

---

CITY OF KELOWNA

MEMORANDUM

---

**Date:** June 4, 2009  
**File No.:** 0550-05, 2380-20-8057.1, 2380-20-8156  
**To:** City Manager  
**From:** Airport Director  
**Subject:** CONSENT TO SECOND MORTGAGE OF SUB-LEASE – 600897 B.C. LTD.  
- KELOWNA INTERNATIONAL AIRPORT

---

**RECOMMENDATION**

THAT Council consent to a Mortgage of Sub-Lease No. 151230 between 600897 B.C. Ltd. (Carson Air) and the Canadian Imperial Bank of Commerce.

THAT Council consent to a Mortgage of Sub-Lease No. 146838 (assigned by A.O.G. Air Support Inc. to 600897 B.C. Ltd.) between 600897 B.C. Ltd. (Carson Air) and the Canadian Imperial Bank of Commerce.

AND THAT the Mayor and City Clerk be authorized to execute the Consents to Mortgage of Sub-Lease on behalf of the City.

**BACKGROUND**

600897 B.C. Ltd. is a local company that has operated at the Kelowna International Airport for over eight years. On December 11, 2000, Council approved entering into a 30 year lease agreement. The signed sub-lease is in place, with an expiry date of December 31<sup>st</sup>, 2030.

On November 6, 2006, Council approved the assignment of A.O.G. Airport Support Inc. sub-lease (Boale, Wood & Company Ltd. – Receiver of the property) to 600897 B.C. Ltd. The signed sub-lease has an expiry date of December 30, 2024.

600897 B.C. Ltd. has requested approval for a mortgage of sub-lease No. 151230 and a mortgage of sub-lease No. 146838 with the Canadian Imperial Bank of Commerce. Pushor Mitchell Lawyers, acting on behalf of 600897 B.C. Ltd. has supplied the City with consent documents, in triplicate.

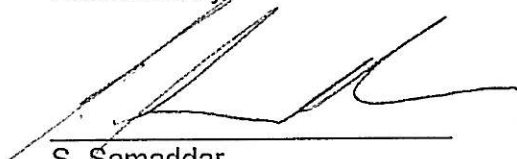
.....2



Considerations that were not applicable to this report:

INTERNAL CIRCULATION TO: N/A  
LEGAL/STATUTORY AUTHORITY: N/A  
LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: N/A  
EXISTING POLICY: N/A  
FINANCIAL/BUDGETARY CONSIDERATIONS: N/A  
PERSONNEL IMPLICATIONS: N/A  
TECHNICAL REQUIREMENTS: N/A  
EXTERNAL AGENCY/PUBLIC COMMENTS: N/A  
COMMUNICATIONS CONSIDERATIONS: N/A  
ALTERNATE RECOMMENDATION: N/A

Submitted by:



S. Samaddar  
Airport Director

Approved for Inclusion:



**CONSENT**

**Re: Mortgage of Sub-Lease No. 151230 dated June 20, 2001 as amended by Supplemental Agreement No. 155423 dated September 25, 2004 (the "Sub-Lease") of a portion of Lease No. 109806 (Pacific 1375) dated December 19, 1979 of all and singular those certain parcels of land situate, lying and being in the City of Kelowna, Osoyoos Division Yale District, in the Province of British Columbia comprising the Kelowna Airport.**

<b>Sub-Lease No. 151230:</b>	<b>Landlord:</b>	<b>The City of Kelowna (the "City")</b>
	<b>Tenant:</b>	<b>600897 B.C. Ltd.</b>
	<b>Tenant's Mortgagor:</b>	<b>Canadian Imperial Bank of Commerce (the "Bank")</b>

The City hereby consents, pursuant to Section 6.01 of the above-noted Sub-Lease, to the granting by 600897 B.C. Ltd., the Sublessee under the above-noted Sub-Lease, of a Mortgage of the above-noted Sub-Lease to the Bank.

This consent is not an approval of the terms of the Mortgage of Sub-Lease, nor is it a consent to any further assignment or any subletting.

As a non-binding commitment to the Bank, the City will make reasonable efforts to notify the Bank of monetary defaults of the Subtenant under the Sub-Lease.

Dated at Kelowna, British Columbia this \_\_\_\_ day of May, 2009.

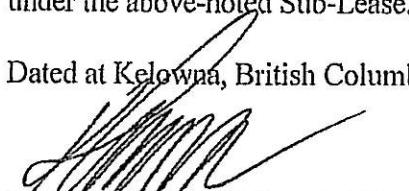
**CITY OF KELOWNA,**  
by its authorized signatory(ies):

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

Per: \_\_\_\_\_  
City Clerk

I, Kevin Carson, Businessman, of Kelowna, British Columbia, hereby acknowledge and agree that nothing in this letter nor anything done or not done by the City pursuant to this letter in any way affects or prejudices my obligations to the City as guarantor of the obligations of 600897 B.C. Ltd. under the above-noted Sub-Lease.

Dated at Kelowna, British Columbia this 25 day of May, 2009.

  
\_\_\_\_\_  
Kevin James Carson  
RTS/1575.393/dlk

Land Title Act

**Form B**

(Section 225)

Province of British Columbia

**MORTGAGE - PART 1**

(This area for Land Title Office use)

Page 1 of 12 pages

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent) Mortgage Loan No.

**PUSHOR MITCHELL LLP** Lawyers, 301- 1665  
 Ellis Street, Kelowna, British Columbia V1Y 2B3,  
 Phone (250) 762-2108 Client No. 10332  
 RTS/15975.393-dlk(3)

\_\_\_\_\_  
 Signature of Applicant's Solicitor or Agent

2. Parcel Identifier(s) and Legal Description(s) of the Mortgaged Land:\*

(PID)

(Legal Description)

N/A

SEE SCHEDULE

3. Borrower(s) [Mortgagor(s)]: (Including postal address(es) and postal code(s))\*

**600897 B.C. LTD.**, Incorporation No. BC0600897, 201 – 6197 Airport Way, Kelowna, British Columbia V1V 2S2

4. Lender(s) [Mortgagee(s)]: (Including occupation(s), postal address(es) and postal code(s))\*

**CANADIAN IMPERIAL BANK OF COMMERCE**, a Canadian Chartered Bank, having a branch office at Commercial Sales and Service Centre, 595 Bay Street, Suite 500, Toronto, Ontario M5G 2C2

5. Payment Provisions:\*\*

(a) Principal Amount	(b) Interest Rate:	(c) Interest Adjustment Date:	Y M D
\$6,000,000.00	See Schedule		N/A
(d) Interest Calculation Period:	(e) Payment Dates	(f) First Payment Date:	
Monthly	N/A		N/A
(g) Amount of each periodic payment:	(h) Interest Act (Canada) Statement: The equivalent rate of interest calculated half yearly not in advance is N/A% per annum.	(i) Last Payment Date:	
N/A			N/A
(j) Assignment of Rents which the applicant wants registered?	(k) Place of payment:	(l) Balance Due Date:	
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	Postal address in Item 4.		On Demand
If YES, page and paragraph number:			

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

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

6. MORTGAGE contains floating charge on land?

Yes \_\_\_ No X

7. MORTGAGE secures a current or running account?

Yes X No

8. INTEREST MORTGAGED:

Freehold X

Other (specify) -\* Mortgage of Sublease 151230 - See Schedule

9. MORTGAGE TERMS:

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

(a) Prescribed Mortgage Terms

(b) Filed Standard Mortgage Terms \_\_\_ D.F. Number:

(c) Express Mortgage Terms X (annexed to this mortgage as Part 2)

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

10. Additional or Modified Terms:\*

See Schedule

11. Prior Encumbrances Permitted by Lender:\*

NIL

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

Officer Signature(s)

Execution Date

Borrower(s) Signature(s)

*Chris Fraser*

Y	M	D
2009	05	25

600897 B.C. LTD., by its authorized signatory

*Kevin James Carson*  
KEVIN JAMES CARSON

**CHRIS A. FRASER**  
BARRISTER & SOLICITOR  
200 - 1449 ST. PAUL STREET  
KELOWNA, BC V1Y 2E5  
TELEPHONE: (250) 868-8306

Officer Certification:

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

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

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

**SCHEDULE**

---

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

All words that are defined in the set of standard mortgage terms annexed to this mortgage as Part 2 shall have the same meaning when used in this Schedule.

**2. LEGAL DESCRIPTION OF THE MORTGAGE LAND AND INTEREST MORTGAGE and  
8. INTEREST MORTGAGED:**

A portion of the Lands in the City of Kelowna, in the Province of British Columbia leased under Lease No. 109806 (Pacific 1375) dated December 19, 1979 known as Lot 3 – Registered Plan 11796, District Lot 120 – Plan 1929, Lot 7 – Registered Plan 1502, comprising all of Kelowna International Airport, as described in Sub-Lease No. 151230 dated June 20, 2001 as amended by Supplemental Agreement No. 155423 dated September 25, 2004 (the “Sub-Lease”).

Sub-Lease No. 151230	Landlord:	The City of Kelowna
	Tenant:	600897 B.C. Ltd.
	Date:	June 20, 2001
	Term:	Ending December 31, 2030
		Transport Canada Supplemental Agreement No.: 155423

**5. PAYMENT PROVISIONS:**

**5. (b) Interest Rate**

~~1. The Interest Rate is See Schedule.~~

2. The Interest Rate is a variable rate per year equal to the Prime rate plus 6% per year, with interest on overdue interest at the same rate. “Prime Rate” means the variable interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

If clause 1 or 2 is completed, the other clause shall be deemed to have been deleted.

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

**10. ADDITIONAL OR MODIFIED TERMS:**

**(a) Indebtedness**

~~1. For the purposes of the Mortgage, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Mortgagor or from other dealings or proceedings by which the Bank may become a creditor of the Mortgagor) payable under or by virtue of:~~

- ~~(i) Mortgage of Sublease 146848 and Assignment of Rents, Mortgage of Sublease 151230 and Assignment of Rents and Security Agreement~~
- ~~(ii) any instrument, agreement or other document whatsoever taken by way of renewal or replacement thereof, as amended from time to time, and~~
- ~~(iii) the Mortgage.~~

2. For the purposes of the Mortgage, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Mortgagor or from other dealings or proceedings by which the Bank may become a creditor of the Mortgagor) including without limitation the outstanding balance of the Principal Amount advanced to the Mortgagor from time to time, interest thereon at the Interest Rate and all other present or future indebtedness and liabilities of the Mortgagor to the Bank payable under or by virtue of the Mortgage.

If clause 1 is completed, clause 2 shall be deemed to have been deleted. If clause 1 is not completed and neither clause 1 or clause 2 is deleted, clause 1 shall be deemed to have been deleted.

**(b) Required Advances**

Notwithstanding any other provisions of this Mortgage (including any standard mortgage terms incorporated by reference) if the Bank is called upon to make a payment for the account of the Mortgagor pursuant to a letter of credit, letter of guarantee or acceptance of a bill of exchange or other negotiable instrument payment by the Bank shall constitute an advance under this Mortgage which the Bank shall be required to make.

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

10. **ADDITIONAL OR MODIFIED TERMS: (CONTINUED)**

(c) **Environmental Laws**

1. **Definitions** - In this provision "hazardous substance" includes, without limitation, any substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal or plant health or life or the environment, and in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority or competent jurisdiction.

2. **Representations** - The Mortgagor represents and warrants to the Bank that to the best of the Mortgagor's information and belief, after due enquiry and investigation:

- (i) the Property has never been used to manufacture, refine, handle, store or dispose of any hazardous substances (except in compliance with all laws, regulations and orders);
- (ii) the Property does not contain any hazardous substances deposited, added or discharged by the Mortgagor or a prior owner, lessee or occupier of the Property or any adjoining property.

3. **Covenant** - The Mortgagor covenants and agrees with the Bank that it will comply in all material respects with all environmental laws, rules and regulations affecting or relating to the Property and will assume and perform any and all environmental liabilities and obligations relating to the Property including, without limitation, any liability for the clean-up of any hazardous substances on, under or emanating from the Property.

4. **Indemnity** - The Mortgagor hereby agrees to indemnify and hold the Bank harmless from and against any and all liabilities, losses, claims, damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Bank by reason of, or in any way related to, the breach of any of the representations and warranties set forth above or the breach of any of the covenants and agreements set forth above.



STANDARD MORTGAGE TERMS

PART 2

FILED BY: CANADIAN IMPERIAL BANK OF COMMERCE

FILING NO: MT 900102

The following set of Standard Mortgage Terms shall be deemed to be included in every mortgage in which the set is referred to by its filing number, as provided in section 219.1 of the Act.

1. DEFINITIONS

In this set of Standard Mortgage Terms:

- (a) "Act" means the Land Title Act, R.S.B.C. 1979 ch. 219, as amended or replaced from time to time;
- (b) "Amount Secured" means the aggregate of (i) the Principal Amount, (ii) interest thereon at the Interest Rate calculated monthly both before and after default, demand, maturity and judgment, (iii) interest at the same rate on any interest or costs not paid when due and (iv) Costs;
- (c) "Bank" means Canadian Imperial Bank of Commerce, its successors and assigns;
- (d) "Common Expenses" means the expenses of the performance of the objects and duties of the Strata Corporation and any expenses which pursuant to the Condominium Act or the by-laws of the Strata Corporation are common expenses;
- (e) "Condominium Act" means the Condominium Act R.S.B.C. 1979 ch. 61, as amended or replaced from time to time;
- (f) "Costs" means all amounts, costs and expenses which, pursuant to the provisions of this set of Standard Mortgage Terms (other than paragraph 3), the Mortgagor is required to pay to the Bank;
- (g) "Fixtures" means (i) all fixtures and growing things in, on, under or in relation to the Property and (ii) all real or personal property whatsoever (whether affixed, mobile or stationary) which is now or later attached to or placed, installed or erected in, on or under the Property, including without limitation: all structures, additions, improvements, fences, plant, machinery, motors, furnaces, boilers, pressure vessels, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, gas pipes, wiring, radiators, shutters, awnings, fixed mirrors, window blinds, wall-to-wall floor coverings, screen and storm doors and windows, aerials, television antennae, satellite dishes, refrigerators, stoves, air conditioning, ventilating, plumbing, electrical, lighting, cooling, heating, cooking and refrigeration equipment, computers, telecommunications systems, security systems, elevators, central vacuum systems, and all apparatus and equipment appurtenant to the Property;
- (h) "Indebtedness" has the meaning specified in the Schedule under the heading "Indebtedness";
- (i) "Interest Rate" means the interest rate specified in the Schedule under the heading "Interest Rate";
- (j) "Lease" means, in respect of any part of the Property in which the Mortgagor has a leasehold interest, the lease under which such leasehold interest is created and any lease with respect to all or any part of the Property which may be entered into in replacement or renewal of such lease, as any of the foregoing may be amended from time to time;
- (k) "Lien" means any mortgage, plan, pledge, assignment, charge, security interest, title retention agreement, levy, execution, attachment or other encumbrance (whether statutory or otherwise);
- (l) "Mortgage" when used as a noun means a Mortgage - Part 1 (Land Title Act Form B) which refers to the filing number of the set of Standard Mortgage Terms (including the Schedule attached thereto) and this set of Standard Mortgage Terms, as any of the foregoing may be amended or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder" and similar expressions refer to the Mortgage and not to any particular paragraph or other portion thereof;
- (m) "Mortgagor" means each party who signs the Mortgage as mortgagor, and the Mortgagor's heirs, executors, administrators, successors and assigns;
- (n) "paragraph" refers to a numbered paragraph in this set of Standard Mortgage Terms;
- (o) "Principal Amount" means the Principal Amount specified in the Mortgage, which shall be in lawful money of Canada unless otherwise specified herein;
- (p) "Property" means the land described in the Mortgage, all buildings now or later placed, installed or erected on any such land and all Fixtures;
- (q) "Schedule" means, collectively, all the schedules attached to the Mortgage; and
- (r) "Strata Corporation" means the strata corporation created by the registration under the Condominium Act of a strata plan if the Property forms part of the lands described in the strata plan.

2. BANK SECURITY

The Mortgagor:

- (a) if the Mortgagor has a freehold interest in the Property, grants and mortgages the Property and the Mortgagor's present and future interest in the Property to the Bank; or
- (b) if the Mortgagor has a leasehold interest in the Property, mortgages and sub-leases the Property and the Mortgagor's present and future interest in the Property to the Bank for and during the unexpired residue of the term of each Lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Mortgagor in each Lease;

as collateral security for payment of the indebtedness in an amount not exceeding the Amount Secured and performance of the Mortgagor's other obligations under the Mortgage.

3. PAYMENT

- (a) The Mortgagor shall pay the indebtedness to the Bank on demand.
- (b) Except as otherwise agreed in writing, payments or other moneys received by the Bank may be applied by it on any part of the indebtedness determined by it from time to time, notwithstanding any contrary stipulation by the Mortgagor. The Bank may from time to time revoke or alter any such application and reapply the amount in question on any other part of the indebtedness determined by it. If the Bank is notified, or in its sole discretion believes, that the Mortgagor has disposed of, encumbered or otherwise created a Lien or other interest on or in all or any part of the Property or any Lease, the Bank may close any of the Mortgagor's accounts at the amount then owing to the Bank and open a new account or accounts for indebtedness thereafter arising and for payments thereafter received by the Bank. No amount paid in or credited to any new account shall be applied to or have the effect of reducing or repaying any part of the indebtedness owing at the time the Bank was so notified or opened any such new account.

- (c) The provisions of the Mortgage in no way prejudice or otherwise affect any right the Bank may have independently of the Mortgage (whether pursuant to any agreement, promissory note, other instrument, any rule of law or otherwise whatsoever) to recover all or any part of the indebtedness from the Mortgagor and, if the indebtedness exceeds the Amount Secured, the Bank may conclusively determine what part of the indebtedness (not exceeding the Amount Secured) shall be secured by the Mortgage and what part shall not be so secured.
- (d) The records maintained by the Bank as to the date and amount of any indebtedness advanced to or otherwise incurred by the Mortgagor from time to time (including any interest accrued thereon), and as to the amount of any payment thereof, shall constitute prima facie evidence of such dates and amounts.
- (e) Any demand for payment made by the Bank pursuant to the Mortgage may be delivered personally to the Mortgagor or any employee or officer thereof or may be mailed, postage prepaid, to the address of the Property or to the Mortgagor's most recent address appearing in the Bank's records relating to the Mortgage. ANY SUCH DEMAND SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN GIVEN AND RECEIVED ON THE DATE OF SUCH DELIVERY OR THE FIFTH DAY AFTER SUCH MAILING.
- (f) The Mortgagor shall not, without the Bank's express written consent, be entitled to pay all or any part of the indebtedness prior to the date the same is payable pursuant to the provisions of the Mortgage.

#### 4. CONTINUING SECURITY

The Mortgage shall, whether or not it secures a current or running account, be a general and continuing collateral security to the Bank for payment of the indebtedness in an amount not exceeding the Amount Secured and performance of the Mortgagor's other obligations under the Mortgage notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Bank representing all or any part of the indebtedness or in the names of the parties to such bills, notes and/or other obligations or that there is no indebtedness outstanding at any particular time; and the Mortgage will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

#### 5. ADVANCES BY THE BANK

If the Bank decides, for any reason, not to advance any moneys or other accommodation, it shall not be required to do so whether or not the Mortgage has been signed and registered and whether or not any moneys or other accommodation have been previously advanced. Whether or not any advances are made, the Mortgagor shall immediately pay the Bank all of the Bank's Costs, including lawyer's fees (on a solicitor and his own client basis), and expenses for investigating title to the Property and for preparing, signing and registering the Mortgage and any other related instruments.

#### 6. ADDITIONAL SECURITY; JUDGMENTS

- (a) The Mortgage is in addition to an not in substitution for any other security now or later held by the Bank for all or any part of the indebtedness. The Mortgagor agrees that the Mortgage shall not create any merger or discharge of any part of the indebtedness or any other debt owing to the Bank or of any Lien, bond, bill of exchange, promissory note or other security now or later held by the Bank (whether from the Mortgagor or any other person). The Mortgagor further agrees that the Mortgage shall not in any way affect any other security now or later held by the Bank for all or any part of the indebtedness or the liability of any endorser or any other person, or any of the Bank's remedies, in respect of any such Lien, bond, bill of exchange, promissory note or other security, or any renewal thereof, held by the Bank for or on account of all or any part of the indebtedness.
- (b) The taking of a judgment or judgments against the Mortgagor in respect of any of the agreements or obligations contained in the Mortgage, or in respect of all or any part of the indebtedness, or otherwise, shall not operate as a merger of such agreements or obligations or all or any part of the indebtedness, or operate as a merger of or in any other way affect the security created by the Mortgage or any other security or the Bank's right to pursue the Bank's other remedies or to enforce the Mortgagor's other obligations (whether hereunder or otherwise) or the Bank's right to interest on the indebtedness at the Interest Rate. Any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment is fully paid and satisfied.

#### 7. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Bank may increase, reduce, discontinue or otherwise vary the Mortgagor's credit arrangements, grant extensions of time or other indulgences, take and give up securities, abstain from taking, perfecting or registering securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Mortgagor and other persons (including without limitation any person to whom all or any part of the Property is transferred) and with any securities as the Bank may see fit without affecting any of the Bank's rights or remedies (hereunder or otherwise), the Mortgagor's liability under the Mortgage or the Mortgagor's liability to pay the indebtedness. The Bank may delay enforcing any of its rights under the Mortgage or any other document relating to the indebtedness without losing or impairing those rights and may waive any breach of the Mortgagor's obligations under the Mortgage or any such document without affecting the Bank's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Bank. The Bank may release others from any liability to pay all or any part of the indebtedness without releasing the Mortgagor. The Bank may release its interest under the Mortgage in all or any part of the Property or any Lease (or any other collateral) whether or not the Bank receives any value and shall be accountable to the Mortgagor only for moneys which the Bank actually receives. If the Bank releases its interest in part of the Property, the remainder of the Property shall continue to secure the indebtedness in an amount not exceeding the Amount Secured and the Mortgagor's obligations under the Mortgage will continue unchanged. No sale or other dealing with all or any part of the Property or any Lease, and no amendment of the Mortgage or any other security, agreement or instrument, and no amendment relating to the indebtedness, will in any way affect the obligation of the Mortgagor or any other person to pay the indebtedness.

#### 8. REPRESENTATIONS, WARRANTIES AND AGREEMENTS RESPECTING THE PROPERTY

- (a) The Mortgagor represents, warrants and agrees with the Bank that:
  - (i) unless the Mortgagor is the lawful tenant or lessee of the Property, the Mortgagor is the lawful owner of the Property and has a good and marketable title in fee simple to the Property, free of any Liens or claims except any the Mortgagor has reported to the Bank in writing;
  - (ii) the Mortgagor has the right to execute and deliver the Mortgage and charge the Property and the Mortgagor's interest in it to the Bank in accordance with the terms hereof;
  - (iii) the Mortgagor has not done, omitted nor permitted anything whereby the Property or any Lease or the Mortgagor's interest in it or any part of it is or may be subject to any Lien or claim except any the Mortgagor has reported to the Bank in writing;
  - (iv) there are no limitations affecting title to the Mortgagor's interest in the Property, except any the Mortgagor has reported to the Bank in writing and except for building and zoning by-laws which have been and will continue to be complied with or with respect to which the Property is a legal non-conforming use;
  - (v) the Mortgagor shall, from time to time, sign any document and take any further action at the Mortgagor's expense as the Bank may think necessary in order to carry out the intention of the Mortgage;

- (vi) no part of the Property is, has ever been or will in the future be insulated with urea formaldehyde foam insulation; and
  - (vii) on default under the Mortgage, the Bank shall have quiet possession of the Property free from all Liens and claims, except any referred to in paragraphs 8(a)(i), 8(a)(iii) and 8(b)(i).
- (b) If the Mortgagor is a tenant or lessee of the Property, the Mortgagor also represents, warrants and agrees with the Bank that:
- (i) the Mortgagor is the lawful tenant or lessee of the Property and has a good and marketable leasehold title to the Property, free of any Liens or claims, except any the Mortgagor has reported to the Bank in writing;
  - (ii) the Property is leased to the Mortgagor under a good, valid and subsisting Lease (a complete copy of which the Mortgagor has given to the Bank);
  - (iii) all rents and other moneys payable under each Lease have been paid and the Mortgagor has not defaulted in respect of any of the Mortgagor's other obligations set out in such Lease, in both cases up to the date the Mortgagor signed the Mortgage;
  - (iv) the Mortgagor has obtained the consent of the Mortgagor's landlord or lessor, or the Mortgagor has the right without such consent, to Mortgage and sublet the Mortgagor's leasehold interest in the Property to the Bank in the manner provided in the Mortgage;
  - (v) the Mortgagor shall pay rent and all other amounts, and perform and observe all other obligations of the lessee or tenant, all as required by each Lease, in default of which the Bank may (but shall not be obligated to) make any such payments or perform or observe any such obligations, and the Mortgagor shall immediately pay the Bank the amount of any payments made or Costs and expenses incurred by the Bank in so doing;
  - (vi) the Mortgagor shall not surrender the Lease or cause or allow it to be terminated or forfeited;
  - (vii) the Mortgagor shall not agree to any amendment of any Lease without first obtaining the Bank's written consent;
  - (viii) the Mortgagor shall promptly give the Bank a copy of any notice, demand or request which the Mortgagor may receive relating to any Lease or the Property; and
  - (ix) the Mortgagor shall stand possessed of the Property for the last day of the term or of any renewal term granted by each Lease in trust for the Bank, and will assign and sell it as the Bank may direct, but subject to the Mortgagor's rights herein.

#### 9. INSURANCE

- (a) The Mortgagor will, in accordance with the provisions of this paragraph 9, insure and keep insured for their full insurable value all buildings and fixtures now or later forming part of the Property, and all present and future crops and other produce of the land forming part of the Property. The risks so insured against shall include loss or damage by or from fire (with extended perils coverage), explosion, tempest, lightning and other perils usually covered in fire insurance policies and such additional risks as the Bank may from time to time require, including without limitation, loss of rental and other income and public liability insurance, in each case in amounts satisfactory to the Bank.
- (b) If a steam boiler, pressure vessel, oil or gas burner, coal blower, stoker or air conditioning or sprinkler system is at any time operated on the Property, the Mortgagor will also insure and keep insured against loss or damage by explosion of, or otherwise caused by, any such apparatus or system.
- (c) Each insurance policy will be carried with a company or companies, and contain a mortgage clause and a loss payee clause in favour of the Bank as its interest may appear, approved by the Bank. The Mortgagor shall immediately give the Bank a certified copy of each insurance policy and, not less than ten days before any policy expires or is terminated, evidence of its renewal or replacement. The Bank may require cancellation of any insurance required by the Mortgage and new insurance effected by an insurer to be approved by the Bank.
- (d) The Bank has the right (but shall not be obligated) to obtain and maintain any insurance if the Mortgagor fails to do so or fails to comply with any of the obligations set forth in paragraph 9(c). The Mortgagor shall immediately pay the Bank all premiums paid and all Costs and expenses incurred by the Bank to effect such insurance.
- (e) If any loss or damage occurs to any part of the Property, the Mortgagor shall immediately notify the Bank and, at the Mortgagor's expense, do everything necessary to enable the Bank to obtain the insurance proceeds. The Bank may require that all or any part of such proceeds, or the proceeds of any other insurance required hereby or otherwise affected with respect to all or any part of the Property, be applied towards all or any part of the indebtedness, whether or not due, or be used to repair such loss or damage.
- (f) As additional security for payment of the indebtedness and performance of the Mortgagor's other obligations under the Mortgage, the Mortgagor assigns to the Bank all of the Mortgagor's interest in or under (i) any policy of insurance effected with respect to all or any part of the Property, whether or not effected in accordance with the provisions of this paragraph 9 and (ii) any insurance trust agreement referred to in paragraph 13(f). The Mortgagor hereby irrevocably appoints each officer of the Bank (with power of substitution) as attorney of the Mortgagor to endorse on behalf of the Mortgagor any cheques issued by any insurer with respect to any policy of insurance effected pursuant to this paragraph 9 or otherwise with respect to all or any part of the Property.

#### 10. TAXES

The Mortgagor shall pay, when due, all taxes, rates and assessments (municipal, local, parliamentary or otherwise) relating to all or any part of the Property. Upon request, the Mortgagor shall give the Bank a receipt evidencing any such payment and copies of all tax bills, notices of assessment and other notices relating to property taxes. If the Mortgagor fails to make any such payment, or to pay any related penalties, fines or interest, the Bank may (but shall not be obligated to) do so and the Mortgagor shall immediately pay the amount of such payment to the Bank.

#### 11. REPAIRS, MAINTENANCE AND INSPECTION

- (a) The Mortgagor shall keep the Property in good condition and in a state of good repair and shall not do, fail to do or permit anything to be done which, in the opinion of the Bank, will lower its value. The Mortgagor shall not commit or permit any act of waste on the Property nor allow any part of the Property to become or remain vacant without the Bank's written consent.
- (b) The Mortgagor shall perform and observe the requirements of every present and future statute, law, by-law, ordinance, regulation and order affecting the operation, condition, maintenance, repair, construction, use or occupation of all or any part of the Property.
- (c) If any part of the Property is farmland, the Mortgagor shall in each year either put into crop or summerfallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Mortgagor shall also keep such Property clean and free from all noxious weeds and generally see that it does not depreciate in any way as farmland.
- (d) The Mortgagor authorizes the Bank to enter on and inspect the Property whenever the Bank deems it necessary or advisable to do so.

- (e) If, in the sole opinion of the Bank, the Mortgagor does not observe or perform any of the foregoing provisions of this paragraph 11, the Bank may from time to time (but shall not be obligated to) enter on and inspect the Property at any time and make such repairs and do such other acts or things it believes are necessary to protect or preserve the Property and to carry out the Mortgagor's obligations under this paragraph 11 including, if the Property is farmland, the farming, improvement and general management thereof. The Mortgagor shall immediately pay the Bank all amounts, Costs and expenses paid or incurred by it in connection with any of the foregoing.
- (f) If the Mortgagor falls at any time for a period of ten consecutive days to diligently carry on any improvement (as defined in paragraph 12) to or on any part of the Property or without the written consent of the Bank departs from the plans and specifications approved by the Bank with respect thereto or from the generally accepted standards of construction in the locality of the Property, or if any of the events or circumstances set out in paragraph 18 has occurred and is continuing, the Bank from time to time may enter on the Property and have exclusive possession of all materials, plant and equipment thereon, free of interference from or by the Mortgagor, and complete the improvement either according to such plans and specifications or according to such other plans, specifications or design as the Bank in its absolute discretion shall determine. The Mortgagor shall immediately pay the Bank all Costs and expenses incurred by it in connection with any of the foregoing. In exercising any of the foregoing rights, the Bank shall be deemed not to be a mortgagee in possession.
- (g) Any entry which may be made by the Bank pursuant to any provision of the Mortgage may be made by any agents, employees and/or contractors thereof.

12. IMPROVEMENTS; DEMOLITION

- (a) In this paragraph 12, the term "improvement" has the meaning given to it in the Builders Lien Act R.S.B.C. 1979 ch. 40, as amended or replaced from time to time, and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Property and the demolition or removal of any building or part of any building on the Property.
- (b) The Mortgagor agrees that no improvement to or on the Property will be made or commenced (by the Mortgagor or any other person) unless the Mortgagor first provides a copy of all proposed plans, blueprints and specifications to the Bank and obtains the Bank's written consent thereto. The improvement shall form part of the Property. Subject to paragraph 6, the Bank may make advances to the Mortgagor under the Mortgage based on progress in completing the improvement or upon its completion or, in the case of a building, its occupation or sale or otherwise. The Mortgagor shall construct and complete the improvement in accordance with the plans and specifications approved by the Bank and all applicable governmental building standards as quickly as possible and make all payments for the improvement that it is required to make, and shall provide the Bank with proof of such payments on request.
- (c) The Bank may retain funds from any advance or advances under the Mortgage until the Bank is completely satisfied that all statutory holdback provisions have been fully complied with, and may give information in accordance with the Bank's statutory obligations as mortgagee.

13. STRATA TITLE PROVISIONS

- (a) This paragraph 13 shall apply, in addition to the other provisions of the Mortgage, if all or any part of the Property is a strata lot. The Mortgagor agrees that the common property pertaining to the Property and any other interest that the Mortgagor may have in the assets of the Strata Corporation form part of the Property and are subject to the Mortgage.
- (b) The Mortgagor shall comply with the Condominium Act and the by-laws, rules and regulations of the Strata Corporation as they exist from time to time.
- (c) The Mortgagor shall pay, when due, all amounts (including without limitation Common Expenses) which, by the terms of the Condominium Act or the by-laws of the Strata Corporation, are payable by the Mortgagor or with respect to the Property and provide the Bank on request with proof of such payment. If the Mortgagor does not make any such payment, the Bank may (but shall not be obligated to) do so, and the Mortgagor shall immediately pay the Bank any amount so paid.
- (d) The Mortgagor shall mail to the Bank, by prepaid registered mail, or deliver to the Bank, copies of every notice, assessment, claim or demand for payment, rule, regulation, request or demand of the Bank to consent to any matter, and every other communication relating to all or any part of the Property or the common property of the Strata Corporation so that the Bank receives them at least five days before any such claim or demand is payable or, in the case of other communications, within five days after receipt by the Mortgagor.
- (e) The Mortgagor irrevocably appoints, authorizes and empowers the Bank to vote, consent or not consent at any meeting of the Strata Corporation respecting all matters relating to insurance, maintenance, finance or any other matter affecting the security of the Mortgage provided that:
  - (i) the Mortgagor shall be entitled to exercise such right to vote or consent or not consent unless the Bank gives notice of its intention to exercise such right, which notice may be for an indeterminate period of time, a limited period of time or a specific meeting or matter;
  - (ii) the Bank's right to vote, consent or not consent does not impose any obligation on the Bank to do so or to protect the Mortgagor's interests; and
  - (iii) the Bank's exercise of its right to vote, consent or not consent shall not constitute the Bank a mortgagee in possession and shall not give rise to any liability on the part of the Bank.
- (f) The Mortgagor shall insure all improvements which at any time the Mortgagor or any previous owner makes or made to the Property and the Mortgagor's common or other interest in buildings which are part of the condominium property, against such risks as the Bank may require. If the Strata Corporation fails to obtain or maintain the insurance it is required by the Condominium Act, the by-laws or rules of the Strata Corporation or otherwise to obtain and maintain with respect to all or any part of the Property, the common property or the assets of the Strata Corporation, the Mortgagor shall do so. If the Mortgagor fails to so insure, the Bank may (but shall not be obligated to) do so and the Mortgagor shall immediately pay the Bank all premiums paid by it. All policies of insurance required to be effected pursuant to this paragraph 13(f) upon or in respect of the buildings on the Property shall provide for any loss to be payable to the Bank and a trustee approved by the Bank pursuant to an insurance trust agreement approved by the Bank, the terms of which shall not be altered without the Bank's prior written consent. Without limiting the generality of paragraph 13(a), it is expressly agreed that the provisions of this paragraph 13(f) are in addition to the Mortgagor's obligations and the Bank's rights set out in paragraph 9.
- (g) In addition to the Bank's other rights, whether under the Mortgage or otherwise, and without affecting the Bank's right to demand payment pursuant to the Mortgage or otherwise, the balance of the indebtedness will, at the Bank's option and without notice to the Mortgagor, become immediately due and payable if any of the following events or circumstances shall occur and be continuing, and the Mortgagor shall immediately pay the Bank the balance of the indebtedness:
  - (i) control of the common property or the assets of the Strata Corporation by the Strata Corporation is terminated;
  - (ii) a vote of the owners of the strata lots authorizes the sale or lease of all or any substantial part of the common property or all or any part of the common property is expropriated;
  - (iii) the Strata Corporation fails to comply with any provision of the Condominium Act or of any of the by-laws, rules or regulations applicable to the Strata Corporation;

- (iv) the Strata Corporation fails to insure the strata lots and common property in accordance with the Condominium Act and the by-laws of the Strata Corporation; or
  - (v) the Strata Corporation fails, in the Bank's opinion, to manage the common property and its assets in a careful way or to maintain them in good repair.
- (h) The Mortgagor will observe all provisions of, and perform all obligations imposed upon the Mortgagor by, the Condominium Act, the by-laws of the Strata Corporation and any rule made pursuant to the Condominium Act. The Bank may (but shall not be obligated to) observe and perform such provisions or obligations if the Mortgagor fails to do so and the Mortgagor shall immediately pay the Bank all Costs and expenses incurred by the Bank in so doing.

#### 14. EFFECT OF SUBDIVISION

If the Property is subdivided, each part of the Property shall continue to secure payment of the total amount of the Indebtedness in an amount not exceeding the Amount Secured and no person shall have any right to require the Indebtedness to be apportioned upon or in respect of any part of the Property.

#### 15. LEASES AND RENTS

- (a) The Mortgagor assigns to the Bank, as additional security for payment of the Indebtedness (i) all leases heretofore or hereafter granted by the Mortgagor (or any predecessor in title) of all or any part of the Property and (ii) any rents payable from time to time under such leases and the benefit of the terms and conditions contained therein and of the reversion thereunder. The Mortgagor shall, on request from time to time, execute a formal assignment of any of the foregoing in a form acceptable to the Bank and, if requested by the Bank, suitable for registration. The Mortgagor agrees to give the Bank executed copies of all such leases promptly after their execution and to perform all of the Mortgagor's obligations thereunder. No such assignment or any act of the Bank pursuant thereto shall operate to delay, hinder or prejudice any of the Bank's rights or remedies under the Mortgage. The Mortgagor shall also, from time to time, execute and deliver to the Bank such notices to lessees or others and such other documents as the Bank may request for the purpose of protecting or enforcing its rights in respect of such assignments.
- (b) The Bank shall not be responsible for the collection of any rents assigned to it or the performance of the terms and conditions of any lease referred to in this paragraph 15. The Bank shall be responsible to account only for rents actually received, less reasonable collection charges, and may apply such rents to the repayment of the Indebtedness, whether or not due. The Bank shall not be responsible for any such collection or any assignment referred to in this paragraph 15 be deemed a mortgagee in possession.
- (c) Notwithstanding this paragraph 15, no lease of all or any part of the Property shall be made by the Mortgagor without the written consent of the Bank. Notwithstanding any such consent, no such lease shall have priority over this Mortgage unless the Bank expressly agrees to such priority in writing. For the purposes of the Mortgage, every action or omission by the lessee under any lease of all or any part of the Property shall be conclusively deemed to be the action or omission of the Mortgagor.

#### 16. OTHER LIENS; RENEWAL OF LEASES

- (a) Unless the Bank otherwise consents, the Mortgagor will not create or permit to exist any Lien on or against all or any part of the Property, any Lease or any leases or rents referred to in paragraph 15, other than Liens (i) for taxes which are not due or (ii) incidental to construction, repairs or current operations which have not been registered against the Property, which relate to obligations which are not due and written notice of which has not been given to the Bank. The Mortgagor shall pay, when due, all amounts payable under, in respect of or secured by any Lien or other claim on, against or relating to all or any part of the Property or any Lease and shall comply with all obligations contained in the document or statute under which any such Lien or other claim arose. The Bank may (but shall not be obligated to) pay any such amount and/or cure any default under any such document or statute and the Mortgagor will immediately pay the Bank all amounts, Costs and expenses paid or incurred in so doing. To the extent the Bank pays any such amount, it shall be entitled to all equities and securities of the person or persons so paid and it may retain any discharge or cessation of charge unregistered until paid. The Mortgagor shall immediately notify the Bank in writing of the creation or coming into existence of any Lien on or against all or any part of the Property or any Lease and of the terms and conditions thereof.
- (b) The Bank may from time to time obtain an order vacating any builders' liens registered against all or any part of the Property and, if the Bank considers it necessary, provide financial guarantees or other security to facilitate the obtaining of any such order. The Mortgagor shall immediately pay the Bank all Costs and expenses paid or incurred by the Bank to obtain such order or to provide such guarantees or security.
- (c) If the Mortgagor has a leasehold interest in the Property and the Mortgagor refuses or neglects to renew any Lease, the Bank may (but shall not be obligated to) from time to time effect any such renewal in its own name or otherwise. The Mortgagor shall immediately pay the Bank all Costs and expenses incurred by the Bank in connection with any such renewal.

#### 17. POSSESSION

Until the occurrence of any default under the Mortgage, the Mortgagor shall be entitled to possession of the Property, subject to the terms of the Mortgage.

#### 18. DEFAULT

In addition to the Bank's other rights, whether under the Mortgage or otherwise, and without affecting any right of the Bank to demand payment otherwise than pursuant to paragraph 3(a), the Bank shall not demand payment pursuant to paragraph 3(a) unless any of the following events or circumstances shall occur and be continuing:

- (a) the Mortgagor fails to pay when due all or any part of the Indebtedness or any amount payable pursuant to any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into, with or in favour of or held by the Bank in respect of or representing all or any part of the Indebtedness;
- (b) the Mortgagor fails to observe or perform any provisions or obligations hereunder or under any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into with or in favour of or held by the Bank except as contemplated in paragraph 18(a);
- (c) the Mortgagor fails to pay when due any Indebtedness for borrowed money except as contemplated in paragraphs 18(a) and (b);
- (d) any statement the Mortgagor has given or made or hereafter gives or makes to the Bank (whether in the Mortgage or otherwise) in respect of the Property, the Mortgage, any Lease, the Indebtedness or the affairs of the Mortgagor is untrue in any material way on the date made or given;
- (e) any Lien or notice of a Lien is registered against the Property without the Bank's prior written consent;
- (f) the Property is abandoned or any act of waste is committed as to all or any part of the Property; or any building or other structure now or later being erected on the Property remains unfinished and without any work being done on it for a period of ten consecutive days;
- (g) the Mortgagor sells, transfers, leases or otherwise disposes of all or any part of the Property or any Lease or any interest in any of the foregoing, or agrees to do so, without the Bank's prior written consent;

- (h) the Mortgagor ceases to carry on the business ordinarily carried on from the Property without the Bank's prior written consent;
- (i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Mortgagor (if the Mortgagor is a corporation), or there is a change in the membership or a dissolution of the Mortgagor (if the Mortgagor is a partnership);
- (j) in the opinion of the Bank, there is a change in effective control of the Mortgagor (if the Mortgagor is a corporation);
- (k) the Mortgagor makes an assignment for the benefit of creditors, or any proceedings shall be instituted by or against the Mortgagor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its property (excluding proceedings which are being contested by the Mortgagor in good faith, which have been outstanding for fewer than thirty days and in respect of which any enforcement proceedings are stayed), or the Mortgagor is declared bankrupt, or a receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Property, or power of sale or foreclosure proceedings are commenced against all or any part of the Property;
- (l) another encumbrancer takes possession of all or any part of the Property or a distress or execution or other similar process is brought against all or any part of the Property; or
- (m) all or any part of the Property is expropriated.

#### 19. REMEDIES ON DEFAULT

- (a) If any of the events or circumstances set out in paragraph 18 has occurred and is continuing, the Bank may (but shall not be obligated to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any one or more of the following remedies:
  - (i) sue the Mortgagor for all or any part of the indebtedness;
  - (ii) distrain for arrears of all or any part of the indebtedness;
  - (iii) take judicial proceedings to foreclose the Mortgagor's and/or any other person's interest in all or any part of the Property or any Lease, to take possession of it and/or to sell, lease or otherwise deal with it;
  - (iv) enter on and take possession of all or any part of the Property;
  - (v) sell and/or lease all or any part of the Property or sell the unexpired term of any Lease;
  - (vi) assign any Lease and sell the last day of the term granted by the Lease and/or remove the Mortgagor or any other persons from being a trustee of the last day of the term of any Lease and appoint a new trustee or trustees in its place;
  - (vii) appoint in writing a receiver (which term as used herein includes a receiver and manager) of all or any part of the Property and the rents and other income thereof and from time to time remove any receiver and appoint another in its place;
  - (viii) exercise in respect of the insurance policies, insurance trust agreements, leases, rents and benefits assigned pursuant to paragraphs 9(f) and 15(a) the remedies exercisable by the Bank in respect of all or any of the Property; and
  - (ix) exercise any other rights or remedies which the Bank may have, whether pursuant to the Mortgage, at law, in equity, by contract or otherwise.
- (b) Nothing contained herein and nothing done by the Bank or any receiver, other than taking possession of the Property in fact, shall render the Bank or such receiver a mortgagee in possession.
- (c) The Mortgagor hereby waives the right to claim any exemption with respect to the Bank's right of distress and agrees that the Bank shall not be limited as to the amount for which it may distrain.
- (d) Any sale contemplated or permitted herein may be for cash or for credit, or partly for cash and partly for credit, by tender, private sale or public auction, as a whole or in separate parcels, with or without a reserve bid, with or without advertisement and at any time or times and on such terms as the Bank thinks reasonable. The Bank will be accountable for sale proceeds or rent only when received in cash. The Bank may use the services of any real estate agent in connection with any sale or lease (including any agent affiliated with the Bank). The Bank may apply the net proceeds of any lease or sale to any part of the indebtedness determined by the Bank and the Mortgagor will pay the Bank any part of the indebtedness remaining unpaid.
- (e) The Bank may cancel or amend any contract of sale or lease and sell or lease again, or adjourn any such sale from time to time, all as the Bank thinks reasonable, without being responsible for any resulting loss.
- (f) Any purchaser or lessee from the Bank or a receiver pursuant hereto shall not be required to see to the validity, legality, regularity or propriety of such sale or lease, or that a default has happened on account of which the sale or lease is being made. The Mortgagor agrees that each such purchaser and lessee will receive good title to or a valid lease of that part of the Property sold or leased, and that the Mortgagor will not make any claims concerning the validity, legality, regularity or propriety of the sale or lease against the purchaser or lessee or their successors in title. The Mortgagor's only claim respecting such validity, legality, regularity or propriety will be made against the Bank and will be in damages only.
- (g) The Bank may lease or sell without entering into actual possession of the Property and, while in possession, shall only be accountable for moneys actually received by it.
- (h) Without limiting the generality of paragraph 19(a), sales may be made from time to time of parts of the Property to satisfy any part of the indebtedness, leaving the balance thereof secured under the Mortgage on the remainder of the Property.
- (i) If the Mortgagor has a leasehold interest in the Property, the Mortgagor irrevocably appoints each officer of the Bank (with power of substitution) to be the Mortgagor's attorney during the continuance of the Mortgage so as to permit the Bank to execute any document or do any act or thing which the Bank is permitted or the Mortgagor is required to execute or do pursuant to the provisions hereof.
- (j) If the Mortgagor has a leasehold interest in the Property, the Mortgagor shall (i) at the request of the Bank and at the cost or expense of the Mortgagor, sell and assign to the Bank or any person appointed by the Bank, the last day of the term of the Lease or any renewal term, and (ii) in the event of any sale by the Bank as contemplated herein, hold such last day in trust for the purchaser, and the purchaser's heirs, executors, administrators, successors and assigns.
- (k) Neither the Mortgagor nor any person claiming an interest in the Property through the Mortgagor shall interfere in any way with the Bank's possession of the Property obtained pursuant to the provisions hereof nor with the possession of anyone to whom all or any part of the Property is sold or leased by the Bank or any receiver appointed pursuant to the provisions hereof.

(i) In appointing a receiver pursuant to the provisions hereof, the Bank shall be deemed to be acting as the Mortgagor's agent and attorney so that the receiver shall, with respect to responsibility for the receiver's acts or omissions, be considered the Mortgagor's agent and so that the receiver's defaults shall be considered the Mortgagor's defaults. The Bank may from time to time fix the remuneration of the receiver and direct its payment out of the income of the Property, but in no event shall the Bank incur any liability for such remuneration. The receiver shall, in the Bank's discretion, be vested with and may enforce all or any of the Bank's rights and discretions under the Mortgage with the same effect as if exercised by the Bank (including without limitation the rights and discretions set out in paragraph 7) and such other rights as the Bank may confer in writing. The receiver shall have the power to borrow on the security of the Property in priority to the Mortgage or otherwise, to collect rent and other income of the Property and to carry on or concur in carrying on any business carried on by the Mortgagor on the Property. From the rent and other income collected, and from the proceeds of all other realization hereunder, the receiver shall, in such order as the Bank sees fit: pay all the rent, taxes, rates, insurance premiums and other outgoings affecting the Property and any other amount the Bank is permitted to pay hereunder; pay the receiver's own remuneration and the cost of repairs; pay all amounts required to keep in good standing any Liens ranking in priority to the Mortgage; and pay the Bank all or any part of the indebtedness.

**20. DOCTRINE OF CONSOLIDATION**

The doctrine of consolidation shall apply to the Mortgage notwithstanding section 27(3) of the Property Law Act R.S.B.C. 1979 ch. 340, as amended or replaced from time to time.

**21. EXPENSES**

The Mortgagor shall immediately pay to the Bank all amounts the Bank is permitted to pay under the Mortgage and all Costs and expenses of or relating to inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Property, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the indebtedness, the exercise of any of the rights of a receiver appointed pursuant to the provisions hereof, such receiver's fees and expenses, agents' costs and expenses, legal fees and expenses of a solicitor and his own client costs, and any other costs and expenses of exercising or protecting the Bank's rights (hereunder or otherwise) or all or any part of the Property. The Mortgagor shall pay the Bank on demand interest at the interest rate on such amounts, costs and expenses (and on all other Costs) from the date they are paid by the Bank until they are repaid by the Mortgagor, which interest shall be calculated as provided in paragraph 1(b).

**22. RENEWING OR AMENDING MORTGAGE**

The Mortgage for any agreement referred to in this paragraph 22) may from time to time be renewed or amended by one or more written agreements with the Mortgagor, or with any successor or successors in title to the Mortgagor, with or without any increase or decrease in the interest rate or extension of time for payment. Whether or not there are any other instruments registered on title to the Property after the Mortgage at the time any such written agreement is entered into, it will not be necessary for the Bank to register the written agreement on title to the Property in order to retain priority for the Mortgage, as renewed or amended, over any other instrument registered after the Mortgage. The Mortgagor acknowledges that the provisions of this paragraph 22 shall not confer any right of renewal upon the Mortgagor.

**23. DISCHARGE**

The Mortgage shall only terminate upon payment in full of the indebtedness and complete performance of the Mortgagor's other obligations hereunder, provided that such termination shall be effective only if the Bank shall have received a written notice from the Mortgagor requesting a discharge or assignment hereof and if no further indebtedness becomes outstanding prior to the delivery of such discharge or assignment. Upon termination of the Mortgage the Mortgagor may request in writing that the Bank provide the Mortgagor with a discharge of the Mortgage or an assignment of the Mortgage to a third party and the Bank shall sign such document and send it to the Mortgagor within a reasonable time. The Mortgagor shall pay immediately the Bank's usual administration fee for preparing, reviewing, signing and/or delivering any such discharge or assignment and the Bank's legal and other expenses, whether such documentation is prepared by the Mortgagor's lawyer or by the Bank's lawyer. It is the Mortgagor's responsibility to register the discharge or assignment on title and to pay the registration fee.


**24. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY**

- (a) The Mortgage is binding on and enures to the benefit of the Mortgagor and the Bank and their heirs, executors, administrators, successors and assigns, and any person(s) to whom the Mortgagor's interest in all or any part of the Property, or the Bank's interest in the Mortgage, may be transferred.
- (b) If more than one person signs the Mortgage as Mortgagor, such persons are jointly and severally liable to observe and perform all of the Mortgagor's obligations herein.

**25. INTERPRETATION AND HEADINGS**

Paragraph headings do not form a part hereof but are used only for ease of reference. Any reference herein to the singular or the neuter shall also mean the plural or the masculine or the feminine where the context or the parties to the Mortgage so require. If any provision hereof is illegal or unenforceable it shall be considered separate and severable from the remaining provisions hereof which shall remain in force and be binding as though such first mentioned provision was not included.

ASSIGNMENT OF RENTS

 Dated the 25 day of May, 2009.

**BETWEEN:**

600897 B.C. LTD.  
201 - 6197 Airport Way  
Kelowna, British Columbia  
V1V 2S2

(the "Mortgagor")

**AND:**

Canadian Imperial Bank of Commerce  
Commercial Sales and Service Centre  
595 Bay Street, Suite 500  
Toronto, Ontario M5G 2C2

(the "Mortgagee")

**WHEREAS:**

- A. The Mortgagee is making loans and advances to the Mortgagor upon the security of a Mortgage; and
- B. As a condition of the making of the said loans and advances it was agreed between the parties hereto that the Mortgagor would grant this instrument by way of additional security.

In consideration of the premises and other good and valuable consideration (the receipt and sufficiency whereof the Mortgagor hereby acknowledges), the Mortgagor covenants and agrees and represents and warrants to and in favour of the Mortgagee as follows:

**1. DEFINITIONS**

In this instrument:

- (a) "Leases" means all leases, tenancy agreements, agreements to lease, licences and rights of occupation, and all agreements collateral thereto, written or oral, now existing or at any time during the existence of the Mortgage made or in effect in respect of the Mortgaged Premises or any part thereof, together with all covenants or agreements of guarantee or indemnity or to like effect, whether now or hereafter existing, in respect of the payment of Rents or the performance of any other obligations thereunder;



- (b) "Mortgage" means that certain mortgage dated for reference the 25 day of May, 2009 made by the Mortgagor in favour of the Mortgagee charging the Mortgaged Premises (or a portion thereof) as such mortgage may be modified from time to time by agreement between the Mortgagor and the Mortgagee;
- (c) "Mortgaged Premises" means the lands described in Schedule "A" hereto and all buildings and improvements thereon at any time during the existence of the Mortgage; "Rents" means all rents and other monies due or accruing due or at any time hereafter to become due under the Leases; and
- (d) "Rents" means all rents and other monies due or accruing due or at any time hereafter to become due under the Leases; and
- (e) "Tenant" means any tenant, sub-tenant, occupant, or licensee of the Mortgaged Premises or any part thereof, and includes any guarantor, indemnitor, or other person liable under any Lease.

## 2. ASSIGNMENT

2.1 The Mortgagor hereby assigns, transfers, and sets over unto the Mortgagee the Rents and the benefit of all covenants and agreements contained in the Leases, as well as the reversion of the Leases, whether existing or arising at any time in the future, and all rights, powers, privileges, and advantages pertaining thereto, with full power and authority to demand, collect, sue for, distrain, recover, receive, and give receipts for all Rents and to enforce payment thereof and the performance of the obligations of Tenant, in the name of and as agent for the Mortgagor, to have and to hold unto the Mortgagee absolutely until all monies owing and all obligations of the Mortgagor in respect of the Mortgage have been fully paid and fulfilled. The Mortgagor represents and warrants to the Mortgagee that the Mortgagor has not assigned, mortgaged, or pledged the Rents or the Leases in whole or in part and has the full right, power, and authority to assign the same to the Mortgagee as herein provided.

2.2 The Mortgagee may at any time give notice of this instrument to any Tenant, and any such notice may direct payment of the Rents to the Mortgagee or to any person designated by the Mortgagee.

2.3 The Mortgagor will be permitted to collect and receive the Rents and to manage the Mortgaged Premises, unless and until the Mortgagee has given notice to Tenants directing that they pay the Rents to the Mortgagee.

2.4 The Mortgagee may at any time withdraw or revoke any notice or direction given to any Tenant.

2.5 No Tenant will be bound to ascertain the validity of this instrument or any actions taken by the Mortgagee hereunder. Payment of Rents by any Tenant to the Mortgagee will be effective to discharge the liability of the Tenant to pay the Rents under the Leases, notwithstanding any deficiency or invalidity in connection with this instrument or any action taken by the Mortgagee in connection with the within assignment.

2.6 Every act and thing which the Mortgagee is entitled, empowered, or authorized to do hereunder may be done by the Mortgagee in the name and on behalf of the Mortgagor, and any right, power, or authority vested in the Mortgagee hereunder or provided for herein may be exercised by any officer, director, investments manager, or branch manager of the Mortgagee or by any agent appointed by the Mortgagee. Where an agent is so appointed the Mortgagee may pay the reasonable fees of such agent and may charge the amount so paid to the account of the Mortgagor.

2.7 The rights, powers, and remedies of the Mortgagee hereunder are continuing rights, powers, and remedies and may be exercised from time to time at the discretion of the Mortgagee.

2.8 For greater certainty, the amount secured under this assignment shall be deemed to include all of the Mortgagor's costs, fees, and amounts paid in connection with this assignment, including legal fees on a solicitor and client basis, to prepare, register, or discharge this assignment; collect the rents; enforce the terms of this assignment, including efforts to compel the Mortgagor to perform the Mortgagor's promises and agreements; costs of seizure, collection, and realization costs and receivership fees, and all levies taxes, and liens that must be paid, satisfied, or otherwise discharged in order to seize or realize the assets subject to this assignment, in addition to the monies owing under the Mortgage.

### **3. LIABILITY OF MORTGAGEE**

3.1 Under no circumstances will the Mortgagee by virtue of this instrument become mortgagee in possession or be liable to account to the Mortgagor for, or to credit the Mortgagor with, any monies except those which come into the hands of the Mortgagee or into the hands of any agent appointed by it pursuant hereto, less proper collection fees and charges (including, without limitation, legal fees on a solicitor and client basis) and any deductions and payments made out of the Rents as provided for herein.

3.2 The Mortgagee will not be obliged to exercise any of its rights, powers, or remedies hereunder, whether or not the Mortgagee has exercised some of such rights, powers, and remedies and whether or not the Mortgagee has become entitled to exercise the same as herein provided, and the Mortgagee will not incur any liability in respect of the exercise, lack of exercise, or any act or omission in the exercise of such rights, powers, or remedies.

3.3 Neither the taking of this instrument nor anything done in pursuance hereof will make the Mortgagee liable in any way, as landlord, tenant, or otherwise, for the performance of any of the covenants or agreements contained in the Leases or the obligations and liabilities of any person thereunder.

3.4 This instrument is in addition to and not in substitution for any other security which the Mortgagee may hold for payment of the moneys hereby secured. Any such other security, whether taken before or after the date hereof, will not diminish, novate, or otherwise affect this instrument, and such other security will not be diminished, novated, or otherwise affected hereby.

3.5 The remedies of the Mortgagee under this instrument are in addition to, and will not prejudice or impair, any remedies of a mortgagee provided at law, in equity, or by statute. Each remedy of the Mortgagee under this instrument, the Mortgage, or any other security may be

enforced in priority to, concurrently with, or subsequently to any other remedy of the Mortgagee as the Mortgagee may deem advisable.

3.6 The Mortgagee will be liable to account only for such monies as may actually come into its hands by virtue of these presents after deduction of all collection charges, inspection fees and other expenses which may be incurred or charged to the Mortgagee.

3.7 Where the Mortgagee enforces this assignment or otherwise receives payment under or by virtue of this assignment, the Mortgagor shall remain liable to the Mortgagee for any deficiency or balance outstanding after the amount so received by the Mortgagee has been applied to the indebtedness of the Mortgagor to the Mortgagee.

#### 4. COVENANTS

4.1 The Mortgagor will not, without the prior written approval of the Mortgagee, assign, transfer, mortgage, charge, or encumber any of the Leases or the Rents or accept or permit the payment of the Rents or any part thereof more than one month in advance of the respective dates on which the same become due.

4.2 The Mortgagor may, in the ordinary course of business and with Tenants with whom the Mortgagor deals at arm's length:

- (a) modify or amend any of the Leases; or
- (b) renew any of the Leases or grant or enter into a new lease, licence, tenancy agreement, or right of occupation of the Mortgaged Premises or any part thereof;

but will not do so outside of the ordinary course of business or with a non-arm's length person without the prior written approval of the Mortgagee.

4.3 The Mortgagor will not accept a surrender, or cancel, or terminate any of the Leases or waive, release, discharge, discount, or commute the payment of any of the Rents or the observance or performance of any obligation under the Leases.

4.4 Forthwith upon the request of the Mortgagee from time to time the Mortgagor will:

- (a) furnish to the Mortgagee a current list of all Leases together with particulars thereof in such detail as the Mortgagee may reasonably require and also, if requested by the Mortgagee, a copy of each of the Leases;
- (b) execute and deliver to the Mortgagee a specific assignment of any of the Leases;
- (c) give to each Tenant notice of this instrument and of any such specific assignment, and obtain from each of such Tenants and deliver to the Mortgagee an acknowledgement of receipt of such notice; and
- (d) execute and deliver to the Mortgagee all such further assurances, documents, and instruments and do all such other things as the Mortgagee may reasonably require to perfect this instrument.

4.5 The Mortgagor will at all times observe and perform all of the Mortgagor's obligations under the Leases and will observe and perform all matters and things necessary or expedient to be observed or performed in order to maintain, preserve, and protect all of the rights and remedies of the Mortgagor thereunder. In the event the Mortgagor fails or refuses to perform all or any of the Mortgagor's obligations under the Leases, the Mortgagee may, in its absolute discretion, perform such obligations on behalf of the Mortgagor, and may add any cost or expense thereby incurred to the amount owing by the Mortgagor to the Mortgagee, and any such amount shall be deemed to be secured by this assignment.

4.6 If in its absolute discretion the Mortgagee deems it advisable to take proceedings, whether judicial or extra-judicial, by way of distress, or otherwise, to enforce payment of the Rents or performance of the obligations of any Tenant, then, if requested by the Mortgagee, the Mortgagor at its own expense will join with the Mortgagee in such proceedings, and the Mortgagor hereby irrevocably authorizes the Mortgagee to join the Mortgagor in such proceedings.

## 5. NOTICES

5.1 The provisions with respect to the giving of notices to, or the making of demands upon, the Mortgagor under the Mortgage are hereby expressly incorporated herein, and the said provisions will apply with equal force to any notice or demand required or permitted to be given to or made upon the Mortgagor hereunder.

## 6. WAIVER

6.1 A waiver of any of the terms, covenants, conditions, or provisions of, or obligations under, this instrument will apply to the particular instance and at the particular time only, and no such waiver will be deemed a continuing waiver.

## 7. SEVERABILITY

7.1 If any provision contained in this instrument is held by a Court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, then at the option of the Mortgagee such provision will be severable from, and will not affect any other provision of, this instrument, and this instrument will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## 8. INTERPRETATION

Time will be of the essence.

8.1 Whenever the parties to, or the context of, this instrument may require, any reference herein to a person, whether a party to this instrument or not, will include the heirs, executors, administrators, legal personal representatives, successors, and assigns of such person.

8.2 All references herein to any person, whether a party to this instrument or not, will be read with such changes in number and gender as the context or reference requires.

8.3 When the context hereof makes it possible, the word "person" appearing in this instrument includes in its meaning any firm and any body corporate or politic.

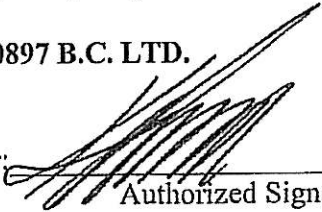
8.4 If the Mortgagor is more than one person, then all covenants, agreements, liabilities, and obligations entered into by or imposed upon the Mortgagor hereunder will be deemed to be joint and several.

8.5 The headings appearing in this instrument have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of the provisions of this instrument.

8.6 All grants, covenants, provisos, conditions, agreements, rights, powers, privileges, and liabilities contained or provided for herein will be read, held, and construed as made, undertaken, and entered into by and with, granted to, imposed and binding upon, and enuring to the benefit of the parties hereto and their respective heirs, executors, administrators, legal personal representatives, successors, and assigns.

Signed by the parties as of the date on the first page.

600897 B.C. LTD.

Per:  \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

RTS/15975.393-dlk(3)

## SCHEDULE "A"

A portion of the Lands in the City of Kelowna, in the Province of British Columbia leased under Lease No. 109806 (Pacific 1375) dated December 19, 1979 known as Lot 3 – Registered Plan 11796, District Lot 120 – Plan 1929, Lot 7 – Registered Plan 1502, comprising all of Kelowna International Airport, as described in Sub-Lease No. 151230 dated June 20, 2001 as amended by Supplemental Agreement No. 155423 dated September 25, 2004 (the "Sub-Lease").

Sub-Lease No. 151230	Landlord:	The City of Kelowna
	Tenant:	600897 B.C. Ltd.
	Date:	June 20, 2001
	Term:	Ending December 31, 2030
	Transport Canada Supplemental Agreement No.:	155423

RTS/15975.393-dlk(3)

**CONSENT**

**Re: Mortgage of Sub-Lease No. 146838 dated October 10, 1996 as amended by Supplemental Agreement No. 147840 dated August 27, 1997, Supplemental Agreement No. 155519 dated December 21, 2000, Supplemental Agreement No. 155273 dated July 5, 2004 and Assignment of Sub-Lease dated October 16, 2006 (the "Sub-Lease") of a portion of Lease No. 109806 (Pacific 1375) dated December 19, 1979 of all and singular those certain parcels of land situate, lying and being in the City of Kelowna, Osoyoos Division Yale District, in the Province of British Columbia comprising the Kelowna International Airport.**

**Sub-Lease No. 146838:**

**Sublessor: City of Kelowna (the "City")**  
**Sublessee: A.O.G. Air Support Inc.**

**Assignment of Sub-Lease No. 146838:**

**Assignor: A.O.G. Air Support Inc.**  
**Assignee: 600897 B.C. Ltd.**  
**Assignee's Mortgagor: Canadian Imperial Bank of Commerce (the "Bank")**

The City hereby consents, pursuant to Article 6 of the above-noted Sub-Lease, to the granting by 600897 B.C. Ltd., the Assignee under the above-noted Assignment of Sub-Lease, of a Mortgage of the above-noted Sub-Lease to the Bank.

This consent is not an approval of the terms of the Mortgage of Sub-Lease, nor is it a consent to any further assignment or any subletting.

As a non-binding commitment to the Bank, the City will make reasonable efforts to notify the Bank of monetary defaults of the Subtenant under the Sub-Lease.

Dated at Kelowna, British Columbia this 25 day of May, 2009.


**CITY OF KELOWNA,**  
by its authorized signatory(ies):

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

Per: \_\_\_\_\_  
City Clerk

I, Kevin James Carson, Businessman, of Kelowna, British Columbia, hereby acknowledge and agree that nothing in this letter nor anything done or not done by the City pursuant to this letter in any way affects or prejudices my obligations to the City as guarantor of the obligations of 600897 B.C. Ltd. under the above-noted Sub-Lease.

Dated at Kelowna, British Columbia this 25 day of May, 2009.



---

Kevin James Carson

RTS/1575.393/dlk



Land Title Act  
**Form B**  
 (Section 225)  
 Province of British Columbia  
**MORTGAGE - PART 1**

(This area for Land Title Office use)

Page 1 of 12 pages

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent) Mortgage Loan No.

**PUSHOR MITCHELL LLP** Lawyers, 301- 1665  
 Ellis Street, Kelowna, British Columbia V1Y 2B3,  
 Phone (250) 762-2108 Client No. 10332  
 RTS/15975.393-dlk(3)

\_\_\_\_\_  
 Signature of Applicant's Solicitor or Agent

2. Parcel Identifier(s) and Legal Description(s) of the Mortgaged Land:\*

(PID)

(Legal Description)

N/A

SEE SCHEDULE

3. Borrower(s) [Mortgagor(s)]: (including postal address(es) and postal code(s))\*

**600897 B.C. LTD.**, Incorporation No. BC0600897, 201 – 6197 Airport Way, Kelowna, British Columbia V1V 2S2

4. Lender(s) [Mortgagee(s)]: (including occupation(s), postal address(es) and postal code(s))\*

**CANADIAN IMPERIAL BANK OF COMMERCE**, a Canadian Chartered Bank, having a branch office at Commercial Sales and Service Centre, 595 Bay Street, Suite 500, Toronto, Ontario M5G 2C2

5. Payment Provisions:\*\*

(a) Principal Amount	(b) Interest Rate:	(c) Interest Adjustment Date:	Y M D
\$6,000,000.00	See Schedule		N/A
(d) Interest Calculation Period:	(e) Payment Dates	(f) First Payment Date:	
Monthly	N/A		N/A
(g) Amount of each periodic payment:	(h) Interest Act (Canada) Statement: The equivalent rate of interest calculated half yearly not in advance is N/A% per annum.	(i) Last Payment Date:	
N/A			N/A
(j) Assignment of Rents which the applicant wants registered?  YES ___ NO <u>X</u>  If YES, page and paragraph number:	(k) Place of payment:  Postal address in Item 4.	(l) Balance Due Date:	On Demand

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

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

6. MORTGAGE contains floating charge on land?

Yes \_\_\_ No X

7. MORTGAGE secures a current or running account?

Yes X No

8. INTEREST MORTGAGED:

Freehold X

Other (specify) - \* Mortgage of Sublease 146838 - See Schedule

9. MORTGAGE TERMS:

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

(a) Prescribed Mortgage Terms

(b) Filed Standard Mortgage Terms \_\_\_\_\_ D.F. Number:

(c) Express Mortgage Terms X (annexed to this mortgage as Part 2)

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

10. Additional or Modified Terms:\*

See Schedule

11. Prior Encumbrances Permitted by Lender:\*

NIL

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

Officer Signature(s)

Execution Date

Borrower(s) Signature(s)

*Chris Fraser*

Y	M	D
2009	05	25

600897 B.C. LTD., by its authorized signatory:

**CHRIS A. FRASER**  
BARRISTER & SOLICITOR  
200 - 1449 ST. PAUL STREET  
KELOWNA, BC V1Y 2E5  
TELEPHONE: (250) 868-8306

*Kevin James Carson*  
**KEVIN JAMES CARSON**

Officer Certification:

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

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

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

**SCHEDULE**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

All words that are defined in the set of standard mortgage terms annexed to this mortgage as Part 2 shall have the same meaning when used in this Schedule.

**2. LEGAL DESCRIPTION OF THE MORTGAGE LAND AND INTEREST MORTGAGE and  
8. INTEREST MORTGAGED:**

A portion of the Lands in the City of Kelowna, in the Province of British Columbia leased under Lease No. 109806 (Pacific 1375) dated December 19, 1979 known as Lot 3 – Registered Plan 11796, District Lots 32 and 120 and of Section 14, Township 23, ODYD – Plan 1929, Lot 7 – Registered Plan 1502, comprising all of Kelowna International Airport, as described in Sub-Lease No. 146838 dated October 10, 1996 as amended by Supplemental Agreement No. 147840 dated August 27, 1997, Supplemental Agreement No. 155519 dated December 21, 2000, Supplemental Agreement No. 155273 dated July 5, 2004 and Assignment of Sub-Lease dated October 16, 2006 (the “Sub-Lease”).

Sub-Lease No. 146838:	Landlord:	City of Kelowna
	Tenant:	A.O.G. Air Support Inc.
	Date:	October 10, 1996
	Term:	Ending December 30, 2024
		Transport Canada Supplemental Agreement No.: 147840
		Transport Canada Supplemental Agreement No.: 155519
		Transport Canada Supplemental Agreement No.: 155273
		Assignment of Sub-Lease dated October 16, 2006

**5. PAYMENT PROVISIONS:**

**5. (b) Interest Rate**

~~1. The Interest Rate is See Schedule.~~

2. The Interest Rate is a variable rate per year equal to the Prime rate plus 6% per year, with interest on overdue interest at the same rate. “Prime Rate” means the variable interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

If clause 1 or 2 is completed, the other clause shall be deemed to have been deleted.

LAND TITLE ACT  
FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

10. ADDITIONAL OR MODIFIED TERMS:

(a) Indebtedness

1. ~~For the purposes of the Mortgage, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Mortgagor or from other dealings or proceedings by which the Bank may become a creditor of the Mortgagor) payable under or by virtue of:~~

~~(i) Mortgage of Sublease 146848 and Assignment of Rents, Mortgage of Sublease 151230 and Assignment of Rents and Security Agreement~~

~~(ii) any instrument, agreement or other document whatsoever taken by way of renewal or replacement thereof, as amended from time to time, and~~

~~(iii) the Mortgage.~~

2. For the purposes of the Mortgage, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Bank and the Mortgagor or from other dealings or proceedings by which the Bank may become a creditor of the Mortgagor) including without limitation the outstanding balance of the Principal Amount advanced to the Mortgagor from time to time, interest thereon at the Interest Rate and all other present or future indebtedness and liabilities of the Mortgagor to the Bank payable under or by virtue of the Mortgage.

If clause 1 is completed, clause 2 shall be deemed to have been deleted. If clause 1 is not completed and neither clause 1 or clause 2 is deleted, clause 1 shall be deemed to have been deleted.

(b) Required Advances

Notwithstanding any other provisions of this Mortgage (including any standard mortgage terms incorporated by reference) if the Bank is called upon to make a payment for the account of the Mortgagor pursuant to a letter of credit, letter of guarantee or acceptance of a bill of exchange or other negotiable instrument payment by the Bank shall constitute an advance under this Mortgage which the Bank shall be required to make.

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

**10. ADDITIONAL OR MODIFIED TERMS: (CONTINUED)**

**(c) Environmental Laws**

**1. Definitions** - In this provision "hazardous substance" includes, without limitation, any substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal or plant health or life or the environment, and in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority or competent jurisdiction.

**2. Representations** - The Mortgagor represents and warrants to the Bank that to the best of the Mortgagor's information and belief, after due enquiry and investigation:

- (i) the Property has never been used to manufacture, refine, handle, store or dispose of any hazardous substances (except in compliance with all laws, regulations and orders);
- (ii) the Property does not contain any hazardous substances deposited, added or discharged by the Mortgagor or a prior owner, lessee or occupier of the Property or any adjoining property.

**3. Covenant** - The Mortgagor covenants and agrees with the Bank that it will comply in all material respects with all environmental laws, rules and regulations affecting or relating to the Property and will assume and perform any and all environmental liabilities and obligations relating to the Property including, without limitation, any liability for the clean-up of any hazardous substances on, under or emanating from the Property.

**4. Indemnity** - The Mortgagor hereby agrees to indemnify and hold the Bank harmless from and against any and all liabilities, losses, claims, damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Bank by reason of, or in any way related to, the breach of any of the representations and warranties set forth above or the breach of any of the covenants and agreements set forth above.



STANDARD MORTGAGE TERMS

PART 2

FILED BY:

CANADIAN IMPERIAL BANK OF COMMERCE

FILING NO:

MT 900102

The following set of Standard Mortgage Terms shall be deemed to be included in every mortgage in which the set is referred to by its filing number, as provided in section 219.1 of the Act.

1. DEFINITIONS

In this set of Standard Mortgage Terms:

- (a) "Act" means the Land Title Act, R.S.B.C. 1979 ch. 219, as amended or replaced from time to time;
- (b) "Amount Secured" means the aggregate of (i) the Principal Amount, (ii) interest thereon at the Interest Rate calculated monthly both before and after default, demand, maturity and judgment, (iii) interest at the same rate on any interest or Costs not paid when due and (iv) Costs;
- (c) "Bank" means Canadian Imperial Bank of Commerce, its successors and assigns;
- (d) "Common Expenses" means the expenses of the performance of the objects and duties of the Strata Corporation and any expenses which pursuant to the Condominium Act or the by-laws of the Strata Corporation are common expenses;
- (e) "Condominium Act" means the Condominium Act R.S.B.C. 1979 ch. 81, as amended or replaced from time to time;
- (f) "Costs" means all amounts, costs and expenses which, pursuant to the provisions of this set of Standard Mortgage Terms (other than paragraph 3), the Mortgagor is required to pay to the Bank;
- (g) "Fixtures" means (i) all fixtures and growing things in, on, under or in relation to the Property and (ii) all real or personal property whatsoever (whether affixed, mobile or stationary) which is now or later attached to or placed, installed or erected in, on or under the Property, including without limitation: all structures, additions, improvements, fences, plant, machinery, motors, furnaces, boilers, pressure vessels, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, gas pipes, wiring, radiators, shutters, awnings, fixed mirrors, window blinds, wall-to-wall floor coverings, screens and storm doors and windows, aerials, television antennae, satellite dishes, refrigerators, stoves, air conditioning, ventilating, plumbing, electrical, lighting, cooling, heating, cooking and refrigeration equipment, computers, telecommunications systems, security systems, elevators, central vacuum systems, and all apparatus and equipment appurtenant to the Property;
- (h) "Indebtedness" has the meaning specified in the Schedule under the heading "Indebtedness";
- (i) "Interest Rate" means the interest rate specified in the Schedule under the heading "Interest Rate";
- (j) "Lease" means, in respect of any part of the Property in which the Mortgagor has a leasehold interest, the lease under which such leasehold interest is created and any lease with respect to all or any part of the Property which may be entered into in replacement or renewal of such lease, as any of the foregoing may be amended from time to time;
- (k) "Lien" means any mortgage, plan, pledge, assignment, charge, security interest, title retention agreement, levy, execution, attachment or other encumbrance (whether statutory or otherwise);
- (l) "Mortgage" when used as a noun means a Mortgage - Part 1 (Land Title Act Form B) which refers to the filing number of this set of Standard Mortgage Terms (including the Schedule attached thereto) and this set of Standard Mortgage Terms, as any of the foregoing may be amended or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder" and similar expressions refer to the Mortgage and not to any particular paragraph or other portion thereof;
- (m) "Mortgagor" means each party who signs the Mortgage as mortgagor, and the Mortgagor's heirs, executors, administrators, successors and assigns;
- (n) "paragraph" refers to a numbered paragraph in this set of Standard Mortgage Terms;
- (o) "Principal Amount" means the Principal Amount specified in the Mortgage, which shall be in lawful money of Canada unless otherwise specified herein;
- (p) "Property" means the land described in the Mortgage, all buildings now or later placed, installed or erected on any such land and all Fixtures;
- (q) "Schedule" means, collectively, all the schedules attached to the Mortgage; and
- (r) "Strata Corporation" means the strata corporation created by the registration under the Condominium Act of a strata plan if the Property forms part of the lands described in the strata plan.

2. BANK SECURITY

The Mortgagor:

- (a) if the Mortgagor has a freehold interest in the Property, grants and mortgages the Property and the Mortgagor's present and future interest in the Property to the Bank; or
  - (b) if the Mortgagor has a leasehold interest in the Property, mortgages and sub-leases the Property and the Mortgagor's present and future interest in the Property to the Bank for and during the unexpired residue of the term of each Lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Mortgagor in each Lease;
- as collateral security for payment of the indebtedness in an amount not exceeding the Amount Secured and performance of the Mortgagor's other obligations under the Mortgage.

3. PAYMENT

- (a) The Mortgagor shall pay the indebtedness to the Bank on demand.
- (b) Except as otherwise agreed in writing, payments or other monies received by the Bank may be applied by it on any part of the indebtedness determined by it from time to time, notwithstanding any contrary stipulation by the Mortgagor. The Bank may from time to time revoke or alter any such application and reapply the amount in question on any other part of the indebtedness determined by it. If the Bank is notified, or in its sole discretion believes, that the Mortgagor has disposed of, encumbered or otherwise created a Lien or other interest on or in all or any part of the Property or any Lease, the Bank may close any of the Mortgagor's accounts at the amount then owing to the Bank and open a new account or accounts for indebtedness thereafter arising and for payments thereafter received by the Bank. No amount paid in or credited to any new account shall be applied to or have the effect of reducing or repaying any part of the indebtedness owing at the time the Bank was so notified or opened any such new account.

- (c) The provisions of the Mortgage in no way prejudice or otherwise affect any right the Bank may have independently of the Mortgage (whether pursuant to any agreement, promissory note, other instrument, any rule of law or otherwise whatsoever) to recover all or any part of the indebtedness from the Mortgagor and, if the indebtedness exceeds the Amount Secured, the Bank may conclusively determine what part of the indebtedness (not exceeding the Amount Secured) shall be secured by the Mortgage and what part shall not be so secured.
- (d) The records maintained by the Bank as to the date and amount of any indebtedness advanced to or otherwise incurred by the Mortgagor from time to time (including any interest accrued thereon), and as to the amount of any payment thereof, shall constitute prima facie evidence of such dates and amounts.
- (e) Any demand for payment made by the Bank pursuant to the Mortgage may be delivered personally to the Mortgagor or any employee or officer thereof or may be mailed, postage prepaid, to the address of the Property or to the Mortgagor's most recent address appearing in the Bank's records relating to the Mortgage. ANY SUCH DEMAND SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN GIVEN AND RECEIVED ON THE DATE OF SUCH DELIVERY OR THE FIFTH DAY AFTER SUCH MAILING.
- (f) The Mortgagor shall not, without the Bank's express written consent, be entitled to pay all or any part of the indebtedness prior to the date the same is payable pursuant to the provisions of the Mortgage.

