

ENVIRONMENTAL AGREEMENT AND INDEMNITY

DATE: _____, 20____ (the "Date")

MEMBER(S) NAME(S):

CREDIT UNION:

MEMBER(S) NUMBER(S):

BRANCH ADDRESS:

(individually and collectively, the "**Borrower**")

(the "**Credit Union**")

OBLIGOR(S) NAME(S):

LANDS:

(individually and collectively, the "**Obligor**")
(note Obligor may be Borrower)

(the "**Lands**")
(insert legal description)

RE: LOAN TO THE BORROWER

WHEREAS:

- A. The Borrower has borrowed or may borrow money from the Lender and, along with each Obligor, has incurred or may incur obligations to the Lender either direct, indirect, absolute, contingent, past or future, matured or not (collectively, the "**Obligations**");
- B. As security for the Obligations, the Borrower granted to the Lender, *inter alia*, certain mortgage security (individually and collectively, the "**Mortgage**"), which Mortgage charges the Lands;
- C. Every loan agreement, the Mortgage and all other security and supporting documents now or hereafter entered into with or granted to the Lender in connection with or as security for the Obligations are herein collectively referred to as the "**Loan Documents**";
- D. As one of the conditions of dealing with the Borrower, the Lender requires that the Obligor makes the representations and warranties and enter into the covenants set out in this Agreement and Indemnity and that each indemnifies the Lender against any loss, claim, or expense arising out of the environmental liabilities more fully set out herein;

NOW THEREFORE IN CONSIDERATION of the premises, the advance of any monies to the Borrower and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Obligor covenants and agrees with the Lender as follows:

1. Definitions

The following terms used in this Agreement and Indemnity shall have the following meanings and all singular definitions may be used in the plural to mean more than one of the term defined and vice-versa:

“Environmental Claims” - any and all enforcement, clean-up, removal or other governmental or regulatory actions, orders, directions or proceedings instituted, pending or completed or to the best of the knowledge of each Obligor, threatened or anticipated pursuant to any Environmental Law and all claims made or, to the best of the knowledge of each Obligor, threatened, by any third party against the Obligors (or any of them), any of the Lands or any party having charge, management or control of any of the Lands relating to damage, contribution, costs recovery, compensation, loss or injury resulting from any violation or alleged violation of Environmental Law.

“Environmental Law” - any applicable federal, provincial, municipal or local laws, statutes, ordinances, codes, by-laws, regulations, rules, orders, directives, decisions, policies, instructions, guidelines or decrees regulating, relating to or imposing liability or standards of conduct concerning any environmental matters, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substances including, but not limited to, matters related to air pollution, water pollution, noise control, or hazardous material, including, but not limited to, the Canadian Environmental Protection Act, Alberta Environmental Protection and Enforcement Act and any similar, replacement or supplemental Acts and all regulations, orders or decrees, now or hereafter made pursuant to any of the foregoing.

“Environmental Liability” - any claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage, injury, judgment, penalty or fine, cost of enforcement, cost of remedial action, or any other cost or expense whatsoever, including legal fees and disbursements, on a solicitor and own client basis, resulting from the violation or alleged violation of any Environmental Law or from any Environmental Claims, including, without limitation, any one or more of the following:

- (a) claims of third parties (including governmental agencies) for damages, penalties, response costs, administrative costs, injunctive, declaratory or other relief;
- (b) expenses, including fees of lawyers and experts, of reporting and/or investigating the existence of Hazardous Substances on or beneath the Lands or any release of Hazardous Substances from the Lands;
- (c) expenses or obligations incurred at, before and after any trial or appeal or administrative proceeding brought under any Environmental Law, including, without limitation, legal fees and disbursements, on a solicitor and own client basis, witness fees, (expert and otherwise), deposition costs, consultant costs, costs for the Lender's own employees, copying, telephone charges and other expenses.

“Hazardous Substances” - collectively, any pollutants, contaminants, chemicals, deleterious substances, waste or industrial, toxic or hazardous wastes (including, without limitation, special waste and subject waste) or other substances, including, without limitation, petroleum or petroleum products, asbestos, polychlorinated biphenyls, underground storage tanks and the contents thereof, urea formaldehyde foam insulation, explosive materials, flammable materials and radioactive materials.

