

## E-SUBMISSION AGREEMENT

MEMORANDUM OF AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

### B E T W E E N:

, a

body corporate under and by virtue of the laws Canada having its  
head office at the City of \_\_\_\_\_, in the Province of  
\_\_\_\_\_, (hereinafter referred to as the  
"Mortgagee"),

OF THE FIRST PART,

- and -

**SERVICE NEW BRUNSWICK**, a body corporate under and by  
virtue of the laws of the Province of New Brunswick, having an  
office at the City of Fredericton, in the Province of New Brunswick,  
(hereinafter referred to as the "Corporation"),

OF THE SECOND PART.

### WHEREAS:

- a) the *Land Titles Act*, of New Brunswick, 1981, c.L-1.1 has been amended to provide for the submission of electronic instruments to a Land Titles office for filing or registration;
- b) the *Land Titles Act* permits the owner of a mortgage, who has entered into an agreement with the Corporation in accordance with regulations under the Act, to submit an electronic instrument that is an assignment of the mortgage or a discharge of the mortgage.
- c) the Mortgagee and the Corporation wish to enter into this Agreement to allow the Mortgagee to submit electronic instruments and, pursuant to section 76.01 of the *Land Titles Act*, to govern the liability of the Mortgagee in the event of the submission of a wrongful discharge or assignment.
- d) the Mortgagee and the Corporation agree that the terms and conditions hereinafter set forth shall govern applications, procedures, duties, obligations and liabilities in the submission of electronic instruments in Land Titles by the Mortgagee.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** for and in consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

## **1. Interpretation**

### 1.1 In this Agreement

"Act" means the *Land Titles Act*, c.L-1.1 of the Revised Statutes of New Brunswick, as amended;

"Agreement" means this Agreement and any agreement or schedule that is supplementary to or in amendment of this Agreement;

"Effective Date" means the effective date referred to in clause 11.1

"electronic instrument" means an instrument in electronic format;

"electronic submission" means the submission of an electronic instrument for registration or filing under the *Land Titles Act* using the technology supplied by the Corporation;

1.2 Headings are inserted in this Agreement solely for the convenience of the parties and are not intended to be used as an aid in the interpretation of this Agreement.

1.3 Where the context requires, words in the singular include the plural, and words in the plural include the singular, and words imparting the masculine gender include the feminine and neuter genders.

## **2. Exchange of Information**

2.1 Following the Effective Date, the Corporation shall promptly notify the Mortgagee in writing of the following:

- a) termination of this Agreement, or
- b) any claim or potential claim against the Mortgagee resulting from an alleged wrongful discharge of mortgage or an alleged wrongful assignment of mortgage by the Mortgagee when such claim or potential claim comes to the attention of the Corporation.

2.2 Upon request by the Mortgagee and also if a mutually acceptable schedule has been agreed upon between the parties, then in accordance with that schedule, the Corporation agrees to provide to the Mortgagee details of electronic submissions made by the Mortgagee.

### **3. Obtaining Access**

3.1 Access to the technology put in place by Service New Brunswick for the submission of electronic instruments will be granted to the Mortgagee upon:

- a) The Corporation receiving a duly executed version of this Agreement in duplicate at the Corporation 's address stated in clause 9, and
- b) The Mortgagee having established an account with the Corporation for electronic funds transfers for the payment of registration fees and any other fees payable to the Corporation.

3.2 The Mortgagee may request that the Corporation issue to the Mortgagee more than one user account. In such eventuality all user accounts issued to the Mortgagee shall be governed by this Agreement.

3.3 The Mortgagee may assign a user account to a service provider who provides services to the Mortgagee relating to instruments of the Mortgagee or activity by the service provider through the account issued to the Mortgagee. In such eventuality, the Mortgagee will be responsible for all electronic submissions made by such service provider and will use its reasonable best efforts to ensure that such service provider complies with the provision of this Agreement relating to electronic submissions.

### **4. Liability**

4.1 The Mortgagee acknowledges and agrees that the Corporation will react to any electronic instrument submitted by the Mortgagee according to its tenor and intent in accordance with subsection 15(3) of the Act. If the Corporation fails to react to the electronic instrument in accordance with its tenor and intent, the Corporation shall be liable to the Mortgagee for all claims, costs, expenses, judgments, cause of action, legal fees, litigation or court costs whatsoever (hereinafter referred to as "claim" or "claims") against the Mortgagee arising from the Corporation's failure to react correctly to the electronic instrument.

4.2 The Mortgagee acknowledges and agrees that the Mortgagee will be liable for all claims, payable by the Corporation in respect of an electronic submission made by the Mortgagee or by any person that has utilized a Mortgagee's user account and password, whether such electronic submission was authorized or not by the Mortgagee or whether such submission contains errors and omissions that resulted in the claim as a result of use of the Mortgagee's user account ID and password, other than any use attributable to the Corporation's negligence, willful blindness or misuse of the Mortgagee's account due to fraud by an employee, officer, director or agent of the Corporation and the Mortgagee will save harmless and fully indemnify the Corporation in such event.

4.3 The Corporation acknowledges and agrees that the Corporation will be liable to the Mortgagee in respect of all claims resulting from the Corporation's negligence, willful blindness or the misuse of the Mortgagee's account due to fraud by an employee, officer, director or agent of the Corporation and the Corporation will save harmless and fully indemnify the Mortgagee in such event.