#### 4. CONTINUING SECURITY

The Mortgage shall, whether or not it secures a current or running account, be a general and continuing collateral security to the Bank for payment of the indebtedness in an amount not exceeding the Amount Secured and performance of the Mortgagor's other obligations under the Mortgage notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Bank representing all or any part of the indebtedness or in the names of the parties to such bills, notes and/or other obligations or that there is no indebtedness outstanding at any particular time; and the Mortgage will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

#### 5. ADVANCES BY THE BANK

If the Bank decides, for any reason, not to advance any moneys or other accommodation, it shall not be required to do so whether or not the Mortgage has been signed and registered and whether or not any moneys or other accommodation have been previously advanced. Whether or not any advances are made, the Mortgagor shall immediately pay the Bank all of the Bank's Costs, including lawyer's fees (on a solicitor and his own client basis), and expenses for investigating title to the Property and for preparing, signing and registering the Mortgage and any other related instruments.

#### 6. ADDITIONAL SECURITY; JUDGMENTS

- (a) The Mortgage is in addition to and not in substitution for any other security now or later held by the Bank for all or any part of the indebtedness. The Mortgagor agrees that the Mortgage shall not create any merger or discharge of any part of the indebtedness or any other debt owing to the Bank or of any Lien, bond, bill of exchange, promissory note or other security now or later held by the Bank (whether from the Mortgagor or any other person). The Mortgagor further agrees that the Mortgage shall not in any way affect any other security now or later held by the Bank for all or any part of the indebtedness or the liability of any endorser or any other person, or any of the Bank's remedies, in respect of any such Lien, bond, bill of exchange, promissory note or other security, or any renewal thereof, held by the Bank for or on account of all or any part of the indebtedness.
- (b) The taking of a judgment or judgments against the Mortgagor in respect of any of the agreements or obligations contained in the Mortgage, or in respect of all or any part of the indebtedness, or otherwise, shall not operate as a merger of such agreements or obligations or all or any part of the indebtedness, or operate as a merger of or in any other way affect the security created by the Mortgage or any other security or the Bank's right to pursue the Bank's other remedies or to enforce the Mortgagor's other obligations (whether hereunder or otherwise) or the Bank's right to interest on the indebtedness at the Interest Rate. Any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment is fully paid and satisfied.

#### 7. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Bank may increase, reduce, discontinue or otherwise vary the Mortgagor's credit arrangements, grant extensions of time or other indulgences, take and give up securities, abstain from taking, perfecting or registering securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Mortgagor and other persons (including without limitation any person to whom all or any part of the Property is transferred) and with any securities as the Bank may see fit without affecting any of the Bank's rights or remedies (hereunder or otherwise), the Mortgagor's liability under the Mortgage or the Mortgagor's liability to pay the indebtedness. The Bank may delay enforcing any of its rights under the Mortgage or any other document relating to the indebtedness without losing or impairing those rights and may waive any breach of the Mortgagor's obligations under the Mortgage or any such document without affecting the Bank's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Bank. The Bank may release others from any liability to pay all or any part of the indebtedness without releasing the Mortgagor. The Bank may release its interest under the Mortgage in all or any part of the Property or any Lease (or any other collateral) whether or not the Bank receives any value and shall be accountable to the Mortgagor only for moneys which the Bank actually receives. If the Bank releases its interest in part of the Property, the remainder of the Property shall continue to secure the indebtedness in an amount not exceeding the Amount Secured and the Mortgagor's obligations under the Mortgage will continue unchanged. No sale or other dealing with all or any part of the Property or any Lease, and no amendment of the Mortgage or any other security, agreement or instrument, and no amendment relating to the indebtedness, will in any way affect the obligation of the Mortgagor or any other person to pay the indebtedness.

#### 8. REPRESENTATIONS, WARRANTIES AND AGREEMENTS RESPECTING THE PROPERTY

- (a) The Mortgagor represents, warrants and agrees with the Bank that:
  - (i) unless the Mortgagor is the lawful tenant or lessee of the Property, the Mortgagor is the lawful owner of the Property and has a good and marketable title in fee simple to the Property, free of any Liens or claims except any the Mortgagor has reported to the Bank in writing;
  - (ii) the Mortgagor has the right to execute and deliver the Mortgage and charge the Property and the Mortgagor's interest in it to the Bank in accordance with the terms hereof;
  - (iii) the Mortgagor has not done, omitted nor permitted anything whereby the Property or any Lease or the Mortgagor's interest in it or any part of it is or may be subject to any Lien or claim except any the Mortgagor has reported to the Bank in writing;
  - (iv) there are no limitations affecting title to the Mortgagor's interest in the Property, except any the Mortgagor has reported to the Bank in writing and except for building and zoning by-laws which have been and will continue to be complied with or with respect to which the Property is a legal non-conforming use;
  - (v) the Mortgagor shall, from time to time, sign any document and take any further action at the Mortgagor's expense as the Bank may think necessary in order to carry out the intention of the Mortgage;

- (vi) no part of the Property is, has ever been or will in the future be insulated with urea formaldehyde foam insulation; and
  - (vii) on default under the Mortgage, the Bank shall have quiet possession of the Property free from all liens and claims, except any referred to in paragraphs 8(a)(i), 8(a)(ii) and 8(b)(i).
- (b) If the Mortgagor is a tenant or lessee of the Property, the Mortgagor also represents, warrants and agrees with the Bank that:
- (i) the Mortgagor is the lawful tenant or lessee of the Property and has a good and marketable leasehold title to the Property, free of any liens or claims, except any the Mortgagor has reported to the Bank in writing;
  - (ii) the Property is leased to the Mortgagor under a good, valid and subsisting Lease (a complete copy of which the Mortgagor has given to the Bank);
  - (iii) all rents and other moneys payable under each Lease have been paid and the Mortgagor has not defaulted in respect of any of the Mortgagor's other obligations set out in such Lease, in both cases up to the date the Mortgagor signed the Mortgage;
  - (iv) the Mortgagor has obtained the consent of the Mortgagor's landlord or lessor, or the Mortgagor has the right without such consent, to Mortgage and sublet the Mortgagor's leasehold interest in the Property to the Bank in the manner provided in the Mortgage;
  - (v) the Mortgagor shall pay rent and all other amounts, and perform and observe all other obligations of the lessee or tenant, all as required by each Lease, in default of which the Bank may (but shall not be obligated to) make any such payments or perform or observe any such obligations, and the Mortgagor shall immediately pay the Bank the amount of any payments made or Costs and expenses incurred by the Bank in so doing;
  - (vi) the Mortgagor shall not surrender the Lease or cause or allow it to be terminated or forfeited;
  - (vii) the Mortgagor shall not agree to any amendment of any Lease without first obtaining the Bank's written consent;
  - (viii) the Mortgagor shall promptly give the Bank a copy of any notice, demand or request which the Mortgagor may receive relating to any Lease or the Property; and
  - (ix) the Mortgagor shall stand possessed of the Property for the last day of the term or of any renewal term granted by each Lease in trust for the Bank, and will assign and sell it as the Bank may direct, but subject to the Mortgagor's rights herein.

#### 9. INSURANCE

- (a) The Mortgagor will, in accordance with the provisions of this paragraph 9, insure and keep insured for their full insurable value all buildings and fixtures now or later forming part of the Property, and all present and future crops and other produce of the land forming part of the Property. The risks so insured against shall include loss or damage by or from fire (with extended perils coverage), explosion, tempest, lightning and other perils usually covered in fire insurance policies and such additional risks as the Bank may from time to time require, including without limitation, loss of rental and other income and public liability insurance, in each case in amounts satisfactory to the Bank.
- (b) If a steam boiler, pressure vessel, oil or gas burner, coal blower, stoker or air conditioning or sprinkler system is at any time operated on the Property, the Mortgagor will also insure and keep insured against loss or damage by explosion of, or otherwise caused by, any such apparatus or system.
- (c) Each insurance policy will be carried with a company or companies, and contain a mortgage clause and a loss payee clause in favour of the Bank as its interest may appear, approved by the Bank. The Mortgagor shall immediately give the Bank a certified copy of each insurance policy and, not less than ten days before any policy expires or is terminated, evidence of its renewal or replacement. The Bank may require cancellation of any insurance required by the Mortgage and new insurance effected by an insurer to be approved by the Bank.
- (d) The Bank has the right (but shall not be obligated) to obtain and maintain any insurance if the Mortgagor fails to do so or fails to comply with any of the obligations set forth in paragraph 9(c). The Mortgagor shall immediately pay the Bank all premiums paid and all Costs and expenses incurred by the Bank to effect such insurance.
- (e) If any loss or damage occurs to any part of the Property, the Mortgagor shall immediately notify the Bank and, at the Mortgagor's expense, do everything necessary to enable the Bank to obtain the insurance proceeds. The Bank may require that all or any part of such proceeds, or the proceeds of any other insurance required hereby or otherwise effected with respect to all or any part of the Property, be applied towards all or any part of the indebtedness, whether or not due, or be used to repair such loss or damage.
- (f) As additional security for payment of the indebtedness and performance of the Mortgagor's other obligations under the Mortgage, the Mortgagor assigns to the Bank all of the Mortgagor's interest in or under (i) any policy of insurance effected with respect to all or any part of the Property, whether or not effected in accordance with the provisions of this paragraph 9 and (ii) any insurance trust agreement referred to in paragraph 13(f). The Mortgagor hereby irrevocably appoints each officer of the Bank (with power of substitution) as attorney of the Mortgagor to endorse on behalf of the Mortgagor any cheques issued by any insurer with respect to any policy of insurance effected pursuant to this paragraph 9 or otherwise with respect to all or any part of the Property.

#### 10. TAXES

The Mortgagor shall pay, when due, all taxes, rates and assessments (municipal, local, parliamentary or otherwise) relating to all or any part of the Property. Upon request, the Mortgagor shall give the Bank a receipt evidencing any such payment and copies of all tax bills, notices of assessment and other notices relating to property taxes. If the Mortgagor fails to make any such payment, or to pay any related penalties, fines or interest, the Bank may (but shall not be obligated to) do so and the Mortgagor shall immediately pay the amount of such payment to the Bank.

#### 11. REPAIRS, MAINTENANCE AND INSPECTION

- (a) The Mortgagor shall keep the Property in good condition and in a state of good repair and shall not do, fail to do or permit anything to be done which, in the opinion of the Bank, will lower its value. The Mortgagor shall not commit or permit any act of waste on the Property nor allow any part of the Property to become or remain vacant without the Bank's written consent.
- (b) The Mortgagor shall perform and observe the requirements of every present and future statute, law, by-law, ordinance, regulation and order affecting the operation, condition, maintenance, repair, construction, use or occupation of all or any part of the Property.
- (c) If any part of the Property is farmland, the Mortgagor shall in each year either put into crop or summerfallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Mortgagor shall also keep such Property clean and free from all noxious weeds and generally see that it does not depreciate in any way as farmland.
- (d) The Mortgagor authorizes the Bank to enter on and inspect the Property whenever the Bank deems it necessary or advisable to do so.



- (a) If, in the sole opinion of the Bank, the Mortgagor does not observe or perform any of the foregoing provisions of this paragraph 11, the Bank may from time to time (but shall not be obligated to) enter on and inspect the Property at any time and make such repairs and do such other acts or things it believes are necessary to protect or preserve the Property and to carry out the Mortgagor's obligations under this paragraph 11 including, if the Property is farmland, the farming, improvement and general management thereof. The Mortgagor shall immediately pay the Bank all amounts, Costs and expenses paid or incurred by it in connection with any of the foregoing.
- (f) If the Mortgagor fails at any time for a period of ten consecutive days to diligently carry on any improvement (as defined in paragraph 12) to or on any part of the Property or without the written consent of the Bank departs from the plans and specifications approved by the Bank with respect thereto or from the generally accepted standards of construction in the locality of the Property, or if any of the events or circumstances set out in paragraph 18 has occurred and is continuing, the Bank from time to time may enter on the Property and have exclusive possession of all materials, plant and equipment thereon, free of interference from or by the Mortgagor, and complete the improvement either according to such plans and specifications or according to such other plans, specifications or design as the Bank in its absolute discretion shall determine. The Mortgagor shall immediately pay the Bank all Costs and expenses incurred by it in connection with any of the foregoing. In exercising any of the foregoing rights, the Bank shall be deemed not to be a mortgagee in possession.
- (g) Any entry which may be made by the Bank pursuant to any provision of the Mortgage may be made by any agents, employees and/or contractors thereof.

## 12. IMPROVEMENTS; DEMOLITION

- (a) In this paragraph 12, the term "improvement" has the meaning given to it in the Builders Lien Act R.S.B.C. 1979 ch. 40, as amended or replaced from time to time, and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Property and the demolition or removal of any building or part of any building on the Property.
- (b) The Mortgagor agrees that no improvement to or on the Property will be made or commenced (by the Mortgagor or any other person) unless the Mortgagor first provides a copy of all proposed plans, blueprints and specifications to the Bank and obtains the Bank's written consent thereto. The improvement shall form part of the Property. Subject to paragraph 6, the Bank may make advances to the Mortgagor under the Mortgage based on progress in completing the improvement or upon its completion or, in the case of a building, its occupation or sale or otherwise. The Mortgagor shall construct and complete the improvement in accordance with the plans and specifications approved by the Bank and all applicable governmental building standards as quickly as possible and make all payments for the improvement that it is required to make, and shall provide the Bank with proof of such payments on request.
- (c) The Bank may retain funds from any advance or advances under the Mortgage until the Bank is completely satisfied that all statutory holdback provisions have been fully complied with, and may give information in accordance with the Bank's statutory obligations as mortgagee.

## 13. STRATA TITLE PROVISIONS

- (a) This paragraph 13 shall apply, in addition to the other provisions of the Mortgage, if all or any part of the Property is a strata lot. The Mortgagor agrees that the common property pertaining to the Property and any other interest that the Mortgagor may have in the assets of the Strata Corporation form part of the Property and are subject to the Mortgage.
- (b) The Mortgagor shall comply with the Condominium Act and the by-laws, rules and regulations of the Strata Corporation as they exist from time to time.
- (c) The Mortgagor shall pay, when due, all amounts (including without limitation Common Expenses) which, by the terms of the Condominium Act or the by-laws of the Strata Corporation, are payable by the Mortgagor or with respect to the Property and provide the Bank on request with proof of such payment. If the Mortgagor does not make any such payment, the Bank may (but shall not be obligated to) do so, and the Mortgagor shall immediately pay the Bank any amount so paid.
- (d) The Mortgagor shall mail to the Bank, by prepaid registered mail, or deliver to the Bank, copies of every notice, assessment, claim or demand for payment, rule, regulation, request or demand of the Bank to consent to any matter, and every other communication relating to all or any part of the Property or the common property of the Strata Corporation so that the Bank receives them at least five days before any such claim or demand is payable or, in the case of other communications, within five days after receipt by the Mortgagor.
- (e) The Mortgagor irrevocably appoints, authorizes and empowers the Bank to vote, consent or not consent at any meeting of the Strata Corporation respecting all matters relating to insurance, maintenance, finance or any other matter affecting the security of the Mortgage provided that:
  - (i) the Mortgagor shall be entitled to exercise such right to vote or consent or not consent unless the Bank gives notice of its intention to exercise such right, which notice may be for an indeterminate period of time, a limited period of time or a specific meeting or matter;
  - (ii) the Bank's right to vote, consent or not consent does not impose any obligation on the Bank to do so or to protect the Mortgagor's interests; and
  - (iii) the Bank's exercise of its right to vote, consent or not consent shall not constitute the Bank a mortgagee in possession and shall not give rise to any liability on the part of the Bank.
- (f) The Mortgagor shall insure all improvements which at any time the Mortgagor or any previous owner makes or made to the Property and the Mortgagor's common or other interest in buildings which are part of the condominium property, against such risks as the Bank may require. If the Strata Corporation fails to obtain or maintain the insurance it is required by the Condominium Act, the by-laws or rules of the Strata Corporation or otherwise to obtain and maintain with respect to all or any part of the Property, the common property or the assets of the Strata Corporation, the Mortgagor shall do so. If the Mortgagor fails to so insure, the Bank may (but shall not be obligated to) do so and the Mortgagor shall immediately pay the Bank all premiums paid by it. All policies of insurance required to be effected pursuant to this paragraph 13(f) upon or in respect of the buildings on the Property shall provide for any loss to be payable to the Bank and a trustee approved by the Bank pursuant to an insurance trust agreement approved by the Bank, the terms of which shall not be altered without the Bank's prior written consent. Without limiting the generality of paragraph 13 (a), it is expressly agreed that the provisions of this paragraph 13(f) are in addition to the Mortgagor's obligations and the Bank's rights set out in paragraph 9.
- (g) In addition to the Bank's other rights, whether under the Mortgage or otherwise, and without affecting the Bank's right to demand payment pursuant to the Mortgage or otherwise, the balance of the indebtedness will, at the Bank's option and without notice to the Mortgagor, become immediately due and payable if any of the following events or circumstances shall occur and be continuing, and the Mortgagor shall immediately pay the Bank the balance of the indebtedness:
  - (i) control of the common property or the assets of the Strata Corporation by the Strata Corporation is terminated;
  - (ii) a vote of the owners of the strata lots authorizes the sale or lease of all or any substantial part of the common property or all or any part of the common property is expropriated;
  - (iii) the Strata Corporation fails to comply with any provision of the Condominium Act or of any of the by-laws, rules or regulations applicable to the Strata Corporation;

- (iv) the Strata Corporation fails to insure the strata lots and common property in accordance with the Condominium Act and the by-laws of the Strata Corporation; or
  - (v) the Strata Corporation fails, in the Bank's opinion, to manage the common property and its assets in a careful way or to maintain them in good repair.
- (h) The Mortgagor will observe all provisions of, and perform all obligations imposed upon the Mortgagor by, the Condominium Act, the by-laws of the Strata Corporation and any rules made pursuant to the Condominium Act. The Bank may (but shall not be obligated to) observe and perform such provisions or obligations if the Mortgagor fails to do so and the Mortgagor shall immediately pay the Bank all costs and expenses incurred by the Bank in so doing.

#### 14. EFFECT OF SUBDIVISION

If the Property is subdivided, each part of the Property shall continue to secure payment of the total amount of the indebtedness in an amount not exceeding the Amount Secured and no person shall have any right to require the indebtedness to be apportioned upon or in respect of any part of the Property.

#### 15. LEASES AND RENTS

- (a) The Mortgagor assigns to the Bank, as additional security for payment of the indebtedness (i) all leases heretofore or hereafter granted by the Mortgagor (or any predecessor in title) of all or any part of the Property and (ii) any rents payable from time to time under such leases and the benefit of the terms and conditions contained therein and of the reversion thereunder. The Mortgagor shall, on request from time to time, execute a formal assignment of any of the foregoing in a form acceptable to the Bank and, if requested by the Bank, suitable for registration. The Mortgagor agrees to give the Bank executed copies of all such leases promptly after their execution and to perform all of the Mortgagor's obligations thereunder. No such assignment or any act of the Bank pursuant thereto shall operate to delay, hinder or prejudice any of the Bank's rights or remedies under the Mortgage. The Mortgagor shall also, from time to time, execute and deliver to the Bank such notices to lessees or others and such other documents as the Bank may request for the purpose of protecting or enforcing its rights in respect of such assignments.
- (b) The Bank shall not be responsible for the collection of any rents assigned to it or the performance of the terms and conditions of any lease referred to in this paragraph 15. The Bank shall be responsible to account only for rents actually received, less reasonable collection charges, and may apply such rents to the repayment of the indebtedness, whether or not due. The Bank shall not by reason of any such collection or any assignment referred to in this paragraph 15 be deemed a mortgagee in possession.
- (c) Notwithstanding this paragraph 15, no lease of all or any part of the Property shall be made by the Mortgagor without the written consent of the Bank. Notwithstanding any such consent, no such lease shall have priority over this Mortgage unless the Bank expressly agrees to such priority in writing. For the purposes of the Mortgage, every action or omission by the lessee under any lease of all or any part of the Property shall be conclusively deemed to be the action or omission of the Mortgagor.

#### 16. OTHER LIENS; RENEWAL OF LEASES

- (a) Unless the Bank otherwise consents, the Mortgagor will not create or permit to exist any Lien on or against all or any part of the Property, any Lease or any leases or rents referred to in paragraph 15, other than Liens (i) for taxes which are not due or (ii) incidental to construction, repairs or current operations which have not been registered against the Property, which relate to obligations which are not due and written notice of which has not been given to the Bank. The Mortgagor shall pay, when due, all amounts payable under, in respect of or secured by any Lien or other claim on, against or relating to all or any part of the Property or any Lease and shall comply with all obligations contained in the document or statute under which any such Lien or other claim arose. The Bank may (but shall not be obligated to) pay any such amount and/or cure any default under any such document or statute and the Mortgagor will immediately pay the Bank all amounts, costs and expenses paid or incurred in so doing. To the extent the Bank pays any such amount, it shall be entitled to all equities and securities of the person or persons so paid and it may retain any discharge or cessation of charge unregistered until paid. The Mortgagor shall immediately notify the Bank in writing of the creation or coming into existence of any Lien on or against all or any part of the Property or any Lease and of the terms and conditions thereof.
- (b) The Bank may from time to time obtain an order vacating any builders' liens registered against all or any part of the Property and, if the Bank considers it necessary, provide financial guarantees or other security to facilitate the obtaining of any such order. The Mortgagor shall immediately pay the Bank all costs and expenses paid or incurred by the Bank to obtain such order or to provide such guarantees or security.
- (c) If the Mortgagor has a leasehold interest in the Property and the Mortgagor refuses or neglects to renew any Lease, the Bank may (but shall not be obligated to) from time to time effect any such renewal in its own name or otherwise. The Mortgagor shall immediately pay the Bank all costs and expenses incurred by the Bank in connection with any such renewal.

#### 17. POSSESSION

Until the occurrence of any default under the Mortgage, the Mortgagor shall be entitled to possession of the Property, subject to the terms of the Mortgage.

#### 18. DEFAULT

In addition to the Bank's other rights, whether under the Mortgage or otherwise, and without affecting any right of the Bank to demand payment otherwise than pursuant to paragraph 3(a), the Bank shall not demand payment pursuant to paragraph 3(a) unless any of the following events or circumstances shall occur and be continuing:

- (a) the Mortgagor fails to pay when due all or any part of the indebtedness or any amount payable pursuant to any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into, with or in favour of or held by the Bank in respect of or representing all or any part of the indebtedness;
- (b) the Mortgagor fails to observe or perform any provisions or obligations hereunder or under any loan agreement, bill of exchange, promissory note, guarantee or other instrument, agreement or document (negotiable or otherwise) now or later entered into with or in favour of or held by the Bank except as contemplated in paragraph 18(a);
- (c) the Mortgagor fails to pay when due any indebtedness for borrowed money except as contemplated in paragraphs 18(a) and (b);
- (d) any statement the Mortgagor has given or made or hereafter gives or makes to the Bank (whether in the Mortgage or otherwise) in respect of the Property, the Mortgage, any Lease, the indebtedness or the affairs of the Mortgagor is untrue in any material way on the date made or given;
- (e) any Lien or notice of a Lien is registered against the Property without the Bank's prior written consent;
- (f) the Property is abandoned or any act of waste is committed as to all or any part of the Property; or any building or other structure now or later being erected on the Property remains unfinished and without any work being done on it for a period of ten consecutive days;
- (g) the Mortgagor sells, transfers, leases or otherwise disposes of all or any part of the Property or any Lease or any interest in any of the foregoing, or agrees to do so, without the Bank's prior written consent;

- (h) the Mortgagor ceases to carry on the business ordinarily carried on from the Property without the Bank's prior written consent;
- (i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Mortgagor (if the Mortgagor is a corporation), or there is a change in the membership or a dissolution of the Mortgagor (if the Mortgagor is a partnership);
- (j) in the opinion of the Bank, there is a change in effective control of the Mortgagor (if the Mortgagor is a corporation);
- (k) the Mortgagor makes an assignment for the benefit of creditors, or any proceedings shall be instituted by or against the Mortgagor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its property (excluding proceedings which are being contested by the Mortgagor in good faith, which have been outstanding for fewer than thirty days and in respect of which any enforcement proceedings are stayed), or the Mortgagor is declared bankrupt, or a receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Property, or power of sale or foreclosure proceedings are commenced against all or any part of the Property;
- (l) another encumbrancer takes possession of all or any part of the Property or a distress or execution or other similar process is brought against all or any part of the Property; or
- (m) all or any part of the Property is expropriated.

#### 19. REMEDIES ON DEFAULT

- (a) If any of the events or circumstances set out in paragraph 18 has occurred and is continuing, the Bank may (but shall not be obligated to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any one or more of the following remedies:
  - (i) sue the Mortgagor for all or any part of the indebtedness;
  - (ii) distress for arrears of all or any part of the indebtedness;
  - (iii) take judicial proceedings to foreclose the Mortgagor's and/or any other person's interest in all or any part of the Property or any Lease, to take possession of it and/or to sell, lease or otherwise deal with it;
  - (iv) enter on and take possession of all or any part of the Property;
  - (v) sell and/or lease all or any part of the Property or sell the unexpired term of any Lease;
  - (vi) assign any Lease and sell the last day of the term granted by the Lease and/or remove the Mortgagor or any other persons from being a trustee of the last day of the term of any Lease and appoint a new trustee or trustees in its place;
  - (vii) appoint in writing a receiver (which term as used herein includes a receiver and manager) of all or any part of the Property and the rents and other income thereof and from time to time remove any receiver and appoint another in its place;
  - (viii) exercise in respect of the insurance policies, insurance trust agreements, leases, rents and benefits assigned pursuant to paragraphs 9(f) and 16(a) the remedies exercisable by the Bank in respect of all or any of the Property; and
  - (ix) exercise any other rights or remedies which the Bank may have, whether pursuant to the Mortgage, at law, in equity, by contract or otherwise.
- (b) Nothing contained herein and nothing done by the Bank or any receiver, other than taking possession of the Property in fact, shall render the Bank or such receiver a mortgagee in possession.
- (c) The Mortgagor hereby waives the right to claim any exemption with respect to the Bank's right of distress and agrees that the Bank shall not be limited as to the amount for which it may distress.
- (d) Any sale contemplated or permitted herein may be for cash or for credit, or partly for cash and partly for credit, by tender, private sale or public auction, as a whole or in separate parcels, with or without a reserve bid, with or without advertisement and at any time or times and on such terms as the Bank thinks reasonable. The Bank will be accountable for sale proceeds or rent only when received in cash. The Bank may use the services of any real estate agent in connection with any sale or lease (including any agent affiliated with the Bank). The Bank may apply the net proceeds of any lease or sale to any part of the indebtedness determined by the Bank and the Mortgagor will pay the Bank any part of the indebtedness remaining unpaid.
- (e) The Bank may cancel or amend any contract of sale or lease and sell or lease again, or adjourn any such sale from time to time, all as the Bank thinks reasonable, without being responsible for any resulting loss.
- (f) Any purchaser or lessee from the Bank or a receiver pursuant hereto shall not be required to see to the validity, legality, regularity or propriety of such sale or lease, or that a default has happened on account of which the sale or lease is being made. The Mortgagor agrees that each such purchaser and lessee will receive good title to or a valid lease of that part of the Property sold or leased, and that the Mortgagor will not make any claims concerning the validity, legality, regularity or propriety of the sale or lease against the purchaser or lessee or their successors in title. The Mortgagor's only claim respecting such validity, legality, regularity or propriety will be made against the Bank and will be in damages only.
- (g) The Bank may lease or sell without entering into actual possession of the Property and, while in possession, shall only be accountable for monies actually received by it.
- (h) Without limiting the generality of paragraph 19(e), sales may be made from time to time of parts of the Property to satisfy any part of the indebtedness, leaving the balance thereof secured under the Mortgage on the remainder of the Property.
- (i) If the Mortgagor has a leasehold interest in the Property, the Mortgagor irrevocably appoints each officer of the Bank (with power of substitution) to be the Mortgagor's attorney during the continuance of the Mortgage so as to permit the Bank to execute any document or do any act or thing which the Bank is permitted or the Mortgagor is required to execute or do pursuant to the provisions hereof.
- (j) If the Mortgagor has a leasehold interest in the Property, the Mortgagor shall (i) at the request of the Bank and at the cost or expense of the Mortgagor, sell and assign to the Bank or any person appointed by the Bank, the last day of the term of the Lease or any renewal term, and (ii) in the event of any sale by the Bank as contemplated herein, hold such last day in trust for the purchaser, and the purchaser's heirs, executors, administrators, successors and assigns.
- (k) Neither the Mortgagor nor any person claiming an interest in the Property through the Mortgagor shall interfere in any way with the Bank's possession of the Property obtained pursuant to the provisions hereof nor with the possession of anyone to whom all or any part of the Property is sold or leased by the Bank or any receiver appointed pursuant to the provisions hereof.

(i) In appointing a receiver pursuant to the provisions hereof, the Bank shall be deemed to be acting as the Mortgagor's agent and attorney so that the receiver shall, with respect to responsibility for the receiver's acts or omissions, be considered the Mortgagor's agent and so that the receiver's defaults shall be considered the Mortgagor's defaults. The Bank may from time to time fix the remuneration of the receiver and direct its payment out of the income of the Property, but in no event shall the Bank incur any liability for such remuneration. The receiver shall, in the Bank's discretion, be vested with and may enforce all or any of the Bank's rights and discretions under the Mortgage with the same effect as if exercised by the Bank (including without limitation the rights and discretions set out in paragraph 7) and such other rights as the Bank may confer in writing. The receiver shall have the power to borrow on the security of the Property in priority to the Mortgage or otherwise, to collect rent and other income of the Property and to carry on or concur in carrying on any business carried on by the Mortgagor on the Property. From the rent and other income collected, and from the proceeds of all other realization hereunder, the receiver shall, in such order as the Bank sees fit: pay all the rent, taxes, rates, insurance premiums and other outgoings affecting the Property and any other amount the Bank is permitted to pay hereunder; pay the receiver's own remuneration and the cost of repairs; pay all amounts required to keep in good standing any Liens ranking in priority to the Mortgage; and pay the Bank all or any part of the indebtedness.

**20. DOCTRINE OF CONSOLIDATION**

The doctrine of consolidation shall apply to the Mortgage notwithstanding section 27(3) of the Property Law Act R.S.B.C. 1979 ch. 340, as amended or replaced from time to time.

**21. EXPENSES**

The Mortgagor shall immediately pay to the Bank all amounts the Bank is permitted to pay under the Mortgage and all costs and expenses of or relating to inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Property, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the indebtedness, the exercise of any of the rights of a receiver appointed pursuant to the provisions hereof, such receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a solicitor and his own client basis, and any other costs and expenses of exercising or protecting the Bank's rights (hereunder or otherwise) or all or any part of the Property. The Mortgagor shall pay the Bank on demand interest at the interest rate on such amounts, costs and expenses (and on all other costs) from the date they are paid by the Bank until they are repaid by the Mortgagor, which interest shall be calculated as provided in paragraph 1(b).

**22. RENEWING OR AMENDING MORTGAGE**

The Mortgage for any agreement referred to in this paragraph 22) may from time to time be renewed or amended by one or more written agreements with the Mortgagor, or with any successor or successors in title to the Mortgagor, with or without any increase or decrease in the interest rate or extension of time for payment. Whether or not there are any other instruments registered on title to the Property after the Mortgage at the time any such written agreement is entered into, it will not be necessary for the Bank to register the written agreement on title to the Property in order to retain priority for the Mortgage, as renewed or amended, over any other instrument registered after the Mortgage. The Mortgagor acknowledges that the provisions of this paragraph 22 shall not confer any right of renewal upon the Mortgagor.