2. Representations and Warranties

Each Obligor hereby represents and warrants to the Lender that:

- (a) it, the Lands, and, on or in respect of the Lands, the activities and operations of it and, to the best of its knowledge after due inquiry, those of any party having charge, management or control of the Lands, have been and are in compliance with all Environmental Laws in respect of the Lands;
- (b) none of the Lands or any of the activities or operations on or in respect of the Lands of it, or to the best of the knowledge of it after due inquiry, those of any party having charge, management or control of the Lands is subject to any Environmental Claims in respect of the Lands;

- (c) it has not received notice of any judicial or administrative proceeding alleging the violation of any Environmental Laws and the Obligor has not received notice of or is subject to any Environmental Claims;
- (d) to the best of its knowledge after due inquiry, any party having charge, management or control of the Lands, has not ever caused or permitted any Hazardous Substance to be placed, held, located, stored or disposed of on, in, under, through or at the Lands or any part thereof in contravention of any Environmental Laws;
- (e) to the best of its knowledge after due inquiry, any party having charge, management or control of the Lands, has not caused or permitted, nor has there been, any release, emission, spill or discharge in any manner whatsoever of any Hazardous Substance on, in, around, from or in connection with the Lands or any such release on or from a facility owned or operated by any third party with respect to which any Obligor is or may reasonably be alleged to have liability; and
- (f) it has delivered to the Lender true and complete copies of all environmental audits, evaluations, assessments, studies or tests relating to the Lands in the possession or control of it.

3. Covenants

Each Obligor hereby covenants and agrees with the Lender as follows:

- (a) to comply and cause all tenants of the Lands and all other parties having charge, management or control of the Lands to comply with all Environmental Laws;
- (b) promptly after it becomes aware of the same, it will advise the Lender in writing of:
 - (i) any and all Environmental Claims,
 - (ii) any remedial or clean-up action taken by any Obligor or any other party in response to:
 - (A) Hazardous Substances in, on, under or about the Lands in violation of Environmental Laws, or
 - (B) Environmental Claims, and
 - (iii) any release of Hazardous Substances on any real property adjoining or in the vicinity of the Lands in each case to the extent the same could have an adverse effect on the Obligors business (or any of them) or could impair the value of the Lands;
- (c) to provide the Lender with copies of all communications with any federal, provincial, municipal or local government ministry, department or agency relating to non-compliance or alleged non-compliance with Environmental Laws and all communications with any party relating to Environmental Claims;
- (d) if it has an obligation to give notice or has given notice pursuant to subsection (b) above with respect to the Lands, then, if required by the Lender, to submit a report, the scope of which is satisfactory to the Lender, prepared by an environmental consultant approved by the Lender, describing the environmental condition of the Lands;
- (e) to take or cause to be taken any and all necessary remedial or clean-up action in response to the presence, storage, use, disposal, transportation, release or discharge of any Hazardous Substance in, on, under or about the Lands;

- (i) in compliance with all applicable Environmental Laws, and
- (ii) in accordance with the orders and directions of all applicable federal, provincial, municipal and local authorities;
- (f) to permit, and to cause any party in charge, management or control of the Lands to permit, the Lender and its agents, employees, consultants and contractors to enter on the Lands and perform such tests on the Lands as are necessary to conduct a review and/or investigation of the environmental condition of the Lands;
- (g) not to create or permit to continue in existence any lien (whether or not such lien has priority over the lien created by the Mortgage) on any Lands and imposed pursuant to Environmental Laws; and
- (h) to deliver to the Lender a true and complete copy of all environmental audits, evaluations, assessments, studies or tests relating to the Lands forthwith after the completion thereof.

4. Indemnity

Each Obligor jointly and severally hereby indemnifies the Lender and agrees to hold the Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and all claims of any and every kind whatsoever, including, without limitation, any Environmental Liability, paid, incurred or suffered by, or asserted against, the Lender for, with respect to, or as a direct or indirect result of:

- (a) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Lands, of any Hazardous Substances; or
- (b) the cost of removal or remediation of any Hazardous Substances regardless of whether or not caused by or within the control of the Borrower;

provided however, that this indemnity shall not apply to losses, liabilities, damages, injuries, costs, expenses and claims arising from Hazardous Substances brought on to the Lands at any time by the Lender, any agent or employee of the Lender or any receiver, receiver-manager or other person with similar powers appointed by the Lender or brought on to the Lands by any person (other than by such Obligor) after any date the Lender acquires title to the Lands.

5. Survival

The obligations of each Obligor under this Agreement and Indemnity shall survive any one or more of the following:

- (a) judicial or extra-judicial realization or other proceedings by the Lender including, without limitation, the appointment of a receiver or receiver-manager or foreclosure under the Mortgage or any conveyance of the Lands in lieu of realization or foreclosure; or
- (b) the payment in full of the Obligations and the satisfaction and release of the Loan Documents.

6. Recourse

This Agreement and Indemnity shall not be subject to any non recourse or other limitation of liability provisions in the Loan Documents, and each Obligor acknowledges that its obligations under this Agreement and Indemnity are not limited by any such non recourse or similar limitation of liability provisions.

7. Payment

The costs, damages, liabilities, losses, claims, expenses (including legal fees and disbursements) for which the Lender is indemnified hereunder shall be reimbursable to the Lender as incurred without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and each Obligor shall pay such costs, damages, liabilities, losses, claims, expenses (including legal fees and disbursements) to the Lender as incurred within 10 days after notice from the Lender itemizing the amount incurred to the date of such notice. In addition to any remedy available for failure to periodically pay such amounts, such amounts shall thereafter bear interest at the highest rate of interest payable pursuant to the Loan Documents. Payment by the Lender shall not be a condition precedent to the obligations of each Obligor under this Agreement and Indemnity.

8. Notices

Any notice or communication permitted or required hereunder shall be in writing and may be given to any Obligor at the address of the Borrower last known to the Lender and shall be given to the Lender at its address set forth in the Loan Documents.

9. Obligors' Acknowledgment

Each Obligor acknowledges that this Agreement and Indemnity has been delivered in connection with a fully negotiated commercial business transaction in which it was represented by a solicitor and each Obligor further acknowledges having read this Agreement and Indemnity and having had the contents explained to them by their own solicitor. The only defence to this Agreement and Indemnity shall be the payment in full, after demand by the Lender, without set-off, deduction, compensation or abatement of the amounts from time to time notified by the Lender to be due pursuant to paragraph 7 hereof. Each Obligor waives each and every other defence to any claim on this Agreement and Indemnity. There are no implied conditions, terms or agreements relating to this Agreement and Indemnity. This Agreement and Indemnity cannot be amended and no collateral agreement can be created which relates to this Agreement and Indemnity unless it is in writing, signed by the Lender under seal and expressly refers to this Agreement and Indemnity and specifically provides that it is a modification hereof. This Agreement and Indemnity covers all agreements between the parties hereto relative to the subject matter hereof and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied herein. Each Obligor acknowledges that the Lender in deciding to deal with or continue to deal with the Borrower has relied on the fact that this Agreement and Indemnity shall be enforceable in accordance with its express written terms.

10. Governing Law

This Agreement and Indemnity shall in all respects be governed by and construed in accordance with the laws of Alberta and the laws in Canada applicable therein.

11. Non-Waiver

The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy shall not constitute a waiver thereof nor give rise to any estoppel against such party, nor excuse any of the parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Agreement and Indemnity is subject to enforcement at law and/or equity, including actions for damages and/or specific performance. Time is of the essence hereof.

12. Enurement

This Agreement and Indemnity shall be binding on each Obligor and each of its heirs, executors, administrators, successors and assigns and it shall enure to the benefit of the Lender and its successors and assigns. The Agreement shall be binding on all who sign, even if others do not sign.

13. Joint and Several

Each of the undersigned Obligors hereby acknowledges that it has read the contents of this Agreement and Indemnity, understands that the signing of this Agreement and Indemnity involves joint and several financial responsibility on the part of the undersigned and has in no way whatsoever, directly or indirectly, sought, received or relied upon any representation or statement from or any agreement or undertaking with the Lender or any officer, employee or agent thereof.

14. Counterpart

This Agreement and Indemnity may be executed in counterpart and by facsimile or other electronic forms.

IN WITNESS WHEREOF, the Borrower has caused this Agreement to be duly executed and delivered on the Date.

WITNESS

Name:

BORROWER

Name:

WITNESS

Name:

BORROWER

Name:

WITNESS

Name:

BORROWER

Name:

WITNESS

Name:

BORROWER

Name: