

**Package #520256  
Ontario - Collateral**

***Last Revised: December 2019***

**Note: Appendices B (#533964), B-1 (#533966), B-2 (#533968) and D (#800286) of the attached package can be found as separate "Word" files at our website <https://www.formssearch.td.com/Search>.**

# Solicitor/Notary Instructions

## Collateral Mortgage/Immovable Hypothec

We are retaining you to assist The Toronto-Dominion Bank (the "Bank") in this collateral mortgage/Immovable Hypothec transaction. The Bank will not require or approve an interim report on title or any draft documentation, including the Collateral Mortgage/Immovable Hypothec. The Bank is relying solely on you to ensure that the Collateral Mortgage/Immovable Hypothec is prepared in accordance with these Solicitor/Notary Instructions and with the instructions set out in the Solicitor/Notary Engagement Letter (collectively the "Instructions").

You are not authorized to deviate from the Instructions or alter any of the documentation or instructions referred to in the Instructions, except as otherwise agreed to by the Bank in writing. You are required to refer any issues related to title which affect or may affect the Bank's security or which are contrary to the intent of the Bank as outlined in the Instructions to the named contact on the Solicitor/Notary Engagement Letter for written direction prior to your release of the Collateral Mortgage/Immovable Hypothec funds and/or prior to the registration of the Collateral Mortgage/Immovable Hypothec.

### Execution of Documents

We are relying on you to verify the identity of the Mortgagor(s) or grantor(s) of the security (if an individual), and the identity of the signing officers who are signing the documentation for a corporate Borrower, Mortgagor or grantor of security (and attorney if applicable documents are being signed under a Power of Attorney) in accordance with the Identification Guidelines identified in Appendix "A" of these Solicitor/Notary Instructions. We require that you submit identification particulars in your Final Report on Title (attached as Appendix "B" to these Solicitor/Notary Instructions).

If documents are executed by a corporation, partnership or any other type of legal entity, we are relying on you to confirm that the officer(s) signing has/have the authority to bind the entity.

### Corporate/Trust Mortgagor

If there is a corporate or trust Mortgagor, you are required to confirm that such Mortgagor: (a) is duly incorporated/constituted; (b) is qualified to own real estate in the jurisdiction where the Property is located; and (c) has the necessary corporate powers and authority to borrow the monies secured by the Collateral Mortgage/Immovable Hypothec and to grant the Collateral Mortgage/Immovable Hypothec.

### Power of Attorney

If this Collateral Mortgage/Immovable Hypothec is executed under Power of Attorney, your registration of the Collateral Mortgage/Immovable Hypothec confirms that:

1. You have received the Bank's consent in writing to use the Power of Attorney;
2. You have confirmed the identity and signature of the attorney in accordance with the Identification Guidelines in Appendix "A";
3. The Power of Attorney, regardless of where it is executed, is valid for use in the province in which the Collateral Mortgage/Immovable Hypothec is to be registered and contains all required powers, including the power to borrow, where applicable. The Collateral Mortgage/Immovable Hypothec and the Loan Documents are duly authorized (where required) under the Power of Attorney document and the Collateral Mortgage/Immovable Hypothec and the Loan Documents have been properly executed; and
4. You have reviewed the Power of Attorney for restrictions that impact or may impact the Bank's Collateral Mortgage/Immovable Hypothec and there are no such restrictions.

### Survey

You will obtain and review a Survey or a Surveyor's Certificate/Real Property Report (Alberta, Yukon, Newfoundland, Manitoba and Saskatchewan) or a Certificate of Location (Quebec) (collectively referenced herein as "Survey") completed by a recognized land surveyor and dated within the last twenty (20) years with respect to the Property. You will be satisfied that the Survey provides satisfactory confirmation that the position of the buildings on the Property complies with all municipal, provincial and other government requirements and that all zoning and other restrictions have been complied with and that the buildings on the Property are within the boundaries of the Property. Where an addition has been made since the date of the Survey, an updated Survey is required unless there is no doubt that the addition is also clearly within the lot lines and meets all setback requirements. Where a Survey is not available for properties that are not mortgage insured and you are satisfied that the position of the building on the Property complies

with all municipal, provincial and other government requirements, a declaration of possession (or statutory declaration) for not less than ten (10) continuous years and indicating no changes to or disputes regarding the Property may be accepted. Where a Survey is not available for mortgage insured properties, the Survey requirement can only be waived on an exception basis and must be referred to the named contact on the Solicitor/Notary Engagement Letter for direction prior to your releasing the mortgage funds.

Additional Provincial Requirements:

- Alberta: A Stamp of Compliance is required. If the Real Property Report is older than six (6) months, an Affidavit of Examination is required confirming no changes have transpired since the original Survey was completed.
- Manitoba: A Zoning Memorandum is required. If the Survey is older than ten (10) years, an Affidavit of Examination is required confirming no changes have transpired since the original Survey was completed.
- Saskatchewan: A Zoning Memorandum is required. If the Real Property Report is older than twenty (20) years, an Affidavit of Examination is required confirming no changes have transpired since the original Survey was completed.

The Bank will rely on your opinion and will not review the Survey.

The Bank will also accept a policy of title insurance in lieu of a Survey from the title insurance companies listed in these Solicitor/Notary Instructions or a solicitor/notary's opinion issued in accordance with the Western Law Societies Conveyancing Protocol (the "Protocol") in the applicable provinces. **[NOTE: this section does not apply if Collateral Mortgage/Immovable Hypothec is being given in respect of agricultural business]**

Additional Instructions for Manitoba eMortgage Form 6.2

We are relying on you to complete Manitoba eMortgage Form 6.2 in compliance with Manitoba law. The following information may be helpful in completing Section 5 of eMortgage 6.2 entitled Terms and Payment Provisions :

- All our standard collateral mortgages : are Payable on Demand ; Secure Present and Future Liabilities
- "Prime" is defined in Standard Charge Mortgage Terms # 4885352/1for our Collateral All-Purpose Mortgage. Accordingly in completing the box following the words "Prime is defined as "in section 5 of eMortgage 6.2 you should consider inserting the following in the aforementioned box : See Definitions in Standard Charge Mortgage Terms # 4885352/1. "

**Title Insurance**

We require you to assess the need for title insurance protection, and to advise the Bank if you have concluded that title insurance is the best option to assure title and protect the Bank's interests under the Collateral Mortgage/Immovable Hypothec.

If title insurance is to be obtained, we require that you utilize one of the Bank's approved insurers. The Bank has approved the use of First Canadian Title Insurance ("FCT"), Stewart Title Guaranty Company ("Stewart Title"), and Chicago Title Insurance Company ("Chicago Title") in respect of a commercial loan transaction secured by a Collateral Mortgage/Immovable Hypothec.

We remind you that title insurance is not a substitute for your services and that we will require you to advise the Bank regarding the title insurance itself. Without limiting the generality of the foregoing, we require you to:

- (a) obtain and negotiate the endorsements which you determine are appropriate for the transaction to protect the Bank's interests and ensure that these endorsements are appropriately adjusted to reflect the commercial realities of the transaction, for example, request and obtain a Revolving Credit Endorsement, where the Collateral Mortgage/Immovable Hypothec will secure a revolving credit facility, Gap Coverage where funds may be advanced prior to registration of the Collateral Mortgage/Immovable Hypothec and/or a Construction Loan Endorsement if the commercial transaction involves construction financing;
- (b) review the confirmation package or commitment to insure from FCT, Stewart Title or Chicago Title, as applicable, to ensure it is satisfactory;
- (c) advise the Bank about any exclusion from coverage and the acceptability of such exclusion;
- (d) review the final certificate of insurance or extension certificate, as applicable and once issued, to ensure it complies with any re-certified or amended report/commitment to insure and to ensure that it incorporates the endorsements you have requested; and
- (e) obtain a tax certificate in respect of the relevant property that shows all property taxes are current.

If the Bank is advancing funds before the receipt of the final title insurance policy on the basis of a confirmation package or commitment to insure, as applicable, from FCT, Stewart Title or Chicago Title, then in addition to the obligations set out above, you must sub-search the title to the property from the date of your report to the title insurer to the date of the first advance and before the Bank advances and confirm to the Bank in writing that the sub-search is clear.

**Disbursement of Funds**

If funds are to be directed to you for disbursement, please provide the office indicated on the Solicitor's/Notary's Letter of Engagement with a signed Request for Funds Form. The Request for Funds Form attached as Appendix "C" to these Solicitor/Notary Instructions, must be used for this purpose. The funds will be forwarded as per your instructions on the Request for Funds Form.

Any funds delivered to you will be delivered in **trust** and are only to be advanced by you to the Borrower(s) or as the Borrower(s) direct(s) upon (i) the registration of the Collateral Mortgage/Immovable Hypothec and at the direction of the Bank once the Bank has received confirmation from you of such registration or (ii) confirmation by you that a title insurance policy with appropriate gap coverage mitigating the Bank's risk of advancing funds prior to registration of the Collateral Mortgage/Immovable Hypothec has been issued to the Bank.

