

**CONTRACT OF LOAN AND HYPOTHECS**

ON THIS \_\_\_\_\_ (\_\_\_\_) DAY OF ●  
TWO THOUSAND ● (201●).

BEFORE ●, the undersigned notary practicing in the province of Québec  
at the City of Montreal.

**APPEARED:**

**COMPAGNIE HOME TRUST / HOME TRUST COMPANY**, a corporation constituted under the laws of Canada, having its registered office at 145 King Street West, Suite 2300, Toronto, Ontario, M5H 1J8, represented by ●, its ●, duly authorized in virtue of a resolution of the board of directors of the said corporation duly adopted on the ● day of ● Two Thousand ●, a duly certified copy of which remains annexed after having been acknowledged as true and signed for identification by said representative with and in the presence of the undersigned Notary and having a notice of address registered in the Land Register under number ● and in the Register of Personal and Movable Real Rights under number ●;

the “*Lender*”,

of the first part

**AND:**

**[BORROWER];**

the “*Borrower*”,

of the second part

**WHICH PARTIES AGREE AS FOLLOWS:**

**LOAN**

**I. FIXED LOAN**

1. The Lender agrees to lend to the Borrower a fixed loan (the “*Fixed Loan*”) of a sum of ● dollars (\$●) (the “*Principal Amount*”) for a term of ● (●) years (the “*Term*”) beginning on ● (the “*Interest Adjustment Date*”) and ending on ● (the “*Balance Due Date*”).

2. The Fixed Loan bears interest at the rate of ● percent (●%) per year (the “*Fixed Loan Interest Rate*”), calculated semi-annually and not in advance. Interest accrues from the date of each advance, until the entire repayment of the Fixed Loan. Interest unpaid when due bears interest at the same rate.

## **II. EQUITY LINE VISA ACCOUNT**

3. The Lender has agreed to extend in favour of the Borrower an Equity Line Visa Account (the “*Visa Account*” and collectively with the Fixed Loan, the “*Loan*”).

4. The credit limit of the Visa Account is \$ ● . The obligations of the Borrower under the Visa Account will bear interest at the rate of ● percent ( ● %) per year, calculated and payable monthly not in advance. Interest accrues on the obligations under the Visa Account until paid in full, the whole in accordance with the terms and condition of the Visa cardholder agreement (as amended, modified or renewed from time to time collectively, the “*Visa Agreement*”). Interest unpaid when due bears interest at the same rate.

## **MATTERS RELATING TO PAYMENT**

5. Obligation to Pay Without Set-off or Delay. The Borrower agrees to pay all amounts payable pursuant to this Contract (as such contract may be amended, modified or renewed from time to time collectively, the “*Contract*”) without abatement, set-off or counterclaim. Any claim the Borrower may make against the Lender either initially or by way of abatement, set-off or counterclaim, will not diminish or delay the Borrower's obligations to make the payments as provided in this Contract and will not delay the exercise of any remedy nor be a defence to any claim by the Lender against the Borrower under this Contract. Without limiting the generality of the foregoing, the Borrower agrees the foregoing applies with respect to any claim or issue of any kind regarding life or other insurance purchased with respect to the Contract.

6. Time and Place for Payment. Subject to the Visa Agreement, all payments under this Contract must be made to the Lender at such place as the Lender designate to the Borrower from time to time. Any payment received by the Lender after 2:00 p.m. or on a day the Lender is closed for

business will be deemed for the purpose of calculation and payment of interest, to have been made and received on the next day the Lender is open for business.

7. Application of Payments. Subject to the Visa Agreement, all payments when received will be applied first in payment of interest calculated at the applicable interest rate, and second in payment of the principal except that if the Borrower is in default, the Lender may apply any payments received during the period the Borrower is in default on such part of the Secured Obligations (as hereinafter defined) as the Lender may choose.

8. Interest After Default. If the Borrower is in default in payment of any amount including interest, interest will be payable on the interest and other arrears at the applicable interest rate, or if renewed at the interest rate in the last renewal of the Contract, compounded monthly.

#### **I. FIXED LOAN**

9. Promise to Pay. The Borrower covenants to pay to the Lender the Principal Amount under the Fixed Loan, interest and all fees and costs as follows:

- (a) interest on the Principal Amount at the Fixed Loan Interest Rate from the date of each advance until the Interest Adjustment Date will be due and paid in advance on the date of each advance;
- (b) from and after the Interest Adjustment Date, the Principal Amount and interest on the Principal Amount at the Fixed Loan Interest Rate computed from the Interest Adjustment Date will become due and be paid in instalments each in the amount of \$● on the same day of each and every month as the day of ● (the "*First Payment Date*"), the first of such payments to be paid on the First Payment Date and the last on the Balance Due Date;
- (c) costs, fees and other liabilities that are not Principal Amount or interest on Principal Amount will be payable on demand with interest thereon at the Fixed Loan Interest Rate; and
- (d) the balance of the Principal Amount then remaining and all other Secured Obligations (except those related to the Visa Account) together with interest thereon at the Interest Rate will be paid on the Balance Due Date.

**10. Preauthorized Payments.** Unless the Lender otherwise agrees, the Borrower will establish and make all regular payments as they become due pursuant to a preauthorized payment method acceptable to the Lender.

**11. Prepayment Privilege and Compensation.** The Fixed Loan, and if renewed each renewal term, is closed to prepayment except as follows:

- (a) Annual 20% Prepayment. The Borrower may, when not in default, on each anniversary of the Interest Adjustment Date prepay an amount not greater than 20% of the original Principal Amount of the Contract. The Borrower may not prepay more than this amount even though the Borrower prepaid less than this amount on a previous anniversary date;
- (b) Prepayment After Year 3. The Borrower may also at any time after the first three years of the term of the Contract or if renewed, after the first three years of the term of the last renewal of the Contract, prepay the full outstanding balance upon payment of the greater of:
  - (i) three months interest at the existing Fixed Loan Interest Rate or, if renewed, at the interest rate in the agreement for the last renewal of the Contract; or,
  - (ii) the interest rate differential based on the difference between the existing Fixed Loan Interest Rate or, if renewed, the interest rate in the agreement for the last renewal of the Contract and the then current rate for the term remaining on the Contract or renewal of the fixed term loan based on the Lender's posted rate for a hypothecary loan for a term that is the next shortest to the remaining term of the Contract or if renewed, of the agreement for the last renewal of the Contract;

calculated on the full principal amount being repaid.

