

Form 16

APPLICATION FOR OPTIONAL MORTGAGE COVENANT

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

Applicant: Tangerine Bank  
3389 Steeles Avenue East  
Toronto ON M2H 3S8

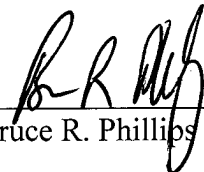
Optional Mortgage  
Covenant: Attached hereto.

The Applicant applies for the assignment of a number to the specified optional mortgage covenant.

Date: April 28, 2014

Applicant:

TANGERINE BANK  
by its agent  
Ellsworth Johnson Phillips

Per   
Bruce R. Phillips

Number assigned to the specified optional mortgage covenant: EJP-2418

Registrar General of Land Titles

Tangerine Bank  
*LAND TITLES ACT (NEW BRUNSWICK)*  
OPTIONAL MORTGAGE COVENANT

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1. DEFINITIONS

In the mortgage and this optional mortgage covenant:

"borrower", "you" and "your" mean each person who signs the mortgage as mortgagor and his, her or their successors and assigns and these terms may be used interchangeably in this optional mortgage covenant;

"business day" means a day that is not a Saturday, Sunday or statutory holiday in the province or territory in which the property is located;

"Condominium Property Act" means the *Condominium Property Act*, (New Brunswick), as amended, together with all regulations promulgated thereunder and includes all successor legislation;

"condominium corporation" means the corporation created by the registration or deposit of a declaration under the Condominium Property Act in respect of the property;

"condominium property" is defined in section 21(e)(i);

"default" means (i) that you have done one or more of the following: (a) you have not paid an amount of principal, interest or other amount due to us under the mortgage or under any loan commitment; or (b) you have breached a promise or covenant that you made in any document executed by you and delivered to us; or (c) you have made a representation or warranty in a document executed by you and delivered to us that was incorrect, incomplete or misleading in any material respect when made; or (ii) you institute proceedings for substantive relief in any bankruptcy, insolvency, debt restructuring, reorganization, readjustment of debt, dissolution, liquidation, winding-up or other similar proceedings, you make an assignment for the benefit of creditors, you admit in writing your inability to fulfil your debts and/or obligations or someone institutes proceedings against you in respect of any of the above and such proceedings are not stayed or dismissed; or (iii) there has occurred an event which is noted as an event of default under any loan commitment;

"deferred interest" is defined in section 3(c);

"Tangerine prime rate" means Tangerine Bank's annual rate of interest announced from time to time as its benchmark prime rate of interest for Canadian dollar loans, which rate is subject to change from time to time at Tangerine Bank's sole discretion;

"interest rate" is defined in section 3(a);

"land registry office" means the land registry office or the land titles office in the province or territory in which the property is registered, or any other similar government office if the property is not registered in the land registry office or the land titles office;

"loan" means individually and in the aggregate, our advance of money to you or on your behalf, as governed by the loan commitment;

"loan amount" means, collectively, all present and future indebtedness and liability owing by you to us, from time to time, as increased or decreased as a result of payments from you to us (whether from time to time reduced and subsequently increased or extinguished entirely and subsequently incurred again) including, without limitation, the amounts advanced to you by us, interest and all other amounts owing by you to us from time to time or at any time;

"loan commitment" means the loan commitment and any other agreement executed by you, not including the mortgage, between you and us setting out the terms of any loan, as the same may be amended from time to time in writing. If two or more loan commitments are issued by us to you, each of them is referred to as a loan commitment and all are collectively referred to as "loan commitments";

"mortgage" or "charge" when used as a noun means, collectively, a Form 15.1 Mortgage, any schedules attached to it, and includes any loan commitment(s) executed by you in our favour and this optional mortgage covenant, as the same may be amended from time to time and when used as verb, "mortgage" or "charge" means to grant a security interest;

"net proceeds" means the proceeds of the sale or lease of the property less our costs incurred to take, recover or keep possession of the property, to sell, lease or transfer the property including, without limitation, all amounts paid by us on account of taxes, maintenance, repairs, utilities, insurance and common expenses or other costs paid to the condominium corporation or

any other amount that we may pay to maintain, manage or preserve the property and our legal expenses in connection with the foregoing;

"other claims" is defined in section 5(b)(x);

"outstanding principal amount" means the aggregate of all amounts advanced by us to you at any time or from time to time which remains unpaid by you, as increased or decreased as a result of payments from you to us (whether from time to time reduced and subsequently increased or extinguished entirely and subsequently incurred again) together with all other amounts payable by you to us, including, without limitation, capitalised interest or amounts advanced by us to third parties because of a default on your part in the payment or performance of an obligation contained in this optional mortgage covenant or in any agreement between you and us;

"principal amount" or "principal sum" means the amount set out as the principal amount in the mortgage;

"property" means the real property, the parcel identifier(s) of which is/are specified in the mortgage, together with all easements, covenants, powers, privileges and other rights now or hereafter benefitting such property and all buildings and structures now on such property or later added, and anything now or later attached to or fixed to any building or structure on such property or attached to or fixed to such property, including, without limitation, additions, alterations, substitutions, improvements, equipment and other apparatus of any kind or nature on such property and, in the case of a condominium unit, includes, without limitation, your interest in the common elements and any other interest you have in the condominium property;

"section" means a section of this optional mortgage covenant;

"successor" means an heir, executor, administrator, liquidator, personal representative or successor;

"taxes" is defined in section 8;

"we", "our", "us" and "mortgagee" mean the mortgagee or chargee as set out in the mortgage and our successors; and

"your obligations" is defined in Section 2.

## 2. GRANT OF MORTGAGE

We have agreed to loan you money on the terms set out in each loan commitment issued by us to you, whether now existing or entered into in the future as may be amended, varied, restated, amended and restated or replaced from time to time.

In consideration for any loan, advance or credit we make available to you, all amounts advanced by us to you, which remain unpaid by you, from time to time, as increased or decreased (as a result of payments from you to us) (whether from time to time reduced and subsequently increased or extinguished entirely and subsequently incurred again) together with all other amounts payable by you to us, including, without limitation, any unpaid interest, capitalised interest or amounts advanced by us to third parties because of a default on your part in the payment or performance of an obligation contained in this optional mortgage covenant or any agreement between you and us together with all obligations to perform contained in this mortgage or any loan commitment (collectively, "your obligations"):

- (i) if you own the property, you charge your entire interest in the property to us; or
- (ii) if you lease the property, you charge and sublease your entire interest (including, without limitation, any option or right of first refusal to purchase) in the property for the entire term (except the last day) of your lease to us; and
- (iii) If you lease the property and you subsequently acquire the freehold title to the property, the mortgage will by operation of law become a mortgage of the freehold interest in the property to the same extent and effect as if you had been the owner of the freehold, free from encumbrances, at the date of the mortgage. For the purposes of this section, you hereby grant, mortgage and charge the freehold interest in the property to and in favour

of us, such grant, mortgage and charge to take effect upon your acquiring freehold title to the property;

in each case, to secure repayment of any amounts you owe us and to ensure that you perform all your obligations owed to us.

We are not under any obligation to make any loan to you at any time or from time to time. When you have repaid the amounts owing to us in full and we terminate all loan commitment(s) governing any loans made to you, we will have no further interest in the property. For clarity, our interest in the property will not cease or be discharged even though, from time to time, you have repaid all amounts owing to us and those amounts are reduced to zero and subsequently incurred again. This mortgage secures the ultimate outstanding balance owing by you to us and is not discharged unless discharged by us in writing.

This mortgage is continuing collateral security and secures your obligations and any and all loan commitments entered into between you and us, whether now existing or entered into in the future.

We have the right to assign the mortgage and the payment of amounts secured by the mortgage. An assignment by us will not cause the mortgage to cease to operate nor entitle you to a discharge of the mortgage.

### 3. INTEREST RATE

#### (a) Interest Rate

The amounts that you are required to pay and the frequency of the payments of principal and interest are set out in each loan commitment.

Interest will be payable on the outstanding principal amount, both before and after maturity, default and judgment, at an annual rate of interest (the "interest rate") which will be set as follows:

- (i) Where the rate of interest payable is set out in the loan commitment, the interest rate will be set out in the loan commitment.
- (ii) Where there are two or more loan commitments, the interest rate for loans made under each such loan commitment will be the interest rate specified in that loan commitment.
- (iii) Where the rate of interest is not set out in the loan commitment, the interest rate will be an annual rate equal to the rate specified in the mortgage.

When used in this optional mortgage covenant, the "then applicable interest rate" means either the rate of interest specified in each loan commitment as applicable to each loan, or if the rate of interest is not specified in the loan commitment, an annual rate equal to the rate specified in the mortgage.

Interest is calculated semi-annually not in advance. The interest rate is a variable rate and will change from time to time. Your obligations may increase or decrease from time to time due to variations in the then applicable interest rate.

If applicable, the rate of interest payable in respect of any loan commitment will be automatically adjusted approximately every three months, if there is a change in the Tangerine prime rate.

#### (b) How You May Determine Your Interest Rate and How You May Find the Tangerine Prime Rate

If your interest rate is calculated with reference to the Tangerine prime rate, after each change in the Tangerine prime rate, we may notify you by mail, electronic means or other means as we may from time to time determine, at the most current address we have for you, of the changed Tangerine prime rate, its effective date and the interest rate applicable to your loan(s) pursuant to any loan commitment. If your interest rate is calculated with reference to the Tangerine prime rate, the interest rate will vary even if we fail to send you such notice or you fail to receive it. You may find out the Tangerine prime rate in effect at any time by calling us at the telephone number set out in the loan commitment or by visiting the Internet website set out in the loan commitment.

(c) Deferred Interest

The amount of interest that has accumulated on the outstanding principal amount from one regular payment to the next is called "deferred interest". Interest at the then applicable interest rate will be charged on the deferred interest from and including such regular payment date. On the next regular payment date, all interest which has accumulated on deferred interest from the previous regular payment date will be added to and become deferred interest and will itself bear interest from and including the regular payment date at the then applicable interest rate. You may find out the amount of deferred interest from time to time by contacting us. Deferred interest will apply even if your payment amounts are increased due to increases in the tangerine prime rate.

(d) Interest Payable

Interest is payable on the outstanding principal amount at the then applicable interest rate, both before and after the demand, default and judgment, until the outstanding principal amount and all other amounts owing by you to us have been paid in full and until all of your obligations have been performed, provided however that nothing in this optional mortgage covenant shall obligate you to pay interest where you are in default hereunder at a rate of interest which is or which is in effect higher than the rate of interest which you are obligated to pay hereunder prior to such default.

**4. COMPOUND INTEREST, CAPITALISED INTEREST AND OTHER AMOUNTS**

If you do not make a regular payment or any other payment when required by the terms of a loan commitment, we will add any such amounts or overdue amount (including interest, which we refer to as capitalised interest) to the outstanding principal amount and charge interest, which we refer to as compound interest on this increased principal amount, at the then applicable interest rate, both before and after maturity, default and judgment. You must pay compound interest immediately when we require, both before and after maturity, default and judgment.

**5. CERTAIN STATEMENTS AND PROMISES YOU MAKE TO US**

- (a) You make the following factual statements and promises to us, which we refer to as representations and warranties:
- (i) unless you are the tenant of the property, you are the lawful owner of the property and there are no encumbrances affecting title to the property;
  - (ii) you have the right to grant us the mortgage;
  - (iii) there are no limitations affecting title to, or your interest in, the property except for any restrictions registered in the land registry office which are being complied with and except for building and zoning by-laws, with which you have complied;
  - (iv) all information that you have provided to us concerning your marital status and whether the property is a marital home within the meaning of the *Marital Property Act* (New Brunswick), as amended or replaced from time to time, is true, complete and correct at the time the mortgage is signed and delivered;
  - (v) all representations and warranties made by you in the loan commitment and in the mortgage are true, complete and correct at the time the mortgage is signed and delivered;
  - (vi) to the best of your knowledge and belief, after reasonable enquiry and investigation:
    - (A) no condition exists on the property which is a contravention of any law, regulation, by-law, order or other legally binding requirement that relates to the protection of the environment, hazardous substances or public health and safety;
    - (B) no part of the property is or will in the future be used to manufacture, refine, handle, treat, store, dispose of or otherwise deal with any hazardous substances except in compliance with all

- laws, regulations, by-laws, orders and other legally binding requirements;
  - (C) there are no underground or aboveground storage tanks on the property except in compliance with all laws, regulations, by-laws, orders and other legally binding requirements relating to underground and aboveground storage tanks, the protection of the environment, hazardous substances or public health and safety;
  - (D) no part of the property contains or will in the future contain any hazardous substance except in compliance with all laws, regulations, by-laws, orders and all other legally binding requirements;
  - (E) no claim, notice, order, investigation or other proceeding, in each case pursuant to any law, regulation, by-law, order or other legally binding requirement that relates to the protection of the environment, hazardous substances or public health and safety, has been made, issued or threatened in relation to any condition on the property; and
  - (F) no part of the property is currently in non-compliance with, or used in any manner which is in non-compliance with, any law, regulation, by-law, order or other legally binding requirement relating to the protection of the environment, hazardous substances or public health and safety.
- (b) You agree with us that:
- (i) you will pay us any amounts advanced by us to you, any interest due on those amounts (inclusive of capitalised interest, compound interest and deferred interest) and any amounts advanced by us to third parties because of a default on your part in the payment or performance of an obligation contained in this optional mortgage covenant or the loan commitment, on demand;
  - (ii) you will comply with all of your obligations under the mortgage and the loan commitment;
  - (iii) you will pay taxes assessed against the property either to us if we require or directly to the tax authority (as further set out in section 8);
  - (iv) as long as this mortgage remains registered, you will not change or permit any change in the use or zoning of the property without our prior written consent;
  - (v) you will not leave the property unoccupied for a material period of time without our prior written consent or take or fail to take any action that may jeopardise insurance coverage for the property without our prior written consent;
  - (vi) regarding compliance with environmental laws:
    - (A) we may (but are not obligated to) require you, at your expense, to obtain an environmental assessment (which may include any intrusive environmental investigations of the property we deem necessary and desirable) of all or any part of the property, which environmental assessment must be satisfactory to us, but such assessment does not relieve you from your obligations under this section.
    - (B) at any time that a change in the environmental condition on or with respect to the property makes any of the above statements untrue, you will provide us a written notice of such change immediately, including a copy, where applicable, of any correspondence with any regulatory body about the condition.
    - (C) you will not, and will not allow any other person to, create or allow to exist any condition on or with respect to the property that does



or could constitute a violation of any law, regulation, by-law, order or other legally binding requirement relating to the protection of the environment, hazardous substances or public health and safety now and as such requirements come into force in the future;

