the end of each day. Interest is due once a month, unless the Agreement states otherwise. Unless you have made other arrangements with us, we will automatically debit your Operating Account for interest amounts owing. If your Operating Account is in overdraft and you do not deposit to the account an amount equal to the monthly interest payment, the effect is that we will be charging interest on overdue interest (which is known as compounding). Unpaid interest continues to compound whether or not we have demanded payment from you or started a legal action, or get judgment, against you.
- 1.4. **Fees.** You will pay the Bank's fees for the Loans as outlined in the Agreement. You will also reimburse us for all reasonable fees (including legal fees on a solicitor and his own client basis) and out-of-pocket expenses incurred in registering any security, and in enforcing our rights under this Agreement or any security. We will automatically debit your Operating Account for fee amounts owing.
- 1.5. **Our rights re demand Loans.** We believe that the banker-customer relationship is based on mutual trust and respect. It is important for us to know all the relevant information (whether good or bad) about your business. Canadian Western Bank is itself a business. Managing risks and monitoring our customers' ability to repay is critical to us. We can only continue to lend when we feel that we are likely to be repaid. As a result, if you do something that jeopardizes that relationship, or if we no longer feel that you are likely to repay all amounts borrowed, we may have to act. We may decide to act, for example, because of something you have done, information we receive about your business, or changes to the economy that affect your business. Some of the actions that we may decide to take include requiring you to give us more financial information, negotiating a change in the interest rate or fees, or asking you to get further accounting assistance, put more cash into the business, provide more security, or produce a satisfactory business plan. It is important to us that your business succeeds. We may demand immediate repayment of any outstanding amounts under any demand Loan. We may also, at any time and for any cause, cancel the unused portion of any demand Loan.
- 1.6. **Payments.** If any payment is due on a day other than a Business Day, then the payment is due on the next Business Day.
- 1.7. **Applying money received.** If you have not made payments as required by this Agreement, or if you have failed to satisfy any term of this Agreement (or any other agreement you have that relates to this Agreement), or at any time before default but after we have given you appropriate notice, we may decide how to apply any money that we receive. This means that we may choose which Loan to apply the money against, or what mix of principal, interest, fees and overdue amounts within any Loan will be paid.
- 1.8. **Information requirements.** We may from time to time reasonably require you to provide further information about your business. We may require information from you to be in a form acceptable to us.
- 1.9. **Insurance.** You will keep all our business assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for property such as yours (plus for any other risks we may reasonably require). If we request, these policies will include a loss payee clause (and if you are giving us mortgage security, a Standard Mortgagee Clause). As further security, you assign all insurance proceeds to us. If we ask, you will give us either the policies themselves or adequate evidence of their existence. If your insurance coverage for any reason stops, we may (but do not have to) insure the property. We will automatically debit your Operating Account for this amount. In the event there are no funds on deposit, we may add the insurance cost to your Loan. Finally, you will notify us immediately of any loss or damage to the property.
- 1.10. **Environmental Matters.** You will carry on your business, and maintain your assets and property, in accordance with all applicable environmental laws and regulations. If (a) there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with either your business or your property, and we pay any fines or for any clean-up, or (b) we suffer any loss or damage as a result of any Discharge, you will reimburse the Bank, its directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If we ask, you will defend any lawsuits, investigations or prosecutions brought against the Bank or any of its directors, officers, employees and agents in connection with any Discharge. Your obligation to us under this section continues even after all Loans have been repaid and this Agreement has terminated.
- 1.11. **Consent to release information.** We may from time to time give any loan or other information about you to, or receive such information from, (a) any financial institution, credit reporting agency, rating agency or credit bureau, (b) any person, firm or corporation with whom you may have or propose to have financial dealings, and (c) any person, firm or corporation in connection with any dealings you have or propose to have with us. You agree that we may use that information to establish and maintain your relationship with us and offer any services as permitted by law, including services and products offered by our subsidiaries when it is considered that this may be suitable to you.
- 1.12. **Proof of debt.** This Agreement provides the proof, between the Bank and you, of the loans made available to you. There may be times when the type of loan you have requires you to sign additional documents. Throughout the time that we provide you loans under this Agreement, our loan accounting records will provide complete proof of all terms and conditions of your loan (such as principal loan balances, interest calculations, and payment dates).
- 1.13. **Renewals of this Agreement.** This Agreement will remain in effect for your Loans for as long as they remain unchanged. If there are no changes to the Loans this Agreement will continue to apply, and you will not need to sign anything further. If there are any changes, we will provide you with either an amending agreement, or a new replacement Letter, for you to sign.
- 1.14. **Confidentiality.** The terms of this Agreement are confidential between you and the Bank. You therefore agree not to disclose the contents of this Agreement to anyone except your professional advisors and where required by law.

- 1.15. **Pre-conditions.** You may use the Loans granted to you under this Agreement only if:
- (a) we have received properly signed copies of all documentation that we may require in connection with the operation of your accounts and your ability to borrow and give security;
  - (b) all the required security has been received and registered to our satisfaction;
  - (c) any special provisions or conditions set forth in the Agreement have been complied with; and
  - (d) if applicable, you have given us the required number of days notice for a drawing under a Loan.
- 1.16. **Notices.** We may give you any notice in person or by telephone, or by letter that is sent either by fax or by mail.
- 1.17. **Non-Revolving Loans.** The following terms apply to each Non-Revolving Loan:
- (a) **Non-revolving Loans.** Unless otherwise stated in the Agreement, any principal payment made permanently reduces the available Loan Amount. Any payment we receive is applied first to overdue interest, then to current interest owing, then to overdue principal, then to any fees and charges owing, and finally to current principal.
  - (b) **Floating Rate Non-Revolving Loans.** Floating Rate Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest as described below:
    - (i) **Blended payments.** If you have a Floating Rate Loan that has blended payments, the amount of your monthly payment is fixed for the term of the loan, but the interest rate varies with changes in the Prime Rate or U.S. Base Rate (as the case may be). If the Prime Rate or U.S. Base Rate during any month is lower than what the rate was at the outset, you may end up paying off the loan before the scheduled end date. If, however, the Prime Rate or U.S. Base Rate is higher than what it was at the outset, the amount of principal that is paid off is reduced. As a result, you may end up still owing principal at the end of the term because of these changes in the Prime Rate or U.S. Base Rate. We will advise you from time to time of any changes in the blended payment necessary to maintain the original amortization period, should we chose to do so.
    - (ii) **Payments of fixed principal plus interest.** If you have a Floating Rate Loan that has regular principal payments, plus interest, the principal payment amount of your Loan is due on the payment date specified in the Agreement. Although the principal payment amount is fixed, your interest payment will usually be different each month, for at least one and possibly more reasons, namely: the reducing principal balance of your loan, the number of days in the month, and changes to the Prime Rate or U.S. Base Rate (as the case may be).
  - (c) **Demand of Fixed Rate Term.** If you have a Fixed Rate Term Loan and we make demand for payment, you will owe us (i) all outstanding principal, (ii) interest, (iii) any other amount due under this Agreement, and (iv) a prepayment charge. The prepayment charge is equal to the greater of three (3) months interest calculated on the unpaid balance at the rate authorized or the Bank's Unwinding Costs.

## ARTICLE 2 – DEFINITIONS

2.1. **Definitions.** In this Agreement, the following terms have the following meanings:

**"Agreement"** means the letter agreement between you and Canadian Western Bank to which this Schedule and any other Schedules are attached.

**"Business Day"** means any day (other than a Saturday or a Sunday) that the CWB Branch/Centre is open for business.

**"Cash Collateral Account"** means funds on deposit held by the Bank in an interest bearing account pending satisfaction of certain terms and/or conditions.

**"Cash Flow Coverage Ratio"** means for any fiscal year the ratio of X to Y where:

X =  
Net profit after tax  
+ amortization/depreciation  
+ all interest expenses  
+ all taxes  
= EBITDA

Y =  
All interest paid or accrued during the trailing fiscal year + the Borrower's actual principal payment obligations for the trailing fiscal year under the CWB credit facility and any other document or agreement including without limitation:

- o in respect of any indebtedness for borrowed money as classified in the balance sheet of the Borrower and in accordance with generally accepted accounting principals; and
- o in respect of any capital lease in accordance with generally accepted accounting principles entered into by the Borrower.

**"Customer Automated Funds Transfer (CAFT)"** is a WEB based service that provides non-personal customers the ability to make multiple electronic transactions for purposes of direct deposit for payroll or direct payment of accounts payable.

**"CWB Branch/Centre"** means the Canadian Western Bank branch or banking centre noted on the first page of this Agreement, as changed from time to time by agreement between the parties.

**"Demand Non-Revolver Loan"** means an installment loan that is payable upon demand. Such a Loan may be either at a fixed or a floating rate of interest.

**"Fixed Rate Loan"** means any loan drawn down, converted or extended under a Loan at an interest rate which was fixed for a term, instead of referenced to a floating rate such as the Prime Rate or U.S. Base Rate, at the time of such drawdown, conversion or extension.

**"Intangibles"** means assets of the business that have no value in themselves but represent value. They include such things as copyright, goodwill, patents and trademarks; franchises, licenses, leases, research and development costs, and deferred development costs.

**"Lease-Up Reserve"** means the amount of the Loan that is funded into a Cash Collateral Account pending lease-up of the Project in accordance with the Loan authorization.

**"Letter of Credit" or "LC"** means a documentary or stand-by Letter of Credit, a Letter of Guarantee, or a similar instrument in form and substance satisfactory to us.

**"Lien"** includes a mortgage, charge, lien, security interest or encumbrance of any sort on an asset, and includes conditional sales contracts, title retention agreements, capital trusts and capital leases.

**"Loan"** means any loan segment referred to in the Agreement and if there are two or more segments, "Loan" includes reference to each segment.

**"Loan Amount"** of any Loan means the amount specified in the Agreement and if there are two or more segments, "Loan Amount" includes reference to each segment.

**"Loan Maturity Date"** means the date the loan is to be repaid or extended by for further term, at the option of the Bank.

**"Mandatory Capital Expenditures"** means net capital expenditures incurred by you not financed by long term debt. Net capital expenditures means all capitalized fixed asset purchases less fixed asset sales.

**"Normal Course Lien"** means a Lien that (a) arises by operation of law or in the ordinary course of business as a result of owning any such asset (but does not include a Lien given to another creditor or to secure debts owed to that Loan) and (b) taken together with all other Normal Course Liens, does not materially affect the value of the asset or its use in the business.

**"Operating Account"** means the account that you normally use for the day-to-day cash needs of your business, and may be either or both of a Canadian dollar and a U.S. dollar account.

**"Postponed Debt"** means any debt owed by you that has been formally postponed to the Bank.

**"Prime Rate"** means the variable reference rate of interest per year declared by the Bank from time to time to be its Prime rate for Canadian dollar loans made by the Bank in Canada.

**"Principal Sum"** means the loan balance outstanding.

**"Priority Claims"** means priorities that are created when a borrower does not remit monies due for Income Tax, Workers Compensation, Canada Pension Plan, Employment Insurance, GST, Provincial Sales Tax, wage claims including unpaid holiday entitlement, unpaid utility bills and arrears of rent for business premises. These are considered to be deemed trust and rank in priority to all security interests.

**"Purchase Money Lien"** means a Lien incurred in the ordinary course of business only to secure the purchase price of an asset, or to secure debt used only to finance the purchase of the asset.

**"Shareholders' Equity"** means paid-in capital, retained earnings and attributed or contributed surplus.

**"Standard Overdraft Rate"** means the variable reference interest rate per year declared by the Bank from time to time to be its standard overdraft rate on overdrafts in Canadian or U.S. dollar accounts maintained with the Bank in Canada.

**"Tangible Net Worth"** means the total Shareholders' Equity, minus (a) amounts due from investments in related parties, and the value of all intangibles, plus (b) all postponed debt.

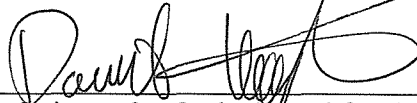
**"Unwinding Costs"** means the costs the Bank incurs when a fixed rate loan is paid out early. The unwinding costs are based on an interest rate differential between the loan rate and the bid side yield for Government of Canada securities with the same maturity as the loan, for the remaining term of the loan at the time of repayment.

**"U.S. Base Rate"** means the variable reference rate of interest per year as declared by the Bank from time to time to be its base rate for U.S. dollar loans made by the Bank in Canada.



THIS IS EXHIBIT "3" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16/DAY OF  
JULY, 2019.

A handwritten signature in black ink, appearing to read "David LeGeyt", written over a horizontal line.

A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor

Burnet,  
Duckworth  
& Palmer LLP  
Law Firm

Reply to: David LeGeyt  
Direct Phone: (403) 260-0210  
Direct Fax: (403) 260-0332  
dlegeyt@bdplaw.com

Assistant: Lindsey Hackman  
Direct Phone: (403) 806-7877  
Our File: 45003-552

VIA EMAIL ([ranasandhu@gmail.com](mailto:ranasandhu@gmail.com) and [nicksandhu1@gmail.com](mailto:nicksandhu1@gmail.com))

March 14, 2019

AAA Holdings Ltd.  
#26, 3530 - 32 Street NE  
Calgary, Alberta  
T1Y 6G7

Attention: Ranbir Sandhu and Mohinder Sandhu

Dear Sir/Madam:

Re: Canadian Western Bank re: AAA Holdings Ltd. ("AAA Holdings")

We are counsel to Canadian Western Bank ("CWB") in connection with a commitment letter dated September 12, 2018 between CWB and AAA Holdings (the "Loan Agreement"). Reference is also made to a general security agreement, demand collateral mortgage and a general assignment of rents and leases, all dated February 24, 2014 (the "Security").

AAA Holdings is in default of the Loan Agreement and the Security, and all amounts owing to CWB under the Loan Agreement and Security are immediately due and payable. The defaults of AAA Holdings include but are not limited to (i) a failure to make scheduled payments to CWB in accordance with the Loan Agreement, (ii) failure to pay property taxes and priority payables when due and owing and (iii) breaches of the general conditions set out in Schedule "D" to the Loan Agreement, such as breach of the cash flow coverage ratio requirements and breach of the restriction on further loans being secured against the Project (as defined in the Loan Agreement).

On behalf of CWB, we hereby demand repayment of all amounts due and owing by AAA Holdings to CWB under the Loan Agreement and Security, namely the amount of CAD\$4,037,335.54 as of March 13, 2019, plus all accrued and accruing interest and legal costs on a solicitor and own client fully indemnity basis (the "Indebtedness").

Please note that the Indebtedness will continue to accrue interest at the rates agreed to, and costs and expenses will continue to be incurred by CWB for which AAA Holdings will be responsible, until payment of all amounts owing is received by either certified cheque or bank draft at the following address:

Canadian Western Bank  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525-8<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 1G1

Attention: David LeGeyt

9525869.1



If full payment, as set forth above, is not received by close of business on March 25, 2019, CWB will take whatever steps it deems appropriate to seek repayment of the said amount. To this end we enclose for service upon you a Notice of Intention to Enforce Security ("NOI") in accordance with section 244 of the *Bankruptcy and Insolvency Act* (Canada). If you are prepared to waive the ten day notice period, please endorse the Consent and Waiver located on page 2 of the NOI and return to the undersigned.

