



NEWFOUNDLAND

## Collateral Mortgage

 FREEHOLD  LEASEHOLD  (check one box)

This mortgage is made on  
BETWEEN:

(the mortgagor or mortgagors),

AND

THE BANK OF NOVA SCOTIA  
(the mortgagee).

In this mortgage **you** and **your** mean each person who has signed this mortgage as mortgagor. **We**, **our** and **us** mean the mortgagee.  
*This mortgage is a leasehold mortgage if the second paragraph under the heading **What this mortgage does** is completed. Otherwise this mortgage is a freehold mortgage.*

### 1 OBLIGATIONS SECURED BY THIS MORTGAGE

- (a) You give us this mortgage to secure the payment to us on demand of the debts and liabilities described in sub-paragraph (b) up to:
- a maximum principal amount of \$ \_\_\_\_\_, plus
  - interest at a maximum rate equal to the prime lending rate of The Bank of Nova Scotia from time to time plus \_\_\_\_\_ % per annum, calculated monthly and payable monthly, both before and after maturity and default, and interest on overdue interest at the same rate and calculated and payable in the same way, plus
  - the additional amounts payable under the heading **We may recover our expenses** below.
- The debts and liabilities secured by this mortgage are referred to in this mortgage as the **obligations secured**.
- (b) The debts and liabilities referred to in sub-paragraph (a) are all debts and liabilities present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by you to us or remaining unpaid by you to us, whether arising from dealings between you and us or from any other dealings or proceedings by which we may be or become in any manner whatever your creditor, and wherever incurred, and whether incurred by you alone or with another or others and whether as principal or surety. You agree to pay those debts and liabilities to us on demand.
- (c) If the debts and liabilities described in sub-paragraph (b) exceed the maximum principal amount or rate of interest stated in sub-paragraph (a), we may decide what part of them is secured by this mortgage.

### 2 DESCRIPTION OF THE PROPERTY COVERED \*

Any buildings on the land described above are also covered by this mortgage. Any other property that is at any time attached or fixed to the land or buildings or placed on and used in connection with them is also covered by this mortgage. Additions, alterations and improvements to the buildings are also covered. The property covered by this mortgage is referred to in this mortgage as **the property**.

*\*If space insufficient, attach Schedule A describing property and type in above space "See attached Schedule A".*



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*This mortgage is a leasehold mortgage if the second paragraph under the heading **What this mortgage does** is completed. Otherwise this mortgage is a freehold mortgage.*

### 1 OBLIGATIONS SECURED BY THIS MORTGAGE

(a) You give us this mortgage to secure the payment to us on demand of all debts and liabilities present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by you to us or remaining unpaid by you to us, whether arising from dealings between you and us or from any other dealings or proceedings by which we may be or become in any manner whatever your creditor, and wherever incurred, and whether incurred by you alone or with another or others and whether as principal or surety, including the additional amounts payable under the heading **We may recover our expenses** below and interest on the total amount of our expenses from the date we incur them to the date you pay them to us at the interest rate equal to the prime lending rate of The Bank of Nova Scotia from time to time plus % per annum, calculated monthly and payable monthly, both before and after maturity and default, and interest on overdue interest at the same rate and calculated and payable in the same way. The debts and liabilities secured by this mortgage are referred to in this mortgage as the **obligations secured**.

### 2 DESCRIPTION OF THE PROPERTY COVERED \*

Any buildings on the land described above are also covered by this mortgage. Any other property that is at any time attached or fixed to the land or buildings or placed on and used in connection with them is also covered by this mortgage. Additions, alterations and improvements to the buildings are also covered. The property covered by this mortgage is referred to in this mortgage as **the property**.

*\*If space insufficient, attach Schedule A describing property and type in above space "See attached Schedule A".*

### 3 OUR SECURITY

#### (a) What this mortgage does

If this is a freehold mortgage you grant, mortgage and appoint to us forever the property, to have and to hold to our use, as security for the repayment of the obligations secured. This means you give your entire interest in the property to us and our successors and assigns (called our **legal representatives**) and to anyone to whom this mortgage is transferred in any way.