- (vii) you will, at your expense, sign any other document or take any further action which we may request to ensure that your entire interest in the property has been fully charged to us and that the loan amount is adequately secured;
  - (viii) if you are in default, we will have the right to take possession of, that is, seize, the property without any encumbrances or interference and we may exercise any other remedy we may have as set out in section 22, the loan commitment, or at law or in equity;
  - (ix) you will take any action necessary to protect your title to or interest in the property including, without limitation, protecting your rights under any applicable legislation, statute or regulation of any municipal, provincial or federal government or regulatory body and you will not in any way interfere with our interest in the property;
  - (x) you will not, without our prior written consent, grant another mortgage or otherwise further encumber the property and you will keep the property free and clear of any subsequent mortgages and other encumbrances, liens, charges and mortgages including, without limitation, any outstanding statutory liens or charges on the property, arrears of taxes, liens for arrears of condominium common element expenses or other condominium charges or expenses, executions and rights (which encumbrances, liens, charges and mortgages and all prior mortgages, if any, are collectively referred to as "other claims");
  - (xi) if the mortgage is not a first mortgage, you agree not to increase or re-borrow any amount repaid under any prior mortgage without our approval and you consent to our giving notice to the holder of the other mortgage of the existence and terms of this mortgage and any loan commitment;
  - (xii) you agree that we may pay the whole or any part of any other claims at any time having priority over the mortgage. The amounts so paid will be payable by you to us on demand and will, until paid, be included in the loan amount, be secured by the mortgage and bear interest at the then applicable interest rate. We will be entitled to any defences, set-offs or counterclaims and the rights and security granted by the person or persons so paid and to obtain an assignment of any other claims so paid and of any right to payment and we are authorized to retain any discharge of any other claims, without registration, until payment to us of the other claims in full.
- (c) If you are a tenant of the property, you make the following representations and warranties to us:
- (i) the property is leased to you under a valid and subsisting lease, a complete copy of which you have given to us and that you have good leasehold title to the property;
  - (ii) all rents and other monies payable under the lease have been paid and you have complied with all of your other obligations set out in the lease, in both cases up to the date you sign the mortgage;
  - (iii) you have the consent of your landlord or you have the right, without your landlord's consent, to charge your interest in the lease to us;
  - (iv) you have not done, or permitted to occur, any act to encumber the lease or any part of the lease; and
  - (v) there are no limitations on your interest in the property except for any set out in the lease, except for restrictions registered in the land registry office

and except for building and zoning by-laws, with which you and your landlord have complied;

- (d) If you are a tenant of the property, you also agree with us that:
- (I) you will pay rents and other payments required by the lease as they fall due;
  - (II) you will comply with all your other obligations set out in the lease;
  - (iii) you will not surrender or assign the lease or any of your rights under the lease or sublet all or any part of the property or cause the lease to be terminated;
  - (iv) you will not make any change to the lease without first obtaining our written consent;
  - (v) where the lease contains an option to renew the term of the lease or a right of first refusal to lease or purchase the property, you will not allow any such right or option to lapse at any time while there remains any outstanding principal amount without our prior written consent;
  - (vi) you will promptly give us a copy of any notice, demand or request which you may receive relating to the lease;
  - (vii) you will, at your expense, sign any other document or take any further action as we may think necessary, in our opinion, to ensure that all your interest in the property and in the lease has been fully charged to us and that the outstanding principal amount and all other amounts owing by you to us is adequately secured;
  - (viii) you will indemnify us against all actions, claims, costs and demands should you default under your lease;
  - (ix) you will hold the last day of the term of your lease or of any renewal term of the lease in trust for us and will only deal with it in such manner as we will require. You will have the same rights arising from this section 5(d)(ix) as you already have under other provisions of the mortgage and at law;
  - (x) at our request, but at your expense, you will transfer to us the last day of the term of the lease or of any renewal term. If we enforce our rights under the mortgage, particularly those referred to in section 22(a)(iii), then you will hold the last day of the term of the lease and of any renewal in trust for any person to whom we sell your interest in the property and for that person's successors and will only deal with it in such manner as such person requires;
  - (xi) you irrevocably give us a power of attorney so that we, on your behalf and in your name, may enforce any of the covenants in your favour under the lease, exercise any right or option available to you under the lease (including any right of renewal or termination) or assign the lease and the last day of the term of the lease and of any renewal term of the lease and convey your interest in the property as we may require to perfect any sale we may make under section 22 and, in particular, under section 22(a)(iii);
  - (xii) we may remove you or any other person as trustee of the trust referred to in section 5(d)(ix) and appoint a new trustee or trustees; and
  - (xiii) you acknowledge that any breach of a term of the lease constitutes a default and you agree that we have the right (but not the obligation) at any time to pay any amount outstanding under the lease or take any action as may be necessary to bring the lease into good standing, and to add all amounts paid by us and all costs incurred by us to the loan amount secured by the mortgage.
- (e) If the applicable loan commitment and/or the mortgage is Canada Mortgage and Housing Corporation insured, or insured by any other third party provider of similar insurance, it is made according to the *National Housing Act* (Canada).

**6. HOW YOU WILL REPAY THE LOAN**

(a) Currency and Place

You will pay your obligations to us in Canadian dollars, on demand or as otherwise provided in the loan commitment, at our address set out in the mortgage, the loan commitment or as otherwise provided in this optional mortgage covenant. If any payment is made on a day that is not a business day, the payment will be deemed to be made on the business day next following the payment date. Unless we otherwise agree, any payments to be made by you are due and payable as provided in the loan commitment or on demand.

(b) Payments

- (i) You will pay the loan to us on demand or as otherwise as set out in this optional mortgage covenant;
- (ii) You will pay interest on the outstanding principal amount owing by you to us as set out in this optional mortgage covenant;
- (iii) If your payment is late, you will pay us as set out in section 4;
- (iv) If we have to advance an amount owing to your failure or default, you will pay us as set out in section 4.

(c) Bank Account for Payments

You will maintain an account of a type satisfactory to us with Tangerine Bank, a branch of a Canadian chartered bank or trust company or such other bank, trust company, caisse populaire, financial institution or credit union approved by us in writing and provide an authorization in a form acceptable to us to automatically debit each payment of principal, interest, taxes and life insurance premiums (if applicable) when due. You will ensure that the account always contains sufficient funds to meet each payment. Failure to maintain sufficient funds in the account, cancellation of the authorization or closing the account will be considered to be a default. You agree to pay us our then current administration and processing fees for any actions which we have to take as a result of your default under this section 6(c).

(d) How Your Regular Payments are Applied

Each of your regular payments will be used: (i) first, to pay interest or reduce the interest (other than deferred interest) on the outstanding principal amount, accumulated to, but not including, the payment date; (ii) second, to pay or reduce any deferred interest outstanding and accumulated to, but not including, the payment date; (iii) third, to reduce any capitalised interest or compound interest; and (iv) fourth, to reduce the principal amount. However, if you are in default, we may apply your payment or any other money we receive towards any part of the outstanding principal amount and all other amounts owing by you to us as we choose.