**Confirmation of Registration**

If funds are not required to be delivered to you for disbursement, funds will only be advanced or made available to the Borrower(s) upon registration of the Loan Documents (as applicable) and at the direction of the Bank once the Bank has received confirmation from you of the applicable registrations.

**Undertaking**

Your disbursement of funds and/or registration of the Collateral Mortgage/Immovable Hypothec, or use of the funds in any way, constitutes your acceptance of this engagement and your undertaking to comply with all Instructions, including completing and returning your Final Report on Title and Certificate of Insurance or Extension Certificate (if applicable) together with all documents required to be delivered hereunder within 30 days of your disbursement/use of funds or registration of the Collateral Mortgage/Immovable Hypothec.

**Condominium (if applicable)**

You will review the Status Certificate (for Ontario and Quebec), Certificate of Payment (for British Columbia), Estoppel Certificate (for Alberta, Saskatchewan, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland), Status Certificate (for Manitoba) and Certificate of Insurance for the Property on behalf of the Condominium Corporation and the Mortgagor(s) and determine that all documents are satisfactory. The Bank will rely on your opinion and will not review the information.

**Planning Act (for Ontario only, if title insurance is not obtained)**

You will review the title to the Property and confirm that the Collateral Mortgage/Immovable Hypothec does not contravene the provisions of the Planning Act, as amended from time to time.

**Leased Land (if applicable where Leasehold mortgage is provided)**

You will review the Lease and confirm that all payments required to be made under the Lease are current and there is currently no default with any provision of the Lease. You will also confirm the Lease allows for the transfer or assignment of the Lease from the Lessee to the Bank. Information about the Lease and the Landlord will also be confirmed and provided to the Bank, and notice of the Collateral Mortgage/Immovable Hypothec shall be given to the Landlord where applicable and proper consents and acknowledgments from the Landlord obtained including, without limitation, the Landlord's agreement to (i) promptly notify the Bank of any default under the Lease and, (ii) allow the Bank in its discretion to remedy any such default(s).

**Fire Insurance**

You will ensure that the Mortgagor(s) has obtained Fire Insurance with coverage that is at least equal to the amount of the Collateral Mortgage/Immovable Hypothec or the replacement value of the buildings, whichever is less, with loss payable to The Toronto-Dominion Bank and the The Toronto-Dominion noted as (first/second/third, as applicable) mortgagee subject to the Insurance Bureau of Canada Standard Mortgage Clause and containing an extended coverage/All Risk endorsement or a broad form policy.

## Additional Documentation Requirements

1. Please provide, for the following provinces:
  - a) British Columbia - a State of Title Certificate
  - b) Alberta - a Certified Copy of Title;
  - c) New Brunswick - a Certificate of Registered Ownership;
  - d) Nova Scotia- a Statement of Registered and Recorded Interest;
  - e) Manitoba - a Status of Title;
  - f) Saskatchewan - a Certified Copy of Title;
2. If water supply is by well, please provide a Water Potability Certificate indicating the water meets government standards and is suitable for human consumption that must be dated within 60 days of the actual closing date. **[NOTE: this section does not apply if Collateral Mortgage/Immovable Hypothec is being given in respect of agricultural business]**
3. If the property subject to the Collateral Mortgage/Immovable Hypothec is a new home construction, please provide:
  - a) a New Home Warranty Certificate (all provinces except Manitoba or Alberta);
  - b) for Manitoba - a New Home Warranty Certificate and a Possession Certificate;
  - c) for Alberta - a Certificate of Possession;
  - d) for all provinces - if water supply is by well, a Well Driller's Certificate confirming a minimum flow of 20 litres per minute over a 1 hour period;
  - e) for all provinces - if on a septic system, confirmation from a provincial or municipal authority certifying that the soil and water pollution, septic system design and installation are acceptable.
4. If the property subject to the Collateral Mortgage/Immovable is a rental property located in any province other than Quebec, a General Assignment of Rents and Leases ("Assignment") is required. You will ensure that all necessary affidavits are completed and applicable registration requirements have been met. You will further ensure that, depending on your jurisdiction, the Assignment (or caveat in support thereof) has been filed/registered in the appropriate land titles/registry office and/or personal property registry, as required.
5. You shall provide confirmation of information required for Property Tax Rolls (i.e. municipal address, municipality, brief legal description, property tax roll number).

Appendix "A"

Identification Guidelines

You are required to ascertain the identity of each Mortgagor or grantor of security (if an individual) (and where applicable, the Attorney under Power of Attorney) and the identity of the signing officers who are signing the documentation for a corporate Borrower, Mortgagor or grantor of security, and provide applicable employment information. If specifically instructed by us and where the Borrower and/or Mortgagor are a corporate or non-personal entity, then the identity of the three signing officers are to be verified (or if less than 3, then all authorized signers are to be identified).

Each Mortgagor or grantor of security and, where applicable Attorney or signing officer must present to you ONE piece of Identification from the list below for examination:

If the Mortgagor, grantor of security and, where applicable, Attorney or signing officer cannot be identified using the identification from the list below, refer to the named contact on the Solicitor Engagement Letter for directions on alternative methods of ascertaining identity. All identification must be original, valid, not expired, legible, unaltered, have a unique identifier number and not be substantially damaged. Each Mortgagor or grantor of security and, where applicable, Attorney or signing officer is required to be physically present when you ascertain his or her identity. Where an identification document is issued by a national government, only the country of issue needs to be recorded. Where the identification document is issued by a regional/state/provincial government, both the region and country need to be recorded. Please do not send photocopies of identification to the Bank.

Please see the table below for acceptable types of ID.

All must have a Photo	
<ul style="list-style-type: none"><li>Canadian Provincial Driver's License</li><li>US Permanent Driver's License</li><li>Canadian or International Passport</li><li>Canadian Certificate of Indian Status</li><li>Canadian Military ID Card</li><li>Canadian Permanent Resident Card</li></ul>	<ul style="list-style-type: none"><li>Canadian Government Issued ID Card (Provincial, Federal, Territorial)</li><li>Canadian Citizenship/Naturalization Card/Certificate Nexus Card</li><li>Canadian Firearms License</li><li>US Passport Card</li></ul>

Notes:

1. In Quebec, a **driver's license** must be volunteered by the customer, you must not request it. Temporary licenses should only be accepted if offered within 30 days of their issuance date (i.e. permanent licenses are issued within 2 weeks from issue date of temporary license). There may be variations to the look of licenses as some provincial governments roll out the enhanced versions of Driver's License.

To: THE TORONTO-DOMINION BANK (the "Bank")

Attention: \_\_\_\_\_ Fax #: \_\_\_\_\_

From: \_\_\_\_\_  
Barrister and Solicitor/Notary

Solicitor/Notary Telephone # \_\_\_\_\_ Solicitor/Notary Fax # \_\_\_\_\_

Re: Borrower(s): \_\_\_\_\_  
Mortgagor(s) (if different from Borrower(s)): \_\_\_\_\_  
Brief Legal Description of Property ("Property"): \_\_\_\_\_  
Municipal Address of Property: \_\_\_\_\_  
Municipality (City or Town): \_\_\_\_\_  
Mortgage Amount: \_\_\_\_\_  
Amount of Funds Requested: \_\_\_\_\_  
Funding Date: \_\_\_\_\_

Request for Funds:

Please provide the Bank with this completed form at least **two (2) business days** prior to the scheduled Funding Date, or there may be a delay in funding.

Instructions for Delivery of Funds (select one):

- ☐ Deposit to my/our TD Canada Trust Trust Account #: \_\_\_\_\_ Branch: \_\_\_\_\_
- ☐ Pickup draft at branch: \_\_\_\_\_
- ☐ Mail/Courier draft: \_\_\_\_\_

Confirmation of Registration (Collateral Mortgage/Immovable Hypothec only - to be completed if directed by the Bank in the Solicitor/Notary Engagement Letter):

- ☐ The Borrower(s) have requested the credit facility be activated and no funds are required to be advanced to the solicitor at this time. Details of the registration of the Collateral Mortgage/Immovable Hypothec are as follows:
- Mortgage Priority: ☐ First ☐ Second ☐ Other: \_\_\_\_\_
- Registration Number/ Particulars \_\_\_\_\_
- Date of Registration (mm/dd/yyyy) \_\_\_\_\_
- Date ILA Signed (mm/dd/yyyy) \_\_\_\_\_

I confirm that the above mentioned Collateral Mortgage/Immovable Hypothec has been registered in accordance with the Instructions issued by The Toronto-Dominion Bank and all information above is accurate.