## **5. Arbitration**

5.1 Either party (the "Complainant") may refer any dispute as to the construction, interpretation or application of this Agreement to arbitration by giving the other party ("Respondent") hereto notice of the dispute and a brief description thereof. Each party shall name an arbitrator within twenty (20) business days of the notice of dispute being given to the Respondent. The Respondent shall respond to the notice of dispute within fifteen (15) business days of receiving it from the Complainant. The two arbitrators shall within fifteen (15) business days of the appointment of the second arbitrator appoint a third arbitrator. The arbitrators shall specify time limits by which acts are to be done in order to have the dispute dealt with expeditiously. The arbitration shall be conducted in accordance with the *Arbitration Act*, Acts of New Brunswick, 1992, c. A-10.1, as amended. Such arbitration shall be held in Fredericton and the decision by a simple majority of the panel of arbitrators shall be final and binding on the parties and may be enforced in a court of competent jurisdiction. The arbitration shall be conducted in accordance with the Rules of Court of New Brunswick except to the extent the parties otherwise agree. The costs of arbitration shall be borne equally by the parties.

5.2 In the event that either party fails to take any action within the time limits specified in this article or any time limits specified by the arbitrators, such party shall be deemed to be in default and the dispute may be decided in favor of the party not in default.

## **6. Governing Law**

6.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the Courts of the Province of New Brunswick as the final and proper forum for determination of any dispute hereunder.

## **7. Changes to the Agreement**

7.1 Any modifications to this Agreement shall be in writing and signed by the duly appointed officers of both parties.

## **8. Termination**

8.1 This Agreement shall terminate on the earliest of the following dates:

- a) January 1, 2040; or
- b) the date that is specified in a notice of termination given by either party to the other, provided that the date specified in any such notice of termination shall not be less than 180 days after giving of the notice of termination to the party to whom it was directed; or

- c) the date that is thirty (30) days following the giving of notice by the Corporation to the Mortgagee that in the opinion of the Corporation the continued privilege to submit electronic instruments to be registered under the Act increases materially the responsibility of the Corporation.

8.2 Upon termination of this Agreement, neither party shall be entitled to make upon the other any claim or demand whatsoever for damages, costs or losses suffered or incurred, or to be suffered or incurred, whether direct or consequential, arising out of, or in any manner related to, the termination of this Agreement.

8.3 Notwithstanding termination of this Agreement, the liability set out in article 4 of this Agreement shall survive such termination with respect to any electronic instrument submitted before such termination.

## 9. Notice

9.1 Any notice or document required or permitted to be given by this Agreement to a party hereto shall be in writing and is sufficiently given if served in the manner provided for personal service under the Rules of Court of New Brunswick to such party addressed as follows:

in the case of the Mortgagee to:

Mortgagee
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To the attention of  
Fax:  
E-mail:

(Authorized officer)

in the case of the Corporation to:

Service New Brunswick  
Attention: Registrar General Land Titles  
P.O. Box 1998  
985 College Hill Road  
Fredericton, NB  
E3B 5G4  
Fax: 506-444-3033  
E-mail: (Registrar General E-mail Address)

## 10. Effective Date

10.1 This Agreement comes into force on the date that access to the technology put in place by the Corporation for the submission of electronic instruments has been granted to the Mortgagee.

## **11. Assignment**

11.1 Neither party may assign this Agreement without the prior written consent of the other which consent shall not be unreasonably withheld or delayed.

## **12. No Agency or Partnership**

12.1 Nothing in this Agreement shall be construed to constitute one party as an agent, associate or partner of the other party.

## **13. Designated instruments and Mortgagee's authority**

13.1 Notwithstanding anything to the contrary contained herein this Agreement and subject to clauses 13.2 and 13.3, the Mortgagee will only be able to submit to a Land Titles office for filing or registration an electronic discharge of its own mortgage or that of its designated subsidiaries or affiliates, in circumstances where the Mortgagee is otherwise legally entitled to execute the discharge of the mortgage in paper format.

13.2 The Mortgagee will be able to similarly submit an assignment of its own mortgage once an assignment of mortgage has been designated by regulations under the Act for filing or registration in electronic format.

13.3 The Mortgagee certifies that it also has the legal authority to submit electronic assignments and discharges of mortgage for the entities listed in Schedule "A" hereto attached and undertakes that it will not submit any electronic assignments and discharges of mortgage for entities other than those listed in Schedule "A" hereto attached, which Schedule "A" may be amended from time to time by the parties to this Agreement.

## **14. Entire Agreement**

14.1 This Agreement, including the Schedules hereto embodies the agreement of the parties hereto with regard to the matters dealt with herein, and that no understanding or agreements, oral or otherwise, exist between the parties except as herein expressly set out.

**IN WITNESS WHEREOF** the party of the first part hereto has caused this Agreement to be executed by its proper officers in that behalf on the \_\_\_\_ day of \_\_\_\_\_ , \_\_\_\_ .

**MORTGAGEE**

\_\_\_\_\_

Per:

Per:

**IN WITNESS WHEREOF** the party of the second part hereto has caused this Agreement to be executed by its proper officer the \_\_\_\_ day of \_\_\_\_\_ , \_\_\_\_ .

**SERVICE NEW BRUNSWICK**

Per: