FORM 109 (RULE 22-2(2) AND (7))

This is the 1st affidavit
of L. Ward in this case
and was made on July 5, 2022

VANCOUVER
JUL 05 2022 C
REGISTRY

No. S-225423
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

DOMAIN MORTGAGE CORP.

Petitioner

and

EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP and PORT CAPITAL DEVELOPMENT (EV) INC.

Respondents

# AFFIDAVIT

I, Lisa Ward, businessperson, of c/o 2900-595 Burrard Street, Vancouver, B.C., AFFIRM THAT:

1. I am the Vice President, Risk Management, of Domain Mortgage Corp., and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.

2. Capitalized terms herein are as defined in Domain's petition to the court.

3. Attached as Exhibits "**A**" and "**B**" respectively are copies of the Domain Commitment Letter and an amendment thereto dated September 1, 2022. Attached as Exhibit "**C**" are copies of

the Promissory Notes. The transactions contemplated by the foregoing closed in October 2021. Domain funded two loan segments as follows:

a) a first loan segment in the principal amount of $10.5 million, upon which interest currently accrues at the rate of 12% per annum, compounded monthly; and

b) a second loan segment in the principal amount of $4.2 million, upon which interest currently accrues at the rate of 24% per annum, compounded monthly.

4. The balance of the Loan Facility, in the total principal sum of $10,549,060.03, was funded by the Junior Lenders. Pursuant to a Loan Administration, Participation and Standstill Agreement dated October 2021, Domain administers the loans on behalf of the lenders, including the Junior Lenders. Upon closing, the DIP Facility was repaid, CMLS received payment for amounts owed to it, and CMLS's security was assigned to Domain.

5. Attached as Exhibit "**D**" is a copy of the Mortgage. Attached as Exhibit "**E**" is a copy of the Priority/Subordination Agreement dated October 22, 2021 between Domain and Aviva Insurance Company of Canada registered under nos. CA9459931 and CA9459932. Attached as Exhibit "**F**" is a copy of the GSA.

6. In or about February 2022 Domain agreed to fund a third loan segment in the principal sum of $1.8 million. Attached as Exhibits "**G**" and "**H**" are copies of the February 2022 Commitment Letter and an amendment thereto dated February 11, 2022. This transaction closed in March 2022.

7. In April 2022 Domain agreed to extend the maturity date for the first two loan segments from May 1, 2022 to July 1, 2022. Attached as Exhibit "**I**" is a copy of the loan renewal letter dated April 25, 2022. The Debtors did not provide Domain with a current appraisal report by May 16, 2022, or at all, and thereby failed to fulfill the post-renewal condition set out in the loan renewal letter.

8. The loans matured on July 1, 2022 and have not been repaid. As at July 4, 2022 the total sum due under the terms of the Domain Commitment Letter, the February 2022 Commitment

Letter, the Promissory Notes and the Security was $29,239,192.03, exclusive of costs and expenses and interest accrued thereafter. Interest accrues at the current combined daily rate of $15,808.32, before compounding. I am advised by Domain's lawyer, Scott Stephens, and verily believe, that demands for repayment have been issued to the Debtors and the Guarantors.

9. Domain is concerned that the debt owed under the Security exceeds the value of the Terrace House Project. Domain is also concerned that, due to the Debtors' financial circumstances, steps need to be taken to protect and preserve the Terrace House Project.

10. On account of the Debtors' failure to comply with their obligations to Domain, as noted above, and otherwise follow through on their promises, Domain has lost faith in the management of the Debtors. For that reason, as well as the expertise of Bowra and the relative anticipated cost, Domain strongly prefers the appointment of Bowra as Receiver as opposed to a continuation of the CCAA proceeding.

11. I have read Domain's petition to the court and confirm that the facts set out in the following paragraphs under Part 2 are true: 8, 9, 10, 11, 12, 14 (the last two sentences), 20 (the first two sentences) and 21 (the first two sentences).

| | | |
|---|---|---|
| AFFIRMED BEFORE ME<br>at the City of Vancouver, in the Province of British Columbia, this 5th day of July, 2022.<br><br>A Commissioner for taking Affidavits for British Columbia | ) ) ) ) ) ) ) ) | <br><br>LISA WARD |

**SCOTT H. STEPHENS**
***BARRISTER & SOLICITOR***
2900 - 595 BURRARD STREET
VANCOUVER, B.C. V7X 1J5
604-688-0401

/

**DOMAIN FUNDING**

Domain Funding
1100–1040 West Georgia St.
Vancouver, BC V6E 4H1
604.681.3000

Loan #: 2021-BC011

Friday, July 30, 2021

This is Exhibit " A " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5 day of July, 2022

A Commissioner for taking Affidavits within British Columbia

**Evergreen House Development LP**
**Port Capital Development (EV) Inc.**
**Port Capital Development Inc.**
**Mr. Macario Teodoro Reyes**
c/o 325 West 4th Avenue,
Vancouver, B.C. V5Y 1H3

E-mail: tobi@portliving.com

Dear Sir:

# THIRD REVISED COMMITMENT LETTER ("3RCL")

**Once executed by the Borrower(s) and Covenantor(s), this Third Revised Commitment Letter (the "3RCL") supersedes and cancels the previously issued Second Revised Commitment Letter dated June 4, 2021 (the "2RCL").**

Bankers Mortgage Corporation doing business as Domain Funding is pleased to present you with a commitment to provide a loan with terms and conditions described herein and on the attached Schedules (the "Loan").

## 1. SECURED PROPERTY:

| | |
|---|---|
| Civic Address: | 1250 West Hastings Street, Vancouver B.C. |
| Legal Description: | LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92 |
| PIDs: | 006-721-397 |

The above property(s) is referred to herein as the "Secured Property".

## 2. LENDER/MORTGAGEE:

| | |
|---|---|
| Name: | **Domain Mortgage Corp.** syndicated in trust for private mortgage investors, and/or nominee. |
| Address: | 1100 – 1040 W. Georgia St. Vancouver, BC V6E 4H1 |

Hereinafter referred to as the "Lender".

## 3. BORROWER(S)/MORTGAGOR(S) AND ASSIGNEE(S) AND/OR NOMINEE(S):

| | |
|---|---|
| Name: | **Evergreen House Development Limited Partnership** |
| Relationship: | The beneficial owner of the Secured Property |
| Address: | 325 West 4th Avenue, Vancouver, B.C. V5Y 1H3 |

Initials of Borrower(s)/Covenantor(s):

| | |
|---|---|
| Name: | **Port Capital Development (EV) Inc.** |
| Relationship: | The registered owner of the Secured Property and the General Partner of Evergreen House Development Limited Partnership |
| Address: | 325 West 4th Avenue, Vancouver, B.C. V5Y 1H3 |

**4. COVENANTOR(S):**

The Lender(s) will require the Loan to be guaranteed by the personal and/or corporate shareholders of the Borrowing Company(s) and/or others (the "Covenantors").

To date the following Covenantors have been identified:

| | |
|---|---|
| Name: | **Macario Teodoro Reyes** |
| Relationship to Borrower: | Principal of Port Capital Development Inc. |
| Address: | #801-2211 Cambie Street, Vancouver, B.C. V5Z 2T5 |
| Name: | **Port Capital Development Inc.** |
| Relationship to Borrower: | 100% shareholder of Port Capital Development (EV) Inc. |
| Address: | 325 West 4th Avenue, Vancouver, B.C. V5Y 1H3 |

**5. LOAN TYPE AND PURPOSE:**

To assist in (i) the redemption and repayment of the interim financing ("Interim Financing") provided by Desjardins Financial Security Life Assurance Company ("Desjardins") and, (ii) together with 1296371 B.C. Ltd. (the "Junior Lender"), the purchase and assignment of the existing loans and security (the "Existing Security") provided by CMLS Financial Ltd., as agent for and on behalf of certain lenders (collectively the "Existing Lenders").

The Interim Financing is in the principal amount of $1,287,274.88 (subject to verification), secured by a super-priority court-ordered charge over all assets, undertakings and property of the Borrowers.

The Existing Loan is in the principal amount of $21,233,416.87 (subject to verification).

The Interim Financing and the Existing Loan are secured by the following Mortgages and Assignments of Rents registered on title to the Secured Property:

| | |
|---|---|
| Nature: | MORTGAGE |
| Registration Number: | CA7337616 |
| Registration Date and Time: | 2019-02-06 15:25 |
| Registered Owner: | CMLS FINANCIAL LTD.<br>INCORPORATION NO. BC0124226 |
| Nature: | ASSIGNMENT OF RENTS |
| Registration Number: | CA7337617 |
| Registration Date and Time: | 2019-02-06 15:25 |
| Registered Owner: | CMLS FINANCIAL LTD.<br>INCORPORATION NO. BC0124226 |
| Nature: | MORTGAGE |
| Registration Number: | CA8277031 |
| Registration Date and Time: | 2020-06-30 16:49 |
| Registered Owner: | DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY<br>INCORPORATION NO. A0056166 |

**(collectively, the foregoing loans, the "Existing Loan", and the foregoing security interests, are referred to herein as the "Existing Security").**

## 6. USES AND SOURCES OF FUNDS:

Loan proceeds to be used in accordance with the following Uses and Sources of Funds budget:

**Uses of Funds**

| | | |
|---|---|---|
| Payout CMLS Financial Ltd. (estimate) | $ | 21,233,416.87 |
| Payout Desjardins Financial Security Life Assurance Company (estimate) | $ | 1,287,274.88 |
| Provision of a Payment Reserve to the CCAA Monitor (estimate) | $ | 250,000.00 |
| Domain Mortgage Corp Loan Servicing Fee (0.25% of the Loan amount) | $ | 18,375.00 |
| Monthly Interest Reserve (6 months - see below) | $ | 866,250.00 |
| Domain Funding Mortgage Broker Fee (2.0% of the Loan amount) | $ | 294,000.00 |
| Domain Securities Corp Fund Raising Fee (1.0% of the Loan amount) | $ | 147,000.00 |
| Lender's CCAA Reporting Consultant - (estimate) | $ | 60,000.00 |
| Lender's legal fees, title insurance, misc., etc. (estimate) | $ | 60,000.00 |
| **Total Uses of Funds** | **$** | **24,216,316.75** |
| **Total Uses of Funds (Rounded)** | **$** | **24,217,000.00** |

**Sources of Funds**

| | | |
|---|---|---|
| Domain Mortgage Corp. Mortgage Loan Amount (First Loan Segment) | $ | 10,500,000.00 |
| Domain Mortgage Corp. Mortgage Loan Amount (Second Loan Segment) | $ | 4,200,000.00 |
| Paid Amount of Domain Funding Mortgage Broker Fees (after Aug. 6 pyt.) | $ | 294,000.00 |
| Paid Amount of Lender's legal fee | $ | 27,000.00 |
| Additional Equity requirement and/or Junior Lender requirement (est.) | $ | 9,196,000.00 |
| **Total Sources of Funds** | **$** | **24,217,000.00** |

NOTE 1: The above budget has been prepared by Domain Funding based on information provided by the Borrower(s) and Covenantor(s) and is subject to change.

NOTE 2: All figures listed in above budget are subject to verification and approval by the Lender.

NOTE 3: At the option of the Lender, any Loan proceeds will be controlled and/or disbursed by the Lender or its solicitor for the purposes outlined above or for other Lender-approved purposes.

NOTE 4: Any shortfall of funds to complete the assignment and transfer of the Existing Mortgage is the responsibility of the Borrower(s), Covenantor(s), and 1296371 B.C. Ltd.

NOTE 5: The Borrower(s) will pay $100,000 (or such other amount recommended by the Monitor of the CCAA proceedings pursuant to the Monitor's budget as approved by the Lender) from the Loan proceeds representing a payment to the Monitor on closing to cover anticipated future costs of the Monitor (including their counsel in the CCAA proceeding. The balance of the $250,000 Provision of a Payment Reserve will be held by the Lender in a reserve as against protective disbursements including without limitation monitor's or other costs. If the monitor's costs exceed the amount advanced to the monitor the Borrower(s) shall pay those costs and the Lender shall not be obligated to (but may) pay any additional costs from the said reserve.

NOTE 6: The Borrower(s) will assign $60,000 (or such other amount recommended by the Lender's solicitor) from the Loan proceeds representing a provision for a CCAA Reporting Consultant to provide reporting to and to advise the Lender with respect to the CCAA proceedings.

## 7. JUNIOR LENDER PARTICIPATION WITHIN THE EXISTING SECURITY:

1296371 B.C. Ltd. will become a Junior-ranking participant in the proposed new ownership of the Existing Security subordinate in all respects to the $14,700,000 aggregate amount of the Loan and will enter into a participation Agreement (the "**Participation and Stand Still Agreement**") with Domain Mortgage Corp. to be prepared by the Lender's Lawyer, or in the alternative, there will be sufficient recapitalization of the Borrower(s) to fund monies required (in addition to the Loan) to refinance the

Existing Lenders and retire the Interim Financing, without participating in the Loan and the related security.

The Participation and Stand Still Agreement will contain a provision allowing the Junior Lender to purchase the Loan and the interest of the Lender in the Existing Security and to transfer the administration of the Existing Security upon payment to the Lender of the amount owing under the Loan and subject to the Lender receiving the minimum interest provisions contained herein and otherwise as required by the Lender's lawyer.

The Participation and Stand Still Agreement will subordinate the Junior Lender to the Lender in all respects and the Lender or the Lender's nominee will administer the Loan and the interest of the Junior Lender in the Existing Security.

The Participation and Stand Still Agreement will contain provision(s) to cause unpaid interest, if and when due, to be made by Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd. and to apply interest due under the Loan exceeding the interest prescribed under the Existing Security to be deducted from the ownership interest of 1296371 B.C. Ltd., and in priority to the ownership interest of 1296371 B.C. Ltd., in the Existing Security.

The standstill provisions of the Participation and Stand Still Agreement will prohibit the Junior Lender from taking any action in respect of the Loan unless and until either:

a) the Loan is repaid in full; or
b) the Junior Lender purchases the Loan and the interest of the Lender from the Lender.

**8. LOAN FUNDING DATE:**

**A date to be determined by the Lender NOT BEFORE October 22, 2021 and NOT AFTER October 29, 2021, subject to the following prior events:**

(i) On or before Sept. 30, 2021, receipt by the Lender of a Decision of the BC Court of Appeal to approve the assignment and transfer of the Existing Security, in a form satisfactory to the Lender

The Borrower(s) acknowledges that interest on the Loan shall accrue from the date that funds are provided by the Lender to its solicitor in preparation for the funding of the Loan, whether or not the Borrower(s) and Covenantor(s) are in a position to draw funds in accordance with the terms and conditions of this Commitment Letter.

**9. PAYMENT PROVISIONS:**

The Loan will be divided into the following (2) Loan Segments with (2) differing interest rates in recognition of differing risk profiles within the $14,700,000 composition of the Loan.

| | |
|---|---|
| Loan Amount: | $10,500,000.00 (the "First Loan Segment")<br>$ 4,200,000.00 (the "Second Loan Segment")<br>$14,700,000.00 (the "Loan") |

Terms of $10,500,000 First Loan Segment

| | |
|---|---|
| Term: | 6 months from Interest Adjustment Date |
| Amortization: | Interest Only |
| Interest Rate: | Up to and including March 31, 2022;<br>The greater of Prime + 8.05% per annum or 10.50% per annum, compounded monthly<br>Commencing April 1, 2022;<br>12.00% per annum, compounded monthly |

Initials of Borrower(s)/Covenantor(s):

5



| | |
|---|---|
| Interest Calculation Period: | Monthly |
| Payment Dates: | 1st day of month during Loan Term |
| Interest Adjustment Date: | November 1, 2021 |
| First Payment Date: | December 1, 2021 |
| Periodic Payment Amounts: | $91,875.00 interest payment<br>$ 2,187.50 Loan servicing fee (0.25% of Loan Amount)<br>$94,062.50 |

Monthly interest payments during the term of the Loan will be made using Monthly Payment Reserve(s) held by the Lender. If and when Monthly Payment Reserve(s) held by the Lender are depleted, interest due under the Loan be made by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd.

Balance Due Date: May 1, 2022

<u>Terms of $4,200,000 Second Loan Segment</u>

| | |
|---|---|
| Term: | 6 months from Interest Adjustment Date. |
| Amortization: | Interest Only |
| Interest Rate: | <u>Second Loan Segment:</u><br><u>Prior to the first day of the last month of the Loan Term:</u><br>18.00% per annum, compounded monthly<br><u>Commencing the first day of the last month of the Loan Term:</u><br>24.00% per annum, compounded monthly |
| Interest Calculation Period: | Monthly |
| Payment Dates: | 1st day of month during Loan Term |
| Interest Adjustment Date: | November 1, 2021 |
| First Payment Date: | December 1, 2021 |
| Periodic Payment Amounts: | $ 52,500.00 interest payment<br>$ 875.00 Loan servicing fee (0.25% of Loan Amount)<br>$ 53,375.00 subtotal |

Monthly interest payments during the term of the Loan will be made using Monthly Payment Reserve(s) held by the Lender. If and when Monthly Payment Reserve(s) held by the Lender are depleted, interest due under the Loan be made by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd.

Balance Due Date: May 1, 2022

## 10. EARLY REPAYMENT TERMS:

The Loan may be repaid in full without penalty provided the Lender has first received payment of Loan Interest and Loan Servicing Fees of not less than $884,625.00. Unless otherwise specified herein, partial repayment of the Loan is not permitted without the written consent of the Lender.

Initials of Borrower(s)/Covenantor(s):

## 11. LOAN RESERVE(S):

The Lender requires the Borrower(s) to assign the following Monthly Payment Reserve to the Lender from the Loan Proceeds (collectively the "Loan Reserve(s)"). Upon payout of the Loan in full, any unused amounts in the Loan Reserve(s) will be returned to the Borrower(s) subject to the Early Repayment Terms outlined herein.

### 11.1 MONTHLY PAYMENT RESERVE:

The Borrower(s) will assign $884,625.00 to the Lender from the Loan proceeds representing a Monthly Payment Reserve which, upon the occurrence of an event of default of the Loan, the Borrower(s) agrees to and so directs the Lender to withdraw from the Monthly Payment Reserve payments to maintain monthly Loan interest and Loan Servicing Fee payments, to pay for any costs to enforce the terms of the Loan, including legal, and/or receivership costs, and/or for any costs to realize on the Loan Security, at the Lender's sole discretion.

Such payments shall be of the same force and effect as if made personally by the Borrower(s), however, shall not constitute a cure or waiver of a default by virtue of the failure to comply with any other payment terms herein. The Lender shall not pay interest on the interest reserve or any monies held or advanced as further security for the Loan.

## 12. SPECIAL TERMS AND CONDITIONS:

The Lender will require the following SPECIAL TERMS AND CONDITIONS, all of which must be found satisfactory to the Lender and its Solicitor:

a) Approval of the proposed form of Order and BC Court of Appeal approval in CCAA Proceeding No. S-205095 approving the transfer and assignment of the Existing Loans and the Existing Security, on or before September 30, 2021.

b) DIP Financing to be fully paid out and a BC Court of Appeal Order terminating the DIP Financing.

c) Review of monitor's budget through the term of the Loan.

d) Administration charge to be fully paid as of the funding date and removed and replaced by the funding of the security to the Monitor or alternatively the Administration charge limited to an amount satisfactory to the Lender.

e) Provision of a Payment Reserve to CCAA Monitor (with a current estimate of $250,000, but subject to change), of which $100,000 is to be advanced to the Monitor on closing, to cover anticipated future costs of the Monitor and its counsel in the CCAA Proceedings.

f) Consent of Aviva Insurance Company of Canada to the transfer and assignment of the Existing Loan and Existing Security to the Lender and agreement to not seek a reverse vesting order or challenge the interest of the participants in the new ownership of the Existing Security or otherwise to seek to modify the registration of the Existing Loans and the Existing Security as a first-ranking charge registered on title to the Secured Property.

g) BC Court of Appeal approval referred to in 12.a), above, to include the following provisions:

- Carve out of the Existing Loans and the Existing Security from the stay of proceedings in connection with CCAA Proceeding No. S-205095.
- Stays of proceedings to be extended to the term of the Loan.
- No further DIP financing without consent of the Lender;
- CCAA Monitor's powers to be reduced to allow Borrower(s) to complete the Project;

- CCAA to go into "dormant status" for the term of the Loan, meaning that no further steps are to be taken in the CCAA Proceeding during the stays of proceedings without the consent of the Lender

## 13. PERMISSIBLE PRIOR ENCUMBRANCES:

The Lender will permit the following prior charge(s) to be registered against the Secured Property:

The Administration charge, if not removed and replaced by reserve funding, subject to limitation to the satisfaction of the Lender as contemplated by Section 12(d) hereof.

## 14. PERMISSIBLE SUBSEQUENT ENCUMBRANCES:

The Lender will permit the following subsequent-ranking financial charge(s) to be registered against title to the Secured Property:

Those charges registered against Land Title No. CA7287055 set out in Schedule "D".

## 15. LOAN SECURITY:

The Lender will require the following Loan Security and other or further Loan Security (the "Loan Security"), all of which must be found satisfactory to the Lender and its Solicitor:

a) An assignment of the Existing Loans and Existing Security to the Lender.

b) Assignment of a $884,625 Monthly Payment Reserve to the Lender.

c) Assignment of a $60,000 CCAA Reporting Consultant allowance to the Lender.

d) Assignment of the Lender-approved Payment Reserve to the Monitor of the CCAA proceeding.

e) To the extent not included in the Existing Security:

   i. General Security Agreement with respect to the Borrower(s) and Covenantor(s) under the P.P.S.A.
   ii. Personal and/or corporate covenants as required by the Lender.
   iii. Principals of the Borrowing Company and any Corporate Covenantor(s) to postpone any Shareholder Loans to the Lender.
   iv. Property insurance, acceptable to the Lender.
   v. Title insurance in favour of the Lender including the Extended Super Priority Lien Coverage under the Lender's Master Policy with First Canadian Title.
   vi. Hazardous substances and environmental indemnity agreement by the Borrower(s)/Covenantor(s) in favour of the Lender

f) BC Court of Appeal approval of the security and the transaction including a declaration the Lender has a first charge on the assets.

g) Such other and further Loan security in connection with the Secured Property as may be required by the Lender or its solicitor.

## 16. STANDARD CLAUSES:

Standard terms, conditions, covenants, representations and warranties are attached to and form part of this Commitment Letter as outlined in Schedule "A".

## 17. CONDITIONS PRECEDENT TO FUNDING:

**17.1** Funding of the Loan is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Friday, October 8, 2021**, all to be found satisfactory to the Lender and its solicitor:

a) An executed copy of this Third Revised Commitment Letter.

b) Payment of the Non-Refundable Working Fee of $25,000.00 payable to "Domain Funding" by way of bank draft upon your acceptance of this Term Sheet. **SATISFIED**

c) Review and approval of the executed assignment and transfer agreement with respect to the purchase and assignment of the Existing Loans and the Existing Security, and all supporting documents including the commitment letter issued by CMLS Financial Ltd. as amended and its replacement by this Commitment Letter. **PENDING**

d) Verification of minimum of $9,196,000 of funds required to be contributed by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd. to complete the refinance of the Existing Lenders and purchase and assignment of the Existing Loans and the Existing Security. **PENDING**

e) Satisfactory review of and opinion with respect to the following by the Lender' solicitor:

i. Mortgage CA7337616 registered i/n/o CMLS Financial Ltd.
ii. Assignment of rents CA7337617 registered i/n/o CMLS Financial Ltd.
iii. Mortgage CA8277031 registered i/n/o Desjardins Financial Security Life Assurance Co.

**PENDING**

f) Satisfactory review of and opinion with respect to the following by the Lender' solicitor:

i. Commitment Letter, issued by CMLS Financial Ltd. dated July 4, 2018 and all amendments, including, without limitation,
   - Amendment to Commitment Letter, issued by CMLS Financial Ltd. dated December 12, 2018, and
   - Amendment to Commitment Letter, issued by CMLS Financial Ltd. dated February 1, 2019, and
   - Amendment to Commitment Letter, issued by CMLS Financial Ltd. dated June 25, 2019,

   and its replacement by this Commitment Letter on funding. **SATISFIED**

g) Satisfactory inspection of the Secured Property by the Lender. **SATISFIED**

h) Satisfactory review by the Lender of the Certificate of Title for the Secured Property. **SATISFIED**

i) Satisfactory review by the Lender of the Organizational Chart of the Borrowers and any company providing a corporate covenant. **SATISFIED**

j) Satisfactory review by the Lender of the most recent Financial Statements for the Borrowing Company(s) and any company providing a corporate covenant (unless newly formed), prepared by a qualified accounting firm. **SATISFIED**

k) Confirmation of legal and beneficial ownership of the Secured Property, the Borrowing Company, and any company providing a corporate covenant including copies of any trust, joint venture, and/or limited partnership agreement(s). **SATISFIED**

l) Current, signed and dated Personal Net Worth Statement of any personal Borrower(s) or person(s) providing a covenant including details of all assets and liabilities. The PNW Statement should be prepared on Domain Funding forms with explanatory notes and/or attachments where necessary. **SATISFIED**

m) Credit Bureau Report for any personal Borrower(s) or person(s) providing a covenant. **SATISFIED**

n) Detailed real estate development resume of the Borrower(s)/Covenantor(s). **SATISFIED**

o) Satisfactory review by the Lender of Development and Building Permits issued by the City of Vancouver related to the Project. **SATISFIED**

p) A complete set of current architectural drawings (11" x 17") of the Project (Issued for Construction). **SATISFIED**

q) Geotechnical Report, acceptable to the Lender, confirming the Secured Property contains satisfactory soil conditions to permit development of the Secured Property. **SATISFIED**

r) Transmittal Letter(s), acceptable to the Lender, from the Geotechnical Engineer authorizing the use of their report for mortgage financing purposes. **SATISFIED**

s) Environmental Report(s), acceptable to the Lender, demonstrating that the Secured Property is environmentally clean. **SATISFIED**

t) Transmittal Letter(s), acceptable to the Lender, from the Environmental Consultant authorizing the use of their report for mortgage financing purposes. **SATISFIED**

u) Appraisal Report and Transmittal Letter from RYAN ULC demonstrating $26,000,000 minimum "as is" land value for the Secured Property. **SATISFIED**

v) Transmittal Letter(s), acceptable to the Lender, from RYAN ULC authorizing the use of their Appraisal Report for mortgage financing purposes. **SATISFIED**

w) Satisfaction of the SPECIAL TERMS AND CONDITIONS outlined in Section 12., herein. **PENDING**

x) Such other and further information, material or requirements that may be required by Domain Funding, the Lender or the Lender's solicitor.

**17.2** Funding of the Loan is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Friday, October 8, 2021**, all to be found satisfactory to the Lender and its solicitor:

a) Receipt of insurance policies, including confirmation of paid insurance premiums, satisfactory to the Lender and/or its solicitor.

b) Registered Loan Security satisfactory to Lender's solicitor.

c) Such other and further information, material or requirements that may be required by Domain Funding, the Lender or the Lender's solicitor.

**17.3** Domain Securities Corp., a related-party to Domain Funding, has advised Domain Funding that it has approved the Loan as a qualified mortgage investment for its private mortgage investors and that its investors will provide the monies necessary to fund the Loan on the Loan Funding Date. As a result, the fund-raising requirement of this 3RCL has been **SATISFIED.**

**17.4** Upon satisfaction of all Conditions Precedent to Funding, as determined by the Lender and its solicitor at their sole discretion, the entire Loan Amount will be advanced to the Borrower(s) in one advance in accordance with the terms and conditions of this Commitment Letter.

## 18. POST FUNDING CONDITIONS:

None.

## 19. PAYMENT OF LOAN FEES:

Pursuant to Schedule "A" of the Loan Retainer Agreement dated Thursday, April 29, 2021, the $25,000 Non-Refundable Working Fee has been received.

The following further amounts are due as follows:

$ 80,000.00 Initial MORTGAGE BROKER FEE due upon issuance of the Loan Commitment Letter dated May 7, 2021. **RECEIVED**

$ 65,000.00 Second MORTGAGE BROKER FEE due upon issuance of the Revised Loan Commitment Letter dated May 11, 2021. **RECEIVED**

$149,000.00 Third MORTGAGE BROKER FEE due on or before Aug. 6, 2021. **PENDING**

NOTE: Domain Funding has agreed to return the Third MORTGAGE BROKER FEE to the Borrower(s), in the event that, prior to Aug. 31, 2021, the BC Court of Appeal denies the Borrower(s) with leave to appeal the decision of Madam Justice Fitzpatrick

Initials of Borrower(s)/Covenantor(s):

pronounced on June 30, 2021 in the matter of *Port Capital Development (EV) Inc. (Re), 2021 BCSC 1272* .

$147,000.00 Fund Raising Fee payable to Domain Securities Corp. due upon the earlier of (a) the funding of the Loan; or (b) Oct. 29, 2021 **PENDING**

**20. LOAN SERVICING AND ADMINISTRATIVE FEES:**

The Borrower(s) and Covenantor(s) agree to pay the following Loan Servicing and Administrative Fees during the Loan term:

a) Loan Servicing Fee of 0.25% per annum, calculated and paid monthly. The Loan Servicing Fee is payable by the Borrower to the Lender as the administrator of the Loan, as compensation for collecting and making interest payments, Loan record-keeping, and post funding administration of the Loan in the normal course;

b) $500.00 non-sufficient funds (NSF) fee, per occurrence.

c) $500.00 late payment fee, per occurrence.

d) $500.00 discharge fee, per title to be discharged.

e) $500.00 per hour (or portion thereof) administration fee for each occasion Domain Funding or the Lender provides administrative services outside the normal course administration of the Loan.

**21. LENDER'S SOLICITOR:**

Legal work and documentation will be performed, at the Borrower(s)' expense, by the Lender's solicitor, as follows:

| | |
|---|---|
| Name: | Alan Frydenlund |
| Firm: | Owen Bird |
| Address: | Bentall 3, Suite 2900, 595 Burrard Street, Vancouver, BC V7X 1J5 |
| Telephone: | (604) 691-7511 |
| Email: | afrydenlund@owenbird.com |

**22. BORROWER(S)' INFORMATION:**

The Borrower(s) must complete the information required in Schedule "C" attached to this Commitment Letter upon acceptance of this Commitment Letter.

**23. DEDUCTIONS FROM LOAN PROCEEDS BY LENDER'S SOLICITOR:**

The Borrower(s) and Covenantor(s) acknowledge and agree that the Lender's solicitor will be deducting the following amounts from the Loan Proceeds:

| | |
|---|---|
| Interest Adjustment: | Lender's solicitor to advise. |
| Fund Raising Fee: | $147,000.00 (payable to Domain Securities Corp.) |
| Monthly Payment Reserve: | $884,625.00 (payable to Domain Mortgage Corp.) |
| Provision of a Payment Reserve for the CCAA Monitor: | $250,000.00 (payee to be named) |
| Lender's CCAA Reporting Consultant: | $60,000.00 (payee to be named) |
| Balance of Lender's Legal Fees: | $33,000.00 (estimate) |

NOTE: Payouts of existing mortgages, outstanding taxes, utilities, etc. are to be deducted from mortgage proceeds and paid by the Lender's solicitor and/or paid by the Borrower(s)' solicitor subject to the appropriate undertakings.

//



**24. LOAN FUNDING EXPIRY DATE:**

Unless the Loan is funded by the Lender and funds are drawn by the Borrower(s) in accordance with the terms and conditions of this Commitment Letter on or before **Friday, October 29, 2021**, then, the Lender's obligation to fund the Loan will become null and void.

**25. ACCEPTANCE:**

The Borrower(s) and Covenantor(s) must indicate their acceptance of this Commitment Letter by completing, signing and initialing where indicated, and by completing, signing, and initialing Schedule "A", Schedule "B", Schedule "C", and Schedule "D" attached, and returning to Domain Funding on or before 1:00 PM on Friday, July 30, 2021.

The $80,000 Initial MORTGAGE BROKER FEE has been previously received in connection with the Commitment Letter dated Friday, May 7, 2021.

The $65,000 Second MORTGAGE BROKER FEE has been previously received in connection with the Commitment Letter dated Tuesday, May 11, 2021.

The $149,000 Third MORTGAGE BROKER FEE is due and payable on or before Aug. 6, 2021.

If this 3RCL is not accepted by the Borrower(s) and Covenantor(s) by 1:00 PM on Friday, July 30, 2021, or if the $149,000.00 Third MORTGAGE BROKER FEE payable to Domain Funding is not received by 1:00 PM on Friday, Aug. 6, 2021, then the Lender's obligation to fund the Loan will cease.

Yours truly,

DOMAIN Funding

PER: Authorized Signatory

## ACCEPTANCE OF COMMITMENT LETTER

I/We hereby understand and accept the terms and conditions of this Commitment Letter and the attached Schedules.

Accepted this 30th day of July, 2021

| BORROWER(S): | COVENANTOR(S): |
|---|---|
| **Evergreen House Development Limited Partnership** | **Port Capital Development Inc.** |
| PER: Authorized Signatory | PER: Authorized Signatory |
| **Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership** | **Mr. Macario Teodoro Reyes** |
| PER: Authorized Signatory | Mr. Macario Teodoro Reyes |

## SCHEDULE "A" – STANDARD CLAUSES

*(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JULY 30, 2021)*

### 1. PROPERTY TAXES AND OTHER CHARGES:

The Borrower(s) will pay all taxes, assessments, utilities, strata and/or condominium fees and all other amounts charged or levied against the Secured Property when the same are due and payable, and provide evidence to the Lender on an annual basis by no later than August 31 of each year, that they are fully paid and up to date.

Subject to the discretion of the Lender, any advance under the Loan will be conditional on the Borrower(s) providing evidence to the Lender that all taxes, assessments, utilities, strata and/or condominium fees and all other amounts charged or levied against the Secured Property have been paid in full.

### 2. INSURANCE:

The Borrower(s) will insure and keep insured the Secured Property and all chattel property against the following perils:

a) With respect to all buildings and other improvements, if any, now or hereinafter situated on the Secured Property, and all insurable property included within the buildings, coverage against loss or damage by fire and other insurable hazards, including earthquakes, defined in an "all risks" policy for the full replacement cost with provision for permission to occupy and with automatic vacancy permit.

b) If applicable, during construction for the full contract price plus extras and additions which, from time to time, may be added thereto using standard Builders' Risk - "all risk" form or equivalent. The policy is to grant permission for partial occupancy.

c) If applicable, standard comprehensive boiler and pressure vessel insurance for the full replacement cost of the Secured Property and all improvements thereon or such lesser amount as shall be acceptable to the Lender.

d) If applicable, business interruption insurance or rental loss insurance acceptable to the Lender for an indemnity period of not less than 100% of the resulting loss of rent and/or other revenue received from the operation of the building.

e) Loss or damage of all personal property by fire or other insurable hazards, including theft, in an amount not less than the full replacement cost thereof.

f) Public liability insurance to an amount not less than $2,000,000 on an occurrence basis.

The policies of insurance to be maintained shall not contain any co-insurance clauses and shall be in a form and with insurers satisfactory to the Lender, and/or its insurance consultant, and shall include the agreement of the insurer that the policy will not be cancelled without at least 15 days prior written notice of intended cancellation to the Lender. The Lender shall be named in all policies as "Loss Payee" and/or as "Additional Insured", as its interest may appear, and the Borrower shall provide to the Lender an updated Certificate of Insurance upon renewal, and in any event,15 days prior to the expiration of any insurance policy for the Secured Property.

The Lender reserves the right to engage the services of an insurance consultant, at the Borrower(s)' expense, to verify the adequacy of the policies of insurance.

### 3. DOCUMENTATION AND SOLICITOR'S APPROVAL:

Loan documentation will be drawn by the Lender's solicitor using the Lender's specified forms. The full Loan amount will be advanced to the Borrower(s) only when the title to and all security in connection with the Loan and all other documents and matters with respect to the Loan being necessary or advisable to the Lender's solicitors are complete, satisfactory and acceptable to the Lender's solicitors.

### 4. COSTS:

The Borrower(s) and Covenantor(s) shall pay, whether or not all or any part of the Loan is advanced, all legal costs, registration fees, appraisal fees, consulting fees and all out-of-pocket expenses incurred by the Lender relating to the Loan in preparation for and completion of the transaction contemplated by this Commitment Letter. Such costs, fees and expenses may be deducted out of the Loan funds to be disbursed, and this Commitment Letter shall constitute an irrevocable direction by the Borrower(s) and Covenantor(s) in that regard.

Upon the Borrower(s)' repayment of the Loan in full, including all interest and other charges owing thereon, the Lender shall provide the Borrower with a discharge of the Loan security registered against the Borrower(s), Covenantor(s) and Secured Property (to be prepared and delivered to the Lender by the Borrower(s) or its solicitor at its own cost) upon payment to the Lender of the discharge fee outlined herein (where permissible by provincial law).

**5. TITLE:**

The Borrower(s) are, or shall become, the registered and beneficial freehold interest owner of the Secured Property at the time of the disbursement of any part of the Loan. The Borrower(s) will have, as the registered owner of the Secured Property, a good and marketable title in fee simple to the Secured Property, and the Lender will be in priority over all other encumbrances, leases, agreements for leases, restrictions, agreements, liens, assignments, easements, mortgages and charges whatsoever to the extent of the Loan except for such encumbrances to which the Lender may consent to in writing.

The Secured Property and all improvements thereon shall have been duly authorized and comply in all respects with all applicable laws, bylaws, government requirements, whether federal, provincial, or municipal, including without restriction, those dealing with zoning, use, occupancy, liquor license, subdivision, parking, historical designations, fire access, loading facilities, landscaped areas, pollution of the environment, toxic materials or other environmental hazards, building construction, public health and safety, and there shall be no outstanding work orders, judicial or administrative actions, suits, or proceedings pending or threatened against the Secured Property or the improvements or any part thereof.

**6. REPRESENTATIONS AND WARRANTIES OF DOMAIN FUNDING:**

The Borrower(s) and Covenantor(s) acknowledge that Domain Funding has made no verbal or written representations or warranties related to the Loan, the Secured Property, or the ability to provide future financing of the Secured Property after the Loan Funding Date, except as expressly outlined in this Commitment Letter.

**7. REPRESENTATIONS AND WARRANTIES OF BORROWER(S) AND COVENANTOR(S):**

The Borrower(s) and Covenantor(s) represent and warrant the following to Domain Funding and the Lender:

a) The Borrower(s) are, or shall become, the registered and beneficial freehold interest owner of the Secured Property at the time of the disbursement of any part of the Loan.

b) The Borrower(s) is the legal and beneficial owner of all the right, title and interest to the Secured Property and holds no portion of the legal or beneficial interest in the Secured Property in trust for any party(s).

c) All other mortgage loans to the Borrower(s) with any lender have not been in arrears in the last 12 months, except as disclosed to and approved by Domain Funding.

d) All financial statements and other documents and information delivered by the Borrower(s) and Covenantor(s) in connection with the Borrower(s)' application for the Loan are true, complete and accurate and representative of the financial condition of the Borrower(s) and Covenantor(s).

e) Neither the Borrower(s) nor the Covenantor(s) are in default under any agreement or instruments to which any of them are a party that materially affects any of their businesses, property, assets or financial condition.

f) At the time of disbursement of any part of the Loan, no default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default under any of the Loan Security documents, and neither the Borrower(s) nor the Covenantor(s) shall be deceased, insolvent or be subject to any bankruptcy, arrangement with creditors, proposal, amalgamation, outstanding claims, actions, suits, judgments, investigations, reorganization, liquidation, winding up, dissolution, receivership or material litigation or continuation under laws of any jurisdiction, nor, to the best of the knowledge of the Borrower(s) or Covenantor(s) are there any pending or threatened. Any default herein shall be deemed to be a default under the Loan. Any default under the Loan shall be deemed to be a default hereunder.

g) The purpose of the Loan is primarily for business, investment or commercial purposes and is not primarily for personal, family or household purposes. The Borrower(s) will only use the Loan proceeds for the Loan purposes set out in the "Uses and Sources of Funds" section of this Commitment Letter.

h) Once executed by the Borrower(s) and Covenantor(s), this Commitment Letter and all other Loan security documentation will each be a valid and binding obligation of each of the Borrower(s) and Covenantor(s) in accordance with their terms.

i) All remittances required to be made by the Borrower(s) or Covenantor(s) to federal, provincial and municipal governments have been made, are currently up to date and not in arrears.

j) The Borrower(s) and/or Covenantor(s) have the ability to service the Loan debt.

The Borrower(s) and Covenantor(s) agree that the above representations and warranties will be true and correct as of the execution of this Commitment Letter and at the time of disbursement of any part of the Loan, and any extension or renewal of the Loan, and will survive the completion of the Loan and any extension or renewal thereof.

The Borrower(s) and Covenantor(s) represent and warrant that all financial and other information provided in connection with the Borrower(s)' Application to Finance the Secured Property is true, accurate and complete, and acknowledges that the terms and conditions contained in this Commitment Letter are based on reliance by Domain Funding and the Lender on the truth, accuracy and completeness of the information provided and the above representations.

8. **COVENANTS OF BORROWER(S) AND COVENANTOR(S):**

The Borrower(s) and Covenantor(s) hereby covenant to:

a) Comply with all Loan terms outlined in this Commitment Letter.
b) Keep all prior and subsequent mortgages registered against the Secured Property, as permitted by the Lender, current and in good status while the Loan remains outstanding.
c) If applicable, comply with all provisions of the Builders Lien Act (or equivalent provincial statute where the Secured Property is located).
d) If applicable, supply to the Lender a statutory declaration in conjunction with each advance under the Loan, confirming the status of any holdback account(s) as at the date of the statutory declaration.
e) Promptly deliver to the Lender the information and documentation required hereunder and such further information and documentation, such as financial reports, as is requested by the Lender or its solicitor, concerning the Borrower(s), Covenantor(s), the Secured Property, or the Project (if applicable), and to advise the Lender immediately upon a material adverse change or the discovery of a discrepancy or inaccuracy in or to the information and documentation provided to the Lender in connection with the Loan.
f) Take all appropriate remedial action in the event of a violation of any environmental law, release of hazardous substances on the Secured Property or any other contamination of the Secured Property.
g) Not further encumber the Secured Property without the written consent of the Lender.
h) Comply with provincial securities acts and mortgage broker acts, where applicable.
i) Remain in good standing with the Canada Revenue Agency (CRA) with respect to tax filings and remittances.
j) Neither the Borrower(s) nor their employees, officers, directors, or agents will represent that financing is available from Domain Funding or Domain Mortgage Corp. to any contractors, trades, or suppliers performing work on the Secured Property.

9. **PUBLISHING, MARKETING AND SIGNAGE:**

The Borrower(s) and Covenantor(s) agree to allow Domain Funding to photograph or utilize existing photographs of the Secured Property and to publish such photographs along with details of the Loan in internal and/or external marketing programs.

The Borrower(s) and Covenantor(s) also agree to allow Domain Funding the right to install on the Secured Property, at Domain Funding's expense, up to four "Domain Funding" financing signs, the location(s) of which shall be mutually agreed to by the parties.

10. **CONFIDENTIALITY AND DISCLOSURE:**

The Borrower(s) and Covenantor(s) acknowledge and agree that the terms and conditions of this Commitment Letter are confidential between the Borrower(s), the Covenantor(s), Domain Funding and the Lender. The Borrower(s) and Covenantor(s) agree not to disclose the information contained herein to any third party without the written consent of the Lender.

The Borrower(s) and Covenantor(s) also acknowledge and agree that the Lender may, at its sole discretion, syndicate the Loan, including to affiliates or associates of the Lender as co-lenders or the sole lender of the Loan, and may disclose to co-lenders, investors and their share or unit holders, as applicable, any or all information provided to the Lender by the Borrower(s) and Covenantor(s), including but not limited to corporate and personal financial information.

11. **CONSENT TO COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION:**

The Borrower(s) and Covenantor(s) hereby authorize Domain Funding and/or the Lender to obtain information from any credit reporting agency or credit granting organization as required at any time and consents to the disclosure of such information at any time to any credit reporting agency or credit granting organization.

In addition, without limiting the foregoing, the Borrower(s) and Covenantor(s), if an individual, hereby acknowledge that they have read and understood Domain Funding's current privacy policy, including specifically the provisions respecting the collection, use and disclosure of personal information, and hereby consents to the collection, use and disclosure of their personal information by Domain Funding and/or the Lender in accordance with Domain Funding's current privacy policy, as described on Domain Funding's company website: www.domainfunding.ca.

**12. ASSIGNMENT:**

The Loan may be assigned by the Lender at which time the Lender shall be relieved by the Borrower(s) and Covenantor(s) of all liabilities and claims relating to the Loan hereunder. The Loan is neither assignable nor transferable by the Borrower(s) or Covenantor(s) without the written approval of the Lender. In addition, the Lender may appoint or engage another party to service and administer the Loan, including collection of payments under the Loan and the approval of Conditions Precedent to Funding the Loan, without prior notice to or consent of the Borrower(s) and/or Covenantor(s).

**13. ADVERSE CHANGE:**

It is a term and condition of the granting, approval and continuation of the Loan, both before and after the disbursement of funds, that, in the Lender's sole opinion, an adverse change relating to the Borrower(s), the Covenantor(s), the Project (if applicable), the Secured Property, the Loan Security or the risk associated with the Loan shall not have occurred, including that there are no actions, suits or pending proceedings involving the Borrower(s) or any Covenantor(s). In the event of an adverse change, the Lender may, in its sole discretion, declare or treat it as an event of default under the Loan, may cease or delay further funding, may terminate this Commitment Letter and may exercise any and all remedies available to it under this Commitment Letter and the Lender's Loan Security or at law or in equity.

**14. COUNTERPARTS AND FACSIMILE/E-MAIL EXECUTION:**

This Commitment Letter may be executed in one or more counterparts, each of which when so executed will constitute an original, and all of which will constitute one and the same Commitment Letter. Also, this Commitment Letter may be executed by the parties and transmitted by facsimile or by e-mail (with PDF attachment), and if so executed and transmitted this Commitment Letter shall be for all purposes as effective as if the parties had delivered an executed original copy of this Commitment Letter.

**15. SEVERABILITY:**

Each of the provisions in this Commitment Letter is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision of this Commitment Letter. To the extent permitted by applicable law, the parties waive any provision of law that renders any provision of this Commitment Letter invalid or unenforceable in any respect.

**16. GOVERNING LAWS:**

The agreement constituted by the Borrower(s)' and Covenantor(s)' acceptance of this Commitment Letter shall be governed by the laws of the province of British Columbia.

**17. BORROWER'S SOLICITOR:**

The Lender shall have the right to approve the solicitor(s) for the Borrower(s) and the Lender may, in its sole discretion, require the Borrower to change its solicitors at any time.

**18. DISCHARGE OF LOAN SECURITY:**

Prior to the discharge of the Lender's mortgage security, the Borrower(s)/Covenantor(s) must provide the Lender, at the Lender's request, a CRA Clearance Certificate, satisfactory to the Lender, indicating that the Borrower(s)/Covenantor(s) are in good standing with the CRA with respect to tax filings and remittances and that no funds are owing to the CRA.

**19. SURVIVAL:**

The obligation and promise of the Borrower(s) and Covenantor(s) to pay the Loan Fee(s), interest on the Loan amount at the interest rate from the time the Loan amount was available for advance, up to and including the date the Loan is repaid or no longer available, including minimum interest, legal fees and disbursements, shall survive the lapse, termination or cancellation of this Commitment Letter.

The terms and conditions of this Commitment Letter shall, after acceptance by the Borrower(s) and Covenantor(s), survive the execution and registration of all security documentation and there shall be no merger of these provisions or conditions in the security provided that in the case of a conflict between the provisions hereof and of any of the security documents, the Lender shall be entitled to elect which provisions shall prevail.

**20. TIME SHALL BE OF THE ESSENCE:**

It is understood that, with reference to all terms and conditions of this Commitment Letter, time shall be of the essence.

**SCHEDULE "B" – PROMISSORY NOTE**

INTENTIONALLY LEFT BLANK

## SCHEDULE "C" – BORROWER(S)' INFORMATION

*(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FRIDAY JULY 30, 2021)*

1. **BORROWER(S):**

Name: see Second Commitment Letter

Registered Records Office: ______

Telephone: ______

Fax: ______

E-Mail: ______

2. **BORROWER(S)' SOLICITOR:**

Name: "

Address: ______

Telephone: ______

Fax: ______

E-Mail: ______

3. **BORROWER(S)' INSURANCE AGENT:**

Name: "

Address: ______

Telephone: ______

Fax: ______

E-Mail: ______

**SCHEDULE "D" – PERMISSIBLE SUBSEQUENT ENCUMBRANCES**

Copy of Title No. CA7287055

**DOMAIN FUNDING**

Domain Funding
Suite 1100–1040 West Georgia St.
Vancouver, BC V6E 4H1
604.681.3000

This is Exhibit " B " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5th day of July, 2022

A Commissioner for taking Affidavits within British Columbia

Sept. 1, 2021

Loan #: 2021-BC011

**Evergreen House Development LP**
**Port Capital Development (EV) Inc.**
**Port Capital Development Inc.**
**Mr. Macario Teodoro Reyes**
c/o 325 West 4th Avenue,
Vancouver, B.C. V5Y 1H3

E-mail: tobi@portliving.com

Dear Sir(s)/Madam(s):

## AMENDMENT TO THIRD REVISED COMMITMENT LETTER

The THIRD REVISED COMMITMENT LETTER dated Friday, July 30, 2021 issued by Bankers Mortgage Corporation doing business as Domain Funding (referred to herein as "Domain Funding") is amended as follows:

**Replace Section 8 - LOAN FUNDING DATE, in its entirety, as follows:**

**8. LOAN FUNDING DATE:**

A date to be determined by the Lender NOT BEFORE October 22, 2021 and NOT AFTER October 29, 2021, subject to the following prior events:

On or before Sept. 30, 2021, receipt by the Lender of a Decision of the BC Court of Appeal to approve the assignment and transfer of the Existing Security, in a form satisfactory to the Lender

At the request of the Borrower, the Loan Funding Date may be extended by the Lender, acting reasonably, provided that the Loan Funding Date shall be no earlier than four (4) weeks following such decision and provided the Loan Funding Date is not later than Dec. 15, 2021.

**Replace Section 17.1 e) - CONDITIONS PRECEDENT TO FUNDING, as follows:**

e) Satisfactory review of and opinion with respect to the following by the Lender' solicitor:

i. Mortgage CA7337616 registered i/n/o CMLS Financial Ltd.
ii. Assignment of rents CA7337617 registered i/n/o CMLS Financial Ltd.
iii. Mortgage CA8277031 registered i/n/o Desjardins Financial Security Life Assurance Co.

**SATISFIED, subject to the form of order granted by the BC Court of Appeal being consistent with the form of order placed before Mdm. Justice Fitzpatrick on May 25, June 8, and June 10, 2021 in 2021 BCSC 1272**

Initials of Borrower(s)/Covenantor(s):

**Replace Section 17.2 a) - CONDITIONS PRECEDENT TO FUNDING, as follows:**

a) Receipt of insurance policies, including confirmation of paid insurance premiums, satisfactory to the Lender and/or its solicitor.

**SATISFIED, subject to the existing insurance policy No. 000010450 and No. 2020WFPS-0942 issued by Marsh Canada Limited to be extended of the term of the Loan and subject to Domain Mortgage Corp. being added as first loss payee under both policies**

**Confirmation of Payment due under Section 19 - PAYMENT OF LOAN FEES:**

Domain Funding confirms receipt of payment of $149,000 representing payment in full of the Third MORTGAGE BROKER FEE due on or before Aug. 6, 2021. This condition is now SATISFIED.

All other terms and conditions of the THIRD REVISED COMMITMENT LETTER dated Friday, July 30, 2021 issued by Domain Funding remain unchanged and in effect.

This Amendment to THIRD REVISED COMMITMENT LETTER, in combination with the THIRD REVISED COMMITMENT LETTER dated Friday, July 30, 2021, form the whole commitment for funding.

Please indicate your acceptance of the amended terms outlined herein by signing where indicated below.

Yours truly,

Domain Funding

PER: Authorized Signatory

## ACCEPTANCE OF AMENDMENT TO REVISED COMMITMENT LETTER

I/We hereby understand and accept the terms and conditions of this Amendment to THIRD REVISED COMMITMENT LETTER

Accepted this 1st day of September, 2021.

| BORROWER(S): | COVENANTOR(S): |
|---|---|
| **Evergreen House Development Limited Partnership**<br>PER: Authorized Signatory | **Port Capital Development Inc.**<br>PER: Authorized Signatory |
| **Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership**<br>PER: Authorized Signatory | **Mr. Macario Teodoro Reyes**<br>Mr. Macario Teodoro Reyes |

Initials of Borrower(s)/Covenantor(s):

# DEMAND PROMISSORY NOTE

Dated: October 22, 2021

Vancouver, British Columbia

CAD $8,399,060.03

1. **IN CONSIDERATION OF ENTERING INTO A THIRD REVISED COMMITMENT LETTER DATED JULY 30, 2021, AS AMENDED SEPTEMBER 1, 2021, AND AS MAY BE FURTHER AMENDED, RESTATED, MODIFIED, SUPPLEMENTED OR AMENDED FROM TIME TO TIME, AND FOR OTHER VALUE RECEIVED,** EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP (the "**LP**") and PORT CAPITAL DEVELOPMENT (EV) INC. (the "**GP**", and collectively with the LP, and their successors and permitted assigns, the "**Borrowers**"), having a principal office located at 325 West 4th Avenue, Vancouver, British Columbia, V5Y 1H3, hereby jointly and severally unconditionally promise to pay ON DEMAND to or to the order of Domain Mortgage Corp., (together with its successors and assigns, the "**Lender**"), in immediately available funds, at c/o Dentons Canada LLP, 20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8 (or any other place as the Lender may, from time to time, designate by notice in writing to the Borrowers), the PRINCIPAL SUM OF EIGHT MILLION THREE HUNDRED AND NINETY NINE THOUSAND AND SIXTY DOLLARS AND THREE CENTS ($8,399,060.03) (such amount, the "**Principal**"), as provided in this Promissory Note, as the same may be amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with its terms (the "**Promissory Note**").

2. **Payment Upon Demand.** The Principal, together with any other amounts owing to the Lender hereunder, will become due and will be paid in full on demand.

3. **Application of Payments.** Any amount paid in satisfaction of the indebtedness evidenced by this Promissory Note will be applied to the Principal owing under this Promissory Note, or such other amounts as may be owing to the Lender hereunder, in such order and amounts as the Lender may elect, in its sole discretion.

4. **Security.** Each of the Borrower's performance of its obligations hereunder is secured by, among other things, certain security, including without limitation the items listed in Schedule "A" hereto, granted by the Borrowers, or either of them, in favour of CMLS Financial Ltd., and subsequently assigned to the Lender, as trustee for certain lenders pursuant to a Loan Administration, Participation and Standstill Agreement dated the date hereof (as such agreement may be amended, restated, supplemented, modified or amended from time to time, the "**Loan Participation Agreement**"), on or about the date hereof, as such security and guarantees may be amended, restated, supplemented, modified or amended and restated from time to time.

5. **Enforcement.** No legal proceeding to enforce the Borrowers' obligations under this Promissory Note will be commenced until after the first day on which there is a failure to perform those obligations once a demand is made.

6. **Rescission of Payments.** If at any time any payment made by the Borrowers, or either of them, under this Promissory Note is rescinded or must otherwise be restored or returned upon the

This is Exhibit " C " referred to in the affidavit of Lisa Ward
sworn before me at Vancouver, B.C.
this 5 day of July, 2022

A Commissioner for taking Affidavits within British Columbia insolvency, bankruptcy or reorganization of the Borrowers or otherwise, the Borrowers' obligation to make such payment shall be reinstated as though such payment has not been made.

7. **Prepayment.** The Borrowers will be entitled to prepay the Principal and all other amounts owing to the Lender hereunder, in whole or in part, at any time prior to a demand being made by the Lender, upon giving ten (10) business days' notice to the Lender, without any bonus or penalty being paid to the Lender, provided that the Borrowers are not in default in the payment of any amount due under this Promissory Note.

8. **Insolvency.** Upon the commencement by or against the Borrowers, or either of them, of any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar proceeding relating to the Borrowers (or either of them) or their debts in any jurisdiction, other than the *Companies' Creditors Arrangement Act* proceedings involving the Borrowers as of the date hereof, the Principal shall become immediately due and payable without presentment, demand, protest or notice of any kind.

9. **Records.** The books and records of the Lender shall constitute *prima facie* evidence of the amount of Principal outstanding under this Promissory Note from time to time.

10. **Waiver of Defences.** Each of the Borrowers hereby waives demand and presentment for payment, notice of non-payment, protest and notice of protest of this Promissory Note. No failure on the part of the Borrower, or either of them, to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All payments under this Promissory Note shall be made without offset, counterclaim or deduction of any kind.

11. **Currency and Payment.** Any money to be paid pursuant to this Promissory Note must be paid by bank draft, certified cheque or wire transfer of immediately available funds payable to the Lender, in lawful Canadian currency.

12. **Non-Waiver.** The extension of time for making any payment which is due and payable under this Promissory Note, or the Lender's failure or delay in exercising or enforcing any rights or remedies under this Promissory Note, or under any instrument securing payment of the indebtedness evidenced by this Promissory Note, will not constitute a continuing waiver of the right of the Lender to enforce those rights and remedies in the future.

13. **Notices and Demands.** Any demand or notice to be made or given in connection with this Promissory Note will be in writing and will be effectively delivered if:

    (a) sent by ordinary mail to the address set out in section 1 hereof, or such other address as the Borrowers or the Lender may, from time to time, designate by notice in writing to the other party; or

    (b) personally delivered to an officer or responsible employee of the Borrowers or the Lender; or

    (c) sent by facsimile, e-mail, or functionally equivalent electronic means, charges (if any) prepaid, at or to any address, electronic address, or facsimile number, as the case may

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be, as the Borrowers or the Lender may designate to the other in accordance with this provision.

Any demand or notice which is personally delivered will be deemed to have been validly and effectively given on the date of delivery if that date is a business day, and the delivery was made during normal business hours; otherwise, it will be deemed to have been validly and effectively given on the business day next following the date of delivery. Any demand or notice which is sent by mail, facsimile, e-mail, or functionally equivalent electronic means will be deemed to have been validly and effectively given on the date sent if that date is a business day; otherwise, it will be deemed to have been validly and effectively given on the business day next following that date.

14. **Amendments.** No amendment, modification or waiver of any provision of this Promissory Note or consent to any departure by the Borrowers from any provision of this Promissory Note is effective unless it is in writing and signed by the Lender, and then the amendment, modification, waiver or consent is effective only in the specific instance and for the specific purposes for which it is given.

15. **Collection and Expenses.** The Borrowers will pay all costs and expenses incurred by the Lender in collecting any amount due, and enforcing its rights, under this Promissory Note, including, without limitation, reasonable legal fees and disbursements on a full indemnity basis.

16. **Governing Law.** This Promissory Note will be governed by and construed in all respects in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia.

17. **Time of the Essence.** Time will in all respects be of the essence of this Promissory Note.

18. **Waiver of Benefits.** Presentation for payment, notice of dishonour, protest, notice of protest and demand are waived by the Borrowers.

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19. **Assignment.** The Lender is permitted to assign its rights and obligations under this Promissory Note, in whole or in part, including without limitation as provided in the Loan Participation Agreement, by providing written notice to the Borrowers of such assignment. The Borrowers will not be permitted to assign their rights or obligations under this Promissory Note, in whole or in part, without the prior written consent of the Lender. This Promissory Note will be binding upon the successors and permitted assigns of the Borrowers and will enure for the benefit of the Lender and its successors and assigns.

IN WITNESS WHEREOF, each of the Borrowers have executed this Promissory Note as of the 22 day of October, 2021.

**EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP,** by its general partner, **PORT CAPITAL DEVELOPMENT (EV) INC.**
Per:
Name:
Title:

**PORT CAPITAL DEVELOPMENT (EV) INC.**
Per:
Name:
Title:

Schedule "A"

Security

1. The first secured mortgage (the "**Mortgage**") and assignment of rents dated July 4, 2018, between Port Capital Development (EV) Inc., as mortgagor and CMLS Financial Ltd. ("**CMLS**") as mortgagee, which was registered in the New Westminster Land Title Office on February 6, 2019, under numbers CA7337616 and CA7337617, is a charge on the following lands and premises:

   **PID: 006-721-397**

   Lot 18, except that part of the Canadian Pacific Railway Right-of-Way as described in the Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, and except in the South 7 feet now Road, Block 29, District Lot 185, Land District 36, Plan 92

   (the "**Lands**")

2. The Covenantor/Indemnitor Acceptance, dated July 6, 2018, December 12, 2018, and February 4, 2019, from Mr. Macario Teodoro Consunji Reyes and Port Capital Development Inc. to the CMLS.
3. The General Security Agreement dated November 1, 2018, by the Borrowers in favour of CMLS.
4. The unconditional joint and several guarantee executed by the Port Capital Development Inc. and Tobi Reyes, dated November 1, 2018.
5. The Cost Overrun and Completion Guarantee, dated November 1, 2018.
6. Environmental Warranty and Indemnity Agreement, dated November 1, 2018.
7. Assignment of Construction Contract dated November 26, 2018.
8. Assignment of Unit Sales Agreements and Deposits, dated November 1, 2018.
9. Assignment of Material Contracts, dated November 1, 2018.
10. Assignment of Insurance, dated November 1, 2018.
11. Assignment of Term Deposits and Credit Balances, dated November 1, 2018.
12. Beneficiary Authorization and Charge Agreement, dated November 1, 2018.
13. A priority/subordination agreement dated January 9, 2019, granted by Aviva in favour of CMLS, registered February 6, 2019, as Instrument Nos. CA7337731-32.
14. A subordination of PPSA Financing Statement in favour of Aviva under Base Reg. No. 353464K.
15. Certificate of Reyes, dated November 25, 2018.
16. Such other and further security documentation as may have been executed pursuant to the Commitment Letter dated July 4, 2019 between the Borrowers and CMLS (as amended from time to time) or otherwise.

# DEMAND PROMISSORY NOTE

Dated: October 22, 2021

Vancouver, British Columbia

CAD $2,150,000

1. **IN CONSIDERATION OF ENTERING INTO A THIRD REVISED COMMITMENT LETTER DATED JULY 30, 2021, AS AMENDED SEPTEMBER 1, 2021, AND AS MAY BE FURTHER AMENDED, RESTATED, MODIFIED, SUPPLEMENTED OR AMENDED FROM TIME TO TIME, AND FOR OTHER VALUE RECEIVED,** EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP (the "**LP**") and PORT CAPITAL DEVELOPMENT (EV) INC. (the "**GP**", and collectively with the LP, and their successors and permitted assigns, the "**Borrowers**"), having a principal office located at 325 West 4th Avenue, Vancouver, British Columbia, V5Y 1H3, hereby jointly and severally unconditionally promise to pay ON DEMAND to or to the order of Domain Mortgage Corp., (together with its successors and assigns, the "**Lender**"), in immediately available funds, at c/o Dentons Canada LLP, 20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8 (or any other place as the Lender may, from time to time, designate by notice in writing to the Borrowers), the PRINCIPAL SUM OF TWO MILLION ONE HUNDRED AND FIFTY THOUSAND DOLLARS ($2,150,000.00) (such amount, the "**Principal**"), as provided in this Promissory Note, as the same may be amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with its terms (the "**Promissory Note**").

2. **Payment Upon Demand.** The Principal, together with any other amounts owing to the Lender hereunder, will become due and will be paid in full on demand.

3. **Application of Payments.** Any amount paid in satisfaction of the indebtedness evidenced by this Promissory Note will be applied to the Principal owing under this Promissory Note, or such other amounts as may be owing to the Lender hereunder, in such order and amounts as the Lender may elect, in its sole discretion.

4. **Security.** Each of the Borrower's performance of its obligations hereunder is secured by, among other things, certain security, including without limitation the items listed in Schedule "A" hereto, granted by the Borrowers, or either of them, in favour of CMLS Financial Ltd., and subsequently assigned to the Lender, as trustee for certain lenders pursuant to a Loan Administration, Participation and Standstill Agreement dated the date hereof (as such agreement may be amended, restated, supplemented, modified or amended from time to time, the "**Loan Participation Agreement**"), on or about the date hereof, as such security and guarantees may be amended, restated, supplemented, modified or amended and restated from time to time.

5. **Enforcement.** No legal proceeding to enforce the Borrowers' obligations under this Promissory Note will be commenced until after the first day on which there is a failure to perform those obligations once a demand is made.

6. **Rescission of Payments.** If at any time any payment made by the Borrowers, or either of them, under this Promissory Note is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrowers or otherwise, the Borrowers' obligation to make such payment shall be reinstated as though such payment has not been made.

7. **Prepayment.** The Borrowers will be entitled to prepay the Principal and all other amounts owing to the Lender hereunder, in whole or in part, at any time prior to a demand being made by the Lender, upon giving ten (10) business days' notice to the Lender, without any bonus or penalty being paid to the Lender, provided that the Borrowers are not in default in the payment of any amount due under this Promissory Note.

8. **Insolvency.** Upon the commencement by or against the Borrowers, or either of them, of any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar proceeding relating to the Borrowers (or either of them) or their debts in any jurisdiction, other than the *Companies' Creditors Arrangement Act* proceedings involving the Borrowers as of the date hereof, the Principal shall become immediately due and payable without presentment, demand, protest or notice of any kind.

9. **Records.** The books and records of the Lender shall constitute *prima facie* evidence of the amount of Principal outstanding under this Promissory Note from time to time.

10. **Waiver of Defences.** Each of the Borrowers hereby waives demand and presentment for payment, notice of non-payment, protest and notice of protest of this Promissory Note. No failure on the part of the Borrower, or either of them, to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All payments under this Promissory Note shall be made without offset, counterclaim or deduction of any kind.

11. **Currency and Payment.** Any money to be paid pursuant to this Promissory Note must be paid by bank draft, certified cheque or wire transfer of immediately available funds payable to the Lender, in lawful Canadian currency.

12. **Non-Waiver.** The extension of time for making any payment which is due and payable under this Promissory Note, or the Lender's failure or delay in exercising or enforcing any rights or remedies under this Promissory Note, or under any instrument securing payment of the indebtedness evidenced by this Promissory Note, will not constitute a continuing waiver of the right of the Lender to enforce those rights and remedies in the future.

13. **Notices and Demands.** Any demand or notice to be made or given in connection with this Promissory Note will be in writing and will be effectively delivered if:

    (a) sent by ordinary mail to the address set out in section 1 hereof, or such other address as the Borrowers or the Lender may, from time to time, designate by notice in writing to the other party; or

    (b) personally delivered to an officer or responsible employee of the Borrowers or the Lender; or

    (c) sent by facsimile, e-mail, or functionally equivalent electronic means, charges (if any) prepaid, at or to any address, electronic address, or facsimile number, as the case may be, as the Borrowers or the Lender may designate to the other in accordance with this provision.

Any demand or notice which is personally delivered will be deemed to have been validly and effectively given on the date of delivery if that date is a business day, and the delivery was made during normal business hours; otherwise, it will be deemed to have been validly and effectively given on the business day next following the date of delivery. Any demand or notice which is sent by mail, facsimile, e-mail, or functionally equivalent electronic means will be deemed to have been validly and effectively given on the date sent if that date is a business day; otherwise, it will be deemed to have been validly and effectively given on the business day next following that date.

14. **Amendments.** No amendment, modification or waiver of any provision of this Promissory Note or consent to any departure by the Borrowers from any provision of this Promissory Note is effective unless it is in writing and signed by the Lender, and then the amendment, modification, waiver or consent is effective only in the specific instance and for the specific purposes for which it is given.

15. **Collection and Expenses.** The Borrowers will pay all costs and expenses incurred by the Lender in collecting any amount due, and enforcing its rights, under this Promissory Note, including, without limitation, reasonable legal fees and disbursements on a full indemnity basis.

16. **Governing Law.** This Promissory Note will be governed by and construed in all respects in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia.

17. **Time of the Essence.** Time will in all respects be of the essence of this Promissory Note.

18. **Waiver of Benefits.** Presentation for payment, notice of dishonour, protest, notice of protest and demand are waived by the Borrowers.

19. **Assignment.** The Lender is permitted to assign its rights and obligations under this Promissory Note, in whole or in part, including without limitation as provided in the Loan Participation Agreement, by providing written notice to the Borrowers of such assignment. The Borrowers will not be permitted to assign their rights or obligations under this Promissory Note, in whole or in part, without the prior written consent of the Lender. This Promissory Note will be binding upon the successors and permitted assigns of the Borrowers and will enure for the benefit of the Lender and its successors and assigns.

IN WITNESS WHEREOF, each of the Borrowers have executed this Promissory Note as of the 22 day of October, 2021.

**EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP,** by its general partner, **PORT CAPITAL DEVELOPMENT (EV) INC.**

Per:

Name:
Title:

**PORT CAPITAL DEVELOPMENT (EV) INC.**

Per:

Name:
Title:

Schedule "A"

Security

1. The first secured mortgage (the "**Mortgage**") and assignment of rents dated July 4, 2018, between Port Capital Development (EV) Inc., as mortgagor and CMLS Financial Ltd. ("**CMLS**") as mortgagee, which was registered in the New Westminster Land Title Office on February 6, 2019, under numbers CA7337616 and CA7337617, is a charge on the following lands and premises:

   **PID: 006-721-397**

   Lot 18, except that part of the Canadian Pacific Railway Right-of-Way as described in the Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, and except in the South 7 feet now Road, Block 29, District Lot 185, Land District 36, Plan 92

   (the "**Lands**")

2. The Covenantor/Indemnitor Acceptance, dated July 6, 2018, December 12, 2018, and February 4, 2019, from Mr. Macario Teodoro Consunji Reyes and Port Capital Development Inc. to the CMLS.
3. The General Security Agreement dated November 1, 2018, by the Borrowers in favour of CMLS.
4. The unconditional joint and several guarantee executed by the Port Capital Development Inc. and Tobi Reyes, dated November 1, 2018.
5. The Cost Overrun and Completion Guarantee, dated November 1, 2018.
6. Environmental Warranty and Indemnity Agreement, dated November 1, 2018.
7. Assignment of Construction Contract dated November 26, 2018.
8. Assignment of Unit Sales Agreements and Deposits, dated November 1, 2018.
9. Assignment of Material Contracts, dated November 1, 2018.
10. Assignment of Insurance, dated November 1, 2018.
11. Assignment of Term Deposits and Credit Balances, dated November 1, 2018.
12. Beneficiary Authorization and Charge Agreement, dated November 1, 2018.
13. A priority/subordination agreement dated January 9, 2019, granted by Aviva in favour of CMLS, registered February 6, 2019, as Instrument Nos. CA7337731-32.
14. A subordination of PPSA Financing Statement in favour of Aviva under Base Reg. No. 353464K.
15. Certificate of Reyes, dated November 25, 2018.
16. Such other and further security documentation as may have been executed pursuant to the Commitment Letter dated July 4, 2019 between the Borrowers and CMLS (as amended from time to time) or otherwise.

NEW WESTMINSTER LAND TITLE OFFICE

Feb-06-2019 15:25:56.001

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CA7337616 CA7337617

LAND TITLE ACT
FORM B (Section 225)

**MORTGAGE - PART 1 Province of British Columbia**



Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Conrad Albert Rego 7KACN7 — c=CA, cn=Conrad Albert Rego 7KACN7, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm?id=7KACN7

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Conrad Rego, McCarthy Tétrault LLP
2400 - 745 Thurlow Street
Vancouver BC V6E 0C5

Phone: (604) 643-5882
Client No. 010452
Doc no. 18212973 File no. 198277/507809

Document Fees: $143.16

Deduct LTSA Fees? Yes ☑

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [legal description]

**SEE SCHEDULE**

STC? YES ☐

This is Exhibit " D " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5th day of July, 2022

A Commissioner for taking Affidavits within British Columbia

3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))

**PORT CAPITAL DEVELOPMENT (EV) INC.**

328 WEST 2ND AVENUE
VANCOUVER BRITISH COLUMBIA
V5Y 1C8 CANADA

Incorporation No
BC1005887

4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))

**CMLS FINANCIAL LTD.**

2110 – 1066 WEST HASTINGS STREET
VANCOUVER BRITISH COLUMBIA
CANADA V6E 3X2

Incorporation No
BC0124226

5. PAYMENT PROVISIONS:

| | | | Y | M | D |
|---|---|---|---|---|---|
| (a) Principal Amount: $80,000,000.00 | (b) Interest Rate: See Section 1.1(20) of Part 2 Terms | (c) Interest Adjustment Date: | 19 | 03 | 01 |
| (d) Interest Calculation Period: See Schedule | (e) Payment Dates: See Schedule | (f) First Payment Date: | 19 | 03 | 01 |
| (g) Amount of each periodic payment: Interest Only | (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 | | | |
| (j) Assignment of Rents which the applicant wants registered ? YES ☑ NO ☐ If YES, page and paragraph number: Pages 33-34, Article 13 | (k) Place of payment: Postal address in Item 4 | (l) Balance Due Date: On Demand | | | |

6. MORTGAGE contains floating charge on land ?
YES ☐ NO ☑

7. MORTGAGE secures a current or running account ?
YES ☑ NO ☐

8. INTEREST MORTGAGED:
Freehold ☑
Other (specify) ☐

9. MORTGAGE TERMS:
Part 2 of this mortgage consists of (select one only):
(a) Prescribed Standard Mortgage Terms ☐
(b) Filed Standard Mortgage Terms ☐ D F Number:
(c) Express Mortgage Terms ☑ (annexed to this mortgage as Part 2)
A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

N/A

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

N/A

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 Y | M | D | Borrower(s) Signature(s) |
|---|---|---|---|---|
| Robert W. Quon<br>Barrister & Solicitor<br>Dentons Canada LLP<br>20th Floor, 250 Howe Street<br>Vancouver, B.C. V6C 3R8<br>Telephone (604) 687 4460 | 18 | 11 | 25 | PORT CAPITAL DEVELOPMENT (EV) INC., by its authorized signatory:<br>Macario Teodoro Reyes |

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.

LAND TITLE ACT
FORM E

SCHEDULE



2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

**006-721-397** **LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92**

STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES ☐

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

5. PAYMENT PROVISIONS:

(d) Interest Calculation Period:

Monthly (calculated on outstanding daily balance)

(e) Payment Dates:

Principal: On Demand
Interest: First day of each month

## EXPRESS MORTGAGE TERMS

## ARTICLE 1
## DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Mortgage the following terms have the respective meanings set forth after each:

(1) "**Applicable Laws**" means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits licenses, authorizations, approvals and all applicable common laws or equitable principles whether now or hereafter in force and effect;

(2) "**Borrower**" means collectively Evergreen House Development Limited Partnership, by its general partner Port Capital Development (EV) Inc., and Port Capital Development (EV) Inc., in its individual capacity, and their respective successors and permitted assigns;

(3) "**Buildings**" means all buildings, erections and improvements whatsoever which now or which may hereafter be constructed, erected or placed upon the Lands;

(4) "**Business Day**" means any day other than Saturday, Sunday and any other day which is a legal holiday in Vancouver, British Columbia or a day on which banking institutions in Vancouver, British Columbia are authorized by law or by local proclamation to close;

(5) "**Change of Control**" means if their respective current owners cease to Control, directly or indirectly, any of the Obligors;

(6) "**Commitment"** means the mortgage loan commitment dated July 4, 2018 issued by the Lender to the Borrower and accepted by the Borrower and the Covenantors, as supplemented, amended, modified, extended, renewed, restated or replaced from time to time;

(7) "**Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have corresponding meanings;

(8) **"Costs**" means all fees, costs, charges and expenses of the Lender of and incidental to:

(a) the preparation, execution and registration of this Mortgage and any other instruments connected herewith and every renewal hereof, including, without limitation, all of the Loan Documents;

(b) the collection, enforcement, realization of and upon this Mortgage and the other Loan Documents;

(c) procuring payment of the Obligations, including without limitation, foreclosure, power of sale, execution, judicial sale, court appointed receivership and management of the Property or other proceedings of enforcement commenced by the Lender or any other party;

(d) any inspection required to be made of the Property;

(e) all necessary repairs required to be made to the Property;

(f) the Lender having to go into possession of the Property and securing, completing and equipping the building or buildings in any way in connection therewith, including without limitation any leasehold inducements or improvements required to lease the Property;

(g) the Lender's renewal of any leasehold interests;

(h) the exercise of any of the powers of a Receiver Manager contained herein; and

(i) any transfers or any changes to, amendments of, or alterations to, the Loan or Loan Documents by request or reason of the Owner, including without limitation, any costs of the Lender in granting approvals or consents thereto and the costs of obtaining confirmation thereof by applicable rating agencies,

and all legal costs incurred by the Lender on a substantial indemnity basis, and all costs and expenses of any examination of title to and of valuation of the Property or the obtaining of credit reports on any Obligor, provided that the fees, costs, charges and expenses of the Lender for the items listed in clauses (a), (d), (g) and (i) above will be those that are reasonably incurred;

(9) "**Covenantors**" means collectively Port Capital Development Inc. and Macario Teodoro Consunji Reyes;

(10) "**Default**" means any event or condition that would constitute an Event of Default upon satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both;

(11) "**Event of Default**" has the meaning set forth in Section 8.1;

(12) "**First Payment Date**" means the First Payment Date set out in Item 5(f) of the Mortgage Form;

(13) "**Fixtures**" means all fixed apparatus, fixed equipment, fixed machinery and fixed plant whatsoever, including, without limitation, all air conditioning, cooling, electric, gas, heating, plumbing, refrigeration and ventilating equipment, all boilers, electric light fixtures, elevators, furnaces and pressure vessels, and all wall to wall carpets and other fixtures which now or which may hereafter be placed or installed upon the Lands or the Buildings;

(14) "**Governmental Authority**" means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, and any body or authority exercising any functions of government, including any court;

(15) "**Guarantees**" has the meaning set forth in Section 13.1

(16) "**Hazardous Substance**" means any substance, defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any Applicable Laws, or any substance or material, the use or disposition of which is regulated by any such Applicable Law;

(17) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person heretofore, now or hereafter assumed, created, incurred or made, whether voluntary or involuntary and however arising, whether due or not due, absolute, inchoate or contingent, liquidated or unliquidated, determined or undetermined, direct or indirect, express or implied, whether such Person may be liable individually or jointly with others and whether recovery upon such indebtedness may be or hereafter becomes barred by reason of any statute of limitations or law of prescription or may be or hereafter becomes otherwise irrecoverable or unenforceable, and irrespective of the genuineness, validity or regularity thereof or of any security therefor or of the existence or extent of such security;

(18) "**Interest Adjustment Date**" means the Interest Adjustment Date set out in Item 5(c) of the Mortgage Form;

(19) "**Interest Payment Date**" means the first day of each month;

(20) "**Interest Rate**" means the rate of interest *per annum* which is equal to the Prime Rate plus two and one-quarter per cent (2.25%) *per annum* or such other rate as may be set out in the Commitment;

(21) "**Lands**" or "**land**" means the lands and premises legally described in Item 2 of the Mortgage Form hereto and all benefits, easements, franchises, immunities, licenses, privileges, rights, rights of way and servitudes appertaining thereto or connected therewith;

(22) "**Leases**" has the meaning set forth in Section 13.1;

(23) "**Lender**" and "**Mortgagee**" means CMLS Financial Ltd. and its successors and assigns;

(24) "**Lender's Address**" means the address of the Lender set out in Item 4 of the Mortgage Form;

(25) "**Loan**" means the construction loan in the maximum sum of $70,000,000 to be made by the Lender to the Borrower pursuant to the Commitment;

(26) "**Loan Documents**" means, collectively, (i) the Commitment, (i) the Security Documents, and (iii) all present and future agreements, documents, certificates and instruments delivered by or on behalf of the Obligors or any of them to the Lender in connection with

the Loan, in each case as the same may from time to time be amended, restated or replaced;

(27) "**Lot**" has the meaning set forth in Section 14.1;

(28) "**Material Adverse Change**" means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (i) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of an Obligor, (ii) the value or marketability of the Property, or (iii) the ability of any Obligor to perform its Obligations in all material respects;

(29) "**Mortgage Form**" means the document prescribed by regulation under the *Land Title Act* (British Columbia) as Part 1 of Form B to which these express mortgage terms are attached, and includes all schedules or addenda to such document other than these express mortgage terms;

(30) "**Mortgagor**" means Port Capital Development (EV) Inc. and its successors and permitted assigns;

(31) "**Mortgagor's Address**" means the address of the Mortgagor set out in Item 3 of the Mortgage Form;

(32) "**Obligations**" means all obligations of the Obligors or any of them to the Lender under or in connection with the Loan Documents, including (i) the Principal Amount, (ii) all interest thereon and compound interest as provided in this Mortgage, (c) all Costs, and (d) all other debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Obligors or any of them to the Lender or remaining unpaid by the Obligors or any of them to the Lender under or in connection with the Loan Documents, and whether incurred by any Obligor alone or with another or others and whether as principal or surety, and all interest, fees and Costs relating thereto;

(33) "**Obligors**" means, collectively, the Owner and the Covenantors and "**Obligor**" means any one of them, as the context may require;

(34) "**Owner**" means the Borrower and the Mortgagor, or either of them;

(35) "**Permitted Encumbrances**" means:

(a) liens for taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which the Owner is contesting in good faith and in respect of which the Owner has set aside, on its books, reserves considered by the Lender as adequate therefor;

(b) undetermined or inchoate liens and charges incidental to current operations which have not been filed against the Owner or which relate to obligations not due or delinquent;

(c) warehousemen's, woodmen's, carriers, maritime and other similar liens which relate to obligations not due or delinquent;

(d) easements, rights-of-way, covenants or similar rights in real property granted to or reserved by other Person which do not materially impair the usefulness, in the business of the Owner, of the real property subject thereto or which may be required in connection with the development, construction and marketing of the Project;

(e) the right reserved to or vested in any Governmental Authority by any lease, licence, franchise, grant, permit or statutory provision to terminate any lease, licence, franchise, grant or permit, or to require annual or other periodic payments as a condition of the continuance thereof;

(f) the encumbrance resulting from the deposit of cash or obligations as security when the Owner is required to do so by any Governmental Authority or by normal business practice in connection with contracts, licences or tenders or similar matters in the ordinary course of business and for the purpose of carrying on the same or to secure workers' compensation, surety or appeal bonds or to secure costs of litigation when required by law;

(g) security given to a public utility or any Governmental Authority when required in connection with the operations of the Owner;

(h) the Security Documents and any other assignment, mortgage, pledge, charge, security interest or other encumbrance granted in favour of the Lender pursuant to the Commitment; and

(i) any other encumbrance consented to in writing by the Lender;

(36) "**Person**" means any association, corporation, individual, joint-stock company, joint venture, partnership, trust, unincorporated organization or Governmental Authority or other entity;

(37) "**Plans and Specifications**" has the meaning set forth in Section 6.3;

(38) "**Prime Rate**" means the floating annual rate of interest designated as such by CIBC from time to time as a reference rate for the purposes of determining rates of interest it will charge on loans denominated in Canadian dollars in Canada;

(39) "**Principal Amount**" means the amount referred to in Item 5(a) of the Mortgage Form as the Principal Amount;

(40) "**Project**" has the meaning set forth in the Commitment;

(41) "**Project Cost Summary**" has the meaning set forth in the Commitment;

(42) "**Project Costs**" has the meaning set forth in Section 6.3;

(43) "**Property**" means:

(a) the Lands;

(b) the Buildings; and

(c) the Fixtures;

(44) "**Receiver Manager**" has the meaning set forth in Section 9.5;

(45) "**Rents**" has the meaning set forth in Section 13.1;

(46) "**Security Documents**" means this Mortgage and any other agreement, instrument, security or other obligation which the Lender may require or consider necessary heretofore, now or hereafter created and issued, granted or made by the Owner and the Covenantors in favour of the Lender in connection with the Lands, the Commitment or the Loan, as the same may from time to time be supplemented or amended and in effect;

(47) "**Strata Corporation**" has the meaning set forth in Section 12.2; and

(48) "**Strata Lots**" has the meaning set forth in Section 12.2.

1.2 <u>Interpretation</u>

The following rules will be applied in interpreting this Mortgage and all schedules hereto:

(1) "**this Mortgage**" means the combination of the Mortgage Form and these express mortgage terms as they may from time to time be supplemented, amended or modified and in effect; and the words "hereby", "herein", "hereto", "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, subsection, clause, subclause, paragraph, subparagraph or other subdivision;

(2) any reference to "**interest**" means interest at the Interest Rate calculated and payable as herein provided;

(3) the headings are for convenience only and do not form a part of this Mortgage and are not intended to interpret, define or limit the scope, extent or intent of this Mortgage or any provision hereof;

(4) where the context so admits, all references in this Mortgage to the singular will be construed to include the plural, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and *vice versa*;

(5) the word "including", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather such general statement, term or matter is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;

(6) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto and, unless otherwise expressly provided herein, includes a reference to all amendments made thereto and in force from time to time, and

to any statute or regulation that may be passed which has the effect of supplementing or superseding such statute or such regulation;

(7) any reference to an entity includes and is also a reference to any entity that is a successor to such entity; and

(8) except as otherwise expressly provided herein or unless the context otherwise requires, expressions defined in section 29 of the *Interpretation Act* (British Columbia) in effect on the date hereof and used herein have the meanings assigned to those expressions therein.

1.3 <u>Calculation of Interest</u>

Interest payable by the Mortgagor pursuant to Section 3.1 will be calculated in accordance with the following provisions:

(1) the Interest Rate will be adjusted automatically on the effective date of any change in the Prime Rate;

(2) interest will be payable as well after as before maturity, default and judgment;

(3) interest will be compounded monthly, and any interest that remains unpaid after an Interest Payment Date will be added to the Principal Amount and will itself bear interest at the Interest Rate; and

(4) a certificate of a manager or account manager of the Lender will be conclusive evidence as to the Prime Rate in effect from time to time.

1.4 <u>Date of Mortgage</u>

Notwithstanding the actual date of execution or registration of this Mortgage, this Mortgage may be referred to in the Loan Documents as having been executed as of, or bearing a formal date of November 1, 2018.

## ARTICLE 2
## GRANT OF MORTGAGE

2.1 <u>Grant and Security</u>

As security for the payment and performance to the Lender of the Obligations, the Mortgagor hereby mortgages and charges the Property to and in favour of the Lender.

## ARTICLE 3
## PAYMENTS

3.1 <u>Payments</u>

(1) This Mortgage will operate until all Obligations are paid and performed in full in the manner provided in this Mortgage.

(2) Interest at the Interest Rate on the amounts from time to time advanced, calculated as and from the respective dates of such advances, will become due and be paid on the each Interest Payment Date commencing on the First Payment Date until all Obligations are paid and performed in full in the manner provided in this Mortgage.

(3) The Obligations payable hereunder or secured or intended to be secured hereby will become due and be paid ON DEMAND.

3.2 Payments

The Mortgagor covenants with the Lender that:

(1) each payment to be made to the Lender hereunder will be made to the Lender at the Lender's Address (or at such other place or to such other Person as may be specified by the Lender by notice in writing to the Mortgagor), in immediately available funds, not later than 12:00 noon (Vancouver time), on the date due for payment of the same;

(2) all payments to be made to the Lender hereunder will be due and payable at the times herein provided whether or not the full amount of the Principal Amount has then been advanced;

(3) the Lender will have the right to allocate any and all payments made to the Lender by the Mortgagor (whether on account of the Principal Amount, interest or any other amount payable hereunder or secured or intended to be secured hereby) in such manner, order and priority as the Lender in its sole discretion may determine;

(4) if any payment made to the Lender hereunder is made after 12:00 noon (Vancouver time) on any day, such payment will be deemed to have been made on the immediately following Business Day for purposes of the calculation of interest and interest will accrue due to such following Business Day;

(5) whenever any payment to be made hereunder is due on a day that is not a Business Day, such payment will be due on the immediately following Business Day and interest will accrue due to such following Business Day;

(6) no interest will accrue for the benefit of or be payable to the Mortgagor on any payment made to, deposited with or advanced and withheld by the Lender;

(7) the Lender may deduct from any advance made hereunder interest accrued and not paid on the amount of the Principal Amount outstanding on the date of such advance and interest on the amount of the Principal Amount outstanding that would accrue from the date of such advance to the first Interest Payment Date immediately following the date such advance is made; and

(8) the Mortgagor will deliver to the Lender, immediately upon request from the Lender, such documentation as is reasonably required by the Lender to establish pre-authorized bank debits or post-dated cheques for such of the then next ensuing payments hereunder as may be required by the Lender from time to time.

## ARTICLE 4
## LAND TRANSFER FORM ACT

4.1 Land Transfer Form Act

This Mortgage is made pursuant to Part 3 of the *Land Transfer Form Act* (British Columbia).

4.2 Land Transfer Form Act Covenants

The Mortgagor covenants with the Lender: (i) that the Mortgagor will pay the mortgage money and interest; (ii) that the Mortgagor has good title in fee simple to the land; (iii) that the Mortgagor has the right to convey the land to the Lender; (iv) that on default the Lender will have possession of the land free from all encumbrances, except Permitted Encumbrances; (v) that the Mortgagor will execute further assurances of the land as may be requisite; (vi) that the Mortgagor has done nothing to encumber the land, except for the Permitted Encumbrances; and (vii) that the Mortgagor releases to the Lender all its claims on the land subject to the proviso.

4.3 Clause 15 Excluded

Clause 15 of Schedule 6 of the *Land Transfer Form Act* (British Columbia) is expressly excluded from this Mortgage.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

5.1 Representations and Warranties

The Mortgagor represents and warrants to the Lender that:

(1) each Obligor: (a) which is a corporation is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (b) which is a partnership is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; (c) which owns an interest in the Property has full power, authority and legal right to own the Property and to carry on its business thereon in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (d) has full power, authority and legal right to enter into each of the Loan Documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (e) has taken all necessary action and proceedings to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; (f) will maintain in good standing its existence, capacity, power and authority as a corporation or partnership, as the case may be, and will not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith; and (g) will not amend any of its articles, memorandum or other charter documents, partnership agreement, joint venture agreement, declaration of trust, trust agreement, by-laws, unanimous shareholder agreement, or any and all other similar agreements, documents and instruments

pursuant to which it is constituted, organized or governed in a manner that could reasonably be expected to have a Material Adverse Change;

(2) the Loan Documents constitute valid and legally binding obligations of each Obligor that is a party thereto, enforceable against each of them in accordance with their terms, and are not subject to any right of rescission, and at the date of entering into the Loan Documents, no Obligor has any right of set-off, counterclaim or defence in respect of the Lender, the Loan or the Loan Documents. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them (a) has resulted or will result in a violation of the constating documents governing any Obligor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors, shareholders or partners, as the case may be, of any Obligor, (b) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which any Obligor is a party or by which it or the Property or any part thereof is bound, or (c) requires any approval or consent of any Person except such as has already been obtained;

(3) the Mortgagor: (i) is the legal owner of the Property; (ii) has good title to the Property, free from all charges, encumbrances and liens except Permitted Encumbrances; and (iii) has good right, full power and absolute authority to convey the Property to the Lender;

(4) to the best of the Mortgagor's knowledge after due and diligent inquiry, no Hazardous Substances are being stored on the Property nor have any Hazardous Substances been stored or used on the Property or any adjacent property prior to the Mortgagor's ownership, possession or control of the Property;

(5) all appraisals, budgets, certificates, reports, plans and specifications (including the Plans and Specifications), statements and other documents whatsoever heretofore or hereafter provided to the Lender by the Mortgagor and all representations, warranties and statements heretofore or hereafter made to the Lender by the Mortgagor, its shareholders, directors, officers or agents, are or will be at the time provided, or made, as the case may be, and will continue to be, true, correct and complete in all material respects; and

(6) there are no existing or threatened actions, proceedings or claims against or relating to the Property or any Obligor except as disclosed to and accepted by the Lender in writing prior to the Loan advance.