(e) Payment Provisions on Default

If you are in default, you must immediately pay to us all outstanding arrears. We may, if we wish, require you to make all payments of principal and interest, taxes and life insurance premiums (if applicable) on a monthly basis. In such an event, we may require you to pay interest to the first day of the following month within 15 days of notice from us, which will be added to the loan amount if you do not do so. We may also exercise our rights under section 13, at law or otherwise.

**7. INSURANCE**

If the property is not a single residential condominium unit, you must insure and keep insured in our favour and until the mortgage is discharged, the property, including, without limitation, all buildings, structures, fixtures and improvements now or in the future located on the property for not less than their full replacement value in Canadian dollars. The risks against which you must insure include loss or damage by or from fire with extended perils coverage and by and from such additional perils, risks or events as we may at any time require. If a steam boiler, pressure vessel, oil or gas burner, coal blower or sprinkler system or any other comparable apparatus is operated on the property, you must also insure and keep insured in our favour and until the mortgage has been discharged, against loss or damage by explosion of, or caused by, any such apparatus and against loss or damage caused by the sprinkler system.

All Insurance policies must be provided by a company approved by us and contain mortgage clauses approved by the Insurance Bureau of Canada or by us confirming that loss proceeds are payable firstly to us, and that we will have the first right to receive and to have a lien on the loss proceeds. Upon our request, you will provide us with certified copies of every Insurance policy with respect to the property and, not less than 15 days before any policy expires, evidence of its renewal.

We may place and pay for any Insurance policy if you fail to do so. Any premiums or sums of money which we pay for Insurance will be immediately payable by you to us or added to the loan amount if not so paid and will bear interest at the then applicable interest rate.

If any loss or damage occurs, you will immediately, at your expense, do everything necessary to enable us to obtain the Insurance proceeds. The production of a copy of the mortgage will be sufficient authority for the Insurance company to pay any loss to us or to accept instructions from us dealing with the loss and the insurance company is hereby directed to pay the same to us. Insurance proceeds may, at our option, in whole or in part be: (i) used to repair or rebuild the property; (ii) paid to you; and/or (iii) used to reduce any part of the outstanding principal amount and all other amounts owing by you to us, whether due or not, including, without limitation, an amount to compensate us for loss of interest.

#### **B. PROPERTY TAXES**

In this optional mortgage covenant, "taxes" includes all taxes, rates and assessments of any nature or kind including, without limitation, property taxes, municipal taxes, school taxes, local improvement rates or charges, development cost charges, water or sewer charges, interest and penalties payable with respect to the property.

We may withhold from any loan or advance under any loan commitment any amount we feel necessary to pay taxes then owing or to anticipate future payments of taxes.

You are responsible for the payment of all taxes on the property which you will pay when due. Upon our request, you will provide us with all the receipted tax bills or a tax certificate confirming that taxes are paid once per calendar year, while our mortgage remains registered on the property. If you fail to provide us with such bills or certificates, we may conduct such searches with the appropriate tax authority as we deem necessary to obtain the current tax status with respect to the property, and you must immediately reimburse us for all payments and expenses we incur in so doing.

In the alternative, we may, at our option and on written notice to you, estimate the amount of taxes payable for the property each year and you agree to pay to us sufficient monies by equal instalments to be applied on account of such taxes. You will pay the instalments on each due date specified in our written notice. We agree to apply these payments against your taxes as long as you are not in default, although we are not obligated to apply payments on account of your taxes more often than annually. If you have paid us instalments towards taxes and if before we have been able to pay these taxes to the appropriate tax authority you have failed to make a payment of principal, interest or any other monies to be paid by you under the loan commitment or the mortgage, then we may, at our option, apply such sum or sums towards payment of any such principal, interest or other monies to be paid by you which you have failed to pay. If the taxes actually charged for any one year, together with any interest and penalties, exceed the estimated amount, you agree to pay us promptly upon written notice from us the amount required to make up the difference. If you desire to take advantage of any discounts or avoid any penalties in connection with the payment of taxes, you may pay to us such additional amounts as are required for that purpose. If we are paying your taxes, you agree to send to us the tax bills and other notices affecting the imposition of taxes immediately after you have received them. If we advance to you any funds after the date of the mortgage, we may deduct from any loan or such advance the amount required to pay any outstanding taxes.

If you do not make your tax payments when they are due, then we may, but will not be obligated to, make those payments for you and the amounts paid by us will: (i) be a charge on the property in favour of us in priority to all claims subsequent to the mortgage; (ii) be payable by you immediately with interest at the then applicable interest rate until paid; and (iii) may, at our option, be added to the loan amount and will bear interest at the then applicable interest rate.

No payment to us of any money on account of taxes shall constitute a trust or a trust obligation on our part, except as set out in this optional mortgage covenant or otherwise agreed by us in writing.

**9. REPAIRS**

You agree to keep the property in a good condition and state of repair and carry out all necessary repairs. You agree not to do, or let anyone else do, anything which lowers the value of the property. You will comply with every present and future statute, by-law, ordinance, regulation and order affecting the condition, repair, use or occupation of the property.

If, in our opinion, you do not keep the property in a good condition and state of repair or do, or allow anything to be done, which lowers its value or do not comply with any of your obligations under this section 9, then we can make whatever repairs are, in our opinion, necessary or as the case requires, take such other steps to remediate the situation as we deem appropriate. The costs of any inspections and repairs are payable by you immediately and, if not paid, will be added to the loan amount and will bear interest at the then applicable interest rate.

You authorize us or anyone on our behalf to enter the property at all reasonable times to inspect and repair, but we will not become a mortgagee in possession by exercising these rights.

**10. DEMOLITION AND ALTERATIONS**

You agree not to demolish the whole or any part of any building or structure on the property without first obtaining our written approval and not to make any material alterations, additions or improvements to the property without first obtaining our written approval to your proposed plans and specifications. In either case, we may withhold our approval in our sole discretion.

The above work must be completed, as quickly as possible, in accordance with all governmental requirements and building standards that apply to the property. Upon our request, and at your expense, you will provide us with proof of payment and compliance with governmental requirements and building standards. If requested by us, you will provide us with copies of all governmental or applicable authorities' correspondence with you regarding the property including any work orders issued. You must retain all holdbacks required or allowed to be retained by law and such governmental requirements and building standards, as the case may be. We may obtain an order vacating any mechanics' lien and, if we think it necessary, pay money into court in accordance with the *Mechanics' Lien Act* (New Brunswick) and/or, provide financial guarantees or other security to obtain such order. All our expenses including, without limitation, any charges for providing financial guarantees or other security, are immediately payable by you to us and, if you do not pay them, we will add them to the loan amount and they will bear interest at the then applicable interest rate.

**11. NO OBLIGATION TO MAKE LOANS TO YOU**

If we decide, for any reason, not to make a loan to you even if you have availability under the loan commitment, you agree we are not obligated to do so. This applies even if the mortgage has been signed and registered and whether or not any part of the principal amount has previously been advanced or whether there is availability under the loan commitment. However, by signing the mortgage you have charged all of your interest in the property to us and you will pay us, on demand, all of our costs including, without limitation, all our legal fees and disbursements, title insurance, expenses for investigating title to or zoning compliance of the property and for preparing and registering the mortgage.