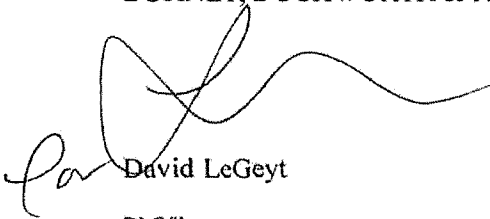
For your information, demands will be issued on the guarantors in respect of AAA Holdings' indebtedness.

Please note that CWB reserves the right to proceed against AAA Holdings: (i) prior to the time stipulated above in the event that it determines that its position has been further jeopardized; and (ii) anytime, or from time to time after any dates stipulated above have passed, and in either case without the necessity of serving a new demand for payment.

If you have any questions, please contact the undersigned.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP

A handwritten signature in black ink, appearing to read 'David LeGeyt', is written over the typed name. The signature is fluid and cursive, with a long horizontal flourish extending to the right.

David LeGeyt

DLG/lh

Encl.

cc: Tyson Hartwell

FORM 86

NOTICE OF INTENTION TO ENFORCE SECURITY

(Subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada))

To: AAA Holdings Ltd., an insolvent person (the "Debtor")


**TAKE NOTICE THAT:**

1. Canadian Western Bank ("CWB"), a secured creditor of the Debtor, intends to enforce its security on the property of the Debtor as set out below:
  - (a) all present and after acquired real and personal property of the Debtor; and
  - (b) all proceeds of the foregoing collateral,
2. The security that is to be enforced is in the form of general security agreement, demand collateral mortgage and a general assignment of rents and leases, all dated February 24, 2014 between CWB and the Debtor (the "Security").
3. The total amount of indebtedness secured by the Security is, as of March 13, 2019, the sum of CAD\$4,037,335.54, plus all accrued and accruing interest and legal costs.

CWB will not have the right to enforce its Security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Calgary, in the Province of Alberta, this 14<sup>th</sup> day of March, 2019.

**BURNET, DUCKWORTH & PALMER LLP,**  
solicitors and agents for Canadian Western Bank

  
Per: \_\_\_\_\_  
David LeGeyt

---

**CONSENT AND WAIVER**

**THE UNDERSIGNED** hereby:

Acknowledges receipt of the Notice of Intention to Enforce Security;

Waives the ten days of notice required under section 244 of the *Bankruptcy and Insolvency Act* (Canada); and

Consents to the immediate enforcement by Canadian Western Bank of the Security referred to herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**AAA HOLDINGS LTD.**

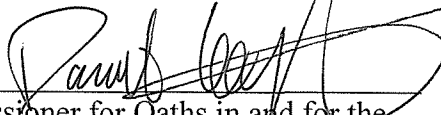
Per: \_\_\_\_\_

Name:

Title:

THIS IS EXHIBIT "4" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.

A handwritten signature in black ink, appearing to read "David LeGeyt", written over a horizontal line.

A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor

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**\$4,500,000.00 DEMAND MORTGAGE BY  
AAA HOLDINGS LTD.  
IN FAVOUR OF CANADIAN WESTERN BANK**

---

# MORTGAGE

*The Land Titles Act*

## RECITALS

### WHEREAS:

- 
- A. The Mortgagor is or is entitled to become the registered owner of the Lands;
  - B. The Mortgagee has agreed to lend an amount not to exceed the Principal Sum to the Mortgagor on the terms and conditions set out herein; and
  - C. As security for repayment of the Principal Sum together with interest and performance of the covenants contained herein, the Mortgagor has agreed to grant this Mortgage in favour of the Mortgagee.

**NOW THEREFORE** in consideration of the covenants and promises contained herein, the Mortgagor and Mortgagee covenant each with the other as follows:

## ARTICLE 1

### 1.1 Definitions

In this Mortgage:

- (a) "**Business Days**" means days other than Saturdays, Sundays and statutory holidays in the Province of Alberta;
  - (b) "**Collateral Security**" means the additional and collateral security, if any, which may be required by the Mortgagee to be granted by the Mortgagor or others pursuant to the provisions of this Mortgage or the Commitment Letter including, but without limiting the generality of the foregoing, the following:
    - (i) Full Liability Guarantee granted by the Mortgagor to and in favour of the Mortgagee;
    - (ii) such other additional and collateral security as provided by the Mortgagor or others to the Mortgagee, from time to time;
- 
- (c) "**Commitment Letter**" means that certain commitment letter from the Mortgagee to the Mortgagor, dated June 19, 2014 and accepted by the Mortgagor on June 19, 2014 as may be amended, modified, supplemented, restated or replaced, from time to time;
  - (d) "**Hazardous Substances**" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
    - (i) radioactive materials;
    - (ii) explosives;



- (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
  - (iv) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
    - (1) endangers the health, safety or welfare of persons or the health of animal life;
    - (2) interferes with normal enjoyment of life or property; or
    - (3) causes damage to plant life or to property;
  - (v) toxic substances including, without restriction, urea formaldehyde foam insulation, asbestos and poly-chlorinated biphenyls; and
  - (vi) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Mortgagor, the Mortgagee or the Lands;
- (e) **"Improvements"** means all improvements of every kind whether or not affixed to the Lands including without limitation all buildings, erections, improvements, machinery and plant, furnaces, boilers, elevators, escalators, mobile homes, plumbing, air conditioning, ventilating and refrigerating equipment, water heaters, wall to wall carpeting, plate glass, ~~storm doors, storm windows, screens and screen doors and all apparatus and equipment~~ appurtenant thereto whether moveable or stationery, with all proper, usual and necessary gears, tools, accessories, equipment and appliances, which are now or may hereafter be placed or installed upon the Lands;
- (f) **"Interest Rate"** means interest on the Principal Sum or on such portion thereof as remains unpaid both before and after maturity or default at the rate of FIFTEEN PERCENT (15.0%) percent per annum (or such other rate or rates as agreed to between the Mortgagor and Mortgagee in writing), calculated, compounded and payable monthly, not in advance;
- (g) **"Interest Adjustment Date"** has the meaning ascribed to such term in section 2.2(a) hereof;
- (h) **"Lands"** means that parcel or parcels of land situate in the Province of Alberta and legally described in Schedule "A" attached hereto, together with all Improvements;
- (i) **"Maturity Date"** means the Business Day that the Mortgage Monies are due for repayment pursuant to the Commitment Letter, any Collateral Security or hereunder;
- (j) **"Mortgage"** means this mortgage together with all Recitals and all Schedules attached hereto;
- (k) **"Mortgage Monies"** means the Principal Sum with interest thereon at the Interest Rate, together with all other monies secured by this Mortgage, including without restriction, any advances, fees or expenses made or incurred by the Mortgagee;

- (l) **"Mortgagee"** means CANADIAN WESTERN BANK;
- (m) **"Mortgagee's Address"** means Canadian Western Bank, 2810, 32<sup>nd</sup> Avenue N.E., Calgary, Alberta T1Y 5J4 or such other address as the Mortgagee shall from time to time advise in writing;
- (n) **"Mortgagor"** means AAA HOLDINGS LTD.;
- (o) **"Mortgagor's Address"** means 26, 3530 – 32<sup>nd</sup> Street NE, Calgary, Alberta, T1Y 5Y9 or such other address as the Mortgagor shall from time to time advise in writing;
- (p) **"Permitted Encumbrances"** means those encumbrances described in Schedule "A" attached hereto;
- (q) **"Prime Rate"** means the variable reference rate of interest per annum established by the Mortgagee from time to time as the Mortgagee's prime lending rate for Canadian dollar loans made by the Mortgagee in Canada;
- (r) **"Principal Sum"** means the sum not to exceed \$4,500,000.00 in lawful money of Canada;
- (s) **"Prior Charge"** means any mortgage, lien, agreement for sale, encumbrance, interest in land or other charge or claim upon or with respect to the Lands which has or may have or which may acquire priority to this Mortgage, including, without restriction, the Permitted Encumbrances;
- (t) **"Real Estate Taxes"** means all taxes, local improvement charges, rates, assessments, levies, liens and penalties which are now or may hereafter be imposed or charged or be chargeable against or payable in respect of the Lands and shall include any levy or mortgage tax or principal and interest tax imposed or which may be imposed on this Mortgage or on the Mortgagee in respect of this Mortgage or on the monies secured by this Mortgage or on the Lands;
- (u) **"Receiver"** means any person or persons appointed by the Mortgagee in accordance with section 6.1 herein and includes a receiver, and a receiver and a manager; and
- (v) **"Term"** means the period of time from the first advance of the Principal Sum hereunder to and including the Maturity Date.

## 1.2 Preamble and Schedule Incorporated

The parties hereby confirm and ratify the matters contained and referred to in the preamble to this Mortgage and agree that same and Schedule "A" attached hereto are expressly incorporated into and form part of this Agreement.

## 1.3 Schedule

The schedule to this Agreement is as follows:

Schedule "A" - Lands and Permitted Encumbrances

## ARTICLE 2

## 2.1 Loan of Principal Sum

The Mortgagee agrees to lend an amount not to exceed the Principal Sum to the Mortgagor upon the terms and conditions contained herein and as set forth in the Commitment Letter.

## 2.2 Repayment

- (a) The Mortgagor shall pay to the Mortgagee at the Mortgagee's Address, **ON DEMAND**, the Principal Sum together with interest at the Interest Rate, calculated monthly and payable monthly, not in advance, before and after maturity, default and judgment, with overdue interest at the Interest Rate from the date of advance of the Principal Sum, or such portion thereof (the "**Interest Adjustment Date**"), with the Mortgagor acknowledging that this Mortgage is given and taken as general and continuing collateral security and may secure a promissory note or note(s), a current or running account or a revolving line of credit, and the Mortgagor agrees that the Mortgage Monies shall include all amounts owing to the Mortgagee from time to time in respect of any such promissory note, note(s), current or running account or revolving line of credit and all indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee, whether present or future, direct or indirect, absolute or contingent, matured or not, and whether arising within or outside Canada, and whether incurred by or arising from any agreement or dealing between the Mortgagee and the Mortgagor or by or from any agreement or dealing with any third party by which the Mortgagee may be or become in any manner whatsoever a creditor of the Mortgagor, or however otherwise incurred or arising, and whether the Mortgagor be bound alone or with another or others, and whether as principal, guarantor or surety; and
- (b) the Principal Sum and all other Mortgage Monies, or the amount thereof remaining unpaid, shall become due and be paid on the Maturity Date.

*Repayment Clause.*

## 2.3 Payment of Interest, Principal under Commitment Letter

The Mortgagor shall pay to the Mortgagee interest at the Interest Rate in the manner aforesaid on the Mortgage Monies or on so much thereof as shall from time to time remain unpaid. In the event of non-payment of any of the Mortgage Monies at the time provided in the Commitment Letter, the Collateral Security or as herein set for payment thereof, the Mortgagor shall, so long as any part thereof remains unpaid, pay interest thereon at the Interest Rate from day to day on the same. All interest on becoming overdue shall be forthwith treated (as to payment of interest thereon) as principal and shall bear compound interest at the Interest Rate after as well as before maturity, default and the obtaining of any judgment by the Mortgagee to be payable on demand and all such interest and compound interest shall be a charge on the Lands.

## 2.4 Construction Loan Advances

If advances under this Mortgage will be made from time to time for the purposes of construction, it is agreed between the Mortgagor and Mortgagee as follows:

- (a) Advances will, at the option of the Mortgagee, be based on a certificate from an architect, engineer or the Mortgagee's cost consultant approved by the Mortgagee, certifying the value of the work in place and that construction is proceeding in accordance with the Plans and Specifications (as hereinafter defined) as may be approved by the Mortgagee;

- (b) Funds may, at the option of the Mortgagee, be held back to ensure that sufficient funds are available to complete the Development (as hereinafter defined) based on then estimated costs;
- (c) Advances may be made subject to the Mortgagor providing evidence of compliance with the *Builders' Lien Act* (Alberta) and the Mortgagee may holdback from advances an amount sufficient to satisfy all holdbacks required under and in accordance with the terms of the *Builders' Lien Act* (Alberta);
- (d) The Mortgagee shall have the right, at its option, to make an advance not otherwise requested by the Mortgagor, the proceeds of which are used, inter alia, to pay accrued interest, legal and other costs that have been incurred by the Mortgagee and which the Mortgagor has agreed to pay;
- (e) Advances may, at the option of the Mortgagee, be made directly to the contractors, sub-contractors and/or suppliers of the Development (as hereinafter defined);
- (f) The Mortgagee shall have no obligation to make more than one advance per month as outlined in the Commitment Letter; and
- (g) Advances must be preceded by a report from the Mortgagee's counsel which confirms that title to the Lands are clear of all encumbrances except this Mortgage and those expressly consented to by the Mortgagee.

### ARTICLE 3

#### 3.1 Insurance

- (a) The Mortgagor shall forthwith insure the Lands and all chattels located thereon and during the continuance of this Mortgage keep insured in favour of the Mortgagee to the extent of the full insurable value thereof, or sufficient to protect the Mortgagee, as the Mortgagee may reasonably request, in lawful money of Canada, with a company or companies approved by the Mortgagee against:
  - (i) all risks of loss or damage including that caused by fire, windstorm, flooding, hail, lightning, explosion, theft, vandalism, malicious damage, riot, earthquake, impact by aircraft or vehicles, smoke damage; and
  - (ii) to the extent applicable, against loss or damage caused by any defect in or the bursting or explosion of any steam boiler or other object generating or operated by steam or any closed circulation hot water system or any pressure vessel or by the escape of water from any sprinkler system or other piping within or operated upon the Lands;

such policies of insurance to contain the usual "Extended Coverage" and "Replacement Cost" endorsements.
- (b) The Mortgagor will maintain comprehensive general liability insurance in such amounts as the Mortgagee may reasonably require.

- (c) The Mortgagee may in the event of any default effect such insurance and insure the Lands against loss or damage from any other cause whatsoever.
- (d) The Mortgagor will not do or permit anything to be done whereby the policy or policies may be voided, and will pay all premiums and sums of money necessary for maintaining every such insurance as aforesaid, as the same become due, and will assign and deliver unto the Mortgagee the policy or policies of insurance and the receipt or receipts relating thereto.
- 
- (e) ~~The policies shall to the extent applicable, bear endorsements in a form satisfactory to the Mortgagee making all proceeds thereunder payable to the Mortgagee. All policies shall contain either the Insurance Bureau of Canada standard mortgage clause or the Mortgagee's special mortgage clause.~~
- (f) The policies of insurance and renewals thereof, if applicable, shall be delivered to the Mortgagee at such times as are requested by the Mortgagee, but without limitation, evidence of renewal shall be delivered not less than thirty (30) Business Days prior to expiration of the insurance.
- (g) The Mortgagee may require any such insurance to be written by insurance companies acceptable to it, and may, at its option, cancel existing policies and require that new insurance be effected, and may, in the event of failure by the Mortgagor to deliver policies or renewals thereof to the Mortgagee as herein provided, effect and maintain any insurance herein provided for. Any amount or amounts paid by the Mortgagee in respect thereof shall be payable by the Mortgagor to the Mortgagee forthwith on demand, and shall be added to the Principal Sum and will accrue interest at the Interest Rate as if the money were interest in arrears and shall bear interest at the Interest Rate until payment is received by the Mortgagee. Such interest shall run from the date of payment by the Mortgagee and shall be added to the Principal Sum and be a charge upon the Lands until repaid with interest as aforesaid. However, nothing set out herein shall obligate the Mortgagee to obtain such insurance and doing so is solely at the option of the Mortgagee.
- 
- (h) The Mortgagor shall forthwith on the happening of any loss or damage, furnish at its own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies, and all monies received by virtue of any policy or policies of insurance may at the sole option of the Mortgagee:
- (i) be applied in or towards substantially rebuilding, reinstating and repairing the Lands;
  - (ii) ~~be applied wholly or in part in reduction of the Mortgage Monies then remaining unpaid, notwithstanding that no amount at such time may be due and payable under the terms of this Mortgage;~~
  - (iii) be paid over in whole or in part to the Mortgagor but no such payment shall operate as payment or a novation of the Mortgagor's indebtedness hereunder or as reduction of this Mortgage; or
  - (iv) be applied partly in one way and partly in another as the Mortgagee in its sole discretion may determine.

