

# Mortgage Amending Agreement

THIS AGREEMENT is made \_\_\_\_\_,

BETWEEN:

ATB FINANCIAL  
(the "Lender")

-and-




(the "Borrower")

RECITALS:

A. The Borrower is the registered owner of



 (the "Lands") against which Lands the Lender holds a mortgage (the "Mortgage") registered on \_\_\_\_\_,   
as Instrument No. \_\_\_\_\_ 

- B. The Borrower has applied to the Lender for additional financial assistance to be secured by the Mortgage.
- C. The sum of the new financial assistance and the monies secured against the Mortgage shall increase the Principal Sum of the Mortgage by an amount of \$ \_\_\_\_\_ 
- D. The Borrower has requested the Lender to amend certain terms of the Mortgage, which the Lender has agreed to do upon the Borrower signing this Agreement.

## AGREEMENT:

### 1. The Mortgage is amended as follows:

#### a. The following definitions are hereby added to Section 1 – Definitions of the Mortgage:

“Confidential Personal Information” means any and all information or data protected by Privacy Laws, including (without limitation) information or data that: (a) is personal information or information about an identifiable individual (as more particularly defined in the applicable Privacy Laws) that was collected, used, disclosed or accessible to such party; or (b) is information from which an individual or individual’s identity can be ascertained either from the information itself or by combining the information with information from other sources available to the parties.

“Event of Default” means the occurrence of any of the events contained in Section 22 (a) through (g) of the Mortgage.

“Financing Guarantor” means Canada Mortgage and Housing Corporation as guarantor in connection with the financing by the Mortgagee of all or any part of the Indebtedness.

“Loan” means each loan made by the Mortgagee to the Mortgagor from time to time pursuant to a loan agreement between the parties, on such terms as notified to the Mortgagor from time to time, that the Mortgagor has agreed in writing will be secured by this Mortgage; provided, for the avoidance of doubt, that either (i) each additional loan that is made under a loan agreement after the initial advance (including any new or additional advances, increases to principal, or further borrowings or extensions of the term, including in the case of any fluctuating account or accounts, revolving loans, lines of credit, additional or further advances beyond an initial advance, re-advances, and multiple facilities (each an “Additional Advance” and, collectively, “Additional Advances”)) will be treated as a new Loan, or (ii) the Additional Advances in the aggregate will be treated as a new Loan, and in each case of (i) or (ii), such new Loan will be treated as a separate and distinct Loan from any Loan that is insured and/or financed under a NHA Program for all purposes including enforcement.

“Indebtedness” has the meaning given to it in the Mortgage; provided, for the avoidance of doubt, that any Indebtedness in respect of any Loan(s) that is/are insured and/or financed by the Mortgagee under a NHA Program shall have priority as to payment, collection, and in respect of this mortgage, enforcement over any other Loan irrespective of the time or order of any Loan, made by the Mortgagee to the Mortgagor from time to time pursuant to a loan agreement secured or to be secured by this mortgage that is not insured and/or financed under a NHA Program.

“NHA Program” means a Mortgagee financing or private or public mortgage insurance program under the *National Housing Act* (Canada), R.S.C., 1985, c. N-11 and associated regulations, as such may be amended, re-enacted or replaced from time to time.

“Privacy Laws” means the *Personal Information Protection and Electronic Documents Act* (Canada), *Personal Information Protection Act* (Alberta) and any regulations thereunder, as amended or supplemented from time to time, and any other similar applicable federal, provincial or territorial legislation now in force or that may in the future come into force in Canada governing the protection of personal information in the private sector applicable to the conduct of business by the Mortgagee, any mortgage loan insurer, the Financing Guarantor, any other person having or proposing to acquire any interest in all or any part of the Indebtedness, including any Loan under the related loan agreement, from time to time (including their respective advisors, agents, lawyers, accountants, consultants, appraisers, credit verification sources, credit rating agencies and servicers), any other person in connection with any collection or enforcement proceedings taken under or in respect of all or any part of the Indebtedness, including any Loan or the related loan agreement and to the activities contemplated herein, together with any common law duties of confidentiality owed by the such persons to the Mortgagor.

- b. The following is hereby added to Section 26 - Renewal, Extension or Amendment:

For the purposes of Section 10 of the *Interest Act* (Canada), where the term of this Mortgage is renewed or extended, the date of this Mortgage will be either (a) the commencement date of the renewal term of this Mortgage where the mortgage has been renewed, or (b) the date that immediately follows the expiry of the original term of this Mortgage where the mortgage has been extended, as applicable.

- c. The following provisions are hereby added to the terms of the Mortgage:

## **27. NHA PROGRAM**

The Mortgagor hereby acknowledges and agrees that, as provided herein, the Mortgagee, at its option exercisable in its sole discretion, may insure or, in connection with the Mortgagee obtaining any financing under a NHA Program, deal with all or any part of the Indebtedness, including any Loan or any interest therein, without restriction and without notice to the Mortgagor, any borrower or guarantor, or any other person, and that it has consented to such insurance being obtained and/or dealings and that no further notice is required. Furthermore, with respect to any mortgage that is insured and/or financed under a NHA Program, each of the Mortgagor and any other borrower or guarantor hereby acknowledges and agrees that:

(a) any Additional Advances on such terms as notified to the Mortgagor from time to time, are only permitted on the condition that (i) each Additional Advance is a new Loan, or (ii) all such Additional Advances are in the aggregate a new Loan, and in each case of (i) or (ii), the new Loan will be treated as a separate and distinct Loan for all purposes including enforcement, made to the Mortgagor and the Mortgagor covenants and agrees to enter into such additional or new security documentation requested by the Mortgagee to evidence the foregoing, including and without limitation a new commitment letter and a new charge;

(b) any references or rights, in favour of the Mortgagee or otherwise, with respect to any consolidation of any security, mortgages, loans, or property with respect to any loan that is insured and/or financed under a NHA Program, are disclaimed by the Mortgagee and not applicable, with the intent that the mortgage securing only the Loan(s) that are insured and/or financed under a NHA Program be registered against the Lands and the Lands only secure the Loan(s) that are insured and/or financed under a NHA Program and no other indebtedness; and

(c) any references or rights, in favour of the Mortgagee or otherwise, with respect to any cross-collateralization or cross-default of any security, mortgages, loans, or property, or the granting of property as security for more than one Loan, or more than one Loan being secured by a single property, in cases where not all of such Loans secured by this mortgage are insured and/or financed under a NHA Program, are disclaimed by the Mortgagee and not applicable with respect to any Loans that are not insured and/or financed under a NHA Program, with the intent that the mortgage securing only the Loan(s) that are insured and/or financed under a NHA Program shall be registered against the Lands and the Lands shall only secure the Loan(s) that are insured and/or financed under a NHA Program and no other indebtedness,

provided, for the avoidance of doubt, that (i) any Indebtedness in respect of any Loan(s) (including, for the avoidance of doubt, without limitation, any costs and expenses with respect thereto) that is/are insured and/or financed by the Mortgagee under a NHA Program shall have priority as to payment, collection and in respect of mortgage enforcement over any other Loan made by the Mortgagee to the Mortgagor from time to time pursuant to a loan agreement secured or to be secured by this mortgage that is not insured and/or financed under a NHA Program; (ii) in no event shall the Mortgagee seek an order under any bankruptcy legislation or file or prove a claim in any bankruptcy proceeding or for the appointment of any trustee in bankruptcy in respect of the Mortgagor until after the date that the outstanding principal amount of all Loans

that are insured and/or financed under a NHA Program are irrevocably discharged in full; and (iii) to the extent that all insurance proceeds and realization proceeds arising from or relating to enforcement of this mortgage are insufficient to irrevocably discharge in full all Indebtedness, the deficiency in respect of any Indebtedness other than Indebtedness in respect of Loans that are insured and/or financed under a NHA Program shall be borne by the Mortgagee and the Mortgagee shall not pursue any judgment in respect of an amount that is greater than such deficiency.

## **28. CONSOLIDATION OF MORTGAGES**

The doctrine of consolidation will apply to this mortgage and any other mortgages granted by the Mortgagor to the Mortgagee. This means that if the Mortgagor has granted any other mortgages to the Mortgagee then, after default, the Mortgagee may consolidate this mortgage with all of the mortgages so that the Mortgagor cannot repay the amounts secured by any one of the mortgages without repaying all of the monies secured by all of the mortgages. The foregoing provision is, however, subject to terms hereof, including that any references or rights, in favour of the Mortgagee or otherwise, with respect to any consolidation of any security, mortgages, loans, or property with respect to any Loan that is insured and/or financed under a NHA Program with any security, mortgages, loans, or property with respect to any Loan that is not insured and/or financed under a NHA Program, are disclaimed by the Mortgagee and not applicable, with the intent that the security securing only the Loan(s) that are insured and/or financed under a NHA Program be registered against the Lands and the Lands only secure the Indebtedness arising from Loan(s) that are insured and/or financed under a NHA Program and no other indebtedness.

## **29. LOAN PRIORITY**

If this mortgage secures Indebtedness relating to multiple Loans at any time, the Mortgagee has the right to allocate and apply all payments (including prepayments) received from or on behalf of the Mortgagor, or any other borrower or guarantor, to any Loan as the Mortgagee may determine in its sole discretion, both before and after default (regardless of any other designation or allocation of such payments by the Mortgagor or any other borrower or guarantor). The foregoing provision is however subject to terms hereof, including, for the avoidance of doubt, that (i) any Indebtedness (including, for the avoidance of doubt, without limitation, any costs and expenses with respect thereto) in respect of any Loan(s) that is/ are insured and/or financed by the Mortgagee under a NHA Program shall have priority as to payment, collection, and in respect of this mortgage, enforcement over any other Loan made by the Mortgagee to the Mortgagor from time to time pursuant to a loan agreement secured or to be secured by this mortgage that is not insured and/or financed under a NHA Program; (ii) in no event shall the Mortgagee seek an order under any bankruptcy legislation or file or prove a claim in any bankruptcy proceeding or for the appointment of any trustee in bankruptcy in respect of the Mortgagor until after the date that the outstanding Indebtedness in respect of all Loans that are insured and/or financed under a NHA Program are irrevocably discharged in full; and (iii) to the extent that all insurance proceeds and realization proceeds arising from or relating to enforcement of this mortgage are insufficient to irrevocably discharge in full all Indebtedness, the deficiency in respect of any Indebtedness other than Indebtedness in respect of Loans that are insured and/or financed under a NHA Program shall be borne by the Mortgagee and the Mortgagee shall not pursue any judgment in respect of an amount that is greater than such deficiency.

## **30. MORTGAGEE'S RIGHT TO FREELY DEAL WITH LOAN SECURED BY THIS MORTGAGE**

The Mortgagee, at its option exercisable in its sole discretion, may sell, transfer, assign, encumber, create a trust in respect of, securitize, in any transaction, insure, or otherwise deal with all or any part of the Indebtedness, including any Loan, the Indebtedness and applicable loan agreement, or any interest therein, without restriction and notice to the Mortgagor, any borrower, guarantor or any other person, and the Mortgagor hereby acknowledges and agrees that it has consented to such dealings and that no further notices are required.

If the Mortgagee does so, the Mortgagor agrees that this mortgage shall continue to secure all Indebtedness, including each Loan and Indebtedness, or any interest therein, that have been so sold, transferred, assigned, encumbered, made subject to a trust, securitized, or otherwise dealt with, and all Indebtedness, including each Loan and Indebtedness, which arise after any such sale, transfer, assignment, encumbrance, trust, securitization, or other dealing (provided, for the avoidance of doubt, that the Loan and Indebtedness shall continue to be subject to the terms hereof, including that any Indebtedness in respect of a Loan that is insured and/or financed by the Mortgagee under a NHA Program shall have priority as to payment, collection, and in respect of this mortgage, enforcement, irrespective of the time or the order of any Loans, over any other Loan made by the Mortgagee to the Mortgagor from time to time pursuant to a loan agreement secured or to be secured by this mortgage that is not insured and/or financed under a NHA Program, and this action shall not have any impact on the interest rate or other terms of the Loans pursuant to the respective loan agreements). Once sold, transferred, assigned, encumbered, made subject to a trust, securitized, or otherwise dealt with, such Indebtedness, including each Loan and all Indebtedness, or any interest therein may be repurchased, reacquired, or redeemed by the Mortgagee at any time, whether or not an Event of Default has occurred.

The Mortgagee may from time to time, in connection with the sale, assignment, syndication or securitization of a Loan, or otherwise, appoint or designate a custodian or agent for a Loan, which custodian or agent may be the registered mortgagee. The Mortgagor acknowledges that such custodian or agent will have no liability whatsoever to the Mortgagor in connection with a Loan.

The Mortgagee shall have the unrestricted right from time to time to appoint a third party to service or administer any Loan, and to deal with the Mortgagor in place of the Mortgagee, provided that until the Mortgagee gives notice of such appointment to the Mortgagor shall continue to deal with the Mortgagee in matters pertaining to the servicing or administration of the Loan.

### **31. CONSENT TO DISCLOSURE**

In connection with the processing, approving, funding, servicing, and administering, or any insurance, sale, securitization, or financing of all or any part of the Indebtedness, including any Loan under a related loan agreement, or any interest therein, any of the Mortgagee, any mortgage loan insurer, the Financing Guarantor, any other person having or proposing to acquire any interest in all or any part of the Indebtedness, including any Loan under a related loan agreement, from time to time (including their respective advisors, agents, lawyers, accountants, consultants, appraisers, credit verification sources, credit rating agencies and servicers), or any other person in connection with any collection or enforcement proceedings taken under or in respect of all or any part of the Indebtedness, including any Loan or a related loan agreement ("Information Access Persons"), may, as it may determine in its sole discretion in accordance with Privacy Laws, collect, use and store information and materials (including Confidential Personal Information) provided by the Mortgagor to, or obtained by or on behalf of, the relevant Information Access Person, relating to the Indebtedness, including any Loan under the related loan agreement, the Mortgagor, or the Lands (both before and after any new loan, any re-financing of a loan, any re-advances and any further advances on any loan, and/or any default) without further notice to the Mortgagor, any other borrower or guarantor, and any such Information Access Person may, as it may determine in its sole discretion in accordance with Privacy Laws, from time to time transfer, assign, release, disclose, exchange or share such information and materials (including Confidential Personal Information) to or with:

(a) any other Information Access Persons; and

(b) any governmental authority having jurisdiction over it or any of its activities,


and the Mortgagor hereby irrevocably consents to the collection, use, storage, release, disclosure, exchange, sharing, transfer, and assignment of all such information and materials (including Confidential Personal Information) in accordance with Privacy Laws.

## 32. INSPECTIONS

The Mortgagor authorizes each of the Mortgagee, any mortgage loan insurer, a Financing Guarantor, or any of its authorized representatives or agents to enter upon the Lands and to enter any buildings on the Lands at any time:

(a) to inspect the Lands and the condition of the buildings and other improvements on the Lands; and

(b) to conduct any environmental testing, site assessment, investigation, or study that the Mortgagee or its authorized representatives deem necessary, including taking soil and ground water samples and creating bore holes in order to obtain such samples.

d. The Principal Sum is hereby increased to \$  .  
For certainty, this increase in the Principal Sum is considered and shall be treated as a new Loan.

2. All capitalized terms not defined in this Agreement shall have the meanings set forth in the Mortgage unless the context requires otherwise.
3. The Borrower agrees with the Lender to make the payments and to observe and perform all terms and conditions contained in the Mortgage as amended by this Agreement. The Borrower further agrees that this Agreement is intended to be and shall operate as an amending agreement only. All other covenants, clauses, agreements, provisions, stipulations, conditions, power and matters contained in the Mortgage shall continue in full force and effect except as amended herein. This Agreement does not result in the release of the Mortgagor or any other person from their obligations under the Mortgage.
4. For better securing to the Lender the repayment in the manner set out in the Mortgage as amended by this Agreement of the Principal Sum and interest and other amounts secured by the Mortgage, the Borrower hereby mortgages and charges all the Borrower's estate and interest in the Lands.
5. Where two or more Borrowers sign this Agreement, the terms of this Agreement shall bind the Borrowers jointly and severally.

[SIGNATURE PAGE FOLLOWS]



The parties have executed this Agreement as of the date first above written.

SIGNED AND DELIVERED

In the presence of:

\_\_\_\_\_  
Witness:

\_\_\_\_\_

\_\_\_\_\_  
Witness:

\_\_\_\_\_

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
/=====

**Branch Officer**

Authorized Representative of ATB Financial

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
/=====

**Corporate Officer**

Authorized Representative of ATB Financial

### DOWER ACT AFFIDAVIT

I, \_\_\_\_\_, of \_\_\_\_\_, in the Province of Alberta,

MAKE OATH AND SAY:

1. I am the mortgagor named in the within instrument.
2. I am not married.

or  
Neither myself nor my spouse have resided on the within mentioned land at any time since our marriage.

or  
I am married to \_\_\_\_\_ being the person who executed the release of dower  
rights registered in the Land Titles Office on \_\_\_\_\_, as instrument number \_\_\_\_\_.

or  
A judgement for damages was obtained against me by my spouse and registered in the Land Titles Office on  
\_\_\_\_\_, as instrument number \_\_\_\_\_.

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

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_

### DOWER ACT CONSENT OF SPOUSE

I, \_\_\_\_\_, being married to \_\_\_\_\_,  
do hereby give my consent to the disposition of our homestead, made in this instrument, and I have executed  
this document for the purpose of giving up my life estate and other dower rights in the property given to me  
by the *Dower Act*, to the extent necessary to give effect to the disposition.

\_\_\_\_\_



# **DOWER ACT CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE**

1. This document was acknowledged before me by \_\_\_\_\_ apart from \_\_\_\_\_.
2. \_\_\_\_\_ acknowledged to me that
  - (a) is aware of the nature of the disposition,
  - (b) is aware that the *Dower Act* gives \_\_\_\_\_ a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent,
  - (c) consents to the disposition for the purpose of giving up the life estate and other dower rights in the homestead given to \_\_\_\_\_ by the *Dower Act* to the extent necessary to give effect to the said disposition,
  - (d) is executing the document freely and voluntarily without any compulsion on the part of \_\_\_\_\_.

Dated at \_\_\_\_\_, in the Province of Alberta, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_

## **AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Alberta MAKE  
OATH AND SAY:

1. That I was personally present and did see \_\_\_\_\_ named in the within instrument, who \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ named therein, duly sign and execute the same for the purpose named therein.
2. That the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. That I know the said \_\_\_\_\_, and \_\_\_\_\_ in my belief, of the full age of eighteen years.

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

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_

### AFFIDAVIT OF EXECUTION

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Alberta MAKE  
OATH AND SAY:

1. That I was personally present and did see \_\_\_\_\_  
named in the within instrument, who \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ named therein,  
duly sign and execute the same for the purpose named therein.
2. That the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing  
witness thereto.
3. That I know the said \_\_\_\_\_, and \_\_\_\_\_ in my belief, of the full age of eighteen  
years.

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

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_

### AFFIDAVIT OF EXECUTION

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Alberta MAKE  
OATH AND SAY:

1. That I was personally present and did see \_\_\_\_\_  
who is known to me to be the person named in the within (or annexed) instrument, duly sign the instrument;  
Or

I was personally present and did see \_\_\_\_\_  
who, on the basis of the identification provided to me, I believe to be the person named in the within (or  
annexed) instrument, duly sign the instrument;

2. That the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing  
witness thereto.
3. That I know the said \_\_\_\_\_, and \_\_\_\_\_ in my belief, of the full age of eighteen  
years.

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

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta  
(Print or Stamp Name Next to Signature)

My Commission Expires \_\_\_\_\_