Solicitor/Notary: Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Address:

To: THE TORONTO-DOMINION BANK (the "Bank")  
Banking Services

Mortgage Reference Number: \_\_\_\_\_  
Branch: \_\_\_\_\_

Pursuant to the Bank's Instructions, we have registered a Collateral Mortgage/Immovable Hypothec of Land ("Collateral Mortgage/Immovable Hypothec") on the Property in the applicable form in the appropriate Land Registry/Titles Office and make our final report as follows:

Mortgagor(s):	_____
Guarantor(s):	_____
Brief Legal Description of Property ("Property"):	_____
Municipal Address of Property:	_____
Municipality (City or Town):	_____
Property Tax Roll Number:	_____

Registration Particulars:

Instrument No:	_____	Date:	_____
Book/Folio/Roll: (if applicable)	_____	Page/Liber/Frame: (if applicable)	_____
Registry/Titles Office:	_____		

Title: In respect of the Collateral Mortgage/Immovable Hypothec, select one of the following by placing an "X" beside the option(s) chosen:

Note that where the only security being granted is a Collateral Mortgage/Immovable Hypothec, you may choose:

- ☐ (i) Title Insurance and complete Appendix "B-2"; or
- ☐ (ii) a Solicitor's Opinion in the form of Appendix "B-1" (or if the property is residential property the Solicitor's Opinion in the form of Appendix "D"); or
- ☐ (iii) Notary's Opinion Collateral Hypothec only (applicable only in Quebec)

Unless otherwise directed by the Bank in the Solicitor Engagement Letter, where security in addition to a Collateral Mortgage/Immovable Hypothec is being granted and you opt to provide Title Insurance in respect of the Collateral Mortgage/Immovable Hypothec, you will be required to deliver the Title Insurance Information in the form of Appendix "B-2" and also a Solicitor's Letter of Opinion in the form of Appendix "B-1" with such Solicitor's Letter of Opinion covering the additional security.

Unless otherwise directed by the Bank in the Solicitor Engagement Letter, where security in addition to a Collateral Mortgage/Immovable Hypothec is being granted and you opt not to provide Title Insurance in respect of the Collateral Mortgage, you will be required to deliver a Solicitor's Letter of Opinion in the form of Appendix "B-1" with such Solicitor's Letter of Opinion covering all of the security.

- ☐ Solicitor's Opinion (Appendix "B-1" or Appendix "D", whichever is applicable);
- ☐ Solicitor's Opinion under Western Law Societies Conveyancing Protocol (Appendix "B-1");
- ☐ Title Insurance Information (Appendix "B-2")

We confirm that all Instructions by the Bank have been complied with and no alterations have been made to this Final Report on Title.

A copy of the Collateral Mortgage/Immovable Hypothec (including, if applicable, Standard Charge/Mortgage Terms/Optional and applicable Statutory Covenants and all schedules to it) has been delivered to each Mortgagor.



**Advances:**

We certify that all funds, if any, forwarded to us have been disbursed in accordance with the directions of the Bank, and that these total \$<>.

**Real Estate Taxes:**

There are no realty tax bills issued and unpaid on the Property as at \_\_\_\_\_. We have provided you with confirmed information regarding Property Tax Rolls.

**Independent Legal Advice:**

Any certificate of independent legal advice which it would be prudent to obtain with respect to the execution of the Loan Documents by any party thereto and/or which is required in our Solicitor's Engagement Letter has been obtained.

**Fire Insurance:**

Company: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Amount: \$ \_\_\_\_\_  
Expiry Date: \_\_\_\_\_  
\*The Fire Insurance Company has been notified of any change of ownership.

We certify that the above fire insurance policy acquired for the Property is for at least the amount of the Collateral Mortgage/Immovable Hypothec or the replacement value of the buildings, whichever is less, with The Toronto-Dominion Bank shown as \_\_\_\_\_ loss payee and with the Standard Mortgage Clause attached to the Policy. It is our opinion that, if a condominium, the certificate of insurance for the Property is satisfactory and discloses no risks to the Bank that have not otherwise been accepted in writing by the Bank.

**Well Water:**

- If the Property is on a well, we confirm:
- (a) <that a water potability certificate, dated within 60 days of closing, has been obtained and reviewed and confirms that the water meets government standards and is suitable for human consumption, and> [NTD: may only be removed if Collateral Mortgage/Immovable Hypothec is being given in respect of agricultural business]
  - (b) if a new construction, that a well driller's certificate has been obtained and reviewed and confirms that there occurs a minimum flow of 20 litres per minute over a 1 hour period.

**Septic Certificate** (new construction only):

If the Property is not on a municipal septic system: We confirm that confirmation has been received from the province or municipality certifying that the soil and water pollution, septic system design and installation are acceptable.

**Leased Land (if applicable):**

All payments required to be made under the Lease are current and there is currently no default with any provision of the Lease. The Lease allows for the transfer or assignment of the Lease from the Lessee to the Bank and where applicable a notice of the Collateral Mortgage/Immovable Hypothec has been given to the Landlord and all consents and acknowledgments from the Landlord have been obtained including, without limitation, the Landlord's agreement to (i) promptly notify the Bank of any default under the Lease and, (ii) allow the Bank in its discretion to remedy any such default(s).

**Landlord Details:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**Lease Details:**

Term: \_\_\_\_\_  
Clauses that may impact the Bank as Mortgagee/Chargee: \_\_\_\_\_

Notice of the Collateral Mortgage/Immovable Hypothec has been provided to the Landlord: ☐ Yes ☐ No

**Corporate/Trust Mortgagors:** *[NTD: delete if Solicitor Letter of Opinion also being delivered]*

The Mortgagor is duly incorporated/constituted and organized under the laws of *< insert >* and is duly qualified to own real estate in the jurisdiction where the Property is located. The Mortgagor has the necessary powers to borrow the monies secured by the Collateral Mortgage/Immovable Hypothec and to grant the Collateral Mortgage/Immovable Hypothec. The Collateral Mortgage/Immovable Hypothec represents a valid and binding obligation of the Mortgagor, enforceable in accordance with its terms. *[NTD: Similar opinion for a corporate/trust Guarantor should be provided where applicable]*

**Power of Attorney: (if applicable)**

We hereby certify the following:

- (i) we have been authorized in writing by the Bank to allow the use of the Power of Attorney;
- (ii) the identity and signature of the attorney have been confirmed in accordance with Appendix "A" of the Instructions;
- (iii) the Power of Attorney is valid and enforceable in the jurisdiction where the Collateral Mortgage/Immovable Hypothec registration occurred;
- (iv) the Collateral Mortgage/Immovable Hypothec and the Loan Documents (where applicable) are duly authorized under the Power of Attorney and the Collateral Mortgage/Immovable Hypothec and the Loan Documents (where applicable) have been properly executed under the Power of Attorney; and
- (v) there are no restrictions in the Power of Attorney that impact or may impact the Bank's Collateral Mortgage/Immovable Hypothec.

**Please find enclosed:**

- (a) Duly executed copy of the Loan Agreement (if applicable);
- (b) Duplicate/certified registered copy of the Collateral Mortgage/Immovable Hypothec (if electronically registered, a completed Acknowledgement and Direction (in British Columbia, an originally signed Form B Mortgage and the first page of the electronically registered Form B Mortgage, and in Saskatchewan, a Verification Statement);
- (c) Executed corporate resolution of the board of directors of the [Borrower/Mortgagor/grantor of security] authorizing, among other things, the execution, delivery and performance of the Collateral Mortgage/Immovable Hypothec and the other applicable security documents;
- (d) Title Insurance Policy (if applicable);
- (e) Guarantee on Title (where applicable):
  - (i) British Columbia - State of Title Certificate
  - (ii) Alberta - Certified Copy of Title
  - (iii) New Brunswick - Certificate of Registered Ownership
  - (iv) Nova Scotia - Statement of Registered and Recorded Interest
  - (v) Manitoba - Status of Title
  - (vi) Saskatchewan - Certified Copy of Title
- (f) Surveyor's Certificate/Real Property Report/Certificate of Location/Building Location Certificate (if applicable);
- (g) Tax Certificate;
- (h) Well Certificate (if applicable);
- (i) If new home construction,
  - (i) a New Home Warranty Certificate (all provinces except Manitoba or Alberta)
  - (ii) for Manitoba: a New Home Warranty Certificate and a Possession Certificate
  - (iii) for Alberta: a Certificate of Possession
  - (iv) Well Driller's Certificate (all provinces, if applicable)
  - (v) Septic Certificate (all provinces, if applicable)
- (j) General Assignment of Rents and Leases (if applicable);
- (k) Articles and by-laws of the Mortgagor/Borrower/ grantor of security (as applicable);
- (l) Certificate of status/ compliance certificate dated \* in respect of the Borrower/Mortgagor/grantor of security (as applicable);
- (m) Certificate of the \* [identify officer(s) by title] of the Borrower/Mortgagor/grantor of security (as applicable) with respect to certain factual matters, upon which we have relied in respect of our opinion on *< insert >* (if applicable);
- (n) Fire Insurance Certificate issued by *<name of the insurer>*;
- (o) Acknowledgement from the Mortgagor(s) that the Mortgagor(s) has received a copy of the Collateral Mortgage/Immovable Hypothec along with a copy of the Standard Charge Terms Filing No. 4885352/1 (Manitoba), Filing No. 8520 (Ontario only) or Optional Covenants (New Brunswick only).
- (p) Executed Certificate of Independent Legal Advice from \_\_\_\_\_ in respect of *< identify guarantee/security >* [in the amount of \$amount (if Limited Guarantee)] (if applicable).
- (q) Executed General Security Agreement from *<name of grantor>* representing *<1st >* position (if applicable).
- (r) Executed [Unlimited/Limited] Guarantee of Advances from *<name of person / entity giving guarantee>* [limited to the amount of *<\$amount (if Limited Guarantee only~)>*] (if electronically registered, a signed guarantee of the Collateral Mortgage/ Immovable Hypothec Guarantor (not applicable in either British Columbia or Saskatchewan) (if applicable);
- (s) Copy of the written notice to all prior-ranking mortgagees (if applicable) with respect to not advancing additional funds, with post office receipt confirming its delivery via registered mail;
- (t) Consent of Landlord (if applicable); and
- (u) Confirmation of registrations of Collateral Mortgage/Immovable Hypothec and other security (if applicable).

**Identification Verification:**

We verified the identity of each Mortgagor, grantor of security, attorney, and signing officer(s) of corporate Borrower/Mortgagor(s) and grantor of security in accordance with the Bank's Instructions.

- (1) **Individuals.** Particulars of identification produced by each Mortgagor or grantor of security and, where applicable, Attorney and signing officer:

**Mortgagor/grantor/Attorney/Signing Officer Full Name:** \_\_\_\_\_  
**Date of Birth:** \_\_\_\_\_

Identification Viewed as per Appendix "A" - Identification Guidelines

**Type:** \_\_\_\_\_ **Number:** \_\_\_\_\_  
**Place of Issue:** \_\_\_\_\_ **Country of Issue:** \_\_\_\_\_  
**Expiry Date (if applicable):** \_\_\_\_\_ **Date viewed:** \_\_\_\_\_  
  
**Occupation:** \_\_\_\_\_

**Mortgagor/grantor/Attorney/Signing Officer Full Name:** \_\_\_\_\_  
**Date of Birth:** \_\_\_\_\_

Identification Viewed as per Appendix "A" - Identification Guidelines

**Type:** \_\_\_\_\_ **Number:** \_\_\_\_\_  
**Place of Issue:** \_\_\_\_\_ **Country of Issue:** \_\_\_\_\_  
**Expiry Date (if applicable):** \_\_\_\_\_ **Date viewed:** \_\_\_\_\_  
  
**Occupation:** \_\_\_\_\_

**Mortgagor/grantor/Attorney/Signing Officer Full Name:** \_\_\_\_\_  
**Date of Birth:** \_\_\_\_\_

Identification Viewed as per Appendix "A" - Identification Guidelines

**Type:** \_\_\_\_\_ **Number:** \_\_\_\_\_  
**Place of Issue:** \_\_\_\_\_ **Country of Issue:** \_\_\_\_\_  
**Expiry Date (if applicable):** \_\_\_\_\_ **Date viewed:** \_\_\_\_\_  
  
**Occupation:** \_\_\_\_\_

(2) **Corporations and other entities.** The corporation or entity's registration number, the type of record referred to and, where applicable, the source of the electronic record:

Name of Corporation of other entity:

Type of entity (e.g., corporation, partnership, other entity):

Registration Number:

Type of Record Referred to:

Source of the electronic version of the record

(must be a source which is accessible to the public) (if applicable):

Name of Corporation of other entity:

Type of entity (e.g., corporation, partnership, other entity):

Registration Number:

Type of Record Referred to:

Source of the electronic version of the record

(must be a source which is accessible to the public) (if applicable):

Solicitor:

Name:

Date:

Address:

Solicitor's Opinion

or

— Solicitor's Opinion under Western Law Societies Conveyancing Protocol (the "Protocol") (Only applies to British Columbia, Alberta, Saskatchewan and Manitoba) for Residential Properties

[NTD: The following Sections 1 through 4 apply to a Solicitor's Opinion and a Solicitor's Opinion under the Protocol]:

1. Scope of Opinion

1.1 We have been retained to act on <behalf of The Toronto-Dominion Bank (the "Bank")> - **or** - <on behalf of The Toronto-Dominion Bank (the "Bank") and <insert name of the Borrower> (the "Borrower")> - **or** - <on behalf of The Toronto-Dominion Bank (the "Bank") and <insert name of the Mortgagor> (the "Mortgagor")> in connection with <a> loan agreement<s> dated as of <date(s)> (the "Loan Agreement") arranged between the Borrower and the Bank, and in connection with the security documents contemplated by that Loan Agreement.

Examination of Documents

1.2 We have participated in the preparation, and/or have examined executed copies of:

[NTD: delete/ insert documents as applicable and insert particulars such as dates, etc.]

- (a) the Loan Agreement;
  - (b) the collateral charge/mortgage of land by the [Borrower/Mortgagor] in favour of the Bank in the principal amount of \$<> over the property municipally known as <insert address> (the "Property") and registered on <insert date> as instrument no. <insert instrument no.> (the "Collateral Mortgage") <may be deleted if title insurance is provided separately in respect of the collateral mortgage>;
  - (c) the general security agreement by <insert name of grantor> in favour of the Bank
  - (d) the Guarantee from [insert Name of guarantor] in favour of the Bank; and
  - (e) <list other security documents as applicable>
- (collectively, the "Loan Documents").

1.3 We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we considered necessary or relevant for purposes of the opinions expressed below, including:

<NTD: Solicitor should list documents reviewed for purposes of the opinion with respect to the applicable parties/entities [Borrower/ Mortgagor/ grantor(s) of security] - listed below are examples>

- (a) the articles and by-laws of <insert applicable entity/ entities>;
- (b) a resolution of the board of directors of <insert applicable entity/ entities>] authorizing, among other things, the execution, delivery and performance of the Loan Documents;
- (c) a certificate of [status/compliance] dated <insert date> issued in respect of [each of] <insert applicable entity/ entities>] pursuant to [insert relevant incorporation statute(s)], a copy of which has been delivered to the Bank [NTD - or in the case of an entity other than a corporation, a copy of the partnership agreement, declaration of trust, articles of association or other similar record that ascertains the existence of such entity, a copy of which has been delivered to the Bank];
- (d) a certificate of the \*[identify officer(s) by title] of <insert applicable entity/entities> with respect to certain factual matters, [a copy/ copies] of which [has/have] been delivered to the Bank;
- (e) <insert particulars of any applicable shareholders agreement or unanimous shareholders declaration>

Searches and Registrations

1.4 We have conducted, or have caused to be conducted, those searches which we consider to be necessary or desirable, current as of the dates indicated in the attached Schedule "A" (which we note may not be the same date as this opinion) for filings, registrations or recordings (collectively, the "Searches") made against [*<the Borrower> <and/or Mortgagor> <and/or insert name of grantor(s) of security>*] (collectively, the "Searched Entities") at the public offices maintained by the governmental agencies specified in Schedule "A".

The Searches disclosed no bankruptcy filing in respect of *<the Borrower OR the Searched Entities>* [NTD: *insert whichever is applicable*]. The only registrations, filings or recordings against *<the Borrower OR the Searched Entities>* [NTD: *insert whichever is applicable*] disclosed by the Searches, if any, are set out in the attached Schedule "A". We have also noted, in cases where we have identified competing secured creditors, those registrations for which we have obtained a subordination or a PPSA estoppel letter from such creditor in favour of the Bank.

The Searches were conducted against the current name [and all former names] of *<the Borrower OR the Searched Entities>* [NTD: *insert whichever is applicable*] [and of its/ their respective predecessors by amalgamation or arrangement], including both the English and French versions, except for the bankruptcy searches described in Schedule "A", which were conducted against the current name of *<the Borrower OR the Searched Entities>* [NTD: *insert whichever is applicable*], including both the English and French versions.

1.5 On behalf of the Bank, we have registered in [*insert province*] pursuant to the PPSA the following financing statements with respect to the security interests created by the Loan Documents:

Debtor	Registration Date and Registration No.	Registration Period	Collateral Type [and Description - NTD: <i>for provinces other than Ontario</i> ]

Assumptions

- 1.6 We have made the following assumptions:
- (a) with respect to the Loan Documents examined by us, the genuineness of all signatures, the legal capacity of individuals signing any documents, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed, telecopied or photocopied copies; and
  - (b) the certificate[s] of *<status/ compliance>* with respect to *<insert applicable entity/ entities>* referred to above continue[s] to be accurate as of the date of this opinion as if issued on that date.

Laws Addressed

- 1.7 This opinion is limited to the laws of the Province of *<insert applicable Province>* and the applicable federal laws of Canada. Without limiting the generality of the immediately preceding sentence, we express no opinion with respect to the laws of any other jurisdiction to the extent that those laws may govern the validity, perfection, effect of perfection or non-perfection or enforcement of the security interests created by the Loan Documents as a result of the application of conflict of laws.
2. **Opinion** [NTD - *if the Borrower/Mortgagor/grantor of security as applicable, is not a corporation, include each of the Opinions below with the necessary contextual changes*]

Based upon and subject to the foregoing, and to the qualifications expressed below, we are of the opinion that:

#### *Corporate Opinions*

- 2.1 [Each of] *<insert applicable entity/ entities>* is incorporated and existing under the *<insert relevant incorporation statute>* and registered in the provincial jurisdiction(s) in which it operates.
- 2.2 [Each of] *<insert applicable entity/ entities>* has the corporate power and capacity to carry on [its] business [as presently conducted], to own [its] properties and assets, including the Property, and to execute, deliver and perform its obligations under the Loan Documents.
- 2.3 [Each of] *<insert applicable entity/ entities>* has taken all necessary corporate action to authorize the execution, delivery and performance by it of each of the Loan Documents, and *<insert applicable entity/ entities>* [has/ have each] duly executed and delivered each of the Loan Documents.

#### *Non-contravention and No Breach Opinion*

- 2.4 The execution, delivery and performance of each of the Loan Documents by [each of] *<insert applicable entity/ entities>* does not:
- (a) breach or result in a default under the articles or by-laws of *<insert applicable entity/ entities>*, or any law, statute, rule or regulation to which the *<insert applicable entity/entities>* [is/are] subject or any other agreements of which we are aware;
  - (b) result in the creation of any security interest, lien or encumbrance on any of the *<insert applicable entity/entities>* property other than the security interests in favour of the Bank created by the Loan Documents.

#### *Regulatory Approval Opinion*

- 2.5 No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution, delivery and performance of any of the Loan Documents by *<insert applicable entity/ entities>*.

#### *Title Opinions*

- 2.6 [The Borrower /Mortgagor] has good and marketable title in fee simple/leasehold interest (where applicable) to the Property free and clear of all encumbrances whatsoever, except for the Collateral Mortgage in favour of the Bank, in *<first>* position and the encumbrances etc., listed on Schedule "B" attached hereto which do not affect the priority of the Collateral Mortgage or the marketability of the Property;
- 2.7 The Bank has a good and valid *<first>* Collateral Mortgage on the Property for the full amount of the monies advanced and to be advanced pursuant to the Loan Agreement;

#### *Survey [NTD: Insert applicable paragraph from options below]*

- 2.8 (i) The Survey/Surveyor's Certificate/Real Property Report/Certificate of Location/Building Location Certificate and the Zoning Memorandum (where applicable) show that the Property complies with all municipal, provincial and other government requirements, and that all zoning and other restrictions have been complied with and that all buildings on the Property are within the boundaries of the Property; or
- (ii) a Survey/Surveyor's Certificate/Real Property Report/Certificate of Location/Building Location Certificate is not available and we have (1) satisfied ourselves that the position of the building on the Property complies with all municipal, provincial and government requirements; and (2) obtained declarations of possession/statutory declarations for not less than the immediately preceding ten continuous years indicating that no changes have been made to the Property and there have been no disputes regarding the Property; or
- (iii) this opinion is given in accordance with the Protocol; or
- (iv) the Survey requirement has been waived by the Bank.

*Condominium Act Opinion (if the Property is a condominium)*

- 2.9 The [Status Certificate (for Ontario)/Certificate of Payment (for British Columbia)/Estoppel Certificate (for Alberta, Saskatchewan, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland)/Status Certificate (for Manitoba)] *[NTD: delete those that do not apply]* is satisfactory and discloses no risks to the Bank that have not otherwise been accepted in writing by the Bank.

*Planning Act Opinion (for Ontario only, if title insurance is not obtained)*

- 2.10 The Collateral Mortgage does not contravene the provisions of the *Planning Act* (Ontario) as amended from time to time.

*Enforceability Opinion (NTD: not required in connection with the Bank's standard form security documents unless changes have been made by the Borrower/Mortgagor or the solicitor to those standard security documents)*

- 2.11 Each of the Loan Documents constitutes legal, valid and binding obligations [of /each of] *<insert applicable entity/ entities>*, [as the case may be,] enforceable against [it/each of them] in accordance with its [respective] terms.

*Registration Opinion*

- 2.12 All necessary filings, records, registrations of, or, in respect of the Loan Documents, have been effected in all jurisdictions and under all registries where we consider it to be necessary or desirable to preserve, protect or perfect the security interests granted to the Bank under the Loan Documents. *[NTD - if registration is effected by the Bank then delete the above opinion and insert the following: "We have identified below all of the registrations, recordings and/or filings together with the appropriate registry/jurisdiction which we consider to be necessary or desirable to preserve, protect or perfect the security interests granted to the Bank under the Loan Documents. We express no opinion with respect to the actual registration of the Loan Documents or the date and time of such registration as we understand that the registrations will be effected by representatives of the Bank"]*

*Security Interest Opinion*

- 2.13 Each of the Loan Documents create a valid security interest in favour of the Bank in the collateral described in the Loan Documents in which *<insert applicable entity/ entities>*now [has/have] rights and is sufficient to create a valid security interest in favour of the Bank in any collateral described in the Loan Documents in which *<insert applicable entity/ entities>*hereafter acquires rights when those rights are so acquired.

*Financial Administration Act Opinion*

- 2.14 We have taken all necessary steps, including without limitation, obtaining the approvals required under the *Financial Administration Act*, to ensure that the Loan Documents and, if applicable, the assignment of Federal Crown debts are effective and in compliance with the *Financial Administration Act*.

*Protocol Opinion (if this opinion is given in accordance with the Protocol)*

- 2.15 (a) We have complied with the Protocol for the province in which the Property is located and have acted and issued this opinion in accordance with the Bank's Solicitor's Engagement Letter with respect to the Collateral Mortgage subject to any qualifications noted below, which have been accepted by the Bank in writing.
- (b) We also agree that if there is:
- (i) an intervening registered encumbrance or an unregistered encumbrance of which we are aware which takes priority over the Collateral Mortgage contrary to the Bank's instructions in the Solicitor's Engagement Letter; or
  - (ii) a survey problem or defect which would have been disclosed by an appropriate Surveyor's Certificate prepared prior to the disbursement of the Collateral Mortgage funds, then we will be responsible to the Bank for any actual losses (including the cost of repairs) that the Bank suffers as a result.
- (c) We maintain minimum insurance coverage at least equal to the face amount of the Collateral Mortgage.



3. Qualifications

The opinions expressed herein are subject to the following qualifications:

- (1) Enforcement of the Loan Documents may be limited by the insolvency provisions of the *Bankruptcy and Insolvency Act* and by laws of general application affecting creditor's rights as the same would be applied to <insert applicable entity/ entities>.
- (2) The availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which proceedings therefore may be brought to enforce the Loan Documents.

4. Reliance

This opinion may be relied upon by the Bank, its successor and permitted assigns, and its legal counsel for the purposes of the transaction contemplated by this opinion. It may not be relied upon by any other person or for any other purpose, nor may it be quoted in whole or in part or otherwise referred to, without our prior written consent.

[insert name of Solicitor/ Law Firm, as applicable]

\_\_\_\_\_  
(signature)

SCHEDULE "A"

SEARCH RESULTS

Searched Entities: <List all names searched>

- <Name of registry searched and currency date of search> [NTD -examples listed below]:
  - (a) proceedings under the Bankruptcy and Insolvency Act (Canada) as of [insert date, 20\_\_] recorded in the Office of the Superintendent of Bankruptcy;
  - (b) Personal Property Security Act [NTD - insert applicable statute] with a currency date of ▪ [insert date ] (the "PPSA");
  - (c) filings made under the Execution Act [NTD - insert province] as recorded in the office of the Sheriff of the [NTD - insert region or municipality] as of [insert date]; and
  - (d) notices of Intention regarding security under Section 427 of the Bank Act registered with the Bank of Canada in [insert Province] as of [insert date].
- < List each name searched and set out/summarize the corresponding search results for the above searches (a) through (d) [and any other applicable searches for the jurisdiction]. If a search reveals no liens/registrations insert: "NIL" for that search result>

Title Insurance Information:

Insurance issued by: \_\_\_\_\_ (the "Title Insurer")

As of the Date of the Policy below, the Collateral Mortgage/Immovable Hypothec was insured. The Collateral Mortgage/Immovable Hypothec was registered on the Date of Registration shown below. The Title Insurer confirms that a policy has been issued in accordance with the Bank's instructions, and the policy, Certificate of Insurance or Extension Certificate, as applicable, is attached to this Final Report with the following particulars, and such particulars shall be deemed to be Schedule "A" to the policy and any additional Schedule "B" exceptions to coverage.

Certificate Number: \_\_\_\_\_

Amount of Insurance: \$ \_\_\_\_\_

Priority: \_\_\_\_\_

Date of Policy: \_\_\_\_\_

Date of Registration: \_\_\_\_\_

Name of Insured: \_\_\_\_\_

The estate or interest in the Property which is covered in this Policy is:

- ☐ Fee Simple
- ☐ Leasehold
- ☐ Other: \_\_\_\_\_

Title to the estate or interest in the Property is held by: \_\_\_\_\_

The Property referred to in this policy is as set out above.

Schedule "B" exceptions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



\_\_\_ Solicitor's Opinion

or

\_\_\_ Solicitor's Opinion under Western Law Societies Conveyancing Protocol (the "Protocol") (Only applies to British Columbia, Alberta, Saskatchewan and Manitoba)

We have acted as counsel for <insert name of the Borrower> (the "Borrower")> - **or** - <insert name of the Mortgagor> (the "Mortgagor")> in connection with financing to be arranged between <insert name of the Borrower> and The Toronto-Dominion Bank (the "Bank"), and specifically in connection with a collateral mortgage contemplated by that financing arrangement.

Examination of Documents

We have participated in the preparation, and/or have examined executed copies of the collateral charge/mortgage of land by the [Borrower/Mortgagor] in favour of the Bank in the principal amount of \$ \_\_\_\_\_ over the property municipally known as <insert address> (the "Property") and registered on <insert date> as instrument no. <insert instrument no.> (the "Collateral Mortgage").

Opinion

We are of the opinion that

- (a) The [Borrower/Mortgagor(s)] have good and marketable title in fee simple/leasehold interest (where applicable) to the Property free and clear of all encumbrances whatsoever except for the Bank Collateral Mortgage in \_\_\_\_\_ position and the encumbrance, etc. listed in Schedule "A" attached hereto which do not affect the priority of the Bank Collateral Mortgage or the marketability of the Property.
- (b) The Bank has a good and valid \_\_\_\_\_ Collateral Mortgage on the Property for the full amount of the monies advanced;
- (c) (i) The Survey/Surveyor's Certificate/Real Property Report/Certificate of Location/Building Location Certificate or other satisfactory evidence shows that the Property complies with all municipal provincial and other government requirements, and that all zoning and other restrictions have been complied with and that all buildings on the Property are within the boundaries of the Property; or (ii) a Survey/Surveyor's Certificate/Real Property report/Certificate of Location/Building Location Certificate is not available and I have (1) satisfied myself that the position of the building on the land complies with all municipal, provincial and government requirements; and (2) obtained declarations of possession/statutory declarations for not less than the immediately preceding ten continuous years indicating that no changes have been made to the Property and there have been no disputes regarding the property; or (iii) this opinion is given in accordance with the Protocol;
- (d) **if the Property is located in Ontario:** on the date of the final disbursement of the funds, executions/judgements were searched in the applicable Registry Office against the Vendor (if applicable), Mortgagor(s) and Guarantor(s), and the same were clear (performed where applicable). It is our opinion that the Collateral Mortgage does not contravene the provisions of the Planning Act as amended from time to time;
- (e) **if the Property is located in Quebec:** the Mortgagor(s) Deed of Purchase does not include an unpaid balance of sale in favour of the Vendor;
- (f) **if the Property is a condominium:** the Status Certificate/Certificate of Payment/Estoppel Certificate/Disclosure Certificate is satisfactory and discloses no risks to the Bank that have not otherwise been accepted in writing by the Bank;

(g) if this opinion is given in accordance with the Protocol;

- 1. We have complied with the Protocol for the province in which the Property is located and have acted and issued this opinion in accordance with the Bank's Instructions with respect to the Collateral Mortgage subject to any qualifications noted below, which have been accepted by the Bank in writing.
- 2. We also agree that if there is:
  - (a) An intervening registered encumbrance or an unregistered encumbrance of which we are aware which takes priority over the Collateral Mortgage contrary to the Instructions; or
  - (b) A survey problem or defect which would have been disclosed by an appropriate Surveyor or Surveyor's Certificate/Real Property Report/Certificate of Location/Building Location Certificate prepared prior to the disbursement of Collateral Mortgage funds, then we will be responsible to the Bank for any actual losses (including the cost of repairs) that the Bank suffers as a result.
- 3. We maintain minimum insurance coverage at least equal to the face amount of the Collateral Mortgage.

*[insert name of Solicitor/ Law Firm, as applicable]*

\_\_\_\_\_  
(signature)

**ADDITIONAL SOLICITOR'S/NOTARY'S INSTRUCTIONS**

**Special Instructions for CMHC/GEMICO Insured Second Ranking Mortgages**

If the Mortgage or Hypothec is a second-ranking mortgage and is CMHC/GEMICO Insured (refer to the Instruction Letter for transaction details) immediately following its registration, the Bank will require you to complete and send to all prior-ranking mortgagees written notice of the existence and registration of the Mortgage or Hypothec and the interest of the Bank in the property. The form of the notice is attached below. The written notice should be transmitted to the prior-ranking mortgagee(s) via registered mail and a copy of written notice with the post office receipt should be included in your Solicitor's Final Report on Title.

From:

Date:

To:

Re:     Mortgagor(s):  
          Address of Property:  
          Legal Description (the "Property"):

And Re: Your mortgage/hypothec of the Property, registered on \_\_\_\_\_ as Instrument No. \_\_\_\_\_.

The Toronto-Dominion Bank ("TD Bank") has received a second-ranking mortgage or hypothec of the Property (the "TD Mortgage"). The TD Mortgage or Hypothec was registered on title to the Property on \_\_\_\_\_ as Instrument No. \_\_\_\_\_. TD Bank's mortgage reference number for the TD Mortgage or Hypothec is \_\_\_\_\_.

TD Bank hereby gives you notice of the TD Mortgage or Hypothec. The TD Mortgage or Hypothec gives TD Bank the benefit of an interest in the Property.

TD Bank's interest in the Property may entitle it to certain rights under your mortgage or hypothec. These rights may include, without limitation, a right to a copy of any notice of default under your mortgage or hypothec, a right to remedy any default under your mortgage or hypothec, a right to redeem your mortgage or hypothec, and a right upon repayment of your mortgage or hypothec to take an assignment or transfer of it. This notice may also prevent you from obtaining priority over the TD Mortgage or Hypothec for any further advance(s) under your mortgage or hypothec, or for any increase, or other amendment that will increase the principal balance owing under your mortgage or hypothec, without the prior consent of TD Bank.

TD Bank also gives you notice that the owner has (or owners have) agreed with TD Bank not to do anything that increases the principal balance owing under your mortgage or hypothec. You may lose any priority or be liable to TD Bank if any actions taken by you after receipt of this notice contribute to any breach of TD Bank's agreement with the owner.

If you have any questions or comments, you may contact TD Bank at the following address:

Yours truly,

Name of Barrister &amp; Solicitor:



Province  
of  
Ontario

# Charge/Mortgage of Land

TD Reference No.

B

Form 2 - Land Registration Reform Act, 1984

FOR OFFICE USE ONLY

New Property Identifiers

Additional:  
See  
Schedule

Executions

Additional:  
See  
Schedule

(1) Registry

Land Titles

(2) Page 1 of pages

(3) Property Identifier(s)

Block

Property

Additional:  
See  
Schedule

(4) Principal Amount

Dollars \$

(5) Description

(6) This Document Contains:

(a) Redescription  
New Easement  
Plan/Sketch

(b) Schedule for:  
Description

Additional Parties

Other

X

(7) Interest/Estate Charged

(8) Standard Charge Terms - The parties agree to be bound by the provisions in Standard Charge Terms filed as number 8520 and the Chargor(s) hereby acknowledge(s) receipt of a copy of these terms.

(9) Payment Provisions

(a) Principal Amount \$

(b) Interest Rate

see Schedule 1

(c) Calculation Period

see Schedule 1

(d) Interest Adjustment Date

Y

XXXX

M

XX

D

XX

(e) Payment Date and Period

ON DEMAND

(f) First Payment Date

Y

XXXX

M

XX

D

XX

(g) Last Payment Date

XXXX

XX

XX

(h) Amount of Each Payment

x x x x x x x x x x x x x x x x

Dollars \$

x x x x x x x x

(i) Balance Due Date

XXXX

XX

XX

(j) Insurance

see paragraph 3 (f) in Standard Charge Terms

Dollars \$

x x x x x x x x

(10) Additional Provisions

Continued on Schedule

(11) Chargor(s) The chargor hereby charges the land to the chargee and certifies that the chargor is at least eighteen years old and that

The chargor(s) acknowledge(s) receipt of a true copy of this charge.

Name(s)

Signature(s)

Date of Signature

Y

M

D

(12) Spouse(s) of Chargor(s) I hereby consent to this transaction.

Name(s)

Signature(s)

Date of Signature

Y

M

D

(13) Chargor(s) Address for Service

(14) Chargee(s)

THE TORONTO-DOMINION BANK

(15) Chargee(s) Address for Service

(16) Assessment Roll Number of Property

Cty.

Mun.

Map

Sub.

Par.

(17) Municipal Address of Property

(18) Document Prepared by:

FOR OFFICE USE ONLY

Fees

Registration Fee

Total





# Schedule 1

Additional Property Identifier(s) and/or Other Information

This is a Schedule to a Charge made between  
  
and THE TORONTO-DOMINION BANK.

- Box (9)(b)

The Chargor hereby agrees to pay interest on the Principal Amount at the following Interest Rate:

  - the Bank's Prime Rate plus \_\_\_\_\_ % per annum. "Prime Rate" means the rate of interest per annum established and reported by the Bank to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of credit worthiness in Canada for Canadian dollar loans made by it in Canada.
- Box (9)(c)

Interest at the Interest Rate aforesaid is calculated and payable monthly, not in advance, before and after demand, default and judgment. Interest is payable on overdue interest and on Indebtedness payable under this Charge at the aforesaid Interest Rate. Any payment appropriated as a permanent reduction of this Charge shall be first applied against interest accrued hereunder.

This set of **STANDARD CHARGE TERMS** shall be deemed to be included in every Charge in which the set is referred to by its filing number, as provided in section 9 of the above Act.

**1. Definitions**

In this set of Standard Charge Terms:

- (a) **Bank** means The Toronto-Dominion Bank.
- (b) **Charge** means this Charge/Mortgage of Land made pursuant to the Land Registration Reform Act, 1984 and any amendments thereto, to which the Chargor and the Chargee are parties and which is dated as of the Date of Signature of the first named Chargor who signs the Charge.
- (c) **Chargee** means the Bank.
- (d) **Chargor** means each Chargor described in this Charge.
- (e) **Costs** means the fees, costs, charges and expenses of the Bank of and incidental to:
  - (i) the preparation, execution and registration of the Charge and any other instruments connected herewith;
  - (ii) the collection, enforcement, realization of the security herein contained;
  - (iii) procuring payment of the Indebtedness due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Bank or any other party;
  - (iv) any inspection required to be made of the Property;
  - (v) all necessary repairs required to be made to the Property;
  - (vi) the Bank's having to go into possession of the Property and secure, complete and equip the building or buildings in any way in connection therewith;
  - (vii) the Bank's renewal of any leasehold interest;
  - (viii) the exercise of any of the powers of a receiver contained herein; and
  - (ix) all solicitor's costs, costs and expenses of any necessary examination of the title to and of valuation of the Property.Costs shall:
  - (i) extend to and include legal costs incurred by the Bank as between solicitor and his own client;
  - (ii) be payable forthwith by the Chargor; and
  - (iii) be a charge on the Property.
- (f) **Fixtures** include, but are not limited to, furnaces, boilers, oil burners, stokers, water heaters, electric light fixtures, screen and storm doors and windows, air conditioning, plumbing, cooling and heating equipment and all apparatus and equipment appurtenant to the Property.
- (g) **Indebtedness** means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, wheresoever or howsoever incurred from or by the Chargor, as principal or surety, whether alone or jointly with any other person and in whatever name style or firm, whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.
- (h) **Interest Rate** means the Interest Rate set out in Schedule 1 to this Charge.
- (i) **Principal Amount** means the Principal Amount in lawful money of Canada set out in this Charge.
- (j) **Property** means the property identified in this Charge by the Property Identifier(s) and described in the Description therein and in a Schedule to this Charge, if required, and includes all buildings, Fixtures and improvements now or hereafter brought or erected thereon.

- (k) **Spouse of Chargor** means each Spouse of Chargor described in this Charge.
- (l) **Taxes** means all taxes, rates and assessments, municipal, local, parliamentary or otherwise.

If the Property is a condominium unit, the following definitions apply:

- (m) **Condominium Corporation** means the Condominium Corporation which was created by the registration of the Declaration and the description relating thereto of which the Property hereby charged constitutes a part.
- (n) **Common Expenses** means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Condominium Act (Ontario), as amended from time to time or in the Declaration.
- (o) **Declaration** means the Declaration which, together with a description, was registered pursuant to the Condominium Act, to create the Condominium Corporation.

## 2. Charge of Property

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor,

- (a) if the Property is a freehold property, hereby charges the Property to the Bank; or
- (b) if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all of the obligations of the Chargor in the manner provided by this Charge.

## 3. Covenants of the Chargor

The Chargor hereby covenants with the Bank that:

- (a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;
- (b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;
- (c) The Chargor has the right to charge the Property to the Bank;
- (d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;
- (e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;
- (f) The Chargor will insure the Property to an amount of not less than the Principal Amount PROVIDED that if and whenever such amount be greater than the insurable value of the buildings, Fixtures and improvements now or hereafter brought or erected upon the Property, such insurance shall not be required in any greater amount than such insurable value and if and whenever the same shall be less than the insurable value the Bank may require such insurance to the full replacement value. It is further agreed that the Bank may require any insurance hereunder to be cancelled and new insurance effected by an insurer to be approved by it and also may of its own accord effect or maintain any insurance herein provided for and any amount paid by the Bank therefor shall be payable forthwith to the Bank with interest at the Interest Rate by the Chargor and shall be a charge upon the Property;
- (g) The Chargor will in each year within ten (10) days after the Taxes become due and payable produce to and leave with the Bank the duly receipted tax bills for that year covering the Property;
- (h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and
- (i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

#### **4. Additional Covenants if Property is a Leasehold Interest**

The Chargor covenants with the Bank that:

- (a) The Chargor has a good leasehold title to the Property;
- (b) The Chargor has a right to charge and sublet the leasehold title to the Property to the Bank in the manner herein provided, and, if required, has obtained the lessor's consent to this Charge;
- (c) Neither the Chargor nor any other person has heretofore made, done, committed or suffered any act to encumber the lease or any part thereof;
- (d) The lease is a good, valid and subsisting lease and not surrendered, forfeited, amended or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Chargor up to the Date of Signature of the Chargor;
- (e) During the continuance of this Charge, the Chargor will not amend, surrender or modify the lease without the written consent of the Bank and will pay the rent reserved by the lease and perform and observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Bank indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto; and
- (f) The Chargor will stand possessed of the Property for the last day of the term or any renewal term granted by the lease in trust for the Bank, and will assign and dispose thereof as the Bank may direct, but subject to the same right of redemption and other rights as are hereby given to the Chargor with respect to the derivative term hereby granted.

#### **5. Repair and Maintenance of Property**

The Chargor covenants with the Bank that the Chargor will keep the Property in good condition and repair. The Bank may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Chargor shall pay the Costs associated therewith. If the Chargor or anyone claiming under him neglects to keep the Property in good condition and repair or commits any act of waste on the Property or does anything by which the value of the Property shall be diminished, as to all of which the Bank shall be sole judge, or makes default as to any of the covenants or provisos herein contained, the Indebtedness shall, at the option of the Bank, forthwith become due and payable. In default of payment thereof the powers of entering upon and leasing or selling hereby given may be exercised forthwith, and the Bank may make such repairs as it deems necessary and the Costs thereof shall be paid by the Chargor.

#### **6. Obligation to Build Diligently**

The Chargor covenants with the Bank that if the Chargor fails at any time for a period of ten days to diligently carry on the work of construction of any building or buildings being or to be erected on the Property or, without the consent in writing of the Bank, departs in such construction from any plans and specifications thereof which must be approved by the Bank or from the generally accepted standards of construction in the locality of the Property, or permits any construction or other lien to be registered against the Property for any period exceeding thirty days, the Bank at its option at any time thereafter through its agents or contractors may enter the Property and have exclusive possession thereof and of all materials, plant, gear and equipment thereon free of interference from or by the Chargor and complete the construction of the building or buildings either according to the said plans and specifications or according to other plans, specifications or design as the Bank in its absolute discretion shall elect. All Costs in connection therewith shall be payable by the Chargor.

#### **7. Remedies on Default of Chargor**

It is hereby provided that:

##### **(a) Power to Lease or Sell Property**

The Bank on default of payment of the Indebtedness or any portion thereof for the minimum default period on giving the minimum notice, according to applicable law, may enter on, lease or sell the Property. Provided further that on default of payment for the minimum default period, according to applicable law, the foregoing power of entry, leasing and selling may be exercised by the Bank without any notice whatsoever.

##### **(b) Rights of Bank in Sale of Property**

- (i) The Bank in the event of default by the Chargor in payment of the Indebtedness or any portion thereof may sell the Property or any part thereof or, if the Property is a leasehold interest, sell the unexpired term of years demised by the lease or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor and on such terms as to credit and otherwise and with such conditions of sale as it shall in its discretion deem proper, and in the event of any sale on credit or for cash or for part cash and part credit, the Bank shall not be accountable for or be charged with any monies until actually received by it. The Bank may rescind or vary any contract or sale and may buy in and re-sell the Property or any part thereof without being answerable for loss occasioned thereby; and no purchaser shall be bound to enquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale hereunder, but the Bank alone shall be responsible. The Bank may sell without entering into actual possession of the Property and while in possession shall be accountable only for monies which are actually received by it and sales may be made by it from time to time of parts of the Property to satisfy any portion of the Indebtedness, leaving the residue thereof secured hereunder on the remainder of the Property, or may take proceedings to sell and may sell the Property or any portion of the Property subject to the balance of the Indebtedness not yet due at the time of the said sale.

- (ii) Disposition of Leasehold Property - If the Property is a leasehold interest, the Chargor hereby irrevocably appoints the Bank as the Chargor's substitute to be the Chargor's attorney during the continuance of this security. In the event of default and on giving the notice contemplated herein to the Chargor for and on behalf of the Chargor, the Bank may assign the lease and convey the Property and the last day of the term granted by the lease as the Bank shall at any time direct, and in particular, upon any sale made by the Bank under the statutory power or power of sale herein contained, to assign the lease and convey the Property and the said reversion to the purchaser. It is hereby declared that the Bank or other person for the time being entitled to the Indebtedness may at any time, by deed, remove the Chargor or any other person from being a trustee of the lease under the declaration of trust hereinbefore declared and on the removal of the Chargor or any future trustee of the lease, appoint a new trustee or trustees in the Chargor's place.
- (iii) If the Property is a leasehold interest, the Chargor will, with respect to the lease, at the request of the Bank, but at the cost, charge and expense of the Chargor, grant and assign unto the Bank, or the person whom it may appoint, the last day of the said term hereinbefore excepted or any renewal or substituted term; and further, in the event of the Bank making any sale under the power of sale herein contained the Chargor shall stand seized and possessed of the Property for the last day of the said term hereinbefore excepted, and of any renewal or substituted term, and of all rights of renewal in trust for the purchaser or purchasers, his or their heirs, executors, administrators, successors and assigns.

**(c) Costs of Sale of Property**

The Costs of any sale proceedings hereunder, whether such sale proves abortive or not, incurred in taking, recovering or keeping possession of the Property or in enforcing the personal remedies under this Charge or by reason of non-payment or in procuring payment of the Indebtedness shall be payable by the Chargor whether any action or proceeding has commenced or not.

**8. Appointment of Receiver**

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank 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 Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;
- (d) The receiver so appointed shall have power to:
  - (i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;
  - (ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and
  - (iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;
- (e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.

**9. Taking Possession of Personal Property**

The Bank may distrain for arrears of any portion of the Indebtedness. The Chargor hereby waives the right to claim exemption and agrees that the Bank shall not be limited to the amount for which it may distrain.

**10. Quiet Possession**

Until default of payment the Chargor shall have quiet possession of the Property.

## **11. Release of Property by Bank**

It is hereby agreed by the Chargor that the Bank may at its discretion at all times release any part or parts of the Property or any other security or any surety for the Indebtedness or any portion thereof either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the Property or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Bank, it being expressly agreed that every part or lot into which the Property is or may hereafter be divided does and shall stand charged with the whole of the Indebtedness.

No extension of time given by the Bank to the Chargor, or any one claiming under the Chargor or any other dealing by the Bank with the owner or owners of the Property or of any part thereof shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable for the payment of the Indebtedness or any portion thereof.

## **12. Payment of Other Charges and Performance of Other Obligations by Bank**

The Chargor hereby agrees that:

- (a) The Bank may satisfy any charge now or hereafter existing or to arise or be claimed upon the Property and the amount so paid shall be added to the Indebtedness and bear interest at the Interest Rate and shall be payable forthwith by the Chargor to the Bank and in default of payment, the Indebtedness shall become payable and the powers of sale hereby given may be exercised forthwith without any notice. And in the event of the Bank satisfying any such charge or claim, it shall be entitled to all equities and securities of the person or persons so satisfied and it may retain any discharge or cessation of charge unregistered until paid; and
- (b) If the Property is a leasehold interest, and if the Chargor shall refuse or neglect to renew the lease or any renewals thereof granted hereafter, then, and as often as it shall happen, the Bank may, effect such renewals in its own name or otherwise, and every renewal of the lease and the Property thereby demised shall remain and be security to the Bank for the Indebtedness. All Costs in connection therewith shall be payable by the Chargor.

## **13. Sale or Transfer of Property by Chargor**

The Chargor covenants and agrees with the Bank that:

- (a) The Chargor will not without the prior consent in writing of the Bank, sell, transfer or otherwise dispose of the Property or any portion thereof or any interest therein; and, in the event of such sale, transfer or other disposition, without the consent of the Bank, the Indebtedness hereby secured shall, at the option of the Bank, forthwith become due and payable; and
- (b) If the Property is a leasehold interest, no sale or other dealing by the Chargor with the lease or the Property or any part thereof or any other dealing by the Bank with the lease or the Property or any part thereof, shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable to repay the Indebtedness hereby secured.

## **14. Charge Not a Substitute For Any Other Security**

It is hereby expressly agreed by the Chargor that this Charge shall not create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Bank, whether from the Chargor or any other party or parties whomsoever and this Charge shall not in any way affect any security held or which may hereafter be held by the Bank for the Indebtedness or any portion or portions thereof or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Bank for or on account of the Indebtedness or any portion or portions thereof nor shall the remedies of the Bank in respect thereof be affected in any manner whatsoever.

## **15. Judgments**

The taking of a judgment or judgments against the Chargor on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Bank's rights to interest on the Indebtedness at the Interest Rate, and further that any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment shall have been fully paid and satisfied.

## **16. Bank May appropriate Payments to Any Debt**

It is hereby agreed that the Bank shall have the right at any time to appropriate any payment made as a temporary or permanent reduction of any portion of the Indebtedness whether the same be represented by open account, overdraft or by any bills, notes or other instruments and whether then due or to become due and may from time to time revoke or alter such appropriation and appropriate such payment as a temporary or permanent reduction of any other portion of the Indebtedness as in its sole and uncontrolled discretion it may see fit.

## **17. Charge Continuing Security**

It is hereby agreed that this Charge may secure a current or running account and shall stand as a continuing security to the Bank for the payment of the Indebtedness and all interest, damages and Costs which may become due or payable to the Bank notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the bills, notes or other obligations now or hereafter representing the same or any portion thereof or in the names of the parties to the said bills, notes or obligations or any of them.

## **18. Additional Covenants if Property is a Condominium Unit**

The Chargor covenants with the Bank that:

- (a) The Chargor will promptly observe and perform all obligations imposed on the Chargor by the Condominium Act as enacted from time to time, and by the Declaration, the By-laws and the Rules, as amended from time to time, of the Condominium Corporation, by virtue of the Chargor's ownership of the Property. Any breach of the said duties and obligations shall constitute a breach of covenant under this Charge;
- (b) Without in any way limiting or restricting the generality of the foregoing:
  - (i) The Chargor will pay promptly when due any contributions to Common Expenses required of the Chargor as an owner of the Property;
  - (ii) The Chargor will transmit to the Bank forthwith upon the demand of the Bank satisfactory proof that all Common Expenses assessed against or in respect of the said Property have been paid as assessed;
  - (iii) The Bank may put out of and deduct from any advance of the Principal Amount secured hereunder all contributions to the Common Expenses assessed against or in respect of the said Property which have become due and payable and are unpaid at the date of such advance; and
  - (iv) Whenever and so long as the Bank so requires the Chargor shall on or before the date when any sum becomes payable by the Chargor in respect of Common Expenses pay such sum to the Bank. The Bank shall forthwith on receipt thereof remit all such sums to the Condominium Corporation on behalf of the Chargor or as the Condominium Corporation may from time to time direct;
- (c) The Bank by accepting delivery of and registering this Charge authorizes and empowers the Chargor to vote or consent or not to consent respecting all matters relating to the affairs of the relevant Condominium Corporation provided that:
  - (i) The Bank may at any time upon written notice to the Chargor and the Condominium Corporation revoke this authorization;
  - (ii) The Bank shall not be under any obligation to vote or consent or not to consent as aforesaid to protect the interest of the Chargor; and
  - (iii) The exercise by the Bank of its right to vote or consent or not to consent as aforesaid shall not constitute the Bank a mortgagee in possession.

## **19. Assignment of Rents**

The Chargor hereby agrees with the Bank as follows:

- (a) The Chargor hereby assigns and sets over to the Bank all rents payable from time to time under all leases of the Property or any part thereof, whether presently existing or arising in the future, together with the benefit of all covenants, agreements and provisos contained in the said leases, in favour of the Bank;
- (b) Forthwith after making any lease of the Property or any part thereof the Chargor will execute and deliver to the Bank an assignment in registrable form in the Bank's usual form of all rents payable under such lease, the benefit of all covenants, agreements and provisos therein contained on the part of the tenant to be observed and performed and the reversion of such lease, and will also execute and deliver to the Bank all such notices and other documents as may be required in order to render such assignment effectual in law;
- (c) Nothing herein contained shall make the Bank responsible for the collection of rents payable under any lease of the Property or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease;
- (d) The Bank shall not by virtue of these presents be deemed a mortgagee in possession of the Property;
- (e) The Bank shall be liable to account for only such rents as actually come into its hands less reasonable collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness; and
- (f) Notwithstanding anything herein contained no lease of the Property or any part thereof made by the Chargor without the consent in writing of the Bank shall have priority over this Charge.

## **20. Interpretation and Headings**

It is hereby agreed that wherever in this Charge the word "Chargor" is used the same shall extend to and include the heirs, executors, administrators, successors and assigns of the Chargor, and wherever in this Charge the word "Bank" is used the same shall extend to and include the successors and assigns of the Bank and wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this document and have been inserted for convenience of reference only.

## **21. Condominium Act**

If the Property is a condominium unit, this Charge is made pursuant to the Condominium Act.