## ARTICLE 6
## COVENANTS OF THE MORTGAGOR

6.1 <u>General Covenants</u>

The Mortgagor covenants and agrees with the Lender:

(1) to punctually pay the Obligations in accordance with the terms of this Mortgage;

(2) to punctually pay and discharge, before the imposition of any fine, interest or penalty for the late payment thereof, all assessments, levies, rates and taxes and every other obligation incurred by, or imposed upon, the Mortgagor or the Property, or any part thereof, by virtue of any Applicable Laws, or any agreement, contract, franchise, lease,

permit or otherwise, the failure to pay or discharge of which could result in any lien or charge or any right of distress, forfeiture, sale or termination or any other remedy being enforced against the Mortgagor or the Property, or any part thereof, and to furnish to the Lender when required evidence establishing such payments;

(3) at the request of the Lender, to pay to the Lender on the first day of each and every month during the term of this Mortgage, such amount as the Lender may from time to time estimate as being necessary to create and maintain a reserve fund from which to pay assessments, levies, rates and taxes and every other obligation incurred by, or imposed upon, or reasonably expected to be incurred by or imposed upon, the Mortgagor or the Property, or any part thereof, by virtue of any Applicable Laws before the same become subject to any fine, interest or penalty for the late payment thereof; amounts in the reserve fund may at the option of the Lender be used for any of the foregoing purposes or be paid to the Mortgagor or be applied on account of the Obligations, whether or not then due, or be used, paid or applied partly in one way and partly in another, even though such use may benefit a subsequent owner or owners of the Property or any part thereof, and, in refunding any amount in the reserve fund at any time, the Lender may deal with the party or parties at the time represented to the Lender as being the owner or owners of the equity of redemption in the Property;

(4) to do, observe and perform all of its obligations and all matters and things necessary or expedient to be done, observed or performed by virtue of any Applicable Laws, for the purpose of creating, maintaining and keeping maintained this Mortgage as a valid and effective mortgage and charge upon the Property, subject only to Permitted Encumbrances;

(5) not to permit or suffer the registration or creation of, or allow to exist, any lien or privilege of any taxing, assessing or other Governmental Authority, worker, contractor, subcontractor or supplier of material upon or in respect of any of the Property;

(6) to defend the title of the Property for the benefit of the Lender against the claims and demands of all Persons;

(7) to maintain and keep the Property in good and proper order, repair and condition and not permit or suffer any acts of waste upon the Property;

(8) immediately upon obtaining knowledge of the institution of any proceedings for the expropriation of the Property or any part thereof, to notify the Lender of such proceedings and, if the Property or any part thereof is taken or damaged in or by any such expropriation proceedings or otherwise, the award or compensation payable to the Mortgagor will be paid, and is hereby assigned, transferred and set over, to the Lender and any award or compensation received by the Lender may at the option of the Lender be paid to the Mortgagor or be applied on account of the Obligations, whether or not then due, or be paid or applied partly in one way and partly in another;

(9) to maintain its corporate existence and qualification to carry on business in all jurisdictions in which the nature of the assets owned or leased or the business carried on by the Mortgagor so requires and diligently maintain, use and operate or cause to be maintained, used and operated the Property and carry on and conduct its business in a proper and efficient manner so as to preserve and protect the Property and the earnings, income, rents and profits thereof;

(10) to keep, or cause to be kept, proper books of account and records and make or cause to be made therein true entries of all dealings and transactions in relation to the business and operations of the Mortgagor including separate entries relating to the Property, allow the Lender to enter upon the premises of the Mortgagor during normal business hours to inspect the books and records of the Mortgagor and make extracts therefrom and allow the Lender at any time during normal business hours to inspect the Property and at all reasonable times furnish or cause to be furnished to the Lender or its duly authorized agent such information relating to its business or the Property as the Lender reasonably requires;

(11) if this Mortgage is or becomes subject or subordinate to one or more agreements for sale, charges, liens, mortgages or other encumbrances (individually a "**prior charge**" and collectively the "**prior charges**"), to pay or cause to be paid as they become due all payments, whether for principal, interest, taxes or otherwise, under or by virtue of the prior charges and otherwise observe, perform and comply with the covenants, provisos and agreements therein contained;

(12) to provide written notice to the Lender immediately upon the Mortgagor becoming aware that the Property or any adjacent property is being or has been contaminated with any Hazardous Substance;

(13) to promptly comply with all Applicable Laws relating to the use, collection, storage, treatment, control, removal or clean-up of any Hazardous Substances in, on, or under the Property or in, on, or under any adjacent property that becomes contaminated with Hazardous Substances as a result of the construction, operation or any other activity on, or the contamination of, the Property;

(14) at the request of the Lender, to grant to the Lender, in form required by the Lender and at the cost of the Mortgagor, as collateral security hereto: (i) a mortgage or charge of all the Mortgagor's chattels and Fixtures now or hereafter situate on the Lands; (ii) a further assignment of Rents from and Leases of the Lands and every guarantee or indemnity given to the Mortgagor for payment or performance thereof; and (iii) an assignment of all other agreements, contracts, licenses, permits and rights affecting the Property;

(15) to be liable for and indemnify and hold each of the Lender and its officers, directors, employees and agents harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, and expenses (including fees of the Lender's counsel) of whatever kind or nature which may be imposed on, incurred by or asserted at any time against the Lender or any of them in any way relating to or arising in connection with, the Property, including any Hazardous Substances in, on, or under the Property. The indemnity contained in this subsection 6.1(15) will survive any action in foreclosure, any other extinguishing of the obligations of the Mortgagor or any other exercise of remedies by the Lender against the Mortgagor;

(16) to provide to the Lender on request such financial and supporting data as the Lender may reasonably require, reflecting all material information with respect to the status of the Mortgagor and operation of the Property; and

(17) to execute such further assurances of the Property as the Lender may from time to time require.

6.2 Covenants Regarding Insurance

The Mortgagor will insure the Property and the contents thereof owned by the Mortgagor in accordance with the Commitment. To ensure that the Lender may apply insurance proceeds in accordance with the Commitment, the Mortgagor waives all the Mortgagor's rights and benefits under the *Insurance Act* (British Columbia) and the *Fire Prevention (Metropolis) Act, 1774.*

6.3 Covenants Regarding Construction

In addition to any term and condition in the Commitment, the Owner agrees:

(1) prior to commencing construction of the Project, to submit to the Lender for approval the plans and specifications (the "**Plans and Specifications**") for the Project and the Project Cost Summary;

(2) subject to acts of God, strikes, lockouts or other labour or industrial disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, future orders of any regulatory body having proper jurisdiction, wars, riots, sabotage, blockades, embargoes, insurrections, lightning, earthquake, fires, storms, floods and explosions:

(a) to carry on construction of the Project continuously, diligently and with dispatch until completed,

(b) to devote its full efforts and energy to the development and construction of the Project, not to abandon or delay completion of the Project or, without the prior written consent of the Lender depart from the Plans and Specifications or the Project Cost Summary;

(3) to construct or cause the Project to be constructed in a good and workmanlike manner in accordance with the Plans and Specifications using first class quality materials and to comply with all Applicable Laws;

(4) to promptly correct all defects in the construction or variation in the construction of the Project as reported to the Lender by its consultants;

(5) if any proceedings are commenced seeking to enjoin or otherwise prevent or declare invalid or unlawful the construction of the Project, to cause such proceedings to be vigorously contested in good faith and, in the event of an adverse ruling or decision, to prosecute all allowable appeals therefrom, including, resisting the entry or seeking the stay of any temporary or permanent injunction that may be entered, and to use its best efforts to bring about a favourable and speedy disposition of all such proceedings;

(6) to provide the Lender with such documents, agreements, contracts and other materials in connection with the construction or proposed construction of the Project as the Lender may require;

(7) to pay or cause to be paid as soon as the same are due all claims and demands of contractors, employees, labourers, materialmen and workers and all wages, salaries, holiday pay, workers compensation assessments or other charges of any nature or kind (hereinafter referred to as "**Construction Charges**"), the failure to pay of which could

result in any lien or charge on the Property or any part thereof and to provide the Lender with such books, payrolls or other records, receipts, certificates and declarations as the Lender may deem necessary to satisfy itself that the Construction Charges have been paid as soon as the same are due;

(8) to employ all amounts advanced hereunder in payment of the "**Project Costs**" provided for in the Project Cost Summary approved by the Lender;

(9) to pay from sources other than amounts advanced hereunder such portion of Project Costs as may be necessary so that the unadvanced portion of the Principal Amount from time to time will, in the opinion of the Lender, at all times be sufficient to pay all Project Costs necessary to complete construction and sale of the Project;

(10) that the authority herein conferred upon the Lender and any action taken by the Lender in exercise of such authority in making inspections of the Project, procuring sworn statements, approving permits, contracts, subcontracts, the Plans and Specifications and the Project Cost Summary is taken by the Lender for its own protection only and the Lender will not have any responsibility to the Mortgagor or any other Person or waive any obligations of the Mortgagor by any such approval or otherwise;

(11) upon the occurrence and during the continuance of any Event of Default, in addition to any other remedies which the Lender may have hereunder or at law or in equity or by statute, the Lender personally, or by its agents, attorneys, contractors or servants, may enter into and upon the Lands, and may exclude the Mortgagor, its agents and servants wholly therefrom, and may cause to be performed any and all work and labour necessary to complete the Project and in the course of such completion may make such changes in the contemplated Project (including such changes in the Plans and Specifications and the Project Cost Summary) as the Lender may deem desirable and all sums expended by the Lender for such purpose will be deemed to have been advanced to the Mortgagor hereunder and secured hereby;

(12) and represents and warrants to the Lender that:

(a) all utility services necessary for the construction of the Project and the operation and use thereof for its intended purpose, including, but not limited to, water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities, are available to the boundaries of the Lands;

(b) the Lands are contiguous to publicly dedicated streets or roads or highways and vehicular and pedestrian access thereto is permitted or, if not, is the dominant tenement of an easement or easements creating the perpetual right of such access to any such publicly dedicated streets or roads or highways; and

(c) the Owner has and will have, until the release hereof, the power, authority and legal right to construct the Project on the Lands save for any permits to be obtained and issued by the City of Vancouver in the ordinary course.

## ARTICLE 7
## PERFORMANCE OF MORTGAGOR'S COVENANTS BY LENDER AND REIMBURSEMENT OF LENDER'S COSTS

7.1 Payment of Costs

The Mortgagor will promptly pay all Costs.

7.2 Performance by Lender

If the Mortgagor fails to perform any obligation in this Mortgage, the Lender may, but will not be obliged to, perform any or all of such obligations.

7.3 Reimbursement of Lender's Costs

All Costs:

(1) will be a charge on the Property in favour of the Lender prior to all claims subsequent to this Mortgage;

(2) will be payable by the Mortgagor to the Lender forthwith without demand with interest at the Interest Rate from the date incurred; and

(3) will, with interest at the Interest Rate, be added to the Principal Amount as if such amount or amounts had originally formed part thereof.

## ARTICLE 8
## EVENTS OF DEFAULT

8.1 Events of Default

The occurrence of any of the following events is an "**Event of Default**" for the purposes of this Mortgage:

(1) if the Obligors fail to pay to the Lender on demand or when otherwise due the Obligations or any other Indebtedness of the Obligors to the Lender;

(2) if there is a breach of any financial covenants contained in the Commitment or any other Loan Document;

(3) if any Obligor neglects to observe or perform any covenant or obligation contained in this Mortgage, the Commitment or any other Loan Document on its part to be observed or performed (other than a covenant or condition whose breach or Default in performance is specifically dealt with elsewhere in this Section 8.1 or such Loan Document) and such Obligor fails to remedy such Default within 10 Business Days from the earlier of (i) the date such Obligor becomes aware of such Default, and (ii) the date the Lender delivers written notice of the Default to such Obligor, or in the case of a Default that cannot be remedied within 10 Business Days, the Obligor does not commence and diligently proceed to remedy such Default within such period of time;

(4) if any information, representation or warranty given or made by any Obligor in the Commitment, any other Loan Document or in any certificate or other document at any time delivered hereunder to the Lender proves to have been incorrect or misleading in any material respect on and as of the date that it was made or was deemed to have been made and such Obligor fails to remedy such Default within 10 Business Days from the earlier of (i) the date such Obligor becomes aware of such Default, and (ii) the date the Lender delivers written notice of the Default to such Obligor, or in the case of a Default that cannot be remedied within 10 Business Days, the Obligor does not commence and diligently proceed to remedy such Default within such period of time;

(5) the Mortgagor fails to observe or perform, or a default occurs under, any of the terms or provisions of any mortgage, charge, pledge, lien, privilege or other encumbrance of any nature upon the Property or any part thereof, including any Permitted Encumbrance;

(6) the Mortgagor uses any amount secured by this Mortgage for a purpose other than the purpose declared to and agreed by the Lender;

(7) the Property or any material part thereof is materially damaged or destroyed by fire or other casualty and the loss, in the sole opinion of the Lender, is not adequately insured and the Mortgagor fails to forthwith deposit the deficiency with the Lender;

(8) the Mortgagor, without the prior written consent of the Lender or as permitted under the Commitment, sells or agrees to sell or otherwise disposes or agrees to dispose of the Property or any part thereof or any interest therein or leases or agrees to lease the Property or any part thereof;

(9) the Mortgagor, without the prior written consent of the Lender, creates, assumes or permits to exist or remain any mortgage, pledge, charge, lien, privilege or other encumbrance upon the Property or any part thereof, except Permitted Encumbrances;

(10) if any Obligor ceases or threatens to cease to carry on business generally or admits its inability or fails to pay its debts generally;

(11) if any Obligor denies, to any material extent, its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part;

(12) any of the Loan Documents or any material provision of any of them becomes unlawful or is changed by virtue of Applicable Laws or by a Governmental Authority, if any Obligor does not, within 10 Business Days of receipt of notice of such Loan Document or material provision becoming unlawful or being changed, replace such Loan Document with a new agreement that is in form and substance satisfactory to the Lender, acting reasonably, or amend such Loan Document to the satisfaction of the Lender acting reasonably;

(13) if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *United States Bankruptcy Code*, the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver

and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;

(14) if any Person takes possession, by appointment of a receiver, receiver and manager or otherwise, of all or any part of the Property;

(15) if proceedings are commenced for the dissolution, liquidation or voluntary winding-up of any Obligor, or for the suspension of the operations of any Obligor unless such proceedings are being actively and diligently contested in good faith;

(16) if a final judgment or decree for the payment of money due has been obtained or entered against an Obligor in an amount, when combined with any other such judgment or decrees, is in an amount in excess of: (i) in the case of the Borrower, $100,000 or (ii) against any other Obligor in an amount that, in the reasonable opinion of the Lender, would materially and adversely affect the ability of any such other Obligor to fulfil its obligations to the Lender under this Mortgage, and such judgment or decree has not been and remained vacated, discharged or stayed pending appeal within the applicable appeal period or the applicable Obligor has not demonstrated to the satisfaction of the Lender that it has the financial ability to satisfy such judgement or decree without adversely affecting in any material way, such Obligor's ability to perform its obligations under the Loan Documents;

(17) if any Security Document ceases to constitute a valid and perfected first priority security interest and, provided the Lender is satisfied that its position will not be prejudiced, the applicable Obligor has failed to remedy such Default within five Business Days of becoming aware of such fact;

(18) if, except as permitted under the Loan Documents, there is any reorganization of any Obligor or any consolidation, merger or amalgamation of any Obligor with any other company or companies, the effect of which would likely be a Material Adverse Change, or if a Change of Control occurs; or

(19) if any part of the Property is expropriated and, in the opinion of the Lender, such expropriation materially impairs any of (i) the value of the Property, (ii) the validity, enforceability or priority of the Security Documents, or (iii) the ability of any Obligor to fulfil its Obligations.

8.2 <u>Acceleration</u>

The Obligations will become immediately due and payable, at the option of the Lender, upon the occurrence of an Event of Default.

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## ARTICLE 9
## ENFORCEMENT

### 9.1 Enforcement

At any time after the occurrence of an Event of Default, the Lender at its option may proceed to realize upon all or any part of the security constituted hereby or all or any part of any security collateral hereto and to enforce any right of the Lender by entry pursuant to Section 9.2, or by the appointment of a Receiver Manager pursuant to Section 9.5, or by sale or lease pursuant to Section 9.3, or by proceedings in any court for the appointment of a Receiver Manager or for the sale of the Property or any part thereof or for foreclosure, or by any other action, suit, remedy or proceeding authorized or permitted by this Mortgage or at law or in equity or by statute; and may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claim of the Lender lodged in any bankruptcy, winding up or other judicial proceeding relative to the Mortgagor.

### 9.2 Entry

At any time after the occurrence of an Event of Default, the Lender will have the right by its officers, agents or attorneys or otherwise, without any further consent or concurrence of the Mortgagor, to enter into and upon and to take possession of all or any part of the Property with power to exclude the Mortgagor and to possess and use the Property subject to the charge created by this Mortgage, with full power to carry on the business of the Mortgagor with respect to the Property and manage the Property, to maintain, operate, renew, repair, replace and restore the Property, and to receive the earnings, income, issues, profits, rents and revenues of the Property, and to pay therefrom all expenses of maintaining, managing, operating, renewing, repairing, replacing and restoring the Property, all charges against the Property ranking in priority to this Mortgage and all other costs, charges and expenses the payment of which in the opinion of the Lender may be necessary, advantageous or expedient to preserve or protect the charge created by this Mortgage. The remainder of the money so received by the Lender and not required for any of the above purposes will be applied by the Lender in the manner provided in Section 9.4.

### 9.3 Sale or Lease

At any time after the occurrence of an Event of Default, the Lender will have the right, with or without entry and without any further consent or concurrence of the Mortgagor, to sell and absolutely dispose of or lease all or any part of the Property en bloc or in parcels, at public auction or by tender or by private contract, or partly by public auction and partly by tender and partly by private contract, as the Lender in its sole discretion will determine, and at such time or times and on such terms and conditions as to the Lender seem appropriate, and to convey and assure the same when so sold or leased unto the purchaser or lessee thereof or such Person as the said purchaser or lessee may direct, and to execute and do all such acts, assurances, matters and things as may be necessary for the purposes aforesaid. It will be lawful for the Lender to make any such sale or lease, whether by auction, tender or private contract, either for cash or upon credit or partly one and partly the other as the Lender in its sole discretion may determine, and upon such reasonable conditions as to terms of payment as the Lender may deem proper; also to rescind or vary any contract of sale that may have been entered into and resell with or under any of the powers conferred herein; also to stop, suspend or adjourn any sale from time to time and hold the sale as adjourned without further notice; and the Lender will not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid, unless the same will happen by reason of the Lender's wilful neglect or default; provided that, notwithstanding the power of sale and lease and other powers and provisions contained in this Article 9, the Lender will have and be entitled to its right of foreclosure of the equity of redemption of the Mortgagor in the Property, as fully and effectually as the Lender might have exercised and enjoyed the same if the power of sale or lease or such other powers and provisions had not been herein contained.

9.4 Application of Proceeds of Sale or Lease

The net profits of operating and managing the Property and the net proceeds of sale or lease of the Property or any part thereof will be applied by the Lender subject to the claims of all creditors (if any) ranking in priority to this Mortgage:

FIRST: in payment of all Costs incidental to the exercise by the Lender of all or of any of the powers aforesaid;

SECOND: in payment to the Lender on account of all other Obligations, to be applied by the Lender whether on account of the Principal Amount, interest or otherwise, in such manner, order and priority as the Lender in its sole discretion will determine;

and the balance thereof, if any, will, subject to the rights of other creditors, be paid to the Mortgagor, but no application as aforesaid will prejudice the right of the Lender to claim against the Mortgagor for any deficiency.

9.5 Appointment of Receiver Manager

At any time after the occurrence of an Event of Default, the Lender will have the right to appoint by writing a receiver or receiver manager (the "**Receiver Manager**") of the Property and may from time to time remove the Receiver Manager and appoint another in its stead. The Receiver Manager will, from the date of appointment, be an agent and officer of the Mortgagor. The Mortgagor will be solely responsible for the acts, defaults, costs and remuneration of the Receiver Manager and the Lender will bear no liability therefor and:

(1) the Receiver Manager in the exercise of its power, authority or discretion will conform to the regulations and directions from time to time made and given by the Lender;

(2) the Lender may from time to time and at any time in its discretion require the Receiver Manager to give security for the performance of its duties as Receiver Manager and may fix the nature and amount of such security; and

(3) the Lender may from time to time determine what funds the Receiver Manager will be at liberty to keep in hand with a view to the performance of its duties as Receiver Manager.

9.6 Powers of Receiver Manager

The Receiver Manager may in the discretion of the Lender be vested with all or any of the powers and discretions of the Lender hereunder and with all or any of the powers of the Mortgagor at the date of execution hereof including, without limitation, the power to:

(1) take possession of and collect rents and profits from the Property, and for such purpose to take all actions and proceedings either in the name of the Mortgagor or otherwise;

(2) complete construction of any Project being constructed on the Lands and improve, maintain, manage, operate, repair, renew, replace and restore the Property or any part thereof;

(3) sell or grant options to purchase the whole or any part of the Property at public auction, by public or private tender, or by private sale;

(4) sell on terms as to credit and with or without security as will appear to be most advantageous to the Receiver Manager and if a sale is on credit the Receiver Manager will not be accountable for any money until actually received;

(5) resell or release without being answerable for any loss occasioned thereby;

(6) rescind or vary any contract or agreement of sale or lease;

(7) effect a sale or option or agreement to sell or lease by conveying in the name of or on behalf of the Mortgagor or otherwise;

(8) make and grant easements, rights of way, restrictive covenants, building schemes and other charges and encumbrances affecting the Lands;

(9) borrow money for the purpose of completing construction of any Project being constructed on the Lands or for the purpose of improving, maintaining, managing, operating, repairing, renewing, replacing or restoring the Property or otherwise in such amount and in such manner as will, in the opinion of the Receiver Manager, be sufficient for obtaining upon the security of the Property or part thereof the amounts from time to time required, and in so doing the Receiver Manager may issue certificates ("**Receiver's Certificates**") which may be payable at such time or times as the Receiver Manager may think expedient and may bear interest as will be stated therein and the amounts from time to time payable by virtue of such Receiver's Certificates will form a charge upon the Property in priority to this Mortgage;

(10) make any arrangement or compromise which the Receiver Manager considers expedient in the interests of the Lender and to assent on behalf of the Mortgagor to any modification of this Mortgage, change in priority or release in whole or in part the Property, and to exchange any part or parts of the Property for any other property upon such terms as the Receiver Manager considers expedient, either with or without payment of money for equality of exchange or otherwise;

(11) execute and prosecute all suits, proceedings and actions in the name of the Mortgagor or otherwise, to defend all suits, proceedings and actions against the Mortgagor or the Receiver Manager, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action which the Receiver Manager considers necessary for the reasonable and proper protection of the Property; and

(12) engage and retain accountants, agents, appraisers, assistants, lawyers and managers.

9.7 Proceeds of Receivership

The net profits of operating and managing the Property and the net proceeds of sale or lease of the Property or any part thereof will be applied by the Receiver Manager subject to the claims of all creditors (if any) ranking in priority to this Mortgage:

FIRST: in payment of all Costs of and incidental to the appointment of the Receiver Manager and the exercise by the Receiver Manager of all or any of the powers granted to the Receiver Manager pursuant to Section 9.6 including the reasonable remuneration of the Receiver Manager and all outgoings properly paid or payable by the Receiver Manager;

SECOND: in payment to the Lender on account of all other Obligations, to be applied by the Lender whether on account of the Principal Amount, interest or otherwise, in such manner, order and priority as the Lender in its sole discretion will determine;

and the balance thereof, if any, will, subject to the rights of other creditors, be paid to the Mortgagor; but no application as aforesaid will prejudice the right of the Lender to claim against the Mortgagor for any deficiency.

9.8 Lender and Receiver Manager as Attorney

If and only when an Event of Default has occurred and is continuing, to enable the Lender and the Receiver Manager to exercise the powers granted to them pursuant to this Article 9, the Mortgagor hereby under seal irrevocably appoints each of the Lender and the Receiver Manager to be an attorney of the Mortgagor to carry out any sale or lease of the Property or any part thereof by conveying the same in the name and on behalf of the Mortgagor but under the seal of the Lender or the Receiver Manager, as the case may be, and any deed, transfer or other instrument signed by the Lender or the Receiver Manager under the seal of the Lender or the Receiver Manager, as the case may be, pursuant hereto will have the same effect as if it had been executed under the common seal of the Mortgagor in the presence of the Mortgagor's duly authorized officers in that behalf, and for the purposes hereof the Mortgagor hereby under seal irrevocably appoints each of the Lender and the Receiver Manager as authorized signatory of the Mortgagor.

9.9 Persons Dealing with Lender or Receiver Manager

The Mortgagor agrees that no Person dealing with the Lender or its agents or the Receiver Manager will be required to enquire whether the charge created by this Mortgage has become enforceable, or whether the powers which the Lender or the Receiver Manager are purporting to exercise have become exercisable, or whether any amount remains owing upon this Mortgage, or as to the necessity or expediency of the stipulations and conditions subject to which any sale or lease is to be made, or otherwise as to the propriety or regularity of any sale or lease or of any other dealing by the Lender or the Receiver Manager with the Property or any part thereof, or to see to the application of any amount paid to the Lender, and the Mortgagor hereby waives each and every claim it may have against any Person dealing with the Lender, its agents or the Receiver Manager.

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9.10 Surrender by the Mortgagor

The Mortgagor will yield up possession of the Property to the Lender or to any Receiver Manager appointed by the Lender or by any court upon demand in writing and agrees to put no obstacle in the way of, but to facilitate by all means, the actions of the Lender and any Receiver Manager hereunder and not to interfere with the carrying out of the powers hereby granted to the Lender and to any Receiver Manager and, if an Event of Default occurs, the Mortgagor will and hereby does consent to the appointment of the Receiver Manager with such powers as the Lender is hereby vested with if so required by the Lender.

**ARTICLE 10**
**GENERAL**

10.1 Enlargement

This Mortgage is intended to be a mortgage of the entire estate, right, title and interest of the Mortgagor in and to the Property and each and every part thereof and, if the estate, right, title and interest of the Mortgagor in and to the Property or any part thereof enlarges, this Mortgage will be enlarged and extended to be a mortgage of such enlarged estate, right, title and interest promptly upon the acquisition thereof by the Mortgagor, and without any further act on the part of the Mortgagor, and will become and be subject to this Mortgage as fully and completely as though now owned by the Mortgagor.

10.2 Each Lot Charged

Every part, parcel, lot or strata lot into which the Lands are or may hereafter be divided does and will stand charged with the whole of the Principal Amount, interest and all other amounts payable hereunder or secured or intended to be secured hereby and no Person will have any right to require the Principal Amount, interest or any other amount payable hereunder or secured or intended to be secured hereby to be apportioned upon or in respect of any such part, parcel, lot or strata lot.

10.3 Attornment

Unless the Lands are occupied by the Mortgagor as residential property as defined by the *Residential Tenancy Act* (British Columbia), the Mortgagor hereby attorns and becomes tenant from year to year to the Lender, from the date hereof at a rental equivalent to, applicable in satisfaction of, and payable at the same time as the instalments payable hereunder, the legal relation of landlord and tenant being hereby constituted between the Lender and the Mortgagor; but it is agreed that neither the existence of this clause, nor anything done by virtue hereof, will render the Lender a mortgagee in possession, so as to be accountable for any money except money actually received; and the Lender may at any time after default hereunder, enter upon the Lands or any part thereof and determine the tenancy hereby created without giving the Mortgagor any notice to quit and the Lender may distrain for arrears of interest and arrears of Principal Amount in the same manner as if the same were arrears of rent.

10.4 Sale by Mortgagor

No sale or other dealing by the Mortgagor with the equity of redemption in the Lands or any part thereof will in any way change the liability of the Mortgagor or in any way alter the rights of the

Lender as against the Mortgagor or any other Person liable for payment of any amount hereby secured.

## ARTICLE 11
## MISCELLANEOUS

### 11.1 Joint Venture

If the Property or any part thereof is held by the Mortgagor as a partner of any firm or as a joint venturer of any joint venture, this Mortgage will be deemed to be a mortgage of the interest of any such partnership or joint venture, as the case may be, in the Property or such part thereof as well as a mortgage of the interest of the Mortgagor in the Property, and all covenants and agreements herein contained will be deemed to be joint and several covenants and agreements of any such partnership or joint venture and of the Mortgagor.

### 11.2 Other Security

The Mortgagor covenants and agrees with the Lender that:

(1) the security created hereby is in addition to any other security which the Lender now or from time to time may hold from the Mortgagor or any other Person;

(2) all powers, privileges, remedies and rights of the Lender hereunder are cumulative and no such power, privilege, remedy or right is exhaustive but is in addition to each other power, privilege, remedy and right of the Lender hereunder or under any other agreement or instrument now or hereafter existing at law or in equity or by statute; and

(3) the Lender may realize upon or enforce all or any part of any security which the Lender now or from time to time may hold from the Mortgagor or any other Person including, without limitation, the security created hereby in any order the Lender may desire and any realization or enforcement by any means upon any such security will not bar realization or enforcement upon any other such security, notwithstanding any rule of law or equity or statute.

### 11.3 Continuing Security

This Mortgage is given as a general and continuing collateral security for the due and timely payment and satisfaction of the Obligations of the Owner to the Lender, including (i) the amount of direct advances to the Owner and all interest thereon, and (ii) the face amount of letters of credit (if any) issued at the request of the Owner or payment under such letters of credit to the beneficiaries thereof. This Mortgage will be effective whether or not the whole or any portion of the Principal Amount will be advanced before or after or upon the date of the execution of this Mortgage and this Mortgage is made to secure, *inter alia*, a current or running account and any portion of the Principal Amount may be advanced or readvanced by the Lender in one or more sums at any future date or dates and the amount of such advances and readvances when so made will be secured by this Mortgage and be repayable with interest at the Interest Rate and this Mortgage will be deemed to be taken as security for the ultimate balance owing to the Lender arising from the current and running accounts represented by advances and readvances of the Principal Amount or any part thereof with interest at the Interest Rate and all other amounts secured hereby. If the whole or any part of the Principal Amount or other amount secured hereby is repaid this Mortgage, nevertheless, will be and remain valid security for any subsequent advance or readvance by the Lender to the Mortgagor to the same extent as if the said advance or readvance had been made on the execution of this Mortgage until such time as the Lender has executed and delivered to the Mortgagor a registrable discharge of this Mortgage. It is intended that this Mortgage remains effective as security and will retain the priority given by section 28 of the *Property Law Act* (British Columbia) in respect of any and all advances or readvances secured hereby.

11.4 Liability to Advance

Except to the extent that the Lender, by issuing letters of credit on the application of the Owner, is required to advance money pursuant to such letters of credit, the Mortgagor agrees that neither the preparation, execution, delivery, registration or filing of this Mortgage, nor the advance of a part of the Principal Amount, will bind the Lender to advance the Principal Amount or any part thereof to the Mortgagor or to any other Person the obligations of which are guaranteed by the Mortgagor, the advance of the Principal Amount or any part thereof being in the sole discretion of the Lender, nor will such preparation, execution, delivery, registration or filing bind the Lender to extend the time within which the Mortgagor or any other Person the obligations of which are guaranteed by the Mortgagor must repay the Principal Amount, interest or any other amount payable hereunder or secured or intended to be secured hereby or any part thereof to the Lender, but, nevertheless, the security created by this Mortgage will take effect in accordance with the terms of this Mortgage forthwith upon execution by the Mortgagor of this Mortgage.

11.5 Consolidation

It is expressly agreed that the common law right of consolidation is hereby retained and preserved, and that the Lender may, at its sole option, invoke the right to consolidate at any applicable time, whether or not all or any of the debentures or mortgages so consolidated are in default, whether or not all or any of the debentures or mortgages so consolidated have matured, and whether or not in pursuance of any action taken to realize on its security, and for the purposes hereof, section 31 of the *Property Law Act* (British Columbia), and any other statutory provision abolishing, or purporting to abolish, the said right of consolidation is hereby expressly excluded.

11.6 Compromise or Release

The Lender may at any time and from time to time, at its option, compound, compromise or release any one or more guarantors, covenantors or sureties of all or any part of the Obligations or all or any part of the Property or any other security held by the Lender for the Obligations, either with or without consideration therefor, without being accountable to any Person for the value thereof or any amount except the amount actually received by the Lender and without releasing any other guarantor, covenantor, surety or other Person from this Mortgage or from the performance of the covenants contained herein and no such compounding, compromise or release will diminish the security created hereby against the Property remaining unreleased or any other security held by the Lender.

11.7 No Merger or Novation

Neither the taking of any judgment under a covenant herein contained or otherwise nor the exercise of any power of appointment, seizure, sale or otherwise pursuant hereto or otherwise will operate to extinguish the obligation of the Mortgagor to pay the Obligations or as a merger of any covenant herein contained or otherwise, and the acceptance of any payment or alternate security will not constitute or create a novation.

11.8 Commitment

The terms and conditions contained in the Commitment will not merge with this Mortgage and will survive the execution and delivery of this Mortgage except insofar as such terms and conditions are inconsistent with the terms and conditions contained herein, in which case the terms and conditions contained in the Commitment will govern; provided, however, that the inclusion of supplemental rights or remedies in favour of the Lender in the Commitment or other agreement will not be deemed a conflict with this Mortgage.

11.9 Alteration or Extension of Mortgage

The Lender in its discretion and with or without notice to or the consent of the Mortgagor may enter into an agreement with anyone who has assumed this Mortgage to grant an extension of time or to change the Interest Rate or to alter in any way the terms of payment or other terms of this Mortgage, or take any additional security, without releasing the Mortgagor from its obligations hereunder, or the performance of any covenants herein, and may compound with or release anyone who has assumed this Mortgage or surrender, release or abandon or omit to perfect or enforce any security, remedy or proceeding which the Lender may now or hereafter hold, take or acquire or discharge part or all of the Property and may apply all money received under this Mortgage as the Lender may think best, without prejudice to or in any way limiting or lessening the liability of the Mortgagor or any other Person liable for payment.

11.10 Waiver

The Lender may waive any default by the Mortgagor in the observance or performance of any of the terms hereof and of any other agreement or instrument of which the Lender has the benefit and may waive its rights arising from the occurrence of any Event of Default; provided that each such waiver will be effective against the Lender only if given by the Lender in writing and no such waiver and no act or omission of the Lender will extend to or be taken in any manner whatsoever to affect any subsequent default or occurrence or the rights arising therefrom or to effect a waiver thereof. The inspection or approval by the Lender of any document or matter or thing done by the Mortgagor will not be deemed to be a warranty or holding out of the adequacy, effectiveness or binding effect of such document, matter or thing or a waiver of the Mortgagor's obligations hereunder.

11.11 Approvals and Consents

Any approval, consent or permission to be given by the Lender hereunder will only be effective if given in writing, and the Lender will and does have the absolute and uncontrolled discretion as to the exercise thereof, to the mode of and time for exercise thereof and, in the absence of fraud, the Lender will be in no way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

11.12 Notices

Except as otherwise provided herein, any notice or other communication herein required or permitted to be given will be in writing and any notice or other document herein required or permitted to be given or delivered may be personally given or delivered or sent by prepaid registered mail if mailed at a Post Office in Vancouver, British Columbia to the applicable Obligors, addressed to the Mortgagor at the Mortgagor's Address and will be personally delivered to the Lender at the Lender's Address, or to such other address as the Mortgagor or the Lender may designate to the other by notice in writing; and any notice or other document, if so sent by mail, will be deemed to have been given to the applicable Obligors at the expiration of the second Business Day after the date of mailing, unless there exists at the time of mailing, or within three Business Days thereafter, a labour dispute or other event which would adversely affect the normal delivery of such notice or other document by Canada Post in which case such notice or other document will only be deemed to be given or delivered when actually given or delivered.

11.13 Further Assurances

The Mortgagor covenants and agrees with the Lender that the Mortgagor will, forthwith at any time and from time to time at the request of the Lender, execute and deliver to the Lender all deeds and documents and do all acts and things which the Lender may reasonably require for the purpose of mortgaging, pledging, assuring, confirming and transferring to the Lender the Property and carrying into effect the purposes of this Mortgage.

11.14 Assignment

Notwithstanding any other provision of this Mortgage, the Lender may assign, grant, pledge, sell or transfer any participation in this Mortgage or any power, remedy or right of the Lender hereunder or any of its interest herein to any Person, in accordance with the Commitment, and the obligations of the Mortgagor under this Mortgage are undertaken for the benefit of each such Person as well as the Lender.

11.15 Successors and Assigns

This Mortgage will be binding upon the Mortgagor, and its successors and assigns, and will enure to the benefit of the Lender, and its successors and assigns, and to any Person to whom the Lender may grant any participation in this Mortgage or any power, remedy or right of the Lender hereunder or any of its interest herein.

11.16 Multiple Mortgagor

If more than one Person executed this Mortgage as the Mortgagor the provisions hereof will be read with all grammatical changes thereby rendered necessary and each reference to the Mortgagor will include each and every such Person jointly and severally and all covenants and agreements herein contained will be deemed to be joint and several covenants and agreements of each such Person and of any other Person who may have covenanted with the Lender to pay the Obligations.

11.17 Lender's Records

The records of the Lender as to the amount outstanding hereunder at any time, the occurrence of any Event of Default or as to any demand having been made upon the Mortgagor will be regarded as constituting *prima facie* proof of the relevant fact or facts without any further or other proof.

11.18 Severability

If any provision of this Mortgage or any part hereof will be found or determined to be invalid, illegal or unenforceable it will be severable from this Mortgage and the remainder of this Mortgage will be construed as if such invalid, illegal or unenforceable provision or part had been deleted herefrom.

11.19 Time of the Essence

Time is of the essence of this Mortgage.

11.20 Applicable Law

This Mortgage and the rights and obligations hereunder will be governed by and be construed according to the laws of the Province of British Columbia.

11.21 Jurisdiction

The Mortgagor irrevocably agrees that any legal action or proceeding with respect to this Mortgage may be brought in the courts of the Province of British Columbia or in such other court or courts as the Lender in its sole discretion may elect and, by execution and delivery of this Mortgage, the Mortgagor irrevocably submits to each such jurisdiction.

11.22 Exclusion of Rights

The Obligations will be paid without regard to any equities between the Mortgagor and the Lender or any other Person or any right of set-off or counterclaim.

11.23 Deed

This Mortgage is intended to be, and to be effective as, a deed.

11.24 Conflict

It is acknowledged and agreed that the Mortgage Form is a summary of terms contained in these express mortgage terms and consequently in the event of conflict between these express mortgage terms and the Mortgage Form, these express mortgage terms will prevail and the Mortgage Form will be interpreted in accordance with the definitions included in, and the terms of, these express mortgage terms.

## ARTICLE 12
## STRATA LOTS

12.1 Application

This Article will not apply unless the Lands include, or in the future include, a strata lot as defined in the *Strata Property Act* (British Columbia) (the "**Act**")).

12.2 Covenants of Mortgagor

The Mortgagor covenants with the Lender:

(1) to observe and perform all the covenants and provisions required to be observed and performed under or pursuant to the terms of this Mortgage, and of the Act, and of any by-laws that may be passed by the strata corporation (the "**Strata Corporation**") of which the Mortgagor is a member by virtue of its ownership of the strata lot or lots hereby charged (the "**Strata Lots**");

(2) on or before the due dates thereof, to pay each and every assessment, contribution or levy made against the Strata Lots and interest in the common property hereby charged by the Strata Corporation. If the Mortgagor fails to pay any one or more of such assessments, contributions or levies on or before their due date, such failure will constitute a Default under this Mortgage. Upon the failure of the Mortgagor to pay such assessment, contribution or levy, the Lender may make such payment but will not be obliged to do so, and any amount so paid by the Lender will be added to and form part of the Principal Amount and will be paid to the Lender together with interest thereon forthwith without demand;

(3) as a member of the Strata Corporation to seek the full compliance by the Strata Corporation with the aforementioned covenants and agreements of the Mortgagor in this Mortgage;

(4) that the power of voting conferred on the Mortgagor by the Act is hereby assigned by the Mortgagor to the Lender and will be exercised by the Lender insofar as is allowed by the Act, but it is agreed that neither this subsection nor anything done by virtue hereof will render the Lender a mortgagee in possession. The Mortgagor hereby acknowledges receipt of written notice that the Lender intends to exercise its power to vote on any matters relating to insurance, maintenance, finance or other matters affecting the security created by this Mortgage, and the Mortgagor agrees that no additional notice need be given to the Mortgagor to permit the Lender to exercise the right and power to vote conferred on the Mortgagor in respect of such matters. It is understood that the Mortgagor may, at any duly called meeting of the Strata Corporation of which the Lender has received written notice, exercise the right to vote on the aforesaid matters if the Lender is not, by its authorized representative, agent or proxy, present at such meeting;

(5) that the right to vote assigned herein to the Lender will not make the Lender in any way responsible to protect the interest of the Mortgagor, and the Lender will not be responsible for any exercise of the right to vote or any failure to exercise the right to vote;

(6) to forward to the Lender within 10 days of demand by the Lender a certificate in Form F of the *Strata Property Regulation* certifying that no money is owing to the Strata Corporation by the Mortgagor;

(7) not to, without the prior written consent of the Lender:

   (a) assign any of the Owner's rights, powers, duties or obligations under the Act or the by-laws created under the Act; or

   (b) give possession of the Strata Lots hereby charged to any Person on the basis of an agreement providing for the purchase of the Strata Lots by the occupier or on the basis of a lease, sub-lease or assignment of lease for a term of three (3) years or more.

12.3 General Provisions

The Mortgagor hereby:

(1) authorizes the Lender in writing to apply at any time and from time to time to the Strata Corporation for certification to the Lender regarding all information and matters referred to in section 59 of the Act;

(2) authorizes the Lender in writing to apply at any time and from time to time to the Strata Corporation to have the by-laws of the Strata Corporation available for inspection pursuant to section 36 of the Act; and

(3) appoints the Lender to be the Mortgagor's agent to examine, inspect and obtain copies of any and all records, minutes, books of account or other documents of any nature and kind whatsoever which the Mortgagor is entitled to examine, inspect or obtain copies of.

## ARTICLE 13
## ASSIGNMENT OF RENTS

13.1 Assignment

The Mortgagor hereby assigns, grants, transfers and sets over to the Lender all right, title, interest and claims of the Mortgagor in and to all rents and other money (collectively, the "**Rents**") due or accruing due or at any time hereafter to become due under each lease, agreement for lease, tenancy agreement, licence, concession, franchise and right of use or occupancy of the Lands or any part thereof of every nature and kind whatsoever, whether verbal, written or otherwise, now or hereafter existing (collectively, the "**Leases**") and each guarantee of or indemnity (collectively, the "**Guarantees**") with respect to each Lease, and each advantage, benefit, power and right derived or to be derived in respect thereof, together with all the right, title and interest of the Mortgagor, as landlord, in the Leases, with full power and authority to collect, demand, distrain for, enforce payment of, give receipts for, receive, recover and sue for any Rents and to take any other measure or do any other act or thing which the Mortgagor would be entitled to take or do but for this Assignment, in the Lender's own name or in the name of and as agent for the Mortgagor as the Lender may elect, for the Lender to have and to hold until all of the Obligations have been fully paid and satisfied.

13.2 Nature of Assignment

The Mortgagor covenants and agrees as follows:

(1) unless otherwise directed by the Lender, the Mortgagor will be permitted and entitled to collect, take and use all Rents until the occurrence of an Event of Default hereunder;

(2) nothing herein contained will have the effect of making the Lender, or its successors or assigns, responsible for the collection of any Rents, or for the performance or observance of any obligation of the Mortgagor under or in respect of any of the Leases or any of the Guarantees, and the Lender will not, by virtue of this Assignment or its receipt of any Rents, become or be deemed to be mortgagee in possession of the Lands or in any way accountable or liable as such and the Lender will not be under any obligation to take any action or exercise any remedy in respect of the collection or recovery of any Rents, or to see to or enforce the performance or observance of any

obligation of any party under or in respect of any of the Leases or any of the Guarantees, and the Lender will be liable to account only for such funds as will actually come into its hands, less proper collection charges, inspection fees and other reasonable expenses of the Lender, and such funds may be applied to any Indebtedness now or hereafter existing of the Mortgagor to the Lender, whether in respect of any of the Obligations or otherwise, in such manner, order and priority and at such times as the Lender in its sole discretion may determine;

(3) it is the intention of the Mortgagor and the Lender that this Assignment will be a present assignment, and the Mortgagor expressly agrees that upon the occurrence of an Event of Default the Lender may, receive and collect any Rents and exercise any other power, right or remedy assigned to the Lender hereunder, and this Assignment will and does constitute an irrevocable direction and full authority to each party to the Leases and the Guarantees to pay all Rents to the Lender upon demand and without the necessity of any further authorization or consent from the Mortgagor; and

(4) this Assignment will not in any manner hinder or prejudice the Lender from realizing on the Lands or any part thereof or from exercising any right, power or remedy of the Lender under the Mortgage and the Lender will be entitled to exercise any right, power or remedy of the Lender hereunder in any order as the Lender in its sole discretion may determine, notwithstanding any rule of law or equity to the contrary.

13.3 Representations and Warranties of Mortgagor

The Mortgagor makes the following representations and warranties to the Lender which will be true and correct in all respects as of the date hereof:

(1) none of the Leases, the Guarantees or the Rents are subject to any other assignment or any claim, charge, lien, set off or other encumbrance other than any encumbrance in favour of the Lender;

(2) no Rents have been paid more than one month in advance of the due date thereof or in an amount referable to a period exceeding one month;

(3) there is no existing default, whether in payment of any Rents or otherwise, under any of the Leases or any of the Guarantees by any party thereto; and

(4) there is no outstanding dispute under any of the Leases between any of the parties thereto.

13.4 Covenants of Mortgagor

The Mortgagor covenants and agrees with the Lender that so long as any of the Obligations will remain unpaid:

(1) the Mortgagor will not, without the prior written consent of the Lender, accept or require prepayment of any Rents more than one month in advance of the due date thereof or in an amount referable to a period exceeding one month except Rents paid on account of arrears in such Rents, and will otherwise accept and require payment of Rents only in the amounts and at the times and in the manner stipulated in the Leases;

(2) the Mortgagor will at all times observe and perform each of its obligations under the Leases and the Guarantees 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, and will indemnify the Lender from the consequences of any failure to do so; and

(3) the Mortgagor will at any time and from time to time upon the written request of the Lender forthwith furnish to the Lender a copy of each Lease and each Guarantee and a current list of all of the Leases, any Rents payable thereunder and any Guarantees in respect thereof in such detail and such form as the Lender may require.

## ARTICLE 14
## PARTIAL DISCHARGES

14.1 Partial Discharges

The Lender will execute and deliver to the Mortgagor a partial discharge of this Mortgage from any lot or strata lot (each a "**Lot**") into which the Lands are subdivided, provided that:

(1) the Lands have been subdivided pursuant to a plan of subdivision approved by the Lender;

(2) no Event of Default or event which with the giving of notice, the passage of time, or both, would constitute an Event of Default has occurred and is continuing;

(3) if required by the Lender, the Mortgagor has delivered to the Lender a written request for such partial discharge, specifically describing such Lot and containing such other information as the Lender may from time to time require;

(4) the Lender has received payment from the Mortgagor of all Costs in respect of such partial discharge and the discharge fee, if any, payable to the Lender by the Mortgagor with respect to such partial discharge;

(5) all amounts accrued for interest under the Mortgage are paid to the date such partial discharge is delivered (whether or not such date is an Interest Payment Date);

(6) the Lender has received in respect of such Lot the amount as required by the Commitment; and

(7) such Lot is sold for not less than 95% of the appraised strata unit value as required by the Commitment.

14.2 Application of Proceeds

All amounts received by the Lender from the sale of any Lot will be applied by the Lender on account of the Obligations in such manner, order and priority as the Lender in its sole discretion determines.

IN WITNESS WHEREOF this Mortgage has been executed by the Mortgagor on the attached Mortgage Form as of the date set out in Item 12 of the Mortgage Form.

Land Title Act
**Charge**
General Instrument – Part 1

NEW WESTMINSTER LAND TITLE OFFICE
OCT 26 2021 15:51:26.001
**CA9459739-CA9459740**

1. Application

**OWEN BIRD LAW CORPORATION**
**2900 - 595 Burrard Street**
**VANCOUVER BC V7X 1J5**
**(604) 691-7528**

2. Description of Land

| PID/Plan Number | Legal Description |
|---|---|
| **006-721-397** | **LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92** |

3. Nature of Interest

| Type | Number | Additional Information |
|---|---|---|
| **TRANSFER OF CHARGE** | **CA7337616** | |
| **TRANSFER OF CHARGE** | **CA7337617** | |

4. Terms

Part 2 of this instrument consists of:
**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**CMLS FINANCIAL LTD., NO.BC0124226**

6. Transferee(s)

**DOMAIN MORTGAGE CORP.** BC1140295
1100 – 1040 WEST GEORGIA STREET
VANCOUVER BC V6E 4H1

7. Additional or Modified Terms

bc Land Title & Survey

Land Title Act
**Charge**
General Instrument – Part 1

8. Execution(s)

This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

| Witnessing Officer Signature | Execution Date | Transferor Signature(s) |
|---|---|---|
| **CHARLIE Z.L. SHI**<br>**Barrister & Solicitor**<br>Alexander Holburn Beaudin Lang LLP<br>2700 - 700 West Georgia St.<br>VANCOUVER BC V7Y 1B8 | YYYY-MM-DD<br>**2021-10-21** | **CMLS FINANCIAL LTD.**<br>By their Authorized Signatory<br>**Neil Xue, Director** |

**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.

**Electronic Signature**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

**Anthony Richard Anderson Z5WMC2**

**Digitally signed by Anthony Richard Anderson Z5WMC2**
**Date: 2021-10-26 15:42:07 -07:00**

Land Title Act

**Charge**

General Instrument – Part 2

In consideration of **$21,676,019.13 and other valuable consideration**, the Transferor hereby assigns, transfers, and sets unto the Transferee of Charge(s) described in Item 3 of the Form C to which this is attached.

**Without limiting the generality of the foregoing, the Transferor hereby assigns, transfers and sets unto the Transferee all monies that may hereafter become due or owing in respect of the Charge(s) described in Item 3 of the Form C which this is attached (collectively, the "Charges"), and the full benefit of all powers and of all covenants contained in the Charges, and also the full power and authority to use the name of the Transferor for enforcing the performance of the covenants and other provisions in the Charges. In construing this instrument, the words "Transferor" and "Transferee", and all personal pronouns, shall be read as the number and gender of the party or parties referred to herein requires and all necessary grammatical changes, as the context requires, shall be deemed to be made. The provisions of this instrument shall enure to and be binding upon the executors, administrators, successors and assigns of each party.**

Land Title Act
**Charge**
General Instrument – Part 1

NEW WESTMINSTER LAND TITLE OFFICE
OCT 26 2021 15:59:59.001
**CA9459782**

1. Application

**OWEN BIRD LAW CORPORATION**
**2900 - 595 Burrard Street**
**VANCOUVER BC V7X 1J5**
**(604) 691-7528**

2. Description of Land

| PID/Plan Number | Legal Description |
|---|---|
| **006-721-397** | **LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92** |

3. Nature of Interest

| Type | Number | Additional Information |
|---|---|---|
| **MODIFICATION** | **CA7337616** | **(as assigned by CA9459739)** |

4. Terms

Part 2 of this instrument consists of:
**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**PORT CAPITAL DEVELOPMENT (EV) INC., NO.BC1005887**

6. Transferee(s)

**DOMAIN MORTGAGE CORP.** BC1140295
1100 – 1040 WEST GEORGIA STREET
VANCOUVER BC V6E 4H1

7. Additional or Modified Terms

Land Title Act
**Charge**
General Instrument – Part 1

8. Execution(s)

This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

| Witnessing Officer Signature | Execution Date | Transferor Signature(s) |
|---|---|---|
| **EMMA T.T.Y. NEWBERY**<br>**Barrister & Solicitor**<br>DENTONS CANADA LLP<br>20th Floor, 250 Howe Street<br>Vancouver BC V6C 3R8<br><br>Telephone: (604) 687-4460 | YYYY-MM-DD<br>**2021-10-22** | **PORT CAPITAL DEVELOPMENT (EV) INC.**<br>By their Authorized Signatory<br><br>**Macario Teodoro Reyes, Director** |

**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.

| Witnessing Officer Signature | Execution Date | Transferor Signature(s) |
|---|---|---|
| **ANTHONY R. ANDERSON**<br>**Barrister & Solicitor**<br>P.O. BOX 49130<br>2900-595 BURRARD STREET<br>VANCOUVER BC V7X 1J5<br><br>604 691 7528 | YYYY-MM-DD<br>**2021-10-25** | **Domain Mortgage Corp.**<br>As Transferee<br>By their Authorized Signatory<br><br>**Alexander Hayne, Director** |

**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.

**Electronic Signature**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

**Anthony Richard Anderson Z5WMC2**

**Digitally signed by Anthony Richard Anderson Z5WMC2**
**Date: 2021-10-26 15:55:23 -07:00**

**TERMS OF INSTRUMENT**

**THIS MODIFICATION AGREEMENT**
Dated for reference the 22nd day of October, 2021

**BETWEEN:**

**PORT CAPITAL DEVELOPMENT (EV) INC.**, (Incorporation No. BC1005887) a company duly incorporated under the laws of the Province of British Columbia, of 325 West 4th Avenue, Vancouver, BC V5Y 1H3

(hereinafter referred to as the "**Mortgagor**")

**OF THE FIRST PART**

**AND:**

**DOMAIN MORTGAGE CORP. (Incorporation No. BC1140295)**, company duly incorporated under the laws of the Province of British Columbia, of 1100 – 1040 W. Georgia St., Vancouver, BC V6E 4H1

(hereinafter referred to as the "**Mortgagee**")

**OF THE SECOND PART**

**RECITALS:**

A. By Mortgage registered in the New Westminster Land Title Office (the "**LTO**") under registration number CA7337616, as assigned by CMLS Financial Ltd. to the Mortgagee under registration number (**CA9459739**) pursuant to an Assignment of Security (together referred to as the "**Original Mortgage**"), the Mortgagor mortgaged to the Mortgagee all of its interest in those lands and premises described in Section 2 of the Form C, being Part 1 of this instrument (the "**Lands**").

B. For the purposes of this Modification Agreement, the Original Mortgage and this Modification Agreement are collectively referred to as the "**Mortgage**".

C. The Mortgagor and the Mortgagee are entering into this Modification Agreement to amend and vary certain provisions of the Original Mortgage.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and other good and valuable consideration now paid by each party to the other (the receipt and sufficiency of which is herein acknowledged) the parties covenant and agree each with the other as follow:

1. The provisions contained in this Modification Agreement shall apply as and from the date of execution of this Modification Agreement by the Mortgagor, and the Original Mortgage is accordingly amended and modified as of such date.

2. The definition of "**Commitment**" set out in Section 1.1(6) of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

"(6) "**Commitment**" means, collectively, the the mortgage loan commitment dated July 4, 2018 issued by CMLS Financial Ltd. (including all amendments thereto, collectively, the "**CMLS Commitment**") to the Borrower and accepted by the Borrower and the Covenantors, as transferred, assignment, supplemented, amended, modified, extended, renewed, restated or replaced from time to time and the Third Revised Commitment Letter dated July 30, 2021 issued by the Mortgagee (including all amendments thereto, collectively, the "**Domain Commitment**") to the to the Borrower and accepted by the Borrower and the Covenantors as transferred, assignment, supplemented, amended, modified, extended, renewed, restated or replaced from time to time and two promissory notes each dated October 22, 2021 in the amounts of CAD$8,399,060.03 and CAD$2,150,000 respectively, granted by the Borrower in favour of Domain Mortgage Corp. (collectively, as the same may be transferred, assigned, supplemented, amended, modified, extended, renewed, restated or replaced from time to time;"

3. The definition of "**Interest Rate**" set out in Section 1.1(20) of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

"(20) "**Interest Rate**" means the rate of interest *per annum* which is equal to 24.00% per annum, compounded monthly or such other rate as may be set out in the Commitment."

4. The definition of "**Loan**" set out in Section 1.1(25) of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

"(25) "**Loan**" means the means the loan in the maximum sum of $25,249,060.03 to be made by the Lender to the Borrower pursuant to the Commitment."

5. Section 11.8 of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

"11.8 <u>Commitment</u>

The Lender and the Borrower agree that the accepted terms and conditions of the Commitment shall survive funding of the Loan secured by this Mortgage and continue to be in full force and effect after said funding. Default by the Borrower of any of the terms or requirements contained in the Commitment constitute a Default hereunder. In the event there is a conflict between the terms and conditions of this Mortgage and the Commitment, then the Lender, at its sole and absolute discretion, will determine which document will prevail. For clarity, in the event of a conflict between the terms and conditions of CMLS Commitment and the Domain Commitment, the Lender, at its sole and absolute discretion, will determine which document will prevail. There will be no conflict if the terms and conditions of the Commitment should enlarge or clarify the terms and conditions of this Mortgage, or vice versa."

6. The Mortgagor covenants and agrees to observe, perform and be bound by every term, covenant and condition contained in the Original Mortgage, as modified herein, or in any other agreement between the Mortgagor and Mortgagee. Breach or default by the Mortgagor of any of such terms, covenants and conditions shall constitute a default under the Mortgage.

7. In the event there is a conflict between the terms and conditions of the Mortgage and any other agreement referred to in paragraph 3 above, then the Mortgagee, at its discretion, shall determine which document shall prevail. There will be no conflict if the terms and conditions of such other agreement should enlarge or clarify the terms and conditions of the Mortgage.

8. All covenants, clauses, provisos, powers, matters and things whatsoever contained in the Original Mortgage save as modified, altered or amended by this Modification Agreement shall continue in full force and effect and shall have application to the amounts and date and terms and payments herein contained; **PROVIDED HOWEVER**, that nothing in this Modification Agreement shall create any merger or alter or prejudice the rights of the Mortgagee as regards any security collateral to the Mortgage, or as regards to any surety, covenantor, guarantor or subsequent encumbrancer, or any person not a party hereto, liable to pay the Indebtedness all of which said rights and priorities are hereby reserved.

9. All parties acknowledge and agree that this Modification Agreement shall not constitute a novation.

10. The provisions of this Modification Agreement shall be binding upon the parties hereto, and their respective administrators, successors or assigns.

11. Wherever the singular or the masculine are used in this Modification Agreement, the same shall be construed as meaning the plural or feminine or body corporate and vice versa where the context requires.

12. The recitals shall form a part of this Modification Agreement with respect to the interpretation of this Modification Agreement.

 74

13. To the extent permitted by applicable law, the parties waive any provision of law that renders any provision of this Modification Agreement invalid or unenforceable in any respect.

**END OF DOCUMENT**

75

Land Title Act
**Charge**
General Instrument – Part 1

NEW WESTMINSTER LAND TITLE OFFICE
MAR 16 2022 16:36:54.001
**CA9790630**

1. Application

**OWEN BIRD LAW CORPORATION**
**2900 - 595 Burrard Street**
**VANCOUVER BC V7X 1J5**
**(604) 691-7528**

2. Description of Land

| PID/Plan Number | Legal Description |
|---|---|
| **006-721-397** | **LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92** |

3. Nature of Interest

| Type | Number | Additional Information |
|---|---|---|
| **MODIFICATION** | **CA7337616** | **(as assigned by CA9459739, as modified by CA9459782)** |

4. Terms

Part 2 of this instrument consists of:
**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**PORT CAPITAL DEVELOPMENT (EV) INC., NO.BC1005887**

6. Transferee(s)

**DOMAIN MORTGAGE CORP.** BC1140295
1100 – 1040 WEST GEORGIA STREET
VANCOUVER BC V6E 4H1

7. Additional or Modified Terms

Land Title Act
**Charge**
General Instrument – Part 1

8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

| Witnessing Officer Signature | Execution Date | Transferor Signature(s) |
|---|---|---|
| **KYLE FALK-VARCOE**<br>**Commissioner for Taking Affidavits for British Columbia**<br>2500 - 666 Burrard Street<br>Vancouver BC V6C 2X8<br><br>Articled Student<br>Expires August 31, 2022 | YYYY-MM-DD<br>**2022-03-14** | **PORT CAPITAL DEVELOPMENT (EV) INC.**<br>By their Authorized Signatory<br><br>**Macario Teodoro Reyes** |

**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.

**Electronic Signature**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

**Anthony Richard Anderson Z5WMC2**

**Digitally signed by Anthony Richard Anderson Z5WMC2**
**Date: 2022-03-16 16:36:36 -07:00**

**TERMS OF INSTRUMENT**

**THIS MODIFICATION AGREEMENT**
Dated for reference the 16th day of March, 2022

**BETWEEN:**

**PORT CAPITAL DEVELOPMENT (EV) INC.**, (Incorporation No. BC1005887) a company duly incorporated under the laws of the Province of British Columbia, of 325 West 4th Avenue, Vancouver, BC V5Y 1H3

(hereinafter referred to as the "**Mortgagor**")

**OF THE FIRST PART**

**AND:**

**DOMAIN MORTGAGE CORP. (Incorporation No. BC1140295)**, company duly incorporated under the laws of the Province of British Columbia, of 1100 – 1040 W. Georgia St., Vancouver, BC V6E 4H1

(hereinafter referred to as the "**Mortgagee**")

**OF THE SECOND PART**

**RECITALS:**

A. By Mortgage registered in the New Westminster Land Title Office (the "**LTO**") under registration number CA7337616, as assigned by CMLS Financial Ltd. to the Mortgagee by way of a Transfer of Charge under registration number CA9459739 pursuant to an Assignment of Security dated October 26, 2021 (together referred to as the "**Original Mortgage**"), and as modified by a Modification Agreement registered in the LTO under registration number CA9459782 (the "**Prior Modification Agreement**") the Mortgagor mortgaged to the Mortgagee all of its interest in those lands and premises described in Section 2 of the Form C, being Part 1 of this instrument (the "**Lands**").

B. For the purposes of this Modification Agreement, the Original Mortgage, the Prior Modification Agreement and this Modification Agreement are collectively referred to as the "**Mortgage**".

C. The Mortgagor and the Mortgagee are entering into this Modification Agreement to amend and vary certain provisions of the Original Mortgage.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and other good and valuable consideration now paid by each party to the other (the receipt and sufficiency of which is herein acknowledged) the parties covenant and agree each with the other as follow:

1. The provisions contained in this Modification Agreement shall apply as and from the date of execution of this Modification Agreement by the Mortgagor, and the Mortgage is accordingly amended and modified as of such date.

2. The definition of "**Commitment**" set out in Section 1.1(6) of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

> "(6) "**Commitment**" means, collectively, the the mortgage loan commitment dated July 4, 2018 issued by CMLS Financial Ltd. to the Borrower and accepted by the Borrower and the Covenantors, as transferred, assigned, supplemented, amended, modified, extended, renewed, restated or replaced from time to time (collectively, the "**CMLS Commitment**"); the Third Revised Commitment Letter dated July 30, 2021 issued by the Mortgagee to the Borrower and accepted by the Borrower and the Covenantors as transferred, assigned, supplemented, amended, modified, extended, renewed, restated or replaced from time to time; two promissory notes each dated October 22, 2021 in the amounts of CAD$8,399,060.03 and CAD$2,150,000 respectively, granted by the Borrower in

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favour of the Mortgagee; and the Commitment Letter dated February 7th, 2022 issued by the Mortgagee to the Borrower and accepted by the Borrower and the Covenantors as transferred, assigned, supplemented, amended, modified, extended, renewed, restated or replaced from time to time, including, but not limited, as amended pursuant to the Amendment to Commitment Letter dated February 11, 2022; as all of the forgoing may, collectively and respectively, be transferred, assigned, supplemented, amended, modified, extended, renewed, restated or replaced from time to time;"

3. The definition of "**Interest Rate**" set out in Section 1.1(20) of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

"(20) "**Interest Rate**" means the rate of interest *per annum* which is equal to 24.00% per annum, compounded monthly or such other rate as may be set out in the Commitment."

4. The definition of "**Loan**" set out in Section 1.1(25) of the Mortgage Part 2 – Form B comprised in the Original Mortgage is deleted in its entirety and replaced with the following:

"(25) "**Loan**" means the means the loan in the maximum sum of $27,049,060.03 to be made by the Lender to the Borrower pursuant to the Commitment."

5. The Mortgagor covenants and agrees to observe, perform and be bound by every term, covenant and condition contained in the Original Mortgage, as modified herein, or in any other agreement between the Mortgagor and Mortgagee. Breach or default by the Mortgagor of any of such terms, covenants and conditions shall constitute a default under the Mortgage.

6. In the event there is a conflict between the terms and conditions of the Mortgage and any other agreement referred to in paragraph 2 above, then the Mortgagee, at its discretion, shall determine which document shall prevail. There will be no conflict if the terms and conditions of such other agreement should enlarge or clarify the terms and conditions of the Mortgage.

7. All covenants, clauses, provisos, powers, matters and things whatsoever contained in the Original Mortgage save as modified, altered or amended by this Modification Agreement shall continue in full force and effect and shall have application to the amounts and date and terms and payments herein contained; **PROVIDED HOWEVER**, that nothing in this Modification Agreement shall create any merger or alter or prejudice the rights of the Mortgagee as regards any security collateral to the Mortgage, or as regards to any surety, covenantor, guarantor or subsequent encumbrancer, or any person not a party hereto, liable to pay the Indebtedness all of which said rights and priorities are hereby reserved.

8. All parties acknowledge and agree that this Modification Agreement shall not constitute a novation.

9. The provisions of this Modification Agreement shall be binding upon the parties hereto, and their respective administrators, successors or assigns.

10. Wherever the singular or the masculine are used in this Modification Agreement, the same shall be construed as meaning the plural or feminine or body corporate and vice versa where the context requires.

11. The recitals shall form a part of this Modification Agreement with respect to the interpretation of this Modification Agreement.

12. To the extent permitted by applicable law, the parties waive any provision of law that renders any provision of this Modification Agreement invalid or unenforceable in any respect.

**END OF DOCUMENT**

Land Title Act
**Charge**
General Instrument – Part 1

**NEW WESTMINSTER LAND TITLE OFFICE**
OCT 26 2021 16:47:52.001
**CA9459931-CA9459932**

1. Application

**Mona Ying (Andrea Mak)**
**LAWSON LUNDELL LLP, Barristers & Solicitors**
**1600-925 West Georgia Street**
**Vancouver BC V6E 3L2**
**604-685-3456**

File No. 27149-137705

2. Description of Land

| PID/Plan Number | Legal Description |
|---|---|
| **006-721-397** | **LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92** |

3. Nature of Interest

| Type | Number | Additional Information |
|---|---|---|
| **PRIORITY AGREEMENT** | | **Granting Mortgage CA7337616, as assigned by CA9459739, (as modified by CA9459782) priority over Mortgage CA6395613 and Assignment of Rents CA6395614** |
| **PRIORITY AGREEMENT** | | **Granting Assignment of Rents CA7337617 (as assigned by CA9459740) priority over Mortgage CA6395613 and Assignment of Rents CA6395614** |

4. Terms

Part 2 of this instrument consists of:
**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**AVIVA INSURANCE COMPANY OF CANADA, NO.A0051421**

6. Transferee(s)

**DOMAIN MORTGAGE CORP.** BC1140295
SUITE 1100 - 1040 WEST GEORGIA STREET
VANCOUVER BC V6E 4H1

7. Additional or Modified Terms

This is Exhibit " E " referred to in the affidavit of Lisa Ward sworn before me at Vancouver BC this 5th day of July, 2022

A Commissioner for taking Affidavits within British Columbia

Land Title Act
**Charge**
General Instrument – Part 1

8. Execution(s)

This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

| Witnessing Officer Signature | Execution Date | Transferor Signature(s) |
|---|---|---|
| **Uppkar Dosanjh**<br>**Commissioner for Taking Affidavits for British Columbia**<br>520 - 1130 West Pender Street<br>Vancouver BC V6E 4A4<br><br>My Commission expires June 30, 2022 | YYYY-MM-DD<br>**2021-10-18** | **Aviva Insurance Company of Canada**<br>By their Authorized Signatory<br><br>**Tom Reeves, Aviva Insurance Company of Canada** |

**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.

**Electronic Signature**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

**Tai-Lun Ying SELYQW**

Digitally signed by Tai-Lun Ying SELYQW
Date: 2021-10-26 16:36:17 -07:00

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## PART 2 – EXPRESS CHARGE TERMS

## PRIORITY/SUBORDINATION AGREEMENT

This Agreement is dated for reference October 22, 2021

BETWEEN:

**AVIVA INSURANCE COMPANY OF CANADA**
c/o Westmount West Services Inc.
Suite 520 – 1130 West Pender
Vancouver, British Columbia, V6E 4A4

AND:

**DOMAIN MORTGAGE CORP.**
Suite 1100 - 1040 West Georgia Street
Vancouver, British Columbia, V6E 4H1

WHEREAS:

A. The Debtor has granted security to the Grantor.

B. The Debtor has also granted security to the Senior Creditor.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the sum of $10.00 now paid by the Senior Creditor to the Grantor and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Senior Creditor and the Grantor covenant and agree as follows:

**1. DEFINED TERMS**

1.1 Defined Terms. The terms defined in Section 5 of this Agreement will have those defined meanings unless the context otherwise requires.

**2. GRANT OF PRIORITY**

2.1 General. For valuable consideration the Senior Creditor and the Grantor hereby agree as follows:

(a) Grantor hereby grants priority to the Senior Creditor's Charges over the Grantor's Charges, and subordinates the Grantor's Charges to the Senior Creditor's Charges with respect to the Debtor's Property in all respects to the extent of the principal amount of $14,700,000 plus:

(i) interest thereon at the rate set out in the Senior Creditor's Commitment Letter (as at the date of this Agreement);

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(ii) protective disbursements; and

(iii) related costs and expenses to which the Senior Creditor is entitled under the Senior Creditor's Security Documents and any other documents relating to the Debtor to Senior Creditor Liabilities,

which priority limit will reduce to the extent that:

(A) principal is repaid to the Senior Creditor on account of non-revolving Debtor to Senior Creditor Liabilities; or

(B) the authorized limit of the principal amount of the non-revolving Debtor to Senior Creditor Liabilities is permanently reduced,

(such aggregate sum as may be reduced being, the "**Senior Creditor Priority Limit**"); and

(b) After the Senior Creditor Priority Limit is reached, for the next $8,005,201, the Senior Creditor's Charges as to 65% and the Grantor's Charges as to 35% shall rank *pari passu* (the "**Pari Passu Limit**"); and

(c) After the Pari Passu Limit is reached, the Senior Creditor hereby grants priority to the Grantor's Charges over the Senior Creditor's Charges, and subordinates the Senior Creditor's Charges to the Grantor's Charges with respect to the Debtor's Property in all respects.

2.2 Grantor Standstill. The Grantor covenants and agrees with the Senior Creditor that, until that date which is the earlier to occur of:

(a) the Grantor obtaining the prior written consent of the Senior Creditor to take Action;

(b) the Debtor to Senior Creditor Liabilities Repayment;

(c) the Senior Creditor commencing Action and only if or so long as such Action is being continued, or

(d) 90 days after written notice is given by the Grantor to the Senior Creditor of a default having occurred under the Grantor's Security Documents unless such default is cured by the Debtor prior to the expiry of such 90 day period,

the Grantor shall not be entitled to take any Action.

2.3 Trust. All proceeds arising from the Debtor's Property received by the Grantor in connection with any enforcement of or realization on the Grantor's Charges, and subject to Section 2.8, all payments and other assets received by the Grantor on account of the Debtor to Grantor Liabilities will be held by the Grantor in trust for the Senior Creditor so as to give effect to the priorities provided for herein and will be paid over or otherwise provided to the Senior Creditor forthwith upon demand.

2.4 Circular Priorities. If any person, firm or corporation other than a party hereto is found by a court of competent jurisdiction to have a right to the Debtor's Property in priority to the Senior Creditor but not in priority to the Grantor, then this Agreement will not apply so as to diminish the rights (as those rights would have been but for this Agreement) of the Grantor with respect to such Debtor's Property unless the Senior Creditor is diligently contesting such finding and has provided the Grantor with a satisfactory indemnity.

2.5 Irrelevant Events and Circumstances. The grant of priority provided for herein will apply in all events and circumstances regardless of:

(a) the dates of execution, delivery and registration of the Grantor's Security Documents and the Senior Creditor's Security Documents, and the dates of creation, attachment, perfection and existence of the Grantor's Charges and the Senior Creditor's Charges;

(b) the dates of all past, present and future advances, re-advances and extensions of credit made by the Grantor or the Senior Creditor for the benefit of the Debtor, and the dates of all other past, present and future liabilities incurred by the Debtor in favour of the Grantor or the Senior Creditor;

(c) the dates of any past, present or future defaults by the Debtor under the Grantor's Security Documents or the Senior Creditor's Security Documents, and the dates of crystallisation of any floating charges comprised in the Grantor's Charges or the Senior Creditor's Charges;

(d) the dates any demands for payment are made, the dates any notices are given, and any failure to make or give any such demands or notices;

(e) any contrary intention expressed in the Senior Creditor's Security Documents, the Grantor's Security Documents or any other documents; and

(f) any priority granted by any principle of law or equity or any statute, including the *Bank Act* (Canada) and applicable personal property security legislation.

2.6 Paramountcy of this Agreement. If there is a conflict or inconsistency between the provisions of this Agreement and the provisions of any of the Grantor's Security Documents, the provisions of this Agreement will prevail to the extent necessary to resolve such conflict or inconsistency so long as this Agreement is in force.

2.7 Postponement of Debtor to Grantor Liabilities. Subject to Section 2.8, the Grantor postpones payment of the Debtor to Grantor Liabilities to the prior payment and satisfaction of the Debtor to Senior Creditor Liabilities.

2.8 Permitted Payments to Grantor. Notwithstanding Sections 2.3 and 2.7, until the Senior Creditor has given notice to the Grantor that the Debtor is in default under the Senior Creditor's Commitment Letter or the Senior Creditor's Security Documents, the Debtor is entitled to pay and the Grantor entitled to accept and retain payment of all fees and premiums payable by the Debtor to the Grantor in connection with the Grantor's Deposit Protection

Insurance Facility. Upon the Senior Creditor giving notice to the Grantor that the Debtor is in default under the Senior Creditor's Commitment Letter or Senior Creditor's Security Documents, the Grantor shall not, without the prior written consent of the Senior Creditor, accept payment of any fees and premiums otherwise payable by the Debtor to the Grantor in connection with the Grantor's Deposit Protection Insurance Facility so long as the default continues. The Senior Creditor agrees to use commercially reasonable efforts to provide notice to the Grantor when such default is remedied or waived however an unintentional failure to provide such notice shall not result in any liability to the Senior Creditor. In addition to the foregoing, nothing in this Agreement will affect the Grantor's entitlement to any payments in respect of any home warranty insurance provided by the Grantor either to the Debtor or on account of the Project or the payment or reimbursement by the Debtor of the Grantor's legal fees.

## 3. REPRESENTATIONS, COVENANTS AND OTHER AGREEMENTS

3.1 Beneficial Ownership. The Grantor represents and warrants that it is the legal and beneficial holder of the Grantor's Security Documents and the Grantor's Charges and the Debtor to Grantor Liabilities, in each case free and clear of all Charges.

3.2 Authority to Grant Priority. The Grantor has good right, full power and lawful authority to enter into this Agreement in such capacity and to agree to the grant of priority, subordination and postponement provided for herein, and all necessary resolutions have been passed and all other necessary steps have been taken to authorize the execution and delivery of this Agreement.

3.3 Authority of Senior Creditor. The Senior Creditor has good right, full power and lawful authority to enter into this Agreement in such capacity and to agree to the grant of priority, subordination and postponement provided for herein, and all necessary resolutions have been passed and all other necessary steps have been taken to authorize the execution and delivery of this Agreement..

3.4 Consent and Waiver by Grantor. The Grantor consents to and waives any default under the Grantor's Security Documents that may otherwise have occurred by reason solely of, the execution, delivery and registration of the Senior Creditor's Security Documents and the creation, attachment, perfection and existence of the Senior Creditor's Charges and the incurring of the Debtor to Senior Creditor Liabilities. **For greater certainty, the redemption of, and the assignment to the Senior Creditor of, the Senior Creditor's Charge are consented to by the Grantor.**

3.5 Consent and Waiver by Senior Creditor. The Senior Creditor consents to, and waives any default under the Senior Creditor's Security Documents that may otherwise have occurred by reason solely of, the execution, delivery and registration of the Grantor's Security Documents and the creation, attachment, perfection and existence of the Grantor's Charges and the incurring of the Debtor to Grantor Liabilities.

3.6 No Contesting. Neither the Senior Creditor nor the Grantor will, in any manner, challenge, contest or bring into question the validity, priority, perfection or enforceability of any of the Grantor's Security Documents or the Senior Creditor's Security Documents, or take any action whereby the priorities set within this Agreement might be impaired or defeated. **In addition, the Grantor agrees not to seek a reverse vesting order in respect of the Debtor's Property.**

3.7 Further Assurances. Each of the parties will forthwith at all times, execute and deliver such further documents and do such other acts as may be required in order to give effect to the intent of this Agreement.

3.8 Exchange of Information. Each of the Grantor and the Senior Creditor may, but will not be obligated to, from time to time upon request from the other provide any or all information (including confidential information) that it may have concerning the Debtor's Property and the debts, liabilities, business and affairs of the Debtor. The Debtor authorizes and consents to this exchange of information.

3.9 Amendment, Waiver and Termination. Neither this Agreement nor any provision hereof may be amended, waived or terminated in any respect except by an instrument in writing executed by the Grantor and the Senior Creditor, provided that no consent of or execution by the Debtor will be necessary to any such amendment, waiver or termination.

3.10 Communication. No notice, consent or other communication in connection herewith will be effective unless it is in writing and is executed by the party giving the same or the party's authorized agent. Any such communication may be given by delivery or fax to the address for the intended party set out on the first page hereof, or a corresponding fax number, or such other address or fax number as the intended party may have given notice of.

3.11 No Duty of Care. Except as expressly provided for in this Agreement, the Senior Creditor owes no duty of care to the Grantor with respect to its dealings with the Debtor under the Senior Creditor's Security Documents.

3.12 Indulgences. The Senior Creditor may grant time, renewals, extensions, releases and discharges to, accept compositions from and otherwise deal with the Debtor as it may see fit, the whole without notice to any other party to this Agreement and without prejudice to or in any way limiting or affecting the rights of the Senior Creditor under this Agreement; provided that such grants, renewals or extensions do not increase the rate of interest pursuant to the Debtor to Senior Creditor Liabilities in existence as at the date of this Agreement or increase the principal sum secured by the Senior Creditor's Security Documents.

3.13 No Benefit. Nothing in this Agreement will be construed as conferring any rights or benefits upon the Debtor. The terms and conditions hereof are for the sole and exclusive benefit of the Senior Creditor and the Grantor.

3.14 Completing Form C. The Grantor authorizes the Senior Creditor or its representative or agent to complete in item 3 of the attached Form C all appropriate Land Title Office registration numbers and dates.

3.15 Consents to Project Development. The Grantor will execute and deliver to the Debtor, or the Senior Creditor, in a timely manner all strata plans, priority agreements, consents and agreements, which are necessary or desirable for the development of any project on the Lands and which have been executed and delivered by the Senior Creditor.

3.16 No Assignment. The Grantor shall not assign the Grantor's Security Documents without the prior written consent of the Senior Creditor and the Senior Creditor shall not assign the Senior Creditor's Security Documents without the prior written consent of the Grantor.

## 4. INTERPRETATION

4.1 Governing Law. This Agreement will be governed by the laws in effect in the Province of British Columbia.

4.2 Successors. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and permitted assigns.

4.3 Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the remaining provisions or the remainder of the impugned provision.

4.4 Number and Gender. Unless the context otherwise requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.

4.5 Headings. Headings have been inserted for convenience of reference only and are not to affect interpretation.

4.6 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all oral agreements, undertakings and understandings among the parties with respect to the subject matter hereof.

4.7 Execution by Debtor. This Agreement will be binding as between the Grantor and the Senior Creditor regardless of whether it is executed by the Debtor.

4.8 Counterparts. This Agreement may be executed in any one or more counterparts, each of which when delivered will be deemed to be an original and all of which together will constitute one and the same document.

## 5. DEFINITIONS

Unless the context otherwise requires, the following terms will have the following meanings herein:

**"this Agreement"**, **"hereby"**, **"herein"**, **"whereof"**, **"hereto"** and **"hereunder"** refer to the whole of this Agreement, including the attachments, all as amended from time to time, and not to any subdivision hereof.

**"Action"** means any action or proceeding, as commenced following the date of this date of this Agreement, to enforce payment of any of the Debtor to Senior Creditor Liabilities or the Debtor to Grantor Liabilities, or any part of parts thereof or to enforce performance by the Debtor of any obligation under the Senior Creditor's Security Documents or the Grantor's Security Documents, including commencement of enforcement proceedings, whether by way of the appointment of a receiver, or enforcing any other rights under the Senior Creditor's Security Documents or the Grantor's Security Documents or any other document or instrument taken or given pursuant thereto including any indemnities or guarantees. For greater certainty, (i) the making of a demand for payment or performance of an obligation, (ii) the acceleration of the time for payment;(iii) the delivery of a notice under Section 244 of the *Bankruptcy and Insolvency Act* (Canada); and (iv) any action or proceeding predating the date of this Agreement shall not constitute an "Action" hereunder.

"**Charge**" means any security interest, mortgage, charge (fixed or floating), pledge, hypothec, lien (statutory or otherwise), assignment, lease, conditional sale or other title retention agreement, trust or other encumbrance of any nature however arising.

"**Debtor**" means, collectively, Evergreen House Development Limited Partnership and Port Capital Development (EV) Inc. (both in its capacity as general partner of Evergreen House Development Limited Partnership and in its individual capacity) and their respective administrators, executors, successors and assigns, and any reference to the Debtor will be deemed to refer to any one or more of them, as the case may be;

"**Debtor's Property**" means:

(a) the Lands and all buildings, fixtures and improvements now or hereafter brought or erected thereon and all rents payable from time to time under all leases of the Lands or any part thereof whether presently existing or arising in the future, and any proceeds thereof; and

(b) all of the presently owned and after acquired or held personal property of the Debtor of whatsoever nature or kind and all proceeds therefrom;

and any reference to the Debtor's Property will, unless otherwise provided, be deemed to refer to the Debtor's Property as a whole or any parts thereof.

"**Debtor to Grantor Liabilities**" means all present and future debts and liabilities of the Debtor to the Grantor.

"**Debtor to Senior Creditor Liabilities**" means all present and future debts and liabilities of the Debtor to the Senior Creditor.

"**Debtor to Senior Creditor Liabilities Repayment**" means that time when all of the Debtor to Senior Creditor Liabilities up to the Senior Creditor Priority Limit have been paid in full.

"**Grantor**" means Aviva Insurance Company of Canada and its successors and assigns, as the case may be.

"**Grantor's Charges**" means the Charges created by the Grantor's Security Documents with respect to the Debtor's Property including without limiting the generality of the foregoing, the Grantor's Mortgage.

**"Grantor's Commitment Letter"** means the commitment letter October 13, 2017 issued by the Grantor to Port Capital Development Inc. on behalf of the Debtor, and any modifications, supplements or replacements thereof.

**"Grantor's Deposit Protection Insurance Facility"** means the deposit protection insurance facility in the principal amount of up to $32,000,000 pursuant to the *Insurance Act* (British Columbia) issued by the Grantor to the Debtor secured by the Project.

**"Grantor's Mortgage"** means together, the mortgage and assignment of rents in the principal amount of $32,000,000 granted by Port Capital Development (EV) Inc. to the Grantor registered in the Land Title Office under the numbers respectively set out secondly in Item 3 of the Form C *Land Title Act* General Instrument attached hereto, and any modifications and amendments thereto or thereof.

**"Grantor's Security Documents"** means all present and future security documents in favour of or held by the Grantor that create Charges with respect to the Debtor's Property, including without limiting the generality of the foregoing, the Grantor's Mortgage and any modifications and amendments thereto or thereof and includes all related financing statements and similar documents.

**"including"** means including without limitation.

**"Land Title Office"** means the New Westminster Land Title Office.

**"Lands"** means the real property legally described in Item 2 of the Form C *Land Title Act* General Instrument which forms part of this Agreement.

**"Person"** means any individual, proprietorship, firm or artificial body, including any corporation, government or instrumentality.

**"Project"** means the nineteen (19) storey, 20-unit luxury residential strata building plus one (1) main floor commercial strata unit with three levels of underground parking to be constructed on the Lands.

**"Senior Creditor"** means Domain Mortgage Corp. and its successors and assigns.

**"Senior Creditor's Charges"** means the Charges created by the Senior Creditor's Security Documents with respect to the Debtor's Property including, without limiting the generality of the foregoing, the Senior Creditor's Mortgage.

**"Senior Creditor's Commitment Letter"** means, collectively, the third revised commitment letter dated July 30, 2021, as amended by the amendment to the third revised commitment letter dated September 1, 2021 issued by the Senior Creditor to the Debtor and any further modifications, supplements or replacements thereof and two promissory notes each dated October 22, 2021 in the amounts of CAD$8,399,060.03 and CAD$2,150,000 respectively, granted by the Debtor in favour of Senior Creditor, as the same may be transferred, assigned, supplemented, amended, modified, extended, renewed, restated or replaced from time to time.

"**Senior Creditor's Mortgage**" means the mortgage and assignment of rents granted by Port Capital Development (EV) Inc. to CMLS Financial Ltd. and registered against the Lands in the Land Title Office under Registration Numbers CA7337616 and Assignment of Rents CA7337617 and the mortgage granted by Port Capital Development (EV) Inc. to Desjardins Financial Security Life Assurance Company dated June 6, 2020 and registered against the Lands in the Land title Office under Registration Number CA8277031.

"**Senior Creditor's Security Documents**" means all present and future security documents in favour of or held by the Senior Creditor (or any predecessor thereof) that create Charges with respect to the Debtor's Property, including without limiting the generality of the foregoing, the Senior Creditor's Mortgage and includes all related financing statements and similar documents.

"**Senior Creditor's Solicitors**" means Owen Bird Law Corporation or such other law firm appointed by the Senior Creditor.

IN WITNESS WHEREOF this Agreement has been duly executed by the Grantor on the Form C *Land Title Act* General Instrument, Part 1, which forms part of this Agreement and by each of the Senior Creditor and the Debtor below.

**DOMAIN MORTGAGE CORP.**
by its authorized signatories:

Name: ALEXANDER HAYNES
Title: DIRECTOR

Name:
Title:

**EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP**
by its general partner:

PORT CAPITAL DEVELOPMENT (EV) INC.
by its authorized signatory:

Any director or officer

**PORT CAPITAL DEVELOPMENT (EV) INC.**
by its authorized signatory:

Any director or officer

"**Senior Creditor's Mortgage**" means the mortgage and assignment of rents granted by Port Capital Development (EV) Inc. to CMLS Financial Ltd. and registered against the Lands in the Land Title Office under Registration Numbers CA7337616 and Assignment of Rents CA7337617 and the mortgage granted by Port Capital Development (EV) Inc. to Desjardins Financial Security Life Assurance Company dated June 6, 2020 and registered against the Lands in the Land title Office under Registration Number CA8277031.

"**Senior Creditor's Security Documents**" means all present and future security documents in favour of or held by the Senior Creditor (or any predecessor thereof) that create Charges with respect to the Debtor's Property, including without limiting the generality of the foregoing, the Senior Creditor's Mortgage and includes all related financing statements and similar documents.

"**Senior Creditor's Solicitors**" means Owen Bird Law Corporation or such other law firm appointed by the Senior Creditor.

IN WITNESS WHEREOF this Agreement has been duly executed by the Grantor on the Form C *Land Title Act* General Instrument, Part 1, which forms part of this Agreement and by each of the Senior Creditor and the Debtor below.

**DOMAIN MORTGAGE CORP.**
by its authorized signatories:

______________________________
Name:
Title:

______________________________
Name:
Title:

**EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP**
by its general partner:

PORT CAPITAL DEVELOPMENT (EV) INC.
by its authorized signatory:

______________________________
Any director or officer

**PORT CAPITAL DEVELOPMENT (EV) INC.**
by its authorized signatory:

______________________________
Any director or officer

**Mortgage Loan No. 50466**

# GENERAL SECURITY AGREEMENT

THIS AGREEMENT is made as of November 1, 2018,

BY:

**EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP**, by its general partner **PORT CAPITAL DEVELOPMENT (EV) INC.**, and **PORT CAPITAL DEVELOPMENT (EV) INC.**, in its individual capacity (collectively, the "**Borrower**")

and

**PORT CAPITAL DEVELOPMENT (EV) INC.**, in its capacity as nominee
(the "**Nominee**")

(the Borrower and the Nominee are hereinafter each individually, and collectively, referred to as the "**Debtor**")

IN FAVOUR OF:

**CMLS FINANCIAL LTD.**

(hereinafter referred to as the "**Secured Party**")

WHEREAS the Debtor has agreed to grant a security interest and assignment, mortgage and charge in the Collateral to the Secured Party in order to secure the performance of its Obligations under the Commitment;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants and agreements herein contained the parties hereto agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.01 Interpretation

In this Agreement, all capitalized terms not otherwise defined shall have the meaning ascribed thereto in the Commitment, and unless something in the subject matter or context is inconsistent therewith:

**"Agreement"** means this agreement and all amendments made hereto by written agreement between the Secured Party and the Debtor.

**"Collateral"** has the meaning set out in Section 2.01.

This is Exhibit " F " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5th day of July, 2022

A Commissioner for taking Affidavits

**"Commitment"** means the mortgage loan commitment dated July 4, 2018 issued by the Secured Party, as lender, and accepted by the Borrower and the Covenantors, as supplemented, amended, modified, extended, renewed, restated or replaced from time to time.

**"Event of Default"** has the meaning given to it in the Mortgage.

**"Obligations"** means, without duplication, all obligations and liabilities of any kind whatsoever of the Debtor to the Secured Party in connection with or relating to the Commitment and the Security.

**"Secured Property"** means the Lands and the Project.

The terms "accessions", "accounts", "chattel paper", "documents of title", "goods", "instruments", "intangibles", "inventory", "investment property", "money", "proceeds", and "securities" whenever used herein have the meanings given to those terms in the *Personal Property Security Act* (British Columbia), as now enacted or as the same may from time to time be amended, re-enacted or replaced (the "**PPSA**").

1.02 **Sections and Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, reference herein to Articles and Sections are to Articles and Sections of this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

## ARTICLE 2 - GRANT OF SECURITY INTEREST

2.01 **Security interest**

As general and continuing security for the payment and performance of all Obligations of the Debtor to the Secured Party, the Debtor hereby:

(1) grants to the Secured Party a security interest in all of the present and future undertaking and property, both real and personal, of the Debtor which arises from, pertains to, is located on, or is used in connection with, the Secured Property (collectively, the "**Collateral**"), and as further general and continuing security for the payment and performance of the Obligations, the Debtor hereby assigns the Collateral to the Secured Party and mortgages the Collateral and charges the Collateral as and by way of a fixed and specific mortgage and charge to the Secured Party. Without limiting the generality of the foregoing, the Collateral will include all right, title and interest that the Debtor now has or may hereafter have, be possessed of, be

entitled to, or acquire, by way of amalgamation or otherwise, now or hereafter or may hereafter have in all property of the following kinds which arises from, pertains to, is located on, or is used in connection with, the Secured Property:

(a) Receivables: all debts, accounts, claims and choses in action for monetary amounts which are now or which may hereafter become due, owing or accruing due to the Debtor (collectively, the "**Receivables**");

(b) Inventory: all inventory of whatever kind and wherever situated including, without limiting the generality of the foregoing, all goods held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in the businesses of the Debtor (collectively, the "**Inventory**");

(c) Equipment: all machinery, equipment, fixtures, furniture, plant, vehicles and other tangible personal property which are not Inventory (collectively, the "**Equipment**");

(d) Chattel Paper: all chattel paper;

(e) Documents of Title: all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;

(f) Securities and Instruments: all shares, stock, warrants, bonds, debentures, debenture stock and other securities and all instruments (collectively, the "**Securities**");

(g) Intangibles: all intangibles not otherwise described in this Section 2.01 including, without limiting the generality of the foregoing, all goodwill, patents, trademarks, copyrights and other industrial property;

(h) Investment Property: all investment property;

(i) Money: all coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government;

(j) Books, Records, Etc.: all books, papers, accounts, invoices, documents and other records in any form evidencing or relating to any of the property described in this Section 2.01 and all contracts, securities, instruments and other rights and benefits in respect thereof;

(k) Performance Bonds: all outstanding refundable performance or maintenance bonds provided to the City of Vancouver;

(l) Substitutions, Etc.: all replacements of, substitutions for and increases, additions and accessions to any of the property described in this Section 2.01; and

(m) Proceeds: all proceeds of any Collateral in any form derived directly or indirectly from any dealing with the Collateral or that indemnifies or compensates for the loss of or damage to the Collateral, provided that the said assignment and mortgage and charge will not (i) extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Debtor, but should the Secured Party enforce the said assignment or mortgage and charge, the Debtor will thereafter stand possessed of such last day and must hold it in trust to assign the same to any person acquiring such term in the course of the enforcement of the said assignment and mortgage and charge, or (ii) render the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound.

2.02 **Attachment of Security interests**

The Debtor acknowledges that value has been given and agrees that the security interests granted hereby will attach when it signs this Agreement and it has any rights in the Collateral.

2.03 **Exception for Contractual Rights**

The security interests granted hereby does not and will not extend to, and the Collateral will not include any agreement, right, franchise, licence or permit (the "**contractual rights**") to which the Debtor is a party, or of which the Debtor has the benefit, to the extent that the creation of the security interests herein would constitute a breach of the terms of or permit any person to terminate the contractual rights, but the Debtor must hold its interests therein in trust for the Secured Party and will assign such contractual rights to the Secured Party forthwith upon obtaining the consent of the other party thereto. The Debtor agrees that it will, upon the request of the Secured Party, use all commercially reasonable efforts to obtain any consent required to permit any contractual rights to be subjected to the security interests.

## ARTICLE 3 - GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEBTOR

3.01 **Representations and Warranties**

The Debtor hereby represents and warrants to the Secured Party that the address of its chief executive office and the office where it keeps its records respecting the Receivables, is: 328 West 2nd Avenue, Vancouver, British Columbia, V5Y 1C8.

3.02 **Covenants**

The Debtor covenants with the Secured Party that it will:

(a) maintain, use and operate the Collateral and carry on and conduct its business in a lawful and business-like manner;

(b) not permit the Collateral to be affixed to real or personal property so as to become a fixture or accession without the prior written consent of the Secured Party;

(c) defend the Collateral against all claims and demands respecting the Collateral made by all persons at any time and, except as otherwise provided herein, will keep the Collateral free and clear of all security interests, mortgages, charges, liens and other encumbrances or interests, except for Permitted Encumbrances, and those hereafter approved in writing by the Secured Party prior to their creation or assumption;

(d) not change its chief executive office and the location of the office where it keeps its records respecting the Receivables, or move any of the Inventory, Securities or Equipment from the locations specified in any schedule hereto, without prior written notice to the Secured Party;

(e) from time to time forthwith at the request of the Secured Party furnish to the Secured Party in writing all information requested relating to the Collateral, and the Secured Party will be entitled from time to time at any reasonable time to inspect the Collateral and make copies of all information relating to the Collateral and for such purposes the Secured Party will have access to all premises occupied by the Debtor or where the Collateral may be found;

(f) not change its name, or, if the Debtor is a corporation, not amalgamate with any other corporation, without first giving notice to the Secured Party of its new name and the names of all amalgamating corporations and the date when such new name or amalgamation is to become effective; and

(g) pay to the Secured Party forthwith upon demand all costs and expenses (including, without limiting the generality of the foregoing, all legal, Receiver's (as defined hereafter) and accounting fees and expenses) incurred by or on behalf of the Secured Party in connection with the preparation, execution and perfection of this Agreement and the carrying out of any of the provisions of this Agreement including, without limiting the generality of the foregoing, protecting and preserving the security interests, assignment and mortgage and charge granted hereby and enforcing by legal process or otherwise the remedies provided herein; and all such costs and expenses will be added to and form part of the Obligations secured hereunder.

## ARTICLE 4 - DEALING WITH COLLATERAL

### 4.01 Dealing with Collateral by the Debtor

The Debtor must not sell, lease or otherwise dispose of any of the Collateral without the prior written consent of the Secured Party, except that the Debtor may, until an Event of Default occurs, deal with the Collateral in the ordinary course of its business, but all proceeds of any dealings with such Collateral will continue to be subject to the security interests, assignment and mortgage and charge granted hereby.

### 4.02 Rights and Duties of the Secured Party

(1) The Secured Party may perform any of its rights and duties hereunder by or through agents and is entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its rights and duties hereunder.

(2) In the holding of the Collateral, the Secured Party and any nominee on its behalf is only bound to exercise the same degree of care as it would exercise with respect to similar

property of its own of similar value held in the same place. The Secured Party and any nominee on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Collateral if it takes such action for that purpose as the Debtor reasonably requests in writing, but failure of the Secured Party or its nominee to comply with any such request will not of itself be deemed a failure to exercise reasonable care.

4.03 **Application of Funds**

Except where the Debtor, when not in default hereunder, so directs in writing at the time of payment, all money collected or received by the Secured Party in respect of the Collateral may be applied on account of such parts of the Obligations as the Secured Party in its sole discretion determines, or may be held unappropriated in a collateral account, or in the discretion of the Secured Party may be released to the Debtor, all without prejudice to the Secured Party's rights against the Debtor.

## ARTICLE 5 - DEFAULT AND REMEDIES

5.01 **Events of Default**

The Debtor will be in default under this Agreement upon the occurrence of an Event of Default.

5.02 **Remedies**

(1) On or after the occurrence of an Event of Default, any or all security granted hereby will, at the option of the Secured Party, become immediately enforceable and, in addition to any right or remedy provided by law, the Secured Party will have the rights and remedies set out below, all of which rights and remedies will be enforceable successively, concurrently or both:

(a) the Secured Party may by appointment in writing appoint a receiver or receiver and manager (each herein referred to as the "**Receiver**") of the Collateral (which term when used in this Section 5.02 will include the whole or any part of the Collateral) and may remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver of the Collateral; and the term "Secured Party" when used in this Section 5.02 will include any Receiver so appointed and the agents, officers and employees of such Receiver; and the Secured Party will not be in any way responsible for any misconduct or negligence of any such Receiver;

(b) the Secured Party may take possession of the Collateral and require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such place or places as may be specified by the Secured Party;

(c) the Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Collateral;

(d) the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor;

(e) the Secured Party may enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law;

(f) the Secured Party may sell, lease or otherwise dispose of the Collateral at public auction, by private tender, by private sale or otherwise either for cash or upon credit upon such terms and conditions as the Secured Party may determine and without notice to the Debtor unless required by law;

(g) the Secured Party may accept the Collateral in satisfaction of the Obligations upon notice to the Debtor of its intention to do so in the manner required by law;

(h) the Secured Party may, for any purpose specified herein, borrow money on the security of the Collateral in priority to the security interests, assignment and mortgage and charge granted by this Agreement;

(i) the Secured Party may enter upon, occupy and use all or any of the premises, buildings and plant occupied by the Debtor and use all or any of the Equipment and other personal property of the Debtor for such time as the Secured Party requires to facilitate the realization of the Collateral, free of charge, and the Secured Party will not be liable to the Debtor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;

(j) the Secured Party may charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered in connection with the exercise of the rights and remedies of the Secured Party hereunder, including, without limiting the generality of the foregoing, reasonable legal, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith, including interest thereon at such rate as the Secured Party deems reasonable, will be added to and form part of the Obligations; and

(k) the Secured Party may discharge any claim, lien, mortgage, charge, security interest, encumbrance or any rights of others that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith will be added to the Obligations.

(2) The Secured Party may (i) grant extensions of time, (ii) take and perfect or abstain from taking and perfecting security, (iii) give up securities, (iv) accept compositions or compromises, (v) grant releases and discharges, and (vi) release any part of the Collateral or otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party sees fit without prejudice to the liability of the Debtor to the Secured Party or the Secured Party's rights hereunder.

(3) The Secured Party will not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and is not bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person, in respect of the Collateral.

(4) The Secured Party may apply any proceeds of realization of the Collateral to payment of expenses in connection with the preservation and realization of the Collateral as above described and the Secured Party may apply any balance of such proceeds to payment of the Obligations in such order as the Secured Party sees fit. If there is any surplus remaining, the Secured Party may pay it to any person having a claim thereto in priority to the Debtor of whom the Secured Party has knowledge and any balance remaining must be paid to the Debtor. If the disposition of the Collateral fails to satisfy the Obligations secured by this Agreement and the aforesaid expenses, the Debtor will be liable to pay any deficiency to the Secured Party forthwith on demand.

## ARTICLE 6 - GENERAL

### 6.01 Joint and Several

If more than one person signs this Agreement as Debtor, such persons are jointly and severally liable to perform and observe all of the obligations herein.

### 6.02 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

### 6.03 Paramountcy

This Agreement has been entered into pursuant to the provisions of the Commitment and is subject to all the terms and conditions thereof and, if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Commitment, the rights and obligations of the parties will be governed by the provisions of the Commitment to the extent of such conflict or inconsistency.

### 6.04 Amendments and Waivers

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

### 6.05 Assignment

The rights of the Secured Party and the Debtor under this Agreement may only be assigned in accordance with the terms of the Commitment.

### 6.06 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

6.07 **Notices**

Any demand, notice or communication to be made or given hereunder shall be in the manner provided for in the Mortgage.

6.08 **Additional Continuing Security**

This Agreement and the security interests, assignment and mortgage and charge granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Secured Party and this Agreement is a continuing agreement and security that will remain in full force and effect until payment and performance of the Obligations in full.

6.09 **Further Assurances**

The Debtor must at its expense from time to time do, execute and deliver, or cause to be done, executed and delivered, all such financing statements, schedules, further assignments, documents, acts, matters and things as may be requested by the Secured Party for the purpose of giving full effect to this Agreement, to better evidence and perfect the security interests, assignment and mortgage and charge granted hereby, or for the purpose of establishing compliance with the representations, warranties and covenants herein contained.

6.10 **Power of Attorney**

The Debtor hereby irrevocably constitutes and appoints any officer for the time being of the Secured Party its true and lawful attorney, with full power of substitution, to do, make and execute all such statements, assignments, documents, acts, matters or things with the right to use the name of the Debtor whenever and wherever the officer may deem necessary or expedient and from time to time to exercise all rights and powers and to perform all acts of ownership in respect to the Collateral in accordance with this Agreement, if and only when an Event of Default has occurred and is continuing.

6.11 **Discharge**

The Debtor will not be discharged from any of the Obligations or from this Agreement except by a release or discharge signed in writing by the Secured Party.

6.12 **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

6.13 **Executed Copy**

The Debtor acknowledges receipt of a fully executed copy of this Agreement.

6.14 **Counterparts and Formal Date**

This Agreement may be executed in several counterparts and delivered by electronic means, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written in the beginning of this Agreement..

***[Signature Page Follows]***

**IN WITNESS WHEREOF** the Debtor has executed this General Security Agreement as of the day and year first above written.

**EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP,** by its general partner **PORT CAPITAL DEVELOPMENT (EV) INC.**

By: ______________________________

Name: Macario Teodoro Reyes
Title: President and Secretary

I / We have authority to bind the above.

**PORT CAPITAL DEVELOPMENT (EV) INC.,** in its individual capacity

By: ______________________________

Name: Macario Teodoro Reyes
Title: President and Secretary

I / We have authority to bind the above.

**PORT CAPITAL DEVELOPMENT (EV) INC.**, in its capacity as nominee

By: ______________________________

Name: Macario Teodoro Reyes
Title: President and Secretary

I / We have authority to bind the above.

**DOMAIN FUNDING**

Domain Funding
1100–1040 West Georgia St.
Vancouver, BC V6E 4H1
604.681.3000

Monday, February 07, 2022

Loan #: 2021-BC011A

This is Exhibit " G " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5th day of July, 2022

A Commissioner for taking Affidavits within British Columbia

**Evergreen House Development LP**
**Port Capital Development (EV) Inc.**
**Port Capital Development Inc.**
**Mr. Macario Teodoro Reyes**
c/o 325 West 4th Avenue,
Vancouver, B.C. V5Y 1H3

E-mail: tobi@portliving.com

Dear Sir:

## COMMITMENT LETTER

On or about Oct, 26, 2021, Domain Mortgage Corp. funded $14,700,000 according to the terms and conditions of the Third Revised Commitment Letter dated July 30, 2021 (the "3RCL"). The $14,700,000 loan funded pursuant to the 3RCL is referred to herein as the "Initial Advance" of the Loan.

Domain Funding is pleased to present you with a Commitment Letter to provide an additional loan advance to the Initial Advance of the Loan. The additional loan advance described herein and on the attached Schedules is referred to as the "Third Loan Segment" of the Loan.

**1. SECURED PROPERTY:**

| | |
|---|---|
| Civic Address: | 1250 West Hastings Street, Vancouver B.C. |
| Legal Description: | LOT 18, EXCEPT THAT PART OF THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AS DESCRIBED IN ABSOLUTE FEE PARCELS BOOK, VOLUME 9, FOLIO 317, NO. 1154C, AND EXCEPT THE SOUTH 7 FEET NOW ROAD, BLOCK 29 DISTRICT LOT 185 PLAN 92 |
| PIDs: | 006-721-397 |

The above property(s) is referred to herein as the "Secured Property".

**2. LENDER/MORTGAGEE:**

| | |
|---|---|
| Name: | **Domain Mortgage Corp.** syndicated in trust for private mortgage investors, and/or nominee. |
| Address: | 1100 – 1040 W. Georgia St. Vancouver, BC V6E 4H1 |

Hereinafter referred to as the "Lender".

**3. BORROWER(S)/MORTGAGOR(S):**

| | |
|---|---|
| Name: | **Evergreen House Development Limited Partnership** |
| Relationship: | The beneficial owner of the Secured Property |
| Address: | 325 West 4th Avenue, Vancouver, B.C. V5Y 1H3 |

| | |
|---|---|
| Name: | **Port Capital Development (EV) Inc.** |
| Relationship: | The registered owner of the Secured Property and the General Partner of Evergreen House Development Limited Partnership |
| Address: | 325 West 4th Avenue, Vancouver, B.C. V5Y 1H3 |

## 4. COVENANTOR(S):

The Lender(s) will require the Loan to be guaranteed by the personal and/or corporate shareholders of the Borrowing Company(s) and/or others (the "Covenantors").

To date the following Covenantors have been identified:

| | |
|---|---|
| Name: | **Macario Teodoro Reyes** |
| Relationship to Borrower: | Principal of Port Capital Development Inc. |
| Address: | #801-2211 Cambie Street, Vancouver, B.C. V5Z 2T5 |
| Name: | **Port Capital Development Inc.** |
| Relationship to Borrower: | 100% shareholder of Port Capital Development (EV) Inc. |
| Address: | 325 West 4th Avenue, Vancouver, B.C. V5Y 1H3 |

## 5. LOAN TYPE AND PURPOSE:

The Borrower(s) are seeking additional funds for purposes exclusively related to the Terrace House Condominium Project located at the Secured Property (the "Project") which has stalled due to the Covid-19 pandemic, a CCAA proceeding involving the Borrower(s), and a series of liens registered on title to the Secured Property. Uses of funds are expected to include consultants' expenses, sales and marketing expenses, property care and maintenance expenses, finance expenses, etc.

The Initial Advance of the Loan in the aggregate amount of $14,700,000 was funded on or about October 26, 2021, and was secured by a super-priority court order charged over all assets, undertakings and property of the Borrower(s) including the following Mortgage, Assignment of Rents, and Modification (the "Existing Security"):

| | |
|---|---|
| Nature: | MORTGAGE |
| Registration Number: | CA7337616 |
| Registration Date and Time: | 2019-02-06 15:25 |
| Registered Owner: | DOMAIN MORTGAGE CORP. INCORPORATION NO. BC1140295 |
| Transfer Number: | CA9459739 |
| Remarks: | MODIFIED BY CA9459782 |
| Nature: | ASSIGNMENT OF RENTS |
| Registration Number: | CA7337617 |
| Registration Date and Time: | 2019-02-06 15:25 |
| Registered Owner: | DOMAIN MORTGAGE CORP. INCORPORATION NO. BC1140295 |
| Transfer Number: | CA9459740 |
| Nature: | MODIFICATION |
| Registration Number: | CA9459782 |
| Registration Date and Time: | 2021-10-26 15:59 |
| Remarks: | MODIFICATION OF CA7337616 |

1296371 B.C. Ltd. along with 1260780 B.C. Ltd. are Junior-ranking participants in the current ownership of the Existing Security by way of a Participation and Standstill Agreement with Domain Mortgage Corp. dated on or about Oct. 26, 2021 (the "Participation Agreement").

It will be a condition of the Third Loan Segment that the Participation Agreement be amended and executed by the parties to the agreement.

Initials of Borrower(s)/Covenantor(s):

## 6. USES AND SOURCES OF FUNDS:

Loan proceeds to be used in accordance with the following Uses and Sources of Funds budget:

| **Uses of Funds** | | |
|---|---|---|
| Monthly Payment Reserve (4 months - Third Loan Segment) | $ | 145,500.00 |
| Collateral Reserve (2 months - Initial Advance) | $ | 294,875.00 |
| Domain Funding Mortgage Broker Fee (2.0% of Third Loan Segment) | $ | 36,000.00 |
| Domain Securities Corp Fund Raising Fee (1.0% of Third Loan Segment) | $ | 18,000.00 |
| Domain Securities Corp Fund Raising Fee (Previously owing) | $ | 147,000.00 |
| Lender's legal fees, title insurance, misc., etc. (estimate) | $ | 15,000.00 |
| Pay amount owed to Aviva Insurance Company of Canada | $ | 366,000.00 |
| Funds available to use by the Borrower related to the Terrace House Project | $ | 777,625.00 |
| **Total Uses of Funds** | **$** | **1,800,000.00** |

| **Sources of Funds** | | |
|---|---|---|
| Domain Mortgage Corp. Mortgage Loan Amount (Third Loan Segment) | $ | 1,800,000.00 |
| **Total Sources of Funds** | **$** | **1,800,000.00** |

NOTE 1: The above budget has been prepared by Domain Funding based on information provided by the Borrower(s) and Covenantor(s) and is subject to change.

NOTE 2: All figures listed in above budget are subject to verification and approval by the Lender.

NOTE 3: At the option of the Lender, any Loan proceeds will be controlled and/or disbursed by the Lender or its solicitor for the purposes outlined above or for other Lender-approved purposes.

## 7. JUNIOR LENDER PARTICIPATION WITHIN THE EXISTING SECURITY:

1296371 B.C. Ltd. along with 1260780 B.C. Ltd are Junior-ranking participants in the ownership of the Existing Security subordinate in all respects to the $14,700,000 aggregate amount of the Initial Advance of the Loan, and has entered into a Participation Agreement with Domain Mortgage Corp.

It will be a condition of funding the Third Loan Segment that the Participation Agreement be amended to include and to give effect to the priority of the $1,800,000 Third Loan Segment as outlined herein.

The Participation and Standstill Agreement will subordinate the Junior Lender to the Lender in all respects and the Lender or the Lender's nominee will administer the Loan and the interest of the Junior Lender in the Existing Security. The administrator of the Loan will act solely in the capacity as a trustee for the Junior Lender and not as an agent or as a mortgage broker.

The standstill provisions of the amended Participation and Standstill Agreement will prohibit the Junior Lender from taking any action in respect of the Loan unless and until either:

a) the Loan is repaid in full; or
b) the Junior Lender purchases the Loan and the interest of the Lender from the Lender.

## 8. LOAN FUNDING DATE:

**Estimated to be during the month of February 2022. Exact date to be specified by the Lender.**

The Borrower(s) acknowledges that interest on the Loan shall accrue from the date that funds are provided by the Lender to its solicitor in preparation for the funding of the Loan, whether or not the Borrower(s) and Covenantor(s) are in a position to draw funds in accordance with the terms and conditions of this Commitment Letter.

## 9. PAYMENT PROVISIONS:

Upon the funding of the Third Loan Segment, the Loan will be divided into the following (3) Loan Segments with (3) differing interest rates in recognition of differing risk profiles within the $16,500,000 composition of the Loan:

| | |
|---|---|
| Loan Amount: | $10,500,000.00 (the "First Loan Segment")<br>$ 4,200,000.00 (the "Second Loan Segment")<br>$ 1,800,000.00 (the "Third Loan Segment")<br>$16,500,000.00 (the "Loan") |

Terms of $10,500,000 First Loan Segment

Unchanged form 3RCL.

Terms of $4,200,000 Second Loan Segment

Unchanged form 3RCL.

Terms of $1,800,000 Third Loan Segment

| | |
|---|---|
| Term: | 4 months from Interest Adjustment Date of the Third Loan Segment to mature July 1, 2022. |
| Amortization: | Interest Only |
| Interest Rate: | 24.00% per annum |
| Interest Calculation Period: | Monthly |
| Payment Dates: | 1st day of month during Loan Term |
| Interest Adjustment Date: | March 1, 2022 |
| First Payment Date: | April 1, 2022 |
| Periodic Payment Amounts: | $36,000.00 Interest payment<br>$ 375.00 Loan Servicing Fee (0.25% of Third Loan Segment)<br>$36,375.00 subtotal<br><br>Monthly interest payments during the term of the Loan will be made using Monthly Payment Reserve(s) held by the Lender. If and when Monthly Payment Reserve(s) held by the Lender are depleted, interest due under the Loan be made by the Borrower(s), the Covenantor(s), and/or by 1296371 B.C. Ltd. |
| Balance Due Date: | July 1, 2022 |

## 10. EARLY REPAYMENT TERMS:

The Loan may be repaid in full without penalty provided the Lender has first received payment of Interest and Loan Servicing Fee of not less than $72,750.00.

Unless otherwise specified herein, partial repayment of the Loan is not permitted without the written consent of the Lender.

Initials of Borrower(s)/Covenantor(s):

**11. LOAN RESERVE(S):**

The Lender requires the Borrower(s) to assign the following Monthly Payment Reserve, Collateral Reserve, and Terrace House Reserve to the Lender from the proceeds of the Third Loan Segment (collectively the "Loan Reserve(s)").

Upon payout of the Loan in full, any unused amounts in the Loan Reserve(s) will be returned to the Borrower(s) subject to the Early Repayment Terms outlined herein.

**11.1 MONTHLY PAYMENT RESERVE:**

**Third Loan Segment:**

The Borrower(s) will assign $145,500.00 to the Lender from the proceeds of the Third Loan Segment to make the monthly interest payments and pay the Loan Servicing Fee during the term of the Third Loan Segment.

**11.2 COLLATERAL RESERVE:**

**First Loan Segment & Second Loan Segment:**

The Borrower(s) will assign $294,875.00 to the Lender from the proceeds of the Third Loan Segment representing a Collateral Reserve for the benefit of the First Loan Segment and the Second Loan Segment to the Loan. Upon the occurrence of an event of default of the Loan, the Collateral Reserve may be used by the Lender, at its sole discretion, to maintain monthly interest payment, to pay for any costs to enforce the terms of the Loan, including legal, and/or receivership costs, and/or for any costs to realize on the Loan Security.

**11.3 TERRACE HOUSE RESERVE:**

The Borrower(s) will assign $777,625.00 to the Lender from the proceeds of the Third Loan Segment, representing a Terrace House Reserve to be used to pay consultants' expenses, property care and maintenance expenses, and other Lender-approved expenses in connection with the preservation of the Secured Property.

Draws from the Terrace House Reserve are subject to the following conditions:

a) No event of default has occurred under the Loan and any other loan funded by the Lender to the Borrower(s) and Covenantor(s).
b) Budget of the proposed uses of the $777,625 Terrace House Reserve to be reviewed and approved by the Lender and/or its appointed cost consultant.
c) Draws from the Terrace House Reserve are subject to a $500 draw fee payable to the Lender, per draw.
d) Draws will be made on a "work-in-place" basis as determined by the Lender.
e) At the option of the Lender, draws from the Terrace House Reserve will be controlled by the Lender and may pay directly to any trades and/or contractors.

**12. PERMISSIBLE PRIOR ENCUMBRANCES:**

The Lender will permit the following prior-ranking charge(s) to be registered against title to the Secured Property:

None.

**13. PERMISSIBLE SUBSEQUENT ENCUMBRANCES:**

The Lender will permit the following subsequent-ranking financial charge(s) to be registered against title to the Secured Property:

Those charges registered against Land Title No. CA7287055 set out in Schedule "D"

Unless otherwise consented to by the Lender in writing, all subsequent financial charge(s) are to execute Priority Agreement(s) in favour of Domain Mortgage Corp., satisfactory to the Lender and/or the Lender's solicitor.

**14. SPECIAL TERMS AND CONDITIONS:**

The Lender will require the following SPECIAL TERMS AND CONDITIONS, all of which must be found satisfactory to the Lender and its Solicitor:

A. Court approval of the proposed Third Loan Segment outlined in this Commitment Letter.

B. Consent of Aviva Insurance Company of Canada to the amendment/supplement of the Existing Loan and the Existing Security as contemplated herein.

C. Borrower(s) and Covenantor(s) to execute the Loan Retainer Agreement issued by Domain Funding dated May 12, 2021 (which according to our records has not been executed).

D. Other Special Terms and Conditions that may be recommended by the Lender's solicitor.

**15. LOAN SECURITY:**

The Lender will require the following Loan Security and other or further Loan Security, all of which must be found satisfactory to the Lender(s) and its solicitor:

**<u>At time of $1,800,000 Third Loan Segment:</u>**

a) All of the Loan Security in effect at the time of the $14,700,000 Initial Advance under the Loan.

b) Assignment of $145,500 Monthly Payment Reserve to the Lender as specified herein.

c) Assignment of $294,875 Collateral Reserve to the Lender in connection with the First Loan Segment and Second Loan Segment.

d) Assignment of $777,625 Terrace House Reserve to the Lender.

e) Modification of FCT Loan Policy in favour of the Lender to acknowledge the $1,800,000 Third Loan Segment as outlined herein.

f) Modification of the Participation Agreement, signed by the Junior Lender, to give effect to the priority of $1,800,000 Third Loan Segment as outlined herein.

g) Modification of the Aviva Priority Agreement in favour of the Lender, to give effect to the priority of the $1,800,000 Third Loan Segment as outlined herein.

h) Court approval of the $1,800,000 Third Loan Segment as outlined herein.

i) Such other and further Loan security in connection with the Secured Property as may be required by the Lender or its solicitor.

**16. STANDARD CLAUSES:**

Standard terms, conditions, covenants, representations and warranties are attached to and form part of this Commitment Letter as outlined in Schedule "A".

**17. CONDITIONS PRECEDENT TO FUNDING:**

17.1 Funding of the Third Loan Segment is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Friday, February 11, 2022**, all to be found satisfactory to the Lender and its solicitor:

**<u>$1,800,000 Third Loan Segment:</u>**

a) Executed copy of this Commitment Letter.

b) Confirmation of no default under the Initial Advance of the Loan.

c) Confirmation of fully paid municipal property taxes for Secured Property.

d) Satisfactory review by the Lender of the Certificate of Title for the Secured Property including all registered charges.

e) Satisfactory inspection of the Secured Property by the Lender.

f) Satisfactory review by the Lender of the Organizational Chart of the Borrowers and any company providing a corporate covenant.

g) Satisfactory credit review of the Borrower(s) and Covenantor(s).

h) Satisfactory review by the Lender of the most recent Financial Statements for the Borrowing Company(s) and any company providing a corporate covenant (unless newly formed), prepared by a qualified accounting firm.

i) Confirmation of legal and beneficial ownership of the Secured Property, the Borrowing Company, and any company providing a corporate covenant including copies of any trust, joint venture, and/or limited partnership agreement(s).

j) Current, signed and dated Personal Net Worth Statement of any personal Borrower(s) or person(s) providing a covenant including details of all assets and liabilities. The PNW Statement should be prepared on Domain Funding forms with explanatory notes and/or attachments where necessary.

k) Budget of proposed use of $777,625 Terrace House Reserve.

l) Satisfactory review by the Lender of Development and Building Permits issued by the City of Vancouver related to the Project.

m) A complete set of current architectural drawings (11" x 17") of the Project (Issued for Construction).

n) Geotechnical Report(s) and Transmittal Letter(s), acceptable to the Lender, confirming the Secured Property contains satisfactory soil conditions to permit development of the Secured Property.

o) Environmental Report(s) and Transmittal Letter(s), acceptable to the Lender, demonstrating that the Secured Property is environmentally clean.

p) Appraisal Report(s) and Transmittal Letter(s) from a Lender-approved appraisal firm demonstrating:
   - $26,000,000 minimum "as is" land value for the Secured Property

q) Satisfaction of the SPECIAL TERMS AND CONDITIONS outlined in Section 14., herein

r) Payout in full of $1,675,000 Domain Mortgage Corp. Loan #2021-009 (referred to by DMC as "Port Living – 583 East Broadway") to Living Midtown Development Limited Partnership and Port Capital Development (MID) Inc. secured by First Mortgage and Assignment of Rents in favour of Domain Mortgage Corp.

s) Such other and further information and material that may be requested by Domain Funding or the Lender.

**17.2** Funding of the Third Loan Segment is conditional upon receipt of the following items from the Borrower(s) and Covenantor(s), on or **before Friday, February 18, 2022**, all to be found satisfactory to the Lender and its solicitor:

a) Receipt of insurance policies, including confirmation of paid insurance premiums, satisfactory to the Lender and/or its solicitor.

b) Registered Loan Security satisfactory to Lender's solicitor.

c) Such other and further information, material or requirements that may be required by Domain Funding, the Lender or the Lender's solicitor.

**17.3** Funding of the Third Loan Segment is conditional upon the successful offering of the Third Loan Segment as a syndicated mortgage investment to private mortgage investors by Domain Securities Corp., a related-party to Domain Funding.

17.4 Upon satisfaction of all Conditions Precedent to Funding, as determined by the Lender and its solicitor at their sole discretion, the entire Third Loan Segment amount will be advanced to the Borrower(s) in one advance in accordance with the terms and conditions of this Commitment Letter.

**18. POST FUNDING CONDITIONS:**

None.

**19. PAYMENT OF LOAN FEES:**

Pursuant to Schedule "A" of the Loan Retainer Agreement dated Tuesday, January 18, 2022, the $36,000.00 Mortgage Broker Fee will be secured by the Promissory Note in the form as attached as Schedule "B" to this Commitment Letter, to be executed by the Borrower(s) and Covenantor(s) along with this Commitment Letter.

In addition, pursuant to Schedule "A" of the Loan Retainer Agreement dated Tuesday, January 18, 2022, the Fund Raising Fee in the amount of $18,000.00 will be due and payable to Domain Securities Corp. upon the earlier of: (a) the funding of the Third Loan Segment; or (b) the Third Loan Segment Funding Date specified in the Loan Commitment Letter(s); or (c) the cancellation of the Loan Retainer Agreement by the Borrower(s).

The following further amounts are due as follows:

$147,000.00 Unpaid Fund Raising Fee payable to Domain Securities Corp., previously due and payable, to be paid upon the funding of the Third Loan Segment.

**20. LOAN SERVICING AND ADMINISTRATIVE FEES:**

The Borrower(s) and Covenantor(s) agree to pay the following Loan Servicing and Administrative Fees during the Loan term:

a) Loan Servicing Fee of 0.25% per annum, calculated and paid monthly. The Loan Servicing Fee is payable by the Borrower to the Lender as the administrator of the Loan, as compensation for collecting and making interest payments, Loan record-keeping, and post funding administration of the Loan in the normal course;
b) $500.00 non-sufficient funds (NSF) fee, per occurrence.
c) $500.00 late payment fee, per occurrence.
d) $500.00 discharge fee, per title to be discharged.
e) $500.00 per hour (or portion thereof) administration fee for each occasion Domain Funding or the Lender provides administrative services outside normal course administration of the Loan.

**21. LENDER'S SOLICITOR:**

Legal work and documentation will be performed, at the Borrower(s)' expense, by the Lender's solicitor, as follows:

| | |
|---|---|
| Name: | Alan Frydenlund |
| Firm: | Owen Bird |
| Address: | Bentall 3, Suite 2900, 595 Burrard Street, Vancouver, BC V7X 1J5 |
| Telephone: | (604) 691-7511 |
| Email: | afrydenlund@owenbird.com |

**22. BORROWER(S)' INFORMATION:**

The Borrower(s) must complete the information required in Schedule "C" attached to this Commitment Letter upon acceptance of this Commitment Letter.

///



**23. DEDUCTIONS FROM LOAN PROCEEDS BY LENDER'S SOLICITOR:**

The Borrower(s) and Covenantor(s) acknowledge and agree that the Lender's solicitor will be deducting the following amounts from the Loan Proceeds:

| | |
|---|---|
| Interest Adjustment: | Lender's solicitor to advise. |
| Balance of Mortgage Broker Fee: | \$ 36,000.00 (payable to Domain Funding) |
| Fund Raising Fee: | \$ 18,000.00 (payable to Domain Securities Corp.) |
| Previously owing Fund Raising Fee: | \$ 147,000.00 (payable to Domain Securities Corp.) |
| Collateral Reserve: | \$ 294,875.00 (payable to Domain Mortgage Corp.) |
| Monthly Payment Reserve: | \$ 145,500.00 (payable to Domain Mortgage Corp.) |
| Terrace House Reserve: | \$ 777,625.00 (payable to Domain Mortgage Corp.) |
| Lender's Legal Fees: | \$ 15,000.00 (estimate) |

NOTE: Payouts of existing mortgages, outstanding taxes, utilities, etc. are to be deducted from mortgage proceeds and paid by the Lender's solicitor and/or paid by the Borrower(s)' solicitor subject to the appropriate undertakings.

**24. LOAN FUNDING EXPIRY DATE:**

Unless the Third Loan Segment is funded by the Lender and funds are drawn by the Borrower(s) in accordance with the terms and conditions of this Commitment Letter on or before **Monday, February 28, 2022**, then, the Lender's obligation to fund the Third Loan Segment will become null and void.

**25. ACCEPTANCE:**

The Borrower(s) and Covenantor(s) must indicate their acceptance of this Commitment Letter by completing, signing and initialing where indicated, and by completing, signing, and initialing Schedule "A", Schedule "B", Schedule "C", and Schedule "D" attached, and returning to Domain Funding on or before **5:00 PM on Wednesday, February 9, 2022.** If this Commitment Letter is not accepted by the Borrower(s) and covenantor(s) by this date, then the Lender's obligation to fund the Third Loan Segment will become null and void.

Yours truly,

DOMAIN Funding

PER: Authorized Signatory

Initials of Borrower(s)/Covenantor(s):

## ACCEPTANCE OF COMMITMENT LETTER

I/We hereby understand and accept the terms and conditions of this Commitment Letter and the attached Schedules.

Accepted this 7th day of February, 2022

| BORROWER(S): | COVENANTOR(S): |
|---|---|
| **Evergreen House Development Limited Partnership** | **Port Capital Development Inc.** |
| PER: Authorized Signatory | PER: Authorized Signatory |
| **Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership** | **Mr. Macario Teodoro Reyes** |
| PER: Authorized Signatory | Mr. Macario Teodoro Reyes |

## SCHEDULE "A" – STANDARD CLAUSES

*(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FEBRUARY 7, 2022)*

1. **PROPERTY TAXES AND OTHER CHARGES:**

The Borrower(s) will pay all taxes, assessments, utilities, strata and/or condominium fees and all other amounts charged or levied against the Secured Property when the same are due and payable, and provide evidence to the Lender on an annual basis by no later than August 31 of each year, that they are fully paid and up to date.

Subject to the discretion of the Lender, any advance under the Loan will be conditional on the Borrower(s) providing evidence to the Lender that all taxes, assessments, utilities, strata and/or condominium fees and all other amounts charged or levied against the Secured Property have been paid in full.

2. **INSURANCE:**

The Borrower(s) will insure and keep insured the Secured Property and all chattel property against the following perils:

a) With respect to all buildings and other improvements, if any, now or hereinafter situated on the Secured Property, and all insurable property included within the buildings, coverage against loss or damage by fire and other insurable hazards, including earthquakes, defined in an "all risks" policy for the full replacement cost with provision for permission to occupy and with automatic vacancy permit.

b) If applicable, during construction for the full contract price plus extras and additions which, from time to time, may be added thereto using standard Builders' Risk - "all risk" form or equivalent. The policy is to grant permission for partial occupancy.

c) If applicable, standard comprehensive boiler and pressure vessel insurance for the full replacement cost of the Secured Property and all improvements thereon or such lesser amount as shall be acceptable to the Lender.

d) If applicable, business interruption insurance or rental loss insurance acceptable to the Lender for an indemnity period of not less than 100% of the resulting loss of rent and/or other revenue received from the operation of the building.

e) Loss or damage of all personal property by fire or other insurable hazards, including theft, in an amount not less than the full replacement cost thereof.

f) Public liability insurance to an amount not less than $2,000,000 on an occurrence basis.

The policies of insurance to be maintained shall not contain any co-insurance clauses and shall be in a form and with insurers satisfactory to the Lender, and/or its insurance consultant, and shall include the agreement of the insurer that the policy will not be cancelled without at least 15 days prior written notice of intended cancellation to the Lender. The Lender shall be named in all policies as "Loss Payee" and/or as "Additional Insured", as its interest may appear, and the Borrower shall provide to the Lender an updated Certificate of Insurance upon renewal, and in any event,15 days prior to the expiration of any insurance policy for the Secured Property.

The Lender reserves the right to engage the services of an insurance consultant, at the Borrower(s)' expense, to verify the adequacy of the policies of insurance.

3. **DOCUMENTATION AND SOLICITOR'S APPROVAL:**

Loan documentation will be drawn by the Lender's solicitor using the Lender's specified forms. The full Loan amount will be advanced to the Borrower(s) only when the title to and all security in connection with the Loan and all other documents and matters with respect to the Loan being necessary or advisable to the Lender's solicitors are complete, satisfactory and acceptable to the Lender's solicitors.

4. **COSTS:**

The Borrower(s) and Covenantor(s) shall pay, whether or not all or any part of the Loan is advanced, all legal costs, registration fees, appraisal fees, consulting fees and all out-of-pocket expenses incurred by the Lender relating to the Loan in preparation for and completion of the transaction contemplated by this Commitment Letter. Such costs, fees and expenses may be deducted out of the Loan funds to be disbursed, and this Commitment Letter shall constitute an irrevocable direction by the Borrower(s) and Covenantor(s) in that regard.

Upon the Borrower(s)' repayment of the Loan in full, including all interest and other charges owing thereon, the Lender shall provide the Borrower with a discharge of the Loan security registered against the Borrower(s), Covenantor(s) and Secured Property (to be prepared and delivered to the Lender by the Borrower(s) or its solicitor at its own cost) upon payment to the Lender of the discharge fee outlined herein (where permissible by provincial law);

**5. TITLE:**

The Borrower(s) are, or shall become, the registered and beneficial freehold interest owner of the Secured Property at the time of the disbursement of any part of the Loan. The Borrower(s) will have, as the registered owner of the Secured Property, a good and marketable title in fee simple to the Secured Property, and the Lender will be in priority over all other encumbrances, leases, agreements for leases, restrictions, agreements, liens, assignments, easements, mortgages and charges whatsoever to the extent of the Loan except for such encumbrances to which the Lender may consent to in writing.

The Secured Property and all improvements thereon shall have been duly authorized and comply in all respects with all applicable laws, bylaws, government requirements, whether federal, provincial, or municipal, including without restriction, those dealing with zoning, use, occupancy, liquor license, subdivision, parking, historical designations, fire access, loading facilities, landscaped areas, pollution of the environment, toxic materials or other environmental hazards, building construction, public health and safety, and there shall be no outstanding work orders, judicial or administrative actions, suits, or proceedings pending or threatened against the Secured Property or the improvements or any part thereof.

**6. REPRESENTATIONS AND WARRANTIES OF DOMAIN FUNDING:**

The Borrower(s) and Covenantor(s) acknowledge that Domain Funding has made no verbal or written representations or warranties related to the Loan, the Secured Property, or the ability to provide future financing of the Secured Property after the Loan Funding Date, except as expressly outlined in this Commitment Letter.

**7. REPRESENTATIONS AND WARRANTIES OF BORROWER(S) AND COVENANTOR(S):**

The Borrower(s) and Covenantor(s) represent and warrant the following to Domain Funding and the Lender:

a) The Borrower(s) are, or shall become, the registered and beneficial freehold interest owner of the Secured Property at the time of the disbursement of any part of the Loan.
b) The Borrower(s) is the legal and beneficial owner of all the right, title and interest to the Secured Property and holds no portion of the legal or beneficial interest in the Secured Property in trust for any party(s).
c) All other mortgage loans to the Borrower(s) with any lender have not been in arrears in the last 12 months, except as disclosed to and approved by Domain Funding.
d) All financial statements and other documents and information delivered by the Borrower(s) and Covenantor(s) in connection with the Borrower(s)' application for the Loan are true, complete and accurate and representative of the financial condition of the Borrower(s) and Covenantor(s).
e) Neither the Borrower(s) nor the Covenantor(s) are in default under any agreement or instruments to which any of them are a party that materially affects any of their businesses, property, assets or financial condition.
f) At the time of disbursement of any part of the Loan, no default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default under any of the Loan Security documents, and neither the Borrower(s) nor the Covenantor(s) shall be deceased, insolvent or be subject to any bankruptcy, arrangement with creditors, proposal, amalgamation, outstanding claims, actions, suits, judgments, investigations, reorganization, liquidation, winding up, dissolution, receivership or material litigation or continuation under laws of any jurisdiction, nor, to the best of the knowledge of the Borrower(s) or Covenantor(s) are there any pending or threatened. Any default herein shall be deemed to be a default under the Loan. Any default under the Loan shall be deemed to be a default hereunder.
g) The purpose of the Loan is primarily for business, investment or commercial purposes and is not primarily for personal, family or household purposes. The Borrower(s) will only use the Loan proceeds for the Loan purposes set out in the "Uses and Sources of Funds" section of this Commitment Letter.
h) Once executed by the Borrower(s) and Covenantor(s), this Commitment Letter and all other Loan security documentation will each be a valid and binding obligation of each of the Borrower(s) and Covenantor(s) in accordance with their terms.
i) All remittances required to be made by the Borrower(s) or Covenantor(s) to federal, provincial and municipal governments have been made, are currently up to date and not in arrears.
j) The Borrower(s) and/or Covenantor(s) have the ability to service the Loan debt.

The Borrower(s) and Covenantor(s) agree that the above representations and warranties will be true and correct as of the execution of this Commitment Letter and at the time of disbursement of any part of the Loan, and any extension or renewal of the Loan, and will survive the completion of the Loan and any extension or renewal thereof.

The Borrower(s) and Covenantor(s) represent and warrant that all financial and other information provided in connection with the Borrower(s)' Application to Finance the Secured Property is true, accurate and complete, and acknowledges that the terms and conditions contained in this Commitment Letter are based on reliance by

Domain Funding and the Lender on the truth, accuracy and completeness of the information provided and the above representations.

8. **COVENANTS OF BORROWER(S) AND COVENANTOR(S):**

The Borrower(s) and Covenantor(s) hereby covenant to:

a) Comply with all Loan terms outlined in this Commitment Letter.
b) Keep all prior and subsequent mortgages registered against the Secured Property, as permitted by the Lender, current and in good status while the Loan remains outstanding.
c) If applicable, comply with all provisions of the Builders Lien Act (or equivalent provincial statute where the Secured Property is located).
d) If applicable, supply to the Lender a statutory declaration in conjunction with each advance under the Loan, confirming the status of any holdback account(s) as at the date of the statutory declaration.
e) Promptly deliver to the Lender the information and documentation required hereunder and such further information and documentation, such as financial reports, as is requested by the Lender or its solicitor, concerning the Borrower(s), Covenantor(s), the Secured Property, or the Project (if applicable), and to advise the Lender immediately upon a material adverse change or the discovery of a discrepancy or inaccuracy in or to the information and documentation provided to the Lender in connection with the Loan.
f) Take all appropriate remedial action in the event of a violation of any environmental law, release of hazardous substances on the Secured Property or any other contamination of the Secured Property.
g) Not further encumber the Secured Property without the written consent of the Lender.
h) Comply with provincial securities acts and mortgage broker acts, where applicable.
i) Remain in good standing with the Canada Revenue Agency (CRA) with respect to tax filings and remittances.
j) Neither the Borrower(s) nor their employees, officers, directors, or agents will represent that financing is available from Domain Funding or Domain Mortgage Corp. to any contractors, trades, or suppliers performing work on the Secured Property.

9. **PUBLISHING, MARKETING AND SIGNAGE:**

The Borrower(s) and Covenantor(s) agree to allow Domain Funding to photograph or utilize existing photographs of the Secured Property and to publish such photographs along with details of the Loan in internal and/or external marketing programs.

The Borrower(s) and Covenantor(s) also agree to allow Domain Funding the right to install on the Secured Property, at Domain Funding's expense, up to four "Domain Funding" financing signs, the location(s) of which shall be mutually agreed to by the parties.

10. **CONFIDENTIALITY AND DISCLOSURE:**

The Borrower(s) and Covenantor(s) acknowledge and agree that the terms and conditions of this Commitment Letter are confidential between the Borrower(s), the Covenantor(s), Domain Funding and the Lender. The Borrower(s) and Covenantor(s) agree not to disclose the information contained herein to any third party without the written consent of the Lender.

The Borrower(s) and Covenantor(s) also acknowledge and agree that the Lender may, at its sole discretion, syndicate the Loan, including to affiliates or associates of the Lender as co-lenders or the sole lender of the Loan, and may disclose to co-lenders, investors and their share or unit holders, as applicable, any or all information provided to the Lender by the Borrower(s) and Covenantor(s), including but not limited to corporate and personal financial information.

11. **CONSENT TO COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION:**

The Borrower(s) and Covenantor(s) hereby authorize Domain Funding and/or the Lender to obtain information from any credit reporting agency or credit granting organization as required at any time and consents to the disclosure of such information at any time to any credit reporting agency or credit granting organization.

In addition, without limiting the foregoing, the Borrower(s) and Covenantor(s), if an individual, hereby acknowledge that they have read and understood Domain Funding's current privacy policy, including specifically the provisions respecting the collection, use and disclosure of personal information, and hereby consents to the collection, use and disclosure of their personal information by Domain Funding and/or the Lender in accordance with Domain Funding's current privacy policy, as described on Domain Funding's company website: www.domainfunding.ca.

**12. ASSIGNMENT:**

The Loan may be assigned by the Lender at which time the Lender shall be relieved by the Borrower(s) and Covenantor(s) of all liabilities and claims relating to the Loan hereunder. The Loan is neither assignable nor transferable by the Borrower(s) or Covenantor(s) without the written approval of the Lender. In addition, the Lender may appoint or engage another party to service and administer the Loan, including collection of payments under the Loan and the approval of Conditions Precedent to Funding the Loan, without prior notice to or consent of the Borrower(s) and/or Covenantor(s).

**13. ADVERSE CHANGE:**

It is a term and condition of the granting, approval and continuation of the Loan, both before and after the disbursement of funds, that, in the Lender's sole opinion, an adverse change relating to the Borrower(s), the Covenantor(s), the Project (if applicable), the Secured Property, the Loan Security or the risk associated with the Loan shall not have occurred, including that there are no actions, suits or pending proceedings involving the Borrower(s) or any Covenantor(s). In the event of an adverse change, the Lender may, in its sole discretion, declare or treat it as an event of default under the Loan, may cease or delay further funding, may terminate this Commitment Letter and may exercise any and all remedies available to it under this Commitment Letter and the Lender's Loan Security or at law or in equity.

**14. COUNTERPARTS AND FACSIMILE/E-MAIL EXECUTION:**

This Commitment Letter may be executed in one or more counterparts, each of which when so executed will constitute an original, and all of which will constitute one and the same Commitment Letter. Also, this Commitment Letter may be executed by the parties and transmitted by facsimile or by e-mail (with PDF attachment), and if so executed and transmitted this Commitment Letter shall be for all purposes as effective as if the parties had delivered an executed original copy of this Commitment Letter.

**15. SEVERABILITY:**

Each of the provisions in this Commitment Letter is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision of this Commitment Letter. To the extent permitted by applicable law, the parties waive any provision of law that renders any provision of this Commitment Letter invalid or unenforceable in any respect.

**16. GOVERNING LAWS:**

The agreement constituted by the Borrower(s)' and Covenantor(s)' acceptance of this Commitment Letter shall be governed by the laws of the province of British Columbia.

**17. BORROWER'S SOLICITOR:**

The Lender shall have the right to approve the solicitor(s) for the Borrower(s) and the Lender may, in its sole discretion, require the Borrower to change its solicitors at any time.

**18. DISCHARGE OF LOAN SECURITY:**

Prior to the discharge of the Lender's mortgage security, the Borrower(s)/Covenantor(s) must provide the Lender, at the Lender's request, a CRA Clearance Certificate, satisfactory to the Lender, indicating that the Borrower(s)/Covenantor(s) are in good standing with the CRA with respect to tax filings and remittances and that no funds are owing to the CRA.

**19. SURVIVAL:**

The obligation and promise of the Borrower(s) and Covenantor(s) to pay the Loan Fee(s), interest on the Loan amount at the interest rate from the time the Loan amount was available for advance, up to and including the date the Loan is repaid or no longer available, including minimum interest, legal fees and disbursements, shall survive the lapse, termination or cancellation of this Commitment Letter.

The terms and conditions of this Commitment Letter shall, after acceptance by the Borrower(s) and Covenantor(s), survive the execution and registration of all security documentation and there shall be no merger of these provisions or conditions in the security provided that in the case of a conflict between the provisions hereof and of any of the security documents, the Lender shall be entitled to elect which provisions shall prevail.

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**20. TIME SHALL BE OF THE ESSENCE:**

It is understood that, with reference to all terms and conditions of this Commitment Letter, time shall be of the essence.

## SCHEDULE "B" – PROMISSORY NOTE

*(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FEBRUARY 7, 2022)*

| | |
|---|---|
| **Date of Promissory Note:** | **February 9, 2022** |
| **Principal Sum of Promissory Note:** | **$36,000.00** |
| **Interest Commencement Date of Promissory Note:** | **February 28, 2022** |
| **Maturity Date of Promissory Note:** | **March 1, 2022** |

FOR VALUE RECEIVED including TEN DOLLARS (the receipt and sufficiency of which is hereby acknowledged by the parties signing this Promissory Note) and other good and valuable consideration, we promise to pay on demand to Bankers Mortgage Corporation d/b/a Domain Funding at its office located at #1100 – 1040 West Georgia Street, Vancouver, British Columbia, the sum of THIRTY SIX THOUSAND DOLLARS (hereinafter called the "Principal Sum") with interest thereon at the rate of 24.00% per annum, calculated monthly as well after as before maturity, default and judgment with overdue interest at the same rate as on the Principal Sum, on the maturity date of this Promissory Note.

We agree that, as security for payment of the PROMISSORY NOTE, we hereby mortgage and charge our right, title and interest in the real property located at;

| | |
|---|---|
| Civic Address: | 1250 West Hastings Street, Vancouver B.C. V6E 4H1 |
| Legal Description: | Lot 18, Block 29, Plan VAP92, District Lot 185, New Westminster Land District, Exc That Pt of Canadian Pacific Railway Srw as Described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154c, & Exc S 7 Ft Now Rd |
| PIDs: | 006-721-397 |

as and by way of an equitable mortgage, in favour of Bankers Mortgage Corporation d/b/a Domain Funding. The equitable mortgage created hereby shall remain in effect until the PROMISSORY NOTE is paid in full.

The undersigned hereby jointly and severally waive demand or presentment for payment, notice of dishonor, protest and notice of protest, and hereby agree to pay, upon the default of any payment hereof, all expenses related or incidental to the PROMISSORY NOTE including all costs for enforcement on a true indemnity, solicitor and own client costs basis.

**Signed, sealed and delivered this** 7th **day of February 2022.**

| **BORROWER(S):** | **COVENANTOR(S):** |
|---|---|
| **Evergreen House Development Limited Partnership** | **Port Capital Development Inc.** |
| PER: Authorized Signatory | PER: Authorized Signatory |
| **Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership** | **Mr. Macario Teodoro Reyes** |
| PER: Authorized Signatory | Mr. Macario Teodoro Reyes |

Initials of Borrower(s)/Covenantor(s):

## SCHEDULE "C" – BORROWER(S)' INFORMATION

*(ATTACHED TO AND FORMING PART OF THE COMMITMENT LETTER DATED FEBRUARY 7, 2022)*

1. **BORROWER(S):**

Name: Evergreen House Development LP

Registered Records Office: 325 W. 4th Ave

Telephone: (604) 688-4337

Fax:

E-Mail: tobi@portliving.com

2. **BORROWER(S)' SOLICITOR:**

Name: David Gruber.

Address: Bennett Jones
666 Burrard St. #2500, Vancouver BC V6C 2X8

Telephone: (604) 891-5150

Fax: (604) 891-5100

E-Mail: GruberD@bennettjones.com

3. **BORROWER(S)' INSURANCE AGENT:**

Name: Grace Wang @ Aon

Address: 401 W. Georgia St. Suite 1200
Vancouver, BC V6B 5A1

Telephone: 604-443-2495

Fax: 604-682-4026

E-Mail: grace.wang@aon.ca

**SCHEDULE "D" – PERMISSIBLE SUBSEQUENT ENCUMBRANCES**

Copy of Title No. CA7287055

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**DOMAIN FUNDING**

**Domain Funding**
Suite 1100–1040 West Georgia St.
Vancouver, BC V6E 4H1
604.681.3000

Loan #: 2021-BC011A

Friday, February 11, 2022

**Evergreen House Development LP**
**Port Capital Development (EV) Inc.**
**Port Capital Development Inc.**
**Mr. Macario Teodoro Reyes**
c/o 325 West 4th Avenue,
Vancouver, B.C. V5Y 1H3

E-mail: tobi@portliving.com

Dear Sir(s)/Madam(s):

## AMENDMENT TO COMMITMENT LETTER

The Commitment Letter dated Monday, February 07, 2022, issued by Bankers Mortgage Corporation doing business as Domain Funding (referred to herein as "Domain Funding") is amended as follows:

**Amend Section 17.1 (r) as follows:**

r) Payout in full of $1,675,000 Domain Mortgage Corp. Loan #2021-009 (referred to by DMC as "Port Living – 583 East Broadway") to Living Midtown Development Limited Partnership and Port Capital Development (MID) Inc. secured by First Mortgage and Assignment of Rents in favour of Domain Mortgage Corp. by no later than Wednesday, February 16, 2022.

All other terms and conditions of the Commitment Letter dated Monday, February 07, 2022, issued by Domain Funding remain unchanged and in effect.

This Amendment to Commitment Letter in combination with the Commitment Letter dated Monday, February 07, 2022, form the whole commitment for funding.

Please indicate your acceptance of the amended terms outlined herein by signing where indicated below.

Yours truly,

Domain Funding

PER: Authorized Signatory

This is Exhibit " H " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5th day of July, 2022

A Commissioner for taking Affidavits within British Columbia

Initials of Borrower(s)/Covenantor(s):

## ACCEPTANCE OF AMENDMENT TO COMMITMENT LETTER

I/We hereby understand and accept the terms and conditions of this Amendment to Commitment Letter.

Accepted this 11 day of February 2022.

| **BORROWER(S):** | **COVENANTOR(S):** |
|---|---|
| **Evergreen House Development Limited Partnership**<br><br>PER: Authorized Signatory | **Port Capital Development Inc.**<br><br>PER: Authorized Signatory |
| **Port Capital Development (EV) Inc. as the General Partner of Evergreen House Development Limited Partnership**<br><br>PER: Authorized Signatory | **Mr. Macario Teodoro Reyes**<br><br>Mr. Macario Teodoro Reyes |

Initials of Borrower(s)/Covenantor(s):

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**DOMAIN FUNDING**

Domain Funding
Suite 1100–1040 West Georgia St.
Vancouver, BC V6E 4H1
604.681.3000

BY E-MAIL

This is Exhibit " I " referred to in the affidavit of Lisa Ward sworn before me at Vancouver, BC this 5th day of July, 2022

A Commissioner for taking Affidavits within British Columbia

Monday, April 25, 2022

**Evergreen House Development LP**
**Port Capital Development (EV) Inc.**
**Port Capital Developments Inc.**
**Mr. Macario Teodoro Reyes**
c/o 325 West 4th Avenue,
Vancouver, B.C. V5Y 1H3

E-mail: tobi@portliving.com

Dear Sirs/Madams:

**LOAN RENEWAL LETTER**

**Re:**

| | |
|---|---|
| **Domain Mortgage No.:** | **2021-010 (Terrace House)** |
| **Mortgage Description:** | **$14,700,000 1st Mortgage Loan (the "Loan")** |
| **Secured Property Description:** | **±8,258 sq. ft. mixed-use development site located at 1250 West Hastings Street, Vancouver, B.C. and as further described in the Appraisal Report prepared by Ryan ULC with an effective date of April 14, 2021 (referred to herein as the "Secured Property")** |

Our records indicate that your Loan will mature on **May 1, 2022.** (the "Loan Maturity Date").

We calculate that your outstanding Loan balance, as of April 1, 2022, is $14,760,005.15.

Domain Funding, as agent of the Lender(s), will recommend a two (2) month extension of the Loan Maturity Date. In consideration of One ($1.00) Dollar and other good and valuable consideration, the following terms and conditions are proposed for mutual approval:

**A. TERMS:**

a) Once approved by the Lender, the new Loan Maturity Date will become **July 1, 2022.**

b) The Loan will remain open for repayment in full without penalty.

c) All other terms and conditions of the Loan, the original Commitment Letter and any amendment thereto, and Personal and Corporate Guarantees and all related Loan documentation, shall remain the same and in effect.

d) The Borrower(s) agrees that, in the event the Borrower(s) fails to repay the Loan in full by July 1, 2022, Domain Funding will earn an Exit Fee equal to 2.00% of the outstanding Loan principal balance on July 1, 2022, which will become due and payable by the Borrower(s) and Covenantor(s) on July 1, 2022.

Initials of Borrower(s)/Covenantor(s):

**B. PRE-RENEWAL CONDITIONS:**

On or before **Friday, April 29, 2022**, the Borrower(s) will provide the following items to the Lender. All items are to be to the satisfaction of Domain Mortgage Corp.

1. Confirmation that insurance is in effect, with respect to the Secured Property.
2. Payment of Loan Renewal Fee in amount of $98,000 (0.666% of Loan amount) made payable to Domain Funding.
3. Confirmation of payment of all outstanding property taxes for the Secured Property (incl. penalties and fees), and to provide the Lender with a new tax search/certificate evidencing NIL balance owing on the Secured Property.

**C. POST-RENEWAL CONDITIONS:**

On or before **Monday, May 16, 2022**, the Borrower(s) will provide the following items to the Lender. All items are to be to the satisfaction of Domain Mortgage Corp.

1. A copy of a current Appraisal Report prepared by a Lender-approved firm demonstrating minimum of a $30,000,000 "as is" value of the Secured Property.

**D. EXPIRY:**

This Renewal Letter is open for acceptance until **10:00 AM** on **Wednesday, April 27, 2022**. Please note that if the Borrower does not accept this Renewal Letter by the specified date, then the Loan Maturity Date will remain May 1, 2022.

If you wish to apply for a renewal of your Loan and you are in agreement with the terms and conditions outlined in this Loan Renewal Letter, please sign where indicated, below, and provide all the items as outlined herein.

The renewal of your Loan is subject to approval by Domain Mortgage Corp., and becomes effective only if approved, below.

Thank you.

DOMAIN Funding

Per: Alexander Hayne
Principal & Director

ACCEPTED this 25th day of April 2022.

| BORROWER(S): | COVENANTOR(S): |
|---|---|
| **Evergreen House Development LP** | **Port Capital Development Inc.** |
| PER: Authorized Signatory | ~~Satpreet Thiara~~ Macario Teodoro Reyes |
| **Port Capital Development (EV) Inc.** | **Mr. Macario Teodoro Reyes** |
| PER: Authorized Signatory | Macario Teodoro Reyes |

Approved by the Lender this 3 day of MAY, 2022.

Domain Mortgage Corp.

PER: Authorized Signatory

Initials of Borrower(s)/Covenantor(s): ☐ ☐ ☐ ☐

No. ____________
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP and PORT CAPITAL DEVELOPMENT (EV) INC.**

Between

DOMAIN MORTGAGE CORP.

Petitioner

and

EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP and PORT CAPITAL DEVELOPMENT (EV) INC.

Respondents

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**AFFIDAVIT**

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**OWEN BIRD LAW CORPORATION**
P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5

Attention: Scott H. Stephens
File No. 37943-0002