*If this is a leasehold mortgage you sublease the property to us for the balance of the term), less the last day, created by a lease (called the **Lease**) dated*

\_\_\_\_\_, \_\_\_\_\_ and registered on \_\_\_\_\_, \_\_\_\_\_ in the Registry of Deeds in Volume \_\_\_\_\_ at Folio(s) \_\_\_\_\_.

*You will hold in trust for us the last day of the term of the Lease and any option to purchase or renew granted by the Lease and any other interest you may have in the property, and you will transfer them to us or anyone we may name if we ask you to do so. We may at any time in writing and without cause remove any trustee and appoint a new trustee or trustees of the trust of the last day of the term of the lease and any option to purchase or renew granted by the Lease and any other interest you may have in the property. You will not without our prior written consent allow your interest to become merged in the landlord's interest and if you acquire that interest you will mortgage it to us. You will exercise any option granted by the Lease to purchase the property or renew the Lease if and when we ask you to do so and do everything needed to complete the purchase of the property or renew the Lease. You will mortgage the property purchased or the renewed Lease to us. You irrevocably appoint us your attorneys to do any of the things you must do under this paragraph, but we are under no obligation to do them.*

This mortgage secures a current or running account. Although this mortgage is not satisfied or discharged by any intermediate payment of all or part of the obligations secured but is a continuing security for payment of the obligations secured, our interest in the property under this mortgage will end when:

- you have repaid the obligations secured on our demand and repaid all additional amounts to which we may become entitled under this mortgage, and
- you have fulfilled all of your other obligations to us under this mortgage, and
- we have reconveyed the property to you or discharged this mortgage.

You may remain in possession of the property as long as you are not in default under any of the obligations secured or under any agreements evidencing or securing the obligations secured and as long as you meet all your other obligations to us under this mortgage.

#### (b) Your title to the property

If this is a freehold mortgage, you certify that you own the property covered by this mortgage; that you have the right to transfer the property to us; and that there are no restrictions, limitations or encumbrances on your title to the property or on your ability to transfer the property to us, except as set out in the MEMORANDUM OF ENCUMBRANCES in this mortgage. You will not do anything that will interfere with our interest in the property, and you will sign any other documents which we think are necessary to transfer to us your interest in the property.

*If this is a leasehold mortgage, you certify that you are entitled to the term created by the Lease and any options to purchase or renew granted by the Lease; that the Lease is valid and in force; that the tenant's obligations are complied with; that you have the right to sublease the property to us and create the trust of the last day of the term of the Lease and any option to purchase or renew granted by the Lease and any other interest you may have in the property and have obtained any necessary consent to do so; and that there are no restrictions, limitations or encumbrances on your title to the term and options or on your ability to sublease the property to us or create the trust of the last day of the term of the Lease and any option to purchase or renew granted by the Lease and any other interest you may have in the property, except as set out in the Lease and the MEMORANDUM OF ENCUMBRANCES in the mortgage. You will not do anything that will interfere with our interest in the property, and you will sign any other documents which we think are necessary to sublease the property to us and create the trust set out above.*

#### (c) Effect of this mortgage on other obligations

This mortgage does not release you from or alter any of your other obligations to us or agreements with us. This mortgage does not affect any other security we hold for the payment of the obligations secured, or any other right we may have to enforce the payment of the obligations secured. Our acceptance of this mortgage or our giving credit secured by this mortgage does not mean we must make credit available or continue to do so.

#### (d) Effect of sale or transfer of property

If you sell or transfer your interest in the property, your liability and responsibilities under this mortgage and our rights against either you or anyone else who is liable for the payment of any of the obligations secured are not affected.

#### (e) Effect of subdivision

If the property is subdivided, each part of the property will secure payment of the total amount of the obligations secured.

#### **4 YOUR RESPONSIBILITIES AS TO THE PROPERTY**

##### **(a) Taxes and other charges**

You will pay all taxes on the property when they are due. You will immediately give us a receipt showing that they have been paid if we ask for it. You will pay all charges, mortgages and other encumbrances on your interest in the property when they are due and comply with your other obligations under them. If you do not pay any taxes, charges, mortgages or other encumbrances when they are due, we may pay them and charge to you the amount paid as an additional amount secured under this mortgage.

##### **(b) Insurance**

You will insure with an insurer satisfactory to us and under a policy satisfactory to us all buildings covered by this mortgage against loss or damage by fire, extended perils and other perils usually covered in fire insurance policies. If there is a steam boiler or sprinkler system in those buildings, your insurance must cover loss or damage caused by an explosion of the boiler and equipment operated by it or caused by the sprinkler system. You will insure against any other risks which we require you to insure against. The buildings must be insured for their replacement cost in Canadian dollars.

If we think it is necessary we can require you to cancel any existing insurance on the property, and to provide other insurance which meets our approval. You will assign any insurance you have on the property, or the proceeds of that insurance, to us at our request. You must give us proof that you have insured as required above and you must at least 10 days before any insurance expires or is terminated give us proof that you have renewed or replaced it. If you fail in any way to comply with these obligations, we may (but we are not obliged to) obtain insurance on your behalf and charge the amount of any premium to you as an additional amount secured under this mortgage. If loss or damage occurs, you will provide us with all necessary proofs of claim and do everything else necessary to enable us to obtain payment of insurance proceeds. Insurance proceeds may, in whole or in part, at our option, be used to rebuild or repair damaged buildings or be used to reduce all or part of the obligations secured.

##### **(c) Keeping the property in good condition**

You will keep the property in good condition and make any repairs that are needed. You will not do anything, or let anyone else do anything, that lowers the value of the property. If you do not keep the property in good condition, or if you do anything, or anyone else does anything, that lowers the value of the property, we may make any needed repairs and charge the cost of them to you as an additional amount secured under this mortgage.

##### **(d) Construction of buildings**

If you are having any buildings or improvements constructed on the property, you will have them constructed only in accordance with plans and specifications approved in writing by us in advance. You must complete those buildings or improvements as quickly as possible.

##### **(e) Legal requirements**

You will observe and conform to all laws and requirements of any governmental authorities relating to the property.

##### **(f) Tenant's obligations**

*If this is a leasehold mortgage, you will pay all rent and other amounts due under the Lease when they are due. You will immediately give us a receipt showing that they have been paid if we ask for it. You will comply with your other obligations under the Lease. If you do not comply with your other obligations under the Lease, we may comply with them and charge the cost of doing so to you as an additional amount secured under this mortgage.*

##### **(g) Condominiums**

The following provisions apply to any condominium unit that is part of the property. In this mortgage, the Condominium Property Act as amended or re-enacted is called the "Act". Expressions used in provisions of this mortgage dealing with a condominium unit which are the same as those in the Act have the same meaning as those in the Act, except that the expression "condominium property" has the same meaning as the word "property" in the Act.

- You will comply with the Act and the declaration, by-laws and rules of the corporation. You will provide us with proof of your compliance from time to time as we may request. You will forward to us copies of any notices, assessments, by-laws, rules and financial statements of the corporation. You will provide us, on request, with any other documents and information that you receive from the corporation or are entitled to receive. You will maintain all improvements made to your unit and repair them after damage.
- You will insure all improvements which you or previous owners have made to your unit and insure your common or other interest in buildings which are part of the condominium property or assets of the corporation if the corporation fails to insure the buildings as required by the Act and the declaration, by-laws and rules of the corporation. These obligations are in addition to your obligations as to insurance under the heading **Insurance** as far as they apply to a condominium unit.
- You authorize us to exercise your rights under the Act to vote and to consent. If we do not exercise your rights, you may do so, but you will do so according to any instructions we may give you. We may at any time revoke any arrangement we make for you to vote or to consent. You also authorize us to inspect the corporation's records. Nothing done under this paragraph puts us in possession of your property.
- If you do not comply with the Act and the declaration, by-laws and rules of the corporation, we may comply with them and charge our costs of doing so to you as an additional amount secured under this mortgage. If we exercise our right to pay common expenses, we can accept statements that appear to be issued by the corporation as conclusive evidence of the amount of those expenses and the dates they are due. You will pay us on demand as additional amounts secured under this mortgage our expenses in relation to any by-law, resolution, rule or other matter (other than one for which only a vote of the majority present at the meeting is required), the enforcement of our right to have the corporation or any owner comply with the Act and the declaration, by-laws and rules of the corporation and our exercising any voting rights we may have.