**12. LEASES AND RENTS**

If the property is intended to be used as an owner-occupied single-family residential premises, you represent and agree that no part of the property is rented or occupied by a tenant and you also agree not to rent, lease or enter into a lease of the whole or any part of the property or renew any lease (other than a renewal provided for in any lease) without first obtaining our written approval which we may withhold in our sole discretion.

If in the future you decide to lease the whole or any part of the property to another person or persons, you must first obtain our written approval which we may withhold in our sole discretion. If we give our approval, upon our request you will:

- (a) assign to us all leases, agreements and their renewals, and all rights thereunder as they affect the property;
- (b) assign to us all rent and any other monies payable under the leases and agreements; and

- (c) give us security on chattels, fixtures and equipment as we may reasonably require.

You agree to pay all of our expenses including, without limitation, all our legal fees and disbursements and other costs relating to such additional security.

If you do not comply with any of your obligations under this section 12, at our option the outstanding principal amount and all other amounts owing by you to us will immediately become due and payable. In this case, we may pay to any tenant such amount as is required to obtain the co-operation of the tenant in showing and selling the property and obtaining possession from the tenant. You agree that the payment of such an amount will be a cost of realization of our security and will be added to the loan amount and will bear interest at the then applicable interest rate. You irrevocably appoint us as your attorney and agent to enforce the terms of any lease or agreement entered into by you and to cancel or terminate any lease or agreement.

Nothing we do under this section 12 will put us in possession of the property and we are not obliged to collect any rent or income from the property or to comply with any term of any lease or agreement.

Rental of any part of the property without our written approval will be considered to have been done to discourage us from taking possession of the property.

**13. ACCELERATION OF REPAYMENT OF OUTSTANDING PRINCIPAL AMOUNT AND ALL OTHER AMOUNTS OWING BY YOU TO US**

Without prejudice to our rights to demand payment at any time and from time to time, the outstanding principal amount and all other amounts owing by you to us will immediately become payable, at our option, if:

- (a) you do not make any payment required by the mortgage or the loan commitment;
- (b) you do not comply with any of your other obligations under the mortgage or the loan commitment;
- (c) we discover that any representation or warranty you made to us in applying for the loan, in the loan commitment or in the mortgage (including, without limitation, those contained in section 5) is untrue;
- (d) any lien is registered against the property or we receive notice of a mechanics' lien, a security interest, a lien that is created as a result of unpaid property taxes or unpaid construction maintenance fees or any other lien against the property;
- (e) you do not observe or perform any obligation or condition contained in any mortgage, charge, lien or encumbrance to which our mortgage is subject or subordinate;
- (f) any buildings being erected on or additions, alterations or improvements done to the property remain unfinished without work being done on them for a period of ten consecutive days; or
- (g) the property is abandoned.

We have the right but not the obligation to waive any particular default by you but if we do so we are not waiving any other existing default or one or more defaults which may occur in the future. In waiving any of the above, we are entitled to impose such conditions with respect to any waiver as we may deem appropriate in our sole discretion.

**14. BUILDING MORTGAGE**

If any loan or part of a loan is to be used to finance an improvement on the property (meaning any alteration, addition or repair to or any construction, erection or installation on, the property including, without limitation, the demolition or removal of all or any part of any building, structure or works on the property), you must first obtain our written approval before any loans are made or amounts advanced. You agree to make the improvement only in accordance with plans and specifications that we have approved in writing and to complete the improvement as quickly as possible and that our approval of plans or specifications does not mean that the plans or specifications are or will be acceptable or sufficient for any purpose whatsoever.

Subject to section 11, we may make loans or advances under any loan to you under the mortgage based on progress in completing the improvement or upon its completion or, in the case of a building, its occupation or sale. We will decide whether loans or advances may be made and when they will be made.

Whatever the purpose of the mortgage, we may retain funds from any loan or advances until we are completely satisfied that you have retained the holdback amount that you are required or allowed to retain under applicable mechanics' lien legislation, as the case may be, and the lien period has expired. You authorize us to give information about the mortgage and the loan commitment to anyone who claims a construction lien on the property.

**15. RELEASING THE PROPERTY FROM THE MORTGAGE**

At our option, we may release our interest under the mortgage in all or part of the property, whether or not we receive any value, and we will be accountable to you only for money that we actually receive. If we release our interest under the mortgage in only a part of the property, the remainder of the property will continue to secure your obligations, and the obligations of any guarantor under the mortgage will continue unchanged. You will pay our then current administration or processing fee for preparing and signing the discharge and all legal and other expenses, whether the discharge is prepared by your lawyer, by ours or by us. It is your responsibility to register the discharge on your title and to pay the registration fee. If the property is subdivided, each part of the property will secure payment of your obligations.

**16. SECURITY**

All funds advanced to you under any loan commitment will be secured by the mortgage. If we request, you will enter into a further agreement with us that will confirm that any such loans are secured by the mortgage. All such loans, interest thereon, any other amounts owing with respect to such advanced amounts or obligations owing with respect to such loans will be secured by, and repaid in accordance with, the provisions of this optional mortgage covenant. These provisions apply even if all or any part of the outstanding principal amount is reduced and subsequently increased or repaid and subsequently loaned again. It will not be necessary for us to register the loan commitment or other agreement on title to the property in order to retain priority for the mortgage over any other instrument registered after the mortgage whether or not there are any other instruments registered on title to the property after the mortgage at the time any agreement is entered into. However, we are entitled to make any registrations against title to the property as we deem necessary and, if requested, you will assist us with any registration we may make. The entering into of any agreement by us with any borrower and with any other person liable to pay the loan amount will not release or affect the liability of anyone who does not enter into such agreement.

**17. RENEWING OR AMENDING THE MORTGAGE AND CHANGES TO LOAN AMOUNT**

At our option, the mortgage and/or any loan commitment may from time to time be renewed, extended, varied or amended by an agreement (in a form acceptable to us) with you, with or without any increase in the interest rate or the principal amount, whether in whole or in part. It will not be necessary for us to register the agreement on title to the property in order to retain priority for the mortgage, as renewed or amended, which may include advances of additional principal amounts, over any other instrument registered after the mortgage whether or not there are any other instruments registered on title to the property after the mortgage at the time any agreement is entered into. However, we are entitled to make any registrations against title to the property as we deem necessary and, if requested, you will assist us with any registration we may make. The entering into of any agreement by us with any borrower and with any other person liable to pay the loan amount will not release or affect the liability of anyone who does not enter into such agreement.

**18. DUE ON SALE**

If you transfer title to the property or agree to do so, the outstanding principal balance and any other money owing by you to us will, at our option, immediately become due and payable in full.

**19. CERTAIN ACTIONS WE CAN TAKE**

If we think it is necessary, we may pay any other claims that have priority over or rank *pari passu* to the mortgage. Also, we can pay all expenses that we incur in collecting any payment under the mortgage that you did not make when due and in enforcing your other obligations. You must immediately reimburse us for all such payments and expenses.

If you are a tenant under a lease of the property, we may cure any defaults existing under your lease and you must immediately reimburse us for all payments and expenses that we incur in so doing.

If you do not comply with any of your obligations under the mortgage, we may perform those obligations. Where you are a tenant of the property and you refuse or neglect to renew your lease when it gives you that right, we can do so and every renewal will be subject to the mortgage. You must immediately reimburse us for all payments that we have to make and costs that we incur in taking these steps.

Any payments we make under the mortgage and any expenses incurred by us (including, without limitation, our legal expenses on a full indemnity basis) in collecting any payment under the mortgage that you did not make when due and in enforcing your other obligations in accordance with the mortgage, which are not immediately reimbursed to us will be added to the loan amount and will bear interest at the then applicable interest rate from the date we pay them. Any interest which accrues as a result of changes requested by you to the frequency of payments or to the regular payment date will be paid by you or added to the loan amount and will bear interest at the then applicable interest rate.

If we have not received a solicitor's final opinion within 90 days of the final advance of funds under the mortgage, we are entitled to retain another solicitor of our choice to provide such opinion at your expense.

#### **20. ENVIRONMENTAL MATTERS**

You agree that we or our agents may at any time and for any reason enter and inspect the property and conduct any environmental testing, site assessment, investigation or study which we consider necessary. The reasonable cost of this testing, assessment, investigation or study, with interest at the then applicable interest rate, will be immediately payable by you and will be a charge on the property. None of us, our agents will become mortgagees in possession of the property or have management or control of the property by exercising these rights.

#### **21. CONDOMINIUM**

If the property is a condominium unit, you agree to comply with the provisions of this section 21 in addition to the other provisions of this optional mortgage covenant.

##### **(a) Compliance with the Condominium Property Act**

You will comply with the Condominium Property Act and with the declaration, by-laws and rules and regulations of the condominium corporation in effect from time to time.

##### **(b) Payment of Common Expenses and Other Costs**

You will pay all amounts required by the Condominium Property Act, the declaration and the by-laws of the condominium corporation on or before the date such amounts are due, including, but not limited to, all common expenses, contributions, levies or assessments. If we request, you will give us proof that you have done so. If you do not make any payments which you are obligated to pay, we may do so on your behalf and add such amounts to the loan amount and such amounts will bear interest at the then applicable interest rate.

##### **(c) Notices and Demands**

You will mail to us by prepaid registered mail or deliver to us a copy of every notice, assessment, claim or demand for payment, rule or regulation, request or demand of us to consent to any matter, and every other communication relating to your unit or the common elements of the condominium property so that we receive such communications at least five days before any claim or demand is payable or, in the case of other communications, within five days of the date you receive them. You consent to the disclosure to us by any party of any and all information available to you under the Condominium Property Act relating to your unit or the common elements of the condominium property.

##### **(d) Voting Rights**

Provided that we are a mortgagee in possession and subject to the provisions of the Condominium Property Act, you irrevocably authorize us, in your name and on your behalf, to exercise your rights under the Condominium Property Act and under the declaration and by-laws of the condominium corporation to vote at any meeting of the condominium corporation.



and to consent to any matter relevant to the management, sale or other dealings with the property or assets of the condominium corporation or the termination of the application of the Condominium Act to the condominium corporation. However, you may exercise such rights to vote or consent unless we notify you in writing that we wish to use our rights to vote or consent, in which case we may also notify the condominium corporation. Our wish to vote or consent can be for a limited period of time or for a particular meeting or matter. When we do vote or consent in your place, we do not then become a mortgagee in possession and are not responsible for protecting your interests or for the way we vote or consent or fail to do so. You acknowledge that we have given you notice of our intent to exercise our rights to vote and to consent as set out in this paragraph.

(e) Acceleration of Repayment

At our option, the outstanding principal amount and all other amounts owing by you to us will become payable immediately if:

- (i) the condominium of which the property forms a part, including, without limitation, the common elements and the assets of the condominium corporation (collectively, the "condominium property") is no longer governed by the Condominium Property Act;
- (ii) a vote of the unit owners authorizes the sale of the condominium property or any part thereof;
- (iii) the condominium corporation fails to comply with the Condominium Property Act, its declaration or by-laws, rules or regulations;
- (iv) the condominium corporation fails, in our opinion, to manage the condominium property in a careful way or to maintain the condominium property in good repair;
- (v) the condominium corporation fails to insure the condominium property according to law and any additional requirements we may have or fails to do all that is necessary to collect insurance proceeds;
- (vi) the condominium corporation makes or permits to be made any substantial modification to the condominium property or any part thereof without our approval; or
- (vii) there has been substantial damage to the condominium property and the owners have voted for termination of the condominium corporation.

Our rights to cause the outstanding principal amount and all other amounts owing by you to us to become payable immediately will not be affected by the fact that we may have voted in favour of or consented to any of the foregoing and the above does not detract from the demand nature of the loan commitment or the mortgage.

(f) Insurance

If the property is a single residential condominium unit, you must insure and keep insured in our favour and until the mortgage is discharged, the property (including, without limitation, all buildings, structures, fixtures and improvements now or in the future located on the property not required to be insured by the condominium corporation according to the Condominium Property Act or the declaration of the condominium corporation) for not less than its full replacement value in Canadian dollars.

The condominium corporation must obtain such appropriate insurance as it is required to obtain under the Condominium Property Act and under the declaration and by-laws of the condominium corporation, failing which you will be in default. In addition, you must insure against loss or damage by fire with extended perils coverage, and against such additional risks as we may at any time require, all improvements or those improvements required by the Condominium Property Act or by-laws of the condominium corporation which at any time have been made to the property.

All insurance policies must be provided by a company approved by us and contain mortgage clauses approved by the Insurance Bureau of Canada or by us confirming that loss proceeds are payable firstly to us, and we will have the first right to receive and to have a lien on the loss proceeds. Upon our request, you will provide us with certified copies of every insurance policy

with respect to the property and, not less than 15 days before any policy expires, evidence of its renewal.

We may place and pay for any insurance policy if you fail to do so. Any premiums or sums of money which we pay for insurance will be immediately payable by you to us or added to the loan amount if not so paid and will bear interest at the then applicable interest rate.

If any loss or damage occurs, you will immediately, at your expense, do everything necessary to enable us to obtain the insurance proceeds. The production of a copy of the mortgage will be sufficient authority for the insurance company to pay any loss to us or to accept instructions from us dealing with the loss, and the insurance company is hereby directed to pay the same to us. Insurance proceeds may, at our option, in whole or in part be: (i) used to repair or rebuild the property; (ii) paid to you; and/or (iii) used to reduce any part of the outstanding principal amount and all other amounts owing by you to us, whether due or not, including, without limitation, an amount to compensate us for loss of interest.

You will, and to the extent it is within your control will cause the condominium corporation to, assign and transfer the policy or policies of insurance and receipts thereof to us and if you or the condominium corporation fails to keep the buildings and improvements insured or provide us at least 15 days before the termination of any insurance, evidence of renewal, we are entitled but not obligated to insure the buildings or improvements.

The obligation to insure may be performed by the condominium corporation and the proceeds of insurance may be payable in accordance with the declaration and by-laws of the condominium corporation. You promise that, in the event of loss or damage, you will fully comply with the terms of all insurance policies and with the insurance provisions of the declaration and by-laws and that, as a member of the condominium corporation, you will insist that the condominium corporation fully complies with these terms.

## 22. ENFORCING OUR RIGHTS

Without prejudice to our rights with respect to amounts that are payable on demand:

### (a) Remedies

if you are in default, or any events or circumstances set out in Section 13 occurs or exists, at our option, the outstanding principal amount and all other amounts owing by you to us will immediately become due and payable, as set out in Section 13, and we may enforce any one or more of the remedies listed below in any order, separately or together, to the extent that such remedies are available in the province or territory in which the property is located.

Our remedies are:

- (i) **Go to Court** • We may take court proceedings to collect the outstanding principal amount and all other amounts owing by you to us,
- (ii) **Lease the Property** • If your default continues for 15 days, we may, on 15 days' notice to you, enter on and lease the property; if your default continues for 30 days we may, without notice to you, enter on and lease the property. We may apply the net proceeds of any lease to reduce any part of the outstanding principal amount and all other amounts owing by you to us. If the net proceeds of any lease are less than the outstanding principal amount and all other amounts owing by you to us, you must pay us the difference.
- (iii) **Power of Sale** • If your default continues we may enter on and sell the whole or any part of the property in accordance with the power of sale provisions contained in the *Property Act* (New Brunswick) and the power of sale and all other powers conferred on the mortgages by virtue of such Act are incorporated herein, as if the mortgage were made by deed. Any sale can be for cash or on credit, or partly for cash and partly on credit, by private sale or public auction and on such terms as can be obtained. We may cancel, amend or not complete any contract of sale without being responsible for any resulting loss. The net proceeds from any sale of the property will be applied to repay any prior encumbrance and then to reduce the outstanding principal amount and all other amounts owing by you to us. If the net proceeds are less than the outstanding principal amount and all other amounts owing by you to us, you must pay us the

difference. If the net proceeds are more than the outstanding principal amount and all other amounts owing by you to us, any amount remaining after all claims have been satisfied will be paid to you or to others who may be entitled to any amounts remaining at law. The purchaser shall not be required to investigate the propriety or regularity of such sale. The absence of any actual default or notice to the mortgagor shall not invalidate the sale or transfer of the property, and the title of a purchaser shall not be liable to be impeached on the ground of any such absence, but any person damaged by an unauthorized, improper or irregular exercise of the power shall have a remedy against the person exercising the power in damages only.

- (iv) Enter on the Property - We can enter on the property at any time without your permission and make any necessary arrangements to inspect, collect rents or manage the property or repair or complete construction of any building or other improvement on the property. Any costs we incur will be added to the outstanding principal amount and all other amounts owing by you to us and will bear interest at the then applicable interest rate.
- (v) Appoint a Receiver - We can appoint, in writing, a receiver (which includes a receiver and manager) to collect any income from the property. The receiver will be your agent, not ours, and you will be responsible for any of the receiver's acts or omissions. We are not accountable for any monies received by the receiver except to the extent that we actually receive any such monies. The receiver may use every remedy which we have under the mortgage to collect the income from the property, take possession of the whole or part of the property, manage the property and keep it in good condition. From the income collected, the receiver may pay all rents, taxes, rates, insurance premiums and other expenses required to keep the property in good condition, his or her own commission as receiver, all amounts required to keep any encumbrances ranking in priority to the mortgage in good standing, interest owing under the mortgage and all or any part of the outstanding principal amount and all other amounts owing by you to us whether or not they are due.
- (vi) Possession - We can take possession of the property at any time, without permission, and take all necessary action to recover and keep possession of the property. We will not be considered to be a mortgagee in possession unless we actually take possession of the property. We may lease or sell the property without actually entering into possession of the property. While in possession, we will only be accountable for money actually received by us.
- (vii) Distress - Subject to applicable laws, we may distress (seize and sell) personal property on the property (whether or not such personal property is included in the definition of property in this optional mortgage covenant) for arrears of interest against the property or any part of it and recover by way of rent reserved as in the case of a demise, the arrears of interest and all costs and expenses incurred in such distress and may also distress (seize and sell) personal property on the property (whether or not such personal property is included in the definition of property in this optional mortgage covenant) for arrears of principal and regular payments of taxes, if required, in the same manner as if the same were arrears of interest.
- (viii) Assignment of Rents- You assign to us all rents from the property. This assignment will take effect upon default and we will have the right to collect rent and enforce collection of rent, as we see fit.

(b) No Interference

If, in enforcing any of our remedies, we take possession of the property, neither you nor any person claiming an interest in the property through you will interfere with our possession, the possession of any receiver we may appoint or with the possession of any person to whom the property is leased or sold and you will not make any claim against any person to whom the property may be leased or sold.

## (c) Notice

When any notice is given by us in connection with the mortgage, the notice may be given in any manner permitted or provided by the laws applicable thereto or, subject to those laws, may, at our option, be given by us by leaving it with an adult person on the property if occupied, by placing it on some portion of the property if unoccupied, by mailing it by prepaid registered mail addressed to you at your last known address, or by publishing it once in a newspaper having a general circulation in the city, town, municipality or area in which the property is located; and such notice will be sufficient even if it is not addressed to any person by name or designation and even if any person to be affected by the notice may be unborn, unknown, unascertained or under any disability; and, subject to the laws from time to time applicable to the notice, such notice will be as effectual as if it had been personally served upon all persons required to be served by it.

## (d) Our Expenses

You agree to pay immediately upon our request all of the expenses which we incur in enforcing any of our remedies. These expenses include all our legal fees and disbursements on a full indemnity basis, all other costs we have to pay to protect our interests and to enforce any of our remedies under the mortgage and a reasonable allowance for the time and services of our employees.

## (e) Delay In Enforcement

Our rights will not be affected if we delay in enforcing any of our rights under the mortgage or give you or anybody else an extension of time. We may still insist that you make all payments on time and comply with your obligations, require payment of the outstanding principal amount and all other amounts owing by you to us if you are in default and require any other person including, without limitation, a guarantor, who has obligations to us under the mortgage to meet those obligations. If you do not make any payment of the principal amount as required by the mortgage, we are not obliged to accept subsequent payment unless you also give us interest to the date of subsequent payment.

## (f) Judgments

If we obtain any court order or judgment against you in any action to enforce our remedies, the judgment will not operate as a merger of any covenant of the mortgage and will not prevent us from pursuing our other remedies or rights to enforce your other obligations under the mortgage and the Joan commitment. Even if we obtain a court order or judgment, until the outstanding principal amount and all other amounts owing by you to us is paid in full, interest is payable on the outstanding principal amount and all other amounts owing by you to us at the then applicable interest rate or in accordance with applicable law, whichever is higher.

## (g) No Prejudice from Failure to Enforce Our Rights

A failure by us to enforce at any time or from time to time any of our rights under the mortgage will not prejudice our rights or any other rights that we have under the mortgage or at law. No performance or payment by us in respect of any breach or default will relieve you from any default, and no waiver at any time or from time to time of any such rights by us will prejudice such rights in the event of any future default or breach.

**23. EXPROPRIATION**

If the entire property is expropriated, the outstanding principal amount and all other amounts owing by you to us will immediately become due and payable together with loss of interest.

If only a part of the property is expropriated, the amount you are awarded for the partial expropriation will be paid to us and we will credit it to the outstanding principal amount and all other amounts owing by you to us. If, in our opinion, the remainder of the property does not constitute adequate security for the outstanding principal amount and all other amounts owing by you to us, then in our sole discretion, all or part of the outstanding principal amount and all other amounts owing by you to us will immediately become due and payable together with loss of interest.

We have the right to order a survey and/or property valuation of the property in order to ascertain the value of the expropriated land and the remaining land. Any and all reasonable costs, charges and expenses for such survey and/or property valuation are payable by you immediately and, if not paid, will be added to the outstanding principal amount and all other

amounts owing by you to us and will bear interest at the then applicable interest rate, and will be a charge on the property under the security of the mortgage.

**24. GUARANTEE**

In consideration for our making a loan to the borrower, each person who signs the mortgage or the loan commitment as guarantor unconditionally and irrevocably guarantees to us, as principal debtor and not as surety, the due and punctual payment of the outstanding principal amount and all other amounts owing by you to us and the due and punctual performance of all of the obligations of the borrower under the mortgage and the loan commitment at all times until the outstanding principal amount and all other amounts owing by you to us is paid in full and all other obligations of the borrower have been fully performed. Each guarantor, if there is more than one, will be jointly and severally liable with the borrower and with each other for complying with all of the obligations of the borrower under the mortgage and the loan commitment. We may at any time and from time to time without the consent of or notice to any guarantor give any extension of time for payment (including renewals), deal with any security (including, without limitation, the mortgage) or the property including, without limitation, releasing, realizing on or replacing any security we may hold, give releases or discharges, increase the interest rate, amend the terms of the mortgage or the loan commitment and generally deal with all matters affecting the mortgage and the loan commitment and the obligations of the borrower either before or after requiring payment from any person without in any way affecting the guarantee or the obligations of any guarantor. We may require payment from any guarantor before we attempt to obtain a payment from the borrower, and the obligations of any guarantor will not be altered by the bankruptcy of the borrower or any guarantor. The enforcement of the obligations of a guarantor under this section 24 may take place before, after or at the same time as the enforcement of the obligations of the borrower or any other guarantor under the mortgage or the enforcement of any security for any such obligation. Each guarantor agrees that he, she or it has read the mortgage and the loan commitment and is fully aware of its terms and in particular the terms of this section 24.

**25. DISCHARGE**

After you have paid us all amounts owing by you to us and fulfilled all of your obligations under this optional mortgage covenant, the mortgage and the loan commitment and where we have terminated the loan commitment and/or any other agreements between you and us evidencing indebtedness on your part to us, we will sign a discharge or, if requested by you, an assignment of the mortgage on a non-recourse basis and send it to you within a reasonable time. You will pay our then current administration or processing fee for preparing and signing the discharge or assignment and all legal and other expenses, whether the discharge or assignment is prepared by your lawyer, by ours or by us. It is your responsibility to register the discharge or assignment on title to the property and to pay the registration fee.

**26. ADMINISTRATION FEES**

You agree to pay us, when due, our then current administration and processing fees in connection with the preparation of any assumption statement, amending or other agreement, statements for information purposes, replacement of cheques where payment has been refused due to insufficient funds or for any other reason in respect of the administration of the mortgage. If not paid, such fees will be added to the loan amount and will bear interest at the then applicable interest rate.

The amount of such fees in effect at any time is available by calling us at the telephone number set out in the loan commitment or by visiting the internet website set out in the loan commitment.

**27. NEW HOME WARRANTY PLANS, PROGRAMS OR LEGISLATION**

If the terms of any new home warranty plan, program and/or legislation apply to the property, you agree to comply with the requirements of such plan, program and/or legislation and to reimburse us for any costs which we incur in complying with such requirements on your behalf if you fail to do so and to reimburse us for any costs which we incur in enforcing your rights under such plan, program and/or legislation if you fail to do so. Such costs are payable by you immediately and, if not paid, will be added to the loan amount and will bear interest at the then applicable interest rate.

**28. CHANGE OF CORPORATE CONTROL**

If the borrower is a corporation, the borrower agrees that if (a) the borrower fails to supply to us, in a form satisfactory to us, such information relating to the ownership of its shares as we may from time to time require, or (b) without our prior written consent, (i) the borrower issues or redeems any of its shares or any of its shares are transferred, or (ii) there is a transfer of the legal or beneficial interest of any of the shares of the borrower, or (iii) the borrower amalgamates, merges or consolidates with any other person or corporation, and the result of any such event is a change in the effective control of the majority of the voting shares of the borrower, then the outstanding principal amount and all other amounts owing by you to us will immediately become due and payable at our option, and our power of sale and all other remedies for enforcement will be exercisable.

**29. DATE OF MORTGAGE**

You agree that, only for the purpose of defining the date of the mortgage the date of the mortgage will be deemed to be the date the mortgage is submitted for registration, regardless of the date of signature of the mortgage.

**30. GENERAL**

(a) Who Is Bound

You agree to be bound by all of your obligations contained in the mortgage. The mortgage is also binding on and enures to the benefit of your successors and anyone else to whom the property is transferred. The mortgage is also binding on and enures to the benefit of our successors and assigns and on anyone to whom we may assign the mortgage.

If more than one person signs the mortgage as borrower, then all persons who so sign are jointly and severally liable to comply with all obligations under the mortgage.

(b) Partial Invalidity

If any provision of the mortgage is found to be illegal or unenforceable, the validity or enforceability of all other provisions will not be affected.

(c) Headings

Headings in the mortgage do not form part of the mortgage and are used only for easy reference.

(d) Statute References

Unless expressly stated otherwise, any reference in this optional mortgage covenant to a statute is a reference to such statute and the regulations thereunder, if any, as such statute and regulations may be amended or replaced from time to time.

(e) Governing Law

The mortgage, including this optional mortgage covenant will be governed by the laws of the Province of New Brunswick and the federal laws of Canada applicable therein.

(f) Entire Agreement

The loan commitment and the mortgage constitute the entire agreement between the borrower and the mortgagee concerning the matters addressed therein. The mortgage is in addition to, and not in substitution for, any other security that we may have in the property of the borrower or the property of any other person.

(g) Exclusion Of Statutory Covenants

The covenants automatically incorporated into mortgages made in New Brunswick by virtue of section 25(4) of the *Land Titles Act* (New Brunswick) are hereby expressly excluded from the mortgage.

(h) Criminal Rate of Interest

If any provision of this optional mortgage covenant or any loan documents would obligate the borrower to make any payment of interest or other amount payable to the mortgagee in an

amount or calculated at a rate which would be prohibited by law or would result in a receipt by the mortgagee of interest at a criminal rate (as construed under the *Criminal Code* (Canada)), then notwithstanding that provision, that amount or rate (or any fees, commissions, premiums and other amounts required to be paid to the mortgagee which would constitute interest for purposes of Section 347 of the *Criminal Code* (Canada)) shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the mortgagee of interest at a criminal rate, the adjustment to be effected, to the extent necessary.

(i) Security In Addition

This charge does not replace or otherwise affect any other security (whether existing or given in the future) given by you to us. Nothing shall affect this security other than payment in full to us and the payment or satisfaction of all amounts owed by you to us together with, in all cases, the termination of the loan commitment by us. This mortgage is intended to expand upon and contains additional terms to those contained in the loan commitment.

(j) Amounts In Excess

Where the outstanding principal amount exceeds the amount set out in the mortgage, if required, you agree that we may select which amounts owed by you are secured by the mortgage in the manner we see fit, in our discretion.

(k) Paramountcy

In the event that any inconsistency occurs in the terms of this optional mortgage covenant and the loan commitment, the terms of the loan commitment shall prevail. It is not an inconsistency when provisions occur in one document but *not* the other.