## **II. EQUITY LINE VISA ACCOUNT**

**12.** The Visa Account is payable in accordance with the terms of the Visa Agreement. Without limiting the generality of the foregoing, the Borrower covenants to pay to the Lender the costs, fees and other liabilities under this Contract related to the Visa Account on demand with interest thereon at the Visa Account Interest Rate.

**NO OBLIGATION TO ADVANCE OR RE-ADVANCE AND DISCHARGE**

**13. No Obligation to Advance or Re-advance.** The preparation, execution or registration of this Contract does not bind the Lender to advance the Principal Amount under the Fixed Loan, nor will the advance of a part of the Principal Amount bind the Lender to advance or re-advance any other portion of the Principal Amount, but nevertheless the hypothec on the Hypothecated Property will take effect immediately on execution of the Contract by the Borrower. Part or parts of the Principal Amount may be re-advanced from time to time, without obligation on the Lender to do so.

**14. Discharge.** After payment of the Secured Obligations in full and closure of the Visa Account, the Lender will sign a discharge. The Borrower will give the Lender a reasonable time after payment in which to prepare and issue the discharge. If electronic registration is available for the Hypothecated Property, the Lender may register the discharge and provide the Borrower or its legal counsel (as applicable) with confirmation of registration.

**MATTERS RELATING TO RENEWAL**

**15. Renewal of this Contract for the Fixed Loan.** The Borrower agrees that this Contract secures, among others, a loan for a fixed term, the Borrower agrees that this Contract may be automatically renewed from time to time in the following manner:

Prior to the Balance Due Date of the Contract, and of each renewal term, the Lender may, but is not obligated to, send to the Borrower , a notice of renewal setting forth the balance outstanding on the Contract and the interest rate, payment amount and the other terms and conditions on which the Contract may be renewed. Unless the Borrower pays the balance outstanding on the Contract, accept other renewal terms the Lender offers or make other arrangements with the Lender in writing to extend payment by the Balance Due Date or maturity date of any renewal or extended term of this Contract, the Borrower will be deemed to have accepted a renewal for a one (1) year term on the terms set out in the notice of renewal. On any renewal, the amount of the payments being made pursuant to the Preauthorized Payment Service or other preauthorized payment mechanism will be adjusted accordingly. Renewal fees not paid by such Balance Due Date will be added to the balance outstanding on the Contract and bear interest at the renewal rate.

**16. Priority of Renewal.** No renewal or extension of time given by the Lender shall in any way affect or prejudice the Lender's rights against the Borrower, the Surety or any other person. The Contract will secure the

payment and other obligations as extended or changed in the renewal agreement and will be deemed dated as of the first day of each renewal term. It will not be necessary to register notice of any such renewal or obtain any consents or acknowledgements in order to retain priority for this Contract so altered over any subsequent encumbrance or instrument registered subsequent to this Contract.

**COVENANTS AND WARRANTIES RELATING TO TITLE, USE AND SALE**

**17. Title Warranty and Covenants.** The Borrower warrants and agrees that:

- (a) Good Title. The Borrower has good and marketable title to the Hypothecated Property subject only to any prior registered hypothec, to which the Lender has agreed in writing;
- (b) To Protect Title. The Borrower will preserve its title to the Hypothecated Property and the validity and priority of this Contract and will forever warrant and defend the same for the Lender against the claims of all persons;
- (c) Authority to Contract. The Borrower has the right to hypothecate the Hypothecated Property to the Lender.

**18. Fixtures, Additions, etc.** The Borrower agrees that the Hypothecated Property includes all property of any kind that is at any time attached or fixed to the land or buildings or placed on and used in connection with them including all heating and cooling equipment such as furnaces, pumps, water heaters and air conditioners (central, window and other units), all cooking and refrigeration equipment, light fixtures, television antennae, satellite dishes, alarm and security systems, central vacuum, carpet where laid, trees, shrubs and plants, as well as all alterations, additions and improvements to the land and buildings.

**19. Representations, Information, etc.** The Borrower warrants and represents that all representations made by the Borrower or anyone on behalf of the Borrower in the application for the Loan and any other information the Borrower or the Surety have provided to the Lender for the Lender's consideration in deciding whether to grant, amend or renew the Loan or any other Secured Obligations are true and correct at the time made or provided.

**20. Residential Use and Rental of the Hypothecated Property.** Where:

- (a) the Contract has been approved by the Lender on the basis of homeowner occupancy of all or part of the Hypothecated

Property, the Hypothecated Property or applicable part will be occupied by the Borrower and his family as his principal residence property for the term and each renewal term of the Contract; or,

- (b) the Lender has approved the Contract on the basis of investment or rental property, the Borrower will lease and maintain the unit or units for residential purposes only in a prudent businesslike manner at fair rents in compliance with all applicable tenancy laws and regulations.

**21. Compliance With Building and Other Laws.** The Borrower's use of the Hypothecated Property complies and the Borrower will continue to comply with all building and zoning by-laws and if a non-conforming use, the Borrower will continue such legal non-conforming use, unless the Lender otherwise agrees in writing. The Borrower will also comply with all other laws in his use and occupation of the Hypothecated Property and will not use or permit the Hypothecated Property to be used for any illegal, improper or immoral purpose or activity.

**22. No Prior Claims or Hypothecs.** The Borrower will not create or permit to exist any other prior claim, hypothec (other than any unregistered legal hypothec for an account not yet due for work or supply to an improvement approved by the Lender) or other encumbrance (other than for taxes and utilities not yet due) or other encumbrance against the Hypothecated Property which has or may in any manner claim any priority over this Contract.

**23. Payment of Taxes and Other Encumbrances.** Unless the Lender elects to pay taxes as provided in paragraph 54 of this Contract, the Borrower will pay all taxes levied on the Hypothecated Property as they become due. The Borrower will, no later than October 31st of each year, give the Lender receipts showing that the taxes have been paid. In this Contract, "taxes" mean all taxes, rates and assessments of any nature or kind, including property taxes, local improvement rates, interest and penalties levied on or payable with respect to the Hypothecated Property. The Borrower will also pay all accounts for utilities supplied to the Hypothecated Property and all charges, hypothecs, liens and other encumbrances on the Hypothecated Property when they are due and comply with the Borrower's other obligations under them.

**24. No Sale Without Consent.** The Borrower will not sell, transfer, lease or otherwise dispose of all or any part of the Hypothecated Property or any interest in the Hypothecated Property without the Lender's prior written approval and if approved, without such approved purchaser, transferee or lessee entering an assumption agreement in form satisfactory to the Lender. Acceptance of any payments from a purchaser, transferee or lessee not

approved in writing by the Lender, will not constitute an approval or waiver by the Lender.

**25. Further Assurances.** The Borrower will, before or after default, execute any further documents and do such other acts with respect to any aspect of this Contract, at its own expense, as the Lender may reasonably require.

**26. Reservation of Rights.** The Borrower agrees that no sale or other dealing by the Borrower with the Hypothecated Property or any dealing by the Lender with the whole or any part of the Hypothecated Property or with any person liable in any manner for the whole or any part of the Secured Obligations, shall in any way affect or prejudice the Lender's rights against the Borrower, the Surety or any other person liable to pay any Secured Obligations.

### **HYPOTHECS**

**27.** To secure the repayment of the Loan, interest, costs incurred and any other sum due to the Lender under this Contract and under the Visa Agreement and to secure the execution of all of its obligations including, without limitation, under the Loan, payment of extra-judicial legal fees incurred by the Lender in the creation and preservation of the hypothecs granted under the present Contract and in the exercise of any recourses ensuing from it (collectively, the "***Secured Obligations***"), the Borrower hypothecates in favour of the Lender the property described below (the "***Hypothecated Property***") for an amount of ● DOLLARS (\$●) plus an additional amount equal to twenty percent (20%) of the foregoing amount, being a total aggregate amount of ● DOLLARS (\$●), bearing interest at the rate of twenty-five percent (25%) per year calculated in accordance with this Contract from the date of this Contract.

**28.** The Hypothecated Property is described as follows:

**28.1** the following immovable property:

#### **DESCRIPTION**

●

with all that is attached or joined to it and is considered immovable by virtue of law (the "***Property***");

**28.2** all present and future rents produced by the Hypothecated Property and the indemnities paid under the insurance contracts covering such rents;

- 28.3** all present and future revenues produced by the Hypothecated Property, including all amounts payable as a result of an amendment, a cancellation or a termination of any lease;
- 28.4** the universality of all present and future movable property used for the operation, administration, maintenance or improvement of the Hypothecated Property or used for the operation of any enterprise or the pursuing of activities in the Hypothecated Property, as well as the proceeds and claims resulting from any sale, lease or disposition of any of the foregoing;
- 28.5** all amounts remitted to the Lender for the payment of property taxes with interest thereon, if any;
- 28.6** all amounts payable to the Borrower as a refund of property taxes; and
- 28.7** the universality of all present and future contracts, agreements, books, records and documents relating to the operation, administration, maintenance and improvement of the Hypothecated Property.
- 29.** These hypothecs subsist without reduction until the complete performance by the Borrower of all its Secured Obligations.
- 30.** The hypothecs created hereby are continuous security and shall subsist notwithstanding any fluctuation of the amounts hereby secured. Any future obligation hereby secured shall be deemed to be one in respect of which the Borrower has once again obligated itself hereunder according to the provisions of article 2797 of the *Civil Code of Québec*.

### **HYPOTHEC ON RENTS**

- 31.** The hypothecs created by this Contract give the Lender, as soon as they have been published, the right to collect the rents and the other revenues produced by the Hypothecated Property.
- 32.** Notwithstanding the foregoing, the Lender authorizes the Borrower to collect the instalments of rent payable monthly and representing one twelfth of the annual rent as well as the security deposits which, for each tenant, cannot exceed one (1) month of rent paid in advance.
- 33.** The Lender may withdraw this authorization given to the Borrower if the latter is in default under this Contract.

## **LEASES**

**34.** The Borrower undertakes to manage the Hypothecated Property in a competent and professional manner in order to attract and maintain good quality tenants. Any change of manager of the Hypothecated Property, whether the Hypothecated Property is managed by the Borrower or by a third party, must be made with the prior written consent of the Lender.

**35.** The Borrower undertakes not to enter into any offer to lease, lease, lease renewal or extension of lease without the Lender's prior written consent. In addition, the Borrower undertakes not to lease space in the Hypothecated Property on conditions that are below the market conditions of the area in which is located the Hypothecated Property or to a tenant that is not dealing with the Borrower at arm's length (as defined in the *Income Tax Act of Canada*).

**36.** The Borrower undertakes not to enter into any agreement which would significantly modify the terms and conditions of a lease or diminish the obligations of a tenant under a lease or discharge a tenant from such obligations, without the prior written consent of the Lender.

**37.** The Borrower undertakes to only use the standard lease form approved by the Lender or, in the case of dwellings, the form prescribed by the *Régie du logement*, and not to significantly derogate therefrom without the prior written consent of the Lender.

**38.** The Borrower undertakes to remit to the Lender a copy of all future leases, renewals and modifications as soon as they are executed, except those relating to dwellings.

## **DEFAULT**

**39.** Events of Default.

The Borrower will be in default under this Contract upon the happening of any of the following events:

- (a) if the Borrower defaults in the payment of any part of the Secured Obligations, when payment of such amount becomes due under the terms of this Contract or any renewal of this Contract;
- (b) if the Borrower defaults in the observance or performance of any term or covenant which the Borrower has agreed with the Lender to observe or perform under this Contract or elsewhere;

- (c) if any information or statement the Borrower or the Surety has given or made before, at or after signing this Contract, in respect of the Hypothecated Property or the Borrower's or the Surety's affairs is incorrect or untrue at the time given or made;
- (d) if the Borrower ceases or threatens to cease to carry on in a sound businesslike manner the business the Borrower or the Surety ordinarily conduct on or with respect to all or any part of the Hypothecated Property;
- (e) if the Hypothecated Property is a condominium unit or units, a vote authorizes termination of the condominium or the sale of all or substantially all of the condominium syndicate's assets or its common elements or the condominium syndicate fails to insure the unit and common elements;
- (f) if a petition in bankruptcy is filed against the Borrower, if the Borrower makes a general assignment for the benefit of his creditors, if a receiver, interim receiver, monitor or similar person is placed or is threatened to be placed in control of or for overview of the Borrower's affairs or Hypothecated Property, or in the Lender's opinion, the Borrower becomes insolvent;
- (g) if a construction legal hypothec is registered against the Hypothecated Property or if default occurs under any other charge or other encumbrance existing against the Hypothecated Property;
- (h) if the Borrower abandons or does not visibly and consistently occupy the Hypothecated Property;
- (i) if the Hypothecated Property or, in the Lender's opinion, a material part of the Hypothecated Property is expropriated;  
or
- (j) if there is a default or an event of default under the Visa Agreement.

#### **RECOURSES**

**40.** When the Borrower is in default under this Contract, the Lender may:

- 40.1** demand the entire repayment of the Secured Obligations, the Borrower thereby losing the benefit of the term;
- 40.2** withdraw from the Borrower the authorization to collect the rents or other hypothecated claims;
- 40.3** institute a personal action against any person obligated to reimburse the Secured Obligations;
- 40.4** exercise the hypothecary rights permitted by law; and
- 40.5** exercise any other right which it possesses by virtue of this Contract or by law.

**41.** The Borrower undertakes to reimburse to the Lender all the costs incurred by the latter in the exercise of its rights and recourses under this Contract. These costs include, without limitation, all legal costs (judicial and extra judicial), appraisal costs, the costs of inspections and environmental assessments, the costs of insurance, the operating costs of the Hypothecated Property and, generally, all costs incurred for the administration of the Hypothecated Property.

**42.** If the Borrower is in default under this Contract, other than a default of payment of a sum of money to the Lender, the latter may, but without being obliged to do so, remedy the state of fact which constitutes the default. The Lender may, among other things, perform in the Borrower's name any of the latter's obligations towards third parties which pertain to the Hypothecated Property. Notwithstanding any other provision of this Contract, if the Lender considers that there is an emergency or that its rights are threatened, the Lender does not have to notify the Borrower before acting. The Borrower undertakes to reimburse to the Lender, upon request, any sum incurred to remedy a default in the aforesaid manner.

**43.** The exercise by the Lender of any of its rights does not preclude it from exercising any other right it possesses by virtue of this Contract or by law.

**44.** The fact that the Lender does not exercise a right does not constitute a waiver of the subsequent exercise of such right.

**45.** Delays, arrangements, consents or waivers cannot be set up against the Lender unless the Lender has consented in writing to such delays, arrangements, consents or waivers.

**46.** The obligations of the Borrower or of any person obligated to reimburse the Loan shall in no way be modified or reduced by the fact that the Lender contracts with a subsequent owner of the Hypothecated Property

in order to modify in any way whatsoever the terms and conditions of this Contract which has been assumed by the subsequent owner.

**47.** If, in the exercise of its hypothecary rights, the Lender sells itself the Hypothecated Property or has it sold by judicial authority, the sale can be made either with the legal warranty of the seller or without such warranty, in whole or in part.

### **ADMINISTRATION OF THE HYPOTHECATED PROPERTY**

**48.** If, in the exercise of its hypothecary rights, the Lender becomes the administrator of the Hypothecated Property and if the provisions of the *Civil Code of Québec* on the administration of the property of others apply, the rules contained in such provisions must be adapted or set aside, as the case may be, to take into account the fact that the Lender is acting to protect its interest as hypothecary creditor.

**49.** The Lender, whether it has simple or full administration of the Hypothecated Property, may negotiate with tenants, suppliers and contractors of the Hypothecated Property, sign leases, service contracts or management contracts, renew or resiliate such contracts, bring an action at law in order to enforce respect of the obligations under such contracts, grant discharges of such obligations, undertake or carry-out all maintenance, repair, renovation or improvement work on the Hypothecated Property, and, generally, do all things which the Lender considers advisable for the operation of the Hypothecated Property, the protection of the Hypothecated Property or the safeguard of its rights.

**50.** Notwithstanding any provisions of law, if the Lender administers the Hypothecated Property,

**50.1** it is not obliged to make an inventory, take out insurance, provide security or invest the amounts which it collects;

**50.2** it is not obliged to render an annual account of its administration of the Hypothecated Property and, if it has to render a final account upon termination of its administration, it may do so by providing the Borrower with a statement of account made in the form used in the normal course of its business; and

**50.3** it is not obliged to make the Hypothecated Property productive or to maintain it in good operating condition.

**51.** If the Lender collects the rents and the other revenues produced by the Hypothecated Property by exercising the rights granted to it by this Contract:

- 51.1 it is not obliged to apply the rents or revenues collected to the payment of an amount which is not yet due under this Contract;
- 51.2 it is not obliged to inform the Borrower of any irregularity in the payment of the rent or of the other revenues;
- 51.3 it is not liable for any loss or damage resulting from non-collection of the rent or of the other revenues;
- 51.4 it may grant a discharge for any rent or revenue which it collects; and
- 51.5 it may Contract management fees comparable to those prevalent in the market.

**MATTERS RELATING TO A PROPERTY THAT IS A CONDOMINIUM**

**52. Covenants for a Condominium Unit.**

The following provisions apply to any condominium unit that is part of the Hypothecated Property:

- (a) **Payment of Common Expenses and Compliance.** The Borrower shall pay all contributions to common expenses of the condominium as they become due and comply with the provisions of the *Civil Code of Québec* and the declaration of co-ownership, by-laws and rules of the syndicate. The Borrower will provide the Lender with proof of payment and compliance from time to time as the Lender may request. The Borrower shall forward to the Lender as received copies of any notices, assessments, by-laws, rules and financial statements of the syndicate. The Borrower shall provide the Lender, on request, with any other documents and information that he receives from the corporation or are entitled to receive.
- (b) **Repair.** The Borrower shall maintain all improvements made to his unit and repair them after damage.
- (c) **Insurance of Unit.** The Borrower shall insure all improvements, which he or the previous owners have made to his unit. Furthermore, the Borrower shall insure his common or other interest in buildings, which are part of the condominium property or assets of the syndicate, if the syndicate fails to insure the buildings as required by the *Civil Code of Québec* and the declaration of co-ownership,

by-laws and rules of the syndicate. These obligations are in addition to the Borrower's obligations in this Contract under the heading Insurance for the Hypothecated Property as far as they apply to a condominium unit.

- (d) **Right to Vote - Proxy.** The Borrower hereby assigns to the Lender and authorizes the Lender to exercise his rights to vote and to consent. If the Lender does not exercise such rights, the Borrower may do so, but the Borrower will do so according to any instructions that the Lender may give to the Borrower from time to time. The Borrower also authorizes the Lender to inspect the syndicate's records. Nothing done under this paragraph puts the Lender in possession of the Hypothecated Property.
- (e) **Hypothec.** The Borrower further hypothecates in favour of the Lender as part of the security for the Secured Obligations, and for the same amount and on the same terms, the Borrower's voting rights, and moreover, on receipt of a request in writing from the Lender to Borrower shall send to the Lender every future notice of meetings, any agenda, financial statements or other proceedings to be considered thereat, and the Borrower further agrees upon receipt of such request to name the Lender as the Borrower's proxy, to attend and to vote at such meetings, or in the alternative, at the option of the Lender, to act as the proxy of the Lender at such meetings and to vote his interest as the Borrower and the Lender may agree upon, and to the foregoing ends, the Borrower assigns his voting rights to the Lender.

### **MATTERS RELATING TO INSURANCE FOR THE HYPOTHECATED PROPERTY**

#### **53. Insurance for the Hypothecated Property.**

- (a) **Fire and Other Perils.** The Borrower shall cause the Hypothecated Property to be insured by an insurer and under a policy or policies satisfactory to the Lender to an amount of not less than the full insurable value of the buildings and improvements on the Hypothecated Property. The insurance must be against the perils and extended perils usually covered in fire insurance policies, including but not limited to loss or damage by explosion, tempest, tornado, cyclone, earthquake and lightning.

- (b) **Boiler Insurance.** If there is a boiler or other pressured vessel or a sprinkler system in any building on the Hypothecated Property, the insurance to be obtained by the Borrower must cover loss or damage caused by the boiler or other pressured vessel and equipment operated with it or caused by the sprinkler system;
- (c) **Owner's Liability Insurance.** The Borrower must have comprehensive liability insurance for movable and property damage and losses occurring on or in respect to the Hypothecated Property for an amount of at least \$250,000 per occurrence or such amount as the Lender may specify to the Borrower in writing;
- (d) **Builder's All Risk.** During such time or times as there is construction of any buildings or other improvements on the Hypothecated Property, the Borrower shall maintain or cause his contractor to maintain builder's all risk insurance with a stated amount clause for the improvements for full insurable value.
- (e) **No Co-Insurance.** The insurance may not contain co-insurance requirements;
- (f) **Proof of Insurance.** Each policy of insurance shall contain mortgage clauses and loss payee clauses in a form satisfactory to the Lender. The Borrower must give the Lender proof that he has obtained the insurance he is required to obtain and he must, at least 20 days before any insurance expires or is terminated, give the Lender proof that the Borrower has arranged for such insurance to be renewed or replaced. If he fails in any way to comply with these obligations, the Lender may (but it is not obliged to) obtain insurance on Borrower's behalf. If the Lender thinks it is necessary, the Lender can require the Borrower to cancel any existing insurance for the Hypothecated Property and provide other insurance which meets the Lender's approval;
- (g) **Insurance Claims and Proceeds.** If loss or damage occurs, the Borrower will provide the Lender with necessary proofs of claim and do everything else necessary to enable the Lender to obtain payment of the Lender's interest in the insurance proceeds. The Borrower irrevocably appoints any of the Vice-Presidents or Region Managers (with power of substitution of the Lender) as his authority to sign on his behalf any documents required or to

endorse on behalf of the Borrower any cheques issued by any insurer with respect to any policy of insurance with respect to all or any part of the Hypothecated Property. Insurance proceeds may, in whole or in part, exclusively at the Lender's option, be used to rebuild or repair damaged buildings or be used to reduce all or part of the amount secured by this Contract.

#### **MATTERS RELATING TO THE PAYMENT OF PROPERTY TAX**

##### **54. Account for Payment of Taxes**

- (a) If the Lender so requires, the Borrower agrees to pay to the Lender on each payment date or any amendment or renewal thereof, sums sufficient, as determined by the Lender, to enable the Lender to pay the whole amount of taxes on or before the due date for payment of taxes or, if taxes are payable in instalments, on or before the due date for payment of the first instalment;
- (b) if the Borrower wishes to take advantage of any discount or to avoid any penalty in connection with the payment of taxes, the Borrower shall pay to the Lender an appropriate amount in addition to the amount referred to in paragraph (a) above;
- (c) if the taxes on the Hypothecated Property in any calendar year exceed the Lender's estimate, the Borrower will pay to the Lender the difference on demand;
- (d) the Borrower agrees to send to the Lender immediately after he receives them interim and final tax bills and all other notices or communications relating to taxes as soon as he receives them;
- (e) the Lender does not have to hold any moneys which the Borrower sends to the Lender under this paragraph in trust, nor pay interest on them, nor apply them to pay taxes more than once a year;
- (f) should the Borrower default under any of the Secured Obligations, the Lender does not have to use monies so received to pay taxes and the Lender may, if it wishes, apply such monies to any of the Borrower's debts or liabilities to the Lender; and

- (g) before or on the Interest Adjustment Date, the Lender may withhold from any advance under this Contract any amount the Lender feels necessary to pay or to anticipate future payments of taxes.

**MATTERS RELATING TO CONSTRUCTION, REPAIR AND ENVIRONMENTAL HAZARDS**

**55. Repair, Vacancy and Maintenance of the Hypothecated Property.**

The Borrower will maintain the Hypothecated Property in good order, condition and repair and will promptly make all necessary repairs, replacements, and improvements. The Borrower will not allow any part of the Hypothecated Property to become or remain vacant without the Lender's written consent. The Borrower will not commit waste and will not remove, demolish or materially alter the Hypothecated Property or any part of it without the Lender's prior written consent. The Lender may, whenever it feels it necessary, either by itself or by its agent enter upon and inspect the Hypothecated Property and the Borrower shall pay the expenses associated with such inspection. If the Borrower, or anyone claiming under the Borrower, neglect to keep the Hypothecated Property in good condition and repair, or commit any act of waste on the Hypothecated Property, or do anything by which the value of the Hypothecated Property is diminished, as to all of which the Lender shall be sole judge, the Lender may (but the Lender is not obliged to) enter the Hypothecated Property and effect such repairs or work as the Lender considers necessary.

**56. Obligations Regarding Construction.**

The Borrower agrees not to make or do any major construction, alteration or demolition to the Hypothecated Property without the Lender's consent. The Borrower must inform the Lender in writing before it is started and the proposed project must be approved by the Lender. The Borrower covenants with the Lender that if the Borrower fails at any time for a period of fifteen (15) business days to diligently carry on the work of construction of any building or buildings being or to be erected on the Hypothecated Property, or without the Lender's consent in writing, the Borrower shall depart in such construction from the project approved by the Lender or from the generally accepted standards of construction in the locality of the Hypothecated Property, or the Borrower shall permit any legal hypothec to be registered against the Hypothecated Property, the Lender may at its option at any time, through its agents or contractors, enter the Hypothecated Property and have exclusive possession of the Hypothecated Property and of all materials, plant, gear and equipment on the Hypothecated Property, free of interference by the Borrower and

complete construction of the building or buildings either according to the Borrower's plans or according to such other plans, specifications or design as the Lender in its discretion may choose. The Borrower shall pay all costs in connection with such construction.

**57. Obligations Regarding Hazardous Substances.**

- (a) To the best of the Borrower's knowledge and belief, after due inquiry and investigation, no part of the Hypothecated Property contains, has ever contained or will in the future, except as provided below, contain any hazardous substances. Hazardous substances refers to any solid, gaseous or liquid waste and substances or conditions that are prohibited or controlled or that are hazardous in fact or that are considered potentially hazardous;
- (b) The Borrower agrees that any activities or storage on any part of the Hypothecated Property that may involve such hazardous substances including storage of home heating oil and propane gas will only be undertaken after full disclosure to the Lender and with the Lender's approval. Any such activities or storage will be in accordance with environmental laws and regulations. No use of any part of the Hypothecated Property will be allowed which may cause or increase the likelihood of the escape, seepage, leakage, spillage, release or discharge of any hazardous substance on, from or under the Hypothecated Property or permit any policy of insurance in respect to the Hypothecated Property to be cancelled;
- (c) The Borrower will promptly notify the Lender as soon as he knows of or suspect that there is any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any hazardous substance on, from or under the Hypothecated Property whether from his activities or storage or from those of another property owner or carrier or from any other source;
- (d) The Borrower will promptly remove any hazardous substances that are or come onto the Hypothecated Property in any manner and from any source, other than those for activities and storage which the Lender has permitted as provided above, and complete all remediation of the Hypothecated Property that may be required by reason of the presence of hazardous substances and that the Lender may consider prudent, all in accordance with environmental laws and regulations;

- (e) The Borrower agrees to indemnify the Lender with respect to any and all costs and liabilities the Lender may incur for investigations, remediation and other matters related to hazardous substances that are or may be on or about or suspected to be on or about any part of the Hypothecated Property or nearby property;
- (f) The Lender may require that the Borrower obtain, or the Lender may obtain, from time to time at the Borrower's expense an environmental inspection or audit report on all or any part of the Hypothecated Property, which report shall be satisfactory to the Lender;
- (g) Any environmental audit or inspection report the Borrower may provide to the Lender or the Lender may obtain or any other investigation the Lender may conduct or any remedial or other work the Lender or someone on behalf of the Lender may perform or any storage or use of hazardous substances on the Hypothecated Property the Lender may permit will not relieve the Borrower from his obligations hereunder;
- (h) The representations, covenants, agreements and indemnity made in this section survive satisfaction and discharge of the hypothecs created herein, sale of all or any part of the Hypothecated Property or extinguishment of the hypothecs stipulated herein if the Lender or its nominee become owner of the Hypothecated Property following default.

### **FEES, COSTS AND EXPENSES**

#### **58. Servicing Fees.**

The Borrower agrees to pay to the Lender servicing fees to cover the Lender's reasonable time and costs for administration of this Contract including without limitation, a fee or allowance for:

- (a) dealing with each late or missed payment and for replacement of each cheque or other instrument not honoured when presented for payment, or any preauthorized payment which does not clear as scheduled;
- (b) preparing each assumption, arrears, reinstatement, discharge or other mortgage statement, whether provided to the Borrower, the Lender's agents or solicitors or any other interested person;

- (c) processing each application to obtain the Lender's consent to assume the hypothecs or the Lender's approval or consent for any other matter required by this Contract whether or not approval or consent is provided or the matter is completed;
- (d) processing each extension, renewal, restructuring or other amendment of this Contract or the Secured Obligations, whether or not completed;
- (e) investigating status of any insurance, administering insurance cancellations and paying insurance premiums and dealing with insurance claims;
- (f) investigating status of realty tax payments and administering tax payments;
- (g) registering an application for registration of hypothecs or issuing or receiving any notice or information, security status or acknowledgement request and conducting any required searches;
- (h) registering electronically or otherwise or executing and delivering any discharge of the hypothecs stipulated herein (notwithstanding that the discharge may have been prepared by the Borrower or other person on behalf of the Borrower);
- (i) generally, any matter connected with the proper administration of this Contract and Hypothecated Property including inquiring into compliance, dealing with or enforcing any obligation contained in this Contract and including, without limitation, with respect to taxes, condominium fees and matters, insurance, repair and construction, environmental matters, leases and other encumbrances, managing or selling the Hypothecated Property.

The Lender's servicing fees shall be the amounts established, disclosed and generally applied by the Lender from time to time and may be ascertained upon inquiry to the Lender.

**59. Costs.**

The Borrower agrees to pay to the Lender all amounts the Lender expends and costs the Lender incurs in any manner in connection with this Contract including, without limitation, expenses in relation to:

- (a) the making of the loan secured by this Contract and each amendment, extension or renewal thereof including preparation, execution and registration of this Contract and any other security, instrument and documents;
- (b) collecting payments under and enforcing and realizing the hypothecs stipulated herein;
- (c) defending or otherwise dealing with any action or proceeding in which the Lender by reason of this Contract may be a party or otherwise interested including without limitation any construction legal hypothec or similar matter, any sale, redemption, assessment or other action or proceeding by any other encumbrancer or any certificate of pending litigation or other title matter;
- (d) performing or complying with any of the Secured Obligations including, without restriction, those relating to insurance, condominium, repair and construction, leases, taxes, prior encumbrances and environmental matters.

All legal costs incurred by the Lender in dealing with compliance with any term and in enforcement of this Contract shall be paid by the Borrower in full (including legal fees for court proceeding on a substantial indemnity basis).

**60. Interest and Security for Fees and Costs.**

All the above described fees and costs, allowances and expenses shall be secured by this Contract, shall bear interest at the Fixed Loan Interest Rate from the date incurred or calculated by the Lender and shall be payable by the Borrower forthwith on demand.

**MISCELLANEOUS MATTERS**

**61. Delay, Waiver and Release of the Hypothecated Property.**

The Borrower agrees that the Lender may in its discretion at any time release any part or parts of the Hypothecated Property or any other security or any surety for the whole or any part of the Secured Obligations either with or without any sufficient consideration, without responsibility or liability to the Borrower and without releasing any other part of the Hypothecated Property or any person from this Contract or from any of the covenants and without being accountable to the Borrower for the value of such released Hypothecated Property, securities or surety, or for any money except that actually received by the Lender.

The Lender may delay in enforcing any of its rights under this Contract or the Secured Obligations without losing or impairing those rights. The Lender can waive breach of the Secured Obligations or under any related security or agreement without losing its rights in respect of any other breach of the Secured Obligations.

**62.** Hypothecs not a Substitute for any other Security.

The Borrower agrees that the hypothecs created under this Contract shall not create any merger, rebate or discharge of any debt owing to the Lender or of any bond, note, instrument or other security now or subsequently held by the Lender, whether from the Borrower or from any other party or parties and the hypothecs created under this Contract shall not in any way affect any security which may now or subsequently be held by the Lender for the whole or any part of the Secured Obligations and other amounts from time to time secured by the hypothecs created under this Contract or the liability of any other person upon any such bond, note, instrument or other security or contract or any renewal or renewals of the same held by the Lender for or on account of the Secured Obligations and other amounts from time to time secured by the hypothecs created under this Contract or any portion thereof, nor shall the remedies of the Lender be affected in any manner.

**63.** Judgments.

If the Lender obtains a court judgment against the Borrower for the Borrower's failure to pay all or any part of the Secured Obligations or to perform any of the Secured Obligations, the judgment will not result in a merger of any of the Secured Obligations with the judgment or take away any of the Lender's other rights to enforce this Contract and the Secured Obligations. The Lender will continue to be entitled to receive interest on the Loan, interest and the other Secured Obligations at the applicable interest rate, calculated and payable in the agreed way, and the judgment may so provide.

**64.** Interpretation and Headings.

Wherever in this Contract 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 so require. The headings do not form part of this document and have been inserted for convenience of reference only. This Contract shall be interpreted, enforced and governed by the laws of the Province of Québec. If any provision of this Contract shall be prohibited by or invalid under applicable law, such provision shall not invalidate the remaining provisions of this Contract. Nothing contained in this Contract shall require the Borrower to pay or for the

Lender to accept interest in an amount greater than that allowed by applicable law.

**65. Indivisible Obligations.**

The obligations of the Borrower are indivisible. Each person designated as Borrower, its assignee, its successor and each of its heirs are obliged and may be compelled by the Lender to perform the obligations of the Borrower in their entirety.

**66. Joint Signatures.**

When more than one person is designated as Borrower under this Contract or when one or several persons have become sureties, assume or otherwise become liable for the obligations of the Borrower, their obligations towards the Lender are solidary.

**67. Demands and Notices.**

Unless otherwise provided in this Contract or prohibited by law, where this Contract allows or requires the Borrower to make a demand on or give a notice to the Borrower or any other person, the Lender may make the demand or give the notice by delivering it addressed to the Borrower or other person at the Hypothecated Property or the Borrower or the other person's last known address or by mailing it by prepaid registered mail addressed to the Borrower or the other person at the Hypothecated Property or last known address or by sending it by telefacsimile (fax) to the Borrower or the other person's last known number and, where the person is a corporation, by so delivering or sending it to the last known address or number of a director, officer, employee or attorney of the corporation.

A notice or demand so delivered will be regarded as given or made when it is so delivered. A notice or demand so mailed will be regarded as given or made on the day after it is mailed and a notice so sent by telefacsimile on the day sent, in each case whether the person actually receives it or not, and if the day of receipt is not a day the Lender and lenders generally are open for business, then the next business day.

The Lender may also give a notice or demand to the Borrower or a Surety by electronic message through the Internet (e-mail) to the e-mail address the Borrower or the Surety gives to the Lender or by which the Borrower or the Surety communicates to the Lender. A demand or notice so delivered shall be deemed received eight (8) hours after transmission by the Lender, regardless of whether actually received or opened by the Borrower or the Surety.

**SURETYSHIP**

**68. Suretyship.**

Each person signing or joining in this Contract as a Surety agrees in consideration of the Lender making the Loan to the Borrower, as follows:

- (a) The Surety, with the Borrower, as principal debtor and not as surety will duly pay or cause to be paid all Secured Obligations on the days and times and in the manner provided for payment of the same;
- (b) The Surety unconditionally guarantees full performance and discharge of all the Secured Obligations at the times and in the manner provided in this Contract;
- (c) The Surety indemnifies and saves the Lender harmless from and against all losses, damages, costs and expenses which the Lender may sustain, or incur or be or become liable for by reason of:
  - (i) the failure for any reason whatsoever by the Borrower to pay the Secured Obligations or to do and perform any other act, matter or thing required by the provisions of this Contract; or
  - (ii) any act, action or proceeding, of or by the Lender, for, or in connection with, the recovery of the Secured Obligations by the Borrower, or enforcing the performance by the Borrower or any other person liable under this Contract of any act, matter or thing required by the provision of this Contract;
- (d) The Lender shall not be obliged to proceed against the Borrower or any other person liable under this Contract or to enforce or exhaust any security before proceeding to enforce the obligations of the Surety set out in this paragraph and that enforcement of such obligations may take place before, after or contemporaneously with enforcement of any of the Secured Obligations or the enforcement of any security for any such Secured Obligations;
- (e) The Lender may, without notice to and the consent or approval of the Surety, grant extensions of time for payment, make renewals, increase, vary and amend the

Fixed Loan Interest Rate, the Visa Account Interest Rate, the Loan and other terms of this Contract and the Secured Obligations, release the whole or any part of the Hypothecated Property or other security from this Contract, or otherwise deal with the Borrower, any of the Secured Obligations or the Hypothecated Property or other security as the Lender sees fit without releasing or lessening the liability of the Surety;

- (f) The Surety agrees to be bound by each such renewal, variation and amendment of any terms of this Contract the Lender makes with the Borrower and each reference to this Contract in this Surety paragraph shall mean the Contract as so renewed and amended from time to time, regardless of whether made with or without the knowledge, consent or approval of the Surety;
- (g) No delay or carelessness or neglect by the Lender in asserting any of its rights, nor the loss of any right by operation of law, nor the loss or destruction of any security, nor the lack of validity or enforceability of all or any part of this Contract or any other security held for or any document evidencing any part of the Secured Obligations will in any way release or lessen the liability of the Surety;
- (h) The Surety has read this Contract and is fully aware of and agrees with its terms and in particular, the terms of this Suretyship;
- (i) Where there is more than one Surety, each Surety is solidarily responsible under this guarantee with the other Sureties and the Borrower;
- (j) The Lender may serve notice on the Surety and any notice to the Surety shall be deemed received in the same manner as provided for notice to the Borrower in this Contract;
- (k) The Surety renounces the benefit of division and the benefit of discussion;
- (l) The Surety further acknowledges and agrees with the Lender that its obligations are not a guaranty attached to specific duties of the Surety towards the Borrower, but is given in consideration of the credit and ability of the Surety to fulfil or cause to be fulfilled the Secured Obligations, and as such is an important consideration, without which the Lender would not have entered into this Contract.

**EXPLANATIONS FROM THE NOTARY**

**69.** The Lender and the Borrower, as well as the Surety and any other party to this Contract declare having received from its legal counsel appropriate and sufficient explanations of the nature and extent of the terms and conditions of this Contract and of the obligations of the parties deriving therefrom.

**LANGUAGE**

**70.** The Borrower and the Surety have requested that this Contract be drawn up in English. L'Emprunteur et la Caution ont demandé que le présent contrat soit rédigé en anglais.

**DECLARATION OF MATRIMONIAL STATUS**

**71.** ●

**INTERVENTION OF SPOUSE**

**72.** ●, spouse of the Borrower, domiciled and residing at ●, intervenes in this Contract and declares:

**72.1** that he/she has taken cognizance of this Contract and consents thereto;

**72.2** that the declaration of matrimonial status made by the Borrower is accurate;

**72.3** that, even if a declaration of family residence has previously been or will subsequently be registered against the Property, his/her rights are subordinated to those of the Lender and the Lender may exercise its rights and recourses, free of all rights of the intervening spouse; and

**72.4** that if a right of use or ownership in the Hypothecated Property is granted in his/her favour, he/she will be solidarily liable for all of the Secured Obligations, without the benefits of division or discussion.

**WHEREOF ACTE**

**THUS DONE AND PASSED**, at the City of ●, Province of Québec, on the date hereinabove first mentioned under the number

\_\_\_\_\_ (\_\_\_\_\_) of the original notarial minutes of the undersigned notary.

**AND AFTER** the parties had declared to have taken cognizance of these presents and to have exempted the said Notary from reading them or causing them to be read, the parties signed with and in the presence of the said Notary.

**COMPAGNIE HOME TRUST /  
HOME TRUST COMPANY**

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

**[BORROWER]**

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

**[SURETY]**

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

\_\_\_\_\_  
●, Notary