**23. DISCHARGE**

The Mortgage shall only terminate upon payment in full of the indebtedness and complete performance of the Mortgagor's other obligations hereunder, provided that such termination shall be effective only if the Bank shall have received a written notice from the Mortgagor requesting a discharge or assignment hereof and if no further indebtedness becomes outstanding prior to the delivery of such discharge or assignment. Upon termination of the Mortgage the Mortgagor may request in writing that the Bank provide the Mortgagor with a discharge of the Mortgage or an assignment of the Mortgage to a third party and the Bank shall sign such document and send it to the Mortgagor within a reasonable time. The Mortgagor shall pay immediately the Bank's usual administration fee for preparing, reviewing, signing and/or delivering any such discharge or assignment and the Bank's legal and other expenses, whether such documentation is prepared by the Mortgagor's lawyer or by the Bank's lawyer. It is the Mortgagor's responsibility to register the discharge or assignment on title and to pay the registration fee.

**24. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY**

- (a) The Mortgage is binding on and enures to the benefit of the Mortgagor and the Bank and their heirs, executors, administrators, successors and assigns, and any person(s) to whom the Mortgagor's interest in all or any part of the Property, or the Bank's interest in the Mortgage, may be transferred.
- (b) If more than one person signs the Mortgage as Mortgagor, such persons are jointly and severally liable to observe and perform all of the Mortgagor's obligations herein.

**25. INTERPRETATION AND HEADINGS**

Paragraph headings do not form a part hereof but are used only for ease of reference. Any reference herein to the singular or the neuter shall also mean the plural or the masculine or the feminine where the context or the parties to the Mortgage so require. If any provision hereof is illegal or unenforceable it shall be considered separate and severable from the remaining provisions hereof which shall remain in force and be binding as though such first mentioned provision was not included.

ASSIGNMENT OF RENTS



Dated the 25 day of May, 2009.

**BETWEEN:**

600897 B.C. LTD.  
201 - 6197 Airport Way  
Kelowna, British Columbia  
V1V 2S2

(the "Mortgagor")

**AND:**

Canadian Imperial Bank of Commerce  
Commercial Sales and Service Centre  
595 Bay Street, Suite 500  
Toronto, Ontario M5G 2C2

(the "Mortgagee")

**WHEREAS:**

- A. The Mortgagee is making loans and advances to the Mortgagor upon the security of a Mortgage; and
- B. As a condition of the making of the said loans and advances it was agreed between the parties hereto that the Mortgagor would grant this instrument by way of additional security.

In consideration of the premises and other good and valuable consideration (the receipt and sufficiency whereof the Mortgagor hereby acknowledges), the Mortgagor covenants and agrees and represents and warrants to and in favour of the Mortgagee as follows:

**1. DEFINITIONS**

In this instrument:

- (a) "Leases" means all leases, tenancy agreements, agreements to lease, licences and rights of occupation, and all agreements collateral thereto, written or oral, now existing or at any time during the existence of the Mortgage made or in effect in respect of the Mortgaged Premises or any part thereof, together with all covenants or agreements of guarantee or indemnity or to like effect, whether now or hereafter existing, in respect of the payment of Rents or the performance of any other obligations thereunder;

- (b) "Mortgage" means that certain mortgage dated for reference the 25 day of May, 2009 made by the Mortgagor in favour of the Mortgagee charging the Mortgaged Premises (or a portion thereof) as such mortgage may be modified from time to time by agreement between the Mortgagor and the Mortgagee;
- (c) "Mortgaged Premises" means the lands described in Schedule "A" hereto and all buildings and improvements thereon at any time during the existence of the Mortgage; "Rents" means all rents and other monies due or accruing due or at any time hereafter to become due under the Leases; and
- (d) "Rents" means all rents and other monies due or accruing due or at any time hereafter to become due under the Leases; and
- (e) "Tenant" means any tenant, sub-tenant, occupant, or licensee of the Mortgaged Premises or any part thereof, and includes any guarantor, indemnitor, or other person liable under any Lease.

## 2. ASSIGNMENT

2.1 The Mortgagor hereby assigns, transfers, and sets over unto the Mortgagee the Rents and the benefit of all covenants and agreements contained in the Leases, as well as the reversion of the Leases, whether existing or arising at any time in the future, and all rights, powers, privileges, and advantages pertaining thereto, with full power and authority to demand, collect, sue for, distrain, recover, receive, and give receipts for all Rents and to enforce payment thereof and the performance of the obligations of Tenant, in the name of and as agent for the Mortgagor, to have and to hold unto the Mortgagee absolutely until all monies owing and all obligations of the Mortgagor in respect of the Mortgage have been fully paid and fulfilled. The Mortgagor represents and warrants to the Mortgagee that the Mortgagor has not assigned, mortgaged, or pledged the Rents or the Leases in whole or in part and has the full right, power, and authority to assign the same to the Mortgagee as herein provided.

2.2 The Mortgagee may at any time give notice of this instrument to any Tenant, and any such notice may direct payment of the Rents to the Mortgagee or to any person designated by the Mortgagee.

2.3 The Mortgagor will be permitted to collect and receive the Rents and to manage the Mortgaged Premises, unless and until the Mortgagee has given notice to Tenants directing that they pay the Rents to the Mortgagee.

2.4 The Mortgagee may at any time withdraw or revoke any notice or direction given to any Tenant.

2.5 No Tenant will be bound to ascertain the validity of this instrument or any actions taken by the Mortgagee hereunder. Payment of Rents by any Tenant to the Mortgagee will be effective to discharge the liability of the Tenant to pay the Rents under the Leases, notwithstanding any deficiency or invalidity in connection with this instrument or any action taken by the Mortgagee in connection with the within assignment.

2.6 Every act and thing which the Mortgagee is entitled, empowered, or authorized to do hereunder may be done by the Mortgagee in the name and on behalf of the Mortgagor, and any right, power, or authority vested in the Mortgagee hereunder or provided for herein may be exercised by any officer, director, investments manager, or branch manager of the Mortgagee or by any agent appointed by the Mortgagee. Where an agent is so appointed the Mortgagee may pay the reasonable fees of such agent and may charge the amount so paid to the account of the Mortgagor.

2.7 The rights, powers, and remedies of the Mortgagee hereunder are continuing rights, powers, and remedies and may be exercised from time to time at the discretion of the Mortgagee.

2.8 For greater certainty, the amount secured under this assignment shall be deemed to include all of the Mortgagor's costs, fees, and amounts paid in connection with this assignment, including legal fees on a solicitor and client basis, to prepare, register, or discharge this assignment; collect the rents; enforce the terms of this assignment, including efforts to compel the Mortgagor to perform the Mortgagor's promises and agreements; costs of seizure, collection, and realization costs and receivership fees, and all levies taxes, and liens that must be paid, satisfied, or otherwise discharged in order to seize or realize the assets subject to this assignment, in addition to the monies owing under the Mortgage.

### 3. LIABILITY OF MORTGAGEE

3.1 Under no circumstances will the Mortgagee by virtue of this instrument become mortgagee in possession or be liable to account to the Mortgagor for, or to credit the Mortgagor with, any monies except those which come into the hands of the Mortgagee or into the hands of any agent appointed by it pursuant hereto, less proper collection fees and charges (including, without limitation, legal fees on a solicitor and client basis) and any deductions and payments made out of the Rents as provided for herein.

3.2 The Mortgagee will not be obliged to exercise any of its rights, powers, or remedies hereunder, whether or not the Mortgagee has exercised some of such rights, powers, and remedies and whether or not the Mortgagee has become entitled to exercise the same as herein provided, and the Mortgagee will not incur any liability in respect of the exercise, lack of exercise, or any act or omission in the exercise of such rights, powers, or remedies.

3.3 Neither the taking of this instrument nor anything done in pursuance hereof will make the Mortgagee liable in any way, as landlord, tenant, or otherwise, for the performance of any of the covenants or agreements contained in the Leases or the obligations and liabilities of any person thereunder.

3.4 This instrument is in addition to and not in substitution for any other security which the Mortgagee may hold for payment of the moneys hereby secured. Any such other security, whether taken before or after the date hereof, will not diminish, novate, or otherwise affect this instrument, and such other security will not be diminished, novated, or otherwise affected hereby.

3.5 The remedies of the Mortgagee under this instrument are in addition to, and will not prejudice or impair, any remedies of a mortgagee provided at law, in equity, or by statute. Each remedy of the Mortgagee under this instrument, the Mortgage, or any other security may be

enforced in priority to, concurrently with, or subsequently to any other remedy of the Mortgagee as the Mortgagee may deem advisable.

3.6 The Mortgagee will be liable to account only for such monies as may actually come into its hands by virtue of these presents after deduction of all collection charges, inspection fees and other expenses which may be incurred or charged to the Mortgagee.

3.7 Where the Mortgagee enforces this assignment or otherwise receives payment under or by virtue of this assignment, the Mortgagor shall remain liable to the Mortgagee for any deficiency or balance outstanding after the amount so received by the Mortgagee has been applied to the indebtedness of the Mortgagor to the Mortgagee.

#### 4. COVENANTS

4.1 The Mortgagor will not, without the prior written approval of the Mortgagee, assign, transfer, mortgage, charge, or encumber any of the Leases or the Rents or accept or permit the payment of the Rents or any part thereof more than one month in advance of the respective dates on which the same become due.

4.2 The Mortgagor may, in the ordinary course of business and with Tenants with whom the Mortgagor deals at arm's length:

- (a) modify or amend any of the Leases; or
- (b) renew any of the Leases or grant or enter into a new lease, licence, tenancy agreement, or right of occupation of the Mortgaged Premises or any part thereof;

but will not do so outside of the ordinary course of business or with a non-arm's length person without the prior written approval of the Mortgagee.

4.3 The Mortgagor will not accept a surrender, or cancel, or terminate any of the Leases or waive, release, discharge, discount, or commute the payment of any of the Rents or the observance or performance of any obligation under the Leases.

4.4 Forthwith upon the request of the Mortgagee from time to time the Mortgagor will:

- (a) furnish to the Mortgagee a current list of all Leases together with particulars thereof in such detail as the Mortgagee may reasonably require and also, if requested by the Mortgagee, a copy of each of the Leases;
- (b) execute and deliver to the Mortgagee a specific assignment of any of the Leases;
- (c) give to each Tenant notice of this instrument and of any such specific assignment, and obtain from each of such Tenants and deliver to the Mortgagee an acknowledgement of receipt of such notice; and
- (d) execute and deliver to the Mortgagee all such further assurances, documents, and instruments and do all such other things as the Mortgagee may reasonably require to perfect this instrument.



4.5 The Mortgagor will at all times observe and perform all of the Mortgagor's obligations under the Leases and will observe and perform all matters and things necessary or expedient to be observed or performed in order to maintain, preserve, and protect all of the rights and remedies of the Mortgagor thereunder. In the event the Mortgagor fails or refuses to perform all or any of the Mortgagor's obligations under the Leases, the Mortgagee may, in its absolute discretion, perform such obligations on behalf of the Mortgagor, and may add any cost or expense thereby incurred to the amount owing by the Mortgagor to the Mortgagee, and any such amount shall be deemed to be secured by this assignment.

4.6 If in its absolute discretion the Mortgagee deems it advisable to take proceedings, whether judicial or extra-judicial, by way of distress, or otherwise, to enforce payment of the Rents or performance of the obligations of any Tenant, then, if requested by the Mortgagee, the Mortgagor at its own expense will join with the Mortgagee in such proceedings, and the Mortgagor hereby irrevocably authorizes the Mortgagee to join the Mortgagor in such proceedings.

## 5. NOTICES

5.1 The provisions with respect to the giving of notices to, or the making of demands upon, the Mortgagor under the Mortgage are hereby expressly incorporated herein, and the said provisions will apply with equal force to any notice or demand required or permitted to be given to or made upon the Mortgagor hereunder.

## 6. WAIVER

6.1 A waiver of any of the terms, covenants, conditions, or provisions of, or obligations under, this instrument will apply to the particular instance and at the particular time only, and no such waiver will be deemed a continuing waiver.

## 7. SEVERABILITY

7.1 If any provision contained in this instrument is held by a Court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, then at the option of the Mortgagee such provision will be severable from, and will not affect any other provision of, this instrument, and this instrument will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## 8. INTERPRETATION

Time will be of the essence.

8.1 Whenever the parties to, or the context of, this instrument may require, any reference herein to a person, whether a party to this instrument or not, will include the heirs, executors, administrators, legal personal representatives, successors, and assigns of such person.

8.2 All references herein to any person, whether a party to this instrument or not, will be read with such changes in number and gender as the context or reference requires.

8.3 When the context hereof makes it possible, the word "person" appearing in this instrument includes in its meaning any firm and any body corporate or politic.

8.4 If the Mortgagor is more than one person, then all covenants, agreements, liabilities, and obligations entered into by or imposed upon the Mortgagor hereunder will be deemed to be joint and several.

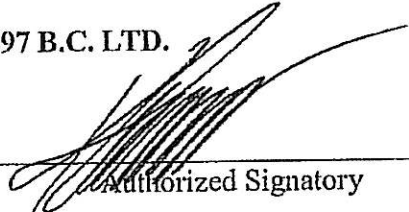
8.5 The headings appearing in this instrument have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of the provisions of this instrument.

8.6 All grants, covenants, provisos, conditions, agreements, rights, powers, privileges, and liabilities contained or provided for herein will be read, held, and construed as made, undertaken, and entered into by and with, granted to, imposed and binding upon, and enuring to the benefit of the parties hereto and their respective heirs, executors, administrators, legal personal representatives, successors, and assigns.

Signed by the parties as of the date on the first page.

600897 B.C. LTD.

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

A large, stylized handwritten signature in black ink, written over a horizontal line.

Authorized Signatory

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

Authorized Signatory

RTS/15975.393-dlk(3)

## SCHEDULE "A"

That property described in Sublease No. 146838 dated October 10, 1996 of a portion of Lease No. 109806 (Pacific 1375) dated December 19, 1979 being all and singular that certain parcel of land situate, lying and being in the Kelowna Airport at Kelowna, in the Province of British Columbia; the said land comprising an area of 104,951 square feet (0.975 hectares), more or less, and being more particularly shown as parcel "E" on the Reference Plan dated the 7th day of August, 1997 prepared by R.R. Runnalls & Associates, B.C. Land Surveyors annexed to the Sublease which Sublease has been amended pursuant to a Supplemental Agreement 147840 dated August 27, 1997, further amended by Supplemental Agreement 155519 dated December 21, 2000 and further amended by Supplemental Agreement 155273 dated July 5, 2004 adding an additional parcel of land designated as Lease Area "F" on the sketch plan dated April 20, 2004 prepared by Runnalls Denby annexed to the Supplemental Agreement and assigned by Assignment and Assumption Agreement 156882 dated October 16, 2006.

RTS/15975.393-dlk(3)

## SCHEDULE "A"

A portion of the Lands in the City of Kelowna, in the Province of British Columbia leased under Lease No. 109806 (Pacific 1375) dated December 19, 1979 known as Lot 3 – Registered Plan 11796, District Lots 32 and 120 and of Section 14, Township 23, ODYD – Plan 1929, Lot 7 – Registered Plan 1502, comprising all of Kelowna International Airport, as described in Sub-Lease No. 146838 dated October 10, 1996 as amended by Supplemental Agreement No. 147840 dated August 27, 1997, Supplemental Agreement No. 155519 dated December 21, 2000, Supplemental Agreement No. 155273 dated July 5, 2004 and Assignment of Sub-Lease dated October 16, 2006 (the "Sub-Lease").

Sub-Lease No. 146838:	Landlord:	City of Kelowna
	Tenant:	A.O.G. Air Support Inc.
	Date:	October 10, 1996
	Term:	Ending December 30, 2024
		Transport Canada Supplemental Agreement No.: 147840
		Transport Canada Supplemental Agreement No.: 155519
		Transport Canada Supplemental Agreement No.: 155273
		Assignment of Sub-Lease dated October 16, 2006

RTS/15975.393-dlk(3)