**5 ENFORCING OUR RIGHTS**

If you fail to comply with any of your obligations under this mortgage, we may enforce our rights in any of the ways set out below. These provisions do not limit any other rights given to us by law or this mortgage. We may enforce this and any other security we may have for any of the obligations secured, and enforce our rights under this mortgage, at the same time or at different times and in any order we choose.

**(a) You will make immediate payment**

You will immediately pay to us all of the obligations secured if any part of the obligations secured is not paid when it is due or if you fail to comply with any of your obligations under this mortgage or any other agreement to which you and we are parties.

**(b) We may sue you**

We may take such legal action as is necessary to collect the obligations secured.

**(c) We may take possession of the property and collect rents**

We may take and keep possession of, collect rents from, and manage the property or any part of it. You certify that we will have the right to take possession of the property or collect the rents from it.

**(d) We may sell or lease the property**

We may take possession of the property and lease the property without notice or we may exercise the powers of sale given to us by law without applying to a court, upon giving you notice as required by law.

We will use the proceeds of sale or lease to reduce or repay the obligations secured and will pay you any balance remaining after all our claims have been satisfied. If the amount we receive from the sale or lease of your interest in the property is less than what you owe, you will immediately pay the difference to us.

You agree that a buyer or lessee may pay all of the money due under a sale or lease to us without seeing to the application of the money. You agree that a buyer or lessee under a sale or lease by us will receive a good title to your interest in the property or a valid lease of the property. You will not make any claims concerning the sale or lease against the buyer or lessee or their successors in title. If you do have any claims concerning a sale or lease by us, you will make them only against us and only for money damages.

**(e) We may foreclose or sell through the courts**

We may commence court proceedings to foreclose your interest in the property. If we obtain a final order of foreclosure, your interest in the property will by law become our property. We may also ask a court to order a sale of your interest in the property. We may also ask a court to appoint a receiver (or receiver and manager) of your interest in the property.

**(f) We may appoint a receiver**

We may appoint in writing a receiver (or receiver and manager), on any terms (including remuneration) that we think are reasonable, to collect any income from your interest in the property. We may make the appointment even if we have taken possession of the property. We may also, in writing, remove a receiver appointed by us and appoint a new receiver. The receiver is considered to be your agent and not ours; his defaults are considered your defaults and not ours. Nothing done by the receiver puts us in possession of your interest in the property or makes us accountable for any money except money we actually receive.

The receiver has the right to use any legal remedy (taken in your name or our name) to collect the income from your interest in the property; take possession of the property or part of it; manage the property and any business conducted on the property and maintain the property in good condition; lease the property or any part of it; enforce any of our other rights under this mortgage which we delegate to him; and borrow money on the security of your interest in the property in priority to this mortgage for these purposes.

**(g) We may recover our expenses**

You will pay us on demand, as additional amounts secured under this mortgage, our expenses incurred:

- under the headings **Taxes and other charges, Insurance, Keeping the property in good condition, Tenant's obligations and Condominiums,**
- in negotiating this mortgage, investigating title to the property and preparing and registering this mortgage,
- in collecting payment after default of the obligations secured, and
- in enforcing our rights under this mortgage,

including our reasonable legal fees on a solicitor and own client basis and interest on the total amount of our above expenses from the date we incur them to the date you pay them to us at the maximum rate stated under paragraph **1** of this mortgage. We may deduct our expenses from any money we owe you.

**6 WE MAY USE PROCEEDS TO REDUCE ANY OBLIGATION**

We may apply the proceeds we receive from enforcing our rights under this mortgage to reduce or repay any of the obligations secured in such manner as we may decide.

**7 WE MAY OPEN A SEPARATE ACCOUNT**

If we learn that you have disposed of or encumbered your interest in the property or any part of it, we may close your account at the amount then due to us. We may open a new account for advances and payments subsequently made and received by us. No amount paid in or credited to the new account will be applied to or have the effect of reducing or repaying any of the obligations secured due to us on the closed account when we learned of the subsequent disposition or encumbrance.

**8 DELAY, RELEASES AND PARTIAL DISCHARGES**

We may delay enforcing any of our rights under this mortgage or the obligations secured or any agreement evidencing or securing the obligations secured without losing or impairing those rights. We can waive any breach of your obligations under this mortgage or the obligations secured or any agreement evidencing or securing the obligations secured without losing our rights in respect of any breach of your obligations.

We may release others on any terms from any liability to repay the obligations secured without releasing you. We may on any terms discharge any part of the property from this mortgage and, if we do so, the remainder of the property not discharged will secure the total amount of the obligations secured.

**9 DISCHARGE OF THIS MORTGAGE**

We will reconvey your interest in the property to you or discharge this mortgage if you pay us the obligations secured on our demand. You will give us a reasonable time after payment in which to prepare and sign the reconveyance or discharge. You must pay our expenses of having it prepared and of signing it. You are responsible for registering it.

**10 EFFECT OF JUDGMENTS**

If we obtain a court judgment against you for your failure to pay any of the obligations secured or to perform any of your obligations to us under this mortgage, the judgment will not result in a merger of your obligations under this mortgage with the judgment or take away any of our other rights to enforce the mortgage. We will continue to be entitled to receive interest on the obligations secured at the agreed rate, calculated and payable in the agreed way, and the judgment may so provide.

**11 OUR RESPONSIBILITY**

We are not responsible for any loss arising in the course of our enforcing our rights under this mortgage unless it results from our wilful neglect or default.

**12 HOW WE MAY MAKE DEMANDS OR GIVE NOTICES**

Where this mortgage allows or requires us to make a demand on or give a notice to any person (including you), we may make the demand or give the notice by delivering it personally to the person (where the person is a corporation, by delivering it personally to a director, officer or employee of the corporation) or by mailing it by prepaid registered mail addressed to the person at the person's last known address.

A notice or demand so delivered will be regarded as given or made when it is so delivered to the person or to the director, officer or employee of the corporation. A notice or demand so mailed will be regarded as given or made on the third business day after the day it is mailed, whether the person receives it or not.

**13 WHO IS BOUND BY THIS MORTGAGE**

This mortgage will be binding on your legal or personal representatives and anyone else to whom your interest in the property is transferred. It will be binding on our legal representatives and anyone to whom it is transferred from us. All our rights under it may be enforced by anyone to whom it is transferred from us.

If more than one person signs this mortgage, each person is jointly and severally bound to comply with all obligations of the mortgagor under this mortgage.

**14 SIGNING THIS MORTGAGE**

If you have read this mortgage and you agree to its terms, sign in the spaces provided for the mortgagors' signatures. Witnesses must sign in the space provided for the witnesses' signatures. You acknowledge receiving a copy of this mortgage. You agree that this mortgage is a deed signed, sealed and delivered by you.

X \_\_\_\_\_  
Witness

X \_\_\_\_\_ (Seal)  
Mortgagor

X \_\_\_\_\_  
Witness

X \_\_\_\_\_ (Seal)  
Mortgagor

**MEMORANDUM OF ENCUMBRANCES**

**AFFIDAVIT OF EXECUTION**

I \_\_\_\_\_  
of the \_\_\_\_\_ of \_\_\_\_\_  
in the \_\_\_\_\_ of \_\_\_\_\_

MAKE OATH AND SAY:

CHECK  
ONE BOX

I was present and saw the mortgagor named in this mortgage duly sign, seal and deliver the mortgage,

I was present and saw the corporate seal of \_\_\_\_\_  
the mortgagor named in this mortgage, duly affixed to the mortgage and I saw  
\_\_\_\_\_ and \_\_\_\_\_  
sign their names to it in verification of it as the \_\_\_\_\_ and  
\_\_\_\_\_ respectively,

and that I am the subscribing witness to such execution.

SWORN before me \_\_\_\_\_ )  
at the \_\_\_\_\_ of \_\_\_\_\_ )  
in the \_\_\_\_\_ of \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.)

\_\_\_\_\_  
A Commissioner for Oaths in and for Newfoundland/  
\*A Notary Public in and for \_\_\_\_\_

*\*Where affidavit is sworn outside Newfoundland, it must be sworn before a notary public in and for the place where sworn and he must impress his official seal here.*

**AFFIDAVIT OF LEGAL AGE AND SPOUSAL STATUS**

I/We \_\_\_\_\_,  
of the \_\_\_\_\_ of \_\_\_\_\_,  
in the \_\_\_\_\_ of \_\_\_\_\_.

MAKE OATH AND SAY:

CHECK  
ONE BOX  
ONLY

CHECK  
ANY BOX  
WHICH  
APPLIES

1. The Matrimonial Property Act is referred to in this affidavit as the "Act". I (We) have read the definitions of spouse\* and matrimonial home\*\* below, and have read Section 32 of the Act\*\*\*.
2. I am (We are each) at least 19 years of age.
3.  We are spouses of one another, neither of us has any other spouse and neither of us has made a cohabitation agreement under section 32 of the Act.  
 I was not a spouse at the time of making this mortgage and I had not made a cohabitation agreement under section 32 of the Act.  
 I am a spouse, I have only one spouse and I have not made a cohabitation agreement under section 32 of the Act.
4.  The property covered by this mortgage has never been the matrimonial home of me and my spouse.  
 My spouse has released all rights to the property covered by this mortgage by a separation agreement and the separation agreement is in full force and effect.  
 My spouse has released all rights to the property covered by this mortgage by a marriage contract and the marriage contract is in full force and effect.  
 My spouse has released all rights to the property covered by this mortgage by a designation made under section 7 of the Act and the designation has not been cancelled.
5. No other person has any right to or unregistered interest in the property covered by this mortgage.

(SEVERALLY) SWORN before me \_\_\_\_\_ )  
at the \_\_\_\_\_ of \_\_\_\_\_ )  
in the \_\_\_\_\_ of \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.)

\_\_\_\_\_  
A Commissioner for Oaths in and for Newfoundland  
\*\*\*\*A Notary Public in and for \_\_\_\_\_

\* "Spouse" means either of a man and woman who  
(i) are married to each other,  
(ii) are married to each other by a marriage that is voidable and has not been voided by a judgement of nullity, or  
(iii) have gone through a form of marriage with each other in good faith, that is void and are cohabiting or have cohabited within the preceding year.

\*\* "Matrimonial home" means the dwelling and real property occupied by a person and his or her spouse as their family residence and owned by either or both of them, whether that occupation occurred before, on or after the commencement of the Act.

\*\*\* Section 32(1) A man and a woman who are cohabiting and are not married to one another may enter into an agreement to be known as a cohabitation agreement, in which they agree on their respective rights and obligations  
(a) during cohabitation,  
(b) upon ceasing to cohabit, or  
(c) upon the death of either of them.  
(2) A cohabitation agreement may adopt the provisions of this Act and upon such an adoption this Act applies to the man and woman.  
(3) Where the parties to a cohabitation agreement subsequently marry, the agreement shall be deemed to be a marriage contract.

\*\*\*\* Where affidavit is sworn outside Newfoundland, it must be sworn before a notary public in and for the place where sworn and he must impress his official seal here.

DATED \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(mortgagor)

TO  
SCOTIA MORTGAGE CORPORATION  
(mortgagee)

c/o THE BANK OF NOVA SCOTIA  
Branch address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

# MORTGAGE

Solicitor for the mortgagee