Pending application of the insurance monies for the purpose aforesaid, the same shall be deemed to form part of the Mortgage Monies and be subject to the charge hereby created.

- (i) The Mortgagor hereby irrevocably appoints the Mortgagee as its attorney for the purpose of demanding, recovering and receiving payment of any and all insurance monies to which it may be or may become entitled. Without limiting the generality of the foregoing, the Mortgagee may, in the name of the Mortgagor:
  - (i) file proofs of claim with any insurer who shall insure the Lands;
  - (ii) settle or compromise any claim for insurance proceeds in respect of the Lands;
  - (iii) commence and prosecute any action in the name of the Mortgagor for recovery of insurance proceeds in respect of the Lands; and
  - (iv) settle or compromise any such action in the name of the Mortgagor for recovery of insurance proceeds in respect of the Lands.

Notwithstanding anything herein contained it shall remain the responsibility of the Mortgagor to demand, recover and receive such payment and nothing herein shall render the Mortgagee liable to the Mortgagor for any act done by it in pursuance of the power of attorney hereby granted or for its failure to do any act or take any step.

- (j) The Mortgagor acknowledges that it is aware of the provisions of the *Fire Prevention (Metropolis) Act* of 1774, which provides that, in the case of loss or damage by fire, the Mortgagor at its discretion, may require that the insurance proceeds be utilized to rebuild, reinstate and repair the Lands, and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof. It is further agreed, that in the event that the Mortgagee at its sole discretion has insurance monies applied to the Principal Sum secured hereby the payment of such sums will be subject to any prepayment provisions contained in this Mortgage.

### 3.2 Payment of Real Estate Taxes

The Mortgagor shall pay as they become due all Real Estate Taxes and shall submit to the Mortgagee tax receipts evidencing payment within thirty (30) days after they become due, provided that:

- (a) the Mortgagee may deduct from any advance of the Principal Sum an amount sufficient to pay any Real Estate Taxes;
- (b) the Mortgagor will transmit to the Mortgagee all assessment notices, tax bills and other notices affecting the imposition of Real Estate Taxes forthwith after the receipt of same by the Mortgagor;
- (c) if the Mortgagor defaults in payment of the Real Estate Taxes, the Mortgagee may, but shall not be obliged to, pay all Real Estate Taxes and all monies expended by the Mortgagee for such purpose, together with interest thereon at the Interest Rate, shall be added to the Principal Sum (such interest to run from the date of payment by the Mortgagee), and shall be a charge upon the Lands and shall be repaid by the Mortgagor to the Mortgagee forthwith upon demand;

- (d) the Mortgagor shall, at the option of the Mortgagee, pay to the Mortgagee on the days appointed for payment of principal and interest, such sums in addition thereto as the Mortgagee shall compute to be required to provide a fund sufficient to pay in full the Real Estate Taxes when such taxes become due and payable and the Mortgagee shall be at liberty to exercise its discretion at any time during the currency of this Mortgage. A forbearance by the Mortgagee to exercise its discretion, either at the commencement of the Term or at any other time thereafter, shall in no way affect or preclude the Mortgagee from requiring the Mortgagor to pay instalments for Real Estate Taxes at any subsequent time. The following provisions shall apply to this subsection:
- (i) in the event that the Real Estate Taxes actually charged for any particular year exceed the estimated amount or in the event of any part of the estimated amount paid to the Mortgagee being applied by the Mortgagee in or towards principal and interest or other monies in default, the Mortgagor will pay to the Mortgagee on demand the amount required to satisfy the deficiency;
  - (ii) so long as there is no default under any covenant or agreement contained in this Mortgage or in any Collateral Security, the Mortgagee shall apply such payments on the Real Estate Taxes chargeable against the Lands, but the Mortgagee shall be under no obligation to apply such payments more often than yearly;
  - (iii) if before any such sum or sums in the hands of the Mortgagee shall have been so applied there shall be default in respect of the payment of any of the Mortgage Monies or in any Collateral Security, the Mortgagee may, at its option, apply such sum or sums in or towards payment of principal, interest or other monies so in default; and
  - (iv) if the Mortgagor desires to take advantage of any discounts or avoid any penalties in connection with the payment of Real Estate Taxes, then it shall pay to the Mortgagee such additional amounts as in the opinion of the Mortgagee are required for that purpose; provided always, that the Mortgagee may, at its option, decide to prepay either in whole or in part any Real Estate Taxes.

### **3.3 Maintenance and Repair of the Lands**

- (a) The Mortgagor will not commit any act of waste upon the Lands nor do or permit to be done any act which may impair the value thereof.
- (b) The Mortgagor will take good and reasonable care of all buildings, structures and improvements now or hereafter from time to time erected on the Lands and without cost and expense to the Mortgagee will manage, operate, maintain and keep or cause the same to be kept in good order, repair and condition throughout, both exterior and interior, structural or otherwise, and will promptly make all required or necessary repairs and replacements thereto, including without limitation, the roof, walls, foundations and appurtenances, pipes and mains, and all other fixtures, machinery, facilities and equipment that belong to or are used in connection with the Lands, all of the foregoing to the extent that a prudent owner would do. Notwithstanding the foregoing, the Mortgagor shall not be obligated to repair any damage caused by reasonable wear and tear which does not affect the use and enjoyment of the improvements except as and when such damage would be ordinarily repaired by a prudent owner.

- (c) The Mortgagee by its agents, solicitors or inspectors may enter upon the Lands at any reasonable time to view the state of repair.
- (d) Should, in the opinion of the Mortgagee, the Lands not be in a proper state of repair, the Mortgagee may serve notice upon the Mortgagor to make such repairs or replacements as the Mortgagee deems proper within a period of twenty (20) Business Days and in the event of the Mortgagor not having complied or not being in the process of diligently complying with such request, the Mortgagee may deem the Mortgagor to be in default hereunder and may authorize the making of such repairs or replacements by its agents, employees or contractors and they may enter upon the Lands for the purpose of doing such work with or without the Mortgagor's concurrence and the cost thereof shall be paid for by the Mortgagor upon demand and until paid shall be secured by this Mortgage, bear interest at the Interest Rate and be a charge upon the Lands in priority to the interest of the Mortgagor. Provided always, that should the Mortgagor have vacated or abandoned the Lands, or, should the Lands be occupied by a tenant or tenants who are failing to properly maintain and repair the same, and, the Mortgagee, in its sole discretion, deems it necessary to enter upon the Lands in order to properly maintain and preserve its security, then in such event, the Mortgagee shall be entitled to so enter and such action by the Mortgagee shall not constitute it a mortgagee in possession nor liable as such.
- (e) In the ownership and development of the Lands, the Mortgagor will observe and comply with all applicable federal, provincial and local bylaws, statutes, rules, ordinances, permits, regulations, orders, directions and restrictions affecting the Lands in force from time to time.

#### **3.4 Miscellaneous Affirmative and Negative Covenants**

- (a) The Mortgagor covenants and agrees that for so long as there shall remain any amount of the Mortgage Monies outstanding hereunder:
  - (i) The Mortgagor will:
    - (1) comply with all terms, conditions and covenants set forth in the Commitment Letter;
    - (2) permit the Mortgagee to inspect the business premises, the property, assets and the books and records of the Mortgagor at all reasonable times;
    - (3) keep the Lands of the Mortgagor free and clear of all taxes, assessments, liens and encumbrances, other than Permitted Encumbrances, and notify the Mortgagee promptly of any loss or damage of or to the Lands or any material asset located thereon. The Mortgagee may pay off the whole or any part of any lien, mortgage, contract, debt, charge and encumbrance with which the Lands or any part thereof may be charged or affected, whether validly or not, and all moneys so paid by the Mortgagee together with all expenses of the Mortgagee in connection with any such payment shall be forthwith added to the Principal Sum and shall bear interest at the Interest Rate per annum and shall be forthwith due and payable by the Mortgagor to the Mortgagee and default in payment thereof shall constitute default thereunder; and



- (4) provide safe storage and properly care for the property and assets of the Mortgagor and make all proper repairs thereto and at all times use, operate and enjoy the same strictly in accordance with all laws from time to time in force;
- (b) The Mortgagor covenants and agrees that for so long as there shall remain any amount of the Mortgage Monies outstanding hereunder, it will not, without the prior written consent of the Mortgagee:
  - (i) amend its Articles of Incorporation, By-Laws or constating documents, amend any material agreement or commitment of the Mortgagor or enter into any agreement or commitment, the effect of which would be to prohibit or make improper payment of the Mortgage Monies created hereby;
  - (ii) sell, convey, transfer, lease or otherwise dispose of all or substantially all of the Lands, its assets or enter into any arrangement to merge, consolidate, or permit the sale of all or substantially all of the shares of the Mortgagor; or
  - (iii) permit any change in any of its business objectives, purposes or operations other than changes which in the aggregate would have no material adverse effect on the Mortgagor.

**3.5 Change of Use**

The Mortgagor will not change or permit to be changed the use of the Lands without the prior written consent of the Mortgagee.

**3.6 Fixtures**

All Improvements shall, immediately upon being placed on the Lands, become fixtures and form a part of the realty and of the security of these presents, and are included in the expression the "Lands", where used in this Mortgage.

**3.7 Hazardous Substances**

The Mortgagor represents, covenants and warrants to and in favour of the Mortgagee that:

- (a) neither the Mortgagor, nor, to the best knowledge of the Mortgagor, any other person has ever caused or permitted any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands, save and except as disclosed to the Mortgagee in writing;
- (b) it shall not allow any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands without the prior written consent of the Mortgagee which consent may be arbitrarily or unreasonably withheld;
- (c) it shall not allow the Lands to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the disposal and emission of Hazardous Substances;

Environmental

- (d) to the extent, that Hazardous Substances are, with the Mortgagee's consent, placed, held, located or disposed of on, under or at the Lands in accordance with the terms hereof, the Mortgagor shall:
- (i) comply with, or cause to be complied with, all applicable laws and regulations relating to the use, storage and disposal of the Hazardous Substances; and
  - (ii) at the request of the Mortgagee, provide evidence to the Mortgagee of compliance with all applicable laws and regulations, such evidence to include inspection reports and such tests as the Mortgagee may reasonably require, all at the expense of the Mortgagor;
- (e) without restricting the generality of the foregoing, in the event that gasoline or other storage tanks are located under or on the Lands, the Mortgagor shall:
- (i) maintain and repair such storage tanks in a manner satisfactory to the Mortgagee; and
  - (ii) at the request of the Mortgagee, assign any warranties or guarantees received from the manufacturer or installer of such storage tanks in favour of the Mortgagee as additional security.

### 3.8 Indemnity

The Mortgagor hereby indemnifies and saves harmless the Mortgagee and its successors and assigns from and against any and all losses, liabilities, damages, costs and expenses of any kind whatsoever, including, without limitation:

- (a) the costs of defending, counter-claiming or claiming against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;
- (b) any cost, liability or damage arising out of a settlement of any action entered into by the Mortgagee with or without the consent of the Mortgagor; and
- (c) the costs of repair, clean-up or restoration paid by the Mortgagee and any fines levied against the Mortgagee;

which at any time or from time to time may be paid, incurred or asserted against the Mortgagee, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release, of Hazardous Substances from the Lands either onto any lands (including the Lands), into the atmosphere or into any water. This indemnification shall survive the satisfaction, release or enforcement of this Mortgage or Collateral Security and the full repayment of the Mortgage Monies.

### 3.9 Development of the Lands

If the principal sum or any part thereof is to be used in development of the Lands, the Mortgagor further covenants and warrants and represents to the Mortgagee that:

- (a) All buildings being renovated, erected or to be erected on the Lands (the "Development") form part of the security for the full amount of the Principal Sum.

- (b) This Mortgage shall be considered a building or construction mortgage by all persons having or hereinafter securing or becoming entitled to any interest in the Lands and the Principal Sum is to be advanced from time to time, in the discretion of the Mortgagee, in accordance with the state of construction of the Development and upon the fulfilling of any other conditions or requirements stipulated by the Mortgagee.
- (c) The Mortgagor will construct the Development in accordance with Plans and Specifications, including without limitation architectural, mechanical, electrical, structural and landscaping plans and specifications (herein referred to as the "Plans and Specifications") which have been or which may hereafter be delivered to, and approved by the Mortgagee or by such other party as the Mortgagee may designate so to do in accordance with applicable building codes and in accordance with the construction industry work requiring inspection by the Mortgagee until the Mortgagee has inspected the same, and any defects in the construction or variation in construction as reported to the Mortgagee by its consultants shall be promptly corrected by the Mortgagor to the satisfaction of the Mortgagee and the Mortgagor shall continuously carry on construction of the Development until completion.
- (d) No extra work or materials or change in Plans and Specifications which will result in a cumulative variation in the cost of the Development shall be ordered or authorized by the Mortgagor without the prior written consent of the Mortgagee.
- (e) All of the personal property, fixtures, attachments and equipment delivered upon or attached to the Development or intended to become a part of the Development will be kept free and clear of all chattel mortgages, conditional vendors liens and all liens, encumbrances and security interests other than as may be granted to the Mortgagee, and that Mortgagor will be the absolute owner of said personal property, fixtures, attachments and equipment, and will, from time to time on the reasonable request of the Mortgagee, furnish the Mortgagee with satisfactory evidence of such ownership, including searches of applicable public records; and upon the Mortgagee's request, the Mortgagor will forthwith execute and deliver a chattel mortgage or other security instrument upon furniture, furnishings, fixtures and equipment to the extent so required and other supporting documents which the Mortgagee may require in connection therewith, including financing statements and searches of records under any applicable legislation.
- (f) If any proceedings are commenced seeking to enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Lands or any portion thereof, the Mortgagor will cause such proceedings to be vigorously contested in good faith, and in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom and will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered 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.
- (g) The authority herein conferred upon the Mortgagee and any action taken by the Mortgagee in exercise of such authority in making inspections of the Lands, procuring sworn statements, approving permits, contracts, subcontracts and Plans and Specifications will be taken by the Mortgagee for its own protection only, and the Mortgagee does not assume any responsibility to the Mortgagor or any other person and

in so doing the Mortgagee shall not be acting in partnership with the Mortgagor in respect of the development of the Development.

- (h) The Mortgagor will pay or cause to be paid as soon as the same are due all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, Workers' Compensation assessments or other charges of any nature or kind (hereinafter called "Charges") which could in any circumstances constitute a lien or charge having priority over this Mortgage or any future advance on this Mortgage and the Mortgagor will from time to time, on demand, provide the Mortgagee with such books, payrolls or other records, receipts, certificates and declarations as the Mortgagee may deem necessary to satisfy itself that such charges have been paid as soon as the same are due.
- (i) The Mortgagee shall not be obliged to hold back advances or any portion of advances to provide the lien fund or other protection to the Mortgagor under the *Builders' Lien Act* of Alberta; provided that if the Mortgagee makes a hold back in a manner similar to the way the said Act provides for an owner to make holdbacks then, notwithstanding such holdbacks by the Mortgagee, such holdbacks shall not constitute the lien fund under the said Act and the Mortgagee shall not be a mortgagee authorized by the owner to disburse money secured by a mortgage as referred to in the said Act.
- (j) The Mortgagor has and will have, until the release hereof, the power, authority and legal right to construct the Development on the Lands.
- (k) In the event of default hereunder, in addition to any other remedies which the Mortgagee may have hereunder, the Mortgagee personally or by its agents, servants, contractors or attorneys may enter into and upon the Lands or any part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom and may inspect, use, operate, manage, lease and control the Lands and conduct the business thereof and, in addition, the Mortgagee, from time to time, may repair, renew, replace, maintain and restore the Lands and may complete the development and in the course of such completion may make such changes in the contemplated Development as it may deem desirable.
- (l) Unless otherwise expressly agreed to in writing by the Mortgagee, the Mortgagor shall:
  - (i) employ any monies advanced hereunder for construction costs, professional fees, property taxes, interest costs, insurance premiums and other costs necessarily incurred to complete construction (and sale, if applicable) of the Development (hereinafter collectively called "Construction Project Costs"); and
  - (ii) pay from sources other than this mortgage such portion of Construction Project Costs as may be necessary so that the monies unadvanced under this Mortgage from time to time shall, in the opinion of the Mortgagee, at all times be sufficient to pay all Construction Project Costs necessary to complete construction (and sale, if applicable) of the Development.
- (m) The Mortgagor shall provide to the Mortgagee construction completion schedules indicating projected dates and amounts of progress advances and shall ensure that such schedules are updated and maintained in a current form from time to time during the course of construction.

- (n) The Mortgagor shall provide to the Mortgagee prior to each advance a statutory declaration that all advances previously provided by the Mortgagee have been disbursed to pay for costs associated with the construction of the Development or that the funds from such previous advances remain in a specially designed account with the Mortgagee.
- (o) The Mortgagor shall provide to the Mortgagee prior to each advance reports from an architect, engineer acceptable to the Mortgagee, or to be provided by the Mortgagee's cost consultant, at the Mortgagor's expense stating, inter alia:
  - (i) that construction to date complies with the approved Plans and Specifications;
  - (ii) that construction to date is of acceptable standards;
  - (iii) that construction has progressed on schedule; and
  - (iv) the percentage of work completed to date and the cost to complete the Development does not exceed the unadvanced monies under this Mortgage.
- (p) If at any time during construction of the development that actual costs incurred exceed that cost budgeted by the Mortgagor and approved by the Mortgagee, the Mortgagor shall immediately so notify the Mortgagee and if the Mortgagee shall conclude that the aggregate undisbursed balance of the loan shall be or become insufficient to pay for the completion of construction of the Development and all expenses and charges of every account in connection therewith, the Mortgagor shall pay the amount of such deficiency into the Development before any further disbursement of funds shall be made, or shall otherwise satisfy the Mortgagee that such deficiency shall be met.
- (q) The Mortgagor shall at all times during the course of construction maintain a Builder's all-risk insurance policy covering all of the construction in progress for the full replacement cost of the construction in progress and the total amount of advances taken from time to time hereunder, with loss payable, firstly, to the Mortgagee, and the insurance provisions of this Mortgage shall be and are hereby modified to such extent as is necessary to give full force and effect to this provision.

#### **ARTICLE 4**

##### **4.1 Mortgagor's Representations and Warranties**

The Mortgagor represents and warrants to the Mortgagee that:

- (a) the Mortgagor has a good title to the Lands;
- (b) the Mortgagor has the right to mortgage the Lands;
- (c) on default, the Mortgagee shall have quiet possession of the Lands, free from all encumbrances (except the Permitted Encumbrances);
- (d) the Mortgagor will execute such further assurances with respect to the Lands as may be required by the Mortgagee;

- (e) the Mortgagor has done no act to encumber the Lands (except the Permitted Encumbrances);
- (f) all balance sheets, statements of profit and loss and other financial data that have been furnished by the Mortgagor to the Mortgagee fairly present the financial condition of the Mortgagor and the results of its operations; all other information, reports, papers and data furnished to the Mortgagee are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the Mortgagee a true and accurate knowledge of the subject matter; and there has been no change in the assets, liabilities or financial condition of the Mortgagor from that set forth in the most recent financial statements furnished by the Mortgagor to the Mortgagee other than changes in the ordinary course of business, none of which changes has been materially adverse; and
- (g) having due regard to all restrictions contained in the Articles of Incorporation, By-Laws or constating documents of the Mortgagor and all outstanding agreements and commitments of the Mortgagor, the Mortgagor has the power and authority to become indebted to the Mortgagee in the manner provided herein, and the Board of Directors or other governing body of the Mortgagor has taken all steps necessary to make proper the creation of the indebtedness evidenced hereby and the Mortgagor's performance hereunder in accordance with the terms and conditions hereof including, but not limited to the mortgaging, pledging, assigning, charging or encumbering of the Lands of the Mortgagor.

## ARTICLE 5

### 5.1 Events of Default

Without in any manner restricting the demand nature of the indebtedness secured hereunder or any other provision with regard to default, the following shall be deemed as events of default hereunder. Time is of the essence of this Mortgage. The whole or any part of the unpaid balance of the Mortgage Monies shall become due and be immediately payable and the security hereby constituted shall become enforceable at the option of the Mortgagee in each and every of the events following:

- (a) If the default shall be made in the due and punctual payment of all or any portion of any payment of principal or interest or any other amounts due or to become due hereunder or under any other agreement between the Mortgagor and the Mortgagee; or
- (b) If default shall be made in the observance or performance of any covenant, agreement or condition herein contained required to be observed or performed by the Mortgagor; or
- (c) If any representation or warranty made by the Mortgagor to the Mortgagee shall have been determined by the Mortgagee to be untrue in any material respect as of the date that such representation or warranty was made; or
- (d) If the Mortgagor shall fail to pay the rent arising out of the lands and premises upon which the property and assets of the Mortgagor are situate promptly when such rent becomes due; or
- (e) If any default should occur under any other mortgage or charge, whether prior or subsequent to this Mortgage; or if the possession of the Mortgagor to its property and assets or any part thereof shall be interfered with or threatened with interference by

seizure of receivership pursuant to any other mortgage or charge, whether prior or subsequent to this Mortgage or the interest of the Mortgagor therein terminated by foreclosure or sale; or

- (f) If a resolution is passed or if a petition is filed or if any order is made for the winding-up of the Mortgagor; or
- (g) If the Mortgagor becomes insolvent or makes an assignment in bankruptcy or files a proposal or if a bankruptcy petition is filed or presented against the Mortgagor or the Mortgagor takes or threatens or proposes to take the benefit of any provision of the *Companies Creditors Arrangement Act* or any similar legislation now or hereafter in force; or
- (h) If the Mortgagor commits or threatens or proposes to commit any act of bankruptcy; or
- (i) If any execution, sequestration or any other process of any court becomes enforceable against or if a distress or analogous process is levied upon the property and assets of the Mortgagor or any material part of them.

## 5.2 Remedies on Default

In addition to the provisions of Article 6, in the event of default being made in any of the covenants, agreements, provisos, payments or stipulations expressed or implied herein, then:

- (a) the Mortgagee may, at its option, and at the Mortgagor's expense and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenant, agreement, proviso or stipulation;
- (b) the Mortgagee may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Lands and a solicitor to examine and report upon the title to the same, all at the expense of the Mortgagor;
- (c) it shall and may be lawful for, and the Mortgagor does hereby grant full power, right and license to the Mortgagee to enter, seize and distrain upon the Lands or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Lands as much of the Mortgage Monies as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent;
- (d) the Mortgagee may, at its option, sell, lease, mortgage or otherwise dispose of or deal with the Mortgagor's interest in and to the Lands, without entering into possession of the same. Any sale, lease or mortgage made under the powers hereby given may be on such terms as to credit or otherwise as shall in the opinion of the Mortgagee be most advantageous and for such price as can be reasonably obtained therefor and such sale may be made of any portion or portions of the Lands, from time to time. The Mortgagee may make any stipulation as to title or otherwise as the Mortgagee may deem proper and the Mortgagee may rescind or vary any contract for sale of any of the Lands and resell without being responsible for any loss occasioned thereby. The proceeds of any sale shall be applied in payment of the Mortgage Monies, all legal costs of the Mortgagee as between a solicitor and his own client on a full indemnity basis and the balance, if any, to be paid to the Mortgagor. Any such sale shall be absolutely conclusive as against the

Mortgagor or any persons claiming by, from, through or under the Mortgagor and its assigns and in the event of a sale on credit or for part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable or charged with any monies until the same shall be actually received by it in cash;

- (e) the whole of the Mortgage Monies shall, at the option of the Mortgagee, become due and payable;
- (f) the Mortgagee may take such proceedings to realize on the Mortgagee's security created by this Mortgage or the Collateral Security by foreclosure or otherwise as the Mortgagee may by law be entitled to do;
- (g) the Mortgagee may exercise each of the foregoing powers, together with all other rights and powers provided for in this Mortgage, without notice to the Mortgagor; and
- (h) the exercise or the attempted exercise of one or more of the Mortgagee's rights or remedies hereunder shall not affect, delay or prejudice any other rights or remedies nor operate as a waiver thereof, and any or all of the said rights or remedies may be exercised concurrently or successively.

### **5.3 Remedies Cumulative**

Each and every right, remedy, and power granted to the Mortgagee hereunder shall be cumulative and in addition to any other right, remedy, or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute, or otherwise and may be exercised by the Mortgagee from time to time concurrently or independently and as often and in such order as the Mortgagee may deem expedient. Any failure or delay on the part of the Mortgagee in exercising any such right, remedy, or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect the Mortgagee's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy, or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, or power.

### **5.4 No Merger**

- (a) The giving and taking of this Mortgage shall in no way merge or affect any other security or securities, including the Collateral Security, that may have been, or that may hereafter be given in respect of any amount secured by this Mortgage, or any part thereof, or impair or affect any such security or securities or any remedy thereunder, and all rights and remedies which the Mortgagee now has or may hereafter have against the Mortgagor or any other person or entity are hereby reserved. The Mortgagor agrees that the taking of a judgment or judgments on any covenant contained herein or on any covenant which is set forth in any other security for payment of the Mortgage Monies or performance of the obligations hereby secured or the entering into of any arrangement, including the granting of time, compromise, release or discharge or the termination of any causes of action, claim or right whatsoever by the Mortgagee against the Mortgagor or any other person or entity, whether prejudicial or beneficial to any one or more of them, shall not operate as a merger of such covenant or affect the rights or remedies of the Mortgagee including, without limitation, or affect the Mortgagee's right to interest at the Interest Rate on any monies which are owing to the Mortgagee and such judgment shall provide



that interest thereon shall be computed at the Interest Rate in the same manner as provided for herein until the judgment has been paid in full.

- (b) The Mortgagor acknowledges that it is aware of the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, dealing with the aware of interest from the date a cause of action arises to the date of judgment, and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof, and agrees to pay interest in accordance with the terms of this Mortgage, both before and after default, maturity and judgment.

### **5.5 Release**

The Mortgagee may at any time release any part of the Lands, or any of the covenants and agreements herein contained, or any Collateral Security, either with or without any consideration therefor and without being accountable either for the value thereof, or for any money except that which is actually received, and without thereby releasing or affecting any other of the Lands or any of the other covenants or agreements herein contained or releasing any guarantor or any other security.

### **5.6 No Obligation to Advance**

Subject to the Commitment Letter, neither execution nor registration nor acceptance of this Mortgage, nor the advance of part of the Principal Sum shall bind the Mortgagee to advance the Principal Sum or any unadvanced portion thereof, but nevertheless this Mortgage shall take effect forthwith on its execution and if the Principal Sum or any part thereof shall not be advanced at the date hereof, the Mortgagee may advance the same in one or more sums to or on behalf of the Mortgagor at any future date or dates and the amount of such advances when so made shall be secured hereby and repayable with interest as herein provided. In all events, the advance of the Principal Sum or any part thereof from time to time shall be in the sole, absolute, unfettered and unqualified discretion of the Mortgagee.

### **5.7 Additional Charges**

All solicitor's, inspector's, valuator's and surveyor's fees and expenses for drawing and registering this Mortgage and for examining the Lands and the title thereto, and for making or maintaining this Mortgage as a valid and subsisting charge (subject only to the Permitted Encumbrances) on the Lands, together with all sums which the Mortgagee may and does from time to time advance, expend or incur hereunder as principal, insurance premiums, Real Estate Taxes, rates or in or toward payment of any Prior Charge, or in maintaining, repairing, restoring or completing the development of the Lands, and in inspecting, leasing, managing, or improving the Lands, including the price or value of any goods of any sort or description supplied to be used on the Lands, and in exercising or enforcing or attempting to enforce or in pursuance of any right, power, remedy or purpose hereunder or subsisting, and legal costs as between a solicitor and his own client, and also an allowance for the time, work and expenses of the Mortgagee, or of any agent, solicitor or servant of the Mortgagee, for any purpose herein provided or whether or not such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise, are to be secured hereby and shall be a charge on the Lands, together with interest thereon at the Interest Rate, and all such monies shall be repayable to the Mortgagee on demand. It is the express intention and agreement of the Mortgagor and Mortgagee that the Mortgagor shall fully and totally indemnify the Mortgagee for all costs, expenses, charges and monies of any nature whatsoever either directly or indirectly arising out of or associated with this Mortgage.

### **5.8 Right of Subrogation**

In the event of the Principal Sum advanced hereunder or any part thereof being applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights of, and stand in the position of and be entitled to all the equities of the party so paid whether such charge or encumbrance has or has not been discharged, and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under this Mortgage or of any claim so paid shall be final and binding on the Mortgagor.

### **5.9 Monies Received or Collected**

The Mortgagee shall not be charged with any monies receivable or collectable out of the Lands or otherwise except those actually received, and all revenue of the Lands received or collected by the Mortgagee from any source other than payment by the Mortgagor may at the option of the Mortgagee be retained in a suspense account or used in maintaining or insuring or improving the Lands, or in payment of Real Estate Taxes or other charges against the Lands, or applied on the mortgage account, and the Mortgagee shall not be under any liability to pay interest on any sums in a suspense account.

### **5.10 Discharge**

Any discharge of this Mortgage shall be prepared by the solicitor of the Mortgagee and the Mortgagee shall have a reasonable time after receipt of payment in full within which to have prepared and to execute such discharge.

### **5.11 Exercise of Discretion**

Any discretion, option, decision or opinion hereunder on the part of the Mortgagee shall be sufficiently exercised or formed if exercised, or formed by or subsequently ratified by the manager or acting manager for the time being of the Mortgagee at Calgary, Alberta or by an executive officer of the Mortgagee, or any officer or agent appointed by the Mortgagee for that purpose.

### **5.12 Default Under Prior Charge**

If the Mortgagor makes default in the performance of the covenants, payments or conditions contained in any Prior Charge then such default shall constitute a default hereunder and the Mortgage Monies shall, at the option of the Mortgagee, become forthwith due and payable without notice or demand. The Mortgagee shall be at liberty in the event of such default, but shall not be obligated, to pay any arrears or other sums payable under the Prior Charge, or pay off all or any portion of the principal or interest thereby secured. Any amounts so paid by the Mortgagee shall:

- (a) be added to the Mortgage Monies;
- (b) bear interest at the Interest Rate until paid;
- (c) be a charge upon the Lands; and
- (d) unless repaid to the Mortgagee upon demand, shall be recoverable from the Mortgagor in the same manner as if such sum had been originally advanced and secured hereby.

For the purposes of tendering any arrears or other sums payable to a holder of a Prior Charge, the Mortgagor hereby irrevocably appoints the Mortgagee its agent for such purpose and irrevocably directs the Mortgagee to tender such monies upon the holder of a Prior Charge, in the name of and on behalf of the Mortgagor, and in this regard the Mortgagor hereby assigns unto the Mortgagee, its equity of redemption, if any, with respect to the Prior Charge together with the statutory right of redemption given to the Mortgagor by the provisions of Section 38 of the *Law of Property Act*, R.S.A. 2000, c. L-7. It is the intention of the parties that the Mortgagee shall have the same rights and powers but not the liabilities as the Mortgagor under and pursuant to the terms of the Prior Charge so that the Mortgagee will be in a position to take whatever steps are necessary to bring the Prior Charge into good standing once a default has occurred thereunder. This assignment is not intended to encompass the Mortgagor's entire interest in the Prior Charge, but only to the extent hereinbefore stipulated. Nothing herein contained shall create an obligation upon the Mortgagee to cure any default on behalf of the Mortgagor.

### **5.13 Attornment**

For better securing the punctual payment of the Mortgage Monies, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Lands at a monthly rental equivalent to the proportionate monthly amount of the Mortgage Monies secured hereby, the same to be paid on each day appointed for the payment of the Mortgage Monies pursuant to the Commitment Letter, and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or shall take the benefit of any statute relating to bankruptcy or insolvent debtors then such rental shall, if not already payable, be payable immediately thereafter. The legal relationship of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor. The Mortgagee may at any time after default hereunder enter upon the Lands, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit; but neither this clause nor anything done by virtue thereof shall render the Mortgagee a mortgagee in possession or accountable for any monies except those actually received.

### **5.14 Expropriation and Condemnation**

- (a) If the Lands or any part thereof be condemned under any power of eminent domain or be acquired by expropriation, the damages, proceeds, consideration and award for such acquisition, to the extent of the full amount of the Mortgage Monies and obligations secured hereby remaining unpaid, are hereby assigned by the Mortgagor and shall be paid forthwith to the Mortgagee and its successors and assigns. If a portion only of the Lands be taken in the expropriation without resulting damage to the buildings and improvements or any part thereof, or if a portion of the Lands shall be taken in such expropriation proceedings with resulting damage to the buildings and improvements and the amount of the award made therein is based on a determination that the portion of the buildings and improvements remaining on the portion of the Lands not so taken can practicably be rehabilitated then the provisions of this Mortgage relating to insurance proceeds in case of loss or damage shall apply to the award in the said expropriation and the same shall be applied accordingly.
- (b) The Mortgagor acknowledges that it is aware of the provisions of Sections 49 and 52 of the *Expropriation Act*, R.S.A. 2000 c. E-13, and any amendments thereto and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof and in addition the Mortgagor covenants to pay to the Mortgagee the difference between the Mortgage Monies and the monies paid by the expropriating authority to the

Mortgagee together with interest thereon at the Interest Rate both before and after maturity, default, acceleration and the obtaining of any judgment by the Mortgagee.

- (c) Notwithstanding the foregoing subsections (a) and (b) the Mortgagee shall be at liberty, at its sole option, to declare the whole of the Mortgage Monies as being immediately due and payable in the event that any portion of the Lands shall be the subject matter of an expropriation proceeding.
- (d) Any monies awarded by an order of either the Land Compensation Board or the Surface Rights Board with respect to all or any part of the Lands to the extent of the full amount of the Mortgage Monies are hereby assigned by the Mortgagee and shall be paid forthwith to the Mortgagee, its successors and assigns.

ARTICLE 6

6.1 Appointment of Receiver

If the Mortgagor shall be in default under this Mortgage or under any Collateral Security given by the Mortgagor to the Mortgagee, then the Mortgagee may by instrument in writing or by obtaining an order of the court, appoint any person or persons, whether an officer or officers or employee or employees of the Mortgagee, or not, to be a Receiver of the Lands and assets which are charged in favour of the Mortgagee and the rents and profits derived therefrom or any portion or part thereof, at the Mortgagee's sole discretion. The Mortgagee may remove any Receiver so appointed and appoint another or others in his or their stead. The following provisions shall apply to this paragraph:

- (a) ~~a Receiver so appointed is conclusively the agent or agents of the Mortgagor and the Mortgagor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the Receiver. The Mortgagee shall not be in any way responsible for any misconduct or negligence on the part of any Receiver;~~
- (b) nothing contained herein and nothing done by the Mortgagee or by a Receiver shall render the Mortgagee a mortgagee in possession or responsible as such;
- (c) all monies received by the Receiver, after providing for payment and charges ranking prior to this Mortgage and for all costs, charges and expenses of or incidental to the exercise of any of the powers of the Receiver as hereinafter set forth, shall be applied in or towards satisfaction of the monies owing pursuant to this Mortgage;
- (d) the Receiver so appointed may but shall not be obligated to:
  - (i) ~~take possession of, collect and get in the property, rents and profits charged by this Mortgage and any Collateral Security granted by the Mortgagor to the Mortgagee and for that purpose to take any proceedings, be they legal or otherwise, in the name of the Mortgagor or otherwise;~~
  - (ii) carry on or concur in carrying on the business which the Mortgagor is conducting on and from the Lands;
  - (iii) lease or re-lease all or any portion of the Lands for any term, and on any condition, and with or without a premium, and for this purpose may execute

*Agent Receiver (b.c.p.)*

contracts in the name of the Mortgagor which said contracts shall be binding upon the Mortgagor;

- (iv) borrow monies for the purpose of carrying on the business of the Mortgagor on the Lands, the maintenance and preservation of the Lands or any part thereof, the payment of taxes, wages and other charges ranking in priority to this Mortgage or for other purposes approved by the Mortgagee and any money so borrowed shall be repaid by the Mortgagor on demand and until repaid shall bear interest thereon at the Interest Rate and form a charge upon the Lands;
- (v) receive the revenues, incomes, issues and profits of the Lands and to pay therefrom all expenses, charges and borrowings incurred or payable 'n carrying on the business as it relates to the Lands and all taxes, assessments and other charges against the Lands, payment of which may be necessary to preserve the Lands and the balance, if any, shall be held and applied in the same manner as if the same arose from a sale or realization of the Lands;
- (vi) sell and dispose of any or all of the Lands at public auction or by tender at such time and on such terms and conditions as the Receiver shall determine or to sell and dispose of any or all of the Lands by private contract and in any event for cash or upon credit and secured or otherwise as the Receiver may deem proper and to deliver to the purchaser or purchasers of the Lands good and sufficient deeds or title document for the same, the Receiver being hereby constituted the irrevocable attorney of the Mortgagor for the purpose of making such sale and executing such deeds and transfer documents and any such sale shall be absolute and conclusive as against the Mortgagor or any persons claiming by, from, through or under the Mortgagor and its assigns and in the event of a sale on credit or for part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable or charged with any monies until the same shall be actually received by it in cash; and the Receiver may vary and rescind any contract for sale made by virtue of these presents and may buy and resell the Lands or part thereof, either by private sale or public auction without the Mortgagee or Receiver being responsible for any loss or deficiency on resale or expense occasioned thereby and for such purposes the Receiver may make and execute all agreements and assurances that the Receiver shall deem advisable or necessary;
- (vii) make any arrangement or compromise which the Receiver shall deem expedient;
- (viii) sue or defend any action in the name of the Mortgagor;
- (ix) exercise all or any of the powers or rights incident to the ownership of the Lands;
- (x) employ or retain for the execution of the duties and powers conferred upon the Receiver hereunder, such agents, assistants, professional advisors or other persons as required on the terms and at the remuneration the Receiver considers proper;
- (xi) carry on and complete any construction commenced by the Mortgagor and be in charge of completion of any further construction on the Lands;

- (xii) release any of the Lands which in the Receiver's opinion are unprofitable or unrealizable or a source of loss or danger to the Mortgagor or the Mortgagee;
  - (xiii) exercise all rights and powers of the Mortgagor hereunder and to act generally in relation to the Lands in such manner and on such terms as may seem expedient in the best interests of the Mortgagee;
  - (xiv) assent to the modification of any contract or agreement which may be subsisting in respect of the Lands; or
  - (xv) enter into, make, execute and sign all such contracts, agreements, transfers, conveyances, assurances, instruments, and do all such things and bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Lands as the Mortgagee may deem expedient;
- (e) the rights and powers conferred by this section are supplemental to and not in substitution for any other rights which the Mortgagee may have from time to time;
  - (f) the Receiver appointed hereunder shall not be obligated to take possession or control of the whole of the business of the Mortgagor. Rather, the Mortgagee's right to appoint shall be restricted to the Lands and the rents, profits and any business deriving therefrom;
  - (g) the Mortgagor shall yield up possession of the Lands and the conduct of its business in connection therewith to the Receiver so appointed upon demand and shall facilitate by all legal means the actions of the Receiver and shall not interfere with the carrying out of the powers hereby granted to the Receiver and the Mortgagor shall forthwith by and through its officer and directors execute such documents and transfers as may be necessary to place the Receiver in legal possession of the Lands and thereupon all the powers and functions, rights and privileges of each and every of the directors and officers of the Mortgagor shall cease and determine with respect to the Lands; and
  - (h) the Mortgagee may from time to time fix the remuneration of every such Receiver and direct the payment thereof out of the Lands or the proceeds thereof and if paid by the Mortgagee, such remuneration and all expenses incurred by any Receiver shall be a charge upon the Lands and shall be repaid by the Mortgagor to the Mortgagee forthwith upon demand, and shall bear interest at the Interest Rate until paid.

## 6.2 Appointment of Attorney

If the Mortgagor shall be in default in the observance or performance of any of the terms, covenants, conditions or payments described herein, then the Mortgagor hereby irrevocably appoints the Mortgagee, or its agent or employee or any Receiver appointed as aforesaid (the choice of which shall be at the election of the Mortgagee, in its sole and absolute discretion) to be its attorney, in its name and on its behalf to execute and perform any conveyances, assurances and things which the Mortgagor ought to execute and perform under the covenants herein contained and generally to use the name of the Mortgagor in the exercise of any of the powers hereby conferred on the Mortgagee and any Receiver and without limiting the generality of the foregoing, the Mortgagee and any Receiver appointed as aforesaid are hereby appointed pursuant to Section 115 of the *Land Titles Act*, R.S.A. 2000 c. L-4 as amended or replaced by substitute legislation from time to time, as the Mortgagor's attorney to execute and deliver, under seal of the Mortgagor, or by the hand and under the seal of the Mortgagee or the Receiver, any agreements, instruments and assurances as the Mortgagee sees fit, for any and all purposes and for the

purpose of carrying out the Mortgagee's power of sale contained herein. Any attorney appointed pursuant to this section shall be entitled, in its capacity as attorney, to exercise all of the powers conferred upon a Receiver hereunder, in addition to any other powers the attorney may have hereunder.

## ARTICLE 7

### 7.1 Assignment of Rents and Leases

As security for payment of the Mortgage Monies, the Mortgagor does hereby fully and absolutely assign, transfer and set over to the Mortgagee all of the rents due or to accrue due and to be payable in respect of the Lands and any and every part thereof and any and all leases, offers to lease and rental agreements of every nature, kind and description, present and future, and all benefits and advantages to be derived therefrom, together with all the rights of the Mortgagor to enforce the same, by way of distress or otherwise.

## ARTICLE 8

### 8.1 Condominium

If the Lands or any portion thereof is now subject to or becomes subject to a condominium plan duly created pursuant to the provisions of the *Condominium Property Act*, R.S.A. 2000 c. C-22, and amendments thereto, then:

- (a) the Mortgagor hereby fully and absolutely assigns, transfers and sets over unto the Mortgagee, any and all of the Mortgagor's voting rights now existing or which may come into existence with respect to the Lands, and with respect to the condominium corporation of which the Mortgagor is a member by virtue of the Mortgagor's ownership of the condominium unit being charged by this Mortgage (herein sometimes called the "**Condominium Corporation**") whether such voting rights arise under the *Condominium Property Act*, R.S.A. 2000, c. C-22, or any amendments thereto, or any legislation passed in addition thereto, or in substitution therefor, under the Bylaws of the Condominium Corporation, under any agreement with the Condominium Corporation or otherwise howsoever. The Mortgagor covenants and agrees to execute any materials or documentation which in the sole opinion of the Mortgagee are necessary or advisable to give full effect to such assignment, transfer and setting over of the voting rights. Provided, however, that if the Mortgagee is not present in person or by proxy, or if present, does not wish to vote, then the Mortgagor may without further authority exercise all voting rights other than the right to vote on any matter requiring a unanimous resolution. Provided further that the Mortgagee may, by notice in writing to the Mortgagor, revoke and terminate all voting rights and privileges of the Mortgagor;
- (b) it is further stipulated, provided and agreed that notwithstanding anything to the contrary herein contained:
  - (i) the Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall observe and perform each and every one of the covenants and provisions required to be performed under or pursuant to the terms of this Mortgage, the *Condominium Property Act*, R.S.A. 2000, c. C-22, and all amendments thereto and any legislation passed in addition thereto or in substitution therefor, the bylaws of the Condominium Corporation and any amendments thereto, and under any agreement between the Mortgagor and the Condominium Corporation; and

- (ii) without limiting the generality of the foregoing subsection, the Mortgagor covenants to pay promptly when due any and all assessments, instalments or payments owing to the Condominium Corporation by an owner of a condominium unit;
- (c) the Mortgagor further covenants and agrees that where the Mortgagor defaults in the Mortgagor's obligations to contribute to the common expenses assessed or levied by the Condominium Corporation or any authorized agent on its behalf, or any assessment, instalment or payment owing to the Condominium Corporation, or upon breach of any covenant or provision hereinbefore in this Section contained, then regardless of any other action or proceeding taken or to be taken by the Condominium Corporation, the Mortgagee, at its option and without notice to the Mortgagor:
  - (i) may, but shall not be obliged to, pay such contribution to the common expenses, assessment, instalment or payment owing to the Condominium Corporation or rectify any such default or breach by the Mortgagor and all monies so paid and expended by the Mortgagee shall be secured hereby and shall be a charge on the Lands together with interest thereon at the Interest Rate and all such monies shall be repayable to the Mortgagee on demand; and
  - (ii) may deem such default to be a default under the terms of this Mortgage and proceed to exercise its rights hereunder; and
- (d) upon default herein and notwithstanding any other right of action of the Condominium Corporation or the Mortgagee, the Mortgagee may distrain for arrears of any assessments, instalments and payments due to the Mortgagee or arising under any of the foregoing paragraphs.

## ARTICLE 9

### 9.1 Interpretation

Wherever the singular number or masculine gender is used in this instrument the same shall be construed as including the plural and feminine and neuter respectively where the fact or context so requires. In any case, where this Mortgage is executed by more than one party, all covenants and agreements herein contained shall be construed and taken as against such executing parties as joint and several. The respective heirs, executors, administrators, successors and assigns of any party executing this Mortgage are jointly and severally bound by the covenants, agreements, stipulations and provisos herein contained. The covenants, agreements, stipulations and provisos herein stated shall be in addition to those granted or implied by statute.

### 9.2 Permitted Encumbrances

The parties acknowledge that this Mortgage is to be registered subject only to the Permitted Encumbrances.

### 9.3 Renewal or Extension

If the Mortgagee shall agree to renew or extend the term of this Mortgage, then such renewal or extension and the rate of interest, term, payments and other stipulations of such renewal or extension shall be binding upon the Mortgagor, the Mortgagor's successors in title, encumbrancers and others interested in



the Lands, whether or not the renewal or extension is registered as an amending agreement or by way of caveat at the Land Titles Office, and whether or not the rate of interest, payments or amortization period applicable during the renewal or extension term is greater than or less than the rate, payments or amortization period stipulated in this Mortgage. The Mortgagor shall forthwith upon request by the Mortgagee, provide to the Mortgagee, at the Mortgagor's expense, all postponements and other assurances as the Mortgagee may require in order to ensure the foregoing. All renewals shall be done at the Mortgagor's legal expense on a solicitor and his own client basis. Such renewal, even if made by a successor in title to the Mortgagor named herein, shall in no way release or abrogate or render unenforceable the covenants or obligations of the Mortgagor named herein, which shall continue notwithstanding such renewal. In the event that the Mortgage is renewed as aforesaid, the Mortgage, as renewed, shall be deemed to be dated as at the date of maturity of this Mortgage or the Mortgage as previously renewed, as the case may be, for the purposes of prepayment only.

No extension of time given by the Mortgagee to the Mortgagor or alteration of interest rate or principal payments or any other dealing by the Mortgagee with the owner of the Lands shall in any way prejudice or affect the rights of the Mortgagee against the Mortgagor or the Mortgagor's assigns, or anyone claiming under the Mortgagor or any other persons.

#### **9.4 Commitment Letter Not Merged**

The provisions of the Commitment Letter are not superseded by or merged in the execution or registration of the Mortgage or any Collateral Security and the provisions of the Commitment Letter shall remain in full force and effect until all of the conditions thereof to be observed and performed by the Mortgagor have been fully paid and satisfied, provided however that in the event of a conflict between the terms of the Commitment Letter and the terms of this Mortgage or the Collateral Security, the Mortgagee, in its sole discretion, may determine which provisions shall prevail.

#### **9.5 Governing Law**

This Mortgage shall be governed by and construed in accordance with the Laws of the Province of Alberta and the Courts of the Province of Alberta shall have exclusive jurisdiction over any dispute or matter arising herefrom.

#### **9.6 Administration Fee**

Should the Mortgagor be in default in the observance or performance of and of the covenants, agreements, conditions or payments set forth in this Mortgage, then the Mortgagee shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements an administration and management fee not to exceed Five Hundred (\$500.00) Dollars for each month or part thereof for which the Mortgagor remains in default. This administration and management fee is intended to reimburse the Mortgagee for time and trouble in the management and administration of this Mortgage and of the Lands. The said sum or sums are agreed to be a liquidated amount to cover the Mortgagee's administration and management costs and are not intended nor shall be construed to be a penalty. All such sums payable to the Mortgagee shall be a charge upon the Lands and shall bear interest at the Interest Rate until paid.

#### **9.7 Financial Records**

If the Mortgagor carries on a commercial or industrial enterprise upon the Lands then:

- (a) The Mortgagor shall provide the information contemplated by the Commitment Letter;

- (b) The Mortgagor covenants and agrees during the continuance of this Mortgage to maintain proper records and books of account with respect to the revenues and expenditures in relation to the Lands and to permit the Mortgagee or any person appointed by the Mortgagee for that purpose to examine such records and books at all reasonable times and to make copies or extracts therefrom, and to give to the Mortgagee all information with regard to the revenues and expenditures in relation to the Lands which the Mortgagee may reasonably require;
- (c) The Mortgagor shall during the continuance of this Mortgage furnish to the Mortgagee annually within ninety (90) days of the end of each of the fiscal years of the Mortgagor, the following statements or information prepared in a manner acceptable to the Mortgagee by a recognized firm of accountants approved by the Mortgagee, namely:
  - (i) a balance sheet and a statement of operations for the preceding year for the Lands;
  - (ii) a detailed statement of income and expenditures and a statement of earned surplus, in each case with supporting schedules and an explanation of any items of an unusual nature;
  - (iii) such additional information as the Mortgagee may from time to time require;
  - (iv) an annual statement of income and expenditures with supporting schedules and an explanation of any items of an unusual nature respecting the Lands, certified by an officer of the Mortgagor;
  - (v) copies of every audited statement or statements as may be prepared from time to time with respect to the Lands; and
- (d) The Mortgagee shall at any time and from time to time at its own expense, be at liberty to have an audit made of the books and accounts of the Mortgagor, related to the Mortgagor's operations with respect to the Lands, and for such purposes the Mortgagor shall make available to the Mortgagee and its accountants all books of account and records and all vouchers, books, papers and documents which may relate to the Lands.

## **9.8 Collateral Security**

As additional and collateral security for the repayment of the monies hereby secured and the performance of the covenants contained herein, the Mortgagor shall execute and deliver or cause to be delivered to the Mortgagee the Collateral Security. None of the rights or remedies of the Mortgagee under this Mortgage or under the Collateral Security shall be merged in, waived, delayed, impaired, prejudiced or suspended by any such additional security or any act of the Mortgagee pursuant thereto.

## **9.9 Default Under Collateral Security**

- (a) If the Mortgagor or any guarantor makes default under any Collateral Security then the same shall constitute default under this Mortgage and the Mortgagee shall be at liberty to exercise its rights under this Mortgage and under any Collateral Security, either successively or concurrently, to the same extent as if the time for payment of the Principal Sum and other monies hereby secured had fully come and expired.

- (b) It is understood and agreed that a default by the Mortgagor hereunder or under the Collateral Security shall constitute a default under all other instruments or agreements, if any, securing or evidencing the loan herein or any indebtedness, present or future, of the Mortgagor to the Mortgagee and a default by the Mortgagor under any such instruments or agreements shall constitute a default hereunder.

#### 9.10 Notices

- (a) All notices, requests, demands, pleadings, judicial documentation and any other communications required to be served or given by the terms of this Mortgage or by the Rules of Court of Alberta, the *Judicature Act*, R.S.A. 2000, C. J-2, and any amendments thereto, the *Law of Property Act*, R.S.A. 2000, C. L-7, and any amendments thereto, or any other statute, as a result of a default by the Mortgagor including but not restricted to any Statement of Claim issued by the Mortgagee or a Mortgagee's Notice of Motion requesting enforcement of its rights hereunder (the "Notice"), shall be sufficiently served either personally or by prepaid registered mail addressed to the Mortgagor at the Mortgagor's Address or, if to the Mortgagee, at the Mortgagee's Address. The Notice shall be conclusively deemed to have been received by the addressee three (3) Business Days after mailing thereof as aforesaid; provided that in the case of any real or reasonably apprehended interruption of the mail, service may be by telegraph, telex, facsimile or other operative form of electronic written telecommunication (in which case the addressee shall be conclusively deemed to have received the same on the day upon which, in the ordinary course of such telecommunication, the same would have been received).
- (b) No want of notice or publication when required by this Mortgage or by any statute nor any impropriety nor irregularity shall invalidate any sale made or purported to be made under this Mortgage.

#### 9.11 Receipt Acknowledged

The Mortgagor acknowledges receipt of a true copy of this Mortgage.

#### 9.12 Charge

For better securing to the Mortgagee repayment of the Mortgage Monies, the Mortgagor hereby mortgages to the Mortgagee all of its right, title, estate and interest in the Lands.

#### 9.13 Due on Sale

In the event that the Mortgagor shall sell, convey, transfer or assign (or purport to do so) the Lands or any portion thereof or interest therein to a purchaser, transferee or assignee without first obtaining the Mortgagee's consent in writing, then, at the Mortgagee's option, the Mortgage Monies shall become immediately due and payable, without the necessity of a prior demand. Such consent may not be unreasonably or arbitrarily withheld. Failure to exercise the aforesaid option shall not be deemed or construed to be an acceptance by the Mortgagee of the aforesaid purchaser, transferee or assignee, nor shall such failure be or constitute or operate as a release, waiver or discharge of any personal covenants contained in this Mortgage or any Collateral Security, nor shall such failure prejudice or affect the enforcement of such personal covenants, nor shall such failure operate as a release or discharge of this Mortgage or any surety of or for this Mortgage. Any promise to pay, written or verbal acknowledgement of the indebtedness outstanding hereunder, or part payment of the Mortgage Monies by any of the

*Due on sale clause.*

Mortgagor's successors in title to the Lands shall be conclusively deemed to be made on behalf of the Mortgagor and any successors in title, as the case may be, as its agent for the purpose of furnishing a fresh starting point for the running of any limitation period.

If the Mortgagor or any other party who becomes liable to perform and observe the covenants herein should be a corporation, then any direct or indirect transaction or dealing whatsoever which affects the share structure or share ownership of such corporation and which results in a change in control, either legal or beneficial, of the shareholdings of that corporation shall constitute an event as hereinbefore described such that the Mortgagee's prior written consent as aforesaid is to be obtained, failing which, at the Mortgagee's sole option, the Mortgage Monies shall become immediately due and payable, without the necessity of a prior demand.

**9.14 Unenforceable Terms**

If any term, covenant or condition of this Mortgage or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent the remainder of this Mortgage or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Mortgage shall be valid and shall be enforceable to the fullest extent permitted by law.

**9.15 Further Advances and Readvances by Mortgagee**

This Mortgage shall be a continuing security and charge for the Principal Sum and all sums of money owed by the Mortgagor to the Mortgagee from time to time pursuant to the provisions of this Mortgage, notwithstanding the balance hereunder may be fluctuating and even may from time to time be or have been reduced to a "nil" balance, and notwithstanding monies advanced may be repaid and further advances made and shown from time to time. This Mortgage shall remain in full force and effect until discharged by the Mortgagee, it being the intention of the parties that the amount owing under this Mortgage may be either increased or decreased from time to time but not to exceed the total Principal Sum. For the purposes of subsection 104(1) of the *Land Titles Act*, R.S.A. 2000 c. L-4 as amended or replaced by substitute legislation from time to time, it is hereby declared by and agreed between the Mortgagor and the Mortgagee that this Mortgage shall be held by the Mortgagee as continuing collateral security for a revolving line of credit up to the Principal Sum.

Readvance clause

**9.16 General**

Mortgagor further covenants and agrees that:

- (a) This Mortgage and all its provisions shall enure to the benefit of the Mortgagee, its successors and assigns, and shall be binding upon the Mortgagor, its successors and assigns.
- (b) The Mortgagee shall at all times have the right to offset and apply any and all credits, moneys and properties of the Mortgagor in the Mortgagee's possession or control against any obligations of the Mortgagor to the Mortgagee. All payments by the Mortgagor or other funds of the Mortgagor held or received by the Mortgagee, other than regular monthly instalments of principal and interest on this Mortgage, and applied by the Mortgagee to any indebtedness hereunder, shall be applied to the last maturing instalments under this application without penalty.


- (c) In the absence of default in any obligation of the Mortgagor to the Mortgagee, voluntary prepayment may be made by the Mortgagor on the Principal Sum (or such lesser amount) owing hereunder at any time and from time to time, without penalty, on two (2) Business Days prior notice to the Mortgagee, with such notice to specify the amount of any such prepayment of the Principal Sum.
  - (d) The Mortgage Monies hereby secured will be paid without regard to any equities between the Mortgagor and the Mortgagee or any set-off or cross-claim, and the receipt of the Mortgagee from time to time hereof for payment of such principal and interest will be a good discharge to the Mortgagor for the same.
- 

**9.17 Reference Date**

This Mortgage is dated July 4, 2014 for reference purposes only.

**IN WITNESS WHEREOF** the Mortgagor has affixed its corporate seal duly attested to by its authorized signing officers this 4th day of July, 2014.

**AAA HOLDINGS LTD.**

Per:  \_\_\_\_\_ (c/s)  
Name:  
Title:

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SCHEDULE "A"**I. LANDS**

PLAN 8011265  
 BLOCK 10  
 LOT 17  
 EXCEPTING THEREOUT ALL MINES AND MINERALS  
 AND THE RIGHT TO WORK THE SAME

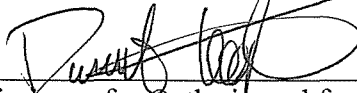
3530 32 ST NE

PERMITTED ENCUMBRANCES

Registration Number	Date (D/M/Y)	Particulars
771 147 064	20/10/1977	Zoning Regulations Subject to Calgary International Airport Zoning Regulations
801 178 750	30/10/1980	Utility Right of Way Grantee – The City of Calgary
141 059 788	10/03/2014	Mortgage Canadian Western Bank Original Principal Amount: \$4,500,000.00
141 059 789	10/03/2014	Caveat Re: Assignment of Rents and Leases Caveator – Canadian Western Bank

THIS IS EXHIBIT "5" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.



\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor

## FULL LIABILITY GUARANTEE

For or value received the undersigned ("Guarantor") hereby guarantees to CANADIAN WESTERN BANK ("Bank") payment, forthwith after demand made therefor as hereinafter provided, of all indebtedness and liability (present and future, direct or indirect, absolute or contingent, matured or not) of AAA WINDOWS LTD.

\_\_\_\_\_ ("Customer") to the Bank whether arising from agreement or dealings between the Bank and the Customer or from agreement or dealings between the Bank and any third person by which the Customer now is or hereafter may become indebted or liable to the Bank or however otherwise arising and whether the Customer be bound alone or with another or others and whether as principal or surety or guarantor; and the Guarantor further agrees that:

1. If more than one Guarantor executes this instrument the provisions hereof shall be read with all grammatical changes thereby rendered necessary and each reference to the Guarantor shall include the undersigned and each and every one of them severally and this guarantee and all covenants and agreements herein contained shall be deemed to be joint and several. This instrument shall be read with all grammatical changes made necessary by the Guarantor's or Customer's gender.
2. The Bank may increase, reduce, renew, extend, discontinue or otherwise vary the Customer's credit, grant time, renewals, extensions, releases and discharges to, take and give up securities (which may include other guarantees), and otherwise deal with the Customer and other parties and securities as the Bank may see fit, and may apply all monies received from the Customer or others or from the sale or other disposal of security upon such part of the Customer's liability as the Bank may think best, without prejudice to or in any way limiting or lessening the liability of the Guarantor under this guarantee. The Guarantor's obligation to pay under this guarantee shall not be limited or reduced as a result of the termination, invalidity or unenforceability of any right of the Bank against the Customer or any other party (including other guarantors) for any cause whatsoever.
3. This guarantee shall be a continuing security for payment by the Customer to the Bank of all the indebtedness and liability aforesaid; provided that the Guarantor may determine his further liability under this guarantee by 30 days written notice given to the branch of the Bank at which this guarantee is held but, if such notice be given, this guarantee shall apply and extend to any indebtedness or liability of the Customer to the Bank incurred prior to the expiration of 30 days from the date of receipt of such notice by the said branch of the Bank.
4. The Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities that it may hold before being entitled to payment from the Guarantor under this guarantee.
5. Any loss of or in respect of securities received by the Bank from the Customer or others, whether occasioned through the fault of the Bank or otherwise, shall not discharge or limit or lessen the liability of the Guarantor under this guarantee.
6. Any change or changes in the name of the Customer, or, if the Customer is a partnership, any change or changes in the membership of the Customer's firm by death or by the retirement of one or more of the partners or by the introduction of one or more new partners or otherwise, shall not affect or in any way limit or lessen the liability of the Guarantor under this guarantee and this guarantee shall extend to the person, firm or corporation acquiring or from time to time carrying on the business of the Customer.
7. All monies, advances, renewals and credits borrowed or obtained from the Bank shall be deemed to form part of the indebtedness and liabilities hereby guaranteed, notwithstanding any incapacity, disability, limitation of status or lack of power of the Customer or the directors, partners or agents thereof, or that the Customer may not be a legal entity, or any defect in the borrowing or obtaining of such money, advances, renewals or credits; and any amount which may not be recoverable from the Guarantor on the footing of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and it shall be paid to the Bank after demand therefor by the Bank.
8. Any account settled or stated by or between the Bank and the Customer shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Customer to the Bank is in fact so due.
9. The Guarantor agrees not to assert any right of contribution against any other guarantor until the customer's indebtedness and liabilities have been paid in full. If the Bank should receive from the Guarantor a payment in full or on account of the indebtedness or liability under this guarantee, all rights of subrogation arising therefrom shall be postponed and the Guarantor shall not be entitled to claim repayment against the Customer or the Customer's estate until the Bank's claims against the Customer have been paid in full; and in the case of liquidation, winding up or bankruptcy of the Customer (whether voluntary or compulsory) or in the event that the Customer shall make a bulk sale of any of the Customer's assets within the bulk transfer provisions of any applicable legislations, or shall make any compromise with creditors or scheme of



arrangement, the Bank shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue to be liable, up to the amount guaranteed, less any payments made by the Guarantor, for any balance which may be owing to the Bank by the Customer. In the event of the valuation by the Bank of any of its securities and/or the retention of such securities by the Bank, such valuation and/or retention shall not, as between the Bank and the Guarantor, be considered as a purchase of such securities or as payment or satisfaction or reduction of the Customer's indebtedness or liabilities to the Bank, or any part thereof.

10. Any notice or demand which the Bank may wish to give may be served on the Guarantor either personally on him or his legal personal representative or, in the case of a corporation, on any officer or director of the corporation, or by sending the same registered mail in an envelope addressed to the last known address of the Guarantor as it appears on the Bank's records and the notice so sent shall be deemed to be received on the fifth business day following that on which it is mailed.
11. As security for the performance of the Guarantor's covenants herein and the payment of the present and future debts and liabilities of the Customer to the Bank, the Guarantor hereby grants to the Bank a security interest in all debts and liabilities, present and future, of the Customer to the Guarantor, all of which are hereby assigned by the Guarantor to the Bank and postponed to the present and future debts and liabilities of the Customer to the Bank. Any monies or other proceeds received by the Guarantor in respect of such debts and liabilities shall be received in trust for and forthwith paid over to the Bank, in whole, without in any way limiting or lessening the liability of the Guarantor hereunder. Notwithstanding anything to the contrary herein, the assignment and postponement contained in this paragraph 11 are intended to be and are independent of the remainder of this guarantee and may, at the option of The Bank, be severed therefrom. A notice of termination given by the Guarantor pursuant to paragraph 3 shall not terminate the provisions contained in this paragraph 11, which shall continue in full force and effect until released in writing by the Bank. The Guarantor hereby acknowledges receiving a copy of this guarantee and waives all rights to receive from the Bank a copy of any financing statement, financing change statement or verification statement filed or issued at any time in respect of this assignment.
12. The Guarantor shall be currently liable under this guarantee at any time for the full amount of the debts and liabilities of the Customer to the Bank then outstanding, provided that the Guarantor shall not be in default under or in breach of this guarantee unless and until the Bank has made demand upon the Guarantor hereunder and the Guarantor has failed to pay the amount demanded or otherwise failed to comply with such demand forthwith following receipt (or deemed receipt) of such demand. In the case of default the Bank may maintain an action upon this guarantee whether or not the Customer is joined therein or separate action is brought against the Customer or judgment obtained against him. The Bank's rights are cumulative and shall not be exhausted by the exercise of any of the Bank's rights hereunder or otherwise against the Guarantor or by any successive actions until and unless all indebtedness and liability hereby guaranteed has been paid and each of the Guarantor's obligations under the guarantee has been fully performed.
13. The Guarantor shall pay to the Bank on demand (in addition to all debts and liabilities of the Customer hereby guaranteed) all costs, charges and expenses (including, without limitation, lawyer's fees as between solicitor and his own client on a full indemnity basis) incurred by the Bank for the preparation, execution and perfection and enforcement of this guarantee and of any securities collateral thereto, together with interest thereon, both before and after demand, default and judgment, calculated from the date of payment by the Bank of each such cost, charge and expense until payment by the Guarantor hereunder, at a rate per annum equal to 3% above the rate published by the Bank from time to time as the Bank's prime lending rate. A statement signed by any officer of the Bank confirming the Bank's prime lending rate at any time or times shall be conclusive evidence thereof for all purposes under this guarantee.
14. This instrument is in addition and without prejudice to any other securities of any kind including any other guarantees, whether or not in the same form as this instrument, now or hereafter held by the Bank. Without limiting the generality of the foregoing, all limits and evidence of liability pursuant to any guarantee now or hereafter held by the Bank shall be cumulative.
15. There are no representations, warranties, collateral agreements or conditions with respect to this guarantee or affecting the Guarantor's liability hereunder other than as contained herein. Without restricting the generality of the foregoing, this guarantee shall be operative and binding upon every signatory hereto notwithstanding the non-execution hereof by any other proposed or intended signatory or signatories.

- 16. This instrument shall be construed in accordance with the laws of Alberta, and the Guarantor agrees that any legal suit, action or proceedings arising out of or relating to this instrument may be instituted in the courts of such province or territory and the Guarantor hereby accepts and irrevocably submits to the jurisdiction of the said courts and acknowledges their competence and agrees to be bound by any judgment thereof, provided that nothing herein shall limit the Bank's right to bring proceedings against the Guarantor elsewhere.
- 17. This instrument shall extend to and enure to the benefit of the successors and assigns of the Bank and shall be binding upon the Guarantor and the heirs, executors, administrators and successors of the Guarantor.

GIVEN under seal at Calgary, Alberta this 4 day of July, 2014.

(corporate seal(s) if corporate guarantor)

AAA HOLDINGS LTD.

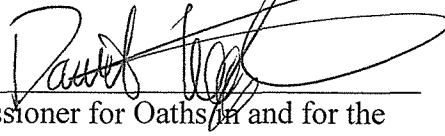


Affix  
Seal

Witness:

THIS IS EXHIBIT "6" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.

A handwritten signature in black ink, appearing to read "David LeGeyt", written over a horizontal line.

A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor



## FULL LIABILITY GUARANTEE

For value received the undersigned ("Guarantor") hereby guarantees to CANADIAN WESTERN BANK ("Bank") payment, forthwith after demand made therefor as hereinafter provided, of all indebtedness and liability (present and future, direct or indirect, absolute or contingent, matured or not) of AAA DOORS LTD. ("Customer") to the Bank whether arising from agreement or dealings between the Bank and the Customer or from agreement or dealings between the Bank and any third person by which the Customer now is or hereafter may become indebted or liable to the Bank or however otherwise arising and whether the Customer be bound alone or with another or others and whether as principal or surety or guarantor; and the Guarantor further agrees that:

1. If more than one Guarantor executes this instrument the provisions hereof shall be read with all grammatical changes thereby rendered necessary and each reference to the Guarantor shall include the undersigned and each and every one of them severally and this guarantee and all covenants and agreements herein contained shall be deemed to be joint and several. This instrument shall be read with all grammatical changes made necessary by the Guarantor's or Customer's gender.
2. The Bank may increase, reduce, renew, extend, discontinue or otherwise vary the Customer's credit, grant time, renewals, extensions, releases and discharges to, take and give up securities (which may include other guarantees), and otherwise deal with the Customer and other parties and securities as the Bank may see fit, and may apply all monies received from the Customer or others or from the sale or other disposal of security upon such part of the Customer's liability as the Bank may think best, without prejudice to or in any way limiting or lessening the liability of the Guarantor under this guarantee. The Guarantor's obligation to pay under this guarantee shall not be limited or reduced as a result of the termination, invalidity or unenforceability of any right of the Bank against the Customer or any other party (including other guarantors) for any cause whatsoever.
3. This guarantee shall be a continuing security for payment by the Customer to the Bank of all the indebtedness and liability aforesaid; provided that the Guarantor may determine his further liability under this guarantee by 30 days written notice given to the branch of the Bank at which this guarantee is held but, if such notice be given, this guarantee shall apply and extend to any indebtedness or liability of the Customer to the Bank incurred prior to the expiration of 30 days from the date of receipt of such notice by the said branch of the Bank.
4. The Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities that it may hold before being entitled to payment from the Guarantor under this guarantee.
5. Any loss of or in respect of securities received by the Bank from the Customer or others, whether occasioned through the fault of the Bank or otherwise, shall not discharge or limit or lessen the liability of the Guarantor under this guarantee.
6. Any change or changes in the name of the Customer, or, if the Customer is a partnership, any change or changes in the membership of the Customer's firm by death or by the retirement of one or more of the partners or by the introduction of one or more new partners or otherwise, shall not affect or in any way limit or lessen the liability of the Guarantor under this guarantee and this guarantee shall extend to the person, firm or corporation acquiring or from time to time carrying on the business of the Customer.
7. All monies, advances, renewals and credits borrowed or obtained from the Bank shall be deemed to form part of the indebtedness and liabilities hereby guaranteed, notwithstanding any incapacity, disability, limitation of status or lack of power of the Customer or the directors, partners or agents thereof, or that the Customer may not be a legal entity, or any defect in the borrowing or obtaining of such money, advances, renewals or credits; and any amount which may not be recoverable from the Guarantor on the footing of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and it shall be paid to the Bank after demand therefor by the Bank.
8. Any account settled or stated by or between the Bank and the Customer shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Customer to the Bank is in fact so due.
9. The Guarantor agrees not to assert any right of contribution against any other guarantor until the Customer's indebtedness and liabilities have been paid in full. If the Bank should receive from the Guarantor a payment in full or on account of the indebtedness or liability under this guarantee, all rights of subrogation arising therefrom shall be postponed and the Guarantor shall not be entitled to claim repayment against the Customer or the Customer's estate

until the Bank's claims against the Customer have been paid in full; and in the case of liquidation, winding up or bankruptcy of the Customer (whether voluntary or compulsory) or in the event that the Customer shall make a bulk sale of any of the Customer's assets within the bulk transfer provisions of any applicable legislations, or shall make any compromise with creditors or scheme of arrangement, the Bank shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue to be liable, up to the amount guaranteed, less any payments made by the Guarantor, for any balance which may be owing to the Bank by the Customer. In the event of the valuation by the Bank of any of its securities and/or the retention of such securities by the Bank, such valuation and/or retention shall not, as between the Bank and the Guarantor, be considered as a purchase of such securities or as payment or satisfaction or reduction of the Customer's indebtedness or liabilities to the Bank, or any part thereof.

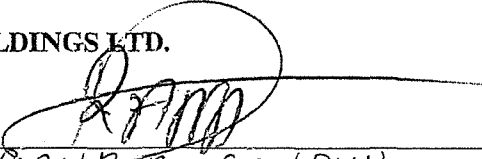
10. Any notice or demand which the Bank may wish to give may be served on the Guarantor either personally on him or his legal personal representative or, in the case of a corporation, on any officer or director of the corporation, or by sending the same registered mail in an envelope addressed to the last known address of the Guarantor as it appears on the Bank's records and the notice so sent shall be deemed to be received on the fifth business day following that on which it is mailed.
11. As security for the performance of the Guarantor's covenants herein and the payment of the present and future debts and liabilities of the Customer to the Bank, the Guarantor hereby grants to the Bank a security interest in all debts and liabilities, present and future, of the Customer to the Guarantor, all of which are hereby assigned by the Guarantor to the Bank and postponed to the present and future debts and liabilities of the Customer to the Bank. Any monies or other proceeds received by the Guarantor in respect of such debts and liabilities shall be received in trust for and forthwith paid over to the Bank, in whole, without in any way limiting or lessening the liability of the Guarantor hereunder. Notwithstanding anything to the contrary herein, the assignment and postponement contained in this paragraph 11 are intended to be and are independent of the remainder of this guarantee and may, at the option of the Bank, be severed therefrom. A notice of termination given by the Guarantor pursuant to paragraph 3 shall not terminate the provisions contained in this paragraph 11, which shall continue in full force and effect until released in writing by the Bank. The Guarantor hereby acknowledges receiving a copy of this guarantee and waives all rights to receive from the Bank a copy of any financing statement, financing change statement or verification statement filed or issued at any time in respect of this assignment. The Guarantor further acknowledges that, at the Bank's option, any additional security granted by the Guarantor in support of this guarantee shall be deemed to be incorporated into this guarantee by reference. In particular, the Guarantor acknowledges that such additional security shall be valid without the necessity of a further Guarantees Acknowledgement Act certificate.
12. The Guarantor shall be currently liable under this guarantee at any time for the full amount of the debts and liabilities of the Customer to the Bank then outstanding, provided that the Guarantor shall not be in default under or in breach of this guarantee unless and until the Bank has made demand upon the Guarantor hereunder and the Guarantor has failed to pay the amount demanded or otherwise failed to comply with such demand forthwith following receipt (or deemed receipt) of such demand. In the case of default the Bank may maintain an action upon this guarantee whether or not the Customer is joined therein or separate action is brought against the Customer or judgment obtained against him. The Bank's rights are cumulative and shall not be exhausted by the exercise of any of the Bank's rights hereunder or otherwise against the Guarantor or by any successive actions until and unless all indebtedness and liability hereby guaranteed has been paid and each of the Guarantor's obligations under the guarantee has been fully performed.
13. The Guarantor shall pay to the Bank on demand (in addition to all debts and liabilities of the Customer hereby guaranteed) all costs, charges and expenses (including, without limitation, lawyer's fees as between solicitor and his own client on a full indemnity basis) incurred by the Bank for the preparation, execution and perfection and enforcement of this guarantee and of any securities collateral thereto, together with interest thereon, both before and after demand, default and judgment, calculated from the date of payment by the Bank of each such cost, charge and expense until payment by the Guarantor hereunder, at a rate per annum equal to 3% above the rate published by the Bank from time to time as the Bank's prime lending rate. A statement signed by any officer of the Bank confirming the Bank's prime lending rate at any time or times shall be conclusive evidence thereof for all purposes under this guarantee.
14. This instrument is in addition and without prejudice to any other securities of any kind including any other guarantees, whether or not in the same form as this instrument, now or hereafter held by the Bank. Without limiting the generality of the foregoing, all limits and evidence of liability pursuant to any guarantee now or hereafter held by the Bank shall be cumulative.

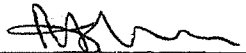
- 15. There are no representations, warranties, collateral agreements or conditions with respect to this guarantee or affecting the Guarantor's liability hereunder other than as contained herein. Without restricting the generality of the foregoing, this guarantee shall be operative and binding upon every signatory hereto notwithstanding the non-execution hereof by any other proposed or intended signatory or signatories.
- 16. This instrument shall be construed in accordance with the laws of Alberta, and the Guarantor agrees that any legal suit, action or proceedings arising out of or relating to this instrument may be instituted in the courts of such province or territory and the Guarantor hereby accepts and irrevocably submits to the jurisdiction of the said courts and acknowledges their competence and agrees to be bound by any judgment thereof, provided that nothing herein shall limit the Bank's right to bring proceedings against the Guarantor elsewhere.
- 17. This instrument shall extend to and enure to the benefit of the successors and assigns of the Bank and shall be binding upon the Guarantor and the heirs, executors, administrators and successors of the Guarantor.

GIVEN under seal at Calgary, Alberta, this 25<sup>th</sup> day of October, 2018.

corporate seal(s) if corporate guarantor(s)

**AAA HOLDINGS LTD.**

Per:   
RANBIR SANDHU

Per:  c/s  
MOHINDER SANDHU

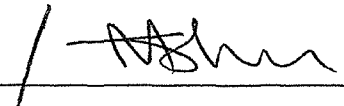
# CANADIAN WESTERN BANK

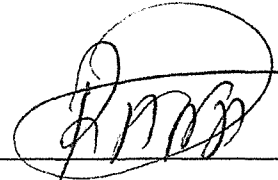
## CONSENT OF SHAREHOLDERS OF GUARANTOR

TO: CANADIAN WESTERN BANK  
2810 – 32nd Avenue N.E.  
Calgary, Alberta T1Y 5J4

The undersigned, being all of the voting and non-voting shareholders of AAA HOLDINGS LTD. (the "Guarantor") hereby acknowledge that they consent to the issuance and delivery of the guarantee dated Oct 25, 2018 from the Guarantor to CANADIAN WESTERN BANK in which the Guarantor guarantees certain indebtedness of AAA DOORS LTD. (the "Borrower") to CANADIAN WESTERN BANK.

The undersigned further acknowledge that this consent is given pursuant to Section 45 of the *Business Corporations Act (Alberta)*. Each shareholder also acknowledges that they have read this consent and that each of them has had the opportunity to obtain, prior to the execution of this consent, independent legal advice in connection with this consent.

  
\_\_\_\_\_  
Name of Shareholder: MOHINDER SANDHU

  
\_\_\_\_\_  
Name of Shareholder: RANBIR SANDHU

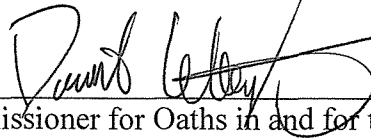
\_\_\_\_\_  
Name of Shareholder: \_\_\_\_\_

\_\_\_\_\_  
Name of Shareholder: \_\_\_\_\_

Note: This **must** be attached to the actual guarantee.

THIS IS EXHIBIT "7" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.

A handwritten signature in black ink, appearing to read "David LeGeyt", written over a horizontal line.

A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor



Burnet,  
Duckworth  
& Palmer LLP  
Law Firm

Reply to: David LeGeyt  
Direct Phone: (403) 260-0210  
Direct Fax: (403) 260-0332  
dlegeyt@bdplaw.com

Assistant: Lindsey Hackman  
Direct Phone: (403) 806-7877  
Our File: 45003-552

VIA EMAIL ([raunasandhu1@gmail.com](mailto:raunasandhu1@gmail.com) and [nickvsandhu1@gmail.com](mailto:nickvsandhu1@gmail.com) )

March 14, 2019

AAA Windows Ltd.  
#26, 3530 - 32 Street NE  
Calgary, Alberta  
T1Y 6G7

Attention: **Ranbir Sandhu and Mohinder Sandhu**

Dear Sir/Madam:

**Re: Canadian Western Bank re: AAA Windows Ltd. ("AAA Windows")**

---

We are counsel to Canadian Western Bank ("CWB") in connection with a commitment letter dated September 12, 2018 between CWB and AAA Windows (the "Loan Agreement"). Reference is also made to a general security agreement and general assignment of debts, both dated July 4, 2014 (the "Security").

AAA Windows is in default of the Loan Agreement and the Security, and all amounts owing to CWB under the Loan Agreement and Security are immediately due and payable. The defaults of AAA Windows include but are not limited to (i) a failure to make payments to CWB when due, (ii) failure to pay priority payables when due and owing and (iii) breaches of the general conditions and key covenants set out in Schedule "B" to the Loan Agreement, such as failure to provide a comprehensive and detailed action plan acceptable to CWB, breach of the cash flow coverage ratio requirements, breach of the current ratio requirements and breach of the restriction on making dividends, withdrawals, bonuses, advances to, or repayment of advances by officers, shareholders, affiliates or related parties which result in key covenants being in default.

On behalf of CWB, we hereby demand repayment of all amounts due and owing by AAA Windows to CWB under the Loan Agreement and Security, namely the amount of CAD\$525,754.56 as of March 13, 2019, plus all accrued and accruing interest and legal costs on a solicitor and own client fully indemnity basis (the "Indebtedness").

Please note that the Indebtedness will continue to accrue interest at the rates agreed to, and costs and expenses will continue to be incurred by CWB for which AAA Windows will be responsible, until payment of all amounts owing is received by either certified cheque or bank draft at the following address:

Canadian Western Bank  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525-8<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 1G1

Attention: David LeGeyt

9525792.1



If full payment, as set forth above, is not received by close of business on March 25, 2019, CWB will take whatever steps it deems appropriate to seek repayment of the said amount. To this end we enclose for service upon you a Notice of Intention to Enforce Security ("NOI") in accordance with section 244 of the *Bankruptcy and Insolvency Act* (Canada). If you are prepared to waive the ten day notice period, please endorse the Consent and Waiver located on page 2 of the NOI and return to the undersigned.

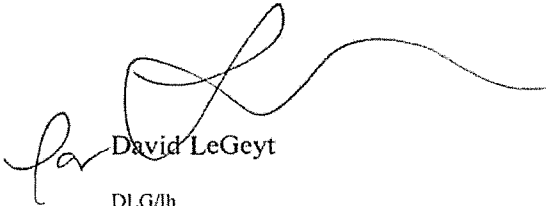
For your information, demands will be issued on the guarantors in respect of AAA Windows' indebtedness.

Please note that CWB reserves the right to proceed against AAA Windows: (i) prior to the time stipulated above in the event that it determines that its position has been further jeopardized; and (ii) anytime, or from time to time after any dates stipulated above have passed, and in either case without the necessity of serving a new demand for payment.

If you have any questions, please contact the undersigned.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP



David LeGeyt

DLG/th

Encl.

cc: Tyson Harwell

FORM 86

**NOTICE OF INTENTION TO ENFORCE SECURITY**

(Subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada))

To: AAA Windows Ltd., an insolvent person (the "Debtor")

**TAKE NOTICE THAT:**

1. Canadian Western Bank ("CWB"), a secured creditor of the Debtor, intends to enforce its security on the property of the Debtor as set out below:
  - (a) all present and after acquired real and personal property of the Debtor; and
  - (b) all proceeds of the foregoing collateral.
2. The security that is to be enforced is in the form of general security agreement and general assignment of debts, both dated July 4, 2014 between CWB and the Debtor (the "Security").
3. The total amount of indebtedness secured by the Security is, as of March 13, 2019, the sum of CAD\$525,754.56, plus all accrued and accruing interest and legal costs.

CWB will not have the right to enforce its Security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Calgary, in the Province of Alberta, this 14<sup>th</sup> day of March, 2019.

**BURNET, DUCKWORTH & PALMER LLP,**  
solicitors and agents for Canadian Western Bank

Per: 

David LeGeyt

**CONSENT AND WAIVER**

**THE UNDERSIGNED** hereby:

Acknowledges receipt of the Notice of Intention to Enforce Security;

Waives the ten days of notice required under section 244 of the *Bankruptcy and Insolvency Act* (Canada); and

Consents to the immediate enforcement by Canadian Western Bank of the Security referred to herein.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**AAA WINDOWS LTD.**

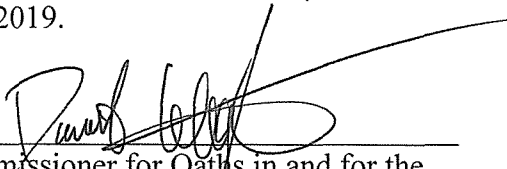
Per: \_\_\_\_\_

Name:

Title:

THIS IS EXHIBIT "8" REFERRED TO IN  
THE AFFIDAVIT OF TYSON HARTWELL.

SWORN BEFORE ME THIS 16 DAY OF  
JULY, 2019.



---

A Commissioner for Oaths in and for the  
Province of Alberta

**David LeGeyt**  
Barrister & Solicitor

Burnet,  
Duckworth  
& Palmer LLP  
Law Firm

Reply to: David LeGeyt  
Direct Phone: (403) 260-0210  
Direct Fax: (403) 260-0332  
dlegeyt@bdplaw.com

Assistant: Lindsey Hackman  
Direct Phone: (403) 806-7877  
Our File: 45003-552

VIA EMAIL ([raj@aaadoors.ca](mailto:raj@aaadoors.ca) and [charlie@aaadoors.ca](mailto:charlie@aaadoors.ca))

March 14, 2019

AAA Doors Ltd.  
#135, 6424 – 36 Street NE  
Calgary, Alberta  
T3J 4C8

**Attention: Sukhdev Sangha and Baldev Sangha**

Dear Sir/Madam:

**Re: Canadian Western Bank re: AAA Doors Ltd. ("AAA Doors")**

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We are counsel to Canadian Western Bank ("CWB") in connection with a commitment letter dated September 12, 2018 between CWB and AAA Doors (the "Loan Agreement"). Reference is also made to a general security agreement dated March 3, 2015 (the "Security").

AAA Doors is in default of the Loan Agreement and the Security, and all amounts owing to CWB under the Loan Agreement and Security are immediately due and payable. The defaults of AAA Doors include but are not limited to (i) a failure to make payments to CWB when due, (ii) failure to pay priority payables when due and owing and (iii) breaches of the general conditions and key covenants set out in Schedule "B" to the Loan Agreement, such as failure to provide a comprehensive and detailed action plan acceptable to CWB, breach of the debt to tangible net worth ratio requirements, breach of the current ratio requirements and breach of the restriction on making dividends, withdrawals, bonuses, advances to, or repayment of advances by officers, shareholders, affiliates or related parties which result in key covenants being in default.

On behalf of CWB, we hereby demand repayment of all amounts due and owing by AAA Doors to CWB under the Loan Agreement and Security, namely the amount of CAD\$1,272,642.36 as of March 13, 2019, plus all accrued and accruing interest and legal costs on a solicitor and own client fully indemnity basis (the "Indebtedness").

Please note that the Indebtedness will continue to accrue interest at the rates agreed to, and costs and expenses will continue to be incurred by CWB for which AAA Doors will be responsible, until payment of all amounts owing is received by either certified cheque or bank draft at the following address:

Canadian Western Bank  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525-8<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 1G1

Attention: David LeGeyt

9525784.1



If full payment, as set forth above, is not received by close of business on March 25, 2019, CWB will take whatever steps it deems appropriate to seek repayment of the said amount. To this end we enclose for service upon you a Notice of Intention to Enforce Security ("NOI") in accordance with section 244 of the *Bankruptcy and Insolvency Act* (Canada). If you are prepared to waive the ten day notice period, please endorse the Consent and Waiver located on page 2 of the NOI and return to the undersigned.

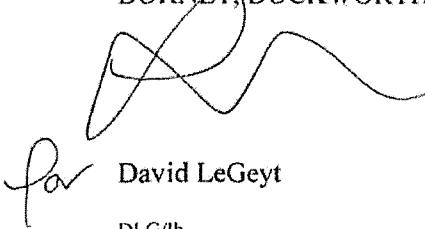
For your information, demands will be issued on the guarantors in respect of AAA Doors' indebtedness.

Please note that CWB reserves the right to proceed against AAA Doors: (i) prior to the time stipulated above in the event that it determines that its position has been further jeopardized; and (ii) anytime, or from time to time after any dates stipulated above have passed, and in either case without the necessity of serving a new demand for payment.

If you have any questions, please contact the undersigned.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP

A handwritten signature in black ink, appearing to read 'David LeGeyt', is written over the printed name. The signature is fluid and cursive, with a large loop at the beginning.

David LeGeyt

DLG/th

Encl.

cc: Tyson Hartwell

FORM 86

**NOTICE OF INTENTION TO ENFORCE SECURITY**

(Subsection 244(1) of the *Bankruptcy and Insolvency Act (Canada)*)

To: AAA Doors Ltd., an insolvent person (the "Debtor")

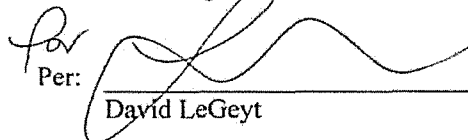
**TAKE NOTICE THAT:**

1. Canadian Western Bank ("CWB"), a secured creditor of the Debtor, intends to enforce its security on the property of the Debtor as set out below:
  - (a) all present and after acquired real and personal property of the Debtor; and
  - (b) all proceeds of the foregoing collateral.
2. The security that is to be enforced is in the form of general security agreement dated March 3, 2015 between CWB and the Debtor (the "Security").
3. The total amount of indebtedness secured by the Security is, as of March 13, 2019, the sum of CAD\$1,272,642.36, plus all accrued and accruing interest and legal costs.

CWB will not have the right to enforce its Security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Calgary, in the Province of Alberta, this 14<sup>th</sup> day of March, 2019.

**BURNET, DUCKWORTH & PALMER LLP,**  
solicitors and agents for Canadian Western Bank

Per:   
\_\_\_\_\_  
David LeGeyt



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**CONSENT AND WAIVER**

**THE UNDERSIGNED** hereby:

Acknowledges receipt of the Notice of Intention to Enforce Security;

Waives the ten days of notice required under section 244 of the *Bankruptcy and Insolvency Act* (Canada); and

Consents to the immediate enforcement by Canadian Western Bank of the Security referred to herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**AAA DOORS LTD.**

Per: \_\_\_\_\_

Name:

Title: