

COURT FILE NUMBER 2101-06388
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS ATB FINANCIAL
RESPONDENTS ALBERTA FOOTHILLS PROPERTIES LTD.
DOCUMENT **SECOND REPORT OF FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS
RECEIVER OF ALBERTA FOOTHILLS
PROPERTIES LTD.**

September 29, 2022

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

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SECOND REPORT OF THE RECEIVER

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INTRODUCTION

1. On May 17, 2021 (the “**Date of Appointment**”), FTI Consulting Canada Inc. (“**FTI Consulting**”) was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings, and properties (the “**Property**”) of Alberta Foothills Properties Ltd. (“**AFPL**”, the “**Debtor**”, or the “**Company**”) pursuant to an Order of the Honourable Justice K.M. Eidsvik (the “**Receivership Order**”) pronounced in the Court of Queen’s Bench of Alberta Court File Number 2101-06388 (the “**Receivership Proceedings**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the Business of the Company, to market any or all of the Property including advertising and soliciting offers to purchase the Property, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. The Receiver’s reports and other publicly available information filed in connection with the Receivership Proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/AFPL>.
4. The purpose of this report (“**Second Report**”) is to provide this Honourable Court with:
 - (a) a summary of the activities of the Receiver since its First Report dated August 30, 2021;
 - (b) a background and history of the dispute regarding a likely asset of the Debtor, being funds currently held in escrow by escrow agent, MLT Aikins LLP; and
 - (c) the Receiver’s comments and recommendations.

TERMS OF REFERENCE

5. In preparing this Second Report, the Receiver has relied upon audited and unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
6. Except as described in this Second Report:
 - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Receiver has not examined or reviewed the financial forecasts and projections referred to in this Second Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
7. Future oriented financial information reported or relied on in preparing this Second Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
8. The Receiver has prepared this Second Report in connection with the Receiver's Application scheduled for December 12, 2022. This Second Report should not be relied on for other purposes.
9. MLT Aikins LLP is engaged as the Receiver's legal counsel (the "**Receiver's Counsel**") in these Receivership Proceedings; however due to its involvement in the dispute described herein, the Receiver engaged Code Hunter LLP (the "**Receiver's Conflict Counsel**").

10. Information and advice described in this Second Report that has been provided to the Receiver by the Receiver's Conflict Counsel, was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

RECEIVER'S ACTIVITIES

12. Since the date of the First Report the Receiver, among other things:
 - (a) The Receiver's Counsel, has reviewed the security granted by AFPL to ATB and, subject to the usual assumptions, has confirmed to the Receiver that the said security is valid and enforceable in accordance with its terms;
 - (b) On September 29, 2021, the Receiver applied to this Honourable Court for advice and directions to determine whether the Receivership Order stayed the Town of Okotoks (the "**Town**") from enacting certain bylaws that rescind a previous bylaw approving a development plan and another bylaw that rezones the lands owned by AFPL while the Receiver is attempting to sell those lands. The Town of Okotoks subsequently passed the by-laws on October 25, 2021;
 - (c) On November 16, 2021, the Receiver sent a request for proposals to a number of listing agents to solicit proposals to market the property;
 - (d) On January 8, 2022, the Receiver, in consultation with ATB, engaged Avison Young LLP to market and solicit offers to purchaser the Property. The Property continues to be listed by Avison Young LLP;

- (e) The Property continues to be listed with Avison Young LLP and discussions are ongoing with potential purchasers; and
- (f) responded to requests for information from creditor and other stakeholders.

BACKGROUND

13. Prior to the Date of Appointment, AFPL discussed obtaining loans from Barbican Capital Partners LLC (“**Barbican**”), including discussions about entering into a commitment letter, to finance its proposed development of a property referred to as the Wind Walk Development (the “**Project**”). We understand that no loan funds were ever advanced from Barbican to AFPL.
14. After the Date of Appointment, the Receiver became aware that:
 - (a) AFPL had deposited approximately \$300,000.00 (the “**Escrow Funds**”) with MLT Aikins LLP in its capacity as escrow agent (the “**Escrow Agent**”) pursuant to an Escrow Agreement dated November 7, 2019 between Barbican and AFPL (the “**Escrow Agreement**”). The Escrow Agreement is attached as Appendix “A”; and
 - (b) The Escrow Agent commenced Court of Queen’s Bench of Alberta Action 2001-10006 - MLT v AFPL and Barbican (the “**Escrow Agent’s Action**”) by Originating Application filed August 11, 2020 seeking directions from the Court for release of the Escrow Funds. The Originating Application is attached as Appendix “B”.
15. The Escrow Agent’s Action was stayed as a result of the Receivership Order.

16. The Receiver investigated whether the Escrow Funds were part of the AFPL estate. As part of its investigation, the Receiver:
- (a) Obtained the pleadings, evidence and other filed materials from the Escrow Agent's Action from the parties;
 - (b) Retained the Receiver's Conflict Counsel;
 - (c) Determined that entitlement to the Escrow Funds was in dispute between the parties to the litigation, ATB, and one or two individuals (Messrs. Atkins and Saperstein) who claim to have funded the payment of the Escrow Funds to the Escrow Agent (the "**Escrow Funds Dispute**"); and
 - (d) Requested and collected additional information and records from the parties.
17. As of July 5, 2022, the Escrow Agent provided an accounting of the Escrow Funds to the Receiver. There is currently \$250,000 in Escrow Funds being held by MLT. The accounting provided is attached as Appendix "C". We understand that all funds described in Appendix "C" are in Canadian dollars.
18. The Affidavits filed in the Escrow Agent's Action are attached as appendices as follows:
- (a) Appendix "D" - Affidavit of Benny Leung filed August 11, 2020 ("**Barbican Affidavit**").
 - (b) Appendix "E" - Affidavit of Drew Atkins filed September 21, 2020 ("**AFPL Affidavit**").

- (c) Appendix “F” - Affidavit of Drew Atkins filed October 16, 2020 (“**AFPL Affidavit 2**”).
 - (d) Appendix “G” - the Cross Application of AFPL filed September 24, 2020.
19. The following is a chronology of the salient events resulting in the Escrow Funds Dispute, summarized primarily from the Affidavits filed in the Escrow Agent’s Action and this proceeding.

Chronology

20. August 17, 2015 - As described in the Affidavit of John Sullivan of May 11, 2021 filed in these proceedings (the “**ATB Affidavit**”), AFPL granted security, including a general security agreement in favour of ATB dated August 17, 2015 (the “**GSA**”), in relation to financing obtained by AFPL from ATB.

ATB Affidavit, para 16 and Exhibit C.

21. September 29, 2017 – AFPL and its principal Drew Atkins obtained financing from ATB by Commitment Letter to finance development of the Project.

ATB Affidavit, paras 7,12 & 15.

22. March 2018 – AFPL breached the terms of its commitment letter with ATB by, among other things, failing to make payments to ATB when due.

ATB Affidavit, para 28.

23. March 16, 2018 – ATB and AFPL entered into a forbearance agreement providing AFPL until April 16, 2018 to address its defaults.

ATB Affidavit, para 29.

24. March, 2018 to March 30, 2021 – ATB extended the forbearance period to April 30, 2021 through various agreements with AFPL.

ATB Affidavit, paras 30-32, 34, 36-37, 39 & 50.

25. August 2019 – AFPL sought a new lender for the Project and was introduced to Barbican by a third party. MLT was Canadian counsel for Barbican.

AFPL Affidavit, paras 8-11; Barbican Affidavit, Exhibit D, p2.

26. August 2019 – AFPL paid Barbican advance fees of \$25,000 USD which Barbican indicated to AFPL was a precondition to Barbican continuing to engage with AFPL regarding a loan.

AFPL Affidavit, para 12.

27. August 22, 2019 – AFPL entered into a Letter of Intent with Barbican for Barbican to loan \$30 million to AFPL.

Barbican Affidavit, para 6 and Exhibit B; AFPL Affidavit,
para 13 and Exhibit A.

28. October 25, 2019 – Barbican communicated its intention to proceed with the loan to AFPL by letter.

AFPL Affidavit, para 17 and Exhibit B.

29. November 7, 2019 - Barbican and AFPL entered into an Escrow Agreement drafted by MLT as counsel to Barbican and appointing MLT as Escrow Agent.

Barbican Affidavit, para 8 and Exhibit C; AFPL Affidavit,
para 19 and Exhibit D.

30. December 24, 2019 – AFPL deposited \$300,000 with MLT pursuant to the Escrow Agreement.

AFPL Affidavit, para 21.

31. February 17, 2020 – Barbican and AFPL negotiated entering into a Commitment Letter regarding the proposed loan. AFPL relied on Barbican’s representations regarding its previous participation in large scale projects in its decision to proceed with the Commitment Letter.

Barbican Affidavit, para 15 and Exhibit D; AFPL Affidavit, paras 26 & 27 and Exhibit H.

32. February 18, 2020 – Barbican issued a notice of lender to MLT as Escrow Agent for MLT to pay \$50,000 from the Escrow Funds to Barbican and the funds were paid to Barbican by MLT.

Barbican Affidavit, paras 17 and 22 and Exhibit E;
AFPL Affidavit, para 29.

33. March 3-9, 2020 – AFPL’s agent travelled to New York to meet Leung to discuss loan funding and was advised that if AFPL provided an additional \$50,000 in fees, Barbican would prove their ability to fund. Despite AFPL signing a non disclosure agreement to obtain proof of ability to fund from Barbican, such proof was not provided.

AFPL Affidavit, para 33-34.

34. March 31, 2020 – By email exchange, the parties communicated their intention to cease loan discussions.

AFPL Affidavit, paras 44, 46-48 & 51 and Exhibit P.

35. No loan monies were advanced to AFPL at any time by Barbican.

AFPL Affidavit, para 29.

36. April 1, 2020 – AFPL requested return of the Escrow Funds from the Escrow Agent.

AFPL Affidavit, para 45 and Exhibit Q.

37. May 1, 2020 – Barbican sent a notice of termination of the commitment letter to AFPL on its own letterhead and demanded payment of a \$975,000 loan fee.

Barbican Affidavit, para 20 and Exhibit F; AFPL Affidavit, para 50 and Exhibit R.

38. June 3, 2020 – Barbican provided expense notices as requested by the Escrow Agent on June 2, 2020 in relation to legal fees it was claiming – being \$44,401.39 for MLT and \$36,346 (USD) for its US counsel.

Barbican Affidavit, para 23 and Exhibit G; AFPL Affidavit, paras 52-57 and Exhibits S and T.

39. June 3, 2020 – AFPL notified the Escrow Agent that legal expenses had to be approved by AFPL before being paid. The Escrow Agent responded that it would pay expenses to Barbican, including MLT’s fees and pay the balance to AFPL:

We intend to distribute the balance of the Escrow Amount first to pay the expenses listed under the Expense Notice and secondly the remaining balance to the Borrower. Under the terms of the Escrow Agreement, we are required to make these payments tomorrow. If you wish to discuss this further, please contact me forthwith.

AFPL Affidavit, paras 58-59 and Exhibit V.

40. August 11, 2020 - MLT filed an originating application in its capacity as Escrow Agent seeking release of the Escrow Funds to Barbican, relying on the Affidavit of Benny Leung sworn July 29, 2020 in support.

Appendices “B” and “D”.

41. September 24, 2020 – AFPL filed a cross application (with Gowlings LLP as its counsel) seeking, among other things, copies of the invoices for legal services being claimed by Barbican pursuant to their expense notice, an order directing MLT to return the escrow monies to AFPL and an order disqualifying MLT from acting in the matter.

Appendix “G”.

42. October 30, 2020 – ATB issued a demand to AFPL along with a Notice of Intention to Enforce Security.

ATB Affidavit, paras 39 and 42.

43. May 17, 2021 – the Receivership Order was granted.
44. August 27, 2021 – the escrow agent’s application and the debtor’s cross application were adjourned sine die by Order of Master Mattis as a result of the Receivership Order.

Positions of the Parties

45. By correspondence sent to the Receiver, MLT asserted that it is entitled to payment of its fees from the Escrow Funds. The letter from MLT is attached as Appendix “H”.

46. Barbican communicated to the Receiver by letter from its counsel dated March 18, 2022 that it is owed \$975,000 by AFPL and the Escrow Funds are not part of the AFPL estate. The letter from counsel for Barbican is attached as Appendix “I”.
47. The Receiver was contacted by counsel for Mr. Atkins and Ron Saperstein, Gowlings LLP, including by email dated March 3, 2022, and notified that Mr. Saperstein asserts that the Escrow Funds are not property of AFPL but instead belong to Mr. Saperstein. The email from counsel for Saperstein is attached as Appendix “J”.
48. Counsel for ATB sent correspondence dated April 5, 2022 to the Receiver, the Escrow Agent and counsel for Barbican advising of ATB’s claimed priority to the Escrow Funds as a result of its security. The ATB correspondence is attached as Appendix “K”.


CONCLUSIONS AND RECOMMENDATIONS

49. There is clearly a dispute to entitlement to the Escrow Funds by various parties identified above. The Receiver requests the assistance of this Honourable Court to provide advice and direction to the Receiver for the resolution and adjudication of the issues in dispute.
50. The Receiver recommends that there be an initial appearance by the parties before this Court for a scheduling order setting:
 - (a) The date and time for hearing of the Escrow Funds Dispute.
 - (b) The deadlines for:
 - i. filing of any evidence to be relied upon by the parties;
 - ii. conducting the cross examination(s) on affidavit(s);

- iii. service of undertaking responses; and
- iv. filing of written briefs of argument, if any.

All of which is respectfully submitted this 29th day of September 2022.

FTI Consulting Canada Inc.
in its capacity as Receiver of Alberta Foothills
Properties Ltd.



Deryck Helkaa, LIT
Senior Managing Director
FTI Consulting Canada Inc.

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “A” – Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made effective as of the 7th day of November, 2019 (the "**Effective Date**").

AMONG:

BARBICAN CAPITAL PARTNERS, LLC

(the "**Lender**")

AND:

ALBERTA FOOTHILLS PROPERTIES LTD.

(the "**Borrower**")

AND:

MLT AIKINS LLP

(the "**Escrow Agent**")

BACKGROUND

- A. The Lender and the Borrower (collectively, the "**Parties**" and each a "**Party**") have entered into a term sheet (the "**Term Sheet**") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "**Commitment**") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.
- B. The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the "**Escrow Amount**"), being a portion of the Commitment Fee set out in the Term Sheet.
- C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.
- D. Capitalized words and expressions used in this Escrow Agreement but not otherwise defined herein will have the meanings ascribed thereto in the Term Sheet. For the purposes of this Escrow Agreement, the term "**Business Day**" means any day in which main branch of TD Canada Trust in Calgary, Alberta is ordinarily open for business and "**Business Days**" means more than one of them.

TERMS OF AGREEMENT

In consideration of the Parties' continued negotiation of the Commitment, and of their respective covenants and agreements hereinafter contained, it is hereby agreed by and among the Parties hereto as follows:

Article 1 – Escrow

1.1 Appointment of Escrow Agent. The Lender and the Borrower hereby appoint the Escrow Agent to act as escrow agent on the terms and conditions set forth in this Escrow Agreement, and the Escrow Agent accepts such appointment on such terms and conditions.

1.2 Delivery of Escrow Amount. Concurrent with the execution and delivery of this Escrow Agreement, the Borrower will deliver the Escrow Amount, which amount will represent a portion of the Commitment Fee set out in the Term Sheet, to the Escrow Agent by wire transfer to the following account:

Account Holder Name: MLT AIKINS LLP, IN TRUST
Account Holder/Address: 2600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1

Bank Name/Address: TD Canada Trust
Toronto Dominion Tower Branch
700 W Georgia St Pacific Centre
Vancouver, BC V7Y 1A2

Account Number: 0902-5416541
Transit Number: 94000
Bank Number: 004
Swift: TDOMCATTOR
ABA: 026009593

1.3 Holding of Escrow Amount. Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Amount in escrow for the period commencing on the Effective Date until the later of the dates on which the Escrow Agent is required to release the Escrow Amount, or portions thereof, in accordance with Article 3 and Section 5.9 below.

Article 2 – Delivery of the Loan Commitment

2.1 Entry into Loan Commitment. Upon receipt of the Escrow Amount from the Borrower, the Escrow Agent will provide the Lender with written notice of receipt of the Escrow Amount (the "**Receipt Notice**"). Within seven Business Days of the Lender's receipt of the Receipt Notice from the Escrow Agent, the Lender will cause its solicitor to deliver to the Borrower or its solicitor a draft form of Commitment as contemplated by the Term Sheet. The Parties will negotiate and finalize the Commitment in good faith. Upon execution of the Commitment, the Parties will deliver the executed Commitment to the Escrow Agent, to be held in escrow by the Escrow Agent with irrevocable instructions to deliver the fully-executed Commitment to both Parties only in accordance with Article 3 below.

Article 3 – Payment of Escrow Monies

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

- (a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

- i. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay \$50,000 CAD of the Escrow Amount to the Lender in such manner as requested by the Lender from time to time; and
- ii. upon receipt of written notice from the Lender with acknowledgment by the Borrower that the remaining due diligence contingencies listed in the "**Due Diligence Contingencies**" section of the Commitment have been fully satisfied by Borrower and/or waived by Lender, the Escrow Agent will release the balance of the Escrow Amount, being \$250,000 CAD, to the Lender within two Business Days. Upon the release of the remaining Escrow Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully-executed Commitment; and
- iii. notwithstanding Section 3.1(a)(ii) above, if the Escrow Agent receives written notice jointly by both Parties that any of the Due Diligence Contingencies cannot be satisfied and the Parties jointly elect to terminate the Commitment, the Escrow Agent will:
 1. provide the Lender with a written demand for a summary of its expenses related to the Term Sheet, this Escrow Agreement, and the Commitment and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice"), which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses. The Lender's expenses appearing on any Expense Notice related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes of the Lender are hereby approved by the Borrower;
 2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first \$50,000 CAD as a break fee to the Lender;
 - b. second the amount set out in the Expense Notice to the Lender; and
 - c. third, the balance to the Borrower,in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused; and
- iv. notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii)

and (iii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;
2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first the amount set out in the Expense Notice to the Lender; and
 - b. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;

(b) upon the Escrow Agent's receipt of written notice by either Party, copying the other Party, in a form satisfactory to the Escrow Agent, acting reasonably, that the Parties have not entered into the Commitment within seven Business Days of the receipt of the Commitment by the Borrower pursuant to Section 2.1 above, the Escrow Agent will:

- i. provide the Lender with a written demand an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and
- ii. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 1. first to the Lender, the amount set out in the Expense Notice; and
 2. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(b)(ii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement.

Article 4 – Investment of Escrow Amount

4.1 The Escrow Amount will be held by the Escrow Agent in a non-interest-bearing account in accordance with its standard trust fund procedures. The Lender and the Borrower, as applicable, will assume any obligations imposed now or hereafter by any applicable tax law with respect to any payment of the Escrow Amount to the Lender or the Borrower under this Escrow Agreement.

Article 5 – Protection of Escrow Agent

- 5.1 Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term or condition of any contract or agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.
- 5.2 The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Parties to this Agreement hereby agree will govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:
- (a) except for the Escrow Agent's own acts of negligence or wilful misconduct, the Escrow Agent will not be liable for any act done or step taken or omitted to be done or taken by the Escrow Agent, or for any mistake of fact or law or error in judgment;
 - (b) the Escrow Agent may at any time consult with, and obtain advice from, legal counsel (who may be selected by the Escrow Agent, in its sole discretion) in the event of any question as to any of the provisions hereof or the Escrow Agent's duties hereunder, and will incur no liability and will be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel; and
 - (c) the Escrow Agent will have no duties except those which are expressly set forth herein, and will not be bound by any Indemnity Claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by the appropriate parties.
- 5.3 In the event that:
- (a) any action is threatened or instituted against the Escrow Agent;
 - (b) any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the Escrow Amount; or
 - (c) at any time the Escrow Agent is uncertain as to its obligations hereunder;
- the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligations hereunder. In such event, or if any other person should apply to a court of competent jurisdiction on any matter affecting the obligations of the Escrow Agent hereunder or otherwise relating to the Escrow Amount, the Escrow Agent may and is hereby authorized to release, deliver or otherwise deal with the Escrow Amount in accordance with the direction, order, judgment or decree of such court. The Escrow Agent may deliver the Escrow Amount (or outstanding balance thereof) in to court pending resolution of a dispute among the Parties.
- 5.4 The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the

Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow Agent's fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent will be reasonably compensated by the Borrower for such additional extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, again all of which will be paid by the Borrower alone, and the Lender will have no obligation or liability therefor.

- 5.5 The Escrow Agent will incur no liability hereunder or in connection herewith for anything whatsoever other than as a result of its own negligence or willful misconduct. The Lender and the Borrower will indemnify, hold harmless and defend the Escrow Agent from and against any and all actions, causes of action, claims, demands, damages, losses, costs, liabilities and expense, of any nature or kind, including reasonable legal fees, which may be made or brought against it by any third party (which, for greater certainty, does not include any of the Parties hereto), or which it may suffer or incur in connection with any such third party claim, as a result of or in respect of or arising out of its appointment as Escrow Agent hereunder, except such as will result solely and directly from its own negligence or willful misconduct.
- 5.6 Notwithstanding anything contained herein, in the event of any disagreement between the Parties hereto resulting in adverse claims or demands with respect to the Escrow Amount, the Escrow Agent will be entitled, at its option to refuse to comply with any claims or demands on it with respect thereto as long as such disagreement will continue, and in so refusing, may elect not to make delivery of the Escrow Amount in accordance with this Escrow Agreement. In so doing, the Escrow Agent will not be or become liable in any way to the Parties hereto for its failure or refusal to comply with such claims or demands. The Escrow Agent will be entitled to refrain from acting or refusing to act until such claims or demands: (a) will have been finally determined in a court of competent jurisdiction; or (b) will have been settled by agreement and the Escrow Agent will have been notified thereof by the Lender and the Borrower in writing.
- 5.7 The Parties acknowledge that the Escrow Agent is holding the Escrow Amount at their request and for their convenience only, and the Escrow Agent will not be deemed the agent of any of the Parties in respect of the escrow.
- 5.8 The Parties acknowledge that the Escrow Agent has acted and is acting as legal counsel to the Lender and further that the Escrow Agent has acted as counsel to the Lender in connection with the Term Sheet and Commitment and transactions contemplated therein and in negotiating and establishing this Escrow Agreement. Each of the Parties consents to the Escrow Agent continuing to act for the Lender in respect of any matter arising in relation to this Escrow Agreement, including any dispute regarding the disposition of the Closing Documents. The Escrow Agent will not be impeachable or accountable because of any conflicting or potentially conflicting duty to, or any advice provided by, the Escrow Agent to the Lender.
- 5.9 This Escrow Agreement will terminate, and the Escrow Agent will have no further responsibility under the terms of this Escrow Agreement and will be released and discharged from all claims and liabilities relating to the Escrow Amount and any interest accrued thereon, and the Escrow

Agent will not be subject to any claims made by or on behalf of any Party hereto, upon the later of:

- (a) the date that the Escrow Agent releases the balance of the Escrow Amount being held by it pursuant to Article 3 of this Escrow Agreement; or
- (b) delivery of the Escrow Amount into court.

Article 6 – General Provisions

- 6.1 The Escrow Agent may, at any time, resign from its obligations under this Escrow Agreement and be discharged from all further duties and liabilities hereunder by giving each of the Parties at least 30 days' notice in writing of its intention to resign. The Parties will immediately upon receipt of such notice, jointly appoint a new person to act in the place of the Escrow Agent and if they fail to agree on such appointment, any of the Parties or the Escrow Agent may apply to a justice of the court on such notice as such justice may direct for the appointment of a new escrow agent. Upon any new appointment, the new escrow agent will be vested with the same powers, rights, duties and obligations as if it had been originally named the escrow agent.
- 6.2 Any notice or other communication required or permitted to be given by this Escrow Agreement will be in writing and will be effectively given and made if (i) delivered personally; or (ii) sent by prepaid courier service; or (iii) sent by registered mail; or (iv) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Lender: **Barbican Capital Partners, LLC**
405 Lexington Avenue, Suite 2600
New York, New York 10174
Attention: Benny Leung
Email: bleung@barbicap.com

With a copy to: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

If to the Borrower: **Alberta Foothills Properties Ltd.**
3505 – 18th Street SW
Calgary, AB T2T 4T9
Attention: Drew Atkins
Email: drew.bland@me.com

With a copy to: **D. Allison Professional Law Corporation**
2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6
Attention: Douglas V. Allison
Email: Doug@allison-associates.ca

If to the Escrow Agent: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

or at such other address as the party to whom such notice is to be given will have last notified the party giving the same in the manner provided in this Section 6.2. Any notice personally delivered to the party to whom it is addressed as provided above will be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice will be deemed to have been given and received on the next Business Day. Any notice transmitted by facsimile, e-mail or other form of electronic communication will be deemed given and received on the first Business Day after its transmission, provided that confirmation of receipt has been obtained by the party delivering such notice. Any notice delivered by means of prepaid courier will be deemed to have been delivered on the second Business Day following the date on which the same has been sent via courier. Any notice delivered by means of registered mail will be deemed to have been delivered on the fifth Business Day following the date of mailing.

- 6.3 Neither the rights nor the obligations of any Party arising from this Escrow Agreement will be assignable without the prior written consent of the other Parties.
- 6.4 This Escrow Agreement may only be modified or amended by an agreement in writing signed by all of the Parties hereto.
- 6.5 Subject as aforesaid, this Escrow Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.
- 6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 6.7 Where the context requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.
- 6.8 This Escrow Agreement constitutes the only contract between the Parties pertaining to the subject matter thereof. No waiver of any of the provisions of this Escrow Agreement will be deemed or will constitute a waiver of any other provisions (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.9 Time will be of the essence of this Escrow Agreement.
- 6.10 The Parties hereto acknowledge that this agreement has been prepared by the law firm MLT Aikins LLP, as solicitors for the Lender, and that each of the other Parties hereto has been advised to obtain independent legal advice and has either done so or waived its right to do so.
- 6.11 This Escrow Agreement may be signed and delivered in counterparts, each of which may be executed by DocuSign, and each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Escrow Agreement may be transmitted by facsimile or email attachment or DocuSign and the reproduction of signatures in such manner will be binding as if originals. Each Party undertakes to provide each and every other Party hereto with a copy of this Escrow Agreement bearing original signatures forthwith upon request.

[Signature page follows.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.

BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President
Manager

ALBERTA FOOTHILLS PROPERTIES LTD.

Per: _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

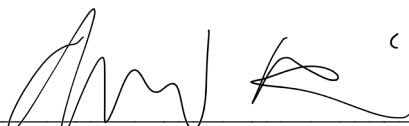
Per: _____
Name: Saravan J. Veylan
Title: Partner

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.


BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President

ALBERTA FOOTHILLS PROPERTIES LTD.

Per:  _____
Name: Drew Atkins
Title: President

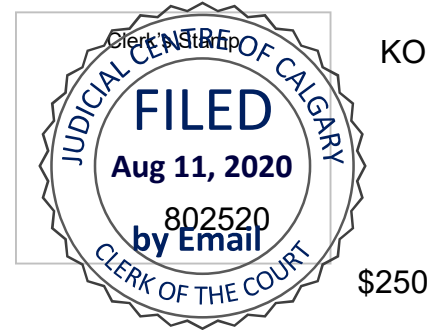
MLT AIKINS LLP

Per:  _____
Name: Saravan J. Veylan
Title: Partner

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “B” – Originating Application

COURT FILE NUMBER 2001- 10006
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT MLT AIKINS LLP
RESPONDENTS ALBERTA FOOTHILLS PROPERTIES LTD.
and BARBICAN CAPITAL PARTNERS LLC



DOCUMENT ORIGINATING APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP
Barristers and Solicitors
2100, 222 – 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.639.4347/4311
Fax: 403.508.4349
Attention: Jonathan J. Bouchier/Catrina J. Webster
File: 0143086.00001

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Master.

To do so, you must be in Court when the application is heard as shown below:

4
Date: September 4, 2020
Time: 10:00 am Virtually, via WebEx
Where: ~~Calgary Courts Centre, 601 5 Street S.W., Calgary, Alberta~~
Before Whom: Presiding Master in Chambers

Go to the end of this document to see what else you can do and when you must do it.

To appear by video:

<https://www.albertacourts.ca/qb/court-operations-schedules/scheduling>

Calgary Masters Chambers Courtroom 2 - Virtual Courtroom 56 (CCC QB)

To appear by telephone:

Dial in Number: 780-851-3573

Access code: 961 851 797

Remedy claimed or sought:

1. The Applicant, MLT Aikins LLP ("**Escrow Agent**"), seeks from this Honourable Court, an Order permitting the release of funds pursuant to the terms of the Escrow Agreement (as defined below) between the Escrow Agent, Barbican Capital Partners LLP ("**Barbican Capital**"), and Alberta Foothills Properties Ltd. (the "**Borrower**") substantially in the form attached hereto and marked as **Schedule "A"**:
 - (a) directing that the funds held by the Escrow Agent be released pursuant to the terms of the Escrow Agreement (as defined below);
 - (b) granting costs, expenses, and fees pursuant to the Escrow Agreement on a solicitor and own client (full-indemnity) basis payable to MLT Aikins LLP, or on such other basis as this Honourable Court deems just and appropriate in the circumstances; and
 - (c) such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

Grounds for making this application:

Parties and Introduction

2. Barbican Capital is a body corporate incorporated pursuant to the laws of the State of Delaware.
3. The Borrower is a body corporate incorporated pursuant to the laws of Alberta, with Registered and Records Offices in Calgary, Alberta.

The Escrow Agreement

4. On August 22, 2019, Barbican Capital and the Borrower entered into a letter of intent and term sheet (the "**Term Sheet**") setting out the terms of a proposed loan agreement whereby Barbican Capital would offer financing to the Borrower in the amount of \$30,000,000.00 as a first mortgagor respecting a multi-unit project located in Okotoks, Alberta (the "**Project**").

5. On November 7, 2019, Barbican Capital and the Borrower entered into an escrow agreement (the "**Escrow Agreement**") whereby the Escrow Agent was appointed to administer the funds pursuant to the financing of the Project.
6. Pursuant to the terms of the Escrow Agreement, Barbican Capital and the Borrower agreed to negotiate the terms of financing for the Project in the amount of \$30,000,000.00.
7. The terms of the Escrow Agreement included, among other terms, that:
 - (a) The Lender and the Borrower (collectively, the "Parties" and each a "Party") have entered into a term sheet (the "Term Sheet") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "Commitment") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.
 - (b) The Borrower agreed to deposit \$300,000 CAD to the Escrow Agent (the "Escrow Amount"), being a portion of the Commitment Fee set out in the Term Sheet.
 - (c) The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.
 - (d) This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
8. The Escrow Agreement provided certain conditions upon which the Escrow Agreement could be satisfied, including if the parties were unable to reach an agreement respecting the financing of the Project.
9. Specifically, section 3.1(a)(iv) of the Escrow Agreement provides as follows:

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

(a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

...

(iv) notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;

2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:

a. first the amount set out in the Expense Notice to the Lender; and

b. second, the balance to the Borrower, in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused.

10. Pursuant to the terms of the Escrow Agreement, Barbican Capital is entitled, by way of an Expense Notice issued to the Escrow Agent, to be reimbursed for all expenses “related to the Term Sheet, [the] Escrow Agreement, and the Commitment [Letter] and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower”. These expenses include Barbican Capital’s expenses “related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes”.

The Commitment Letter

11. On February 17, 2020, Barbican Capital and the Borrower entered into a commitment letter (the “**Commitment Letter**”) setting out the terms upon which Barbican Capital would provide financing to the Borrower for the Project.
12. On February 18, 2020, pursuant to the terms of the Escrow Agreement, Barbican Capital issued a Notice of Lender (the “**Notice of Lender**”) providing an executed copy of the Commitment Letter to the Escrow Agent and confirming that the Escrow Agent shall pay \$50,000.00 of the Escrow Amount to the Lender.

The Borrower’s Failure to Comply with the Escrow Agreement and Commitment Letter

13. Following the execution of the Commitment Letter and issuance of the funds pursuant to the Notice of Lender, the Borrower failed to satisfy the requirements necessary for Barbican Capital to complete the financing of the Project pursuant to the Commitment Letter.
14. On May 1, 2020, Barbican Capital issued a notice terminating the loan commitment contained in the Commitment Letter, revoking all previous offers by Barbican Capital to extend any loans to the Borrower, and demanding payment from the Borrower in the amount of the commitment fee of \$975,000.00 pursuant to the terms of the Commitment Letter (the “**Termination Notice**”).
15. Barbican Capital further advised the Borrower of the following:
 - (a) the Commitment Letter automatically expired on April 30, 2020 as a result of the Borrower’s defaults and failure to satisfy certain conditions precedent to closing;
 - (b) the Borrower had failed to provide certain documents required by the Commitment Letter;
 - (c) the Borrower had failed to deliver Due Diligence Contingencies as defined in the Commitment Letter; and
 - (d) as a result of the termination of the Commitment Letter, pursuant to the Escrow Agreement, the Escrow funds in the amount of \$300,000.00 are due and payable

to Barbican Capital (\$50,000.00 of which was previously paid to the Lender pursuant to the Notice to Lender).

16. On June 2, 2020, in accordance with the termination of the Escrow Agreement, the Escrow Agent requested that Barbican Capital provide a notice of expenses, and, on June 3, 2020, Barbican Capital provided an expense notice as required pursuant to the terms of the Escrow Agreement (collectively, the “**Expense Notices**”).
17. As set-out in the Expense Notices, the current total expenses owing by the Borrower pursuant to the Escrow Agreement amounts to approximately \$44,401.39CAD and \$36,346.00USD, plus interest, costs, disbursements, and fees on a solicitor and own client (full-indemnity) basis related to the within Originating Application (the “**Releasable Escrow Funds**”).
18. Despite repeated requests, the Borrower has refused to permit the Escrow Agent to comply with the terms of the Escrow Agreement and release the Releasable Escrow Funds.

Requirements of the Escrow Agreement were Satisfied

19. The Borrower was not ready, willing, or able to finalize the requirements to complete the financing of the Project pursuant to the Commitment Letter or the Escrow Agreement.
20. Further, the Escrow Agreement provided sufficient commercial certainty as to the terms of the agreement between the Escrow Agent, Barbican Capital, and the Borrower in the event the parties were unable to complete the financing of the Project. Specifically, the Escrow Agreement provides that, if the financing is not completed and the Commitment Letter is terminated, including as a result of the due diligence requirements of the Borrower, the Escrow Agent shall distribute funds pursuant to the Expense Notice respecting expenses related to the Term Sheet, the Escrow Agreement, and the Commitment Letter. The Borrower has unreasonably withheld their consent to distribute funds from the Escrow Amount pursuant to the Escrow Agreement.

Costs of the Application to Distribute Funds pursuant to the Escrow Agreement

21. Pursuant to section 5.3 of the Escrow Agreement, in the event that “any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the

Escrow Amount or at any time the Escrow Agent is uncertain as to its obligations” the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligation pursuant to the Escrow Agreement.

22. Further, and pursuant to section 5.4 of the Escrow Agreement:

The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow Agent’s fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent’s services as contemplated by this Escrow Agreement...

23. As a result, the Escrow Agent seeks to recover: (i) the costs set-out in the Expense Notice; and (ii) the costs of bringing the within Originating Application for advice and direction pursuant to the terms of the Escrow Agreement.

Material or relevant evidence to be relied on:

24. MLT Aikins LLP relies on the following:

- (a) the Affidavit of Benny Leung, sworn on July 29, 2020; and
- (b) such other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

25. *Alberta Rules of Court*, Alta. Reg. 124/2010, Part 6, Division 1.

Applicable Acts and Regulations:

26. None.

How the application is proposed to be heard or considered:

27. In person, before the presiding Master in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

COURT FILE NUMBER 2001-10006
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT MLT AIKINS LLP
RESPONDENTS ALBERTA FOOTHILLS PROPERTIES LTD. and
BARBICAN CAPITAL PARTNERS LLC

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
2100, 222 – 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.639.4347
Fax: 403.508.4349/4311
Attention: Jonathan J. Bouchier/Catrina J. Webster
File: 0143086.00001

DATE ON WHICH ORDER WAS PRONOUNCED:

NAME OF MASTER WHO MADE THIS ORDER:

LOCATION OF HEARING:

CALGARY, ALBERTA

UPON the application by MLT Aikins LLP (the "**Escrow Agreement Application**") for an Order directing that the certain funds (the "**Escrow Funds**") be released pursuant to the terms of an escrow agreement dated November 7, 2019 (the "**Escrow Agreement**") between MLT Aikins LLP, Barbican Capital Partners LLC, and Alberta Foothills Properties Ltd.; **AND UPON** having read the Affidavit of Benny Leung, sworn on July 29, 2020; **AND UPON** having heard oral submissions from MLT Aikins LLP and all other interested parties present;

IT IS HEREBY ORDERED THAT:

1. The Escrow Agreement Application is hereby granted.
2. MLT Aikins LLP is hereby permitted and directed to distribute the Escrow Funds pursuant to the terms of the Escrow Agreement as follows:
 - a. \$44,401.39 to MLT Aikins LLP; and
 - b. \$36,346.00USD to Withers Bergman LLP.
3. Costs of this Application are awarded to MLT Aikins LLP on a solicitor and own client (full-indemnity) basis to be paid from the Escrow Funds.

M.C.C.Q.B.A.

Appendix “C” – Accounting of Escrow Funds

Catrina J. Webster
Direct Line: (403) 693-4347
E-mail: cwebster@mltaikins.com

Joy Mutuku
Legal Assistant
Direct Line: (403) 693-5403
E-mail: jmutuku@mltaikins.com

MLT AIKINS

WESTERN CANADA'S LAW FIRM

July 5, 2022

VIA EMAIL (carla.murray@codehunterllp.com)

Code Hunter LLP
850, 444 2 Ave SW
Calgary, Alberta
T2P 5E9

Attention: Carla Murray

Re: MLT Aikins LLP v. Alberta Foothills Properties Ltd. ("AFPL") and Barbican Capital Partners LLC ("Barbican"); Court of Queen's Bench of Alberta Action No. 2001-10006 (the "Action")

We write further to the above-noted Action and your requests on behalf of the Receiver of AFPL.

We have reviewed the trust account deposit information and confirm that on December 24, 2019, \$300,000.00 was received by MLT Aikins LLP from "D. Allison Professional Law Corporation" and subsequently, \$50,000.00 of the \$300,000.00 was distributed.

The following is a summary of the distributions:

Date	Amount	Balance	Description
1/24/2019	\$300,000.00	\$300,000.00	Wire from D. Allison Professional Corporation
2/19/2020	(\$37,500.00)	\$262,500.00	Transfer to Barbican for Commitment Fee
3/12/2020	(\$6,319.60)	\$256,180.40	MLT Aikins Trust Transfer to pay Invoice #6071369
3/12/200	(\$6,180.40)	\$250,000.00	MLT Aikins Trust Transfer to pay Invoice #6078471 partially

We confirm that the remaining \$250,000.00 is currently being held in our firm's trust account in a non-interest bearing account.

Yours truly,

MLT AIKINS LLP



Catrina J. Webster

c. Jonathan J. Bouchier, MLT Aikins LLP (via email)

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “D” – Barbican Affidavit



COURT FILE NUMBER 2001- 10006

COURT COURT OF QUEEN'S BENCH
 OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT MLT AIKINS LLP

RESPONDENTS ALBERTA FOOTHILLS PROPERTIES LTD. and
 BARBICAN CAPITAL PARTNERS LLC

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT **MLT AIKINS LLP**
 Barristers and Solicitors
 2100, 222 3rd Ave SW
 Calgary, Alberta T2P 0B4
 Attention: Jonathan J. Bouchier/Catrina J. Webster
 Phone: 403.693.4310/4347
 Fax: 403.508.4349
 File: 0143086.00001

AFFIDAVIT OF BENNY LEUNG
Sworn on July 29th, 2020

I, Benny Leung, of the City of New York, in the State of New York, MAKE OATH AND SAY THAT:

Introduction

1. I am a Manager of the Respondent, Barbican Capital Partners LLC ("**Barbican Capital**"), and, as such, I have personal knowledge of the facts and matters deposed to herein, except where any such facts and matters are stated to be from other sources, in which case I believe those facts and matters to be true.
2. I am swearing this Affidavit in support of an Application by MLT Aikins LLP (the "**Escrow Agent**") seeking an Order permitting the release of funds pursuant to the terms of the Escrow Agreement (as defined below) between the Escrow Agent, Barbican Capital, and Alberta Foothills Properties Ltd. (the "**Borrower**").
3. I am familiar with the issues that are the subject matter of these proceedings, as I was at all material times involved in Barbican Capital's role with the Escrow Agreement.

The Parties

4. Barbican Capital is a body corporate incorporated pursuant to the laws of the State of Delaware.
5. The Borrower is a body corporate incorporated pursuant to the laws of Alberta, with Registered and Records Offices in Calgary, Alberta. Attached hereto as **Exhibit "A"** are the results of a Government of Alberta Corporate Registration System Search for "Alberta Foothills Properties Ltd."

The Escrow Agreement

6. On August 22, 2019, Barbican Capital and the Borrower entered into a letter of intent and term sheet (the "**Term Sheet**") setting out the terms of a proposed loan agreement whereby Barbican Capital would offer financing to the Borrower in the amount of \$30,000,000.00 as a first mortgagor respecting a multi-unit project located in Okotoks, Alberta (the "**Project**").
7. Attached hereto as **Exhibit "B"** is a copy of the Term Sheet.
8. On November 7, 2019, Barbican Capital and the Borrower entered into an escrow agreement (the "**Escrow Agreement**") whereby the Escrow Agent was appointed to administer the funds pursuant to the financing of the Project.
9. Attached hereto as **Exhibit "C"** is a copy of the Escrow Agreement.
10. Pursuant to the terms of the Escrow Agreement, Barbican Capital and the Borrower agreed to negotiate the terms of financing for the Project in the amount of \$30,000,000.00.
11. The terms of the Escrow Agreement included, among other terms, that:
 - A. The Lender and the Borrower (collectively, the "Parties" and each a "Party") have entered into a term sheet (the "Term Sheet") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "Commitment") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.

- B. The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the "Escrow Amount"), being a portion of the Commitment Fee set out in the Term Sheet.
- C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.

...

6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

12. The Escrow Agreement provided certain conditions upon which the Escrow Agreement could be satisfied, including if the parties were unable to reach an agreement respecting the financing of the Project.

13. Specifically, section 3.1(a)(iv) of the Escrow Agreement provides as follows:

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

(a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

...

(iv) notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;

2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:

- a. first the amount set out in the Expense Notice to the Lender; and
- b. second, the balance to the Borrower, in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused.

14. Pursuant to the terms of the Escrow Agreement, Barbican Capital is entitled, by way of an Expense Notice issued to the Escrow Agent, to be reimbursed for expenses "related to the Term Sheet, [the] Escrow Agreement, and the Commitment [Letter] and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower". These expenses include Barbican Capital's expenses "related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes".

The Commitment Letter

15. On February 17, 2020, Barbican Capital and the Borrower entered into a commitment letter (the "**Commitment Letter**") setting out the terms upon which Barbican Capital would provide financing to the Borrower for the Project.
16. Attached hereto as **Exhibit "D"** is a copy of the Commitment Letter.
17. On February 18, 2020, pursuant to the terms of the Escrow Agreement, Barbican Capital issued a Notice of Lender (the "**Notice of Lender**") providing an executed copy of the Commitment Letter to the Escrow Agent and confirming that the Escrow Agent shall pay \$50,000.00 of the Escrow Amount to the Lender.
18. Attached hereto as **Exhibit "E"** is a copy of the Notice of Lender.

The Borrower's Failure to Comply with the Escrow Agreement and Commitment Letter

19. Following the execution of the Commitment Letter and issuance of the funds pursuant to the Notice of Lender, the Borrower failed to satisfy the requirements necessary for Barbican Capital to complete the financing of the Project pursuant to the Commitment Letter.

20. On May 1, 2020, Barbican Capital issued a notice terminating the loan commitment contained in the Commitment Letter, revoking all previous offers by Barbican Capital to extend any loans to the Borrower, and demanding payment from the Borrower in the amount of the commitment fee of \$975,000.00 pursuant to the terms of the Commitment Letter (the "**Termination Notice**").
21. Attached hereto as **Exhibit "F"** is a copy of the Termination Notice.
22. Barbican Capital further advised the Borrower of the following:
 - (a) the Commitment Letter automatically expired on April 30, 2020 as a result of the Borrower's default and failure to satisfy certain conditions precedent to closing;
 - (b) the Borrower had failed to provide certain documents required by the Commitment Letter;
 - (c) the Borrower had failed to deliver Due Diligence Contingencies as defined in the Commitment Letter; and
 - (d) as a result of the termination of the Commitment Letter, pursuant to the Escrow Agreement, the Escrow funds in the amount of \$300,000.00 are due and payable to Barbican Capital (\$50,000.00 of which was previously paid to the Lender pursuant to the Notice to Lender).
23. On June 2, 2020, in accordance with the termination of the Escrow Agreement, the Escrow Agent requested that Barbican Capital provide a notice of expenses, and, on June 3, 2020, Barbican Capital provided an expense notice as required pursuant to the terms of the Escrow Agreement (collectively the "**Expense Notices**").
24. Attached hereto as **Exhibit "G"** are copies of the Expense Notices.
25. As set-out in the Expense Notices, the current total expenses owing by the Borrower pursuant to the Escrow Agreement amounts to approximately \$44,401.39 CAD and \$36,346.00 USD, plus interest, costs, disbursements, and fees on a solicitor and own client (full-indemnity) basis (the "**Releasable Escrow Funds**").

26. I am advised by MLT Aikins LLP, and believe, that despite repeated requests, the Borrower has refused to permit the Escrow Agent to comply with the terms of the Escrow Agreement and release the Releasable Escrow Funds.
27. I swear this Affidavit in relation to the Application by the Escrow Agent for advice and direction of the Court of Queen's Bench of Alberta and in support of an Order permitting the Escrow Agent to release the Releasable Escrow Funds pursuant to the terms of the Escrow Agreement.

SWORN BEFORE ME at the City of New York,
in the State of New York, this 19 day of July
2020



A Notary Public in and for the State of New York



BENNY LEUNG

Laurie Ann Wagonfeld
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 27 day of July 2020



A Notary Public in and for the State of New York

LAURIE ANN WAGONFELD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2019/09/18
Time of Search: 02:55 PM
Search provided by: MLT AIKINS LLP (CALGARY)
Service Request Number: 31710872
Customer Reference Number: 143086.1/jdc

Corporate Access Number: 2013017559

Legal Entity Name: ALBERTA FOOTHILLS PROPERTIES LTD.

Legal Entity Status: Active

Alberta Corporation Type: Named Alberta Corporation

Registration Date: 2007/02/20 YYYY/MM/DD

Date of Last Status Change: 2019/04/16 YYYY/MM/DD

Registered Office:

Street: 2205, 500 - 4TH AVENUE SW

City: CALGARY

Province: ALBERTA

Postal Code: T2P 2V6

Records Address:

Street: 2205, 500 - 4TH AVENUE SW

City: CALGARY

Province: ALBERTA

Postal Code: T2P 2V6

Directors:

Last Name: ATKINS

First Name: DREW

Middle Name: G.

Street/Box Number: 3505 - 18TH STREET SW.

City: CALGARY

Province: ALBERTA

Postal Code: T2T 4T9

Voting Shareholders:

Legal Entity Name: 1367803 ALBERTA LTD.
Corporate Access Number: 2013678038
Street: 3505 - 18TH STREET S.W.
City: CALGARY
Province: ALBERTA
Postal Code: T2T 4T9
Percent Of Voting Shares: 90

Legal Entity Name: INFRASTRUCTURE DEVELOPMENT GROUP INC.
Corporate Access Number: 2010093553
Street: 204 SCARBORO AVENUE S.W.
City: CALGARY
Province: ALBERTA
Postal Code: T3C 2H3
Percent Of Voting Shares: 10

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: THE ATTACHED SCHEDULE OF SHARE CAPITAL IS INCORPORATED INTO AND FORMS A PART OF THE ARTICLES OF THE CORPORATION.

Share Transfers Restrictions: THE ATTACHED SCHEDULE OF SHARE TRANSFER RESTRICTIONS IS INCORPORATED INTO AND FORMS A PART OF THE ARTICLES OF THE CORPORATION.

Min Number Of Directors: 1

Max Number Of Directors: 10

Business Restricted To: NONE

Business Restricted From: NONE

Other Provisions: THE ATTACHED SCHEDULE OF OTHER RULES OR PROVISIONS IS INCORPORATED INTO AND FORMS A PART OF THE ARTICLES OF THE CORPORATION.

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2019	2019/04/16

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2007/02/20	Incorporate Alberta Corporation
2010/09/16	Name/Structure Change Alberta Corporation
2017/05/17	Change Director / Shareholder
2019/03/13	Change Address
2019/04/02	Status Changed to Start for Failure to File Annual Returns
2019/04/16	Enter Annual Returns for Alberta and Extra-Provincial Corp.

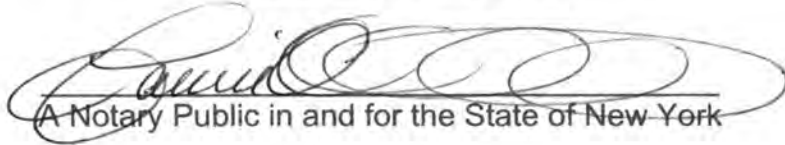
Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2007/02/20
Other Rules or Provisions	ELECTRONIC	2007/02/20
Restrictions on Share Transfers	ELECTRONIC	2007/02/20
Share Structure	ELECTRONIC	2010/09/16

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 29 day of July 2020



A Notary Public in and for the State of New York

LAURIE ANN WAGONFELD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
SUITE 2600
NEW YORK, NEW YORK 10174
TEL: (212) 271-5045 • FAX: (212) 271-5582

August 22, 2019

Alberta Foothills Properties Ltd
3505-18th Street SW
Calgary, AB T2T 4T9

Attention: Drew Atkins, President & Director

Re: C\$30 Million First Mortgage Development and Construction Loan for Phase I of a multi-phase, master-planned community ("MPC") known as "Wind Walk" located at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Project").

Dear Mr. Atkins:

The Term Sheet attached as hereto as Appendix A outlines the basic terms and conditions upon which Barbican Capital Partners, LLC, a Delaware limited liability company or its affiliate ("BCP" or "Lender"), will consider making a first mortgage loan ("Loan") for the completion of the Phase I of a MPC known as "Wind Walk" (the "Property"). The borrower will be a bankruptcy-remote, single-purpose, single-asset entity ("Borrower"), wholly-owned and/or controlled by Drew Gordon Atkins (and/or any other individuals approved by the Lender) ("Principal" or "Principals"). The sponsor of the Project shall be 1067803 Alberta Ltd O/A Holmes Communities ("Sponsor"). The development of the Property for such purposes is sometimes referred to in this Letter of Intent as the "Project". All capitalized terms not otherwise defined in this Letter of Intent shall have the meaning ascribed thereto in Appendix A.

The transaction contemplated in this Letter of Intent is subject to, among other things, completion of Lender's due diligence. Upon timely execution and return of this Letter of Intent to BCP together with timely payment to BCP of the "Good-faith Deposit" (as defined in Paragraph E), BCP will enter a 45-day due diligence period ("Due Diligence Period"). At or before the end of the Due Diligence Period, BCP will give notice ("Notification") to Borrower, Sponsors and Principals as to whether (i) BCP has determined not to make the loan or (ii) BCP desires to proceed with the Loan and shall issue a loan commitment ("Commitment") within five (5) business days from the date of the Notification. Failure by BCP to give the Notification on or before the final day of the Due Diligence Period will be deemed to be a determination by BCP not to make the Loan.

Subject to Borrower's satisfaction of all the conditions set forth in the Commitment (which shall include paragraph A below), BCP will endeavor to effect a closing ("Closing") of the Loan as promptly as possible but in no event later than the "Closing Date" as stipulated in the Commitment.

A. The general conditions precedent to the Closing of the Loan by Lender shall include, but are not limited to:

1. The approval of BCP's Investment Committee and/or Board of Directors;
2. Satisfactory completion of BCP's legal, credit, business and other due diligence and satisfactory completion of BCP's underwriting of the Project;
3. Loan documentation satisfactory to BCP: Satisfaction of closing conditions set forth in the Commitment and final definitive documentation, including, without limitation, Loan Agreement, Security Agreement, Pledge Agreement, Guarantees, Promissory Notes, Performance Bonds (or credit instrument), Subordination Agreement, Title Insurance Policies, Survey and Legal Opinions, all have to be satisfactory to BCP;
4. Receipt of third-party estoppels, subordination, non-disturbance and attornment agreements, and consents as required by BCP;
5. BCP's review and approval of design and construction items, including, contractors, plans and specifications, construction budgets, performance and payment bonds, construction contracts, subcontracts, design contracts, architect and design professional agreements, soils reports, licenses, permits and approvals relating to the construction work;
6. BCP's receipt of a MAI (or local equivalent) appraisal and market feasibility report all in form and content satisfactory to BCP; and
7. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsors, Principals, Guarantor, the Property, the Project or political, economic, capital markets or other market conditions.

B. This Letter of Intent shall terminate on a date (the "Termination Date") which shall be the earlier of (i) sixty days from the date hereof or (ii) the occurrence of any of the following:

1. Notification by BCP to the Principals that BCP does not intend to proceed with the Loan;
2. Failure by Borrower to accept a Commitment issued by BCP in accordance herewith within seven (7) days of issuance.

In consideration of BCP's effort and expenses in analyzing this transaction, Borrower, Sponsors and the Principals agree that they will not directly or indirectly make, accept, negotiate, entertain or otherwise engage in any financing or other capital transaction or accept any financing offers from third-party

regarding the Property other than the financing transaction contemplated hereby with Lender prior to the Termination Date. In the event Borrower, Sponsors or the Principals breach this exclusivity covenant and accept any financing from any third-party lender other than Lender, Borrower, Sponsors and the Principals agree to pay to BCP a breakup fee of US\$50,000 (the "Breakup Fee"). The arrangement of the Breakup Fee is more specifically described in Paragraph F below.

C. Borrower, Sponsors and Principals, for themselves and on behalf of any third-party professional advisors (lawyers, accountants) retained by them, specifically including Oveldi Strategic Capital, Inc. by execution of this Letter of Intent, agrees to maintain the confidentiality of Lender's involvement in this possible transaction and the structure and pricing thereof. Borrower, Sponsors and Principals further agrees not to disclose any information regarding Lender (or its Loan Participants, if any) or Lender's involvement in this transaction to any person or entity other than its advisors, agents and consultants who will assist Borrower, Sponsors and Principals in its transaction with Lender, and Borrower, Sponsors and Principals will inform them of the confidentiality requirements of this Letter of Intent and their duty to comply with its terms. Borrower, Sponsors and Principals shall be liable, jointly and severally, for any breach of this confidentiality agreement by any of such advisors, agents or consultants. The foregoing shall not apply to any disclosures required by law or disclosures consented to by BCP

D. Lender and Borrower, Sponsors and Principals each represent and warrant to the other that neither has engaged any person to whom a commission or finders' fee may be owing by reason of the transactions contemplated by this Letter of Intent except that any fees that may be due under certain letter agreements between Borrower and Nova Capital Advisors, Inc. It should be noted that the transaction was introduced to BCP by Nova Capital Advisors via one of its principals. Any fees (finders or placement) for the above shall only be paid upon the closing and funding of the Loan. Borrower, Sponsors and Principals shall be liable for payment of such fees. Borrower, Sponsors and Principals collectively agree to defend, indemnify and hold BCP, Lender, their successors, assigns, trustees, shareholders, directors and officers harmless from and against any claims of any persons or entities claiming a fee or commission (including the above-mentioned finder fee) by reason of the Loan or the transactions contemplated by this Letter of Intent.

E. Lender acknowledges that it had received an initial deposit of US\$10,000 ("Initial Deposit") from Borrower prior to the issuance of this Letter of Intent. Simultaneously with the execution of this Letter of Intent, Borrower, Sponsors or Principals shall deposit with BCP an additional sum of US\$15,000 as final deposit ("Final Deposit"). The Initial and Final Deposits are collectively as the "Good-faith Deposit". The Good-faith Deposit shall be used to defray Lender's due diligence expenses ("Expenses") in connection with the transaction described in this Letter of Intent, including, without limitation, all out-of-pocket expenses, legal fees (including local counsel expenses), due diligence expenses, consultants' fees, accountants' fees and expenses, traveling costs and any third party fees incurred by BCP in connection with underwriting, structuring, conducting due diligence, documenting, and negotiating of the Loan. The Good-faith Deposit (less Lender's Expenses) shall become refundable in the event Lender issues the Notification indicating its determination not to make the Loan. If BCP determines that the Good-faith Deposit will not be sufficient to pay BCP's Expenses prior to the expiration of the Due Diligence Period, then, Borrower, Sponsors or the Principals shall, upon demand from BCP, deposit such additional funds as BCP shall demand to pay BCP's Expenses. If upon the completion of the Due Diligence Period, BCP issues the Commitment which material terms and conditions are substantially similar to those outlined in

F. In addition to the posting of the Good-faith Deposit in paragraph E above, Borrower, Sponsors or Principals agree to deposit an additional US\$50,000 in escrow ("Escrow Deposit") with Lender's counsel pursuant to an escrow agreement ("Escrow Agreement") within two business day from their receipt of Lender's Notification that Lender had decided to proceed with the loan and shall issue the Commitment . The Escrow Deposit (i) shall be used to pay a Breakup Fee in the event Borrower, Sponsors or Principals breach the exclusivity covenant contained in Paragraph B, (ii) shall be released and applied as a credit to the payment of the Commitment Fee in the event that Lender issues its final loan commitment ("Commitment") and such Commitment was accepted by the Borrower, or (iii) shall be fully refunded and returned to the Borrower, Sponsors or Principals in full in the event Lender issues (or is deemed to have issued) Notification that it has determined not to make the loan.

G. This Letter of Intent represents a statement of the parties' general intent only and, except for the provisions of Paragraphs B, C, D, E and F (the "Binding Provisions") of this Letter of Intent, does not purport to be and does not constitute a binding agreement among the parties, and, except for the respective obligations of the parties under the Binding Provisions (which are intended by the parties to be legally binding), none of the parties hereto will have any legal obligation under this Letter of Intent unless and until a subsequent formal written contract (a commitment letter and/or other documents required by Lender to govern, evidence and secure the Loan) is executed and delivered by Lender and accepted by Borrower, Sponsors and the Principals. Termination of this Letter of Intent will not release a party from liability arising under the Binding Provisions. This Letter of Intent shall be governed by, and construed in accordance with, the internal laws of the State of New York. Any litigation relating to this Letter of Intent shall be brought, at BCP option, in the courts of the United States of America or the State of New York located in the State and County of New York. The Binding Provisions shall survive any termination of this Letter of Intent. To the fullest extent permitted by law, each party to this Letter of Intent expressly waives all rights to trial by jury in any litigation relating to this Letter of Intent and all rights to punitive, consequential or special damages on account of this Letter of Intent. The prevailing party in any litigation relating to this Letter of Intent shall be entitled to recover its actual reasonable attorneys' fees and disbursements, expert witness fees and expenses and court costs from the non-prevailing party in such litigation.

Subject to the foregoing, if the terms outlined herein are acceptable to you, please execute a copy of this letter in the space provided for below and return same to us on or before 5:00 p.m. (New York, New York time) on August 29, 2019. If this Letter of Intent is not so executed and returned to us by such time, then the proposal set forth herein shall be deemed withdrawn and this letter shall be of no further force or effect whatsoever.

We look forward to working with you on this transaction. If you have any questions, please call me at (212) 271-5045 or my cell at (516) 526-1341.

Sincerely,

Barbican Capital Partners, LLC

By: _____

Name: Benny P. Leung

Title: Manager

Agreed to and Accepted this 31st day of ~~August~~ ^{September}, 2019

-da-

Borrower:

Alberta Foothills Properties Ltd

By:

Name: Drew G. Atkins

Title: Director and President

Sponsor:

1067803 Alberta Ltd O/A Holmes Communities

By:

Name:

Title:

Principal:

By:

Name: Drew Gordon Atkins, individually

APPENDIX A-TERM SHEET

- Lender:** Barbican Capital Partners, LLC or its affiliates
- Borrower:** Alberta Foothills Properties, Ltd (“Borrower”). Borrower shall be a bankruptcy-remote, single-purpose and single-asset entity. The organization structure of the Borrower shall be satisfactory to Lender.
- Sponsor:** 1067803 Alberta Ltd (“Sponsor”).
- Principals:** The principals of Borrower shall be Drew Gordon Atkins and/or any other individual to be approved by Lender based on due diligence.
- Project:** Phase I of a multi-phase, master-planned community known as “Wind Walk” located on a site (approximately 144.66 acres of land) at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta (“Project”).
- Loan:** C\$30,000,000 (the “Loan”) subject to due diligence and underwriting of all relevant aspects of the Project (site and market feasibility, credit, legal and tax arrangement). It is contemplated that the Loan shall be structured and funded into two tranches: (i) a senior tranche of an amount equal to the lesser of (a) 60% Loan-To-Value (based on Lender’s approved appraised value), 60% Loan-To-Costs (based on Lender’s approved Total Project Costs) or C\$22,000,000 (“Tranche A Loan” or “Senior Loan”) and (b) a mezzanine tranche of an amount equal to the lesser of (x) 20% Loan-To-Value, 20% Loan-To-Costs or C\$8,000,000 (“Tranche B Loan” or “Mezz Loan”). The final loan amount for Tranche A and Tranche B loans shall be determined upon completion of due diligence and established in the Commitment.
- Interest:** Tranche A Loan: The non-default floating interest rate (“Based Rate”) equal to the higher of (i) Bank of Canada Prime rate (as announced in the Daily Digest published by Bank of Canada from time to time) + 4% or (ii) 3-month Canada Dollar Offer Rate (CDOR) (as published by Thomason-Reuters from time to time) +5.5%. Interest shall be payable current via cash flow and/or Interest Reserve during the loan period and such amount shall be incorporated into the Total Project Costs.
- Tranche B Loan: Based Rate of 8% per annum, interest only, payable monthly in arrears.
- Reserves:** At closing, Lender shall require an interest and other applicable reserves (e.g. tax, insurance, etc.) to be established. Such requirement will be more specifically described in the Commitment.
- Term:** 36 months with an option to extend for another 12 months by (i) payment of 1% fee and (ii) no Events of Default
- Exit Fee:** Senior Loan: 2% payable at the prepayment, repayment and/or Maturity of the Senior Loan.
Mezz Loan: Please refer to Make-whole amount below

- Make-whole:** At any prepayment, repayment or Maturity of the Mezz Loan, the Borrower shall pay Lender, in addition to any unpaid interest and principal, a lump sum amount which, when taking into account of the payment of the loan fees and interests, shall yield Lender an overall internal rate of return (IRR) of 15%.
- Late Charge:** Based Rate plus 5%.
- Default Rate:** Base Rate plus 5%.
- Cash flow :** 100% of net proceeds from sale of each improved lot and/or other cash flow (if any) less an Approved Working Capital shall be put into a “lock box” and first applied to the payment any accrued and unpaid interest; then to the Exit Fee and Make Whole amount and the principal repayment of the loan.
- Releases:** Lender shall release each relevant improved lot upon receipt of payment under Cash Flow Sweep for each such improved lot.
- Use of Loan:** The loan, together with the Borrower’s Equity (as defined herein below) shall be used by Borrower to (i) retire an existing loan with Alberta Treasury Branch in an amount of approximately C\$11,600,000 (to be verified by Lender during due diligence); (ii) to proceed with development as per a master plan (“Master Plan”) approved by Lender and (iii) pay any costs associate with the closing of the Loan.
- Security:** For each of the Senior and Mezz loan, they shall be secured by (i) a promissory note; (ii) first (and second), perfected mortgage on the land and any improvement currently exists and to be constructed thereon; (iii) collateral assignment of all relevant contracts, leases, receivables, governmental approvals, permits and insurance policies; (iv) stock pledge and (v) any other loan documentation as required by relevant laws and Lender’s attorney in connection with the provision of the loan.
- Equity:** The borrower shall provide cash equity (or quasi equity approved by the Lender) equal to the difference between the Total Project Costs (approved by the Lender upon completion of due diligence) and the Loan (“Borrower’s Equity”).
- Pre-sales:** Borrower acknowledges that the “pre-sales” aspect is a crucial consideration for Lender to consider the provision of the Loan. Upon the completion of the due diligence, Lender shall establish the exact pre-sales requirement of the Project and stipulate such in the final loan commitment (“Commitment”).
- Assignment:** Lender has the right to assign the Senior Loan to any third party upon closing of the Loan. Borrower is prohibited to assign any of its rights under the Loan to any third-party without Lender’s prior approval.
- Guarantee:** Subject to final underwriting by Lender, the loan shall also be secured by various guarantees including without limitation, (i) standard non-recourse” carve outs”, (ii) the completion and carrying guarantee, (iii) costs overruns guarantee and other guarantee that Lender deems necessary upon completion of due diligence. The guarantees shall be provided by an acceptable guarantor or guarantors in form satisfactory to Lender.

Compliance: Lender shall be satisfied that the Project complies with all applicable laws including without limitation, planning, zoning, environmental, tax, etc.

Environmental: The project shall be clear from any environmental issue as required under the relevant laws. Any documentation in connection with the clearance shall be in form satisfactory to Lender

Manager: Borrower shall manage the Project. Lender shall hire a third-party consultant to monitor the progress of the development. The expenses for such hire shall be borne by Borrower.

GMP The project shall have a Guarantee Maximum Price Contract (“GMP”) in form satisfactory to Lender. The contract shall be performed by a qualified contractor approved by the Lender. In addition, the contractor shall provide a performance bond in form and from a financial institution satisfactory to Lender.

Transfer: Except for partial releases described above, the Loan Documents shall provide that the Property and the direct and indirect ownership interests in Borrower shall not be directly or indirectly sold, transferred, encumbered, mortgaged or otherwise disposed of, in whole or in part, without Lender's consent.

Covenants: The Loan Documents will include, among other things, such affirmative and negative covenants as Lender may require including, without limitation, financial covenants (e.g. DSCR), covenants regarding insurance, covenants limiting distributions, due on sale and due on encumbrance covenants, and covenants restricting the incurring of debt: covenants restricting affiliate transactions, and covenants regarding the SPE status of Borrower.

Commitment

Fee: 2.5% of loan amount. 1% payable at the execution of commitment; 1.5% payable at the closing of the loan.

DD Expenses: Borrower shall be fully responsible for reimbursement of Lender’s due diligence expenses.

Broker: Nova Capital Advisors, Inc (“Nova”). Borrower shall enter into a fee agreement with Nova regarding its finder’s fee for its introduction of BCP to Borrower.

Conditions

Precedent: Lender’s Commitment, if issued, shall contain conditions precedent to the closing which shall include, but not limited to:

1. Receipt of approval by Lender of its Investment Committee and Board of Directors
2. Loan Documents satisfactory to Lender which shall include, without limitation, Loan Agreement, Notes, Mortgages, Subordination Agreement and those relevant documentation listed in the section entitling “Security” in this Term Sheet.
3. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsors or Principals, the Property, the Project or political, economic, capital markets or other market conditions.

4. Receipt of all organizational documents of Borrower, Sponsors and financial information of the Principals and all property related due diligence items Lender or its counsel deem necessary for the subject transaction.
5. Borrower has entered into Qualified Contracts for the sale of lots sufficient to meet the Pre-Sale Requirement, based on at least the approved minimum sales price schedule.
6. Approval of the Master Plan of the Project
7. Receipt of evidence satisfactory to Lender of the Project's compliance with all laws and zoning regulations, including, without limitation, issuance of all Governmental permits.
8. Receipt of the Total Project Costs (with breakdown of line items) in form and substance acceptable to the Lender.
9. Approval of the general contractor by Lender in its sole discretion, and receipt of a guaranteed maximum price contract in an amount not more than provided for in the budget in form and substance acceptable to the Lender.
10. Receipt of payment and performance guaranty from general contractor in form of payment and performance bonds from insurers with ratings of A or better (from acceptable rating agency) or a Standby Letter of Credit in an amount and from a financial institution acceptable to Lender in its sole discretion. Dual Obligee riders in favor of Lender will also be required for the performance bonds.
11. Receipt of marketing materials for the Project that comply with all acceptable laws and regulations.
12. All relevant filings required by local Municipal authorities, to be made under the relevant laws and regulations and any other governmental or regulatory requirement relating to master-plan, have been accepted and approved by the appropriate agencies.
13. Environmental Site Assessment in form and from a qualified Engineer acceptable to Lender to be received prior to closing of the Loan
14. An update Feasibility Report to be prepared by a consultant in form and substance acceptable to Lender to be received prior to closing of the Loan.
15. Prior to closing the Loan, Lender shall receive, review and approve an MAI Appraisal (or local equivalent) which indicates a market value satisfactory to Lender and its underwriting standards.
16. Borrower, Sponsors and the Principals have satisfied all conditions required by Lender under the Loan Documentation including, without limitation, the full funding of the Equity Requirement, the Preferred Equity (if applicable) and the Guarantors shall provide all necessary guarantees as required by Lender
17. Satisfactory completion of Lender's legal, business and other due diligence and underwriting of the Project.

Construction

Consultant: Lender shall engage an independent consultant who will review the budget and construction draws on a monthly basis. The closing of the Loan is predicated upon the Lender's receipt of an acceptable review of the budget and the independent consultant's conclusion that the budget is sufficient to complete the improvements.

Governing

Law: The Loan Documents will be governed by, and construed in accordance with, the internal laws of the State of New York except that the provisions in the Loan Documents with respect to the creation, perfection and enforcement of the liens and security interests created pursuant to the Loan Documents will be governed by, and construed in accordance with, the internal laws of Alberta, Canada.

This Term Sheet is provided for discussion purposes only and does not constitute a commitment to lend or an agreement to issue a commitment. Its terms are not all inclusive and are subject to Lender's internal underwriting committee approval, Lender's due diligence and other conditions, and satisfactory market conditions. Additions and changes may be made as Lender and its counsel deem necessary, prudent or desirable. No agreement (oral or otherwise) that may be reached during negotiations shall be binding upon the parties unless and until a commitment letter and final Loan Documents have been executed and delivered by all applicable parties. This Term Sheet shall be kept confidentiality, shall not be reproduced or disclosed, and shall not be used by Borrower or Sponsors other than in connection with evaluating the transaction described herein. Notwithstanding the receipt and/or deposit by Lender of any deposits or fees tendered by Borrower or Sponsors, no changes to this Term Sheet shall be effective unless expressly agreed to in writing by Lender.

THIS IS EXHIBIT "C" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 29 day of July 2020

A Notary Public in and for the State of New York

Laurie Ann Wagonfeld
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made effective as of the 7th day of November, 2019 (the "**Effective Date**").

AMONG:

BARBICAN CAPITAL PARTNERS, LLC

(the "**Lender**")

AND:

ALBERTA FOOTHILLS PROPERTIES LTD.

(the "**Borrower**")

AND:

MLT AIKINS LLP

(the "**Escrow Agent**")

BACKGROUND

- A. The Lender and the Borrower (collectively, the "**Parties**" and each a "**Party**") have entered into a term sheet (the "**Term Sheet**") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "**Commitment**") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.
- B. The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the "**Escrow Amount**"), being a portion of the Commitment Fee set out in the Term Sheet.
- C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.
- D. Capitalized words and expressions used in this Escrow Agreement but not otherwise defined herein will have the meanings ascribed thereto in the Term Sheet. For the purposes of this Escrow Agreement, the term "**Business Day**" means any day in which main branch of TD Canada Trust in Calgary, Alberta is ordinarily open for business and "**Business Days**" means more than one of them.

TERMS OF AGREEMENT

In consideration of the Parties' continued negotiation of the Commitment, and of their respective covenants and agreements hereinafter contained, it is hereby agreed by and among the Parties hereto as follows:

Article 1 – Escrow

1.1 Appointment of Escrow Agent. The Lender and the Borrower hereby appoint the Escrow Agent to act as escrow agent on the terms and conditions set forth in this Escrow Agreement, and the Escrow Agent accepts such appointment on such terms and conditions.

1.2 Delivery of Escrow Amount. Concurrent with the execution and delivery of this Escrow Agreement, the Borrower will deliver the Escrow Amount, which amount will represent a portion of the Commitment Fee set out in the Term Sheet, to the Escrow Agent by wire transfer to the following account:

Account Holder Name: MLT AIKINS LLP, IN TRUST
Account Holder/Address: 2600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1

Bank Name/Address: TD Canada Trust
Toronto Dominion Tower Branch
700 W Georgia St Pacific Centre
Vancouver, BC V7Y 1A2

Account Number: 0902-5416541
Transit Number: 94000
Bank Number: 004
Swift: TDOMCATTOR
ABA: 026009593

1.3 Holding of Escrow Amount. Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Amount in escrow for the period commencing on the Effective Date until the later of the dates on which the Escrow Agent is required to release the Escrow Amount, or portions thereof, in accordance with Article 3 and Section 5.9 below.

Article 2 – Delivery of the Loan Commitment

2.1 Entry into Loan Commitment. Upon receipt of the Escrow Amount from the Borrower, the Escrow Agent will provide the Lender with written notice of receipt of the Escrow Amount (the "**Receipt Notice**"). Within seven Business Days of the Lender's receipt of the Receipt Notice from the Escrow Agent, the Lender will cause its solicitor to deliver to the Borrower or its solicitor a draft form of Commitment as contemplated by the Term Sheet. The Parties will negotiate and finalize the Commitment in good faith. Upon execution of the Commitment, the Parties will deliver the executed Commitment to the Escrow Agent, to be held in escrow by the Escrow Agent with irrevocable instructions to deliver the fully-executed Commitment to both Parties only in accordance with Article 3 below.

Article 3 – Payment of Escrow Monies

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

- (a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

- i. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay \$50,000 CAD of the Escrow Amount to the Lender in such manner as requested by the Lender from time to time; and
- ii. upon receipt of written notice from the Lender with acknowledgment by the Borrower that the remaining due diligence contingencies listed in the "**Due Diligence Contingencies**" section of the Commitment have been fully satisfied by Borrower and/or waived by Lender, the Escrow Agent will release the balance of the Escrow Amount, being \$250,000 CAD, to the Lender within two Business Days. Upon the release of the remaining Escrow Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully-executed Commitment; and
- iii. notwithstanding Section 3.1(a)(ii) above, if the Escrow Agent receives written notice jointly by both Parties that any of the Due Diligence Contingencies cannot be satisfied and the Parties jointly elect to terminate the Commitment, the Escrow Agent will:
 1. provide the Lender with a written demand for a summary of its expenses related to the Term Sheet, this Escrow Agreement, and the Commitment and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice"), which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses. The Lender's expenses appearing on any Expense Notice related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes of the Lender are hereby approved by the Borrower;
 2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first \$50,000 CAD as a break fee to the Lender;
 - b. second the amount set out in the Expense Notice to the Lender; and
 - c. third, the balance to the Borrower,in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused; and
- iv. notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii)

and (iii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;
2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first the amount set out in the Expense Notice to the Lender; and
 - b. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;

(b) upon the Escrow Agent's receipt of written notice by either Party, copying the other Party, in a form satisfactory to the Escrow Agent, acting reasonably, that the Parties have not entered into the Commitment within seven Business Days of the receipt of the Commitment by the Borrower pursuant to Section 2.1 above, the Escrow Agent will:

- i. provide the Lender with a written demand an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and
- ii. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 1. first to the Lender, the amount set out in the Expense Notice; and
 2. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(b)(ii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement.

Article 4 – Investment of Escrow Amount

4.1 The Escrow Amount will be held by the Escrow Agent in a non-interest-bearing account in accordance with its standard trust fund procedures. The Lender and the Borrower, as applicable, will assume any obligations imposed now or hereafter by any applicable tax law with respect to any payment of the Escrow Amount to the Lender or the Borrower under this Escrow Agreement.

Article 5 – Protection of Escrow Agent

- 5.1 Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term or condition of any contract or agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.
- 5.2 The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Parties to this Agreement hereby agree will govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:
- (a) except for the Escrow Agent's own acts of negligence or wilful misconduct, the Escrow Agent will not be liable for any act done or step taken or omitted to be done or taken by the Escrow Agent, or for any mistake of fact or law or error in judgment;
 - (b) the Escrow Agent may at any time consult with, and obtain advice from, legal counsel (who may be selected by the Escrow Agent, in its sole discretion) in the event of any question as to any of the provisions hereof or the Escrow Agent's duties hereunder, and will incur no liability and will be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel; and
 - (c) the Escrow Agent will have no duties except those which are expressly set forth herein, and will not be bound by any Indemnity Claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by the appropriate parties.
- 5.3 In the event that:
- (a) any action is threatened or instituted against the Escrow Agent;
 - (b) any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the Escrow Amount; or
 - (c) at any time the Escrow Agent is uncertain as to its obligations hereunder;
- the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligations hereunder. In such event, or if any other person should apply to a court of competent jurisdiction on any matter affecting the obligations of the Escrow Agent hereunder or otherwise relating to the Escrow Amount, the Escrow Agent may and is hereby authorized to release, deliver or otherwise deal with the Escrow Amount in accordance with the direction, order, judgment or decree of such court. The Escrow Agent may deliver the Escrow Amount (or outstanding balance thereof) in to court pending resolution of a dispute among the Parties.
- 5.4 The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the

Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow Agent's fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent will be reasonably compensated by the Borrower for such additional extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, again all of which will be paid by the Borrower alone, and the Lender will have no obligation or liability therefor.

- 5.5 The Escrow Agent will incur no liability hereunder or in connection herewith for anything whatsoever other than as a result of its own negligence or willful misconduct. The Lender and the Borrower will indemnify, hold harmless and defend the Escrow Agent from and against any and all actions, causes of action, claims, demands, damages, losses, costs, liabilities and expense, of any nature or kind, including reasonable legal fees, which may be made or brought against it by any third party (which, for greater certainty, does not include any of the Parties hereto), or which it may suffer or incur in connection with any such third party claim, as a result of or in respect of or arising out of its appointment as Escrow Agent hereunder, except such as will result solely and directly from its own negligence or willful misconduct.
- 5.6 Notwithstanding anything contained herein, in the event of any disagreement between the Parties hereto resulting in adverse claims or demands with respect to the Escrow Amount, the Escrow Agent will be entitled, at its option to refuse to comply with any claims or demands on it with respect thereto as long as such disagreement will continue, and in so refusing, may elect not to make delivery of the Escrow Amount in accordance with this Escrow Agreement. In so doing, the Escrow Agent will not be or become liable in any way to the Parties hereto for its failure or refusal to comply with such claims or demands. The Escrow Agent will be entitled to refrain from acting or refusing to act until such claims or demands: (a) will have been finally determined in a court of competent jurisdiction; or (b) will have been settled by agreement and the Escrow Agent will have been notified thereof by the Lender and the Borrower in writing.
- 5.7 The Parties acknowledge that the Escrow Agent is holding the Escrow Amount at their request and for their convenience only, and the Escrow Agent will not be deemed the agent of any of the Parties in respect of the escrow.
- 5.8 The Parties acknowledge that the Escrow Agent has acted and is acting as legal counsel to the Lender and further that the Escrow Agent has acted as counsel to the Lender in connection with the Term Sheet and Commitment and transactions contemplated therein and in negotiating and establishing this Escrow Agreement. Each of the Parties consents to the Escrow Agent continuing to act for the Lender in respect of any matter arising in relation to this Escrow Agreement, including any dispute regarding the disposition of the Closing Documents. The Escrow Agent will not be impeachable or accountable because of any conflicting or potentially conflicting duty to, or any advice provided by, the Escrow Agent to the Lender.
- 5.9 This Escrow Agreement will terminate, and the Escrow Agent will have no further responsibility under the terms of this Escrow Agreement and will be released and discharged from all claims and liabilities relating to the Escrow Amount and any interest accrued thereon, and the Escrow

Agent will not be subject to any claims made by or on behalf of any Party hereto, upon the later of:

- (a) the date that the Escrow Agent releases the balance of the Escrow Amount being held by it pursuant to Article 3 of this Escrow Agreement; or
- (b) delivery of the Escrow Amount into court.

Article 6 – General Provisions

- 6.1 The Escrow Agent may, at any time, resign from its obligations under this Escrow Agreement and be discharged from all further duties and liabilities hereunder by giving each of the Parties at least 30 days' notice in writing of its intention to resign. The Parties will immediately upon receipt of such notice, jointly appoint a new person to act in the place of the Escrow Agent and if they fail to agree on such appointment, any of the Parties or the Escrow Agent may apply to a justice of the court on such notice as such justice may direct for the appointment of a new escrow agent. Upon any new appointment, the new escrow agent will be vested with the same powers, rights, duties and obligations as if it had been originally named the escrow agent.
- 6.2 Any notice or other communication required or permitted to be given by this Escrow Agreement will be in writing and will be effectively given and made if (i) delivered personally; or (ii) sent by prepaid courier service; or (iii) sent by registered mail; or (iv) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Lender: **Barbican Capital Partners, LLC**
405 Lexington Avenue, Suite 2600
New York, New York 10174
Attention: Benny Leung
Email: bleung@barbicap.com

With a copy to: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

If to the Borrower: **Alberta Foothills Properties Ltd.**
3505 – 18th Street SW
Calgary, AB T2T 4T9
Attention: Drew Atkins
Email: drew.bland@me.com

With a copy to: **D. Allison Professional Law Corporation**
2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6
Attention: Douglas V. Allison
Email: Doug@allison-associates.ca

If to the Escrow Agent: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

or at such other address as the party to whom such notice is to be given will have last notified the party giving the same in the manner provided in this Section 6.2. Any notice personally delivered to the party to whom it is addressed as provided above will be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice will be deemed to have been given and received on the next Business Day. Any notice transmitted by facsimile, e-mail or other form of electronic communication will be deemed given and received on the first Business Day after its transmission, provided that confirmation of receipt has been obtained by the party delivering such notice. Any notice delivered by means of prepaid courier will be deemed to have been delivered on the second Business Day following the date on which the same has been sent via courier. Any notice delivered by means of registered mail will be deemed to have been delivered on the fifth Business Day following the date of mailing.

- 6.3 Neither the rights nor the obligations of any Party arising from this Escrow Agreement will be assignable without the prior written consent of the other Parties.
- 6.4 This Escrow Agreement may only be modified or amended by an agreement in writing signed by all of the Parties hereto.
- 6.5 Subject as aforesaid, this Escrow Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.
- 6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 6.7 Where the context requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.
- 6.8 This Escrow Agreement constitutes the only contract between the Parties pertaining to the subject matter thereof. No waiver of any of the provisions of this Escrow Agreement will be deemed or will constitute a waiver of any other provisions (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.9 Time will be of the essence of this Escrow Agreement.
- 6.10 The Parties hereto acknowledge that this agreement has been prepared by the law firm MLT Aikins LLP, as solicitors for the Lender, and that each of the other Parties hereto has been advised to obtain independent legal advice and has either done so or waived its right to do so.
- 6.11 This Escrow Agreement may be signed and delivered in counterparts, each of which may be executed by DocuSign, and each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Escrow Agreement may be transmitted by facsimile or email attachment or DocuSign and the reproduction of signatures in such manner will be binding as if originals. Each Party undertakes to provide each and every other Party hereto with a copy of this Escrow Agreement bearing original signatures forthwith upon request.

[Signature page follows.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.

BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President
Manager

ALBERTA FOOTHILLS PROPERTIES LTD.

Per: _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

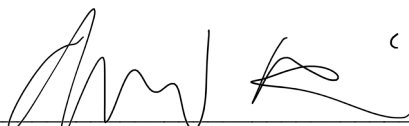
Per: _____
Name: Saravan J. Veylan
Title: Partner

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.


BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President

ALBERTA FOOTHILLS PROPERTIES LTD.

Per:  _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

Per:  _____
Name: Saravan J. Veylan
Title: Partner

THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 29 day of July 2020


A Notary Public in and for the State of New York

Laurie Ann Wagonfeld
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

EXECUTION VERSION

February 1, 2020

Alberta Foothills Properties Ltd.
3505-18th Street SW
Calgary, AB T2T 4T9

Attention: Drew Atkins, President and Director

Re: C\$39 Million First Mortgage Development and Construction Loan for Phase I of a multi-phase master-planned community ("MPC") known as "Wind Walk" located at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Project")

Gentlemen:

Based upon recent discussions between Barbican Capital Partners, LLC, a Delaware limited liability company (the "Lender") and you, and based on Lender's (and its Investment Committee's) preliminary review and relying upon the information which you have previously provided to us, the Lender is pleased to confirm its willingness to offer a C\$39,000,000 secured loan facility (the "Facility" or the "Loan") to Alberta Foothills Properties Ltd., subject to the terms and conditions set forth in this letter (the "Commitment Letter"), including, without limitation, the paragraph below entitled "Due Diligence". It is understood and agreed that the terms and conditions herein contained and of the Facility are not limited to those set forth in this Commitment Letter and in Exhibit A annexed hereto and made a part hereof. The Lender reserves the right to modify and/or supplement such terms and conditions at any time after the date hereof, based on events occurring after the date hereof, on the results of the due diligence described in this Commitment Letter or otherwise, in its sole discretion.

Lender: Barbican Capital Partners, LLC or its designee and/or affiliate.

Borrower: Alberta Foothills Properties Ltd., a single purpose and bankruptcy-remote entity duly incorporated and existing under the laws of the

Province of Alberta, and authorized to carry on business therein, subject to commercially reasonable practices under the laws of the Province of Alberta and the laws of Canada applicable therein (collectively, "Applicable Canadian Law") as to be advised by MLT Aikins LLP (the "Lender's Local Counsel") in Lender's Local Counsel's sole and absolute discretion, that holds title to the land on which the Project is being developed (the "Borrower"). The final organizational structure of Borrower, along with all documentation supporting such structure, shall be subject to the approval of Lender in its sole discretion. The Principals and Borrower shall make certain representations, warranties and covenants concerning the organization of Borrower and Guarantors (as hereinafter defined) to be set forth in the Loan Documents (as hereinafter defined) and Borrower shall make certain representations, warranties and covenants concerning its organization to be set forth in the Loan Documents. The Facility will be a full recourse obligation of the Borrower.

The "Sponsor" shall be 1367803 Alberta Ltd.

The "Principals" shall be Drew Gordon Atkins and/or any other individual to be approved by Lender based on due diligence.

Guarantors:

Upon completion of Lender's due diligence of the Project (as hereinafter defined) and the financial conditions and creditworthiness of the Sponsor and Principal but prior to the closing of the Facility, Lender may require, in its sole and absolute discretion, that any or all of the Sponsor or Principal on a joint and several basis (or an alternate individual or corporate entity acceptable to Lender) (the "Guarantors") provide any or all of the following guaranties to Lender in form satisfactory to Lender:

- Standard Non-Recourse Carve-Out Guaranty (which shall include fraud and intentional misrepresentation, any voluntary act of bankruptcy of Borrower, and other standard non-recourse carveouts).
- A Completion and Carrying Guarantee.
- A limited guarantee in an amount to be determined upon the finalization of the Final Project Budget (as hereinafter

defined) in form and by a guarantor satisfactory to Lender

- Project Cost Overrun and Recourse Guaranty (which shall include due prompt and punctual completion of all improvements in accordance with approved plans and specifications, payments of all "hard costs" and all "soft costs" and expenses incurred in connection with such completion (including interest) and payments of all overruns in excess of items reflected in the Final Project Budget). Any and all cost overruns of the Project will be the sole responsibility of Borrower, Sponsor, and Principal.
- Any other Guarantee that Lender deems necessary upon completion of due diligence.

In connection with making such guarantees, Guarantors shall additionally provide with any and all certificates and other documents required to be issued pursuant to the *Guarantees Acknowledgment Act* (Alberta).

Project: Phase I of a multi-phase, master planned community known as "Wind Walk" located on a site (approximately 144.66 acres of land (the "Land")) at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Property") based on a master plan ("Master Plan") to be approved by Lender.

Facility Amount: C\$39,000,000 subject to due diligence and underwriting of all relevant aspects of the Project (e.g., site and market feasibility, credit, legal and tax arrangements, etc.). It is contemplated that the Loan shall be structured and funded into two tranches: (i) a senior tranche in an amount equal to the least of (a) 60% of Lender's approved "as is" appraised value of the Project as determined by a MAI Appraisal or an equivalent appraisal acceptable to Lender in its sole and absolute discretion (the "Appraisal") to be obtained by Lender prior to the closing of the Facility, (b) 60% Loan-To-Costs (based on Lender's approved Total Project Costs (as hereinafter defined)) and (c) C\$28,500,000 ("Tranche A Loan") and (ii) a mezzanine tranche of an amount equal to the least of (x) 20% of Lender's approved "as is" appraised value of the Project as determined by the Appraisal, (y) 20% Loan-To-Costs, and (z) C\$10,500,000 ("Tranche B Loan"). The final loan amount for each

of the Tranche A Loan and the Tranche B Loan shall be determined upon the occurrence of all of the following (A) completion of due diligence, (B) the receipt and approval of the Appraisal and such other material as reasonably requested by Lender for its final underwriting purposes, and (C) the determination of the Final Project Budget.

The Facility is non-revolving and shall mature at the end of the Facility Term (as hereinafter defined). After expiration of the Facility Term, subject to any applicable extensions described herein or termination of the Facility, no additional Advances (as hereinafter defined) shall be made hereunder.

Upon closing of the Facility, the Facility shall be advanced (the "Advance") to and used by the Borrower for the purposes described herein subject to the satisfaction of all conditions precedent to such Advance established in the Loan Documents and based upon the results of the Lender's due diligence with respect such Advance and the Borrower's compliance with the terms of the Loan Documents.

**Equity
Requirement:**

Borrower shall provide a total cash equity contribution (or quasi equity contribution approved by the Lender in its sole and absolute discretion) equal to the difference between the Total Project Costs (approved by the Lender upon completion of due diligence) and the Loan ("Borrower's Equity"). Lender shall determine the final amount of the Borrower's equity requirement (the "Equity Requirement") within five (5) Business Days after the occurrence of the following events: (i) Borrower's delivery of the final GMP Contract (as hereinafter defined) for the Project, (ii) Lender's receipt of a final report (the "Construction Review Report") from Lender's Construction Consultant (as hereinafter defined) that concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project (which review and report shall also include for the avoidance of doubt the Lender's Construction Consultant's approval of the GMP Contract and the Construction Management Contract), and (iii) verification of Borrower's equity contributed to such point into the Project. Borrower shall grant prompt access to Lender's accountants and consultants upon execution of this Commitment Letter to

Borrower's books and records in order for such accountants and consultants to verify the contribution of the Equity Requirement. Evidence of such contribution will constitute cancelled checks or wire transfer receipts (if funds were already disbursed into the Project) along with bank statements or any other form acceptable to Lender.

Manager: Borrower shall manage the Project. Lender shall hire a third-party consultant to monitor the progress of the construction and development of the Project. The expenses for such hire shall be borne by Borrower.

Plans & Specs: Lender and the Lender Construction Consultant shall be satisfied with its review of all the plans and specifications.

GMP Contract: The Project shall have a guaranteed maximum price contract ("GMP Contract") in form and substance satisfactory to Lender. The GMP Contract shall be performed by a qualified GC (as hereinafter defined) satisfactory to Lender. In addition, in Lender's sole discretion, the GC shall provide (i) a performance bond from a major insurance company or a financial institution satisfactory to Lender or (ii) a standby letter of credit to guarantee such performance in form and from a financial institution satisfactory to Lender.

Total Project Costs: Total Project Costs will include the interest expense on the Facility, "soft" and "hard" costs of the construction of the improvements of the Project and other carrying and development costs, establishment of required reserves, and closing costs associated with the Facility.

Total Project Costs shall be subject to review and verification by the Lender. Upon satisfactory completion of its due diligence, Lender shall put forth a final project budget ("Final Project Budget") that will be final for purpose of Lender's underwriting of the Loan.

Facility Term: Thirty-six (36) months from the closing of the Facility.

Extension Option: Borrower shall be entitled to one extension of twelve (12) months upon satisfaction of the following conditions for such extension:

(a) no Event of Default or default shall have occurred and then be continuing, (b) Borrower shall have paid to Lender an extension fee equal to 1% of the principal balance of the Facility, and (c) Borrower shall have given Lender not more than 120 days nor less than 30 days' notice of such extension.

Pre-Sale

Contracts/Deposits: Borrower acknowledges that the "pre-sales" aspect is a crucial consideration for Lender to consider the provision of the Loan. Upon the execution of this Commitment Letter and upon Borrower's submission of relevant information and future marketing plan for Phase 1 regarding such "pre-sales", Lender shall establish the exact pre-sales requirement of the Project (the "Pre-Sale Requirement"). The Loan Documents shall provide that all pre-sale deposits relating to the sales of lots shall (i) for pre-sale deposits relating to any "unit" (as defined in the *Condominium Property Act* (Alberta)), be held in trust by a prescribed trustee in compliance with the provisions of the *Condominium Property Act* (Alberta), (ii) for pre-sale deposits paid by individuals who are residents of British Columbia, be held in trust by a brokerage, lawyer, notary public or prescribed person in compliance with the provisions of the *Real Estate Development Marketing Act* (British Columbia), and (iii) otherwise be placed in escrow and released to (a) the Lender upon commencement of construction as a prepayment of the Tranche A Loan, or (b) the unit purchaser if commencement of construction does not occur on the date as specified under the agreement for sale (unless mutually extended). Exceptions will be approved by Lender, such approval not to be unreasonably withheld.

Distribution to

Equity: No equity distributions by Borrower to any of its partners (general or limited), shareholders, Sponsor, directors and Principals will be permitted without the Lender's prior written consent until the Facility has been repaid in full.

Interest Rate: Tranche A Loan: The non-default floating interest rate ("Based Rate") equal to the higher of (i) Bank of Canada Prime rate (as announced in the Daily Digest published by Bank of Canada from time to time) + 4% or (ii) 3-month Canada Dollar Offer Rate

(CDOR) (as published by Thomson-Reuters from time to time) +5.5%. Interest shall be payable current via cash flow and/or Interest Reserve (as hereinafter defined) during the loan period and such amount shall be incorporated into the Total Project Costs.

Tranche B Loan: Interest rate of 8% per annum ("Fixed Rate"), fixed and payable monthly in arrears.

To the extent permitted by law, Borrower waives the provisions of the *Judgment Interest Act* (Alberta).

Payments: Interest on the Tranche A Loan and the Tranche B Loan shall be calculated on an actual day elapsed 360 basis. All interest accrued shall be due and payable at the end of the Loan Term as it may be extended. Interest on the Loan (i.e., each of the Tranche A Loan and the Tranche B Loan) shall be paid monthly from the Interest Reserve until such Interest Reserve has been fully advanced. The inadequacy, if any, of such Interest Reserve shall not relieve Borrower of its obligation to make interest payments on a timely basis.

Interest Reserve: An interest reserve will be established promptly after the finalization of the Final Project Budget, in an amount to be determined by the Lender prior to the closing of the Facility but sufficient to fully fund the payment of interest for the Facility during the initial Facility Term, which reserve shall be maintained at a financial institution designated by the Lender, and which reserve may, in the Lender's sole discretion, be financed with the proceeds of the Facility (the "Interest Reserve"). The Interest Reserve shall be used to secure the Borrower's obligations under the Loan Documents, including, without limitation, the obligation to pay interest as the same becomes due.

Additional Reserves: Borrower shall establish necessary reserves (expected to be satisfied by adequate provisions in the Final Project Budget and related undrawn proceeds of the Facility) including, without limitation, for taxes and insurance, and for specific operating expenses of Borrower identified by Lender to be excluded from the Final Project Budget.

Insurance: The Property including the improvements thereon, Borrower, the

GC and all subcontractors will be covered by insurance at limits, with deductibles and by carriers customary for similar transactions consummated by Lender. Insurance policies may not exclude coverage for events related to terrorism.

Cash Flow Sweep: To the extent that there is available cash flow (including 90% of net proceeds from the sale of each improved lot), 90% of all such cash flow less any approved working capital shall be put into a "lock box" and shall be used to (i) first, pay any accrued and unpaid interests on the Facility, (ii) second, prepay or repay the Facility and (iii) lastly, pay the Exit Fee (as hereinafter defined) and the Make Whole Amount (as hereinafter defined).

Release: Lender shall release its lien upon each relevant improved lot upon its receipt of the net payment for each such improved lot.

Purpose/

Use of Proceeds:

Subject to the terms and conditions contained herein and in the Facility's Loan Documents, the Loan shall be used by the Borrower solely to (i) retire an existing loan with Alberta Treasury Branches in an amount of approximately C\$13,007,000 (to be verified by Lender during due diligence), (ii) advance certain pre-construction costs approved by Lender pursuant to the Master Plan, and (iii) pay for all closing and related costs consistent with "EXHIBIT C" (contained herein) and approved by Lender.

Upon the retirement of the foregoing loan with Alberta Treasury Branches, the Borrower shall be required to obtain and register discharges for (or otherwise cause the discharge of) any and all encumbrances registered against title to the Property relating to such loan.

Closing: The date of the execution and delivery of definitive Loan Documents for the Facility (the "Closing Date") is anticipated to occur on or about March 31, 2020, or such later date as determined by the Lender, in its sole discretion.

Prepayment: Any partial prepayments made pursuant to the "Cash Flow Sweep" section above are allowed with no prepayment penalty, provided that any such prepayment shall not be less than C\$1,000,000 Canadian Dollars per occurrence. Prepayment of the Tranche A Loan shall be

permitted with the payment of the Exit Fee. Prepayment of the Tranche B Loan shall be permitted with the payment of the Make Whole Amount.

**Exit Fee and
Make Whole
Amount:**

Tranche A Loan: 2% exit fee (the "Exit Fee") payable at prepayment, repayment or maturity.

Tranche B Loan: At any prepayment, repayment or maturity of the Tranche B Loan, including as a result of an acceleration after a default, the Borrower shall pay Lender, in addition to any unpaid interest and principal, a lump sum amount which, when taking into account the payment of the Loan fees and interests, shall yield Lender an overall internal rate of return (IRR) of 15% (the "Make Whole Amount").

Default Rate:

Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) on unpaid principal, interest and other amounts secured by the Loan Documents, payable on demand.

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)).

Late Charge:

Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) of the amount then due and payable (other than the payment on the maturity date).

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)) of the amount then due and payable (other than the payment on the maturity date).

Security:

Each of the Tranche A Loan and the Tranche B Loan and all obligations of the Borrower under the Loan Documents shall be fully recourse to the Borrower and shall be secured by:

1. A promissory note executed by Borrower in favor of Lender with respect to the Facility.
2. A first priority (and with respect to the Tranche B Loan, second priority) mortgage and assignment of rents over the Borrower's

interest in the Property granted by the Borrower (the "Legal Mortgage").

3. Stock pledges of Sponsor.
4. A first priority or ranking all assets general security agreement under Applicable Canadian Law granted by the Borrower (including an assignment of all key construction and development documents and step-in rights where appropriate), together with a security agreement under New York law and a UCC-1 financing statement.
5. An assignment of all rights of the Borrower's title and interest in and to the Project including all agreements related to the Property.
6. A first priority or ranking perfected security interest in all fixtures, furnishings and equipment at the Project now owned and hereafter acquired by the Borrower, together with any financing statement or other perfection instrument required under Applicable Canadian Law.
7. A collateral assignment of all the material construction-related contracts including, without limitation, the architect's agreement and all other construction and development agreements, including any GC's agreements and subcontractors' agreements (including the GMP), and collateral assignment of the plans and specifications for the Project.
8. A mortgagee's policy of title insurance (the "Title Insurance Policy") or Canadian equivalent with respect to the Legal Mortgage, satisfactory to the Lender, its insurance advisors, and Lender's Local Counsel in their sole and absolute discretion, in an amount equal to the Facility with such endorsements thereto as the Lender may require insuring the first priority ranking of the Legal Mortgage in favor of the Lender.
9. An assignment of all proceeds and claims arising from damage to or condemnation of the Project and/or the improvements or a portion thereof.

10. An assignment of all inventory, accounts and general intangibles (including, without limitation, all contract rights, licenses, permits, entitlements and other customary documents).
11. If applicable, an assignment of all leases and occupancy agreements, if any, for the Project together with all rents, profits and issues therefrom (or Canadian equivalent). The assignment shall provide that the Lender has the right in its sole and absolute discretion to approve the form of leases to be used at the Project and require minimum standards with respect to rent, term and expense recoveries.
12. An assignment of all deposits (including purchase contract deposits under any purchase contracts for the lots).
13. A perfected security interest in all reserve accounts required under the Loan Documents.
14. Assignment of insurance.
15. Postponement and assignment agreement granted by the Sponsor and the Principals in favor of the Lender, postponing and assignment any right, title and interest in and to any payment owing by the Borrower to the Sponsor or Principals, as the case may be, to the Lender.
16. Any additional items which Lender and its New York and/or Canadian counsel may reasonably require in connection with the foregoing security interests.

Other customary items of security for a construction loan of this size and type, and together with items 1-16, collectively, the "Security Documents".

Documentation:

The closing of the Facility will be subject to (i) the negotiation, execution and delivery of a definitive loan agreement (including schedules, exhibits and ancillary documentation) (the "Facility Agreement"), (ii) guaranties (if applicable), (iii) all of the Security Documents described in the previous "Security" section hereof, (iv) all waivers, postponements, subordination and priority agreements and other documents required by Lender to provide

Lender with all such priority or ranking as required in the previous "Security" section hereof, (v) promissory note(s) evidencing the Facility, (vi) an environmental indemnity agreement executed by the Borrower, Sponsor and Principal, and (vii) such other and additional documentation as the Lender shall require, all containing terms and conditions as shall be satisfactory to the Lender and its counsel in all respects in their sole discretion (collectively, the "Loan Documents").

Conditions

Precedent:

The Lender's obligation to make the Facility available to the Borrower shall be subject to the satisfaction of certain conditions precedent which shall include, but shall not be limited to the following:

1. Receipt by Lender of its final Investment Committee's and Board of Directors' approval of the transaction contemplated by this Commitment Letter.
2. Satisfactory completion of Lender's legal, business and other due diligence and satisfactory completion of Lender's underwriting of the Project.
3. Receipt of any consents, third-party estoppels, subordination, non-disturbance and attornment agreements as required by Lender.
4. Loan Documents satisfactory to Lender which shall include, such terms and conditions as shall be required by the Lender and its counsel, including, without limitation, the terms and conditions outlined in this Commitment Letter, and in Exhibit A.
5. Satisfaction of closing conditions set forth in final documentation, including, without limitation, Loan Agreement, Security Agreement, Pledge Agreement, Guarantees, Promissory Notes, Performance Bonds, Subordination Agreement, Title Insurance Policies or Canadian equivalent (if applicable), Survey and Legal Opinions, each satisfactory to Lender.

6. Review and approval of design and construction items, including, contractors, plans and specifications, construction budgets, performance and payment bonds, construction contracts, subcontracts, design contracts, architect and design professional agreements, soils reports, licenses, permits and approvals relating to the construction by Lender.
7. Verification by Lender of the Equity Requirement.
8. Receipt of all organizational documents of Borrower, Sponsor and personal information of the Principal and all property related due diligence items Lender or its counsel deem necessary for the subject transaction.
9. Receipt of the total Project costs (the "Total Project Costs") (with a breakdown of line items) in form and substance acceptable to the Lender
10. Subject to Borrower's satisfaction of item 12 below, receipt of evidence satisfactory to Lender of the Project's compliance with all laws and zoning regulations, including, without limitation, issuance of all governmental permits.
11. Borrower has entered into Qualified Contracts for the sale of lots sufficient to meet the Pre-Sale Requirement, based on at least the approved minimum sales price schedule.
12. Approval of the general contractor ("GC") by Lender in its sole discretion, and receipt of a GMP Contract in an amount not more than provided for in the budget in form and substance approved by Lender and its construction consultant.
13. Approval of the Master Plan of the Project.
14. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsor or Principal, the Property, the Project or political, economic, capital markets, or other market conditions.
15. Receipt of payment and performance guaranty from the GC in the form of payment and performance bonds from insurers with

ratings of A or better (from acceptable rating agency) and acceptable to Lender in its sole discretion, for the GC or, at Lender's sole discretion and election, a standby letter of credit acceptable to Lender with respect to GC's performance in an amount and from a financial institutions acceptable to Lender in its sole discretion. Dual Obligee riders in favor of Lender will also be required for the performance bonds.

16. Receipt of marketing materials for the Project that comply with all applicable laws and regulations.
17. All relevant filings required by the Canadian authorities, to be made under the relevant laws and regulations and any other governmental or regulatory requirement relating to the Master Plan, have been accepted and approved by the appropriate agencies.
18. Environmental Site Assessment (or Canadian equivalent) from a qualified engineer acceptable to Lender to be received prior to closing of the Loan.
19. All guarantees in form and substance and financial condition of Guarantor all satisfactory to Lender in its sole discretion prior to closing of the Loan.
20. Prior to closing the Loan, Lender shall receive, review and accept an MAI Appraisal (or Canadian equivalent) which indicates an "as is" and "as completed" market value satisfactory to Lender in its sole discretions.
21. Lender's receipt of a feasibility report to be prepared by a consultant, all in form and content satisfactory to Lender to be received prior to the closing of the Loan.
22. Borrower shall deliver its full financial statements (i.e., Profit & Loss Statement, Balance Sheet and Cash Flow Statement) in either "Audited" or "Review" format based on GAAP (or local equivalent) under AICPA (or Canadian CICA) guidelines for the fiscal period ended May 31, 2018, May 31, 2019 and a 9-month "stub" period ended January 31, 2020. The Audited or Review report (the "Financial Review") shall be prepared by a qualified certified public accountant or chartered accountant

firm approved by Lender. The Financial Review shall be subject to review and approval by Lender and its accountant as a condition to closing.

23. In addition to the satisfaction of all other contingencies and conditions precedent contained herein, this Commitment Letter shall remain contingent and the closing of the Facility shall be predicated upon the Lender's Construction Consultant's receipt of the final GMP Contract, the Final Project Budget and the plans and specifications and such Lender's Construction Consultant's issuance of the Construction Review Report which concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project.
24. Review and approval of the due diligence contingencies listed on Exhibit B annexed hereto (the "Due Diligence Contingencies").
25. All usual and customary terms and conditions precedent for loan facilities of this size, type and purpose, together with such other terms and conditions as the Lender may require in its sole discretion, shall have been satisfied, including, without limitation:
 - a. Delivery of a certificate of a duly authorized signatory for Borrower and Sponsor containing an incumbency certificate and attaching: (i) its certificate of formation and by-laws, (ii) its resolutions authorizing the transactions, and (iii) good standing certificates, in each case in form and substance acceptable to the Lender and its counsel or the equivalent documents under the jurisdiction of formation of each entity.
 - b. Opinions of counsel to Borrower and Guarantors, in form and substance acceptable to the Lender and its counsel, including, without limitation, opinions as to such regulatory matters as the Lender and its counsel shall require and a "non-consolidation" opinion with respect to the Borrower.
 - c. Lender shall have received a lien search for Borrower and each Sponsor and Principal (including, without limitation,

with respect to any assets acquired by the Borrower) and a background report on each Principal, and the results thereof shall be satisfactory to Lender and its counsel.

- d. The Lender shall have received a litigation search for Borrower and each Sponsor and Principal and verification that there are not prior or pending actions, and the results thereof shall be satisfactory to the Lender and its counsel.
- e. The Lender shall have received a tax lien search for Borrower and each Sponsor and Principal, and the results thereof shall be satisfactory to the Lender and its counsel.
- f. The Borrower shall have paid all fees and disbursements of Lender and its counsel when due, except for those fees which are going to be paid from the Facility proceeds at closing.
- g. The Lender shall be satisfied in all respects with the Borrower's insurance and shall have received satisfactory certificates naming the Lender loss payee and additional insured.
- h. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.

**Representations
and Warranties:**

The Loan Documents shall include such representations and warranties as are usual and customary for loan facilities of this size, type and purpose, together with such other representations and warranties as the Lender or its counsel may require in their sole discretion, including, without limitation, representations and warranties relating to the existence, good standing, capacity, power and authority of the Borrower, the due authorization of all Loan Documents, receipt of all necessary governmental approvals and authorizations, ownership by each Guarantor of its assets, absence

of liens or material litigation, payment of taxes and other material obligations, no material adverse change in any of Borrower's, Sponsor's or Principal's operations or financial condition, possession and validity of all licenses, permits, consents and authorizations to operate the Borrower's business as shall be deemed necessary or advisable by the Lender, solvency, compliance with agreements, compliance with laws, and litigation matters.

Covenants:

The Loan Documents shall include such affirmative and negative covenants as are usual and customary for loan facilities of this size, type and purpose, including, without limitation, financial covenants (e.g. DSCR), covenants regarding insurance, covenants limiting distributions, due on sale and due on encumbrance covenants, covenants restricting the incurrence of debt, covenants restricting affiliate transactions, and covenants regarding the SPE status of the Borrower; together with such additional covenants as the Lender or its counsel may require in their sole discretion, including, without limitation, the following:

1. Prohibitions or limitations on additional indebtedness (other than customary trade payables) and guaranties
2. Prohibitions on granting liens on assets or permitting the existence of builders' liens on the Property (or any portion thereof).
3. Prohibitions on dividends, distributions and other restricted payments.
4. Prohibitions on transactions with affiliates, except on terms which are intrinsically fair and no less favorable to Borrower than would be obtained in an arms-length transaction with an unrelated third party.
5. Restrictions on issuance of stock, changes in ownership, capital structure and nature of business.
6. Prohibitions or limitations on capital expenditures (limitations shall be based on amounts set forth in Borrower's budget unless otherwise approved by Lender), acquisitions, asset sales (other than pre-sales in accordance with the terms of this Commitment

Letter and the Facility) and exchanges, investments, mergers, sale leasebacks, lines of business, prepayments of other debt, restrictions on subsidiaries and transactions with affiliates.

7. The Borrower shall deliver to the Lender the following information (wherever applicable):
 - a. As soon as available and in any event within forty-five (45) days following the close of each fiscal quarter, copies of quarterly unaudited consolidated financial statements, certified by the chief financial officer or a director of the Borrower.
 - b. As soon as available, and in any event, within ninety (90) days following the close of each fiscal year, financial statements prepared on a consolidated and consolidating basis in accordance with generally accepted accounting principles applied on a consistent basis and audited by an independent certified public accountant (or Canadian equivalent) satisfactory to the Lender.
 - c. Copies of tax returns filed by the Borrower for fiscal year 2018 and 2019 or promptly upon filing with the appropriate taxing authorities.
 - d. Copies of all registration statements, SEC forms 10-K, 8-K and 10-Q (or equivalents under Applicable Canadian Law) and all other information, forms, notices, applications and documents for all Borrower, Sponsor and Principal received or filed with all federal and state government agencies and authorities, including, without limitation, all reports, notices and correspondence filed with, sent to or received from the Securities and Exchange Commission or any state securities agency, HUD, any state banking authority or any regulatory authority in the jurisdiction of the Property.
 - e. Copies of (i) personal financial statements of Principal (to the extent such Principal is a Guarantor and natural person) as of December 31, 2019, and (ii) all financial statements, reports, written material notices and correspondence filed with, sent to or received from any state or federal agency or governmental body or otherwise made public by the

Borrower or such agency or governmental body.

f. Such other information relating to the Borrower, Sponsor or the Principal as the Lender may request in its reasonable discretion.

8. Compliance with applicable real estate development marketing legislation.

No Borrower's Fees: Other than compensation and/or fees approved by Lender (except in the event of a default by the Borrower) as set forth in the Final Project Budget and paid in accordance with such Final Project Budget approved by Lender, no management fees or other similar compensation shall be payable to Borrower, Sponsor or Principal or their respective owners, directors, officers or employees during the Loan Term without the prior approval of Lender.

Events of Default: The Loan Documents shall contain such events of default as are usual and customary for credit facilities of this size, type and purpose, together with such other events of default as the Lender or its counsel may require in their sole discretion, including without limitation, nonpayment of principal, interest and other sums due the Lender after five (5) days following the date such payments are due, failure to keep the Facility "in balance" after a specified number of days following Borrower's receipt of notice from Lender, failure to remedy a breach of covenants, breach of representations and warranties, bankruptcy and insolvency related matters (including matters relating to creditor arrangements and receivership), change of control, ERISA issues (or issues under equivalent Applicable Canadian Law), violation of laws, material adverse change in the assets, business, operations or financial condition of the Borrower, Sponsor or Principal, violation of laws, and termination, suspension or non-renewal of material licenses, in each case after grace, notice, or cure periods as will be further defined in the loan documentation.

Recourse: Fully recourse to Borrower but not to Sponsor and the Principal; provided, however, (i) standard "bad-boy" recourse carve-outs (which shall include fraud and misrepresentation and any voluntary act of bankruptcy of Borrower) and environmental indemnity shall apply to Sponsor and the Principal and (ii) the Sponsor and the

Principal shall guarantee the Project Cost overruns in excess of items reflected in the final approved Project Budget and lien-free completion of construction and also those obligations described in the "Guarantors" section if applicable.

**Cost and Yield
Protections:**

Standard provisions for illegality, increased costs or reduced return, including those arising from taxes, withholding and capital requirements.

Transferability:

Except for partial releases described above, the Loan Documents shall provide that the Property and the direct and indirect ownership interests in Borrower shall not be directly or indirectly sold, transferred, encumbered, mortgaged or otherwise disposed of, in whole or in part, without Lender's consent.

**Compliance with
Law:**

Lender shall be satisfied that the Project complies with all applicable laws including, without limitation, planning and development, zoning, environmental, municipal, and tax laws. In addition to all other requirements set out in this Commitment Letter, the Loan Documents as well as compliance with all applicable laws governing the Project, the Borrower shall ensure that prior to the transfer of any and all lots in the Project, it procures (at its own cost and expense) the registration of a subdivision plan (and any further subdivision, strata and/or condominium plans as required), bylaws and all requisite easements/rights of way/restrictive covenants (collectively, the "Registration Documents") for the Project, and provides any required municipal land dedications or payments in lieu thereof, all pursuant to Applicable Canadian Law (as revised and in accordance with their respective regulations). The Lender shall have the right to inspect and comment on the Registration Documents prior to submission to the Alberta Land Title Office.

Environmental:

The Project shall be clear from any environmental issue as required under the applicable laws. Any documentation in connection with the clearance shall be of form and substance satisfactory to Lender and the Borrower shall provide an environmental assessment from the Alberta Energy Regulator relating to energy resource activity on the Property to the Lender. As applicable, any abandonment,

reclamation and remediation costs and other environmental obligations relating to the Property shall be the sole responsibility of Borrower, and shall not be satisfied (in whole or in part) using the Loan without Lender's prior approval.

Approval: Among other approval rights, Lender will have sole approval rights with respect to admission of new partners or principals, changes to the Final Project Budget and sales agent arrangements. Agreements with each sales agent will be subordinated to the Facility. Lender shall be satisfied that the Borrower has secured all necessary approvals for the development of the Project. Such approvals include, without limitation, Master Plan, site, planning, designs, zoning, environmental, development agreement, building permit and any other relevant approvals as identified by Lender's Local Counsel.

Construction Consultant: Lender shall engage an independent consultant ("Lender's Construction Consultant") who will review the Final Project Budget and construction draws on a monthly basis. The closing of the Loan is predicated upon the Lender's receipt of an acceptable review of the budget and the Lender's Construction Consultant's conclusion that the budget is sufficient to complete the improvements.

Assignment: Borrower hereby specifically acknowledges that Lender shall reserve the right to transfer, syndicate, or sell part or whole of the Loan (which may be effectuated at the closing of the Loan or at any time thereafter). Borrower agrees to cooperate with any such transfer or sale but will only be responsible for its own costs. Borrower is prohibited to assign any of its rights under the Loan to any third-party without Lender's prior approval.

Structuring: Lender may, and Borrower shall fully cooperate with Lender to, structure all or part of the Facility, as a wraparound loan, co-lending facility (with or without agents), or other structure at no additional cost or financial exposure to Borrower.

Termination: This Commitment Letter may be terminated at Lender's option by Lender giving written notice to Borrower at the address set forth above upon the occurrence of any of the events or conditions

described elsewhere in this commitment letter giving rise to such termination right (including, without limitation, under the provision entitled "Due Diligence" hereof), or upon any of the following events:

1. Any of Borrower's, Guarantors' or Principals' assignment for the benefit of its creditors, admission in writing of its inability to pay its debts as they become due, filing of a petition of bankruptcy or being adjudicated a bankrupt or insolvent, or voluntary filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation.
2. Any material adverse change in the condition of the Property or any of the Borrower, Guarantors or Principals (financial or otherwise), subsequent to the date of this Commitment Letter.
3. If any statement, representation or warranty made in any application, submittal or other written statements made to Lender by any of the Borrower, Guarantors or Principals in connection with the Facility shall prove to have been untrue or misleading when made in any material respect, or shall have failed to disclose information necessary to make such statement not materially misleading in light of the circumstances under which it was made.
4. If the Environmental Audit (as defined in Exhibit A hereto) discloses the presence of any existing or potentially hazardous material contamination or physical conditions that may result in such contamination of the Property.
5. If Lender has not received the Appraisal, Environmental Audit, the Construction Review Report, verification of Presale Contracts, the Financial Review and any other reports reasonably required by Lender, and approved them all by March 13, 2020, in its sole discretion.
6. If the Closing Date does not occur by March 31, 2020 unless otherwise extended by Lender, in its sole discretion.

Delay in the exercise of Lender's right to terminate this

Commitment Letter shall not be construed as a waiver of any such right to terminate with regard to the occurrence of any specific event referred to above, and Lender's failure to act as to any such event shall not be construed as a waiver of its rights or remedies with respect to any subsequent event of default. Any termination of this Commitment Letter shall not affect Lender's rights to enforce, or any Borrower's and Principal's obligations under Section "Loan Fees" and Section "Expenses and Indemnification", including legal fees and disbursements, which rights shall survive any such termination. Upon termination of this Commitment Letter, the Lender shall have no further obligations hereunder except to return that portion of the Commitment Fee which has been received by Lender, and Expense Deposit subject to the terms and conditions set forth herein.

Loan Fees:

Commitment Fee: In consideration of the Lender's issuance of this Commitment Letter, the Borrower shall pay to the Lender a total commitment fee in the amount of two and one-half percent (2.5%) of the Facility (C\$975,000) (the "Commitment Fee"). Prior to the issuance of this Commitment Letter, Lender acknowledges that a portion of the Commitment Fee in the amount of C\$300,000 (the "Escrow Funds") from Borrower was deposited with MLT Aikins LLP pursuant to an escrow agreement by and among the Lender, the Borrower, and MLT Aikins LLP as the escrow agent, dated November 7, 2019 (the "Escrow Agreement"). The Commitment Fee shall be due and payable as follows: (a) C\$50,000 payable simultaneously at the execution of this Commitment Letter, with such funds to be released from the Escrow Funds, (ii) C\$250,000 payable when Lender approves the Due Diligence Contingencies in Exhibit B, with such funds to be released from the Escrow Funds, and (iii) C\$675,000 payable at the earlier of (x) the closing of the Loan and to be funded from the Loan proceeds or (y) the expiration of the Commitment if the Loan does not close for any reason other than Lender's willful default. Notwithstanding the foregoing, if Lender is unable to approve the Due Diligence Contingencies by the date that is thirty (30) days after the date of execution of the Commitment Letter due solely to Borrower's failure to submit the required documentation under Exhibit B (the Due Diligence Contingencies) to Lender, then Borrower agrees to release from the Escrow Funds on the thirty-first (31st) day and pay to Lender an additional C\$50,000 Commitment Fee. If Borrower

fails to deliver all of the required documentation under Exhibit B (the Due Diligence Contingencies) prior to the date that is sixty (60) days after the date of execution of the Commitment, then Lender shall have the unilateral right to terminate the Commitment and will incur no liability to Borrower. Under such circumstance, the remaining Escrow Funds shall be released from escrow and payable to Lender as liquidated damages for Lender's processing and preparation of the closing of the Loan. If the closing does not occur due to Borrower's failure to satisfy the conditions precedent to the closing or due to any other Borrower's default, then the total Commitment Fee of 2.5% shall be due immediately thereafter. Borrower, Sponsor and the Principal shall jointly and severally guarantee the payment of such Commitment Fee under such circumstance.

Legal Fees and Disbursements. Upon the execution of this Commitment Letter, Borrower shall deposit US\$25,000 with Lender or with Withers Bergman LLP, Lender's New York counsel (the "Expense Deposit"), which sum shall be used by Lender to defray on-going expenses in connection with the Facility, including, without limitation, to pay Lender's legal fees and disbursements in connection with the preparation, review and negotiation of this Commitment Letter, and thereafter such fees and disbursements as may be incurred in consummating the transactions that are the subject thereof. Borrower shall be obligated to pay all reasonable fees and disbursements of Lender's counsel (U.S. and Canadian) regardless of whether the Closing Date occurs.

Broker: Nova Capital Advisors, Inc ("Nova"). Borrower shall enter into a fee agreement with Nova regarding its finder's fee for introduction of Lender to Borrower. The Borrower shall pay any brokerage or finder's fees, commissions or other compensation payable to Nova in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.

Expenses and Indemnification: Without limiting the Borrower's obligations contained elsewhere in this Commitment Letter, the Borrower will pay the out-of-pocket costs, fees and expenses of the Lender incurred in connection with its due diligence, the negotiation, preparation and closing of the

Loan Documents regardless of whether any transaction contemplated hereby is therein consummated, and will provide indemnification thereto on terms and conditions that are usual and customary for a facility of this size, type and purpose, including, without limitation, costs, fees and expenses of the Lender in connection with the establishment (including, without limitation, legal fees and disbursements, due diligence expenses, fees of accountants, consultants and other third parties in connection with search, audit and appraisal services, filing, recording and registration fees, title insurance policy costs, and other costs and expenses) of, and fees, costs and expenses of the Lender in connection with, the preservation of its rights and the enforcement of the Facility; provided, however, in no event shall Borrower indemnify Lender for losses, claims, damages, liabilities, or related expenses to the extent such expenses are primarily caused by the willful misconduct or gross negligence of Lender.

Due Diligence:

By accepting this Commitment Letter, the Borrower specifically acknowledges that this Commitment Letter is being issued at a time when the Lender has not completed a full business, credit and legal due diligence and analysis of the Borrower, the Sponsor or the Principal, the collateral for the Facility or other aspects of the Facility contemplated by this Commitment Letter. As a result of further investigation and analysis by the Lender and its consultants, agents, representatives, analysts, accountants and counsel, which investigation and analysis shall include a review of the documents and information required under this Commitment Letter and the Loan Documents, information with respect to the Borrower, the Sponsor and the Principal, and the collateral for the Facility, of which the Lender is not now aware, may be revealed and affect the Lender's decision and/or ability to close the Facility. The Lender may, in its discretion, based on such information, decide to not close the Facility (in which case this Commitment Letter shall be deemed terminated and withdrawn) or to require that the terms of this Commitment Letter be modified or that new conditions be added hereto to address appropriately the issues raised by such information. In the event that, based upon the results of the Lender's due diligence, the Lender exercises its rights under this paragraph and determines not to close the Facility as contemplated in the Commitment Letter, the Borrower acknowledges and agrees that the Lender's sole liability shall be to return the portion of the

Commitment Fee that has been received by Lender, and Expense Deposit less any and all out-of-pocket amounts expended by the Lender in connection with this Commitment Letter, the Loan Documents and the transactions contemplated hereby and thereby. In such event, the Borrower agrees not to make any claim or bring any proceeding or action against the Lender arising out of this Commitment Letter, the Loan Documents or the transactions contemplated hereby or thereby, and the Borrower further releases and acquits the Lender, its subsidiaries and affiliates and their respective employees, officers, directors, shareholders, agents, attorneys, accountants and consultants from any and all known or unknown claims, proceedings, damages, liabilities and obligations, except for the obligations specifically provided in this paragraph.

**Rights of
Shareholders:**

It is expressly understood and agreed that the rights of the shareholders (or partners, as the case may be) of Borrower with respect to their equity in Borrower, Sponsor, and/or Guarantors and the return on same or repayment thereof shall at all times be fully subordinated to Lender's rights under the Loan Documents and to Lender's rights to receive repayment of the Facility, together with all interest accrued thereunder and the payment of the additional interest, subject to the distribution priorities set forth herein, if any.

**No Third Party
Beneficiary:**

This Commitment Letter has been prepared for the sole use and benefit of Borrower (and its constituent owners) and Lender and its affiliates, and no other persons or entities shall have any right to rely upon this Commitment Letter or any of the terms or provisions contained herein for any purpose, except that each Indemnified Party (as hereinafter defined) may rely on the provisions contained herein relating to indemnity and limitation of liability.

**Lender Not a
Joint Venturer:**

Any provision hereof to the contrary notwithstanding, Lender, by virtue of its issuance of this Commitment Letter or any action taken pursuant hereto, shall not be deemed to be a partner or joint venturer with any of the Principals, Borrower, Sponsor, Guarantors or any other parties. Each of the Borrower, Guarantors, Sponsor and Principal shall jointly and severally indemnify, defend (with counsel approved selected by Lender) and hold harmless Lender, in its capacity as the provider of the Facility, from and against any

and all losses, costs, damages, expenses (including, without limitation, those of defending or settling any such claims or demands and all reasonable fees and disbursements of outside legal counsel engaged by Lender in defending and settling such claims or demands resulting from such a construction of the parties and their relationship) and liabilities occasioned by Lender being deemed to be a partner or joint venturer with any of the Borrower, Guarantors, Sponsor or Principal or any other parties as a result of the issuance of this Commitment Letter or providing the Facility to Borrower. Any inspection of the Property, any review of the plans and specifications therefor or other documents submitted to Lender or Lender's consultants or any analysis of any Property or related facts, documents, conditions and circumstances made by Lender or any of its agents, architects or consultants is intended solely for the benefit of Lender and shall not be deemed to create or form the basis of any warranty, representation, covenant, implied promise or liability to any of the Borrower, Guarantors, Principal, Sponsor or any other person or entity.

Conflicting Terms: The terms, conditions and provisions of this Commitment Letter shall, if this Facility is funded, terminate upon the execution of the Loan Documents except to the extent such terms are expressly stated to survive the closing of the Facility. If there is any conflict or inconsistency between the terms, conditions and provisions of this Commitment Letter and the terms, conditions and provisions of the Loan Documents, the Loan Documents shall control.

**Governing Law/
Consent
to Jurisdiction:**

Irrespective of the place of execution and/or delivery, this Commitment Letter and the Loan Documents (except that the Legal Mortgage and the provisions in the other Loan Documents with respect to the creation, perfection and enforcement of the liens and security interests created pursuant to the Loan Documents will be governed by, and construed in accordance with, the internal laws of Alberta, Canada) shall be governed by, and shall be construed in accordance with, the laws of the State of New York applicable to agreements entered into and to be performed entirely within New York. The Borrower and the Lender hereby consent and submit to the jurisdiction of the state and federal

courts located in New York City, New York with respect to any claim or litigation arising hereunder or under the Loan Documents or any alleged breach of any of the covenants or provisions contained herein or therein, and acknowledge and agree that proper venue in any matter so claimed or litigated shall be in the New York State Supreme Court or other state court located in the Borough of Manhattan, in the City of New York, State of New York, or in the United States District Court for the Southern District of New York, as appropriate.

**Waiver of
Jury Trial:**

EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS COMMITMENT LETTER OR OTHERWISE RELATED TO THE FACILITY CONTEMPLATED HEREBY OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS COMMITMENT LETTER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Borrower hereby represents and covenants that: (i) to Borrower's knowledge, all information (the "Information") other than projections (the "Projections") that has been or will be made available to Lender by Borrower or any of its representatives is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made, and (ii) the Projections that have been or will be delivered have been prepared in good faith based upon reasonable assumptions. Borrower acknowledges that we may have shared, and that we may in the future share, non-public information concerning the Borrower, Sponsor, Principal and their affiliates with our affiliates. By your execution of this Commitment Letter, you consent and agree to such sharing of information. Any breach by you of the provisions contained in the Commitment Letter, shall, at the option of the Lender, terminate all of the Lender's obligations under this Commitment Letter. This paragraph shall survive the closing of the Facility.

The Lender's willingness to offer the Facility is further subject to, among other things: (i) the negotiation and execution of Loan Documents containing such terms as are described above and otherwise in form and substance satisfactory to the Lender and its counsel; (ii) the absence of any material adverse change in the condition (financial or otherwise), business, assets, properties, prospects, operations, performance or current

capital structure of the Borrower, Sponsor, or Principal, (iii) our verification of the Information, (iv) our not becoming aware after the date hereof of any information or other matter which is inconsistent with any Information or the Projections and our otherwise being satisfied with our due diligence concerning the Borrower, Sponsor, Principal and such aspects of their respective businesses and assets that we choose to investigate, (v) the resolution and satisfaction of all contingencies contained herein, and (vi) the absence of any disruption of or adverse change in the financial, banking or capital markets (including the market for debt financing) that we deem material.

By executing this Commitment Letter, Borrower hereby agrees to indemnify and hold harmless the Lender, its subsidiaries and affiliates and each of its and their officers, directors, employees, affiliates, agents, representatives, counsel, accountants, consultants and controlling persons (each, an "Indemnified Party") from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding howsoever relating to this Commitment Letter, the Facility (including the use of the proceeds thereof), or any related transaction, whether or not any Indemnified Party is a party thereto, and to reimburse each Indemnified Party upon demand for all out-of-pocket legal and other fees and expenses incurred in connection with investigating or defending any of the foregoing; provided, however, that the foregoing indemnity will not, as to any Indemnified Party, apply to losses, claims, damages, liabilities or related expenses to the extent arising from the willful misconduct or gross negligence of such Indemnified Party. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter, Borrower represents that it has secured all requisite consents, authorizations and internal approvals, including, without limitation, from the partners, members, managers, Board of Directors and/or shareholders of the Borrower (as applicable), required to execute and deliver this Commitment Letter and fulfill Borrower's obligations hereunder. To the extent there is any future dispute arising from the breach by Borrower of this representation, the Guarantors and Borrower shall indemnify each Indemnified Party from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding arising from such dispute.

By executing this Commitment Letter, Borrower: (i) agrees that Borrower will not make any claim against any Indemnified Party for any special, punitive, indirect or consequential damages in respect of any breach or wrongful conduct (whether the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated and the relationship established

by this Commitment Letter, or any act, omission or event occurring in connection herewith, and (ii) waive, release and agree not to sue upon any such claim for any such damages whether or not accrued and whether or not known or suspected to exist in your favor. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter and without limiting any provision hereof, Borrower agrees that Borrower will pay all fees, costs and expenses incurred by the Lender in connection with the negotiation and preparation of this Commitment Letter and the Loan Documents relating to the Facility (including, without limitation, costs and expenses in connection with Lender's due diligence investigations and fees and expenses of our counsel) whether or not the loan documentation is finalized and whether or not the Facility is extended or other financial accommodations are made, and regardless of the reasons for which such documentation is not finalized or the Facility is not extended or other financial accommodations are not made. Such fees and expenses include, without limitation, fees and expenses incurred in connection with documenting this Commitment Letter and the Loan Documents, due diligence expenses, costs of appraisals, search fees, costs of title insurance policies, fees and expenses of counsel, accountants and consultants, environmental review, and recording, filing and registration costs. In the event of a default under the Loan Documents, the Borrower, Sponsor and Principal shall pay all of the Lender's fees, costs and expenses incurred in connection with enforcing its rights.

If Lender decides to not close the Facility based on Lender's due diligence analyses as set forth in this Commitment Letter, Lender shall have no liability for any losses or damages sustained by any of the Borrower, Guarantors and Principal as a result of such decision by Lender and Lender shall, subject to Lender's receipt of a legal release from Borrower and related parties, promptly refund the portion of the Commitment Fee paid to or for the benefit of Lender, less expenses incurred in connection with the Facility or this Commitment Letter. If the Facility does not close for any reason other than as a result of Lender's due diligence analysis or Lender's willful default, Lender shall retain all fees previously paid under the terms of this Commitment Letter as liquidated damages and Lender shall have no liability for any losses or damages sustained by Borrower by reason thereof.

Borrower agrees that this Commitment Letter is for its confidential use only and will not, without Lender's prior written consent, be disclosed by Borrower or any of its representatives to any person other than its accountants and attorneys, and then only in connection with the transactions contemplated hereby and only on a confidential basis, except that, following Borrower's acceptance of this Commitment Letter, Borrower may make such disclosure of the terms and conditions of this Commitment Letter as Borrower

is required by law to make. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

This Commitment Letter shall not be assignable by Borrower, and may not be amended or any provision hereof waived or modified except by a document in writing signed by Borrower and the Lender.

The foregoing is not and shall not be deemed to be a binding agreement by the Lender to make available the Facility described herein. Such agreement will arise only upon the execution and delivery by the Lender and the Borrower of a definitive loan agreement and such other agreements, instruments and documents as shall be required by the Lender and its counsel, and the fulfillment of the conditions precedent set forth herein and therein. All of such documents may contain any terms, provisions or conditions as the Lender may deem necessary or desirable.

This Commitment Letter sets forth the entire understanding of the parties hereto as to the scope of the obligations of the parties hereto and supersedes all prior agreements, written or oral, representations and understandings, if any, relating to the subject matter hereof. THIS COMMITMENT LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES OF SUCH STATE. EACH OF THE UNDERSIGNED PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF OR IN CONNECTION WITH, THIS COMMITMENT LETTER AND ANY OTHER COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY OF THE UNDERSIGNED PARTIES IN CONNECTION HEREWITH. IN NO EVENT SHALL ANY PARTY TO THIS COMMITMENT LETTER BE LIABLE FOR PUNITIVE OR CONSEQUENTIAL DAMAGES.

Withers Bergman LLP will act as U.S. counsel and MLT Aikins LLP will act as Canadian counsel to Lender in connection with the Facility. Each of the Borrower and Guarantors are requested to deliver copies of all correspondence and documentation in connection with the Facility to their attention. Please have your counsel contact our legal counsel in order to begin the necessary due diligence and documentation processes.

This Commitment Letter shall automatically expire if not accepted by Borrower in accordance with the terms hereof on or before 5:00 P.M. (New York City time) on February 14, 2020. Please indicate Borrower's acceptance of this Commitment Letter

and agreement to the terms hereof by signing this Commitment Letter where indicated below and returning it to the Lender, together with (a) the initial installment of the Commitment Fee of C\$300,000 (which Lender acknowledges has been deposited with MLT Aikins LLP pursuant to the Escrow Agreement), and (b) US\$25,000 Expense Deposit to Lender or Withers Bergman LLP, Lender's New York legal counsel, at Lender's election for the expense deposit. By so doing, Borrower will be bound by the terms hereof and will pay all fees, costs and expenses as provided herein.

Even if accepted in accordance with the provisions of the previous paragraph, the obligations of the Lender under this Commitment Letter shall expire and terminate automatically, without further act or condition and regardless of cause or circumstance, if loan documentation satisfactory in form and substance to us and our counsel is not executed on or before April 30, 2020.

[The rest of this page has been intentionally left blank.]

This Commitment Letter may be executed in counterparts, all of which together shall be considered one and the same document.

Very truly yours,

BARBICAN CAPITAL PARTNERS, LLC

By: _____

Name: Benny P. Leung

Title: Manager

THE BORROWER ACKNOWLEDGES THAT IT WAS REPRESENTED BY COUNSEL SELECTED BY IT IN CONNECTION WITH THIS COMMITMENT LETTER, THAT IT HAS READ THIS COMMITMENT LETTER AND EXHIBIT A AND UNDERSTANDS, ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN EXHIBIT A.

Borrower:

ALBERTA FOOTHILLS PROPERTIES LTD.

By: AWA
Name: Arum Atkins
Title: President

Sponsor:

1067803 ALBERTA LTD.

By: AWA
Name: Arum Atkins
Title: President

Principal:

AWA

DREW GORDON ATKINS

EXHIBIT A**General Terms and Conditions**

1. Loan Document Provisions. The Loan Documents shall in all respects be satisfactory to Lender and its counsel, and shall contain such terms and provisions as Lender may require, including, without limitation, the following:

- (a) Due on Sale and Other Default Provisions. The Loan Documents shall prohibit (i) any sale, conveyance, assignment or transfer of all or any portion of any security for the Facility or any interest therein, without the prior written consent of Lender, or (ii) any change in the ownership interests in Borrower, including, without limitation, the Sponsor's or Principal's respective interests (whether direct or indirect) or management of the Property, or the sale, pledge, hypothecation or other transfer of any interests in Borrower or Borrower's assets, or Guarantor, if any, or Guarantor's assets (except to the extent following any asset transfer by Guarantor, Guarantor continues to meet all financial covenants), in any such case without the prior written consent of Lender. The promissory note(s) to be executed by Borrower with respect to the Facility (collectively, the "Note"), and all indebtedness with respect to the Facility, may be declared due and payable in its entirety in the event that (i) the Property or any of the security for the Facility or any portion thereof or interest therein (whether direct or indirect) is pledged, hypothecated, mortgaged or encumbered, or any lien for indebtedness (which may be the result of other than a Facility transaction) is placed thereon, without the prior written consent of Lender, (ii) any of the Borrower or Guarantors shall fail to observe or perform any term of the Note or of any of the other Loan Documents and such failure shall continue beyond applicable notice, grace, and/or cure periods thereunder, or (iii) any default shall occur (and any required notice shall have been given and grace or cure period shall have expired) under the terms of any of the Loan Documents. No subordinate financing (secured or unsecured) or other claims against the Property shall be permitted without Lender's prior written approval, which approval may be withheld in Lender's sole discretion. Borrower and the Principals agree that the Loan Documents shall provide for such events and conditions of default as may be required by Lender in Lender's sole discretion.

In connection with the foregoing, it is expressly acknowledged and agreed by Borrower and the Principals that Lender is relying on the

creditworthiness and experience of Principals in owning, servicing, developing, operating and selling properties such as the Property in Lender agreeing to issue this Commitment Letter, and Lender will rely on the Principals' continued direct or indirect ownership in Borrower for so long as the Facility is outstanding.

- (b) Material Adverse Changes. It shall constitute an immediate Event of Default under the Loan Documents if any of the Borrower, Guarantors or Principals shall suffer a material adverse change in its or his financial condition at any time during the term of the Facility, as determined by Lender in Lender's sole discretion. Among other events, each of the Borrower, Guarantors or Principals shall be deemed to have suffered a material adverse change in its or his financial condition if, in Lender's sole judgment, its or his financial condition has changed in a manner which could impair the value of Lender's security for the Facility, prevent timely repayment of the Facility in accordance with the provisions of the Note, or otherwise prevent any of the Borrower, Guarantors or Principals from performing its or his obligations under any of the Loan Documents to which any of them is a party.
- (c) Cross Default; Cross Collateralization. The occurrence of a default or event of default under any loan document executed and delivered by Borrower in connection with the Facility shall constitute an Event of Default under each of the Loan Documents. The Property and all related rights, titles and interests, encumbered by a mortgage, deed of trust or other Loan Document in favor of Lender, shall constitute collateral security for the entire Loan and all amounts required to be paid and obligations required to be performed by Borrower in connection therewith.
- (d) Financial Reporting Requirements. The Borrower will be required to comply with certain financial reporting requirements including, inter alia, providing to Lender at Borrower's expense, not later than ninety (90) days after the end of each calendar year audited financial statements as of December 31 of such year and for the year then ended, all prepared by a certified public accountant (or Canadian equivalent) acceptable to Lender in accordance with generally accepted accounting principles. Guarantors shall deliver to Lender an operating budget for the Property and such other financial information with respect to the Property as Lender may require, all certified as true, complete and correct by the senior financial officer of the Borrower. Within thirty (30) days following the end of each calendar quarter, Guarantors shall deliver to Lender unaudited financial statements

for the Property for such quarter, each in such form and containing such information regarding revenues, expenses and sources and uses of funds for the Property, each as Lender may require and certified as true, complete and correct by the senior financial officer of the Borrower. Each of the Borrower and Guarantors shall provide such additional financial information as Lender may reasonably require.

- (e) Loan Provisions. To the extent applicable, the Loan Documents shall contain various provisions relating to the construction and carrying out of the Project to Lender's satisfaction, including without limitation, provisions relating to delivery of the construction budget, construction contract, architect's agreement, plans and specifications, sign-offs by Lender's Construction Consultant and the retention and release of statutory holdbacks.
2. Further Conditions to Closing. In addition to delivery of the Loan Documents and compliance with all other requirements set forth in this commitment letter, the delivery to Lender of the items set forth below, each in form and substance satisfactory to Lender and its counsel, as the case may be, shall be conditions to the closing of the Tranche A Loan:
- (a) Organizational Documents. Evidence satisfactory to Lender of each of the Borrower's and Guarantors' (to the extent such Guarantor is not an individual) due incorporation and good standing in the State of their formation and authorization to do business, and their corporate capacity, power, legal right and authority to enter into and perform the Loan Documents, or the equivalent forms of evidence provides by such entities' jurisdiction of formation. Such evidence proof shall include, but not be limited to, certified copies of certificates or articles of incorporation and by-laws, applicable resolutions and incumbency certificates and good standing certificates for each of them.
 - (b) Financial Statements. Financial statements of Borrower and each Guarantor as required by the commitment letter, and such other financial information as Lender may reasonably request. Each such financial statement of the Borrower shall be prepared in accordance with generally accepted accounting principles, and (except as otherwise set forth in the commitment letter) certified by a certified public accountant (or Canadian equivalent) acceptable to Lender, and shall describe in reasonable detail all contingent liabilities of the subject thereof, and shall evidence to Lender's satisfaction that there has occurred no material adverse change in the

financial condition reflected therein from the financial condition of the subject thereof reflected in any financial statements previously delivered to Lender.

- (c) Opinions of Counsel. Opinions of counsel for Borrower addressing such legal issues concerning each of the Borrower, Guarantors, and the Property as Lender may reasonably require for a transaction of this nature, including, without limitation, the organization of each of the Borrower and Guarantors, authorization of the execution and delivery of the Loan Documents, the proper execution and delivery of the Loan Documents, the enforceability of the Loan Documents under State law (which may be subject to customary qualifications acceptable to Lender), absence of violations of applicable law (including usury laws) as a result of the payment of any interest, fees or charges due under the Loan Documents, compliance with zoning, land use, environmental and similar laws (addressing specific problems that may be identified by Lender, and otherwise to the extent such opinions generally would be requested by a lender making a loan similar to that provided for herein), the choice of law provisions contained in the Loan Documents, non-consolidation bankruptcy opinion, absence of insolvency, receivership and creditor arrangements, and such other matters as counsel for Lender may request relating to the validity and enforceability of the Loan Documents and the liens and security interests created thereby, and any other matters relating to any of the Borrower, Guarantors and Principals as Lender shall require.
- (d) Insurance. Not less than ten (10) days prior to the closing of the Facility, evidence that the insurance coverages to be required by the Loan Documents are in effect with respect to the Property.
- (e) Title Insurance. A title report or commitment for a lender's Title Insurance Policy or Canadian equivalent (the "Title Policy"), which shall become a binding title insurance policy at the closing of the Facility, issued by a nationally recognized title insurance company satisfactory to Lender (the "Title Insurer"), to insure the liens of the debenture, mortgage or deed of trust encumbering the Property as each a first lien upon Borrower's interest in the Property, insuring the entire Facility, naming Lender as the insured, insuring all utility, access, support and other appurtenant easements necessary for the operation of the Property, and subject to no exclusions or exceptions other than those expressly approved by Lender in writing. If required by Lender, the Title Policy shall be with customary form of reinsurance agreements and direct access agreements satisfactory to

Lender with title insurance companies satisfactory to Lender. The share of liability assumed by each title company shall be satisfactory to Lender. Upon each Advance under the Facility, the amount of coverage under each Title Policy shall be increased to reflect such Advance. In addition, the Title Policy shall, if Lender requires and if available, include an endorsement protecting against forfeiture or reversion due to covenants, restrictions or encroachments, a survey endorsement, a usury endorsement, a so-called lender's doing business endorsement, a so-called lender's comprehensive endorsement and such other endorsements as Lender may require.

- (f) Survey. A current, accurate real property report of the Property prepared by a qualified land surveyor acceptable to Lender, which survey shall be in form and substance satisfactory to Lender and its counsel and shall be certified to Lender and the Title Insurer with the certificate dated not more than thirty (30) days prior to the Closing Date. The survey shall show, among other things, the dimensions and total square foot area of the land, the legal description thereof, all interior lot lines, the dimensions and locations of all improvements, easements, parking areas, rights of way, adjoining sites, encroachments and the extent thereof and their distance from the lot lines, established building lines and street lines, means of ingress and egress, the nearest intersecting streets and such other details as Lender may request.
- (g) Utilities: Evidence establishing to the satisfaction of Lender that the Property is serviced at its boundaries by adequate storm sewer, sanitary sewer, telephone, gas, electricity, water and other utility services or will-serve letters by the appropriate utility providers confirming the same.
- (h) Permits and Licenses. Copies of all environmental permits, utility permits, land use permits, development permit and building permits and any other permits, approvals or licenses required for the commencement of construction.
- (i) Searches. Such real estate, personal property, statutory lien, bankruptcy, insolvency, zoning or building code violation and other searches of public records as Lender may require with respect to Borrower, Guarantor, any Principal, and the Property.
- (j) Environmental Survey. A Phase I environmental survey or Canadian equivalent (satisfactory to Lender and Lender's environmental consultant)

prepared at Borrower's sole expense by a qualified environmental consultant satisfactory to Lender for the Property and dated not earlier than thirty (30) days prior to closing (the "Environmental Audit"). Such Environmental Audit shall, at a minimum, (a) disclose any existing or potential hazardous material contamination, and physical conditions that may result in such contamination, at the Property, (b) include the results of all sampling or monitoring to confirm the extent of existing or potential hazardous material contamination at the Property, including the results of leak detection tests for each underground storage tank located at the Project, if any, (c) describe response actions appropriate to remedy any existing or potential hazardous material contamination, and (d) report the estimated cost of any appropriate response. All costs and charges by Lender's environmental consultant will be borne by Borrower.

- (k) Appraisal. Lender shall have received and approved the Appraisal as described in the Commitment Letter to which this Exhibit A is attached.
- (l) Easements. Evidence that the Property is benefited by such easements or other rights as may be necessary for operation and use thereof and vehicular and pedestrian ingress and egress, and for the maintenance of utilities, parking and other site improvements necessary or appropriate.
- (m) Compliance with Laws. Evidence of the payment of all amounts owing with respect to the recordation and/or filing of any of the Loan Documents in or with the applicable registry or filing office and evidence, satisfactory to Lender in all material respects, that the Property complies in all material respects with all applicable statutes, rules, regulations, laws and ordinances.
- (n) Capital Budget. A detailed capital budget for carrying out the Project acceptable to the Lender.
- (o) Officer's Certificate. A certificate of an authorized officer, manager, or managing member of Borrower addressed to the Lender and in form and substance satisfactory to the Lender, certifying that the Equity Requirement, as at the Closing Date, is not less than the amount required by the Lender as determined by the Lender's final underwriting requirements.
- (p) Filings and Registrations. All filings and registrations of or in respect of the Loan Documents necessary to preserve, perfect and protect the

mortgages, charges, assignments and security interests created thereby shall have been duly effected to the satisfaction of the Lender.

- (q) Lock-Box Account. The required lock-box account shall have been established by the Borrower.
 - (r) Additional Documents and Information. Such certificates, opinions, materials, documents, correspondence (including a letter from the appropriate governmental authority regarding the zoning of the Property) and other papers regarding the Property, Borrower, Guarantor or the Facility as Lender may require. In addition, all legal matters in connection with the Facility in addition to those discussed elsewhere in this Commitment Letter shall be satisfactory in form and substance to Lender.
3. Conditions of Advances. The obligation of Lender to make any Advance of the Facility, whether the first Advance or any Advance made subsequently to the first Advance, is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Request for Advance. Lender shall have received, at least five (5) Business Days prior to the requested Advance, a request for Advance, which request for Advance shall be in form and content satisfactory to Lender, wherein, among other things, Borrower shall confirm the accuracy of all representations and warranties set forth in the Loan Documents and which shall be accompanied by a certificate of an authorized officer, manager or managing member of Borrower as to hard and soft costs, together with, in each case, invoices and/or receipts, all of which shall be in form and content satisfactory to the Lender.
 - (b) Discharge of Encumbrances. Except for permitted encumbrances, Borrower shall have paid and discharged or caused to be paid and discharged all encumbrances affecting the Property and Lender shall have received a favorable opinion of its counsel as to title to the Property and priority of the Loan Documents.
 - (c) Payment of Project Costs. Borrower shall timely pay all Project costs in respect of which prior Advances were made hereunder and shall, if requested by Lender, provide to the Lender evidence thereof satisfactory to the Lender.

- (d) Limitation on Amount. Lender shall not be obligated to advance any amount hereunder in respect of any item of Project costs that is not an approved cost or that is in excess of the maximum amount of such item as set forth in the approved capital budget.
 - (e) No Construction Liens. Lender shall not have received written notice of, nor shall there have been registered against title to the Property, any claim for a construction lien.
 - (f) Other Documents. Lender shall have received and approved such other documents, consents, acknowledgements, opinions and agreements as Lender or its counsel may reasonably request.
4. Conditions of All Advances. The obligation of Lender to make any Advance of the Facility is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Truth of Representations and Warranties. The representations and warranties of the Borrower contained in the Commitment Letter, this Exhibit A or in any other Loan Document shall be true and correct as of such date with the same force and effect as if such representations and warranties had been made on and as of such date.
 - (b) Performance of Covenants by the Borrower. The Borrower shall have fulfilled or complied with all covenants contained in the Loan Documents which are to be performed by it at or prior to such time.
 - (c) No Default. No Event of Default shall have occurred and be continuing.
 - (d) No Change in Laws. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.
 - (e) Review and Approval. Review and approval of such Advance and the use of proceeds thereof, receipt of copies of all permits obtained, receipt of invoices for use of funds, approval by Construction Consultant with

respect to pre-construction work completed, and such other items as Lender, its U.S. and/or Canadian counsel may reasonably require.

5. Limitations on Advances. No Advance shall be made within a period of thirty (30) days after the making of a prior Advance.
6. Insurance. Borrower shall maintain adequate insurance at all times with responsible insurance carriers in amounts and pursuant to insurance policies reasonably acceptable to Lender against (i) loss or damage by fire and other hazards; (ii) comprehensive general liability on account of damage to Persons and property in minimum amount of C\$5,000,000 per occurrence or such greater amount as may be required by Lender, acting reasonably, and notified by Lender to Borrower from time to time; and (iii) such other risks as Lender may reasonably request. Each insurance policy covering tangible property shall (iv) provide that, in the case of each separate loss, the full amount of insurance proceeds with respect thereto shall be payable to Lender as secured party or otherwise as its interests may appear; (v) provide for at least thirty (30) days' prior written notice to Lender of the cancellation or substantial modification thereof; (vi) provide that, in respect of the interests of Lender and Borrower, as the case may be, such insurance shall not be invalidated by any action or inaction of Borrower or any other person; (vii) insure Lender's interests regardless of any breach of or violation by Borrower or any other person of any warranties, declarations, or conditions contained in such insurance; (ix) provide that Lender shall have the right (but not the obligation) to cure any default by Borrower under such insurance. Each liability policy shall (x) name Lender as an additional insured; (xi) be primary without right of contribution from any other insurance which is carried by Lender to the extent that such other insurance provides Lender with contingent or excess liability insurance, or both, with respect to its interest as such in the Property; and (xii) expressly provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and except liability for premiums (which shall be solely a liability of Borrower) shall operate in the same manner as if there were a separate policy covering each insured.

Currency. Unless otherwise indicated, all references in this Agreement to dollars or to \$ are expressed in United States currency and all references in this Agreement C\$ are expressed in Canadian currency.

7. Criminal Code. If any provision of the Commitment Letter, this Exhibit A or of any of the other Loan Documents would obligate Borrower, Guarantors or any Principal to make any payment of interest or other amount payable to the Lender

in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by such Lender of interest at a criminal or usurious rate, as such terms are construed under applicable law then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Lender of interest at a criminal or usurious rate, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to such Lender under the applicable Loan Document, and thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" under applicable law.

EXHIBIT B**Due Diligence Contingencies**

1. Three years tax returns for any Principal and Guarantor named, complete with all K-1 (or local partnership tax reporting equivalent) schedules for any real estate or other assets owned by such Principal and Guarantors. If no such tax return is available, please provide a written explanation as to the reason for the non-delivery of such tax return.
2. Personal financial statements (with detailed footnote of any liabilities) of any Principal and Guarantor named dated no earlier than December 31, 2019; audited financial statements for the Borrower and its corporate parent entity (if applicable) with detailed footnotes for any liabilities for each of the last three fiscal years plus "stub" period no earlier December 31, 2019. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements must include the individuals' full name, full-time occupation, Social insurance Number, Birth date and current address.
3. Detailed description (by phases) of the final approved Master Plan for the Project with details of category of real estate for each such phase.
4. Copy of the closing statements for the original acquisition of the Land.
5. Copy of final plans & specifications (in electronic format).
6. Background information on the Borrower, Principal and Guarantors.
7. Detailed Total Project Costs for Phase 1 (including detailed line items).
8. Copy of the final fully executed Development Agreement and any related documentation from municipality of Okotoks.
9. Copy of the fully executed Guaranteed Maximum Price Contract (GMP) on the AIA form (or local equivalent) and the profile of the GC.

10. Copy of detailed financial pro forma for Phase 1 of the Project for five (5) years.
11. It is Lender's intention to review and sign off on the above items within thirty (30) days from execution of this Commitment Letter (the "Target Sign-Off Date"). Borrower shall deliver the above items promptly to Lender, but in no event, later than ten (10) days prior to the Target Sign-Off Date. Borrower shall bear the consequences for any late submission of the above listed items to Lender, including, without limitation, the consequences set forth in the section entitled "Loan Fees" of the Commitment Letter.

EXHIBIT C**The Use of Proceeds**

Use of Proceeds	CAD	USD	
Currency Conversion Rate	1.000000	0.7601600	
Proceeds from New Debt	\$39,000,000.00	\$29,646,240.00	
Pre-Paid Interest (12 months)	\$1,950,000.00	\$1,482,312.00	5%
Net Proceeds	\$37,050,000.00	\$28,163,928.00	100.00%

PLANNED UTILISATION

Capital Expenditure

Existing 1st Mortgage	\$13,007,000.00	\$9,887,401.12	
Stakeholder Buyout (2nd)	\$3,100,000.00	\$2,356,496.00	
Settlement to Debenture Holders	\$4,320,000.00	\$3,283,891.20	
ACA (Title Release)	\$1,037,000.00	\$788,285.92	
Consultant Fees	\$780,000.00	\$592,924.80	
Other Capital Expenditures	\$100,000.00	\$76,016.00	
Total Capital Expenditure	\$22,344,000.00	\$16,985,015.04	60.31%

Working Capital

Startup Marketing Team (1 Year)	\$330,000.00	\$250,852.80	
Rentals	\$25,000.00	\$19,004.00	

Legal and Compliance	\$45,000.00	\$34,207.20	
Travel and Living	\$25,000.00	\$19,004.00	
General Expenditure	\$50,000.00	\$38,008.00	
Other Miscellaneous Expenses	\$50,000.00	\$38,008.00	
Total Working Capital	\$525,000.00	\$399,084.00	1.42%
Investment Expenditure			
Other Buyouts and Acquisitions	\$250,000.00	\$190,040.00	
Total Investment Expenditure	\$250,000.00	\$190,040.00	0.67%
Construction Expenses			
Please see detailed construction budget	\$14,560,650.00	\$11,068,423.70	39.30%
Total Utilization of Funds	\$37,679,650.00	\$28,642,562.74	101.70%

THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 29 day of July 2020



A Notary Public in and for the State of New York

Laurie Ann Wagonfeld
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
SUITE 2600
NEW YORK, NEW YORK 10174
TEL: (212) 271-5045 • FAX: (212) 271-5582

February 18, 2020

MLT Aikins LLP
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan

Dear Sir:

Re: Escrow Agreement among Barbican Capital Partners, LLC (the “Lender”), Alberta Foothills Properties Ltd. (the “Borrower”), and MLT Aikins LLP (the “Escrow Agent”) dated for reference November 7, 2019 (the “Escrow Agreement”)

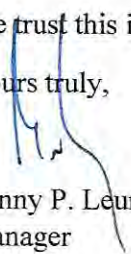
Reference is made to the Escrow Agreement, an executed copy of which is enclosed herein. Words and phrases contained in this letter which begin with capital letters but which are not specifically defined herein shall have the respective meaning described thereto in the Escrow Agreement.

The Escrow Agent holds the Escrow Amount in trust as a portion of the Commitment Fee pursuant to the Term Sheet.

Please accept this letter and the enclosed executed Loan Commitment Letter as formal written notice from the Lender to the Escrow Agent pursuant to section 3.1(a)(i) of the Escrow Agreement that the Escrow Agent shall pay CAD\$50,000 of the Escrow Amount to the Lender via wire transfer. Our wire instruction is enclosed herewith for your reference.

We trust this is satisfactory.

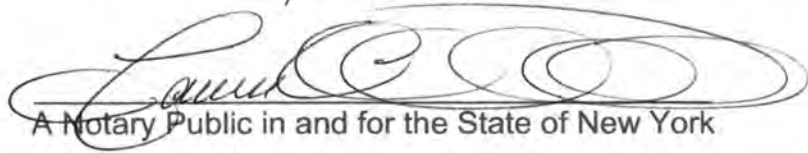
Yours truly,


Benny P. Leung
Manager

Encl.

Cc: Alberta Foothills Properties, Ltd (via email)

THIS IS EXHIBIT "F" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 29 day of July 2020



A Notary Public in and for the State of New York

LAURIE ANN WAGONFELD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING

405 LEXINGTON AVENUE

SUITE 2600

NEW YORK, NEW YORK 10174

TEL: (212) 271-5045 • FAX: (212) 271-5582

May 1, 2020

By Email and FedEx

Mr. Drew Atkins, Director
Alberta Foothills Properties Ltd
3505 18th Street SW
Calgary, Alberta T2T 4T9
drew.bland@mac.com; drew.bland@me.com

Re: Notice of Termination of Commitment and Demand for Payment of Commitment Fee

Dear Mr. Atkins:

We write to you regarding the loan commitment dated February 17, 2020 ("Commitment") entered into between Barbican Capital Partners, LLC ("Lender") and Alberta Foothills Properties Ltd. ("Borrower" or "you"). Lender hereby: (1) notifies Borrower that the Commitment is terminated; (2) formally revokes any previous offers by Lender to extend the Commitment; and (3) demands Borrower's payment to Lender of the C\$975,000 Commitment Fee. Capitalized terms used but not otherwise defined herein shall have their respective meanings attributed to them in the Commitment.

By its terms, the Commitment automatically expired and terminated on April 30, 2020, because of Borrower's default and Borrower's failure to satisfy certain conditions precedent to the closing. In addition, Lender has not received from Borrower the documents required by subsection 5 of the Termination section of the Commitment, and Borrower has failed to deliver the Due Diligence Contingencies to Lender within the required sixty (60) days of the execution of the Commitment, both of which are independent grounds for Lender to terminate the Commitment. Accordingly, Lender hereby notifies you that the Commitment is terminated. Any and all previous offers by Lender to extend the Commitment, including without limitation Lender's conditional offer in its March 25, 2020 letter to you, are hereby formally revoked.

As a result of the termination of the Commitment, you are obligated to pay Lender the C\$975,000 Commitment Fee, as well as Lender's fees and expenses. As set forth in the Loan Fees section of the Commitment, Borrower shall pay to Lender the Commitment Fee in consideration of Lender's issuance of the Commitment, regardless of whether the Commitment leads to a closing of the Facility. Of the C\$975,000 Commitment Fee, C\$300,000 was deposited by Borrower with the Escrow Agent. Of those C\$300,000 Escrow Funds, C\$50,000 was paid to Lender when the Commitment was executed, and the remaining C\$250,000 was due and payable to Lender after Borrower failed to deliver the Due Diligence Contingencies to Lender within the required sixty (60) days after execution of the Commitment. Accordingly, the remaining sum of C\$250,000 Escrow Funds are due and payable to Lender.

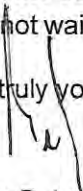
In addition, the Loan Fees section of the Commitment provides that the remaining C\$675,000 of the Commitment Fee will be "payable at...the expiration of the Commitment (i.e. April 30, 2020) if the Loan does not close for any reason other than Lender's willful default." As you are aware, Lender has not defaulted on any of its obligations in

the Commitment. To the contrary, it is Borrower's stated unwillingness to close the Facility that is preventing the closing. Accordingly, the entire C\$975,000 Commitment Fee is due and payable to Lender.

Lender hereby demands payment of the \$975,000 Commitment Fee from Borrower. Lender demands that Borrower release the C\$250,000 Escrow Funds to Lender by executing the attached joint release letter to Escrow Agent, and returning it Lender on or before May 8, 2020. Lender also demands that Borrower pays to Lender the remaining \$675,000 of the Commitment Fee by wire transfer of that amount to Lender's account on or before May 15, 2020. The wiring instructions for Lender's account are attached to this letter. If Borrower fails to both return the joint release letter and make payment of the balance of the Commitment Fee by wire transfer by the above dates, interest charges will accrue at the New York statutory rate of 9% per year, and Lender will pursue all appropriate legal remedies, which may include, but not be limited to, Lender initiating a lawsuit against Borrower.

This letter does not, and is not intended to, state all facts and circumstances regarding the issues it addresses. Lender does not waive any of its rights or remedies. To the contrary, Lender expressly reserves all of its rights and remedies.

Very truly yours,



Benny P. Leung
Manager

CC:

1367803 Alberta Ltd, as Sponsor

Drew Gordon Atkins, as Principal (drew.bland@mac.com; drew.bland@me.com)

MLT Aikins LLP, as escrow agent (sveylan@mltakins.com)

April __, 2020

MLT Aikins LLP
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan

Dear Sir:

Re: Escrow Agreement among Barbican Capital Partners, LLC (the “Lender”), Alberta Foothills Properties Ltd. (the “Borrower”), and MLT Aikins LLP (the “Escrow Agent”) dated for reference November 7, 2019 (the “Escrow Agreement”)

Reference is made to the Escrow Agreement, an executed copy of which is enclosed herein. Words and phrases contained in this letter which begin with capital letters but which are not specifically defined herein shall have the respective meaning described thereto in the Escrow Agreement.

The Escrow Agent holds the Escrow Amount in trust as a portion of the Commitment Fee pursuant to the Term Sheet.

Please accept this letter and the enclosed executed Escrow Agreement as formal written notice from the Lender and Borrower, as joint Parties, to the Escrow Agent that pursuant to the terms of the Commitment that the Parties had determined that C\$250,000 is owed to Barbican Capital Partners, LLC (“BCP”) and Escrow Agent is hereby authorized by the Parties to release such sum to BCP.

Sincerely,

Barbican Capital Partners, LLC

Alberta Foothills Properties, Ltd

By: _____

By: _____

THIS IS EXHIBIT "G" TO THE
AFFIDAVIT OF BENNY LEUNG
SWORN BEFORE ME AT New York, New York
this 19 day of July 2020



A Notary Public in and for the State of New York

Laurie Ann Wagonfeld
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01WA6396360
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 08/19/2023

June 2, 2020

BY EMAIL bleung@barbicap.com

Barbican Capital Partners, LLC
405 Lexington Avenue, Suite 2600
New York, New York 10174

Attention: Benny Leung

Dear Mr. Leung:

**Re: Escrow Agreement among Barbican Capital Partners, LLC, Alberta
Foothills Properties Ltd. and MLT Aikins LLP dated November 7th, 2019
(the "Escrow Agreement")**

Capitalized terms used but not defined herein have the meanings given to them in the Escrow Agreement.

Pursuant to Section 3.1(a)(iv) of the Escrow Agreement, please provide us with the Expense Notice by June 4, 2020. Upon receipt of such Expense Notice, within two Business Days, we will pay:

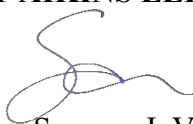
- a) the amount set out in the Expense Notice to the Lender; and
- b) the balance of the Escrow Funds to the Borrower.

We look forward to hearing from you.

Sincerely,

MLT AIKINS LLP

Per:



Saravan J. Veylan
Partner

Cc: Alberta Foothills Properties Ltd., Attn: Drew Atkins (drew.bland@me.com)
D. Allison Professional Law Corporation, Attn: Douglas V. Allison (Doug@allison-associates.ca)

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING

405 LEXINGTON AVENUE

SUITE 2600

NEW YORK, NEW YORK 10174

TEL: (212) 271-5045 • FAX: (212) 271-5582

Via Email

June 3, 2020

MLT Aikins LLP
1066 West Hastings Street
Suite 2600
Vancouver, BC V6E 3X1

Re: Escrow Agreement between Barbican Capital Partners, LLC, as Lender, Alberta Foothills Properties Ltd, as Borrower, and MLT Aikins LLP, as Escrow Agent, dated November 7, 2019 (the "Escrow Agreement")

Dear Sirs:

Pursuant to your letter dated June 2, 2020 requesting an expense notice ("Expense Notice") from Lender, please be advised that Lender's expenses in connection with the transaction are as follows:

MLT Aikens LLP C\$44,401.39 (Canadian Dollar)

Withers Bergman LLP US\$36,346.00

Please accept this as Expense Notice for the purpose and pursuant to Section 3.1 (a) (iv) of the above-referenced Escrow Agreement. Our wire instruction is enclosed herewith for your onward action.

Sincerely,


Benny P. Leung
Managing Member

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “E” – AFPL Affidavit

ENTERED

Form 49
Rule 13.19



COURT FILE NUMBER 2001-10006
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE CALGARY

APPLICANT(S) ALBERTA FOOTHILLS PROPERTIES LTD. ("ALBERTA
FOOTHILLS")

PM
902282

RESPONDENTS MLT AIKINS LLP ("MLT")

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9

Telephone (403) 298-1878
Facsimile (403) 695-3582

File No. A164337

Attention: Warren Foley/Ram Sankaran

AFFIDAVIT OF: DREW ATKINS

SWORN OR AFFIRMED ON: September 21, 2020

I, Drew Atkins, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the President of Alberta Foothills Properties Ltd. ("**Alberta Foothills**") and as such I have personal knowledge of the matters herein deposed to, except where these matters are stated to be based on information, in which case I believe that information to be true.
2. I am authorized to swear the within Affidavit on behalf of the Applicant, Alberta Foothills.
3. I am informed by my review of the documents and by being advised by legal counsel Alberta Foothills of all of the below

The Parties

4. Alberta Foothills is a body corporate incorporated pursuant to the laws of Alberta.
5. MLT Aikins LLP (“**MLT**”) is a law firm with offices throughout western Canada.
6. Barbican Capital (“**Barbican**”) is a body corporate incorporated pursuant to the laws of the State of Delaware.

Background

7. Alberta Foothills is a property developer primarily operating in Southern Alberta. The company is and has been in the process of raising capital and obtaining loans for a significant multi-home residential complex named the “Win-Walk” development in Okotoks, Alberta (the “**Project**”).
8. On or before August 2019, Alberta Foothills engaged Mr. James Brooks, of Oveldi Capital Inc. (“**Oveldi**”), which is to the best of my knowledge a body corporate incorporated pursuant to the laws of Alberta, to assist with finding potential lenders for the Project.
9. On or around August 2019, through Mr. Brooks, Alberta Foothills contacted Nova Capital Advisor LLC (“**Nova**”), which to the best of my knowledge is a body corporate incorporated pursuant to the laws of the State of California, for the purposes of assisting in raising capital for the Project.
10. On or around August 2019, Omar Lalani, an agent and/or employee of Nova, referred me to Barbican as a potential source of lending capital for the Project. In introducing Alberta Foothills to Nova, Mr. Lalani indicated that Barbican’s principal, Benny Ping Wing Leung (“**Benny Leung**”), was a Hong Kong billionaire who operated a capital company out of New York. In or around August 2019, after being introduced by Nova, I contacted Benny Leung to discuss arranging a loan to be used in connection with the Project.
11. In our discussions, Mr. Leung represented that Barbican had access to and could provide loans to Alberta Foothills (the “**Loan**”) in the amount of \$30,000,000.00 (Cdn) (the “**Loan Amounts**”). Mr. Leung further indicated that Barbican had previously funded projects of a similar scale and scope as the Project and that Barbican’s Loans were funded by himself and his family members.
12. Based on Mr. Leung’s representations, Alberta Foothills sent Barbican advance fees totalling \$25,000.00 (USD) in two separate transactions of \$10,000.00 (USD) and \$15,000.00 (USD) via bank wire transfer in August 2019 (the “**Advance Fees**”). Mr. Leung advised that the payment of the Advance Fee were a precondition for Barbican to continue to engage with Alberta Foothills regarding the Loan. At no time prior to the Advance Fees being paid to Barbican did Barbican provide Alberta Foothills with access to the Loan Amounts.
13. After payment of the Advance Fees, on or around August 22, 2019, Barbican and Alberta Foothills agreed to a term sheet (the “**Letter of Intent/Term Sheet**”) setting out the terms of a proposed loan agreement whereby Barbican would offer financing to Alberta Foothills in the amount of \$30,000,000.00 as a first mortgagor for the Project. Attached as Exhibit “A” is a copy of the Letter of Intent/Term Sheet.
14. The Letter of Intent/Term Sheet stated that:

- (a) Barbican acknowledged that it had received an initial deposit of \$10,000.00 (US) from Alberta Foothills prior to the issuance of the Term Sheet and simultaneously, with the execution of the Term Sheet, Alberta Foothills were to deposit with Barbican an additional sum of \$15,000.00 (US). These deposits would collectively constitute the “Good-Faith Deposit” (defined above as Advance Fees) and would be used to defray Barbican’s due diligence expenses including all out of pocket expenses, legal fees, due diligence expenses, consultants’ fees, accountants’ fees and expenses, traveling costs and any third party fees incurred by Barbican in connection with the Loan;
 - (b) The Good Faith deposit would become refundable if Barbican issued notification indicating it would not make the Loan. Barbican was to make the determination regarding the notification no later than November 6, 2019.
 - (c) Alberta Foothills was not free to entertain financing offers from other third party lenders other than Barbican and if it breached this condition Alberta Foothills agreed to pay Barbican \$50,000.00 (US);
 - (d) Barbican was to engage an independent consultant to review the Project’s budget and construction draws on a monthly basis. The closing of the Loan was predicated upon Barbican’s receipt of an acceptable review of the budget and the independent consultant’s conclusion that the budget was sufficient to complete the improvements.
15. On approximately August 28, 2019, Alberta Foothills, hosted Mr. Leung for a site visit to their Project construction site in Okotoks, Alberta. Thereafter, Alberta Foothills sent Barbican a copy of the Phase 1 Construction Budget for the Project.
16. In September and October 2019, in connection with meeting the due diligence requirements for the Letter of Intent/Term Sheet, Alberta Foothills sent Nova and Barbican an assortment of due diligence documents relating to the Project including, but not limited to:
- (a) The relevant construction permits;
 - (b) Proof of the value of the Project lands; and
 - (c) Additional documentation relating to the genuineness of the Project and plans for construction;
 - (d) Notices for Tax Assessments, which confirmed the company did not owe any amounts to the Canada Revenue Agency (“CRA”).
17. On or around October 25, 2019, Barbican provided correspondence to Alberta Foothills indicating that it intended to proceed with the Loan. Barbican advised that their counsel, MLT, were waiting for results of legal searches and other information in order to present to Barbican with a final report on legal due diligence. Barbican further indicated that MLT would prepare and deliver an escrow agreement for its review and Barbican would be required to deposit \$300,000.00 with MLT. Attached as Exhibit “B” to my Affidavit is a copy of this correspondence along with its e-mail cover.
18. On October 30, 2019, Mr. Saravan Veylan, a Partner with MLT, sent e-mail correspondence to Alberta Foothill’s counsel, Mr. Doug Allison, indicating MLT had been instructed to prepare an escrow agreement to address the timing and funding of outstanding due diligence matters and the

negotiation of the loan commitment. Mr. Veylan provided a copy of a draft Escrow Agreement with this correspondence. Attached as Exhibit “C” to my Affidavit is a copy of Mr. Veylan’s e-mail correspondence and the draft escrow agreement.

19. On November 7, 2019, Barbican and Alberta Foothills entered into an escrow agreement (the “**Escrow Agreement**”), which was drafted by MLT, whereby MLT was appointed as Escrow Agent to administer the funds pursuant to Barbican’s Loan financing of the Project. Attached as Exhibit “D” is a copy of the Escrow Agreement. While Alberta Foothills understood MLT was counsel for Barbican, its expectation was that MLT, as Escrow Agent, would always act in accordance with its fiduciary duties to Alberta Foothills. These duties included MLT’s duty to act fairly and even-handedly in any dispute between the parties regarding the Escrow Agreement.
20. Pursuant to the terms of the Escrow Agreement, Barbican and Alberta Foothills agreed to negotiate the terms of financing for the Project in the amount of \$30,000,000.00. Additional terms of the Escrow Agreement stated that:
 - (a) Alberta Foothills agreed to deposit \$300,000.00 (Cdn) with MLT (the “**Escrow Amount**”), as Escrow Agent, this being a portion of the Commitment Fee set out in the Term Sheet;
 - (b) The Escrow Amount was to be held in trust and dealt with by MLT in accordance with the Escrow Agreement;
 - (c) The Escrow Agent was authorized to release monies from the Escrow Amount as follows:
 - (i) Upon receipt of written direction from Barbican ,with a copy to Alberta Foothills, the Escrow Agent would pay \$50,000.00 (Cdn) of the Escrow Amount to Barbican in such manner as requested by Barbican from time to time (the “**Escrow Advance Payment**”);
 - (ii) If the Escrow Agent received written notice jointly by both parties that any of the Due Diligence Contingencies could not be satisfied and the Parties jointly elected to terminate the Commitment, the Escrow Agent would:
 - (A) Provide Barbican with a written demand for a summary of its expenses related to the Term Sheet/Letter of Intent; the Escrow Agreement, and the Loan and the transactions contemplated thereby, which expenses have been approved in advance by Alberta Foothills, which approval shall not be unreasonably withheld, delayed or conditioned (the “**Expense Notice**”), which Barbican will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses. Barbican’s expenses appearing on any Expense Notice related to due diligence costs, legal and other advisory fees (including without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes of Barbican are hereby approved by Alberta Foothills;
 - (B) Upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - (1) First \$50,000.00 (Cdn) as a break fee to Alberta Barbican;

- (2) Second the amount set out in the Expense Notice to Barbican; and
- (3) Third, the balance to Alberta Foothills.

In such a manner as requested by each of the payee Parties from time to time [...]

(C) If the conditions necessary to satisfy release of the Escrow Amounts were not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

- (1) Provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and will be definitive with respect to the kind and amount of such expenses; and
- (2) Upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount.

(d) Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term of condition of any contract or agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.

21. On or around December 24, 2019, pursuant to the terms of the Escrow Agreement, Alberta Foothills deposited \$300,000.00 into MLT's bank account. On January 10, 2020, Mr. Gregory Pun, of Withers Bregman, Barbican's New York counsel, sent Alberta Foothills email correspondence with a draft loan commitment letter for the Loan. Attached as Exhibit "E" to my Affidavit is a copy of the draft loan commitment letter.
22. On or after January 10, 2020, Alberta Foothills provided the following due diligence documents to Barbican:
 - (a) Three years of tax returns and related information for Principal and Guarantor for the Loan;
 - (b) Personal financial statements, CRA Notices of Assessment and Tax Returns for Principal and Guarantor for the Loan;
 - (c) Project Plans and Appraisals including area structure plan and subdivision outline;
 - (d) Surveys and Concept Plan for the Project;
 - (e) Total Project Costs for Phase 1 of the Project; and
 - (f) Copy of detailed financial pro forma for Phase 1 of the Project for five (5) years.
23. Based on prior experiences we had concerns that Barbican was not capable of funding the Loan and could be using the process to seek fees and deposits from Alberta Foothills. Early in the process

with Barbican, we communicated these concerns to Mr. Leung. For example on or around January 10, 2020, Alberta Foothills, through Mr. Brooks communicated these concerns to Mr. Leung and requested a standby letter of credit as assurance that the Loan would be funded.

24. In response, on February 3, 2020, Mr. Leung advised that Barbican was a genuine lender and the Escrow Agreement was in place to assure Alberta Foothills that Barbican would not use the due diligence provisions any loan agreement to collect loan fees. Mr. Leung indicated Barbican's request for a standby letter of credit was not a common one in the lending market and Barbican was not prepared to provide this letter. Attached as Exhibit "F" to my Affidavit is a copy of Mr. Leung's email correspondence.
25. On February 13, 2020, Mr. Leung sent e-mail correspondence providing further information on Barbican's investments including the following:
 - (a) A thirty six (36) story mixed use office and retail complex in Shanghai, China owned by one of Barbican's affiliates;
 - (b) Two Rodeo Drive in Beverly Hills, California;
 - (c) 1201 & 1205 New York Avenue in Washington, D.C.;
 - (d) 228-240 Post Street in San Francisco, California; and
 - (e) Crescent at Carlyle in Alexandria, Virginia.

(the "**Barbican Properties**")

Attached as Exhibit "G" to my Affidavit is a copy of Mr. Leung's February 13, 2020 email correspondence.

26. Despite our concerns, Mr. Leung continued to represent that Barbican had the ability to fund the Loan and his representations regarding their interests and participation in similar large scale projects such as the Barbican Properties gave us some comfort that Barbican would be able to deliver the loan funds. Alberta Foothills relied on Mr. Leung's representations and decided to move forward with the Loan Commitment.
27. On February 17, 2020, and following Barbican completing its due diligence, the parties entered into a commitment letter (the "**Commitment Letter**") setting out the terms upon which Barbican would provide financing to the Alberta Foothills for the Project. Attached as Exhibit "H" is a copy of the Commitment Letter.
28. The terms of the Commitment Letter stated, amongst other provisions, that:
 - (a) Barbican would provide Alberta Foothills with a loan of \$39,000,000.00 (Cdn) ("**Revised Loan Amount**");
 - (b) The date of the execution and delivery of the definitive Loan Documents for the Facility (the "**Closing Date**") was anticipated to occur on or about March 31, 2020, or such later date as determined by Barbican, in its sole discretion;

- (c) Barbican shall engage an independent consultant to review the final Project Budget and construction draws on a monthly basis;
29. On February 18, 2020, Barbican, via letter correspondence, wrote to the Escrow Agent, MLT, providing notice for MLT to pay Barbican the Escrow Advance Payment of \$50,000.00 (Cdn) via wire transfer. On or after February 18, 2020, MLT disbursed the Escrow Advance Payment to Barbican and provided Alberta Foothills notification via e-mail correspondence. At no time prior to Barbican requesting the Escrow Advance Payment or MLT disbursing the Escrow Advance Payment to Barbican were the Loan Amounts ever made available to Alberta Foothills
30. After the execution of the Commitment Letter, in February 2020 I had verbal conversations with Mr. Leung regarding potential delays in obtaining due diligence documents due to the COVID-19 Pandemic (“COVID-19”). In particular, between February 19, 2020 and March 3, 2020, through our conversations, Mr. Leung assured me of the following with respect to delays in providing due diligence documentation relating to COVID 19 or otherwise:
- (a) Due diligence was substantially completed and Barbican only required updated tax and financial information for Alberta Foothills;
- (b) Even if Alberta Foothills were unable to provide the due diligence documentation outlined in the Commitment Letter prior to relevant deadlines, Barbican was prepared to waive those requirements; and
- (c) Any such delays were not of concern to Barbican and timelines stated in the Commitment Letter could be extended without issue.
31. On February 28, 2020, Alberta Foothills, through Mr. Brooks indicated that Alberta Foothills’ “team” was in a position to proceed and requested a meeting with Mr. Leung before finalizing its documentation. In the same email chain, Mr. Leung expressed concerns with travelling due to COVID-19 and therefore no face to face meeting was scheduled. Attached as Exhibit “I” to my Affidavit is a copy of this email correspondence.
32. On March 3, 2020, on behalf of Alberta Foothills, Mr. Brooks indicated to Mr. Leung that I was taking steps to obtain updated financial and tax returns, from KPMG, updated appraisals from CBRE and obtaining a general price agreement from the contractor on the Project, Volker Stevin. Attached as Exhibit “J” to my Affidavit is a copy of Mr. Brooks’ email correspondence.
33. Between March 3, 2020 and March 9, 2020, Mr. Brooks travelled to New York, on behalf of Alberta Foothills to meet with Mr. Leung to discuss further steps and to obtain further assurances regarding Barbican’s ability to fund the Loan. During these meetings, Mr. Leung indicated that if Alberta Foothills provided an additional \$50,000.00 in fees, Barbican would provide proof of their ability to fund the Loan.
34. On March 9, 2016, at Mr. Leung’s request, I signed a non-disclosure agreement (“NDA”) on behalf of Alberta Foothills. Mr. Leung had indicated that Barbican required the NDA in order to provide us proof of Barbican’s funds to fund the Loan. Despite signing the NDA, Mr. Leung never provided Alberta Foothills with proof of funds.
35. On March 11, 2020, I had a conference call with Mr. Leung in which he brought up Alberta Foothills’ alleged failure to comply with due diligence requests, but also indicated he was prepared to obtain the letter of standby credit requested earlier. We also discussed Barbican’s waiver of due

diligence and he indicated “the lender” might agree to waiver. This was the first time Mr. Leung had explicitly represented that a third party lender would be funding the Loan. This revelation was an additional cause for concern to Alberta Foothills because prior to entering the Letter of Intent/Term Sheet, Mr. Leung had indicated that Barbican would be making the Loan and that Barbican’s lending funds came from Mr. Leung and his family members.

36. On or after March 11, 2020, Mr. Leung sent us an amendment to the Escrow Agreement (“**the Amendment**”). He indicated that the Escrow Agreement could be amended to meet the concerns of all parties and instead of any amendments to the Loan Commitment. The Amendment would have altered the terms of the Escrow Agreement in the following ways:
- (a) The Escrow Agent would now be authorized to release Escrow Amounts upon written direction from Barbican to satisfy Barbican’s legal fees and disbursements incurred in connection with the Loan Commitment as in such a manner as requested by Barbican from time to time;
 - (b) If the conditions necessary for release of the Escrow Amounts were not met by April 17, 2020, and Barbican provided written notice of its intention to terminate the Loan Commitment, MLT, as Escrow Agent, would provide Barbican a written request for the Expense Notice. After receiving the Expense Notice, MLT, within two business days would pay the entirety of the Escrow Amount as liquidated damages for Barbican’s processing and preparation of the Loan Commitment in such a manner as requested by Barbican from time to time. Upon payment of the Escrow Amount to Barbican, the Escrow Agreement would terminate and no party would have any further rights or obligations under the Letter of Intent/Term Sheet or the Escrow Agreement.

Attached as Exhibit “K” to my Affidavit is a blacklined version of the Amendment and Escrow Agreement.

37. Alberta Foothills was surprised by the Amendment especially with respect to the method by which Escrow Funds could now be disbursed unilaterally at Barbican’s request and the to the truncated timelines for potential termination of the Loan Commitment. This was especially concerning given Barbican’s previous representations regarding the timing for the providing of the final due diligence documents and their representations that the timing and nature of the due diligence documents could be waived. Alberta Foothills was concerned that Barbican was planning to use the revised timing to compel Alberta Foothills to pay additional fees to Barbican even though due diligence had substantially been complied with and Mr. Leung’s representation with respect to due diligence as discussed above.
38. I have been advised by Mr. Brooks and do believe that on March 17, 2020, on behalf of Alberta Foothills, Mr. Brooks had a verbal discussion with Mr. Leung. During this discussion, Mr. Brooks requested references for Barbican’s previous lending deals and also asked if Barbican had even engaged a construction consultant to review the documents provided in relation to the Project and as was required under the Loan Commitment. Mr. Leung confirmed he had not engaged a construction consultant in relation to the project. Mr. Leung also rejected Alberta Foothill’s request for references and indicated that the Amendment had to be signed by Alberta Foothills after which he was prepared to provide documentation proving Barbican’s ability to fund the Loan.
39. Mr. Leung’s disclosure that Barbican had not taken any necessary steps under the Loan Commitment to complete due diligence, in not even hiring a construction consultant, caused

renewed concern for Alberta Foothills and indicated that Barbican was not meeting its responsibilities under the Loan Commitment.

40. On March 17, 2020, on behalf of Alberta Foothills, Mr. Brooks sent e-mail correspondence to Mr. Leung indicating that while Alberta Foothills still wished to proceed with the Loan, Alberta Foothills wanted assurances of Barbican's ability to fund the Loan. Mr. Brooks further indicated that Alberta Foothills would like to leave the signed agreements "as they are". Attached as Exhibit "L" to my Affidavit is a copy of Mr. Brooks' March 17 e-mail correspondence.
41. On March 18, 2020, I sent e-mail correspondence to Mr. Leung indicating Alberta Foothills was not prepared to execute the Amendment because certain dates had been amended to make meeting the due diligence requirements impossible and an additional liquidated damages clause had been included in the Amendment. Attached as Exhibit "M" to my Affidavit is a copy of this correspondence.
42. On March 19, 2020, Mr. Leung sent an email to myself indicating that "the lender" had previously agreed to a deferred payment program to provide Alberta Foothills with comfort that they were sincere in completing the Loan, but that no further documents relating to Barbican's ability to provide the Loan Amounts would be provided. Attached as Exhibit "N" to my Affidavit is a copy of Mr. Leung's March 19 e-mail correspondence.
43. On March 26, 2020, Mr. Leung sent an email to myself indicating that he was prepared to offer a 90 day extension to the due diligence requirements. ("**the Proposal**") in exchange for further fees as he had requested previously or if Alberta Foothills agreed to the Amendment. Attached as Exhibit "O" to my Affidavit is a copy of Mr. Leung's email correspondence.
44. On March 31, 2020, through e-mail correspondence to Mr. Leung, I provided Alberta Foothills' further response to the Proposal where I stated that:
 - (a) While Alberta Foothills had been unable to meet the due diligence requirements of the Commitment Letter, Barbican had also not met its requirements under the Commitment Letter including their failure to provide draft security documents;
 - (b) Alberta Foothills concern's that Barbican could not fund the Loan had never been addressed despite Barbican making verbal and written representations they would do so; and
 - (c) Alberta Foothills was concerned that given the unknown timelines for law firms, accounting firms and government agencies to return to normal day to day activities, there was a possibility that they would remain unable to comply with the due diligence requirements of the Commitment Letter by the end of June 2020 even if Barbican provided an extension until that date.

Attached as Exhibit "P" is a copy of my March 31, 2020 e-mail correspondence replying to the Proposal.

45. On March 31, 2020, Mr. Leung responded to my email indicating that he wished to call me to discuss ending the relationship. We subsequently had a verbal discussion over the phone, where Mr. Leung informed me that if Alberta Foothills wanted the Loan Amounts, we had to "give him something". Alberta Foothills did not agree to pay Barbican any further fees and on April 1, 2020, through our counsel, Doug Allison, Alberta Foothills sent an email to MLT requesting return of the

Escrow Amounts. Mr. Allison provided his firm's trust account information for the return of these funds. Attached as Exhibit "Q" is a copy of this email correspondence.

46. Alberta Foothills took this decision because, in its view, Barbican had:
- (a) Breached fundamental principles of the agreements;
 - (b) Did not honor its representations on a variety of issues; and
 - (c) Was using the difficulties caused by COVID 19 to try to take advantage of Alberta Foothills by obtaining further fees or making it easier to have fees disbursed to it from the Escrow Amounts.
47. This view was formed by several events relating to the formation and execution of the agreements including Alberta Foothills:
- (a) Being advised by Barbican that the Loan was to be funded by Mr. Leung and his family members only to be informed at a later date that a third party lender was involved;
 - (b) Having concerns regarding Barbican's ability to fund the Loan, repeatedly asking for proof of funding and having no documentation provided by which Alberta Foothills could verify Barbican was in a position to fund the Loan;
 - (c) Having being assured by Barbican that they would work with Alberta Foothills to deal with various documentation challenges presented by COVID-19 only for Barbican to attempt to force Alberta Foothills to provide further fees and/or amend the Escrow Agreement so that Barbican could unilaterally have funds from the Escrow Fund disbursed without Alberta Foothill's review or approval; and
 - (d) Having been informed by Barbican that they had not take any steps in relation to their obligations under the agreement, such as to hire a construction consultant to review and assess construction plan documents relating to the Project, even though these documents had been provided to Barbican at an early date.
48. Barbican engaged in a pattern of behavior whereby representations were made without any subsequent related action. This pattern indicated to Alberta Foothills that even if the alleged due diligence deficiencies had been addressed, Barbican was not in any position to meet their obligations relating to the Loan. Having taken the position that Barbican could not execute the Loan and were themselves in breach of the agreements, Alberta Foothills instructed Mr. Allison to request MLT for the Escrow Amounts to be returned.
49. After Mr. Allison made the request for the return of the Escrow Amounts, Alberta Foothills expected MLT, as Escrow Agent, to issue a request for Expense Notices after which the relevant expenses would be gathered and sent to Alberta Foothills for review and approval. MLT took no further steps and nothing substantive occurred in relation to the Escrow Amounts other than failed negotiations between Alberta Foothills and Barbican as to what the parties were obligated to do and what they were prepared to do in relation to those amounts.
50. On May 1, 2020, Barbican sent correspondence to Alberta Foothills terminating the Commitment Letter and making a demand for the Commitment Fee of \$975,000.00 Attached as Exhibit "R" is a copy of the Notice of Termination letter.

51. Alberta Foothills did not respond to this request based on our understanding that Barbican had fundamentally breached the agreements.
52. On June 2, 2020, MLT sent a letter to Mr. Leung requesting submittal of the Expense Notice described in the Escrow Agreement. Attached as Exhibit “S” is a copy of MLT’s request.
53. On June 3, 2020, Barbican sent an Expense Notice to MLT claiming for expenses related to legal fees. Attached as Exhibit “T” is a copy of the Expense Notice.
54. The Expense Notice consisted of a letter sent via email from Mr. Leung to MLT, copying Alberta Foothills. The Expense Notice indicated that Barbican’s expenses (“**the Expenses**”) in connection with the transaction were:

“MLT Aikens LLP CDN \$ 44,401.39 (Canadian Dollar)

Withers Bergman LLP US\$ 36,346.00”
55. Alberta Foothills was surprised by the Expenses in that, based on what transpired between the parties, there were serious questions as to whether we were responsible for payment of the fees claimed. Further, Alberta Foothills had never agreed to pay for legal fees without review and/or approval. In fact, the Amendment appeared to have been a mechanism by which Barbican’s legal fees could be paid without any Alberta Foothills’ agreement which was required under the Escrow Agreement.
56. Alberta Foothills was also perplexed as to the quantum of legal fees indicated in the Expenses. It appeared, based on discussions with Mr. Leung, that Barbican was not taking any steps to verify due diligence or had a due diligence report prepared. Two boilerplate agreements had been drafted with an amendment involving roughly three clauses of the Escrow Agreement. Alberta Foothills believes and continues to believe it was inconceivable for the quantum of legal charges claimed as Expenses to be over \$90,000.00 (Cdn).
57. The Expense Notice did not contain any date ranges or particulars as to the work performed, and to we have not been provided with this information, despite repeated requests. Further, as of April 2020, MLT was aware that Alberta Foothills disputed payment of any legal fees prior to its review and approval. Alberta Foothills expected MLT, as Escrow Agent, to meaningfully respond to these concerns or seek appropriate direction.
58. On June 3, 2020, Alberta Foothills responded to MLT’s correspondence indicating that the Expenses, including legal expenses, had to be approved in advance by Alberta Foothills before distribution. As Alberta Foothills had never approved the Expenses in advance, Alberta Foothills advised MLT to not release any such funds prior to Alberta Foothills granting approval. Attached as Exhibit “U” is a copy of Alberta Foothills’ correspondence.
59. On June 3, 2020, via e-mail MLT indicated their intention to Alberta Foothills to distribute the balance of the Escrow Amount to first pay the Expenses, which included MLT’s legal expenses, under the Expense Notice and then return the remaining balance to Alberta Foothills. Attached as Exhibit “V” is a copy of MLT’s e-mail correspondence.

MLT Is In A Conflict of Interest

60. I have been informed by legal counsel for Alberta Foothills, that MLT's continued involvement in this matter may leave them in breach of conflict of interest provisions of both the *Alberta Code of Conduct* and the *British Columbia Code of Professional Conduct* (the "Codes"). Attached as Exhibit "W" to my Affidavit are the relevant provisions of the *Codes*.
61. Alberta Foothills has serious concerns about MLT's actions as Escrow Agent, their advocacy of their own interest in bringing this Originating Application and their duties to their client, Barbican. Alberta Foothills believes these concerns are serious enough to put MLT in a conflict of interest and they should be disqualified as acting as counsel in this Originating Application and subsequent proceedings as a result.
62. Instead of taking the steps to meet its duties to Alberta Foothills, MLT acted in its interests and Barbican's interest and against Alberta Foothills' interest by:
- (a) Waiting to take any steps until June 2020;
 - (b) Withholding the undisputed Escrow Amounts from Alberta Foothills to pressure our business to agree to Barbican's interpretation regarding the legal expense provisions;
 - (c) Pressuring Alberta Foothills for payment by interpreting the legal expense provisions in the same fashion as their client, Barbican, and going further by indicating Alberta Foothills was also liable for the legal costs of the Originating Application under the Escrow Agreement; and
 - (d) Bringing the Originating Application, not to seek direction from the Court as to how to interpret the legal expense provisions of the agreements, but rather advocating a position that MLT and Withers Bregman were entitled to payment of Expenses by Alberta Foothills without any review or approval of those expenses required.
63. Further, MLT's Originating Application raises issues with respect to the reasonableness of MLT's own legal expenses. I am informed by legal counsel for Alberta Foothills that it may be necessary to cross examine some of the lawyers at MLT who worked on this file.

There are Material Facts in Dispute

64. In the Affidavit of Mr. Leung he indicates that:
- (a) Despite repeated requests, Alberta Foothills has refused to permit MLT to comply with the Escrow Agreement and release relevant Escrow funds;
 - (b) Alberta Foothills failed to meet the due diligence requirements for the closing of the Loan; and
 - (c) Barbican complied with their obligations under the Loan Agreement.
65. As previously discussed, Alberta Foothills disputes Mr. Leung's version of the facts and asserts that:

- (a) Alberta Foothills have always advised MLT to comply with the Escrow Agreement, but also advised that we never agreed for Escrow Funds to be released in relation to expenses without such funds being reviewed and approved by Alberta Foothills prior to release
 - (b) Alberta Foothills disputes that it failed to meet the due diligence requirements of the Loan Commitment. In fact, Alberta Foothills provided every piece of documentation asked for other than updated financials and tax information and the only reason that documentation was not provided is because of Barbican's unilateral termination/repudiation of the Loan Commitment;
 - (c) To the extent that Alberta Foothills did not meet the due diligence requirements, Barbican had represented that these requirements were met based on the documentation provided;
 - (d) Barbican was not in compliance with the terms of the Loan Commitment as they had not even hired a construction consultant to review the budget and even if the due diligence documentation were of no issue, Barbican was not in position to complete the Loan; and
 - (e) Mr. Leung also fails to mention relevant chronology between February 2020 to April 2020. On multiple occasions, Mr. Leung and other Barbican personnel requested additional fees, early release of Escrow Funds or for Alberta Foothills to sign the Amendment in return for Barbican:
 - (i) Extending the time requirements by which Alberta Foothills was required to provide certain due diligence documentation;
 - (ii) Providing proof of source and funding of the Loan Amounts to Alberta Foothills; and/or
 - (iii) Providing the Loan Amounts to Alberta Foothills before June 1, 2020.
66. All of the above matters call into question Alberta Foothill's legal responsibility to pay for some or all of the Expenses and are serious and material facts that are in dispute between MLT and Alberta Foothills in this matter.

Additional Records Are Required To Be Produced

67. As previously mentioned, Alberta Foothills has requested that MLT, as Escrow Agent, provide unredacted invoices and backup for the Expenses. To date, MLT has refused to provide these documents.
68. Instead, MLT has taken a specific interpretation of the Escrow Agreement, which drafted, and pressured Alberta Foothills to pay the Expenses without objection or be forced to pay further legal fees for the Originating Application. Attached as Exhibit "X" are copies of e-mail correspondence between Alberta Foothills' Counsel and MLT relating to these issues.
69. In general it is difficult for Alberta Foothills to understand what the Invoices relate to or if the expenses were reasonably incurred. We are left without information as to what aspect of the file these expenses are for and how such substantial legal charges were incurred for:
- (a) The drafting of two boilerplate agreements;

- (b) The drafting of the Amendment; and
 - (c) The review of due diligence documents for a Project for which, to Alberta Foothill's knowledge, no due diligence report was ever prepared by MLT or Withers Bregman.
70. Based on the information provided relating to the Expenses, Alberta Foothills has no way of determining if the Expenses were reasonably incurred or even related to the legal expense provisions of the Agreements and required relevant unredacted Invoices and related backup to be provided in order to do so.

Alberta Foothill's Position on Additional Legal Expenses and Procedural Issues


71. I have been advised by Alberta Foothills' counsel that MLT has incurred in the range of \$20,000.00 in legal fees bringing forward this Originating Application and intends to argue that Alberta Foothills is liable for these fees as well under the Escrow Agreement. Again, if these fees are being claimed, we require unredacted invoices and backup information relating to these charges and are curious as to the dates on which these charges have been incurred, particularly if work commenced on litigation prior to the April 2020.
72. I have been advised by Alberta Foothill's counsel that MLT has been made aware of the following:
- (a) There were concerns of whether MLT could act in this matter due to potential conflicts of
 - (b) There may be material facts in dispute which indicated that the matter should not proceed by way of Originating Application;
 - (c) The disputes should be set down for a Court of Queen's Bench special application.

Attached as Exhibit "Y" to my Affidavit is a copy of correspondence from Alberta Foothills' counsel confirming the above.

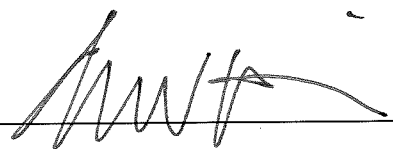
Purpose of Affidavit

73. I make this Affidavit for the purpose of obtaining the relief requested in the Application Alberta Foothills has filed in this Action and in opposition to MLT's Application in this Action.

SWORN (OR AFFIRMED) BEFORE ME at)
 the City of Calgary, Alberta, this 21st day of)
 September, 2020.)



 Ram Sankaran)
 A Commissioner of Oaths in and for the)
 Province of Alberta)



 DREW ATKINS

RAM C. SANKARAN
 Barrister & Solicitor
 My Commission is at the pleasure
 of the Lieutenant Governor

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
SUITE 2600
NEW YORK, NEW YORK 10174
TEL: (212) 271-5045 • FAX: (212) 271-5582

This is exhibit "A" referred to
in the affidavit of

Drew Atkins

sworn before me this 21st
day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

August 22, 2019

Alberta Foothills Properties Ltd
3505-18th Street SW
Calgary, AB T2T 4T9

Attention: Drew Atkins, President & Director

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Re: CS\$30 Million First Mortgage Development and Construction Loan for Phase I of a multi-phase, master-planned community ("MPC") known as "Wind Walk" located at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Project").

Dear Mr. Atkins:

The Term Sheet attached as hereto as Appendix A outlines the basic terms and conditions upon which Barbican Capital Partners, LLC, a Delaware limited liability company or its affiliate ("BCP" or "Lender"), will consider making a first mortgage loan ("Loan") for the completion of the Phase I of a MPC known as "Wind Walk" (the "Property"). The borrower will be a bankruptcy-remote, single-purpose, single-asset entity ("Borrower"), wholly-owned and/or controlled by Drew Gordon Atkins (and/or any other individuals approved by the Lender) ("Principal" or "Principals"). The sponsor of the Project shall be 1067803 Alberta Ltd O/A Holmes Communities ("Sponsor"). The development of the Property for such purposes is sometimes referred to in this Letter of Intent as the "Project". All capitalized terms not otherwise defined in this Letter of Intent shall have the meaning ascribed thereto in Appendix A.

The transaction contemplated in this Letter of Intent is subject to, among other things, completion of Lender's due diligence. Upon timely execution and return of this Letter of Intent to BCP together with timely payment to BCP of the "Good-faith Deposit" (as defined in Paragraph E), BCP will enter a 45-day due diligence period ("Due Diligence Period"). At or before the end of the Due Diligence Period, BCP will give notice ("Notification") to Borrower, Sponsors and Principals as to whether (i) BCP has determined not to make the loan or (ii) BCP desires to proceed with the Loan and shall issue a loan commitment ("Commitment") within five (5) business days from the date of the Notification. Failure by BCP to give the Notification on or before the final day of the Due Diligence Period will be deemed to be a determination by BCP not to make the Loan.

Subject to Borrower's satisfaction of all the conditions set forth in the Commitment (which shall include paragraph A below), BCP will endeavor to effect a closing ("Closing") of the Loan as promptly as possible but in no event later than the "Closing Date" as stipulated in the Commitment.

A. The general conditions precedent to the Closing of the Loan by Lender shall include, but are not limited to:

1. The approval of BCP's Investment Committee and/or Board of Directors;
2. Satisfactory completion of BCP's legal, credit, business and other due diligence and satisfactory completion of BCP's underwriting of the Project;
3. Loan documentation satisfactory to BCP: Satisfaction of closing conditions set forth in the Commitment and final definitive documentation, including, without limitation, Loan Agreement, Security Agreement, Pledge Agreement, Guarantees, Promissory Notes, Performance Bonds (or credit instrument), Subordination Agreement, Title Insurance Policies, Survey and Legal Opinions, all have to be satisfactory to BCP;
4. Receipt of third-party estoppels, subordination, non-disturbance and attornment agreements, and consents as required by BCP;
5. BCP's review and approval of design and construction items, including, contractors, plans and specifications, construction budgets, performance and payment bonds, construction contracts, subcontracts, design contracts, architect and design professional agreements, soils reports, licenses, permits and approvals relating to the construction work;
6. BCP's receipt of a MAI (or local equivalent) appraisal and market feasibility report all in form and content satisfactory to BCP; and
7. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsors, Principals, Guarantor, the Property, the Project or political, economic, capital markets or other market conditions.

B. This Letter of Intent shall terminate on a date (the "Termination Date") which shall be the earlier of (i) sixty days from the date hereof or (ii) the occurrence of any of the following:

1. Notification by BCP to the Principals that BCP does not intend to proceed with the Loan;
2. Failure by Borrower to accept a Commitment issued by BCP in accordance herewith within seven (7) days of issuance.

In consideration of BCP's effort and expenses in analyzing this transaction, Borrower, Sponsors and the Principals agree that they will not directly or indirectly make, accept, negotiate, entertain or otherwise engage in any financing or other capital transaction or accept any financing offers from third-party

regarding the Property other than the financing transaction contemplated hereby with Lender prior to the Termination Date. In the event Borrower, Sponsors or the Principals breach this exclusivity covenant and accept any financing from any third-party lender other than Lender, Borrower, Sponsors and the Principals agree to pay to BCP a breakup fee of US\$50,000 (the "Breakup Fee"). The arrangement of the Breakup Fee is more specifically described in Paragraph F below.

C. Borrower, Sponsors and Principals, for themselves and on behalf of any third-party professional advisors (lawyers, accountants) retained by them, specifically including Oveldi Strategic Capital, Inc. by execution of this Letter of Intent, agrees to maintain the confidentiality of Lender's involvement in this possible transaction and the structure and pricing thereof. Borrower, Sponsors and Principals further agrees not to disclose any information regarding Lender (or its Loan Participants, if any) or Lender's involvement in this transaction to any person or entity other than its advisors, agents and consultants who will assist Borrower, Sponsors and Principals in its transaction with Lender, and Borrower, Sponsors and Principals will inform them of the confidentiality requirements of this Letter of Intent and their duty to comply with its terms. Borrower, Sponsors and Principals shall be liable, jointly and severally, for any breach of this confidentiality agreement by any of such advisors, agents or consultants. The foregoing shall not apply to any disclosures required by law or disclosures consented to by BCP

D. Lender and Borrower, Sponsors and Principals each represent and warrant to the other that neither has engaged any person to whom a commission or finders' fee may be owing by reason of the transactions contemplated by this Letter of Intent except that any fees that may be due under certain letter agreements between Borrower and Nova Capital Advisors, Inc. It should be noted that the transaction was introduced to BCP by Nova Capital Advisors via one of its principals. Any fees (finders or placement) for the above shall only be paid upon the closing and funding of the Loan. Borrower, Sponsors and Principals shall be liable for payment of such fees. Borrower, Sponsors and Principals collectively agree to defend, indemnify and hold BCP, Lender, their successors, assigns, trustees, shareholders, directors and officers harmless from and against any claims of any persons or entities claiming a fee or commission (including the above-mentioned finder fee) by reason of the Loan or the transactions contemplated by this Letter of Intent.

E. Lender acknowledges that it had received an initial deposit of US\$10,000 ("Initial Deposit") from Borrower prior to the issuance of this Letter of Intent. Simultaneously with the execution of this Letter of Intent, Borrower, Sponsors or Principals shall deposit with BCP an additional sum of US\$15,000 as final deposit ("Final Deposit"). The Initial and Final Deposits are collectively as the "Good-faith Deposit". The Good-faith Deposit shall be used to defray Lender's due diligence expenses ("Expenses") in connection with the transaction described in this Letter of Intent, including, without limitation, all out-of-pocket expenses, legal fees (including local counsel expenses), due diligence expenses, consultants' fees, accountants' fees and expenses, traveling costs and any third party fees incurred by BCP in connection with underwriting, structuring, conducting due diligence, documenting, and negotiating of the Loan. The Good-faith Deposit (less Lender's Expenses) shall become refundable in the event Lender issues the Notification indicating its determination not to make the Loan. If BCP determines that the Good-faith Deposit will not be sufficient to pay BCP's Expenses prior to the expiration of the Due Diligence Period, then, Borrower, Sponsors or the Principals shall, upon demand from BCP, deposit such additional funds as BCP shall demand to pay BCP's Expenses. If upon the completion of the Due Diligence Period, BCP issues the Commitment which material terms and conditions are substantially similar to those outlined in BCP Term Sheet 08222019

Confidential

F. In addition to the posting of the Good-faith Deposit in paragraph E above, Borrower, Sponsors or Principals agree to deposit an additional US\$50,000 in escrow ("Escrow Deposit") with Lender's counsel pursuant to an escrow agreement ("Escrow Agreement") within two business day from their receipt of Lender's Notification that Lender had decided to proceed with the loan and shall issue the Commitment . The Escrow Deposit (i) shall be used to pay a Breakup Fee in the event Borrower, Sponsors or Principals breach the exclusivity covenant contained in Paragraph B, (ii) shall be released and applied as a credit to the payment of the Commitment Fee in the event that Lender issues its final loan commitment ("Commitment") and such Commitment was accepted by the Borrower, or (iii) shall be fully refunded and returned to the Borrower, Sponsors or Principals in full in the event Lender issues (or is deemed to have issued) Notification that it has determined not to make the loan.

G. This Letter of Intent represents a statement of the parties' general intent only and, except for the provisions of Paragraphs B, C, D, E and F (the "Binding Provisions") of this Letter of Intent, does not purport to be and does not constitute a binding agreement among the parties, and, except for the respective obligations of the parties under the Binding Provisions (which are intended by the parties to be legally binding), none of the parties hereto will have any legal obligation under this Letter of Intent unless and until a subsequent formal written contract (a commitment letter and/or other documents required by Lender to govern, evidence and secure the Loan) is executed and delivered by Lender and accepted by Borrower, Sponsors and the Principals. Termination of this Letter of Intent will not release a party from liability arising under the Binding Provisions. This Letter of Intent shall be governed by, and construed in accordance with, the internal laws of the State of New York. Any litigation relating to this Letter of Intent shall be brought, at BCP option, in the courts of the United States of America or the State of New York located in the State and County of New York. The Binding Provisions shall survive any termination of this Letter of Intent. To the fullest extent permitted by law, each party to this Letter of Intent expressly waives all rights to trial by jury in any litigation relating to this Letter of Intent and all rights to punitive, consequential or special damages on account of this Letter of Intent. The prevailing party in any litigation relating to this Letter of Intent shall be entitled to recover its actual reasonable attorneys' fees and disbursements, expert witness fees and expenses and court costs from the non-prevailing party in such litigation.

Subject to the foregoing, if the terms outlined herein are acceptable to you, please execute a copy of this letter in the space provided for below and return same to us on or before 5:00 p.m. (New York, New York time) on August 29, 2019. If this Letter of Intent is not so executed and returned to us by such time, then the proposal set forth herein shall be deemed withdrawn and this letter shall be of no further force or effect whatsoever.

We look forward to working with you on this transaction. If you have any questions, please call me at (212) 271-5045 or my cell at (516) 526-1341.

Sincerely,

Barbican Capital Partners, LLC

By: _____

Name: Benny P. Leung

BCP Term Sheet 08222019

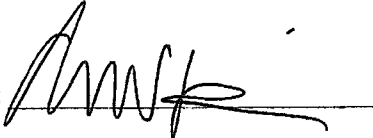
Confidential

Title: Manager

Agreed to and Accepted this ^{5th} ~~31st~~ day of ^{August} ~~August~~, 2019

Borrower:

Alberta Foothills Properties Ltd

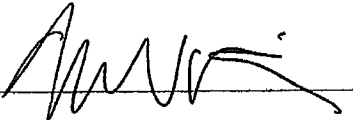
By: 

Name: Drew G. Atkins

Title: Director and President

Sponsor:

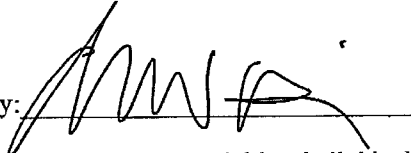
1067803 Alberta Ltd O/A Holmes Communities

By: 

Name:

Title:

Principal:

By: 

Name: Drew Gordon Atkins, individually

APPENDIX A-TERM SHEET

- Lender:** Barbican Capital Partners, LLC or its affiliates
- Borrower:** Alberta Foothills Properties, Ltd (“Borrower”). Borrower shall be a bankruptcy-remote, single-purpose and single-asset entity. The organization structure of the Borrower shall be satisfactory to Lender.
- Sponsor:** 1067803 Alberta Ltd (“Sponsor”).
- Principals:** The principals of Borrower shall be Drew Gordon Atkins and/or any other individual to be approved by Lender based on due diligence.
- Project:** Phase I of a multi-phase, master-planned community known as “Wind Walk” located on a site (approximately 144.66 acres of land) at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta (“Project”).
- Loan:** C\$30,000,000 (the “Loan”) subject to due diligence and underwriting of all relevant aspects of the Project (site and market feasibility, credit, legal and tax arrangement). It is contemplated that the Loan shall be structured and funded into two tranches: (i) a senior tranche of an amount equal to the lesser of (a) 60% Loan-To-Value (based on Lender’s approved appraised value), 60% Loan-To-Costs (based on Lender’s approved Total Project Costs) or C\$22,000,000 (“Tranche A Loan” or “Senior Loan”) and (b) a mezzanine tranche of an amount equal to the lesser of (x) 20% Loan-To-Value, 20% Loan-To-Costs or C\$8,000,000 (“Tranche B Loan” or “Mezz Loan”). The final loan amount for Tranche A and Tranche B loans shall be determined upon completion of due diligence and established in the Commitment.
- Interest:** Tranche A Loan: The non-default floating interest rate (“Based Rate”) equal to the higher of (i) Bank of Canada Prime rate (as announced in the Daily Digest published by Bank of Canada from time to time) + 4% or (ii) 3-month Canada Dollar Offer Rate (CDOR) (as published by Thomason-Reuters from time to time) +5.5%. Interest shall be payable current via cash flow and/or Interest Reserve during the loan period and such amount shall be incorporated into the Total Project Costs.
- Tranche B Loan: Based Rate of 8% per annum, interest only, payable monthly in arrears.
- Reserves:** At closing, Lender shall require an interest and other applicable reserves (e.g. tax, insurance, etc.) to be established. Such requirement will be more specifically described in the Commitment.
- Term:** 36 months with an option to extend for another 12 months by (i) payment of 1% fee and (ii) no Events of Default
- Exit Fee:** Senior Loan: 2% payable at the prepayment, repayment and/or Maturity of the Senior Loan.
Mezz Loan: Please refer to Make-whole amount below

- Make-whole:** At any prepayment, repayment or Maturity of the Mezz Loan, the Borrower shall pay Lender, in addition to any unpaid interest and principal, a lump sum amount which, when taking into account of the payment of the loan fees and interests, shall yield Lender an overall internal rate of return (IRR) of 15%.
- Late Charge:** Based Rate plus 5%.
- Default Rate:** Base Rate plus 5%.
- Cash flow :** 100% of net proceeds from sale of each improved lot and/or other cash flow (if any) less an Approved Working Capital shall be put into a “lock box” and first applied to the payment any accrued and unpaid interest; then to the Exit Fee and Make Whole amount and the principal repayment of the loan.
- Releases:** Lender shall release each relevant improved lot upon receipt of payment under Cash Flow Sweep for each such improved lot.
- Use of Loan:** The loan, together with the Borrower’s Equity (as defined herein below) shall be used by Borrower to (i) retire an existing loan with Alberta Treasury Branch in an amount of approximately C\$11,600,000 (to be verified by Lender during due diligence); (ii) to proceed with development as per a master plan (“Master Plan”) approved by Lender and (iii) pay any costs associate with the closing of the Loan.
- Security:** For each of the Senior and Mezz loan, they shall be secured by (i) a promissory note; (ii) first (and second), perfected mortgage on the land and any improvement currently exists and to be constructed thereon; (iii) collateral assignment of all relevant contracts, leases, receivables, governmental approvals, permits and insurance policies; (iv) stock pledge and (v) any other loan documentation as required by relevant laws and Lender’s attorney in connection with the provision of the loan.
- Equity:** The borrower shall provide cash equity (or quasi equity approved by the Lender) equal to the difference between the Total Project Costs (approved by the Lender upon completion of due diligence) and the Loan (“Borrower’s Equity”).
- Pre-sales:** Borrower acknowledges that the “pre-sales” aspect is a crucial consideration for Lender to consider the provision of the Loan. Upon the completion of the due diligence, Lender shall establish the exact pre-sales requirement of the Project and stipulate such in the final loan commitment (“Commitment”).
- Assignment:** Lender has the right to assign the Senior Loan to any third party upon closing of the Loan. Borrower is prohibited to assign any of its rights under the Loan to any third-party without Lender’s prior approval.
- Guarantee:** Subject to final underwriting by Lender, the loan shall also be secured by various guarantees including without limitation, (i) standard non-recourse” carve outs”, (ii) the completion and carrying guarantee, (iii) costs overruns guarantee and other guarantee that Lender deems necessary upon completion of due diligence. The guarantees shall be provided by an acceptable guarantor or guarantors in form satisfactory to Lender.

Compliance: Lender shall be satisfied that the Project complies with all applicable laws including without limitation, planning, zoning, environmental, tax, etc.

Environmental: The project shall be clear from any environmental issue as required under the relevant laws. Any documentation in connection with the clearance shall be in form satisfactory to Lender

Manager: Borrower shall manage the Project. Lender shall hire a third-party consultant to monitor the progress of the development. The expenses for such hire shall be borne by Borrower.

GMP The project shall have a Guarantee Maximum Price Contract (“GMP”) in form satisfactory to Lender. The contract shall be performed by a qualified contractor approved by the Lender. In addition, the contractor shall provide a performance bond in form and from a financial institution satisfactory to Lender.

Transfer: Except for partial releases described above, the Loan Documents shall provide that the Property and the direct and indirect ownership interests in Borrower shall not be directly or indirectly sold, transferred, encumbered, mortgaged or otherwise disposed of, in whole or in part, without Lender's consent.

Covenants: The Loan Documents will include, among other things, such affirmative and negative covenants as Lender may require including, without limitation, financial covenants (e.g. DSCR), covenants regarding insurance, covenants limiting distributions, due on sale and due on encumbrance covenants, and covenants restricting the incurring of debt: covenants restricting affiliate transactions, and covenants regarding the SPE status of Borrower.

Commitment

Fee: 2.5% of loan amount. 1% payable at the execution of commitment; 1.5% payable at the closing of the loan.

DD Expenses: Borrower shall be fully responsible for reimbursement of Lender’s due diligence expenses.

Broker: Nova Capital Advisors, Inc (“Nova”). Borrower shall enter into a fee agreement with Nova regarding its finder’s fee for its introduction of BCP to Borrower.

Conditions

Precedent: Lender’s Commitment, if issued, shall contain conditions precedent to the closing which shall include, but not limited to:

1. Receipt of approval by Lender of its Investment Committee and Board of Directors
2. Loan Documents satisfactory to Lender which shall include, without limitation, Loan Agreement, Notes, Mortgages, Subordination Agreement and those relevant documentation listed in the section entitling “Security” in this Term Sheet.
3. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsors or Principals, the Property, the Project or political, economic, capital markets or other market conditions.

4. Receipt of all organizational documents of Borrower, Sponsors and financial information of the Principals and all property related due diligence items Lender or its counsel deem necessary for the subject transaction.
5. Borrower has entered into Qualified Contracts for the sale of lots sufficient to meet the Pre-Sale Requirement, based on at least the approved minimum sales price schedule.
6. Approval of the Master Plan of the Project
7. Receipt of evidence satisfactory to Lender of the Project's compliance with all laws and zoning regulations, including, without limitation, issuance of all Governmental permits.
8. Receipt of the Total Project Costs (with breakdown of line items) in form and substance acceptable to the Lender.
9. Approval of the general contractor by Lender in its sole discretion, and receipt of a guaranteed maximum price contract in an amount not more than provided for in the budget in form and substance acceptable to the Lender.
10. Receipt of payment and performance guaranty from general contractor in form of payment and performance bonds from insurers with ratings of A or better (from acceptable rating agency) or a Standby Letter of Credit in an amount and from a financial institution acceptable to Lender in its sole discretion. Dual Obligee riders in favor of Lender will also be required for the performance bonds.
11. Receipt of marketing materials for the Project that comply with all acceptable laws and regulations.
12. All relevant filings required by local Municipal authorities, to be made under the relevant laws and regulations and any other governmental or regulatory requirement relating to master-plan, have been accepted and approved by the appropriate agencies.
13. Environmental Site Assessment in form and from a qualified Engineer acceptable to Lender to be received prior to closing of the Loan
14. An update Feasibility Report to be prepared by a consultant in form and substance acceptable to Lender to be received prior to closing of the Loan.
15. Prior to closing the Loan, Lender shall receive, review and approve an MAI Appraisal (or local equivalent) which indicates a market value satisfactory to Lender and its underwriting standards.
16. Borrower, Sponsors and the Principals have satisfied all conditions required by Lender under the Loan Documentation including, without limitation, the full funding of the Equity Requirement, the Preferred Equity (if applicable) and the Guarantors shall provide all necessary guarantees as required by Lender
17. Satisfactory completion of Lender's legal, business and other due diligence and underwriting of the Project.

Construction

Consultant: Lender shall engage an independent consultant who will review the budget and construction draws on a monthly basis. The closing of the Loan is predicated upon the Lender's receipt of an acceptable review of the budget and the independent consultant's conclusion that the budget is sufficient to complete the improvements.

Governing

Law: The Loan Documents will be governed by, and construed in accordance with, the internal laws of the State of New York except that the provisions in the Loan Documents with respect to the creation, perfection and enforcement of the liens and security interests created pursuant to the Loan Documents will be governed by, and construed in accordance with, the internal laws of Alberta, Canada.

This Term Sheet is provided for discussion purposes only and does not constitute a commitment to lend or an agreement to issue a commitment. Its terms are not all inclusive and are subject to Lender's internal underwriting committee approval, Lender's due diligence and other conditions, and satisfactory market conditions. Additions and changes may be made as Lender and its counsel deem necessary, prudent or desirable. No agreement (oral or otherwise) that may be reached during negotiations shall be binding upon the parties unless and until a commitment letter and final Loan Documents have been executed and delivered by all applicable parties. This Term Sheet shall be kept confidentiality, shall not be reproduced or disclosed, and shall not be used by Borrower or Sponsors other than in connection with evaluating the transaction described herein. Notwithstanding the receipt and/or deposit by Lender of any deposits or fees tendered by Borrower or Sponsors, no changes to this Term Sheet shall be effective unless expressly agreed to in writing by Lender.

This is exhibit " B " referred to
in the affidavit of

Drew Atkins

sworn before me this 21st

day of September, 2020

[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: October 25, 2019 at 3:19:21 PM MDT
To: drew.bland@mac.com
Cc: drew atkins <drew.bland@me.com>
Subject: RE: Lender's Notification to proceed

Dear Drew:

As per our phone discussion yesterday, attached please find Barbican's notification to proceed. Our counsel will forward the escrow agreement to you for your review on Monday. After that, we just follow the procedure outlined in the enclosed notification.

Have a nice weekend.

Best regards,

Benny

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
SUITE 2600
NEW YORK, NEW YORK 10174
TEL: (212) 271-5045 • FAX: (212) 271-5582

October 25, 2019

Alberta Foothills Properties Ltd
3505-18th Street SW
Calgary, AB T2T 4T9

Attn: Drew Atkins, Director

Dear Sirs:

Pursuant to certain letter of intent ("LOI") dated August 22, 2019 executed between Barbican Capital Partners, LLC ("Lender") and Alberta Foothills Properties Ltd ("Borrower"), Lender hereby notifies Borrower that it intends to proceed with the loan transaction as contemplated by the executed LOI.

Based on the phone conversation between the parties' representatives yesterday, Lender conveyed to Borrower that due to the fact that certain information had not been provided to Lender during the 45 days due diligence period, Lender's willingness to proceed to issue the final loan commitment shall be expressly subject to, among other things, the satisfactory review of those information post-commitment. In addition, Lender also conveyed to Borrower that due to the backlog of Alberta courts' and other relevant agencies' backlog in handling search request, Lender's lawyers are still waiting for results from certain legal searches and other information in order to present Lender with a final report on legal due diligence.

Given these pending contingencies, but in view of the parties' mutual desire to move forward with the transaction expeditiously, Lender proposes the following procedures which was agreed by Borrower's representative in yesterday's phone discussion:

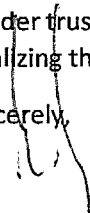
1. Lender's Canadian counsel shall prepare and deliver an escrow agreement ("Escrow Agreement") to Borrower for its review. Upon execution of the Escrow Agreement, Borrower shall deposit 1% of the Commitment Fee (C\$300,000) ("Escrow Deposit") with Lender's Canadian counsel, MLT Aikens ("Escrow Agent") pursuant to the terms of the LOI.
2. Within seven (7) business days from the receipt of the Escrow Deposit, Lender's New York counsel shall prepare and deliver a draft loan commitment for Borrower's review. The parties shall proceed to negotiate and finalize the loan commitment accordingly.
3. Upon the execution of the Commitment, the Commitment shall be held temporarily in escrow until the pending contingencies ("Contingencies") were either satisfied by

Borrower or waived by Lender. The parties will agree upon the Contingencies during the negotiation of the Commitment.

4. If the Contingencies are deemed satisfied, the Commitment will be released from escrow and become effective and the parties shall proceed to prepare the closing of the transaction based on the terms of the Commitment.
5. If there is any issue with certain contingency and the parties cannot resolve, the parties will mutually desire either to find an alternate way to satisfy such contingency, in which case, the contingency deems to be resolved and the Commitment will be released from escrow or issue joint instruction to terminate the transaction and the escrow arrangement.
6. If the escrow was terminated due to the parties' failure to agree on (i) the terms of the Commitment and thus, no commitment or (ii) the resolution on certain contingency, then the escrow shall be terminated and the Escrow Agent shall be instructed to (i) reimburse Lender with all of its costs in connection with the processing of this transaction and (ii) remit the remaining balance of the Escrow Deposit to Borrower.

Lender trusts that the above procedure is the fair way to proceed and is looking forward to finalizing the Commitment with Borrower in short future.

Sincerely,


Benny P. Leung
Manager

This is exhibit " C " referred to
in the affidavit of

Deen Atleo's

sworn before me this 21st
day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Begin forwarded message:

From: "Saravan J. Veylan" <sveylan@mltaikins.com>
Date: October 30, 2019 at 12:46:45 PM MDT
To: "Doug@allison-associates.ca" <Doug@allison-associates.ca>
Cc: Benny Leung <bleung@barbicap.com>, "drew.bland@me.com" <drew.bland@me.com>, Kevin Mehi <kmehi@mltaikins.com>
Subject: Alberta Foothills Properties - loan by Barbican Capital Partners

Doug,

We have been instructed to prepare an escrow agreement to address the timing and funding of outstanding due diligence matters and the negotiation of the loan commitment.

Please find attached a form of escrow agreement for your review and comment.

Regards,
Sarvi

Saravan J. Veylan*
Partner

* services provided by SJ Veylan Law Corporation
P: +1 (604) 608-4570 | **E:** sveylan@mltaikins.com
F: +1 (604) 682-7131

MLT Aikins LLP
Suite 2600 – 1066 West Hastings Street
Vancouver, British Columbia V6E 3X1
mltaikins.com

BIO [VCARD](#)

MLT AIKINS

WESTERN CANADA'S LAW FIRM

Winnipeg | Regina | Saskatoon | Calgary | Edmonton | Vancouver

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ESCROW AGREEMENT

THIS ESCROW AGREEMENT made effective as of the ___ day of October, 2019 (the "**Effective Date**").

AMONG:

BARBICAN CAPITAL PARTNERS, LLC

(the "**Lender**")

AND:

ALBERTA FOOTHILLS PROPERTIES LTD.

(the "**Borrower**")

AND:

MLT AIKINS LLP

(the "**Escrow Agent**")

BACKGROUND

- A. The Lender and the Borrower (collectively, the "**Parties**" and each a "**Party**") have entered into a term sheet (the "**Term Sheet**") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "**Commitment**") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.
- B. The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the "**Escrow Amount**"), being a portion of the Commitment Fee set out in the Term Sheet.
- C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.
- D. Capitalized words and expressions used in this Escrow Agreement but not otherwise defined herein will have the meanings ascribed thereto in the Term Sheet. For the purposes of this Escrow Agreement, the term "**Business Day**" means any day in which main branch of TD Canada Trust in Calgary, Alberta is ordinarily open for business and "**Business Days**" means more than one of them.

TERMS OF AGREEMENT

In consideration of the Parties' continued negotiation of the Commitment, and of their respective covenants and agreements hereinafter contained, it is hereby agreed by and among the Parties hereto as follows:

Article 1 – Escrow

1.1 Appointment of Escrow Agent. The Lender and the Borrower hereby appoint the Escrow Agent to act as escrow agent on the terms and conditions set forth in this Escrow Agreement, and the Escrow Agent accepts such appointment on such terms and conditions.

1.2 Delivery of Escrow Amount. Concurrent with the execution and delivery of this Escrow Agreement, the Borrower will deliver the Escrow Amount, which amount will represent a portion of the Commitment Fee set out in the Term Sheet, to the Escrow Agent by wire transfer to the following account:

Account Holder Name: MLT AIKINS LLP, IN TRUST
Account Holder/Address: 2600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1

Bank Name/Address: TD Canada Trust
Toronto Dominion Tower Branch
700 W Georgia St Pacific Centre
Vancouver, BC V7Y 1A2

Account Number: 0902-5416541
Transit Number: 94000
Bank Number: 004
Swift: TDOMCATTOR
ABA: 026009593

1.3 Holding of Escrow Amount. Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Amount in escrow for the period commencing on the Effective Date until the later of the dates on which the Escrow Agent is required to release the Escrow Amount, or portions thereof, in accordance with Article 3 and Section 5.9 below.

Article 2 – Delivery of the Loan Commitment

2.1 Entry into Loan Commitment. Upon receipt of the Escrow Amount from the Borrower, the Escrow Agent will provide the Lender with written notice of receipt of the Escrow Amount (the "**Receipt Notice**"). Within seven Business Days of the Lender's receipt of the Receipt Notice from the Escrow Agent, the Lender will cause its solicitor to deliver to the Borrower or its solicitor a draft form of Commitment as contemplated by the Term Sheet. The Parties will negotiate and finalize the Commitment in good faith. Upon execution of the Commitment, the Parties will deliver the executed Commitment to the Escrow Agent, to be held in escrow by the Escrow Agent with irrevocable instructions to deliver the fully-executed Commitment to both Parties only in accordance with Article 3 below.

Article 3 – Payment of Escrow Monies

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

- (a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

- i. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay \$50,000 CAD of the Escrow Amount to the Lender in such manner as requested by the Lender from time to time; and
- ii. upon receipt of written notice from the Lender with acknowledgment by the Borrower that the remaining due diligence contingencies listed in the "**Due Diligence Contingencies**" section of the Commitment have been fully satisfied by Borrower and/or waived by Lender, the Escrow Agent will release the balance of the Escrow Amount, being \$250,000 CAD, to the Lender within two Business Days. Upon the release of the remaining Escrow Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully-executed Commitment; and
- iii. notwithstanding Section 3.1(a)(ii) above, if the Escrow Agent receives written notice jointly by both Parties that any of the Due Diligence Contingencies cannot be satisfied and the Parties jointly elect to terminate the Commitment, the Escrow Agent will:
 1. provide the Lender with a written demand for a summary of its expenses related to the Term Sheet, this Escrow Agreement, and the Commitment and the transactions contemplated thereby (the "**Expense Notice**"), which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;
 2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first \$50,000 CAD as a break fee to the Lender;
 - b. second the amount set out in the Expense Notice to the Lender; and
 - c. third, the balance to the Borrower,in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused; and
- iv. notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii) and (iii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:
 1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days

of such demand and which will be definitive with respect to the kind and amount of such expenses;

2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first the amount set out in the Expense Notice to the Lender; and
 - b. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;

- (b) upon the Escrow Agent's receipt of written notice by either Party, copying the other Party, in a form satisfactory to the Escrow Agent, acting reasonably, that the Parties have not entered into the Commitment within seven Business Days of the receipt of the Commitment by the Borrower pursuant to Section 2.1 above, the Escrow Agent will:
 - i. provide the Lender with a written demand an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and
 - ii. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 1. first to the Lender, the amount set out in the Expense Notice; and
 2. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(b)(ii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement.

Article 4 – Investment of Escrow Amount

- 4.1 The Escrow Amount will be held by the Escrow Agent in a non-interest-bearing account in accordance with its standard trust fund procedures. The Lender and the Borrower, as applicable, will assume any obligations imposed now or hereafter by any applicable tax law with respect to any payment of the Escrow Amount to the Lender or the Borrower under this Escrow Agreement.

Article 5 – Protection of Escrow Agent

- 5.1 Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term or condition of any contract or

agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.

5.2 The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Parties to this Agreement hereby agree will govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

- (a) except for the Escrow Agent's own acts of negligence or wilful misconduct, the Escrow Agent will not be liable for any act done or step taken or omitted to be done or taken by the Escrow Agent, or for any mistake of fact or law or error in judgment;
- (b) the Escrow Agent may at any time consult with, and obtain advice from, legal counsel (who may be selected by the Escrow Agent, in its sole discretion) in the event of any question as to any of the provisions hereof or the Escrow Agent's duties hereunder, and will incur no liability and will be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel; and
- (c) the Escrow Agent will have no duties except those which are expressly set forth herein, and will not be bound by any Indemnity Claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by the appropriate parties.

5.3 In the event that:

- (a) any action is threatened or instituted against the Escrow Agent;
- (b) any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the Escrow Amount; or
- (c) at any time the Escrow Agent is uncertain as to its obligations hereunder;

the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligations hereunder. In such event, or if any other person should apply to a court of competent jurisdiction on any matter affecting the obligations of the Escrow Agent hereunder or otherwise relating to the Escrow Amount, the Escrow Agent may and is hereby authorized to release, deliver or otherwise deal with the Escrow Amount in accordance with the direction, order, judgment or decree of such court. The Escrow Agent may deliver the Escrow Amount (or outstanding balance thereof) in to court pending resolution of a dispute among the Parties.

5.4 The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow Agent's fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not

contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent will be reasonably compensated by the Borrower for such additional extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, again all of which will be paid by the Borrower alone, and the Lender will have no obligation or liability therefor.

- 5.5 The Escrow Agent will incur no liability hereunder or in connection herewith for anything whatsoever other than as a result of its own negligence or willful misconduct. The Lender and the Borrower will indemnify, hold harmless and defend the Escrow Agent from and against any and all actions, causes of action, claims, demands, damages, losses, costs, liabilities and expense, of any nature or kind, including reasonable legal fees, which may be made or brought against it by any third party (which, for greater certainty, does not include any of the Parties hereto), or which it may suffer or incur in connection with any such third party claim, as a result of or in respect of or arising out of its appointment as Escrow Agent hereunder, except such as will result solely and directly from its own negligence or willful misconduct.
- 5.6 Notwithstanding anything contained herein, in the event of any disagreement between the Parties hereto resulting in adverse claims or demands with respect to the Escrow Amount, the Escrow Agent will be entitled, at its option to refuse to comply with any claims or demands on it with respect thereto as long as such disagreement will continue, and in so refusing, may elect not to make delivery of the Escrow Amount in accordance with this Escrow Agreement. In so doing, the Escrow Agent will not be or become liable in any way to the Parties hereto for its failure or refusal to comply with such claims or demands. The Escrow Agent will be entitled to refrain from acting or refusing to act until such claims or demands: (a) will have been finally determined in a court of competent jurisdiction; or (b) will have been settled by agreement and the Escrow Agent will have been notified thereof by the Lender and the Borrower in writing.
- 5.7 The Parties acknowledge that the Escrow Agent is holding the Escrow Amount at their request and for their convenience only, and the Escrow Agent will not be deemed the agent of any of the Parties in respect of the escrow.
- 5.8 The Parties acknowledge that the Escrow Agent has acted and is acting as legal counsel to the Lender and further that the Escrow Agent has acted as counsel to the Lender in connection with the Term Sheet and Commitment and transactions contemplated therein and in negotiating and establishing this Escrow Agreement. Each of the Parties consents to the Escrow Agent continuing to act for the Lender in respect of any matter arising in relation to this Escrow Agreement, including any dispute regarding the disposition of the Closing Documents. The Escrow Agent will not be impeachable or accountable because of any conflicting or potentially conflicting duty to, or any advice provided by, the Escrow Agent to the Lender.
- 5.9 This Escrow Agreement will terminate, and the Escrow Agent will have no further responsibility under the terms of this Escrow Agreement and will be released and discharged from all claims and liabilities relating to the Escrow Amount and any interest accrued thereon, and the Escrow Agent will not be subject to any claims made by or on behalf of any Party hereto, upon the later of:
- (a) the date that the Escrow Agent releases the balance of the Escrow Amount being held by it pursuant to Article 3 of this Escrow Agreement; or

- (b) delivery of the Escrow Amount into court.

Article 6 – General Provisions

- 6.1 The Escrow Agent may, at any time, resign from its obligations under this Escrow Agreement and be discharged from all further duties and liabilities hereunder by giving each of the Parties at least 30 days' notice in writing of its intention to resign. The Parties will immediately upon receipt of such notice, jointly appoint a new person to act in the place of the Escrow Agent and if they fail to agree on such appointment, any of the Parties or the Escrow Agent may apply to a justice of the court on such notice as such justice may direct for the appointment of a new escrow agent. Upon any new appointment, the new escrow agent will be vested with the same powers, rights, duties and obligations as if it had been originally named the escrow agent.
- 6.2 Any notice or other communication required or permitted to be given by this Escrow Agreement will be in writing and will be effectively given and made if (i) delivered personally; or (ii) sent by prepaid courier service; or (iii) sent by registered mail; or (iv) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Lender: **Barbican Capital Partners, LLC**
405 Lexington Avenue, Suite 2600
New York, New York 10174
Attention: Benny Leung
Email: bleung@barbicap.com

With a copy to: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

If to the Borrower: **Alberta Foothills Properties Ltd.**
3505 – 18th Street SW
Calgary, AB T2T 4T9
Attention: Drew Atkins
Email: drew.bland@me.com

With a copy to: **D. Allison Professional Law Corporation**
2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6
Attention: Douglas V. Allison
Email: Doug@allison-associates.ca

If to the Escrow Agent: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

or at such other address as the party to whom such notice is to be given will have last notified the party giving the same in the manner provided in this Section 6.2. Any notice personally delivered

to the party to whom it is addressed as provided above will be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice will be deemed to have been given and received on the next Business Day. Any notice transmitted by facsimile, e-mail or other form of electronic communication will be deemed given and received on the first Business Day after its transmission, provided that confirmation of receipt has been obtained by the party delivering such notice. Any notice delivered by means of prepaid courier will be deemed to have been delivered on the second Business Day following the date on which the same has been sent via courier. Any notice delivered by means of registered mail will be deemed to have been delivered on the fifth Business Day following the date of mailing.

- 6.3 Neither the rights nor the obligations of any Party arising from this Escrow Agreement will be assignable without the prior written consent of the other Parties.
- 6.4 This Escrow Agreement may only be modified or amended by an agreement in writing signed by all of the Parties hereto.
- 6.5 Subject as aforesaid, this Escrow Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.
- 6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 6.7 Where the context requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.
- 6.8 This Escrow Agreement constitutes the only contract between the Parties pertaining to the subject matter thereof. No waiver of any of the provisions of this Escrow Agreement will be deemed or will constitute a waiver of any other provisions (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.9 Time will be of the essence of this Escrow Agreement.
- 6.10 The Parties hereto acknowledge that this agreement has been prepared by the law firm MLT Aikins LLP, as solicitors for the Lender, and that each of the other Parties hereto has been advised to obtain independent legal advice and has either done so or waived its right to do so.
- 6.11 This Escrow Agreement may be signed and delivered in counterparts, each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Escrow Agreement may be transmitted by facsimile or email attachment and the reproduction of signatures in such manner will be binding as if originals. Each Party undertakes to provide each and every other Party hereto with a copy of this Escrow Agreement bearing original signatures forthwith upon request.

[Signature page follows.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.

BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President

ALBERTA FOOTHILLS PROPERTIES LTD.

Per: _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

Per: _____
Name: Saravan J. Veylan
Title: Partner

This is exhibit " D " referred to
in the affidavit of

Die. Atleirs

sworn before me this 21st

day of September, 2020

RL

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made effective as of the 7th day of November, 2019 (the "**Effective Date**").

AMONG:

BARBICAN CAPITAL PARTNERS, LLC

(the "**Lender**")

AND:

ALBERTA FOOTHILLS PROPERTIES LTD.

(the "**Borrower**")

AND:

MLT AIKINS LLP

(the "**Escrow Agent**")

BACKGROUND

- A. The Lender and the Borrower (collectively, the "**Parties**" and each a "**Party**") have entered into a term sheet (the "**Term Sheet**") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "**Commitment**") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.
- B. The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the "**Escrow Amount**"), being a portion of the Commitment Fee set out in the Term Sheet.
- C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.
- D. Capitalized words and expressions used in this Escrow Agreement but not otherwise defined herein will have the meanings ascribed thereto in the Term Sheet. For the purposes of this Escrow Agreement, the term "**Business Day**" means any day in which main branch of TD Canada Trust in Calgary, Alberta is ordinarily open for business and "**Business Days**" means more than one of them.

TERMS OF AGREEMENT

In consideration of the Parties' continued negotiation of the Commitment, and of their respective covenants and agreements hereinafter contained, it is hereby agreed by and among the Parties hereto as follows:

Article 1 – Escrow

1.1 **Appointment of Escrow Agent.** The Lender and the Borrower hereby appoint the Escrow Agent to act as escrow agent on the terms and conditions set forth in this Escrow Agreement, and the Escrow Agent accepts such appointment on such terms and conditions.

1.2 **Delivery of Escrow Amount.** Concurrent with the execution and delivery of this Escrow Agreement, the Borrower will deliver the Escrow Amount, which amount will represent a portion of the Commitment Fee set out in the Term Sheet, to the Escrow Agent by wire transfer to the following account:

Account Holder Name:	MLT AIKINS LLP, IN TRUST
Account Holder/Address:	2600 - 1066 West Hastings Street Vancouver, BC V6E 3X1
Bank Name/Address:	TD Canada Trust Toronto Dominion Tower Branch 700 W Georgia St Pacific Centre Vancouver, BC V7Y 1A2
Account Number:	0902-5416541
Transit Number:	94000
Bank Number:	004
Swift:	TDOMCATTOR
ABA:	026009593

1.3 **Holding of Escrow Amount.** Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Amount in escrow for the period commencing on the Effective Date until the later of the dates on which the Escrow Agent is required to release the Escrow Amount, or portions thereof, in accordance with Article 3 and Section 5.9 below.

Article 2 – Delivery of the Loan Commitment

2.1 **Entry into Loan Commitment.** Upon receipt of the Escrow Amount from the Borrower, the Escrow Agent will provide the Lender with written notice of receipt of the Escrow Amount (the "**Receipt Notice**"). Within seven Business Days of the Lender's receipt of the Receipt Notice from the Escrow Agent, the Lender will cause its solicitor to deliver to the Borrower or its solicitor a draft form of Commitment as contemplated by the Term Sheet. The Parties will negotiate and finalize the Commitment in good faith. Upon execution of the Commitment, the Parties will deliver the executed Commitment to the Escrow Agent, to be held in escrow by the Escrow Agent with irrevocable instructions to deliver the fully-executed Commitment to both Parties only in accordance with Article 3 below.

Article 3 – Payment of Escrow Monies

3.1 **Payment of the Escrow Amount.** The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

- (a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

- i. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay \$50,000 CAD of the Escrow Amount to the Lender in such manner as requested by the Lender from time to time; and
- ii. upon receipt of written notice from the Lender with acknowledgment by the Borrower that the remaining due diligence contingencies listed in the "**Due Diligence Contingencies**" section of the Commitment have been fully satisfied by Borrower and/or waived by Lender, the Escrow Agent will release the balance of the Escrow Amount, being \$250,000 CAD, to the Lender within two Business Days. Upon the release of the remaining Escrow Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully-executed Commitment; and
- iii. notwithstanding Section 3.1(a)(ii) above, if the Escrow Agent receives written notice jointly by both Parties that any of the Due Diligence Contingencies cannot be satisfied and the Parties jointly elect to terminate the Commitment, the Escrow Agent will:
 1. provide the Lender with a written demand for a summary of its expenses related to the Term Sheet, this Escrow Agreement, and the Commitment and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice"), which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses. The Lender's expenses appearing on any Expense Notice related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes of the Lender are hereby approved by the Borrower;
 2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first \$50,000 CAD as a break fee to the Lender;
 - b. second the amount set out in the Expense Notice to the Lender; and
 - c. third, the balance to the Borrower,in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused; and
- iv. notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii)

and (iii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;
2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first the amount set out in the Expense Notice to the Lender; and
 - b. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;

(b) upon the Escrow Agent's receipt of written notice by either Party, copying the other Party, in a form satisfactory to the Escrow Agent, acting reasonably, that the Parties have not entered into the Commitment within seven Business Days of the receipt of the Commitment by the Borrower pursuant to Section 2.1 above, the Escrow Agent will:

- i. provide the Lender with a written demand an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and
- ii. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 1. first to the Lender, the amount set out in the Expense Notice; and
 2. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(b)(ii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement.

Article 4 – Investment of Escrow Amount

4.1 The Escrow Amount will be held by the Escrow Agent in a non-interest-bearing account in accordance with its standard trust fund procedures. The Lender and the Borrower, as applicable, will assume any obligations imposed now or hereafter by any applicable tax law with respect to any payment of the Escrow Amount to the Lender or the Borrower under this Escrow Agreement.

Article 5 – Protection of Escrow Agent

- 5.1 Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term or condition of any contract or agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.
- 5.2 The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Parties to this Agreement hereby agree will govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:
- (a) except for the Escrow Agent's own acts of negligence or wilful misconduct, the Escrow Agent will not be liable for any act done or step taken or omitted to be done or taken by the Escrow Agent, or for any mistake of fact or law or error in judgment;
 - (b) the Escrow Agent may at any time consult with, and obtain advice from, legal counsel (who may be selected by the Escrow Agent, in its sole discretion) in the event of any question as to any of the provisions hereof or the Escrow Agent's duties hereunder, and will incur no liability and will be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel; and
 - (c) the Escrow Agent will have no duties except those which are expressly set forth herein, and will not be bound by any Indemnity Claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by the appropriate parties.
- 5.3 In the event that:
- (a) any action is threatened or instituted against the Escrow Agent;
 - (b) any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the Escrow Amount; or
 - (c) at any time the Escrow Agent is uncertain as to its obligations hereunder;
- the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligations hereunder. In such event, or if any other person should apply to a court of competent jurisdiction on any matter affecting the obligations of the Escrow Agent hereunder or otherwise relating to the Escrow Amount, the Escrow Agent may and is hereby authorized to release, deliver or otherwise deal with the Escrow Amount in accordance with the direction, order, judgment or decree of such court. The Escrow Agent may deliver the Escrow Amount (or outstanding balance thereof) in to court pending resolution of a dispute among the Parties.
- 5.4 The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the

Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow Agent's fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent will be reasonably compensated by the Borrower for such additional extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, again all of which will be paid by the Borrower alone, and the Lender will have no obligation or liability therefor.

- 5.5 The Escrow Agent will incur no liability hereunder or in connection herewith for anything whatsoever other than as a result of its own negligence or willful misconduct. The Lender and the Borrower will indemnify, hold harmless and defend the Escrow Agent from and against any and all actions, causes of action, claims, demands, damages, losses, costs, liabilities and expense, of any nature or kind, including reasonable legal fees, which may be made or brought against it by any third party (which, for greater certainty, does not include any of the Parties hereto), or which it may suffer or incur in connection with any such third party claim, as a result of or in respect of or arising out of its appointment as Escrow Agent hereunder, except such as will result solely and directly from its own negligence or willful misconduct.
- 5.6 Notwithstanding anything contained herein, in the event of any disagreement between the Parties hereto resulting in adverse claims or demands with respect to the Escrow Amount, the Escrow Agent will be entitled, at its option to refuse to comply with any claims or demands on it with respect thereto as long as such disagreement will continue, and in so refusing, may elect not to make delivery of the Escrow Amount in accordance with this Escrow Agreement. In so doing, the Escrow Agent will not be or become liable in any way to the Parties hereto for its failure or refusal to comply with such claims or demands. The Escrow Agent will be entitled to refrain from acting or refusing to act until such claims or demands: (a) will have been finally determined in a court of competent jurisdiction; or (b) will have been settled by agreement and the Escrow Agent will have been notified thereof by the Lender and the Borrower in writing.
- 5.7 The Parties acknowledge that the Escrow Agent is holding the Escrow Amount at their request and for their convenience only, and the Escrow Agent will not be deemed the agent of any of the Parties in respect of the escrow.
- 5.8 The Parties acknowledge that the Escrow Agent has acted and is acting as legal counsel to the Lender and further that the Escrow Agent has acted as counsel to the Lender in connection with the Term Sheet and Commitment and transactions contemplated therein and in negotiating and establishing this Escrow Agreement. Each of the Parties consents to the Escrow Agent continuing to act for the Lender in respect of any matter arising in relation to this Escrow Agreement, including any dispute regarding the disposition of the Closing Documents. The Escrow Agent will not be impeachable or accountable because of any conflicting or potentially conflicting duty to, or any advice provided by, the Escrow Agent to the Lender.
- 5.9 This Escrow Agreement will terminate, and the Escrow Agent will have no further responsibility under the terms of this Escrow Agreement and will be released and discharged from all claims and liabilities relating to the Escrow Amount and any interest accrued thereon, and the Escrow

Agent will not be subject to any claims made by or on behalf of any Party hereto, upon the later of:

- (a) the date that the Escrow Agent releases the balance of the Escrow Amount being held by it pursuant to Article 3 of this Escrow Agreement; or
- (b) delivery of the Escrow Amount into court.

Article 6 – General Provisions

- 6.1 The Escrow Agent may, at any time, resign from its obligations under this Escrow Agreement and be discharged from all further duties and liabilities hereunder by giving each of the Parties at least 30 days' notice in writing of its intention to resign. The Parties will immediately upon receipt of such notice, jointly appoint a new person to act in the place of the Escrow Agent and if they fail to agree on such appointment, any of the Parties or the Escrow Agent may apply to a justice of the court on such notice as such justice may direct for the appointment of a new escrow agent. Upon any new appointment, the new escrow agent will be vested with the same powers, rights, duties and obligations as if it had been originally named the escrow agent.
- 6.2 Any notice or other communication required or permitted to be given by this Escrow Agreement will be in writing and will be effectively given and made if (i) delivered personally; or (ii) sent by prepaid courier service; or (iii) sent by registered mail; or (iv) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Lender: **Barbican Capital Partners, LLC**
405 Lexington Avenue, Suite 2600
New York, New York 10174
Attention: Benny Leung
Email: bleung@barbicap.com

With a copy to: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mлтаikins.com

If to the Borrower: **Alberta Foothills Properties Ltd.**
3505 – 18th Street SW
Calgary, AB T2T 4T9
Attention: Drew Atkins
Email: drew.bland@me.com

With a copy to: **D. Allison Professional Law Corporation**
2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6
Attention: Douglas V. Allison
Email: Doug@allison-associates.ca

If to the Escrow Agent: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

or at such other address as the party to whom such notice is to be given will have last notified the party giving the same in the manner provided in this Section 6.2. Any notice personally delivered to the party to whom it is addressed as provided above will be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice will be deemed to have been given and received on the next Business Day. Any notice transmitted by facsimile, e-mail or other form of electronic communication will be deemed given and received on the first Business Day after its transmission, provided that confirmation of receipt has been obtained by the party delivering such notice. Any notice delivered by means of prepaid courier will be deemed to have been delivered on the second Business Day following the date on which the same has been sent via courier. Any notice delivered by means of registered mail will be deemed to have been delivered on the fifth Business Day following the date of mailing.

- 6.3 Neither the rights nor the obligations of any Party arising from this Escrow Agreement will be assignable without the prior written consent of the other Parties.
- 6.4 This Escrow Agreement may only be modified or amended by an agreement in writing signed by all of the Parties hereto.
- 6.5 Subject as aforesaid, this Escrow Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.
- 6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 6.7 Where the context requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.
- 6.8 This Escrow Agreement constitutes the only contract between the Parties pertaining to the subject matter thereof. No waiver of any of the provisions of this Escrow Agreement will be deemed or will constitute a waiver of any other provisions (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.9 Time will be of the essence of this Escrow Agreement.
- 6.10 The Parties hereto acknowledge that this agreement has been prepared by the law firm MLT Aikins LLP, as solicitors for the Lender, and that each of the other Parties hereto has been advised to obtain independent legal advice and has either done so or waived its right to do so.
- 6.11 This Escrow Agreement may be signed and delivered in counterparts, each of which may be executed by DocuSign, and each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Escrow Agreement may be transmitted by facsimile or email attachment or DocuSign and the reproduction of signatures in such manner will be binding as if originals. Each Party undertakes to provide each and every other Party hereto with a copy of this Escrow Agreement bearing original signatures forthwith upon request.

[Signature page follows.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.

BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President
Wang E

ALBERTA FOOTHILLS PROPERTIES LTD.

Per: _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

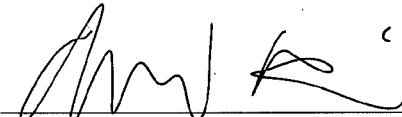
Per: _____
Name: Saravan J. Veylan
Title: Partner

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.


BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President

ALBERTA FOOTHILLS PROPERTIES LTD.

Per:  _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

Per:  _____
Name: Saravan J. Veylan
Title: Partner

This is exhibit "E" referred to
in the affidavit of

Dieu Atkinson

sworn before me this 26th

day of September, 2020



A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

January __, 2020

Alberta Foothills Properties Ltd.
3505-18th Street SW
Calgary, AB T2T 4T9

Attention: Drew Atkins, President and Director

Re: C\$30 Million First Mortgage Development and Construction Loan for Phase I of a multi-phase master-planned community ("MPC") known as "Wind Walk" located at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Project")

Gentlemen:

Based upon recent discussions between Barbican Capital Partners, LLC, a Delaware limited liability company (the "Lender") and you, and based on Lender's (and its Investment Committee's) preliminary review and relying upon the information which you have previously provided to us, the Lender is pleased to confirm its willingness to offer a C\$30,000,000 secured loan facility (the "Facility" or the "Loan") to Alberta Foothills Properties Ltd., subject to the terms and conditions set forth in this letter (the "Commitment Letter"), including, without limitation, the paragraph below entitled "Due Diligence". It is understood and agreed that the terms and conditions herein contained and of the Facility are not limited to those set forth in this Commitment Letter and in Exhibit A annexed hereto and made a part hereof. The Lender reserves the right to modify and/or supplement such terms and conditions at any time after the date hereof, based on events occurring after the date hereof, on the results of the due diligence described in this Commitment Letter or otherwise, in its sole discretion.

Lender: Barbican Capital Partners, LLC or its designee and/or affiliate.

Borrower: Alberta Foothills Properties Ltd., a single purpose and bankruptcy-remote entity duly incorporated and existing under the laws of the Province of Alberta, and authorized to carry on business therein, subject to commercially reasonable practices under the laws of the Province of Alberta and the laws of Canada applicable therein (collectively, "Applicable Canadian Law") as to be advised by MLT Aikins LLP (the "Lender's Local Counsel") in Lender's Local

Counsel's sole and absolute discretion, that holds title to the land on which the Project is being developed (the "Borrower"). The final organizational structure of Borrower, along with all documentation supporting such structure, shall be subject to the approval of Lender in its sole discretion. The Principals and Borrower shall make certain representations, warranties and covenants concerning the organization of Borrower and Guarantors (as hereinafter defined) to be set forth in the Loan Documents (as hereinafter defined) and Borrower shall make certain representations, warranties and covenants concerning its organization to be set forth in the Loan Documents. The Facility will be a full recourse obligation of the Borrower.

The "Sponsor" shall be 1067803 Alberta Ltd.

The "Principals" shall be Drew Gordon Atkins and/or any other individual to be approved by Lender based on due diligence.

Guarantors:

Upon completion of Lender's due diligence of the Project (as hereinafter defined) and the financial conditions and creditworthiness of the Sponsor and Principal but prior to the closing of the Facility, Lender may require, in its sole and absolute discretion, that any or all of the Sponsor or Principal on a joint and several basis (or an alternate individual or corporate entity acceptable to Lender) (the "Guarantors") provide any or all of the following guaranties to Lender in form satisfactory to Lender:

- Standard Non-Recourse Carve-Out Guaranty (which shall include fraud and intentional misrepresentation, any voluntary act of bankruptcy of Borrower, and other standard non-recourse carveouts).
- A Completion and Carrying Guarantee.
- A limited guarantee in an amount to be determined upon the finalization of the Final Project Budget (as hereinafter defined) in form and by a guarantor satisfactory to Lender
- Project Cost Overrun and Recourse Guaranty (which shall include due prompt and punctual completion of all improvements in accordance with approved plans and specifications, payments of all "hard costs" and all "soft costs" and expenses incurred in connection with such completion (including interest) and payments of all overruns in excess of items reflected in the Final Project Budget). Any and all cost overruns of the Project will be the sole

responsibility of Borrower, Sponsor, and Principal.

- Any other Guarantee that Lender deems necessary upon completion of due diligence.

In connection with making such guarantees, Guarantors shall additionally provide with any and all certificates and other documents required to be issued pursuant to the *Guarantees Acknowledgment Act* (Alberta).

Project: Phase I of a multi-phase, master planned community known as "Wind Walk" located on a site (approximately 144.66 acres of land (the "Land")) at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Property") based on a master plan ("Master Plan") to be approved by Lender.

Facility Amount: C\$30,000,000 subject to due diligence and underwriting of all relevant aspects of the Project (e.g., site and market feasibility, credit, legal and tax arrangements, etc.). It is contemplated that the Loan shall be structured and funded into two tranches: (i) a senior tranche in an amount equal to the least of (a) 60% of Lender's approved "as is" appraised value of the Project as determined by a MAI Appraisal or an equivalent appraisal acceptable to Lender in its sole and absolute discretion (the "Appraisal") to be obtained by Lender prior to the closing of the Facility, (b) 60% Loan-To-Costs (based on Lender's approved Total Project Costs (as hereinafter defined)) and (c) C\$22,000,000 ("Tranche A Loan") and (ii) a mezzanine tranche of an amount equal to the least of (x) 20% of Lender's approved "as is" appraised value of the Project as determined by the Appraisal, (y) 20% Loan-To-Costs, and (z) C\$8,000,000 ("Tranche B Loan"). The final loan amount for each of the Tranche A Loan and the Tranche B Loan shall be determined upon the occurrence of all of the following (A) completion of due diligence, (B) the receipt and approval of the Appraisal and such other material as reasonably requested by Lender for its final underwriting purposes, and (C) the determination of the Final Project Budget.

The Facility is non-revolving and shall mature at the end of the Facility Term (as hereinafter defined). After expiration of the Facility Term, subject to any applicable extensions described herein or termination of the Facility, no additional Advances (as hereinafter defined) shall be made hereunder.

Upon closing of the Facility, the Facility shall be advanced (the "Advance") to and used by the Borrower for the purposes described herein subject to the satisfaction of all conditions precedent to such Advance established in the Loan Documents and based upon the results of the Lender's due diligence with respect such Advance and the Borrower's compliance with the terms of the Loan Documents.

Equity

Requirement:

Borrower shall provide a total cash equity contribution (or quasi equity contribution approved by the Lender in its sole and absolute discretion) equal to the difference between the Total Project Costs (approved by the Lender upon completion of due diligence) and the Loan ("Borrower's Equity"). Lender shall determine the final amount of the Borrower's equity requirement (the "Equity Requirement") within five (5) Business Days after the occurrence of the following events: (i) Borrower's delivery of the final GMP Contract (as hereinafter defined) for the Project, (ii) Lender's receipt of a final report (the "Construction Review Report") from Lender's Construction Consultant (as hereinafter defined) that concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project (which review and report shall also include for the avoidance of doubt the Lender's Construction Consultant's approval of the GMP Contract and the Construction Management Contract), and (iii) verification of Borrower's equity contributed to such point into the Project. Borrower shall grant prompt access to Lender's accountants and consultants upon execution of this Commitment Letter to Borrower's books and records in order for such accountants and consultants to verify the contribution of the Equity Requirement. Evidence of such contribution will constitute cancelled checks or wire transfer receipts (if funds were already disbursed into the Project) along with bank statements or any other form acceptable to Lender.

Manager:

Borrower shall manage the Project. Lender shall hire a third-party consultant to monitor the progress of the construction and development of the Project. The expenses for such hire shall be borne by Borrower.

Plans & Specs:

Lender and the Lender Construction Consultant shall be satisfied with its review of all the plans and specifications.

GMP Contract:

The Project shall have a guaranteed maximum price contract ("GMP Contract") in form and substance satisfactory to Lender. The GMP

Contract shall be performed by a qualified GC (as hereinafter defined) satisfactory to Lender. In addition, in Lender's sole discretion, the GC shall provide (i) a performance bond from a major insurance company or a financial institution satisfactory to Lender or (ii) a standby letter of credit to guarantee such performance in form and from a financial institution satisfactory to Lender.

Total Project Costs: Total Project Costs will include the interest expense on the Facility, "soft" and "hard" costs of the construction of the improvements of the Project and other carrying and development costs, establishment of required reserves, and closing costs associated with the Facility.

Total Project Costs shall be subject to review and verification by the Lender. Upon satisfactory completion of its due diligence, Lender shall put forth a final project budget ("Final Project Budget") that will be final for purpose of Lender's underwriting of the Loan.

Facility Term: Thirty-six (36) months from the closing of the Facility.

Extension Option: Borrower shall be entitled to one extension of twelve (12) months upon satisfaction of the following conditions for such extension: (a) no Event of Default or default shall have occurred and then be continuing, (b) Borrower shall have paid to Lender an extension fee equal to 1% of the principal balance of the Facility, and (c) Borrower shall have given Lender not more than 120 days nor less than 30 days' notice of such extension.

Pre-Sale

Contracts/Deposits: Borrower acknowledges that the "pre-sales" aspect is a crucial consideration for Lender to consider the provision of the Loan. Upon the execution of this Commitment Letter and upon Borrower's submission of relevant information and future marketing plan for Phase 1 regarding such "pre-sales", Lender shall establish the exact pre-sales requirement of the Project (the "Pre-Sale Requirement"). The Loan Documents shall provide that all pre-sale deposits relating to the sales of lots shall (i) for pre-sale deposits relating to any "unit" (as defined in the *Condominium Property Act* (Alberta)), be held in trust by a prescribed trustee in compliance with the provisions of the *Condominium Property Act* (Alberta), (ii) for pre-sale deposits paid by individuals who are residents of British Columbia, be held in trust by a brokerage, lawyer, notary public or prescribed person in compliance with the provisions of the *Real Estate Development Marketing Act* (British Columbia), and (iii) otherwise be placed in

escrow and released to (a) the Lender upon commencement of construction as a prepayment of the Tranche A Loan, or (b) the unit purchaser if commencement of construction does not occur on the date as specified under the agreement for sale (unless mutually extended). Exceptions will be approved by Lender, such approval not to be unreasonably withheld.

Distribution to Equity:

No equity distributions by Borrower to any of its partners (general or limited), shareholders, Sponsor, directors and Principals will be permitted without the Lender's prior written consent until the Facility has been repaid in full.

Interest Rate:

Tranche A Loan: The non-default floating interest rate ("Based Rate") equal to the higher of (i) Bank of Canada Prime rate (as announced in the Daily Digest published by Bank of Canada from time to time) + 4% or (ii) 3-month Canada Dollar Offer Rate (CDOR) (as published by Thomson-Reuters from time to time) + 5.5%. Interest shall be payable current via cash flow and/or Interest Reserve (as hereinafter defined) during the loan period and such amount shall be incorporated into the Total Project Costs.

Tranche B Loan: Interest rate of 8% per annum ("Fixed Rate"), fixed and payable monthly in arrears.

To the extent permitted by law, Borrower waives the provisions of the *Judgment Interest Act* (Alberta).

Payments:

Interest on the Tranche A Loan and the Tranche B Loan shall be calculated on an actual day elapsed 360 basis. All interest accrued shall be due and payable at the end of the Loan Term as it may be extended. Interest on the Loan (i.e., each of the Tranche A Loan and the Tranche B Loan) shall be paid monthly from the Interest Reserve until such Interest Reserve has been fully advanced. The inadequacy, if any, of such Interest Reserve shall not relieve Borrower of its obligation to make interest payments on a timely basis.

Interest Reserve:

An interest reserve will be established promptly after the finalization of the Final Project Budget, in an amount to be determined by the Lender prior to the closing of the Facility but sufficient to fully fund the payment of interest for the Facility during the initial Facility Term, which reserve shall be maintained at a financial institution designated by the Lender, and which reserve may, in the Lender's

sole discretion, be financed with the proceeds of the Facility (the "Interest Reserve"). The Interest Reserve shall be used to secure the Borrower's obligations under the Loan Documents, including, without limitation, the obligation to pay interest as the same becomes due.

Additional Reserves: Borrower shall establish necessary reserves (expected to be satisfied by adequate provisions in the Final Project Budget and related undrawn proceeds of the Facility) including, without limitation, for taxes and insurance, and for specific operating expenses of Borrower identified by Lender to be excluded from the Final Project Budget.

Insurance: The Property including the improvements thereon, Borrower, the GC and all subcontractors will be covered by insurance at limits, with deductibles and by carriers customary for similar transactions consummated by Lender. Insurance policies may not exclude coverage for events related to terrorism.

Cash Flow Sweep: To the extent that there is available cash flow (including 100% of net proceeds from the sale of each improved lot), 100% of all such cash flow less any approved working capital shall be put into a "lock box" and shall be used to (i) first, pay any accrued and unpaid interests on the Facility, (ii) second, prepay or repay the Facility and (iii) lastly, pay the Exit Fee (as hereinafter defined) and the Make Whole Amount (as hereinafter defined).

Release: Lender shall release its lien upon each relevant improved lot upon its receipt of the net payment for each such improved lot.

**Purpose/
Use of Proceeds:** Subject to the terms and conditions contained herein and in the Facility's Loan Documents, the Loan together with the Equity Requirement (as hereinafter defined) shall be used by the Borrower solely to (i) retire an existing loan with Alberta Treasury Branches in an amount of approximately C\$11,600,000 (to be verified by Lender during due diligence), (ii) advance certain pre-construction costs approved by Lender pursuant to the Master Plan, and (iii) pay for all closing and related costs approved by Lender.

Upon the retirement of the foregoing loan with Alberta Treasury Branches, the Borrower shall be required to obtain and register discharges for (or otherwise cause the discharge of) any and all

encumbrances registered against title to the Property relating to such loan.

Closing: The date of the execution and delivery of definitive Loan Documents for the Facility (the "Closing Date") is anticipated to occur on or about March 31, 2020, or such later date as determined by the Lender, in its sole discretion.

Prepayment: Any partial prepayments made pursuant to the "Cash Flow Sweep" section above are allowed with no prepayment penalty, provided that any such prepayment shall not be less than C\$1,000,000 Canadian Dollars per occurrence. Prepayment of the Tranche A Loan shall be permitted with the payment of the Exit Fee. Prepayment of the Tranche B Loan shall be permitted with the payment of the Make Whole Amount.

Exit Fee and Make Whole Amount: Tranche A Loan: 2% exit fee (the "Exit Fee") payable at prepayment, repayment or maturity.

Tranche B Loan: At any prepayment, repayment or maturity of the Tranche B Loan, including as a result of an acceleration after a default, the Borrower shall pay Lender, in addition to any unpaid interest and principal, a lump sum amount which, when taking into account the payment of the Loan fees and interests, shall yield Lender an overall internal rate of return (IRR) of 15% (the "Make Whole Amount").

Default Rate: Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) on unpaid principal, interest and other amounts secured by the Loan Documents, payable on demand.

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)).

Late Charge: Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) of the amount then due and payable (other than the payment on the maturity date).

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)) of the amount then due and payable (other than the payment on the maturity date).

Security:

Each of the Tranche A Loan and the Tranche B Loan and all obligations of the Borrower under the Loan Documents shall be fully recourse to the Borrower and shall be secured by:

1. A promissory note executed by Borrower in favor of Lender with respect to the Facility.
2. A first priority (and with respect to the Tranche B Loan, second priority) mortgage and assignment of rents over the Borrower's interest in the Property granted by the Borrower (the "Legal Mortgage").
3. Stock pledges of Sponsor.
4. A first priority or ranking all assets general security agreement under Applicable Canadian Law granted by the Borrower (including an assignment of all key construction and development documents and step-in rights where appropriate), together with a security agreement under New York law and a UCC-1 financing statement.
5. An assignment of all rights of the Borrower's title and interest in and to the Project including all agreements related to the Property.
6. A first priority or ranking perfected security interest in all fixtures, furnishings and equipment at the Project now owned and hereafter acquired by the Borrower, together with any financing statement or other perfection instrument required under Applicable Canadian Law.
7. A collateral assignment of all the material construction-related contracts including, without limitation, the architect's agreement and all other construction and development agreements, including any GC's agreements and subcontractors' agreements (including the GMP), and collateral assignment of the plans and specifications for the Project.
8. A mortgagee's policy of title insurance (the "Title Insurance Policy") or Canadian equivalent with respect to the Legal Mortgage, satisfactory to the Lender, its insurance advisors, and Lender's Local Counsel in their sole and absolute discretion, in an amount equal to the Facility with such endorsements thereto

as the Lender may require insuring the first priority ranking of the Legal Mortgage in favor of the Lender.

9. An assignment of all proceeds and claims arising from damage to or condemnation of the Project and/or the improvements or a portion thereof.
10. An assignment of all inventory, accounts and general intangibles (including, without limitation, all contract rights, licenses, permits, entitlements and other customary documents).
11. If applicable, an assignment of all leases and occupancy agreements, if any, for the Project together with all rents, profits and issues therefrom (or Canadian equivalent). The assignment shall provide that the Lender has the right in its sole and absolute discretion to approve the form of leases to be used at the Project and require minimum standards with respect to rent, term and expense recoveries.
12. An assignment of all deposits (including purchase contract deposits under any purchase contracts for the lots).
13. A perfected security interest in all reserve accounts required under the Loan Documents.
14. Assignment of insurance.
15. Postponement and assignment agreement granted by the Sponsor and the Principals in favor of the Lender, postponing and assignment any right, title and interest in and to any payment owing by the Borrower to the Sponsor or Principals, as the case may be, to the Lender.
16. Any additional items which Lender and its New York and/or Canadian counsel may reasonably require in connection with the foregoing security interests.

Other customary items of security for a construction loan of this size and type, and together with items 1-16, collectively, the "Security Documents".

Documentation:

The closing of the Facility will be subject to (i) the negotiation, execution and delivery of a definitive loan agreement (including schedules, exhibits and ancillary documentation) (the "Facility

Agreement"), (ii) guaranties (if applicable), (iii) all of the Security Documents described in the previous "Security" section hereof, (iv) all waivers, postponements, subordination and priority agreements and other documents required by Lender to provide Lender with all such priority or ranking as required in the previous "Security" section hereof, (v) promissory note(s) evidencing the Facility, (vi) an environmental indemnity agreement executed by the Borrower, Sponsor and Principal, and (vii) such other and additional documentation as the Lender shall require, all containing terms and conditions as shall be satisfactory to the Lender and its counsel in all respects in their sole discretion (collectively, the "Loan Documents").

**Conditions
Precedent:**

The Lender's obligation to make the Facility available to the Borrower shall be subject to the satisfaction of certain conditions precedent which shall include, but shall not be limited to the following:

1. Receipt by Lender of its final Investment Committee's and Board of Directors' approval of the transaction contemplated by this Commitment Letter.
2. Satisfactory completion of Lender's legal, business and other due diligence and satisfactory completion of Lender's underwriting of the Project.
3. Receipt of any consents, third-party estoppels, subordination, non-disturbance and attornment agreements as required by Lender.
4. Loan Documents satisfactory to Lender which shall include, such terms and conditions as shall be required by the Lender and its counsel, including, without limitation, the terms and conditions outlined in this Commitment Letter, and in Exhibit A.
5. Satisfaction of closing conditions set forth in final documentation, including, without limitation, Loan Agreement, Security Agreement, Pledge Agreement, Guarantees, Promissory Notes, Performance Bonds, Subordination Agreement, Title Insurance Policies or Canadian equivalent (if applicable), Survey and Legal Opinions, each satisfactory to Lender.

6. Review and approval of design and construction items, including, contractors, plans and specifications, construction budgets, performance and payment bonds, construction contracts, subcontracts, design contracts, architect and design professional agreements, soils reports, licenses, permits and approvals relating to the construction by Lender.
7. Verification by Lender of the Equity Requirement.
8. Receipt of all organizational documents of Borrower, Sponsor and personal information of the Principal and all property related due diligence items Lender or its counsel deem necessary for the subject transaction.
9. Receipt of the total Project costs (the "Total Project Costs") (with a breakdown of line items) in form and substance acceptable to the Lender
10. Subject to Borrower's satisfaction of item 12 below, receipt of evidence satisfactory to Lender of the Project's compliance with all laws and zoning regulations, including, without limitation, issuance of all governmental permits.
11. Borrower has entered into Qualified Contracts for the sale of lots sufficient to meet the Pre-Sale Requirement, based on at least the approved minimum sales price schedule.
12. Approval of the general contractor ("GC") by Lender in its sole discretion, and receipt of a GMP Contract in an amount not more than provided for in the budget in form and substance approved by Lender and its construction consultant.
13. Approval of the Master Plan of the Project.
14. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsor or Principal, the Property, the Project or political, economic, capital markets, or other market conditions.
15. Receipt of payment and performance guaranty from the GC in the form of payment and performance bonds from insurers with ratings of A or better (from acceptable rating agency) and acceptable to Lender in its sole discretion, for the GC or, at

Lender's sole discretion and election, a standby letter of credit acceptable to Lender with respect to GC's performance in an amount and from a financial institutions acceptable to Lender in its sole discretion. Dual Obligee riders in favor of Lender will also be required for the performance bonds.

16. Receipt of marketing materials for the Project that comply with all applicable laws and regulations.
17. All relevant filings required by the Canadian authorities, to be made under the relevant laws and regulations and any other governmental or regulatory requirement relating to the Master Plan, have been accepted and approved by the appropriate agencies.
18. Environmental Site Assessment (or Canadian equivalent) from a qualified engineer acceptable to Lender to be received prior to closing of the Loan.
19. All guarantees in form and substance and financial condition of Guarantor all satisfactory to Lender in its sole discretion prior to closing of the Loan.
20. Prior to closing the Loan, Lender shall receive, review and accept an MAI Appraisal (or Canadian equivalent) which indicates an "as is" and "as completed" market value satisfactory to Lender in its sole discretions.
21. Lender's receipt of a feasibility report to be prepared by a consultant, all in form and content satisfactory to Lender to be received prior to the closing of the Loan.
22. Borrower shall deliver its full financial statements (i.e., Profit & Loss Statement, Balance Sheet and Cash Flow Statement) in either "Audited" or "Review" format based on GAAP (or local equivalent) under AICPA (or Canadian CICA) guidelines for the fiscal period ended December 31, 2017 and 2018 and a "stub" period ended September 30, 2019. The Audited or Review report (the "Financial Review") shall be prepared by a qualified certified public accountant or chartered accountant firm approved by Lender. The Financial Review shall be subject to review and approval by Lender and its accountant as a condition to closing.

23. In addition to the satisfaction of all other contingencies and conditions precedent contained herein, this Commitment Letter shall remain contingent and the closing of the Facility shall be predicated upon the Lender's Construction Consultant's receipt of the final GMP Contract, the Final Project Budget and the plans and specifications and such Lender's Construction Consultant's issuance of the Construction Review Report which concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project.
24. Review and approval of the due diligence contingencies listed on Exhibit B annexed hereto (the "Due Diligence Contingencies").
25. All usual and customary terms and conditions precedent for loan facilities of this size, type and purpose, together with such other terms and conditions as the Lender may require in its sole discretion, shall have been satisfied, including, without limitation:
 - a. Delivery of a certificate of a duly authorized signatory for Borrower and Sponsor containing an incumbency certificate and attaching: (i) its certificate of formation and by-laws, (ii) its resolutions authorizing the transactions, and (iii) good standing certificates, in each case in form and substance acceptable to the Lender and its counsel or the equivalent documents under the jurisdiction of formation of each entity.
 - b. Opinions of counsel to Borrower and Guarantors, in form and substance acceptable to the Lender and its counsel, including, without limitation, opinions as to such regulatory matters as the Lender and its counsel shall require and a "non-consolidation" opinion with respect to the Borrower.
 - c. Lender shall have received a lien search for Borrower and each Sponsor and Principal (including, without limitation, with respect to any assets acquired by the Borrower) and a background report on each Principal, and the results thereof shall be satisfactory to Lender and its counsel.
 - d. The Lender shall have received a litigation search for Borrower and each Sponsor and Principal and verification that there are not prior or pending actions, and the results thereof shall be satisfactory to the Lender and its counsel.

- e. The Lender shall have received a tax lien search for Borrower and each Sponsor and Principal, and the results thereof shall be satisfactory to the Lender and its counsel.
- f. The Borrower shall have paid all fees and disbursements of Lender and its counsel when due, except for those fees which are going to be paid from the Facility proceeds at closing.
- g. The Lender shall be satisfied in all respects with the Borrower's insurance and shall have received satisfactory certificates naming the Lender loss payee and additional insured.
- h. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.

**Representations
and Warranties:**

The Loan Documents shall include such representations and warranties as are usual and customary for loan facilities of this size, type and purpose, together with such other representations and warranties as the Lender or its counsel may require in their sole discretion, including, without limitation, representations and warranties relating to the existence, good standing, capacity, power and authority of the Borrower, the due authorization of all Loan Documents, receipt of all necessary governmental approvals and authorizations, ownership by each Guarantor of its assets, absence of liens or material litigation, payment of taxes and other material obligations, no material adverse change in any of Borrower's, Sponsor's or Principal's operations or financial condition, possession and validity of all licenses, permits, consents and authorizations to operate the Borrower's business as shall be deemed necessary or advisable by the Lender, solvency, compliance with agreements, compliance with laws, and litigation matters.

Covenants:

The Loan Documents shall include such affirmative and negative covenants as are usual and customary for loan facilities of this size, type and purpose, including, without limitation, financial covenants

(e.g. DSCR), covenants regarding insurance, covenants limiting distributions, due on sale and due on encumbrance covenants, covenants restricting the incurrence of debt, covenants restricting affiliate transactions, and covenants regarding the SPE status of the Borrower; together with such additional covenants as the Lender or its counsel may require in their sole discretion, including, without limitation, the following:

1. Prohibitions or limitations on additional indebtedness (other than customary trade payables) and guaranties
2. Prohibitions on granting liens on assets or permitting the existence of builders' liens on the Property (or any portion thereof).
3. Prohibitions on dividends, distributions and other restricted payments.
4. Prohibitions on transactions with affiliates, except on terms which are intrinsically fair and no less favorable to Borrower than would be obtained in an arms-length transaction with an unrelated third party.
5. Restrictions on issuance of stock, changes in ownership, capital structure and nature of business.
6. Prohibitions or limitations on capital expenditures (limitations shall be based on amounts set forth in Borrower's budget unless otherwise approved by Lender), acquisitions, asset sales (other than pre-sales in accordance with the terms of this Commitment Letter and the Facility) and exchanges, investments, mergers, sale lease-backs, lines of business, prepayments of other debt, restrictions on subsidiaries and transactions with affiliates.
7. The Borrower shall deliver to the Lender the following information (wherever applicable):
 - a. As soon as available and in any event within forty-five (45) days following the close of each fiscal quarter, copies of quarterly unaudited consolidated financial statements, certified by the chief financial officer of the Borrower.
 - b. As soon as available, and in any event, within ninety (90) days following the close of each fiscal year, financial statements prepared on a consolidated and consolidating basis in

accordance with generally accepted accounting principles applied on a consistent basis and audited by an independent certified public accountant (or Canadian equivalent) satisfactory to the Lender.

- c. Copies of tax returns filed by the Borrower for fiscal year 2018 and 2019 or promptly upon filing with the appropriate taxing authorities.
 - d. Copies of all registration statements, SEC forms 10-K, 8-K and 10-Q (or equivalents under Applicable Canadian Law) and all other information, forms, notices, applications and documents for all Borrower, Sponsor and Principal received or filed with all federal and state government agencies and authorities, including, without limitation, all reports, notices and correspondence filed with, sent to or received from the Securities and Exchange Commission or any state securities agency, HUD, any state banking authority or any regulatory authority in the jurisdiction of the Property.
 - e. Copies of (i) personal financial statements of Principal (to the extent such Principal is a Guarantor and natural person) as of December 31, 2019, and (ii) all financial statements, reports, written material notices and correspondence filed with, sent to or received from any state or federal agency or governmental body or otherwise made public by the Borrower or such agency or governmental body.
 - f. Such other information relating to the Borrower, Sponsor or the Principal as the Lender may request in its reasonable discretion.
8. Compliance with applicable real estate development marketing legislation.

No Borrower's Fees: Other than compensation and/or fees approved by Lender (except in the event of a default by the Borrower) as set forth in the Final Project Budget and paid in accordance with such Final Project Budget approved by Lender, no management fees or other similar compensation shall be payable to Borrower, Sponsor or Principal or their respective owners, directors, officers or employees during the Loan Term without the prior approval of Lender.

Events of Default: The Loan Documents shall contain such events of default as are usual and customary for credit facilities of this size, type and purpose, together with such other events of default as the Lender or its counsel may require in their sole discretion, including without limitation, nonpayment of principal, interest and other sums due the Lender after five (5) days following the date such payments are due, failure to keep the Facility "in balance" after a specified number of days following Borrower's receipt of notice from Lender, failure to remedy a breach of covenants, breach of representations and warranties, bankruptcy and insolvency related matters (including matters relating to creditor arrangements and receivership), change of control, ERISA issues (or issues under equivalent Applicable Canadian Law), violation of laws, material adverse change in the assets, business, operations or financial condition of the Borrower, Sponsor or Principal, violation of laws, and termination, suspension or non-renewal of material licenses, in each case after grace, notice, or cure periods as will be further defined in the loan documentation.

Recourse: Fully recourse to Borrower but not to Sponsor and the Principal; provided, however, (i) standard "bad-boy" recourse carve-outs (which shall include fraud and misrepresentation and any voluntary act of bankruptcy of Borrower) and environmental indemnity shall apply to Sponsor and the Principal and (ii) the Sponsor and the Principal shall guarantee the Project Cost overruns in excess of items reflected in the final approved Project Budget and lien-free completion of construction and also those obligations described in the "Guarantors" section if applicable.

Cost and Yield Protections: Standard provisions for illegality, increased costs or reduced return, including those arising from taxes, withholding and capital requirements.

Transferability: Except for partial releases described above, the Loan Documents shall provide that the Property and the direct and indirect ownership interests in Borrower shall not be directly or indirectly sold, transferred, encumbered, mortgaged or otherwise disposed of, in whole or in part, without Lender's consent.

Compliance with Law: Lender shall be satisfied that the Project complies with all applicable laws including, without limitation, planning and development, zoning, environmental, municipal, and tax laws. In addition to all

other requirements set out in this Commitment Letter, the Loan Documents as well as compliance with all applicable laws governing the Project, the Borrower shall ensure that prior to the transfer of any and all lots in the Project, it procures (at its own cost and expense) the registration of a subdivision plan (and any further subdivision, strata and/or condominium plans as required), bylaws and all requisite easements/rights of way/restrictive covenants (collectively, the "Registration Documents") for the Project, and provides any required municipal land dedications or payments in lieu thereof, all pursuant to Applicable Canadian Law (as revised and in accordance with their respective regulations). The Lender shall have the right to inspect and comment on the Registration Documents prior to submission to the Alberta Land Title Office.

Environmental: The Project shall be clear from any environmental issue as required under the applicable laws. Any documentation in connection with the clearance shall be of form and substance satisfactory to Lender and the Borrower shall provide an environmental assessment from the Alberta Energy Regulator relating to energy resource activity on the Property to the Lender. As applicable, any abandonment, reclamation and remediation costs and other environmental obligations relating to the Property shall be the sole responsibility of Borrower, and shall not be satisfied (in whole or in part) using the Loan without Lender's prior approval.

Approval: Among other approval rights, Lender will have sole approval rights with respect to admission of new partners or principals, changes to the Final Project Budget and sales agent arrangements. Agreements with each sales agent will be subordinated to the Facility. Lender shall be satisfied that the Borrower has secured all necessary approvals for the development of the Project. Such approvals include, without limitation, Master Plan, site, planning, designs, zoning, environmental, development agreement, building permit and any other relevant approvals as identified by Lender's Local Counsel.

Construction Consultant: Lender shall engage an independent consultant ("Lender's Construction Consultant") who will review the Final Project Budget and construction draws on a monthly basis. The closing of the Loan is predicated upon the Lender's receipt of an acceptable review of the budget and the Lender's Construction Consultant's conclusion that the budget is sufficient to complete the improvements.

Assignment: Borrower hereby specifically acknowledges that Lender shall reserve the right to transfer, syndicate, or sell part or whole of the Loan (which may be effectuated at the closing of the Loan or at any time thereafter). Borrower agrees to cooperate with any such transfer or sale but will only be responsible for its own costs. Borrower is prohibited to assign any of its rights under the Loan to any third-party without Lender's prior approval.

Structuring: Lender may, and Borrower shall fully cooperate with Lender to, structure all or part of the Facility, as a wraparound loan, co-lending facility (with or without agents), or other structure at no additional cost or financial exposure to Borrower.

Termination: This Commitment Letter may be terminated at Lender's option by Lender giving written notice to Borrower at the address set forth above upon the occurrence of any of the events or conditions described elsewhere in this commitment letter giving rise to such termination right (including, without limitation, under the provision entitled "Due Diligence" hereof), or upon any of the following events:

1. Any of Borrower's, Guarantors' or Principals' assignment for the benefit of its creditors, admission in writing of its inability to pay its debts as they become due, filing of a petition of bankruptcy or being adjudicated a bankrupt or insolvent, or voluntary filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation.
2. Any material adverse change in the condition of the Property or any of the Borrower, Guarantors or Principals (financial or otherwise), subsequent to the date of this Commitment Letter.
3. If any statement, representation or warranty made in any application, submittal or other written statements made to Lender by any of the Borrower, Guarantors or Principals in connection with the Facility shall prove to have been untrue or misleading when made in any material respect, or shall have failed to disclose information necessary to make such statement not materially misleading in light of the circumstances under which it was made.

4. If the Environmental Audit (as defined in Exhibit A hereto) discloses the presence of any existing or potentially hazardous material contamination or physical conditions that may result in such contamination of the Property.
5. If Lender has not received the Appraisal, Environmental Audit, the Construction Review Report, verification of Presale Contracts, the Financial Review and any other reports reasonably required by Lender, and approved them all by March 13, 2020, in its sole discretion.
6. If the Closing Date does not occur by March 31, 2020 unless otherwise extended by Lender, in its sole discretion.

Delay in the exercise of Lender's right to terminate this Commitment Letter shall not be construed as a waiver of any such right to terminate with regard to the occurrence of any specific event referred to above, and Lender's failure to act as to any such event shall not be construed as a waiver of its rights or remedies with respect to any subsequent event of default. Any termination of this Commitment Letter shall not affect Lender's rights to enforce, or any Borrower's and Principal's obligations under Section "Loan Fees" and Section "Expenses and Indemnification", including legal fees and disbursements, which rights shall survive any such termination. Upon termination of this Commitment Letter, the Lender shall have no further obligations hereunder except to return that portion of the Commitment Fee which has been received by Lender, and Expense Deposit subject to the terms and conditions set forth herein.

Loan Fees:

Commitment Fee: In consideration of the Lender's issuance of this Commitment Letter, the Borrower shall pay to the Lender a total commitment fee in the amount of two and one-half percent (2.5%) of the Facility (C\$750,000) (the "Commitment Fee"). Prior to the issuance of this Commitment Letter, Lender acknowledges that a portion of the Commitment Fee in the amount of C\$300,000 (the "Escrow Funds") from Borrower was deposited with MLT Aikins LLP pursuant to an escrow agreement by and among the Lender, the Borrower, and MLT Aikins LLP as the escrow agent, dated November 7, 2019 (the "Escrow Agreement"). The Commitment Fee shall be due and payable as follows: (a) C\$50,000 payable simultaneously at the execution of this Commitment Letter, with such funds to be released from the Escrow Funds, (ii) C\$250,000 payable when Lender approves the Due Diligence Contingencies in

Exhibit B, with such funds to be released from the Escrow Funds, and (iii) C\$450,000 payable at the earlier of (x) the closing of the Loan and to be funded from the Loan proceeds or (y) the expiration of the Commitment if the Loan does not close for any reason other than Lender's willful default. Notwithstanding the foregoing, if Lender is unable to approve the Due Diligence Contingencies by the date that is thirty (30) days after the date of execution of the Commitment Letter due solely to Borrower's failure to submit the required documentation under Exhibit B (the Due Diligence Contingencies) to Lender, then Borrower agrees to release from the Escrow Funds on the thirty-first (31st) day and pay to Lender an additional C\$50,000 Commitment Fee. If Borrower fails to deliver all of the required documentation under Exhibit B (the Due Diligence Contingencies) prior to the date that is sixty (60) days after the date of execution of the Commitment, then Lender shall have the unilateral right to terminate the Commitment and will incur no liability to Borrower. Under such circumstance, the remaining Escrow Funds shall be released from escrow and payable to Lender as liquidated damages for Lender's processing and preparation of the closing of the Loan. If the closing does not occur due to Borrower's failure to satisfy the conditions precedent to the closing or due to any other Borrower's default, then the total Commitment Fee of 2.5% shall be due immediately thereafter. Borrower, Sponsor and the Principal shall jointly and severally guarantee the payment of such Commitment Fee under such circumstance.

Legal Fees and Disbursements. Upon the execution of this Commitment Letter, Borrower shall deposit US\$25,000 with Lender or with Withers Bergman LLP, Lender's New York counsel (the "Expense Deposit"), which sum shall be used by Lender to defray on-going expenses in connection with the Facility, including, without limitation, to pay Lender's legal fees and disbursements in connection with the preparation, review and negotiation of this Commitment Letter, and thereafter such fees and disbursements as may be incurred in consummating the transactions that are the subject thereof. Borrower shall be obligated to pay all reasonable fees and disbursements of Lender's counsel (U.S. and Canadian) regardless of whether the Closing Date occurs.

Broker:

Nova Capital Advisors, Inc ("Nova"). Borrower shall enter into a fee agreement with Nova regarding its finder's fee for introduction of Lender to Borrower. The Borrower shall pay any brokerage or finder's fees, commissions or other compensation payable to Nova

in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.

Expenses and Indemnification:

Without limiting the Borrower's obligations contained elsewhere in this Commitment Letter, the Borrower will pay the out-of-pocket costs, fees and expenses of the Lender incurred in connection with its due diligence, the negotiation, preparation and closing of the Loan Documents regardless of whether any transaction contemplated hereby is therein consummated, and will provide indemnification thereto on terms and conditions that are usual and customary for a facility of this size, type and purpose, including, without limitation, costs, fees and expenses of the Lender in connection with the establishment (including, without limitation, legal fees and disbursements, due diligence expenses, fees of accountants, consultants and other third parties in connection with search, audit and appraisal services, filing, recording and registration fees, title insurance policy costs, and other costs and expenses) of, and fees, costs and expenses of the Lender in connection with, the preservation of its rights and the enforcement of the Facility; provided, however, in no event shall Borrower indemnify Lender for losses, claims, damages, liabilities, or related expenses to the extent such expenses are primarily caused by the willful misconduct or gross negligence of Lender.

Due Diligence:

By accepting this Commitment Letter, the Borrower specifically acknowledges that this Commitment Letter is being issued at a time when the Lender has not completed a full business, credit and legal due diligence and analysis of the Borrower, the Sponsor or the Principal, the collateral for the Facility or other aspects of the Facility contemplated by this Commitment Letter. As a result of further investigation and analysis by the Lender and its consultants, agents, representatives, analysts, accountants and counsel, which investigation and analysis shall include a review of the documents and information required under this Commitment Letter and the Loan Documents, information with respect to the Borrower, the Sponsor and the Principal, and the collateral for the Facility, of which the Lender is not now aware, may be revealed and affect the Lender's decision and/or ability to close the Facility. The Lender may, in its discretion, based on such information, decide to not close the Facility (in which case this Commitment Letter shall be deemed terminated and withdrawn) or to require that the terms of this Commitment Letter be modified or that new conditions be added

hereto to address appropriately the issues raised by such information. In the event that, based upon the results of the Lender's due diligence, the Lender exercises its rights under this paragraph and determines not to close the Facility as contemplated in the Commitment Letter, the Borrower acknowledges and agrees that the Lender's sole liability shall be to return the portion of the Commitment Fee that has been received by Lender, and Expense Deposit less any and all out-of-pocket amounts expended by the Lender in connection with this Commitment Letter, the Loan Documents and the transactions contemplated hereby and thereby. In such event, the Borrower agrees not to make any claim or bring any proceeding or action against the Lender arising out of this Commitment Letter, the Loan Documents or the transactions contemplated hereby or thereby, and the Borrower further releases and acquits the Lender, its subsidiaries and affiliates and their respective employees, officers, directors, shareholders, agents, attorneys, accountants and consultants from any and all known or unknown claims, proceedings, damages, liabilities and obligations, except for the obligations specifically provided in this paragraph.

**Rights of
Shareholders:**

It is expressly understood and agreed that the rights of the shareholders (or partners, as the case may be) of Borrower with respect to their equity in Borrower, Sponsor, and/or Guarantors and the return on same or repayment thereof shall at all times be fully subordinated to Lender's rights under the Loan Documents and to Lender's rights to receive repayment of the Facility, together with all interest accrued thereunder and the payment of the additional interest, subject to the distribution priorities set forth herein, if any.

**No Third Party
Beneficiary:**

This Commitment Letter has been prepared for the sole use and benefit of Borrower (and its constituent owners) and Lender and its affiliates, and no other persons or entities shall have any right to rely upon this Commitment Letter or any of the terms or provisions contained herein for any purpose, except that each Indemnified Party (as hereinafter defined) may rely on the provisions contained herein relating to indemnity and limitation of liability.

**Lender Not a
Joint Venturer:**

Any provision hereof to the contrary notwithstanding, Lender, by virtue of its issuance of this Commitment Letter or any action taken pursuant hereto, shall not be deemed to be a partner or joint venturer

with any of the Principals, Borrower, Sponsor, Guarantors or any other parties. Each of the Borrower, Guarantors, Sponsor and Principal shall jointly and severally indemnify, defend (with counsel approved selected by Lender) and hold harmless Lender, in its capacity as the provider of the Facility, from and against any and all losses, costs, damages, expenses (including, without limitation, those of defending or settling any such claims or demands and all reasonable fees and disbursements of outside legal counsel engaged by Lender in defending and settling such claims or demands resulting from such a construction of the parties and their relationship) and liabilities occasioned by Lender being deemed to be a partner or joint venturer with any of the Borrower, Guarantors, Sponsor or Principal or any other parties as a result of the issuance of this Commitment Letter or providing the Facility to Borrower. Any inspection of the Property, any review of the plans and specifications therefor or other documents submitted to Lender or Lender's consultants or any analysis of any Property or related facts, documents, conditions and circumstances made by Lender or any of its agents, architects or consultants is intended solely for the benefit of Lender and shall not be deemed to create or form the basis of any warranty, representation, covenant, implied promise or liability to any of the Borrower, Guarantors, Principal, Sponsor or any other person or entity.

Conflicting Terms: The terms, conditions and provisions of this Commitment Letter shall, if this Facility is funded, terminate upon the execution of the Loan Documents except to the extent such terms are expressly stated to survive the closing of the Facility. If there is any conflict or inconsistency between the terms, conditions and provisions of this Commitment Letter and the terms, conditions and provisions of the Loan Documents, the Loan Documents shall control.

**Governing Law/
Consent
to Jurisdiction:**

Irrespective of the place of execution and/or delivery, this Commitment Letter and the Loan Documents (except that the Legal Mortgage and the provisions in the other Loan Documents with respect to the creation, perfection and enforcement of the liens and security interests created pursuant to the Loan Documents will be governed by, and construed in accordance with, the internal laws of Alberta, Canada) shall be governed by, and shall be construed in accordance with, the laws of the State of New York applicable to agreements entered into and to be performed entirely within New

York. The Borrower and the Lender hereby consent and submit to the jurisdiction of the state and federal courts located in New York City, New York with respect to any claim or litigation arising hereunder or under the Loan Documents or any alleged breach of any of the covenants or provisions contained herein or therein, and acknowledge and agree that proper venue in any matter so claimed or litigated shall be in the New York State Supreme Court or other state court located in the Borough of Manhattan, in the City of New York, State of New York, or in the United States District Court for the Southern District of New York, as appropriate.

**Waiver of
Jury Trial:**

EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS COMMITMENT LETTER OR OTHERWISE RELATED TO THE FACILITY CONTEMPLATED HEREBY OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS COMMITMENT LETTER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Borrower hereby represents and covenants that: (i) to Borrower's knowledge, all information (the "Information") other than projections (the "Projections") that has been or will be made available to Lender by Borrower or any of its representatives is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made, and (ii) the Projections that have been or will be delivered have been prepared in good faith based upon reasonable assumptions. Borrower acknowledges that we may have shared, and that we may in the future share, non-public information concerning the Borrower, Sponsor, Principal and their affiliates with our affiliates. By your execution of this Commitment Letter, you consent and agree to such sharing of information. Any breach by you of the provisions contained in the Commitment Letter, shall, at the option of the Lender, terminate all of the Lender's obligations under this Commitment Letter. This paragraph shall survive the closing of the Facility.

The Lender's willingness to offer the Facility is further subject to, among other things: (i) the negotiation and execution of Loan Documents containing such terms as are described above and otherwise in form and substance satisfactory to the Lender and its counsel; (ii) the absence of any material adverse change in the condition (financial or otherwise), business, assets, properties, prospects, operations, performance or current capital structure of the Borrower, Sponsor, or Principal, (iii) our verification of the

Information, (iv) our not becoming aware after the date hereof of any information or other matter which is inconsistent with any Information or the Projections and our otherwise being satisfied with our due diligence concerning the Borrower, Sponsor, Principal and such aspects of their respective businesses and assets that we choose to investigate, (v) the resolution and satisfaction of all contingencies contained herein, and (vi) the absence of any disruption of or adverse change in the financial, banking or capital markets (including the market for debt financing) that we deem material.

By executing this Commitment Letter, Borrower hereby agrees to indemnify and hold harmless the Lender, its subsidiaries and affiliates and each of its and their officers, directors, employees, affiliates, agents, representatives, counsel, accountants, consultants and controlling persons (each, an "Indemnified Party") from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding howsoever relating to this Commitment Letter, the Facility (including the use of the proceeds thereof), or any related transaction, whether or not any Indemnified Party is a party thereto, and to reimburse each Indemnified Party upon demand for all out-of-pocket legal and other fees and expenses incurred in connection with investigating or defending any of the foregoing; provided, however, that the foregoing indemnity will not, as to any Indemnified Party, apply to losses, claims, damages, liabilities or related expenses to the extent arising from the willful misconduct or gross negligence of such Indemnified Party. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter, Borrower represents that it has secured all requisite consents, authorizations and internal approvals, including, without limitation, from the partners, members, managers, Board of Directors and/or shareholders of the Borrower (as applicable), required to execute and deliver this Commitment Letter and fulfill Borrower's obligations hereunder. To the extent there is any future dispute arising from the breach by Borrower of this representation, the Guarantors and Borrower shall indemnify each Indemnified Party from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding arising from such dispute.

By executing this Commitment Letter, Borrower: (i) agrees that Borrower will not make any claim against any Indemnified Party for any special, punitive, indirect or consequential damages in respect of any breach or wrongful conduct (whether the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated and the relationship established by this Commitment Letter, or any act, omission or event occurring in connection herewith, and (ii) waive, release and agree not to sue upon any such claim for any such damages whether or not accrued and whether or not known or suspected to exist in your favor. This

paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter and without limiting any provision hereof, Borrower agrees that Borrower will pay all fees, costs and expenses incurred by the Lender in connection with the negotiation and preparation of this Commitment Letter and the Loan Documents relating to the Facility (including, without limitation, costs and expenses in connection with Lender's due diligence investigations and fees and expenses of our counsel) whether or not the loan documentation is finalized and whether or not the Facility is extended or other financial accommodations are made, and regardless of the reasons for which such documentation is not finalized or the Facility is not extended or other financial accommodations are not made. Such fees and expenses include, without limitation, fees and expenses incurred in connection with documenting this Commitment Letter and the Loan Documents, due diligence expenses, costs of appraisals, search fees, costs of title insurance policies, fees and expenses of counsel, accountants and consultants, environmental review, and recording, filing and registration costs. In the event of a default under the Loan Documents, the Borrower, Sponsor and Principal shall pay all of the Lender's fees, costs and expenses incurred in connection with enforcing its rights.

If Lender decides to not close the Facility based on Lender's due diligence analyses as set forth in this Commitment Letter, Lender shall have no liability for any losses or damages sustained by any of the Borrower, Guarantors and Principal as a result of such decision by Lender and Lender shall, subject to Lender's receipt of a legal release from Borrower and related parties, promptly refund the portion of the Commitment Fee paid to or for the benefit of Lender, less expenses incurred in connection with the Facility or this Commitment Letter. If the Facility does not close for any reason other than as a result of Lender's due diligence analysis or Lender's willful default, Lender shall retain all fees previously paid under the terms of this Commitment Letter as liquidated damages and Lender shall have no liability for any losses or damages sustained by Borrower by reason thereof.

Borrower agrees that this Commitment Letter is for its confidential use only and will not, without Lender's prior written consent, be disclosed by Borrower or any of its representatives to any person other than its accountants and attorneys, and then only in connection with the transactions contemplated hereby and only on a confidential basis, except that, following Borrower's acceptance of this Commitment Letter, Borrower may make such disclosure of the terms and conditions of this Commitment Letter as Borrower is required by law to make. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

This Commitment Letter shall not be assignable by Borrower, and may not be amended or any provision hereof waived or modified except by a document in writing signed by Borrower and the Lender.

The foregoing is not and shall not be deemed to be a binding agreement by the Lender to make available the Facility described herein. Such agreement will arise only upon the execution and delivery by the Lender and the Borrower of a definitive loan agreement and such other agreements, instruments and documents as shall be required by the Lender and its counsel, and the fulfillment of the conditions precedent set forth herein and therein. All of such documents may contain any terms, provisions or conditions as the Lender may deem necessary or desirable.

This Commitment Letter sets forth the entire understanding of the parties hereto as to the scope of the obligations of the parties hereto and supersedes all prior agreements, written or oral, representations and understandings, if any, relating to the subject matter hereof. THIS COMMITMENT LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES OF SUCH STATE. EACH OF THE UNDERSIGNED PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF OR IN CONNECTION WITH, THIS COMMITMENT LETTER AND ANY OTHER COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY OF THE UNDERSIGNED PARTIES IN CONNECTION HEREWITH. IN NO EVENT SHALL ANY PARTY TO THIS COMMITMENT LETTER BE LIABLE FOR PUNITIVE OR CONSEQUENTIAL DAMAGES.

Withers Bergman LLP will act as U.S. counsel and MLT Aikins LLP will act as Canadian counsel to Lender in connection with the Facility. Each of the Borrower and Guarantors are requested to deliver copies of all correspondence and documentation in connection with the Facility to their attention. Please have your counsel contact our legal counsel in order to begin the necessary due diligence and documentation processes.

This Commitment Letter shall automatically expire if not accepted by Borrower in accordance with the terms hereof on or before 5:00 P.M. (New York City time) on January 17, 2020. Please indicate Borrower's acceptance of this Commitment Letter and agreement to the terms hereof by signing this Commitment Letter where indicated below and returning it to the Lender, together with (a) the initial installment of the Commitment Fee of C\$300,000 (which Lender acknowledges has been deposited with MLT Aikins LLP pursuant to the Escrow Agreement), and (b) US\$25,000 Expense Deposit to Lender or Withers Bergman LLP, Lender's New York legal counsel, at Lender's election for the expense deposit. By so doing, Borrower will be bound by the terms hereof and will pay all fees, costs and expenses as provided herein.

Even if accepted in accordance with the provisions of the previous paragraph, the obligations of the Lender under this Commitment Letter shall expire and terminate automatically, without further act or condition and regardless of cause or circumstance, if loan documentation satisfactory in form and substance to us and our counsel is not executed on or before April 30, 2020.

[The rest of this page has been intentionally left blank.]

This Commitment Letter may be executed in counterparts, all of which together shall be considered one and the same document.

Very truly yours,

BARBICAN CAPITAL PARTNERS, LLC

By: _____

Name: Benny P. Leung

Title: Manager

THE BORROWER ACKNOWLEDGES THAT IT WAS REPRESENTED BY COUNSEL SELECTED BY IT IN CONNECTION WITH THIS COMMITMENT LETTER, THAT IT HAS READ THIS COMMITMENT LETTER AND EXHIBIT A AND UNDERSTANDS, ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN EXHIBIT A.

Borrower:

ALBERTA FOOTHILLS PROPERTIES LTD.

By: _____

Name: _____

Title: _____

Sponsor:

1067803 ALBERTA LTD.

By: _____

Name: _____

Title: _____

Principal:

DREW GORDON ATKINS

EXHIBIT A

General Terms and Conditions

1. Loan Document Provisions. The Loan Documents shall in all respects be satisfactory to Lender and its counsel, and shall contain such terms and provisions as Lender may require, including, without limitation, the following:

- (a) Due on Sale and Other Default Provisions. The Loan Documents shall prohibit (i) any sale, conveyance, assignment or transfer of all or any portion of any security for the Facility or any interest therein, without the prior written consent of Lender, or (ii) any change in the ownership interests in Borrower, including, without limitation, the Sponsor's or Principal's respective interests (whether direct or indirect) or management of the Property, or the sale, pledge, hypothecation or other transfer of any interests in Borrower or Borrower's assets, or Guarantor, if any, or Guarantor's assets (except to the extent following any asset transfer by Guarantor, Guarantor continues to meet all financial covenants), in any such case without the prior written consent of Lender. The promissory note(s) to be executed by Borrower with respect to the Facility (collectively, the "Note"), and all indebtedness with respect to the Facility, may be declared due and payable in its entirety in the event that (i) the Property or any of the security for the Facility or any portion thereof or interest therein (whether direct or indirect) is pledged, hypothecated, mortgaged or encumbered, or any lien for indebtedness (which may be the result of other than a Facility transaction) is placed thereon, without the prior written consent of Lender, (ii) any of the Borrower or Guarantors shall fail to observe or perform any term of the Note or of any of the other Loan Documents and such failure shall continue beyond applicable notice, grace, and/or cure periods thereunder, or (iii) any default shall occur (and any required notice shall have been given and grace or cure period shall have expired) under the terms of any of the Loan Documents. No subordinate financing (secured or unsecured) or other claims against the Property shall be permitted without Lender's prior written approval, which approval may be withheld in Lender's sole discretion. Borrower and the Principals agree that the Loan Documents shall provide for such events and conditions of default as may be required by Lender in Lender's sole discretion.

In connection with the foregoing, it is expressly acknowledged and agreed by Borrower and the Principals that Lender is relying on the creditworthiness and experience of Principals in owning, servicing, developing, operating and selling properties such as the Property in Lender agreeing to issue this Commitment Letter, and Lender will rely on the

Principals' continued direct or indirect ownership in Borrower for so long as the Facility is outstanding.

- (b) Material Adverse Changes. It shall constitute an immediate Event of Default under the Loan Documents if any of the Borrower, Guarantors or Principals shall suffer a material adverse change in its or his financial condition at any time during the term of the Facility, as determined by Lender in Lender's sole discretion. Among other events, each of the Borrower, Guarantors or Principals shall be deemed to have suffered a material adverse change in its or his financial condition if, in Lender's sole judgment, its or his financial condition has changed in a manner which could impair the value of Lender's security for the Facility, prevent timely repayment of the Facility in accordance with the provisions of the Note, or otherwise prevent any of the Borrower, Guarantors or Principals from performing its or his obligations under any of the Loan Documents to which any of them is a party.
- (c) Cross Default; Cross Collateralization. The occurrence of a default or event of default under any loan document executed and delivered by Borrower in connection with the Facility shall constitute an Event of Default under each of the Loan Documents. The Property and all related rights, titles and interests, encumbered by a mortgage, deed of trust or other Loan Document in favor of Lender, shall constitute collateral security for the entire Loan and all amounts required to be paid and obligations required to be performed by Borrower in connection therewith.
- (d) Financial Reporting Requirements. The Borrower will be required to comply with certain financial reporting requirements including, inter alia, providing to Lender at Borrower's expense, not later than ninety (90) days after the end of each calendar year audited financial statements as of December 31 of such year and for the year then ended, all prepared by a certified public accountant (or Canadian equivalent) acceptable to Lender in accordance with generally accepted accounting principles. Guarantors shall deliver to Lender an operating budget for the Property and such other financial information with respect to the Property as Lender may require, all certified as true, complete and correct by the senior financial officer of the Borrower. Within thirty (30) days following the end of each calendar quarter, Guarantors shall deliver to Lender unaudited financial statements for the Property for such quarter, each in such form and containing such information regarding revenues, expenses and sources and uses of funds for the Property, each as Lender may require and certified as true, complete and correct by the senior financial officer of the Borrower. Each of the Borrower

and Guarantors shall provide such additional financial information as Lender may reasonably require.

- (e) Loan Provisions. To the extent applicable, the Loan Documents shall contain various provisions relating to the construction and carrying out of the Project to Lender's satisfaction, including without limitation, provisions relating to delivery of the construction budget, construction contract, architect's agreement, plans and specifications, sign-offs by Lender's Construction Consultant and the retention and release of statutory holdbacks.
2. Further Conditions to Closing. In addition to delivery of the Loan Documents and compliance with all other requirements set forth in this commitment letter, the delivery to Lender of the items set forth below, each in form and substance satisfactory to Lender and its counsel, as the case may be, shall be conditions to the closing of the Tranche A Loan:
- (a) Organizational Documents. Evidence satisfactory to Lender of each of the Borrower's and Guarantors' (to the extent such Guarantor is not an individual) due incorporation and good standing in the State of their formation and authorization to do business, and their corporate capacity, power, legal right and authority to enter into and perform the Loan Documents, or the equivalent forms of evidence provides by such entities' jurisdiction of formation. Such evidence proof shall include, but not be limited to, certified copies of certificates or articles of incorporation and by-laws, applicable resolutions and incumbency certificates and good standing certificates for each of them.
 - (b) Financial Statements. Financial statements of Borrower and each Guarantor as required by the commitment letter, and such other financial information as Lender may reasonably request. Each such financial statement of the Borrower shall be prepared in accordance with generally accepted accounting principles, and (except as otherwise set forth in the commitment letter) certified by a certified public accountant (or Canadian equivalent) acceptable to Lender, and shall describe in reasonable detail all contingent liabilities of the subject thereof, and shall evidence to Lender's satisfaction that there has occurred no material adverse change in the financial condition reflected therein from the financial condition of the subject thereof reflected in any financial statements previously delivered to Lender.
 - (c) Opinions of Counsel. Opinions of counsel for Borrower addressing such legal issues concerning each of the Borrower, Guarantors, and the Property as Lender may reasonably require for a transaction of this nature, including,

without limitation, the organization of each of the Borrower and Guarantors, authorization of the execution and delivery of the Loan Documents, the proper execution and delivery of the Loan Documents, the enforceability of the Loan Documents under State law (which may be subject to customary qualifications acceptable to Lender), absence of violations of applicable law (including usury laws) as a result of the payment of any interest, fees or charges due under the Loan Documents, compliance with zoning, land use, environmental and similar laws (addressing specific problems that may be identified by Lender, and otherwise to the extent such opinions generally would be requested by a lender making a loan similar to that provided for herein), the choice of law provisions contained in the Loan Documents, non-consolidation bankruptcy opinion, absence of insolvency, receivership and creditor arrangements, and such other matters as counsel for Lender may request relating to the validity and enforceability of the Loan Documents and the liens and security interests created thereby, and any other matters relating to any of the Borrower, Guarantors and Principals as Lender shall require.

- (d) Insurance. Not less than ten (10) days prior to the closing of the Facility, evidence that the insurance coverages to be required by the Loan Documents are in effect with respect to the Property.

- (e) Title Insurance. A title report or commitment for a lender's Title Insurance Policy or Canadian equivalent (the "Title Policy"), which shall become a binding title insurance policy at the closing of the Facility, issued by a nationally recognized title insurance company satisfactory to Lender (the "Title Insurer"), to insure the liens of the debenture, mortgage or deed of trust encumbering the Property as each a first lien upon Borrower's interest in the Property, insuring the entire Facility, naming Lender as the insured, insuring all utility, access, support and other appurtenant easements necessary for the operation of the Property, and subject to no exclusions or exceptions other than those expressly approved by Lender in writing. If required by Lender, the Title Policy shall be with customary form of reinsurance agreements and direct access agreements satisfactory to Lender with title insurance companies satisfactory to Lender. The share of liability assumed by each title company shall be satisfactory to Lender. Upon each Advance under the Facility, the amount of coverage under each Title Policy shall be increased to reflect such Advance. In addition, the Title Policy shall, if Lender requires and if available, include an endorsement protecting against forfeiture or reversion due to covenants, restrictions or encroachments, a survey endorsement, a usury endorsement, a so-called lender's doing business endorsement, a so-called lender's comprehensive endorsement and such other endorsements as Lender may require.

- (f) Survey. A current, accurate real property report of the Property prepared by a qualified land surveyor acceptable to Lender, which survey shall be in form and substance satisfactory to Lender and its counsel and shall be certified to Lender and the Title Insurer with the certificate dated not more than thirty (30) days prior to the Closing Date. The survey shall show, among other things, the dimensions and total square foot area of the land, the legal description thereof, all interior lot lines, the dimensions and locations of all improvements, easements, parking areas, rights of way, adjoining sites, encroachments and the extent thereof and their distance from the lot lines, established building lines and street lines, means of ingress and egress, the nearest intersecting streets and such other details as Lender may request.
- (g) Utilities: Evidence establishing to the satisfaction of Lender that the Property is serviced at its boundaries by adequate storm sewer, sanitary sewer, telephone, gas, electricity, water and other utility services or will-serve letters by the appropriate utility providers confirming the same.
- (h) Permits and Licenses. Copies of all environmental permits, utility permits, land use permits, development permit and building permits and any other permits, approvals or licenses required for the commencement of construction.
- (i) Searches. Such real estate, personal property, statutory lien, bankruptcy, insolvency, zoning or building code violation and other searches of public records as Lender may require with respect to Borrower, Guarantor, any Principal, and the Property.
- (j) Environmental Survey. A Phase I environmental survey or Canadian equivalent (satisfactory to Lender and Lender's environmental consultant) prepared at Borrower's sole expense by a qualified environmental consultant satisfactory to Lender for the Property and dated not earlier than thirty (30) days prior to closing (the "Environmental Audit"). Such Environmental Audit shall, at a minimum, (a) disclose any existing or potential hazardous material contamination, and physical conditions that may result in such contamination, at the Property, (b) include the results of all sampling or monitoring to confirm the extent of existing or potential hazardous material contamination at the Property, including the results of leak detection tests for each underground storage tank located at the Project, if any, (c) describe response actions appropriate to remedy any existing or potential hazardous material contamination, and (d) report the estimated cost of any appropriate response. All costs and charges by Lender's environmental consultant will be borne by Borrower.

- (k) Appraisal. Lender shall have received and approved the Appraisal as described in the Commitment Letter to which this Exhibit A is attached.
 - (l) Easements. Evidence that the Property is benefited by such easements or other rights as may be necessary for operation and use thereof and vehicular and pedestrian ingress and egress, and for the maintenance of utilities, parking and other site improvements necessary or appropriate.
 - (m) Compliance with Laws. Evidence of the payment of all amounts owing with respect to the recordation and/or filing of any of the Loan Documents in or with the applicable registry or filing office and evidence, satisfactory to Lender in all material respects, that the Property complies in all material respects with all applicable statutes, rules, regulations, laws and ordinances.
 - (n) Capital Budget. A detailed capital budget for carrying out the Project acceptable to the Lender.
 - (o) Officer's Certificate. A certificate of an authorized officer, manager, or managing member of Borrower addressed to the Lender and in form and substance satisfactory to the Lender, certifying that the Equity Requirement, as at the Closing Date, is not less than the amount required by the Lender as determined by the Lender's final underwriting requirements.
 - (p) Filings and Registrations. All filings and registrations of or in respect of the Loan Documents necessary to preserve, perfect and protect the mortgages, charges, assignments and security interests created thereby shall have been duly effected to the satisfaction of the Lender.
 - (q) Lock-Box Account. The required lock-box account shall have been established by the Borrower.
 - (r) Additional Documents and Information. Such certificates, opinions, materials, documents, correspondence (including a letter from the appropriate governmental authority regarding the zoning of the Property) and other papers regarding the Property, Borrower, Guarantor or the Facility as Lender may require. In addition, all legal matters in connection with the Facility in addition to those discussed elsewhere in this Commitment Letter shall be satisfactory in form and substance to Lender.
3. Conditions of Advances. The obligation of Lender to make any Advance of the Facility, whether the first Advance or any Advance made subsequently to the first Advance, is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:

- (a) Request for Advance. Lender shall have received, at least five (5) Business Days prior to the requested Advance, a request for Advance, which request for Advance shall be in form and content satisfactory to Lender, wherein, among other things, Borrower shall confirm the accuracy of all representations and warranties set forth in the Loan Documents and which shall be accompanied by a certificate of an authorized officer, manager or managing member of Borrower as to hard and soft costs, together with, in each case, invoices and/or receipts, all of which shall be in form and content satisfactory to the Lender.
 - (b) Discharge of Encumbrances. Except for permitted encumbrances, Borrower shall have paid and discharged or caused to be paid and discharged all encumbrances affecting the Property and Lender shall have received a favorable opinion of its counsel as to title to the Property and priority of the Loan Documents.
 - (c) Payment of Project Costs. Borrower shall timely pay all Project costs in respect of which prior Advances were made hereunder and shall, if requested by Lender, provide to the Lender evidence thereof satisfactory to the Lender.
 - (d) Limitation on Amount. Lender shall not be obligated to advance any amount hereunder in respect of any item of Project costs that is not an approved cost or that is in excess of the maximum amount of such item as set forth in the approved capital budget.
 - (e) No Construction Liens. Lender shall not have received written notice of, nor shall there have been registered against title to the Property, any claim for a construction lien.
 - (f) Other Documents. Lender shall have received and approved such other documents, consents, acknowledgements, opinions and agreements as Lender or its counsel may reasonably request.
4. Conditions of All Advances. The obligation of Lender to make any Advance of the Facility is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Truth of Representations and Warranties. The representations and warranties of the Borrower contained in the Commitment Letter, this Exhibit A or in any other Loan Document shall be true and correct as of

such date with the same force and effect as if such representations and warranties had been made on and as of such date.

- (b) Performance of Covenants by the Borrower. The Borrower shall have fulfilled or complied with all covenants contained in the Loan Documents which are to be performed by it at or prior to such time.
 - (c) No Default. No Event of Default shall have occurred and be continuing.
 - (d) No Change in Laws. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.
 - (e) Review and Approval. Review and approval of such Advance and the use of proceeds thereof, receipt of copies of all permits obtained, receipt of invoices for use of funds, approval by Construction Consultant with respect to pre-construction work completed, and such other items as Lender, its U.S. and/or Canadian counsel may reasonably require.
5. Limitations on Advances. No Advance shall be made within a period of thirty (30) days after the making of a prior Advance.
6. Insurance. Borrower shall maintain adequate insurance at all times with responsible insurance carriers in amounts and pursuant to insurance policies reasonably acceptable to Lender against (i) loss or damage by fire and other hazards; (ii) comprehensive general liability on account of damage to Persons and property in minimum amount of C\$5,000,000 per occurrence or such greater amount as may be required by Lender, acting reasonably, and notified by Lender to Borrower from time to time; and (iii) such other risks as Lender may reasonably request. Each insurance policy covering tangible property shall (iv) provide that, in the case of each separate loss, the full amount of insurance proceeds with respect thereto shall be payable to Lender as secured party or otherwise as its interests may appear; (v) provide for at least thirty (30) days' prior written notice to Lender of the cancellation or substantial modification thereof; (vi) provide that, in respect of the interests of Lender and Borrower, as the case may be, such insurance shall not be invalidated by any action or inaction of Borrower or any other person; (vii) insure Lender's interests regardless of any breach of or violation by Borrower or any other person of any warranties, declarations, or conditions contained in such insurance; (ix) provide that Lender shall have the right (but not the obligation) to cure any default

by Borrower under such insurance. Each liability policy shall (x) name Lender as an additional insured; (xi) be primary without right of contribution from any other insurance which is carried by Lender to the extent that such other insurance provides Lender with contingent or excess liability insurance, or both, with respect to its interest as such in the Property; and (xii) expressly provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and except liability for premiums (which shall be solely a liability of Borrower) shall operate in the same manner as if there were a separate policy covering each insured.

8. Currency. Unless otherwise indicated, all references in this Agreement to dollars or to \$ are expressed in United States currency and all references in this Agreement C\$ are expressed in Canadian currency.
9. Criminal Code. If any provision of the Commitment Letter, this Exhibit A or of any of the other Loan Documents would obligate Borrower, Guarantors or any Principal to make any payment of interest or other amount payable to the Lender in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by such Lender of interest at a criminal or usurious rate, as such terms are construed under applicable law then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Lender of interest at a criminal or usurious rate, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to such Lender under the applicable Loan Document, and thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" under applicable law.

EXHIBIT B

Due Diligence Contingencies

1. Three years tax returns for any Principal and Guarantor named, complete with all K-1 (or local partnership tax reporting equivalent) schedules for any real estate or other assets owned by such Principal and Guarantors. If no such tax return is available, please provide a written explanation as to the reason for the non-delivery of such tax return.
2. Personal financial statements (with detailed footnote of any liabilities) of any Principal and Guarantor named dated no earlier than December 31, 2019; audited financial statements for the Borrower and its corporate parent entity (if applicable) with detailed footnotes for any liabilities for each of the last three fiscal years plus "stub" period no earlier December 31, 2019. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements must include the individuals' full name, full-time occupation, Social insurance Number, Birth date and current address.
3. Detailed description (by phases) of the final approved Master Plan for the Project with details of category of real estate for each such phase.
4. Copy of the closing statements for the original acquisition of the Land.
5. Copy of final plans & specifications (in electronic format).
6. Background information on the Borrower, Principal and Guarantors.
7. Detailed Total Project Costs for Phase 1 (including detailed line items).
8. Copy of the final fully executed Development Agreement and any related documentation from municipality of Okotoks.
9. Copy of the fully executed Guaranteed Maximum Price Contract (GMP) on the AIA form (or local equivalent) and the profile of the GC.
10. Copy of detailed financial pro forma for Phase 1 of the Project for five (5) years.

It is Lender's intention to review and sign off on the above items within thirty (30) days from execution of this Commitment Letter (the "Target Sign-Off Date"). Borrower shall deliver the above items promptly to Lender, but in no event, later than ten (10) days prior to the Target Sign-Off Date. Borrower shall bear the consequences for any late submission of the above listed items to Lender, including, without limitation, the consequences set

forth in the section entitled "Loan Fees" of the Commitment Letter.

This is exhibit "F" referred to
in the affidavit of

Dev Atkins

sworn before me this 21st
day of September, 2020


A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: February 3, 2020 at 10:32:55 AM MST
To: drew.bland@mac.com
Cc: drew atkins <drew.bland@me.com>, james.brooks@oveldicapital.com
Subject: Re: Foothills loan

Dear Drew:

I just came back from Chinese New Year holiday and am responding to emails sent by Omar regarding due diligence items and James regarding your concern of Barbican's ability to fund. Before I reply to the above items, I would like to bring to your attention of the following:

1. It has been over five months since Barbican sent you the Loan Quote in mid-August. While the Loan Quote had resulted in our mutual execution of the Letter of Intent (Term Sheet), we have not yet commenced and finalized our negotiation of the loan commitment ("Commitment"). I obviously do not know what closing timing you have actually in mind, but in a normal circumstance, the proposed loan as contemplated in the Commitment would have been closed by now. While it appears that the protracted delay for the loan process may be coincidental and thus justifiable, I believe the delay was caused by two issues which were repeatedly cited by you in the past few months.
2. The first issue comes from the fact that you conveyed that there is a constant "infighting" between you (and perhaps together with your family members) and other shareholder(s) in Foothills (Borrower). You had indicated that while you have strong desire to develop the project, your other shareholders would prefer to sell the land and take the profits. I had witnessed that every time when you (or Foothills) need to decide to execute any document with Barbican, this issue serviced and cited as the reason for the delay in completing with the negotiation or signing the relevant document. This occurred from Loan Quote to Term Sheet and now to the Commitment without exception.
3. The second issue comes from the fact that you conveyed to me about your bad experience with a US-based lender. Because of this unfortunate experience you encountered in the past (which has nothing to do with Barbican), you had unfairly treated Barbican as if we are the same kind of bad lenders. Because Barbican recognizes your concern, it has gone extra mile by making the current escrow arrangement to convince you that (i) we are not those bad lenders and (ii) the current arrangement will alleviate your concern that we just take the fees and do nothing. Nevertheless, the fact that James' email which inquired Barbican's ability to fund and suggested Barbican's possible provision of a standby letter of credit to back our funding clearly indicated that this thorny issue had still pretty much in your head that you cannot get over with.

I now respond to the two items mentioned above.

- A. Attached, please find Barbican's response to Omar's email of January 24, 2020 regarding the due diligence items. Our response is self-explanatory. You now can see and understand our requirements (which are customary) without the fear that Barbican may just try to use the due diligence items to induce a loan fee. If you don't think you can satisfy these items based on what we require, then we should stop the process now.
- B. With regard to Barbican's ability to fund, I am sure as a successful litigator for many years, you will agree with me that Lender's liability is a big thing in lending industry. As such, Barbican has taken that very seriously. Nevertheless, James' suggestion that Barbican should consider opening a standby letter of credit (SLOC) to back our loan really surprised me. In my close to thirty years' lending and investing experience, I had not come across with one single instance under which Barbican or other competitive industry lenders that I know of was requested by any borrower to do so or had put up one single SLOC to back their loans. Consequently, I know for fact that James' request is not "market". To be fair, if you had a different experience whereby one of your previous lenders had opened a SLOC to back its loan, I would like to see the information. In addition, my personal view of lending is regardless of the terms in the loan commitment or final loan documentation and regardless what comfort was given to you by a lender, a lender can still choose or decide not to fund but by doing that, the lender will have to suffer serious consequence of its action. This is equivalent to any borrower who promises to pay its loan back when it matures ending up in default for its non-payment and suffers whatever consequences afterwards. Therefore, what will happen if Barbican suggests that it will open a SLOC to back funding of its loan but requires the Borrower to do the same by opening a SLOC to guarantee the payback of the loan? You know the answer to that.

In sum, I think it is time for you to make two serious decisions as to whether you really wish to proceed with Barbican's proposed loan. First, you and your other shareholders must either agree or disagree now as to development vs sale. That is a business decision and Barbican will respect it one way or the other. What Barbican wishes to avoid is for such conflict be consistently resurfaced as an issue or obstacle in our negotiation. Second, you must get over with your "bad lender" experience and begin to trust someone as paranoid or second-guessing will not get us any further in the finalization of our loan (even if we can pass the point of the loan commitment but same paranoid will come back again during finalization of final definitive documentation). If you don't think you can overcome the above two obstacles, I would suggest that we stop now, break the escrow and pay Barbican's out-of-pocket expenses (no commitment fees) and have the remaining funds back to you. I am sure you agree that any successful business relationship cannot be made under a cloud of suspicion and distrust.

Please let me know how you wish to proceed.

Sincerely,
 Benny

Reply to Due Diligence Contingencies

Below sets forth Lender's responses to certain email dated January 24, 2020 from Omar Lalani on behalf of Foothills (Borrower) to Lender regarding the captioned subject. Answers replied according to the order of the individual item cited in the above-mentioned email.

1. **Not complete as stated.** We are in current year of 2020. While the filing of the tax return for the fiscal of 2020 for Principal and Guarantor may not be complete at this time, it should be completed by the time of the anticipated closing. In addition, there is no tax return for the fiscal year of 2017 and 2018. What has been provided were tax returns for fiscal year of 2015 and 2016. Accordingly, this item is not satisfactory to Lender at this time and that is also the reason why Lender had included this item (together with other items in similar fashion) in the Due Diligence Contingencies as part of the Loan Commitment ("Commitment"). If there is any reason why the Principal and Guarantor does not need to file any tax return for fiscal year of 2017 and 2018, please have his accountant to provide a letter of explanation for such reason.
2. **Not complete as stated.** For corporate returns, while we had received similar information prior to our issuance of the Commitment, our customary requirement for financial statements (except for personal financial statement) is in "audited" format based on GAAP (or local equivalent). To the extent that audited format is not available due to time or other factor, Lender will accept the second level of "review" format. Compilation format will not be satisfactory for our loan underwriting purpose. In addition, internally-prepared financial presentation such as trial balance and others will only be treated as information only. As for personal financial statement ("PFS"), while Lender does not require PFS to be audited, it does require that the PFS be dated and signed. In addition, since the majority of the Guarantor's net worth is within an entity (Bland Investments), Lender will require additional information regarding this entity in order to determine whether the PFS is sufficient for its underwriting purpose.
3. **Pending, not completed as stated.** First, Lender has conveyed to Borrower subsequent to its receipt of the CBRE appraisal dated June 1, 2018 that it can accept CBRE as an "approved" appraiser but the appraisal itself needs to be updated to current date together with a "reliance letter" to be issued to Lender by CBRE prior to closing. Second, while Lender has cursory review after execution of the LOI on the project plans, it is Lender's intention to have an "all in" meeting after the execution of the Commitment to go over the entire development process for Phase I before Lender's construction consultant to proceed with its final sign off of all related plans and specifications and confirm a final construction budget.
4. **Not completed.** While Lender's Canadian counsel already run the title report, the requirement of the original closing statements is still needed. Since those information should be readily available to Borrower, please provide such information to complete this item.
5. **Not completed.** Please refer to answer in item 3 above.
6. **Pending.** Subject to Lender's additional knowledge to Principal's prior development experience, this item will be satisfactory to Lender. Nevertheless, just from a curiosity point of view, in the background presentation, under "Holmes communities", there is a reference to "Mike's experience" which kind of confused Lender. Lender assumes it is either a typo or a reference to Mr. Atkins' other family members. Perhaps, Mr. Atkins can clarify this.

7. **Pending, not completed as stated.** Lender's customary requirement for this item is for Borrower's general contractor ("GC") to submit a detailed costs breakdown under relevant AIA (or local equivalent) form which eventually will form an exhibit to the final Guaranteed Maximum Contract ("GMP") (which will be also on relevant AIA form as well). Please have your GC to resubmit the information based on above format.
8. **Not completed.** Lender takes note of the timing of the availability of this item as per the said email.
9. **Not completed.** Lender takes note of the timing of the availability of this item as per the said email. However, please submit information on GC so we can approve it while we are waiting for the GMP contract to be finalized.
10. **Pending, not completed.** Lender will not be able to sign off this item until it has ascertained that GC can deliver the final agreed upon project costs for the project and the establishment of the final Uses and Sources of funds schedule.

To avoid any further misunderstanding, Lender would like to clarify that it has no prior relationship with Omar Lalani who might have a possible contractual relationship with Walter Welsh. Therefore, the notion that Mr. Lalani had reviewed all the above information on behalf of Lender back in August of 2019 for its underwriting was a false statement. All underwriting is done internally (and with the assistance of outside legal counsel and other consultants such as accountants, appraisal, engineer, construction consultant, etc) by Lender. Therefore, any representation by anyone who purports to confirm any approval on behalf of Lender other than Lender's own representative or legal counsel in writing will be taken at Borrower's own peril.

This is exhibit "G" referred to
in the affidavit of

Dr. Atkins

sworn before me this 26th
day of September, 2020

[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: February 13, 2020 at 11:25:02 AM MST
To: drew.bland@mac.com
Cc: drew atkins <drew.bland@me.com>
Subject: Re: Investment Portfolio

Dear Drew:

As per your request, I attach herewith selective sample investments that our affiliate acquired and sold through a period between 2000 and 2007 for your reference. You may recall that I had shown this (with more properties) to you when we met in your lawyer's office in Calgary. In addition, the Shanghai property (36 story mixed used office/retail complex) which we still currently own under one of our offshore affiliates is also attached herewith for your reference. As mentioned to you, the performance of this property is excellent after we paid off the construction loan from Bank of China upon completion in 2012. Prior to completion, CBRE appraised our property at RMB 900 million (US\$130 million based on then exchange rate). Now that the building is fully leased up, we would expect a value of around US\$180 million with no debt.

Please note that while we do not require a NDA to be pre-signed by you regarding this email disclosure and confidential information of our investment portfolio, the enclosed information is provided to you in strict confidence and any unauthorized use of it is strictly prohibited without our prior written consent.

Sincerely,

Benny



Two Rodeo Drive, Beverly Hills, California

Located at the intersection of Southern California's two most recognized thoroughfares, Rodeo Drive and Wilshire Boulevard, Two Rodeo is an internationally recognized landmark and one of the premier retail properties in the world.

No other single property in the United States has two Rodeo's concentration of world's leading fashion and luxury goods tenants. The property's rent roll included Tiffany, Versace, Cartier, Gianfranco Ferré, Escada, Porsche Design, Charles Jourdan and many other famous brands.

Two Rodeo consists of 130,446 square feet of retail space, which equates to approximately 30% of the total retail space on Rodeo Drive. With four levels of underground valet parking, Two Rodeo has more parking than any other complex in the area.

The property was purchased at US\$130 million and subsequently sold for US\$275 million after value-added re-leasing program was implemented.

Confidential, unauthorized distribution or disclosure is strictly prohibited



1201 & 1205 New York Avenue, Washington D.C

The twin building on New York Avenue was located in the rapidly growing east side office market of Washington D.C. The building has twelve floors plus a penthouse level totaling 413,000 square feet and three floors of underground parking.

Shortly after the twin building was acquired, the property was totally re-tenanted. The building is now house major government units including U.S. Department of Homeland Security, The Federal Elections Commission and the Office of Government Ethics.

The property was purchased for US\$112 million and subsequently sold for US\$215 million.



228-240 Post Street, San Francisco, California

This premier retail property consists of three attached low-rise building located at Union Square retail area of San Francisco, one of the high-end shopping districts in the United States.

The property was leased to high-end retailers including Louis Vuitton, Bernini, Saks Fifth Avenue and Ann Taylor.

The property was purchased for US\$30.5 million and subsequently sold for US\$45.8 million



Crescent at Carlyle, Alexandria, Virginia

Two attractive office buildings situated at the entrance to the Carlyle Development at Alexandria, Virginia were purchased separately in two consecutive years. Carlyle Development was the new home for the two million square foot campus of the U.S. Patent and Trademarks Office.

Combined buildings provided both secure income and appreciation opportunities.

The two office buildings were purchased for US\$121 million and subsequently sold for US\$217 million.





This is exhibit "1-1" referred to
in the affidavit of

De Atleis

sworn before me this 26th

day of September, 2020



A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

EXECUTION VERSION

February 11, 2020

Alberta Foothills Properties Ltd.
3505-18th Street SW
Calgary, AB T2T 4T9

Attention: Drew Atkins, President and Director

Re: C\$39 Million First Mortgage Development and Construction Loan for Phase I of a multi-phase master-planned community ("MPC") known as "Wind Walk" located at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Project")

Gentlemen:

Based upon recent discussions between Barbican Capital Partners, LLC, a Delaware limited liability company (the "Lender") and you, and based on Lender's (and its Investment Committee's) preliminary review and relying upon the information which you have previously provided to us, the Lender is pleased to confirm its willingness to offer a C\$39,000,000 secured loan facility (the "Facility" or the "Loan") to Alberta Foothills Properties Ltd., subject to the terms and conditions set forth in this letter (the "Commitment Letter"), including, without limitation, the paragraph below entitled "Due Diligence". It is understood and agreed that the terms and conditions herein contained and of the Facility are not limited to those set forth in this Commitment Letter and in Exhibit A annexed hereto and made a part hereof. The Lender reserves the right to modify and/or supplement such terms and conditions at any time after the date hereof, based on events occurring after the date hereof, on the results of the due diligence described in this Commitment Letter or otherwise, in its sole discretion.

Lender: Barbican Capital Partners, LLC or its designee and/or affiliate.

Borrower: Alberta Foothills Properties Ltd., a single purpose and bankruptcy-remote entity duly incorporated and existing under the laws of the

Province of Alberta, and authorized to carry on business therein, subject to commercially reasonable practices under the laws of the Province of Alberta and the laws of Canada applicable therein (collectively, "Applicable Canadian Law") as to be advised by MLT Aikins LLP (the "Lender's Local Counsel") in Lender's Local Counsel's sole and absolute discretion, that holds title to the land on which the Project is being developed (the "Borrower"). The final organizational structure of Borrower, along with all documentation supporting such structure, shall be subject to the approval of Lender in its sole discretion. The Principals and Borrower shall make certain representations, warranties and covenants concerning the organization of Borrower and Guarantors (as hereinafter defined) to be set forth in the Loan Documents (as hereinafter defined) and Borrower shall make certain representations, warranties and covenants concerning its organization to be set forth in the Loan Documents. The Facility will be a full recourse obligation of the Borrower.

The "Sponsor" shall be 1367803 Alberta Ltd.

The "Principals" shall be Drew Gordon Atkins and/or any other individual to be approved by Lender based on due diligence.

Guarantors:

Upon completion of Lender's due diligence of the Project (as hereinafter defined) and the financial conditions and creditworthiness of the Sponsor and Principal but prior to the closing of the Facility, Lender may require, in its sole and absolute discretion, that any or all of the Sponsor or Principal on a joint and several basis (or an alternate individual or corporate entity acceptable to Lender) (the "Guarantors") provide any or all of the following guaranties to Lender in form satisfactory to Lender:

- Standard Non-Recourse Carve-Out Guaranty (which shall include fraud and intentional misrepresentation, any voluntary act of bankruptcy of Borrower, and other standard non-recourse carveouts).
- A Completion and Carrying Guarantee.
- A limited guarantee in an amount to be determined upon the finalization of the Final Project Budget (as hereinafter

defined) in form and by a guarantor satisfactory to Lender

- Project Cost Overrun and Recourse Guaranty (which shall include due prompt and punctual completion of all improvements in accordance with approved plans and specifications, payments of all "hard costs" and all "soft costs" and expenses incurred in connection with such completion (including interest) and payments of all overruns in excess of items reflected in the Final Project Budget). Any and all cost overruns of the Project will be the sole responsibility of Borrower, Sponsor, and Principal.
- Any other Guarantee that Lender deems necessary upon completion of due diligence.

In connection with making such guarantees, Guarantors shall additionally provide with any and all certificates and other documents required to be issued pursuant to the *Guarantees Acknowledgment Act* (Alberta).

Project: Phase I of a multi-phase, master planned community known as "Wind Walk" located on a site (approximately 144.66 acres of land (the "Land")) at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Property") based on a master plan ("Master Plan") to be approved by Lender.

Facility Amount: C\$39,000,000 subject to due diligence and underwriting of all relevant aspects of the Project (e.g., site and market feasibility, credit, legal and tax arrangements, etc.). It is contemplated that the Loan shall be structured and funded into two tranches: (i) a senior tranche in an amount equal to the least of (a) 60% of Lender's approved "as is" appraised value of the Project as determined by a MAI Appraisal or an equivalent appraisal acceptable to Lender in its sole and absolute discretion (the "Appraisal") to be obtained by Lender prior to the closing of the Facility, (b) 60% Loan-To-Costs (based on Lender's approved Total Project Costs (as hereinafter defined)) and (c) C\$28,500,000 ("Tranche A Loan") and (ii) a mezzanine tranche of an amount equal to the least of (x) 20% of Lender's approved "as is" appraised value of the Project as determined by the Appraisal, (y) 20% Loan-To-Costs, and (z) C\$10,500,000 ("Tranche B Loan"). The final loan amount for each

of the Tranche A Loan and the Tranche B Loan shall be determined upon the occurrence of all of the following (A) completion of due diligence, (B) the receipt and approval of the Appraisal and such other material as reasonably requested by Lender for its final underwriting purposes, and (C) the determination of the Final Project Budget.

The Facility is non-revolving and shall mature at the end of the Facility Term (as hereinafter defined). After expiration of the Facility Term, subject to any applicable extensions described herein or termination of the Facility, no additional Advances (as hereinafter defined) shall be made hereunder.

Upon closing of the Facility, the Facility shall be advanced (the "Advance") to and used by the Borrower for the purposes described herein subject to the satisfaction of all conditions precedent to such Advance established in the Loan Documents and based upon the results of the Lender's due diligence with respect such Advance and the Borrower's compliance with the terms of the Loan Documents.

**Equity
Requirement:**

Borrower shall provide a total cash equity contribution (or quasi equity contribution approved by the Lender in its sole and absolute discretion) equal to the difference between the Total Project Costs (approved by the Lender upon completion of due diligence) and the Loan ("Borrower's Equity"). Lender shall determine the final amount of the Borrower's equity requirement (the "Equity Requirement") within five (5) Business Days after the occurrence of the following events: (i) Borrower's delivery of the final GMP Contract (as hereinafter defined) for the Project, (ii) Lender's receipt of a final report (the "Construction Review Report") from Lender's Construction Consultant (as hereinafter defined) that concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project (which review and report shall also include for the avoidance of doubt the Lender's Construction Consultant's approval of the GMP Contract and the Construction Management Contract), and (iii) verification of Borrower's equity contributed to such point into the Project. Borrower shall grant prompt access to Lender's accountants and consultants upon execution of this Commitment Letter to

Borrower's books and records in order for such accountants and consultants to verify the contribution of the Equity Requirement. Evidence of such contribution will constitute cancelled checks or wire transfer receipts (if funds were already disbursed into the Project) along with bank statements or any other form acceptable to Lender.

Manager: Borrower shall manage the Project. Lender shall hire a third-party consultant to monitor the progress of the construction and development of the Project. The expenses for such hire shall be borne by Borrower.

Plans & Specs: Lender and the Lender Construction Consultant shall be satisfied with its review of all the plans and specifications.

GMP Contract: The Project shall have a guaranteed maximum price contract ("GMP Contract") in form and substance satisfactory to Lender. The GMP Contract shall be performed by a qualified GC (as hereinafter defined) satisfactory to Lender. In addition, in Lender's sole discretion, the GC shall provide (i) a performance bond from a major insurance company or a financial institution satisfactory to Lender or (ii) a standby letter of credit to guarantee such performance in form and from a financial institution satisfactory to Lender.

Total Project Costs: Total Project Costs will include the interest expense on the Facility, "soft" and "hard" costs of the construction of the improvements of the Project and other carrying and development costs, establishment of required reserves, and closing costs associated with the Facility.

Total Project Costs shall be subject to review and verification by the Lender. Upon satisfactory completion of its due diligence, Lender shall put forth a final project budget ("Final Project Budget") that will be final for purpose of Lender's underwriting of the Loan.

Facility Term: Thirty-six (36) months from the closing of the Facility.

Extension Option: Borrower shall be entitled to one extension of twelve (12) months upon satisfaction of the following conditions for such extension:

(a) no Event of Default or default shall have occurred and then be continuing, (b) Borrower shall have paid to Lender an extension fee equal to 1% of the principal balance of the Facility, and (c) Borrower shall have given Lender not more than 120 days nor less than 30 days' notice of such extension.

Pre-Sale

Contracts/Deposits: Borrower acknowledges that the "pre-sales" aspect is a crucial consideration for Lender to consider the provision of the Loan. Upon the execution of this Commitment Letter and upon Borrower's submission of relevant information and future marketing plan for Phase 1 regarding such "pre-sales", Lender shall establish the exact pre-sales requirement of the Project (the "Pre-Sale Requirement"). The Loan Documents shall provide that all pre-sale deposits relating to the sales of lots shall (i) for pre-sale deposits relating to any "unit" (as defined in the *Condominium Property Act* (Alberta)), be held in trust by a prescribed trustee in compliance with the provisions of the *Condominium Property Act* (Alberta), (ii) for pre-sale deposits paid by individuals who are residents of British Columbia, be held in trust by a brokerage, lawyer, notary public or prescribed person in compliance with the provisions of the *Real Estate Development Marketing Act* (British Columbia), and (iii) otherwise be placed in escrow and released to (a) the Lender upon commencement of construction as a prepayment of the Tranche A Loan, or (b) the unit purchaser if commencement of construction does not occur on the date as specified under the agreement for sale (unless mutually extended). Exceptions will be approved by Lender, such approval not to be unreasonably withheld.

Distribution to

Equity:

No equity distributions by Borrower to any of its partners (general or limited), shareholders, Sponsor, directors and Principals will be permitted without the Lender's prior written consent until the Facility has been repaid in full.

Interest Rate:

Tranche A Loan: The non-default floating interest rate ("Based Rate") equal to the higher of (i) Bank of Canada Prime rate (as announced in the Daily Digest published by Bank of Canada from time to time) + 4% or (ii) 3-month Canada Dollar Offer Rate

(CDOR) (as published by Thomson-Reuters from time to time) +5.5%. Interest shall be payable current via cash flow and/or Interest Reserve (as hereinafter defined) during the loan period and such amount shall be incorporated into the Total Project Costs.

Tranche B Loan: Interest rate of 8% per annum ("Fixed Rate"), fixed and payable monthly in arrears.

To the extent permitted by law, Borrower waives the provisions of the *Judgment Interest Act* (Alberta).

Payments:

Interest on the Tranche A Loan and the Tranche B Loan shall be calculated on an actual day elapsed 360 basis. All interest accrued shall be due and payable at the end of the Loan Term as it may be extended. Interest on the Loan (i.e., each of the Tranche A Loan and the Tranche B Loan) shall be paid monthly from the Interest Reserve until such Interest Reserve has been fully advanced. The inadequacy, if any, of such Interest Reserve shall not relieve Borrower of its obligation to make interest payments on a timely basis.

Interest Reserve:

An interest reserve will be established promptly after the finalization of the Final Project Budget, in an amount to be determined by the Lender prior to the closing of the Facility but sufficient to fully fund the payment of interest for the Facility during the initial Facility Term, which reserve shall be maintained at a financial institution designated by the Lender, and which reserve may, in the Lender's sole discretion, be financed with the proceeds of the Facility (the "Interest Reserve"). The Interest Reserve shall be used to secure the Borrower's obligations under the Loan Documents, including, without limitation, the obligation to pay interest as the same becomes due.

Additional Reserves: Borrower shall establish necessary reserves (expected to be satisfied by adequate provisions in the Final Project Budget and related undrawn proceeds of the Facility) including, without limitation, for taxes and insurance, and for specific operating expenses of Borrower identified by Lender to be excluded from the Final Project Budget.

Insurance:

The Property including the improvements thereon, Borrower, the

GC and all subcontractors will be covered by insurance at limits, with deductibles and by carriers customary for similar transactions consummated by Lender. Insurance policies may not exclude coverage for events related to terrorism.

Cash Flow Sweep: To the extent that there is available cash flow (including 90% of net proceeds from the sale of each improved lot), 90% of all such cash flow less any approved working capital shall be put into a "lock box" and shall be used to (i) first, pay any accrued and unpaid interests on the Facility, (ii) second, prepay or repay the Facility and (iii) lastly, pay the Exit Fee (as hereinafter defined) and the Make Whole Amount (as hereinafter defined).

Release: Lender shall release its lien upon each relevant improved lot upon its receipt of the net payment for each such improved lot.

Purpose/

Use of Proceeds: Subject to the terms and conditions contained herein and in the Facility's Loan Documents, the Loan shall be used by the Borrower solely to (i) retire an existing loan with Alberta Treasury Branches in an amount of approximately C\$13,007,000 (to be verified by Lender during due diligence), (ii) advance certain pre-construction costs approved by Lender pursuant to the Master Plan, and (iii) pay for all closing and related costs consistent with "EXHIBIT C" (contained herein) and approved by Lender.

Upon the retirement of the foregoing loan with Alberta Treasury Branches, the Borrower shall be required to obtain and register discharges for (or otherwise cause the discharge of) any and all encumbrances registered against title to the Property relating to such loan.

Closing: The date of the execution and delivery of definitive Loan Documents for the Facility (the "Closing Date") is anticipated to occur on or about March 31, 2020, or such later date as determined by the Lender, in its sole discretion.

Prepayment: Any partial prepayments made pursuant to the "Cash Flow Sweep" section above are allowed with no prepayment penalty, provided that any such prepayment shall not be less than C\$1,000,000 Canadian Dollars per occurrence. Prepayment of the Tranche A Loan shall be

permitted with the payment of the Exit Fee. Prepayment of the Tranche B Loan shall be permitted with the payment of the Make Whole Amount.

**Exit Fee and
Make Whole
Amount:**

Tranche A Loan: 2% exit fee (the "Exit Fee") payable at prepayment, repayment or maturity.

Tranche B Loan: At any prepayment, repayment or maturity of the Tranche B Loan, including as a result of an acceleration after a default, the Borrower shall pay Lender, in addition to any unpaid interest and principal, a lump sum amount which, when taking into account the payment of the Loan fees and interests, shall yield Lender an overall internal rate of return (IRR) of 15% (the "Make Whole Amount").

Default Rate:

Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) on unpaid principal, interest and other amounts secured by the Loan Documents, payable on demand.

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)).

Late Charge:

Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) of the amount then due and payable (other than the payment on the maturity date).

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)) of the amount then due and payable (other than the payment on the maturity date).

Security:

Each of the Tranche A Loan and the Tranche B Loan and all obligations of the Borrower under the Loan Documents shall be fully recourse to the Borrower and shall be secured by:

1. A promissory note executed by Borrower in favor of Lender with respect to the Facility.
2. A first priority (and with respect to the Tranche B Loan, second priority) mortgage and assignment of rents over the Borrower's

interest in the Property granted by the Borrower (the "Legal Mortgage").

3. Stock pledges of Sponsor.
4. A first priority or ranking all assets general security agreement under Applicable Canadian Law granted by the Borrower (including an assignment of all key construction and development documents and step-in rights where appropriate), together with a security agreement under New York law and a UCC-1 financing statement.
5. An assignment of all rights of the Borrower's title and interest in and to the Project including all agreements related to the Property.
6. A first priority or ranking perfected security interest in all fixtures, furnishings and equipment at the Project now owned and hereafter acquired by the Borrower, together with any financing statement or other perfection instrument required under Applicable Canadian Law.
7. A collateral assignment of all the material construction-related contracts including, without limitation, the architect's agreement and all other construction and development agreements, including any GC's agreements and subcontractors' agreements (including the GMP), and collateral assignment of the plans and specifications for the Project.
8. A mortgagee's policy of title insurance (the "Title Insurance Policy") or Canadian equivalent with respect to the Legal Mortgage, satisfactory to the Lender, its insurance advisors, and Lender's Local Counsel in their sole and absolute discretion, in an amount equal to the Facility with such endorsements thereto as the Lender may require insuring the first priority ranking of the Legal Mortgage in favor of the Lender.
9. An assignment of all proceeds and claims arising from damage to or condemnation of the Project and/or the improvements or a portion thereof.

10. An assignment of all inventory, accounts and general intangibles (including, without limitation, all contract rights, licenses, permits, entitlements and other customary documents).
11. If applicable, an assignment of all leases and occupancy agreements, if any, for the Project together with all rents, profits and issues therefrom (or Canadian equivalent). The assignment shall provide that the Lender has the right in its sole and absolute discretion to approve the form of leases to be used at the Project and require minimum standards with respect to rent, term and expense recoveries.
12. An assignment of all deposits (including purchase contract deposits under any purchase contracts for the lots).
13. A perfected security interest in all reserve accounts required under the Loan Documents.
14. Assignment of insurance.
15. Postponement and assignment agreement granted by the Sponsor and the Principals in favor of the Lender, postponing and assignment any right, title and interest in and to any payment owing by the Borrower to the Sponsor or Principals, as the case may be, to the Lender.
16. Any additional items which Lender and its New York and/or Canadian counsel may reasonably require in connection with the foregoing security interests.

Other customary items of security for a construction loan of this size and type, and together with items 1-16, collectively, the "Security Documents".

Documentation:

The closing of the Facility will be subject to (i) the negotiation, execution and delivery of a definitive loan agreement (including schedules, exhibits and ancillary documentation) (the "Facility Agreement"), (ii) guaranties (if applicable), (iii) all of the Security Documents described in the previous "Security" section hereof, (iv) all waivers, postponements, subordination and priority agreements and other documents required by Lender to provide

Lender with all such priority or ranking as required in the previous "Security" section hereof, (v) promissory note(s) evidencing the Facility, (vi) an environmental indemnity agreement executed by the Borrower, Sponsor and Principal, and (vii) such other and additional documentation as the Lender shall require, all containing terms and conditions as shall be satisfactory to the Lender and its counsel in all respects in their sole discretion (collectively, the "Loan Documents").

Conditions

Precedent:

The Lender's obligation to make the Facility available to the Borrower shall be subject to the satisfaction of certain conditions precedent which shall include, but shall not be limited to the following:

1. Receipt by Lender of its final Investment Committee's and Board of Directors' approval of the transaction contemplated by this Commitment Letter.
2. Satisfactory completion of Lender's legal, business and other due diligence and satisfactory completion of Lender's underwriting of the Project.
3. Receipt of any consents, third-party estoppels, subordination, non-disturbance and attornment agreements as required by Lender.
4. Loan Documents satisfactory to Lender which shall include, such terms and conditions as shall be required by the Lender and its counsel, including, without limitation, the terms and conditions outlined in this Commitment Letter, and in Exhibit A.
5. Satisfaction of closing conditions set forth in final documentation, including, without limitation, Loan Agreement, Security Agreement, Pledge Agreement, Guarantees, Promissory Notes, Performance Bonds, Subordination Agreement, Title Insurance Policies or Canadian equivalent (if applicable), Survey and Legal Opinions, each satisfactory to Lender.

6. Review and approval of design and construction items, including, contractors, plans and specifications, construction budgets, performance and payment bonds, construction contracts, subcontracts, design contracts, architect and design professional agreements, soils reports, licenses, permits and approvals relating to the construction by Lender.
7. Verification by Lender of the Equity Requirement.
8. Receipt of all organizational documents of Borrower, Sponsor and personal information of the Principal and all property related due diligence items Lender or its counsel deem necessary for the subject transaction.
9. Receipt of the total Project costs (the "Total Project Costs") (with a breakdown of line items) in form and substance acceptable to the Lender
10. Subject to Borrower's satisfaction of item 12 below, receipt of evidence satisfactory to Lender of the Project's compliance with all laws and zoning regulations, including, without limitation, issuance of all governmental permits.
11. Borrower has entered into Qualified Contracts for the sale of lots sufficient to meet the Pre-Sale Requirement, based on at least the approved minimum sales price schedule.
12. Approval of the general contractor ("GC") by Lender in its sole discretion, and receipt of a GMP Contract in an amount not more than provided for in the budget in form and substance approved by Lender and its construction consultant.
13. Approval of the Master Plan of the Project.
14. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsor or Principal, the Property, the Project or political, economic, capital markets, or other market conditions.
15. Receipt of payment and performance guaranty from the GC in the form of payment and performance bonds from insurers with

ratings of A or better (from acceptable rating agency) and acceptable to Lender in its sole discretion, for the GC or, at Lender's sole discretion and election, a standby letter of credit acceptable to Lender with respect to GC's performance in an amount and from a financial institutions acceptable to Lender in its sole discretion. Dual Oblige riders in favor of Lender will also be required for the performance bonds.

16. Receipt of marketing materials for the Project that comply with all applicable laws and regulations.
17. All relevant filings required by the Canadian authorities, to be made under the relevant laws and regulations and any other governmental or regulatory requirement relating to the Master Plan, have been accepted and approved by the appropriate agencies.
18. Environmental Site Assessment (or Canadian equivalent) from a qualified engineer acceptable to Lender to be received prior to closing of the Loan.
19. All guarantees in form and substance and financial condition of Guarantor all satisfactory to Lender in its sole discretion prior to closing of the Loan.
20. Prior to closing the Loan, Lender shall receive, review and accept an MAI Appraisal (or Canadian equivalent) which indicates an "as is" and "as completed" market value satisfactory to Lender in its sole discretions.
21. Lender's receipt of a feasibility report to be prepared by a consultant, all in form and content satisfactory to Lender to be received prior to the closing of the Loan.
22. Borrower shall deliver its full financial statements (i.e., Profit & Loss Statement, Balance Sheet and Cash Flow Statement) in either "Audited" or "Review" format based on GAAP (or local equivalent) under AICPA (or Canadian CICA) guidelines for the fiscal period ended May 31, 2018, May 31, 2019 and a 9-month "stub" period ended January 31, 2020. The Audited or Review report (the "Financial Review") shall be prepared by a qualified certified public accountant or chartered accountant

firm approved by Lender. The Financial Review shall be subject to review and approval by Lender and its accountant as a condition to closing.

23. In addition to the satisfaction of all other contingencies and conditions precedent contained herein, this Commitment Letter shall remain contingent and the closing of the Facility shall be predicated upon the Lender's Construction Consultant's receipt of the final GMP Contract, the Final Project Budget and the plans and specifications and such Lender's Construction Consultant's issuance of the Construction Review Report which concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project.
24. Review and approval of the due diligence contingencies listed on Exhibit B annexed hereto (the "Due Diligence Contingencies").
25. All usual and customary terms and conditions precedent for loan facilities of this size, type and purpose, together with such other terms and conditions as the Lender may require in its sole discretion, shall have been satisfied, including, without limitation:
 - a. Delivery of a certificate of a duly authorized signatory for Borrower and Sponsor containing an incumbency certificate and attaching: (i) its certificate of formation and by-laws, (ii) its resolutions authorizing the transactions, and (iii) good standing certificates, in each case in form and substance acceptable to the Lender and its counsel or the equivalent documents under the jurisdiction of formation of each entity.
 - b. Opinions of counsel to Borrower and Guarantors, in form and substance acceptable to the Lender and its counsel, including, without limitation, opinions as to such regulatory matters as the Lender and its counsel shall require and a "non-consolidation" opinion with respect to the Borrower.
 - c. Lender shall have received a lien search for Borrower and each Sponsor and Principal (including, without limitation,

with respect to any assets acquired by the Borrower) and a background report on each Principal, and the results thereof shall be satisfactory to Lender and its counsel.

- d. The Lender shall have received a litigation search for Borrower and each Sponsor and Principal and verification that there are not prior or pending actions, and the results thereof shall be satisfactory to the Lender and its counsel.
- e. The Lender shall have received a tax lien search for Borrower and each Sponsor and Principal, and the results thereof shall be satisfactory to the Lender and its counsel.
- f. The Borrower shall have paid all fees and disbursements of Lender and its counsel when due, except for those fees which are going to be paid from the Facility proceeds at closing.
- g. The Lender shall be satisfied in all respects with the Borrower's insurance and shall have received satisfactory certificates naming the Lender loss payee and additional insured.
- h. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.

**Representations
and Warranties:**

The Loan Documents shall include such representations and warranties as are usual and customary for loan facilities of this size, type and purpose, together with such other representations and warranties as the Lender or its counsel may require in their sole discretion, including, without limitation, representations and warranties relating to the existence, good standing, capacity, power and authority of the Borrower, the due authorization of all Loan Documents, receipt of all necessary governmental approvals and authorizations, ownership by each Guarantor of its assets, absence

of liens or material litigation, payment of taxes and other material obligations, no material adverse change in any of Borrower's, Sponsor's or Principal's operations or financial condition, possession and validity of all licenses, permits, consents and authorizations to operate the Borrower's business as shall be deemed necessary or advisable by the Lender, solvency, compliance with agreements, compliance with laws, and litigation matters.

Covenants:

The Loan Documents shall include such affirmative and negative covenants as are usual and customary for loan facilities of this size, type and purpose, including, without limitation, financial covenants (e.g. DSCR), covenants regarding insurance, covenants limiting distributions, due on sale and due on encumbrance covenants, covenants restricting the incurrence of debt, covenants restricting affiliate transactions, and covenants regarding the SPE status of the Borrower; together with such additional covenants as the Lender or its counsel may require in their sole discretion, including, without limitation, the following:

1. Prohibitions or limitations on additional indebtedness (other than customary trade payables) and guaranties
2. Prohibitions on granting liens on assets or permitting the existence of builders' liens on the Property (or any portion thereof).
3. Prohibitions on dividends, distributions and other restricted payments.
4. Prohibitions on transactions with affiliates, except on terms which are intrinsically fair and no less favorable to Borrower than would be obtained in an arms-length transaction with an unrelated third party.
5. Restrictions on issuance of stock, changes in ownership, capital structure and nature of business.
6. Prohibitions or limitations on capital expenditures (limitations shall be based on amounts set forth in Borrower's budget unless otherwise approved by Lender), acquisitions, asset sales (other than pre-sales in accordance with the terms of this Commitment

Letter and the Facility) and exchanges, investments, mergers, sale leasebacks, lines of business, prepayments of other debt, restrictions on subsidiaries and transactions with affiliates.

7. The Borrower shall deliver to the Lender the following information (wherever applicable):
 - a. As soon as available and in any event within forty-five (45) days following the close of each fiscal quarter, copies of quarterly unaudited consolidated financial statements, certified by the chief financial officer or a director of the Borrower.
 - b. As soon as available, and in any event, within ninety (90) days following the close of each fiscal year, financial statements prepared on a consolidated and consolidating basis in accordance with generally accepted accounting principles applied on a consistent basis and audited by an independent certified public accountant (or Canadian equivalent) satisfactory to the Lender.
 - c. Copies of tax returns filed by the Borrower for fiscal year 2018 and 2019 or promptly upon filing with the appropriate taxing authorities.
 - d. Copies of all registration statements, SEC forms 10-K, 8-K and 10-Q (or equivalents under Applicable Canadian Law) and all other information, forms, notices, applications and documents for all Borrower, Sponsor and Principal received or filed with all federal and state government agencies and authorities, including, without limitation, all reports, notices and correspondence filed with, sent to or received from the Securities and Exchange Commission or any state securities agency, HUD, any state banking authority or any regulatory authority in the jurisdiction of the Property.
 - e. Copies of (i) personal financial statements of Principal (to the extent such Principal is a Guarantor and natural person) as of December 31, 2019, and (ii) all financial statements, reports, written material notices and correspondence filed with, sent to or received from any state or federal agency or governmental body or otherwise made public by the

Borrower or such agency or governmental body.

f. Such other information relating to the Borrower, Sponsor or the Principal as the Lender may request in its reasonable discretion.

8. Compliance with applicable real estate development marketing legislation.

No Borrower's Fees: Other than compensation and/or fees approved by Lender (except in the event of a default by the Borrower) as set forth in the Final Project Budget and paid in accordance with such Final Project Budget approved by Lender, no management fees or other similar compensation shall be payable to Borrower, Sponsor or Principal or their respective owners, directors, officers or employees during the Loan Term without the prior approval of Lender.

Events of Default: The Loan Documents shall contain such events of default as are usual and customary for credit facilities of this size, type and purpose, together with such other events of default as the Lender or its counsel may require in their sole discretion, including without limitation, nonpayment of principal, interest and other sums due the Lender after five (5) days following the date such payments are due, failure to keep the Facility "in balance" after a specified number of days following Borrower's receipt of notice from Lender, failure to remedy a breach of covenants, breach of representations and warranties, bankruptcy and insolvency related matters (including matters relating to creditor arrangements and receivership), change of control, ERISA issues (or issues under equivalent Applicable Canadian Law), violation of laws, material adverse change in the assets, business, operations or financial condition of the Borrower, Sponsor or Principal, violation of laws, and termination, suspension or non-renewal of material licenses, in each case after grace, notice, or cure periods as will be further defined in the loan documentation.

Recourse: Fully recourse to Borrower but not to Sponsor and the Principal; provided, however, (i) standard "bad-boy" recourse carve-outs (which shall include fraud and misrepresentation and any voluntary act of bankruptcy of Borrower) and environmental indemnity shall apply to Sponsor and the Principal and (ii) the Sponsor and the

Principal shall guarantee the Project Cost overruns in excess of items reflected in the final approved Project Budget and lien-free completion of construction and also those obligations described in the "Guarantors" section if applicable.

Cost and Yield

Protections:

Standard provisions for illegality, increased costs or reduced return, including those arising from taxes, withholding and capital requirements.

Transferability:

Except for partial releases described above, the Loan Documents shall provide that the Property and the direct and indirect ownership interests in Borrower shall not be directly or indirectly sold, transferred, encumbered, mortgaged or otherwise disposed of, in whole or in part, without Lender's consent.

Compliance with

Law:

Lender shall be satisfied that the Project complies with all applicable laws including, without limitation, planning and development, zoning, environmental, municipal, and tax laws. In addition to all other requirements set out in this Commitment Letter, the Loan Documents as well as compliance with all applicable laws governing the Project, the Borrower shall ensure that prior to the transfer of any and all lots in the Project, it procures (at its own cost and expense) the registration of a subdivision plan (and any further subdivision, strata and/or condominium plans as required), bylaws and all requisite easements/rights of way/restrictive covenants (collectively, the "Registration Documents") for the Project, and provides any required municipal land dedications or payments in lieu thereof, all pursuant to Applicable Canadian Law (as revised and in accordance with their respective regulations). The Lender shall have the right to inspect and comment on the Registration Documents prior to submission to the Alberta Land Title Office.

Environmental:

The Project shall be clear from any environmental issue as required under the applicable laws. Any documentation in connection with the clearance shall be of form and substance satisfactory to Lender and the Borrower shall provide an environmental assessment from the Alberta Energy Regulator relating to energy resource activity on the Property to the Lender. As applicable, any abandonment,

reclamation and remediation costs and other environmental obligations relating to the Property shall be the sole responsibility of Borrower, and shall not be satisfied (in whole or in part) using the Loan without Lender's prior approval.

Approval: Among other approval rights, Lender will have sole approval rights with respect to admission of new partners or principals, changes to the Final Project Budget and sales agent arrangements. Agreements with each sales agent will be subordinated to the Facility. Lender shall be satisfied that the Borrower has secured all necessary approvals for the development of the Project. Such approvals include, without limitation, Master Plan, site, planning, designs, zoning, environmental, development agreement, building permit and any other relevant approvals as identified by Lender's Local Counsel.

Construction Consultant: Lender shall engage an independent consultant ("Lender's Construction Consultant") who will review the Final Project Budget and construction draws on a monthly basis. The closing of the Loan is predicated upon the Lender's receipt of an acceptable review of the budget and the Lender's Construction Consultant's conclusion that the budget is sufficient to complete the improvements.

Assignment: Borrower hereby specifically acknowledges that Lender shall reserve the right to transfer, syndicate, or sell part or whole of the Loan (which may be effectuated at the closing of the Loan or at any time thereafter). Borrower agrees to cooperate with any such transfer or sale but will only be responsible for its own costs. Borrower is prohibited to assign any of its rights under the Loan to any third-party without Lender's prior approval.

Structuring: Lender may, and Borrower shall fully cooperate with Lender to, structure all or part of the Facility, as a wraparound loan, co-lending facility (with or without agents), or other structure at no additional cost or financial exposure to Borrower.

Termination: This Commitment Letter may be terminated at Lender's option by Lender giving written notice to Borrower at the address set forth above upon the occurrence of any of the events or conditions

described elsewhere in this commitment letter giving rise to such termination right (including, without limitation, under the provision entitled "Due Diligence" hereof), or upon any of the following events:

1. Any of Borrower's, Guarantors' or Principals' assignment for the benefit of its creditors, admission in writing of its inability to pay its debts as they become due, filing of a petition of bankruptcy or being adjudicated a bankrupt or insolvent, or voluntary filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation.
2. Any material adverse change in the condition of the Property or any of the Borrower, Guarantors or Principals (financial or otherwise), subsequent to the date of this Commitment Letter.
3. If any statement, representation or warranty made in any application, submittal or other written statements made to Lender by any of the Borrower, Guarantors or Principals in connection with the Facility shall prove to have been untrue or misleading when made in any material respect, or shall have failed to disclose information necessary to make such statement not materially misleading in light of the circumstances under which it was made.
4. If the Environmental Audit (as defined in Exhibit A hereto) discloses the presence of any existing or potentially hazardous material contamination or physical conditions that may result in such contamination of the Property.
5. If Lender has not received the Appraisal, Environmental Audit, the Construction Review Report, verification of Presale Contracts, the Financial Review and any other reports reasonably required by Lender, and approved them all by March 13, 2020, in its sole discretion.
6. If the Closing Date does not occur by March 31, 2020 unless otherwise extended by Lender, in its sole discretion.

Delay in the exercise of Lender's right to terminate this

Commitment Letter shall not be construed as a waiver of any such right to terminate with regard to the occurrence of any specific event referred to above, and Lender's failure to act as to any such event shall not be construed as a waiver of its rights or remedies with respect to any subsequent event of default. Any termination of this Commitment Letter shall not affect Lender's rights to enforce, or any Borrower's and Principal's obligations under Section "Loan Fees" and Section "Expenses and Indemnification", including legal fees and disbursements, which rights shall survive any such termination. Upon termination of this Commitment Letter, the Lender shall have no further obligations hereunder except to return that portion of the Commitment Fee which has been received by Lender, and Expense Deposit subject to the terms and conditions set forth herein.

Loan Fees:

Commitment Fee: In consideration of the Lender's issuance of this Commitment Letter, the Borrower shall pay to the Lender a total commitment fee in the amount of two and one-half percent (2.5%) of the Facility (C\$975,000) (the "Commitment Fee"). Prior to the issuance of this Commitment Letter, Lender acknowledges that a portion of the Commitment Fee in the amount of C\$300,000 (the "Escrow Funds") from Borrower was deposited with MLT Aikins LLP pursuant to an escrow agreement by and among the Lender, the Borrower, and MLT Aikins LLP as the escrow agent, dated November 7, 2019 (the "Escrow Agreement"). The Commitment Fee shall be due and payable as follows: (a) C\$50,000 payable simultaneously at the execution of this Commitment Letter, with such funds to be released from the Escrow Funds, (ii) C\$250,000 payable when Lender approves the Due Diligence Contingencies in Exhibit B, with such funds to be released from the Escrow Funds, and (iii) C\$675,000 payable at the earlier of (x) the closing of the Loan and to be funded from the Loan proceeds or (y) the expiration of the Commitment if the Loan does not close for any reason other than Lender's willful default. Notwithstanding the foregoing, if Lender is unable to approve the Due Diligence Contingencies by the date that is thirty (30) days after the date of execution of the Commitment Letter due solely to Borrower's failure to submit the required documentation under Exhibit B (the Due Diligence Contingencies) to Lender, then Borrower agrees to release from the Escrow Funds on the thirty-first (31st) day and pay to Lender an additional C\$50,000 Commitment Fee. If Borrower

fails to deliver all of the required documentation under Exhibit B (the Due Diligence Contingencies) prior to the date that is sixty (60) days after the date of execution of the Commitment, then Lender shall have the unilateral right to terminate the Commitment and will incur no liability to Borrower. Under such circumstance, the remaining Escrow Funds shall be released from escrow and payable to Lender as liquidated damages for Lender's processing and preparation of the closing of the Loan. If the closing does not occur due to Borrower's failure to satisfy the conditions precedent to the closing or due to any other Borrower's default, then the total Commitment Fee of 2.5% shall be due immediately thereafter. Borrower, Sponsor and the Principal shall jointly and severally guarantee the payment of such Commitment Fee under such circumstance.

Legal Fees and Disbursements. Upon the execution of this Commitment Letter, Borrower shall deposit US\$25,000 with Lender or with Withers Bergman LLP, Lender's New York counsel (the "Expense Deposit"), which sum shall be used by Lender to defray on-going expenses in connection with the Facility, including, without limitation, to pay Lender's legal fees and disbursements in connection with the preparation, review and negotiation of this Commitment Letter, and thereafter such fees and disbursements as may be incurred in consummating the transactions that are the subject thereof. Borrower shall be obligated to pay all reasonable fees and disbursements of Lender's counsel (U.S. and Canadian) regardless of whether the Closing Date occurs.

Broker:

Nova Capital Advisors, Inc ("Nova"). Borrower shall enter into a fee agreement with Nova regarding its finder's fee for introduction of Lender to Borrower. The Borrower shall pay any brokerage or finder's fees, commissions or other compensation payable to Nova in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.

**Expenses and
Indemnification:**

Without limiting the Borrower's obligations contained elsewhere in this Commitment Letter, the Borrower will pay the out-of-pocket costs, fees and expenses of the Lender incurred in connection with its due diligence, the negotiation, preparation and closing of the

Loan Documents regardless of whether any transaction contemplated hereby is therein consummated, and will provide indemnification thereto on terms and conditions that are usual and customary for a facility of this size, type and purpose, including, without limitation, costs, fees and expenses of the Lender in connection with the establishment (including, without limitation, legal fees and disbursements, due diligence expenses, fees of accountants, consultants and other third parties in connection with search, audit and appraisal services, filing, recording and registration fees, title insurance policy costs, and other costs and expenses) of, and fees, costs and expenses of the Lender in connection with, the preservation of its rights and the enforcement of the Facility; provided, however, in no event shall Borrower indemnify Lender for losses, claims, damages, liabilities, or related expenses to the extent such expenses are primarily caused by the willful misconduct or gross negligence of Lender.

Due Diligence:

By accepting this Commitment Letter, the Borrower specifically acknowledges that this Commitment Letter is being issued at a time when the Lender has not completed a full business, credit and legal due diligence and analysis of the Borrower, the Sponsor or the Principal, the collateral for the Facility or other aspects of the Facility contemplated by this Commitment Letter. As a result of further investigation and analysis by the Lender and its consultants, agents, representatives, analysts, accountants and counsel, which investigation and analysis shall include a review of the documents and information required under this Commitment Letter and the Loan Documents, information with respect to the Borrower, the Sponsor and the Principal, and the collateral for the Facility, of which the Lender is not now aware, may be revealed and affect the Lender's decision and/or ability to close the Facility. The Lender may, in its discretion, based on such information, decide to not close the Facility (in which case this Commitment Letter shall be deemed terminated and withdrawn) or to require that the terms of this Commitment Letter be modified or that new conditions be added hereto to address appropriately the issues raised by such information. In the event that, based upon the results of the Lender's due diligence, the Lender exercises its rights under this paragraph and determines not to close the Facility as contemplated in the Commitment Letter, the Borrower acknowledges and agrees that the Lender's sole liability shall be to return the portion of the

Commitment Fee that has been received by Lender, and Expense Deposit less any and all out-of-pocket amounts expended by the Lender in connection with this Commitment Letter, the Loan Documents and the transactions contemplated hereby and thereby. In such event, the Borrower agrees not to make any claim or bring any proceeding or action against the Lender arising out of this Commitment Letter, the Loan Documents or the transactions contemplated hereby or thereby, and the Borrower further releases and acquits the Lender, its subsidiaries and affiliates and their respective employees, officers, directors, shareholders, agents, attorneys, accountants and consultants from any and all known or unknown claims, proceedings, damages, liabilities and obligations, except for the obligations specifically provided in this paragraph.

**Rights of
Shareholders:**

It is expressly understood and agreed that the rights of the shareholders (or partners, as the case may be) of Borrower with respect to their equity in Borrower, Sponsor, and/or Guarantors and the return on same or repayment thereof shall at all times be fully subordinated to Lender's rights under the Loan Documents and to Lender's rights to receive repayment of the Facility, together with all interest accrued thereunder and the payment of the additional interest, subject to the distribution priorities set forth herein, if any.

**No Third Party
Beneficiary:**

This Commitment Letter has been prepared for the sole use and benefit of Borrower (and its constituent owners) and Lender and its affiliates, and no other persons or entities shall have any right to rely upon this Commitment Letter or any of the terms or provisions contained herein for any purpose, except that each Indemnified Party (as hereinafter defined) may rely on the provisions contained herein relating to indemnity and limitation of liability.

**Lender Not a
Joint Venturer:**

Any provision hereof to the contrary notwithstanding, Lender, by virtue of its issuance of this Commitment Letter or any action taken pursuant hereto, shall not be deemed to be a partner or joint venturer with any of the Principals, Borrower, Sponsor, Guarantors or any other parties. Each of the Borrower, Guarantors, Sponsor and Principal shall jointly and severally indemnify, defend (with counsel approved selected by Lender) and hold harmless Lender, in its capacity as the provider of the Facility, from and against any

and all losses, costs, damages, expenses (including, without limitation, those of defending or settling any such claims or demands and all reasonable fees and disbursements of outside legal counsel engaged by Lender in defending and settling such claims or demands resulting from such a construction of the parties and their relationship) and liabilities occasioned by Lender being deemed to be a partner or joint venturer with any of the Borrower, Guarantors, Sponsor or Principal or any other parties as a result of the issuance of this Commitment Letter or providing the Facility to Borrower. Any inspection of the Property, any review of the plans and specifications therefor or other documents submitted to Lender or Lender's consultants or any analysis of any Property or related facts, documents, conditions and circumstances made by Lender or any of its agents, architects or consultants is intended solely for the benefit of Lender and shall not be deemed to create or form the basis of any warranty, representation, covenant, implied promise or liability to any of the Borrower, Guarantors, Principal, Sponsor or any other person or entity.

Conflicting Terms: The terms, conditions and provisions of this Commitment Letter shall, if this Facility is funded, terminate upon the execution of the Loan Documents except to the extent such terms are expressly stated to survive the closing of the Facility. If there is any conflict or inconsistency between the terms, conditions and provisions of this Commitment Letter and the terms, conditions and provisions of the Loan Documents, the Loan Documents shall control.

**Governing Law/
Consent**

to Jurisdiction: Irrespective of the place of execution and/or delivery, this Commitment Letter and the Loan Documents (except that the Legal Mortgage and the provisions in the other Loan Documents with respect to the creation, perfection and enforcement of the liens and security interests created pursuant to the Loan Documents will be governed by, and construed in accordance with, the internal laws of Alberta, Canada) shall be governed by, and shall be construed in accordance with, the laws of the State of New York applicable to agreements entered into and to be performed entirely within New York. The Borrower and the Lender hereby consent and submit to the jurisdiction of the state and federal

courts located in New York City, New York with respect to any claim or litigation arising hereunder or under the Loan Documents or any alleged breach of any of the covenants or provisions contained herein or therein, and acknowledge and agree that proper venue in any matter so claimed or litigated shall be in the New York State Supreme Court or other state court located in the Borough of Manhattan, in the City of New York, State of New York, or in the United States District Court for the Southern District of New York, as appropriate.

**Waiver of
Jury Trial:**

EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS COMMITMENT LETTER OR OTHERWISE RELATED TO THE FACILITY CONTEMPLATED HEREBY OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS COMMITMENT LETTER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Borrower hereby represents and covenants that: (i) to Borrower's knowledge, all information (the "Information") other than projections (the "Projections") that has been or will be made available to Lender by Borrower or any of its representatives is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made, and (ii) the Projections that have been or will be delivered have been prepared in good faith based upon reasonable assumptions. Borrower acknowledges that we may have shared, and that we may in the future share, non-public information concerning the Borrower, Sponsor, Principal and their affiliates with our affiliates. By your execution of this Commitment Letter, you consent and agree to such sharing of information. Any breach by you of the provisions contained in the Commitment Letter, shall, at the option of the Lender, terminate all of the Lender's obligations under this Commitment Letter. This paragraph shall survive the closing of the Facility.

The Lender's willingness to offer the Facility is further subject to, among other things: (i) the negotiation and execution of Loan Documents containing such terms as are described above and otherwise in form and substance satisfactory to the Lender and its counsel; (ii) the absence of any material adverse change in the condition (financial or otherwise), business, assets, properties, prospects, operations, performance or current

capital structure of the Borrower, Sponsor, or Principal, (iii) our verification of the Information, (iv) our not becoming aware after the date hereof of any information or other matter which is inconsistent with any Information or the Projections and our otherwise being satisfied with our due diligence concerning the Borrower, Sponsor, Principal and such aspects of their respective businesses and assets that we choose to investigate, (v) the resolution and satisfaction of all contingencies contained herein, and (vi) the absence of any disruption of or adverse change in the financial, banking or capital markets (including the market for debt financing) that we deem material.

By executing this Commitment Letter, Borrower hereby agrees to indemnify and hold harmless the Lender, its subsidiaries and affiliates and each of its and their officers, directors, employees, affiliates, agents, representatives, counsel, accountants, consultants and controlling persons (each, an "Indemnified Party") from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding howsoever relating to this Commitment Letter, the Facility (including the use of the proceeds thereof), or any related transaction, whether or not any Indemnified Party is a party thereto, and to reimburse each Indemnified Party upon demand for all out-of-pocket legal and other fees and expenses incurred in connection with investigating or defending any of the foregoing; provided, however, that the foregoing indemnity will not, as to any Indemnified Party, apply to losses, claims, damages, liabilities or related expenses to the extent arising from the willful misconduct or gross negligence of such Indemnified Party. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter, Borrower represents that it has secured all requisite consents, authorizations and internal approvals, including, without limitation, from the partners, members, managers, Board of Directors and/or shareholders of the Borrower (as applicable), required to execute and deliver this Commitment Letter and fulfill Borrower's obligations hereunder. To the extent there is any future dispute arising from the breach by Borrower of this representation, the Guarantors and Borrower shall indemnify each Indemnified Party from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding arising from such dispute.

By executing this Commitment Letter, Borrower: (i) agrees that Borrower will not make any claim against any Indemnified Party for any special, punitive, indirect or consequential damages in respect of any breach or wrongful conduct (whether the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated and the relationship established

by this Commitment Letter, or any act, omission or event occurring in connection herewith, and (ii) waive, release and agree not to sue upon any such claim for any such damages whether or not accrued and whether or not known or suspected to exist in your favor. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter and without limiting any provision hereof, Borrower agrees that Borrower will pay all fees, costs and expenses incurred by the Lender in connection with the negotiation and preparation of this Commitment Letter and the Loan Documents relating to the Facility (including, without limitation, costs and expenses in connection with Lender's due diligence investigations and fees and expenses of our counsel) whether or not the loan documentation is finalized and whether or not the Facility is extended or other financial accommodations are made, and regardless of the reasons for which such documentation is not finalized or the Facility is not extended or other financial accommodations are not made. Such fees and expenses include, without limitation, fees and expenses incurred in connection with documenting this Commitment Letter and the Loan Documents, due diligence expenses, costs of appraisals, search fees, costs of title insurance policies, fees and expenses of counsel, accountants and consultants, environmental review, and recording, filing and registration costs. In the event of a default under the Loan Documents, the Borrower, Sponsor and Principal shall pay all of the Lender's fees, costs and expenses incurred in connection with enforcing its rights.

If Lender decides to not close the Facility based on Lender's due diligence analyses as set forth in this Commitment Letter, Lender shall have no liability for any losses or damages sustained by any of the Borrower, Guarantors and Principal as a result of such decision by Lender and Lender shall, subject to Lender's receipt of a legal release from Borrower and related parties, promptly refund the portion of the Commitment Fee paid to or for the benefit of Lender, less expenses incurred in connection with the Facility or this Commitment Letter. If the Facility does not close for any reason other than as a result of Lender's due diligence analysis or Lender's willful default, Lender shall retain all fees previously paid under the terms of this Commitment Letter as liquidated damages and Lender shall have no liability for any losses or damages sustained by Borrower by reason thereof.

Borrower agrees that this Commitment Letter is for its confidential use only and will not, without Lender's prior written consent, be disclosed by Borrower or any of its representatives to any person other than its accountants and attorneys, and then only in connection with the transactions contemplated hereby and only on a confidential basis, except that, following Borrower's acceptance of this Commitment Letter, Borrower may make such disclosure of the terms and conditions of this Commitment Letter as Borrower

is required by law to make. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

This Commitment Letter shall not be assignable by Borrower, and may not be amended or any provision hereof waived or modified except by a document in writing signed by Borrower and the Lender.

The foregoing is not and shall not be deemed to be a binding agreement by the Lender to make available the Facility described herein. Such agreement will arise only upon the execution and delivery by the Lender and the Borrower of a definitive loan agreement and such other agreements, instruments and documents as shall be required by the Lender and its counsel, and the fulfillment of the conditions precedent set forth herein and therein. All of such documents may contain any terms, provisions or conditions as the Lender may deem necessary or desirable.

This Commitment Letter sets forth the entire understanding of the parties hereto as to the scope of the obligations of the parties hereto and supersedes all prior agreements, written or oral, representations and understandings, if any, relating to the subject matter hereof. THIS COMMITMENT LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES OF SUCH STATE. EACH OF THE UNDERSIGNED PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF OR IN CONNECTION WITH, THIS COMMITMENT LETTER AND ANY OTHER COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY OF THE UNDERSIGNED PARTIES IN CONNECTION HEREWITH. IN NO EVENT SHALL ANY PARTY TO THIS COMMITMENT LETTER BE LIABLE FOR PUNITIVE OR CONSEQUENTIAL DAMAGES.

Withers Bergman LLP will act as U.S. counsel and MLT Aikins LLP will act as Canadian counsel to Lender in connection with the Facility. Each of the Borrower and Guarantors are requested to deliver copies of all correspondence and documentation in connection with the Facility to their attention. Please have your counsel contact our legal counsel in order to begin the necessary due diligence and documentation processes.

This Commitment Letter shall automatically expire if not accepted by Borrower in accordance with the terms hereof on or before 5:00 P.M. (New York City time) on February 14, 2020. Please indicate Borrower's acceptance of this Commitment Letter

and agreement to the terms hereof by signing this Commitment Letter where indicated below and returning it to the Lender, together with (a) the initial installment of the Commitment Fee of C\$300,000 (which Lender acknowledges has been deposited with MLT Aikins LLP pursuant to the Escrow Agreement), and (b) US\$25,000 Expense Deposit to Lender or Withers Bergman LLP, Lender's New York legal counsel, at Lender's election for the expense deposit. By so doing, Borrower will be bound by the terms hereof and will pay all fees, costs and expenses as provided herein.

Even if accepted in accordance with the provisions of the previous paragraph, the obligations of the Lender under this Commitment Letter shall expire and terminate automatically, without further act or condition and regardless of cause or circumstance, if loan documentation satisfactory in form and substance to us and our counsel is not executed on or before April 30, 2020.

[The rest of this page has been intentionally left blank.]

This Commitment Letter may be executed in counterparts, all of which together shall be considered one and the same document.

Very truly yours,

BARBICAN CAPITAL PARTNERS, LLC

By: _____

Name: Benny P. Leung

Title: Manager

THE BORROWER ACKNOWLEDGES THAT IT WAS REPRESENTED BY COUNSEL SELECTED BY IT IN CONNECTION WITH THIS COMMITMENT LETTER, THAT IT HAS READ THIS COMMITMENT LETTER AND EXHIBIT A AND UNDERSTANDS, ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN EXHIBIT A.

Borrower:

ALBERTA FOOTHILLS PROPERTIES LTD.

By: MWA
Name: Arum Atkins
Title: President

Sponsor:

1067803 ALBERTA LTD.

By: MWA
Name: Arum Atkins
Title: President

Principal:

MWA

DREW GORDON ATKINS

EXHIBIT A**General Terms and Conditions**

1. **Loan Document Provisions.** The Loan Documents shall in all respects be satisfactory to Lender and its counsel, and shall contain such terms and provisions as Lender may require, including, without limitation, the following:
 - (a) **Due on Sale and Other Default Provisions.** The Loan Documents shall prohibit (i) any sale, conveyance, assignment or transfer of all or any portion of any security for the Facility or any interest therein, without the prior written consent of Lender, or (ii) any change in the ownership interests in Borrower, including, without limitation, the Sponsor's or Principal's respective interests (whether direct or indirect) or management of the Property, or the sale, pledge, hypothecation or other transfer of any interests in Borrower or Borrower's assets, or Guarantor, if any, or Guarantor's assets (except to the extent following any asset transfer by Guarantor, Guarantor continues to meet all financial covenants), in any such case without the prior written consent of Lender. The promissory note(s) to be executed by Borrower with respect to the Facility (collectively, the "Note"), and all indebtedness with respect to the Facility, may be declared due and payable in its entirety in the event that (i) the Property or any of the security for the Facility or any portion thereof or interest therein (whether direct or indirect) is pledged, hypothecated, mortgaged or encumbered, or any lien for indebtedness (which may be the result of other than a Facility transaction) is placed thereon, without the prior written consent of Lender, (ii) any of the Borrower or Guarantors shall fail to observe or perform any term of the Note or of any of the other Loan Documents and such failure shall continue beyond applicable notice, grace, and/or cure periods thereunder, or (iii) any default shall occur (and any required notice shall have been given and grace or cure period shall have expired) under the terms of any of the Loan Documents. No subordinate financing (secured or unsecured) or other claims against the Property shall be permitted without Lender's prior written approval, which approval may be withheld in Lender's sole discretion. Borrower and the Principals agree that the Loan Documents shall provide for such events and conditions of default as may be required by Lender in Lender's sole discretion.

In connection with the foregoing, it is expressly acknowledged and agreed by Borrower and the Principals that Lender is relying on the

creditworthiness and experience of Principals in owning, servicing, developing, operating and selling properties such as the Property in Lender agreeing to issue this Commitment Letter, and Lender will rely on the Principals' continued direct or indirect ownership in Borrower for so long as the Facility is outstanding.

- (b) Material Adverse Changes. It shall constitute an immediate Event of Default under the Loan Documents if any of the Borrower, Guarantors or Principals shall suffer a material adverse change in its or his financial condition at any time during the term of the Facility, as determined by Lender in Lender's sole discretion. Among other events, each of the Borrower, Guarantors or Principals shall be deemed to have suffered a material adverse change in its or his financial condition if, in Lender's sole judgment, its or his financial condition has changed in a manner which could impair the value of Lender's security for the Facility, prevent timely repayment of the Facility in accordance with the provisions of the Note, or otherwise prevent any of the Borrower, Guarantors or Principals from performing its or his obligations under any of the Loan Documents to which any of them is a party.
- (c) Cross Default; Cross Collateralization. The occurrence of a default or event of default under any loan document executed and delivered by Borrower in connection with the Facility shall constitute an Event of Default under each of the Loan Documents. The Property and all related rights, titles and interests, encumbered by a mortgage, deed of trust or other Loan Document in favor of Lender, shall constitute collateral security for the entire Loan and all amounts required to be paid and obligations required to be performed by Borrower in connection therewith.
- (d) Financial Reporting Requirements. The Borrower will be required to comply with certain financial reporting requirements including, inter alia, providing to Lender at Borrower's expense, not later than ninety (90) days after the end of each calendar year audited financial statements as of December 31 of such year and for the year then ended, all prepared by a certified public accountant (or Canadian equivalent) acceptable to Lender in accordance with generally accepted accounting principles. Guarantors shall deliver to Lender an operating budget for the Property and such other financial information with respect to the Property as Lender may require, all certified as true, complete and correct by the senior financial officer of the Borrower. Within thirty (30) days following the end of each calendar quarter, Guarantors shall deliver to Lender unaudited financial statements

for the Property for such quarter, each in such form and containing such information regarding revenues, expenses and sources and uses of funds for the Property, each as Lender may require and certified as true, complete and correct by the senior financial officer of the Borrower. Each of the Borrower and Guarantors shall provide such additional financial information as Lender may reasonably require.

- (e) Loan Provisions. To the extent applicable, the Loan Documents shall contain various provisions relating to the construction and carrying out of the Project to Lender's satisfaction, including without limitation, provisions relating to delivery of the construction budget, construction contract, architect's agreement, plans and specifications, sign-offs by Lender's Construction Consultant and the retention and release of statutory holdbacks.

2. Further Conditions to Closing. In addition to delivery of the Loan Documents and compliance with all other requirements set forth in this commitment letter, the delivery to Lender of the items set forth below, each in form and substance satisfactory to Lender and its counsel, as the case may be, shall be conditions to the closing of the Tranche A Loan:

- (a) Organizational Documents. Evidence satisfactory to Lender of each of the Borrower's and Guarantors' (to the extent such Guarantor is not an individual) due incorporation and good standing in the State of their formation and authorization to do business, and their corporate capacity, power, legal right and authority to enter into and perform the Loan Documents, or the equivalent forms of evidence provides by such entities' jurisdiction of formation. Such evidence proof shall include, but not be limited to, certified copies of certificates or articles of incorporation and by-laws, applicable resolutions and incumbency certificates and good standing certificates for each of them.
- (b) Financial Statements. Financial statements of Borrower and each Guarantor as required by the commitment letter, and such other financial information as Lender may reasonably request. Each such financial statement of the Borrower shall be prepared in accordance with generally accepted accounting principles, and (except as otherwise set forth in the commitment letter) certified by a certified public accountant (or Canadian equivalent) acceptable to Lender, and shall describe in reasonable detail all contingent liabilities of the subject thereof, and shall evidence to Lender's satisfaction that there has occurred no material adverse change in the

financial condition reflected therein from the financial condition of the subject thereof reflected in any financial statements previously delivered to Lender.

- (c) Opinions of Counsel. Opinions of counsel for Borrower addressing such legal issues concerning each of the Borrower, Guarantors, and the Property as Lender may reasonably require for a transaction of this nature, including, without limitation, the organization of each of the Borrower and Guarantors, authorization of the execution and delivery of the Loan Documents, the proper execution and delivery of the Loan Documents, the enforceability of the Loan Documents under State law (which may be subject to customary qualifications acceptable to Lender), absence of violations of applicable law (including usury laws) as a result of the payment of any interest, fees or charges due under the Loan Documents, compliance with zoning, land use, environmental and similar laws (addressing specific problems that may be identified by Lender, and otherwise to the extent such opinions generally would be requested by a lender making a loan similar to that provided for herein), the choice of law provisions contained in the Loan Documents, non-consolidation bankruptcy opinion, absence of insolvency, receivership and creditor arrangements, and such other matters as counsel for Lender may request relating to the validity and enforceability of the Loan Documents and the liens and security interests created thereby, and any other matters relating to any of the Borrower, Guarantors and Principals as Lender shall require.
- (d) Insurance. Not less than ten (10) days prior to the closing of the Facility, evidence that the insurance coverages to be required by the Loan Documents are in effect with respect to the Property.
- (e) Title Insurance. A title report or commitment for a lender's Title Insurance Policy or Canadian equivalent (the "Title Policy"), which shall become a binding title insurance policy at the closing of the Facility, issued by a nationally recognized title insurance company satisfactory to Lender (the "Title Insurer"), to insure the liens of the debenture, mortgage or deed of trust encumbering the Property as each a first lien upon Borrower's interest in the Property, insuring the entire Facility, naming Lender as the insured, insuring all utility, access, support and other appurtenant easements necessary for the operation of the Property, and subject to no exclusions or exceptions other than those expressly approved by Lender in writing. If required by Lender, the Title Policy shall be with customary form of reinsurance agreements and direct access agreements satisfactory to

Lender with title insurance companies satisfactory to Lender. The share of liability assumed by each title company shall be satisfactory to Lender. Upon each Advance under the Facility, the amount of coverage under each Title Policy shall be increased to reflect such Advance. In addition, the Title Policy shall, if Lender requires and if available, include an endorsement protecting against forfeiture or reversion due to covenants, restrictions or encroachments, a survey endorsement, a usury endorsement, a so-called lender's doing business endorsement, a so-called lender's comprehensive endorsement and such other endorsements as Lender may require.

- (f) Survey. A current, accurate real property report of the Property prepared by a qualified land surveyor acceptable to Lender, which survey shall be in form and substance satisfactory to Lender and its counsel and shall be certified to Lender and the Title Insurer with the certificate dated not more than thirty (30) days prior to the Closing Date. The survey shall show, among other things, the dimensions and total square foot area of the land, the legal description thereof, all interior lot lines, the dimensions and locations of all improvements, easements, parking areas, rights of way, adjoining sites, encroachments and the extent thereof and their distance from the lot lines, established building lines and street lines, means of ingress and egress, the nearest intersecting streets and such other details as Lender may request.
- (g) Utilities: Evidence establishing to the satisfaction of Lender that the Property is serviced at its boundaries by adequate storm sewer, sanitary sewer, telephone, gas, electricity, water and other utility services or will-serve letters by the appropriate utility providers confirming the same.
- (h) Permits and Licenses. Copies of all environmental permits, utility permits, land use permits, development permit and building permits and any other permits, approvals or licenses required for the commencement of construction.
- (i) Searches. Such real estate, personal property, statutory lien, bankruptcy, insolvency, zoning or building code violation and other searches of public records as Lender may require with respect to Borrower, Guarantor, any Principal, and the Property.
- (j) Environmental Survey. A Phase I environmental survey or Canadian equivalent (satisfactory to Lender and Lender's environmental consultant)

prepared at Borrower's sole expense by a qualified environmental consultant satisfactory to Lender for the Property and dated not earlier than thirty (30) days prior to closing (the "Environmental Audit"). Such Environmental Audit shall, at a minimum, (a) disclose any existing or potential hazardous material contamination, and physical conditions that may result in such contamination, at the Property, (b) include the results of all sampling or monitoring to confirm the extent of existing or potential hazardous material contamination at the Property, including the results of leak detection tests for each underground storage tank located at the Project, if any, (c) describe response actions appropriate to remedy any existing or potential hazardous material contamination, and (d) report the estimated cost of any appropriate response. All costs and charges by Lender's environmental consultant will be borne by Borrower.

- (k) Appraisal. Lender shall have received and approved the Appraisal as described in the Commitment Letter to which this Exhibit A is attached.
- (l) Easements. Evidence that the Property is benefited by such easements or other rights as may be necessary for operation and use thereof and vehicular and pedestrian ingress and egress, and for the maintenance of utilities, parking and other site improvements necessary or appropriate.
- (m) Compliance with Laws. Evidence of the payment of all amounts owing with respect to the recordation and/or filing of any of the Loan Documents in or with the applicable registry or filing office and evidence, satisfactory to Lender in all material respects, that the Property complies in all material respects with all applicable statutes, rules, regulations, laws and ordinances.
- (n) Capital Budget. A detailed capital budget for carrying out the Project acceptable to the Lender.
- (o) Officer's Certificate. A certificate of an authorized officer, manager, or managing member of Borrower addressed to the Lender and in form and substance satisfactory to the Lender, certifying that the Equity Requirement, as at the Closing Date, is not less than the amount required by the Lender as determined by the Lender's final underwriting requirements.
- (p) Filings and Registrations. All filings and registrations of or in respect of the Loan Documents necessary to preserve, perfect and protect the

mortgages, charges, assignments and security interests created thereby shall have been duly effected to the satisfaction of the Lender.

- (q) Lock-Box Account. The required lock-box account shall have been established by the Borrower.
 - (r) Additional Documents and Information. Such certificates, opinions, materials, documents, correspondence (including a letter from the appropriate governmental authority regarding the zoning of the Property) and other papers regarding the Property, Borrower, Guarantor or the Facility as Lender may require. In addition, all legal matters in connection with the Facility in addition to those discussed elsewhere in this Commitment Letter shall be satisfactory in form and substance to Lender.
3. Conditions of Advances. The obligation of Lender to make any Advance of the Facility, whether the first Advance or any Advance made subsequently to the first Advance, is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Request for Advance. Lender shall have received, at least five (5) Business Days prior to the requested Advance, a request for Advance, which request for Advance shall be in form and content satisfactory to Lender, wherein, among other things, Borrower shall confirm the accuracy of all representations and warranties set forth in the Loan Documents and which shall be accompanied by a certificate of an authorized officer, manager or managing member of Borrower as to hard and soft costs, together with, in each case, invoices and/or receipts, all of which shall be in form and content satisfactory to the Lender.
 - (b) Discharge of Encumbrances. Except for permitted encumbrances, Borrower shall have paid and discharged or caused to be paid and discharged all encumbrances affecting the Property and Lender shall have received a favorable opinion of its counsel as to title to the Property and priority of the Loan Documents.
 - (c) Payment of Project Costs. Borrower shall timely pay all Project costs in respect of which prior Advances were made hereunder and shall, if requested by Lender, provide to the Lender evidence thereof satisfactory to the Lender.

- (d) Limitation on Amount. Lender shall not be obligated to advance any amount hereunder in respect of any item of Project costs that is not an approved cost or that is in excess of the maximum amount of such item as set forth in the approved capital budget.
 - (e) No Construction Liens. Lender shall not have received written notice of, nor shall there have been registered against title to the Property, any claim for a construction lien.
 - (f) Other Documents. Lender shall have received and approved such other documents, consents, acknowledgements, opinions and agreements as Lender or its counsel may reasonably request.
4. Conditions of All Advances. The obligation of Lender to make any Advance of the Facility is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Truth of Representations and Warranties. The representations and warranties of the Borrower contained in the Commitment Letter, this Exhibit A or in any other Loan Document shall be true and correct as of such date with the same force and effect as if such representations and warranties had been made on and as of such date.
 - (b) Performance of Covenants by the Borrower. The Borrower shall have fulfilled or complied with all covenants contained in the Loan Documents which are to be performed by it at or prior to such time.
 - (c) No Default. No Event of Default shall have occurred and be continuing.
 - (d) No Change in Laws. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.
 - (e) Review and Approval. Review and approval of such Advance and the use of proceeds thereof, receipt of copies of all permits obtained, receipt of invoices for use of funds, approval by Construction Consultant with

respect to pre-construction work completed, and such other items as Lender, its U.S. and/or Canadian counsel may reasonably require.

5. Limitations on Advances. No Advance shall be made within a period of thirty (30) days after the making of a prior Advance.
6. Insurance. Borrower shall maintain adequate insurance at all times with responsible insurance carriers in amounts and pursuant to insurance policies reasonably acceptable to Lender against (i) loss or damage by fire and other hazards; (ii) comprehensive general liability on account of damage to Persons and property in minimum amount of C\$5,000,000 per occurrence or such greater amount as may be required by Lender, acting reasonably, and notified by Lender to Borrower from time to time; and (iii) such other risks as Lender may reasonably request. Each insurance policy covering tangible property shall (iv) provide that, in the case of each separate loss, the full amount of insurance proceeds with respect thereto shall be payable to Lender as secured party or otherwise as its interests may appear; (v) provide for at least thirty (30) days' prior written notice to Lender of the cancellation or substantial modification thereof; (vi) provide that, in respect of the interests of Lender and Borrower, as the case may be, such insurance shall not be invalidated by any action or inaction of Borrower or any other person; (vii) insure Lender's interests regardless of any breach of or violation by Borrower or any other person of any warranties, declarations, or conditions contained in such insurance; (ix) provide that Lender shall have the right (but not the obligation) to cure any default by Borrower under such insurance. Each liability policy shall (x) name Lender as an additional insured; (xi) be primary without right of contribution from any other insurance which is carried by Lender to the extent that such other insurance provides Lender with contingent or excess liability insurance, or both, with respect to its interest as such in the Property; and (xii) expressly provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and except liability for premiums (which shall be solely a liability of Borrower) shall operate in the same manner as if there were a separate policy covering each insured.

Currency. Unless otherwise indicated, all references in this Agreement to dollars or to \$ are expressed in United States currency and all references in this Agreement C\$ are expressed in Canadian currency.

7. Criminal Code. If any provision of the Commitment Letter, this Exhibit A or of any of the other Loan Documents would obligate Borrower, Guarantors or any Principal to make any payment of interest or other amount payable to the Lender

in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by such Lender of interest at a criminal or usurious rate, as such terms are construed under applicable law then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Lender of interest at a criminal or usurious rate, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to such Lender under the applicable Loan Document, and thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" under applicable law.

EXHIBIT B**Due Diligence Contingencies**

1. Three years tax returns for any Principal and Guarantor named, complete with all K-1 (or local partnership tax reporting equivalent) schedules for any real estate or other assets owned by such Principal and Guarantors. If no such tax return is available, please provide a written explanation as to the reason for the non-delivery of such tax return.
2. Personal financial statements (with detailed footnote of any liabilities) of any Principal and Guarantor named dated no earlier than December 31, 2019; audited financial statements for the Borrower and its corporate parent entity (if applicable) with detailed footnotes for any liabilities for each of the last three fiscal years plus "stub" period no earlier December 31, 2019. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements must include the individuals' full name, full-time occupation, Social insurance Number, Birth date and current address.
3. Detailed description (by phases) of the final approved Master Plan for the Project with details of category of real estate for each such phase.
4. Copy of the closing statements for the original acquisition of the Land.
5. Copy of final plans & specifications (in electronic format).
6. Background information on the Borrower, Principal and Guarantors.
7. Detailed Total Project Costs for Phase 1 (including detailed line items).
8. Copy of the final fully executed Development Agreement and any related documentation from municipality of Okotoks.
9. Copy of the fully executed Guaranteed Maximum Price Contract (GMP) on the AIA form (or local equivalent) and the profile of the GC.

10. Copy of detailed financial pro forma for Phase 1 of the Project for five (5) years.
11. It is Lender's intention to review and sign off on the above items within thirty (30) days from execution of this Commitment Letter (the "Target Sign-Off Date"). Borrower shall deliver the above items promptly to Lender, but in no event, later than ten (10) days prior to the Target Sign-Off Date. Borrower shall bear the consequences for any late submission of the above listed items to Lender, including, without limitation, the consequences set forth in the section entitled "Loan Fees" of the Commitment Letter.

EXHIBIT C**The Use of Proceeds**

Use of Proceeds	CAD	USD	
Currency Conversion Rate	1.000000	0.7601600	
Proceeds from New Debt	\$39,000,000.00	\$29,646,240.00	
Pre-Paid Interest (12 months)	\$1,950,000.00	\$1,482,312.00	5%
Net Proceeds	\$37,050,000.00	\$28,163,928.00	100.00%

PLANNED UTILISATION**Capital Expenditure**

Existing 1st Mortgage	\$13,007,000.00	\$9,887,401.12	
Stakeholder Buyout (2nd)	\$3,100,000.00	\$2,356,496.00	
Settlement to Debenture Holders	\$4,320,000.00	\$3,283,891.20	
ACA (Title Release)	\$1,037,000.00	\$788,285.92	
Consultant Fees	\$780,000.00	\$592,924.80	
Other Capital Expenditures	\$100,000.00	\$76,016.00	
Total Capital Expenditure	\$22,344,000.00	\$16,985,015.04	60.31%

Working Capital

Startup Marketing Team (1 Year)	\$330,000.00	\$250,852.80	
Rentals	\$25,000.00	\$19,004.00	

Legal and Compliance	\$45,000.00	\$34,207.20	
Travel and Living	\$25,000.00	\$19,004.00	
General Expenditure	\$50,000.00	\$38,008.00	
Other Miscellaneous Expenses	\$50,000.00	\$38,008.00	
Total Working Capital	\$525,000.00	\$399,084.00	1.42%
Investment Expenditure			
Other Buyouts and Acquisitions	\$250,000.00	\$190,040.00	
Total Investment Expenditure	\$250,000.00	\$190,040.00	0.67%
Construction Expenses			
Please see detailed construction budget	\$14,560,650.00	\$11,068,423.70	39.30%
Total Utilization of Funds	\$37,679,650.00	\$28,642,562.74	101.70%

This is exhibit " 1 " referred to
in the affidavit of

Dr. Atkin
sworn before me this 26th
day of September, 2020

[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

-----Original Message-----

From: Benny Leung [mailto:bleung@barbicap.com]

Sent: Friday, February 28, 2020 9:12 PM

To: James D. Brooks

Cc: drew.bland@mac.com; drew atkins

Subject: Re: Meeting on Final DD

Hi James:

Sorry for my late reply as I had two appointments in the morning and also had my annual medical check-up this afternoon.

There is a long and short answer to your inquiry. Because of the impact of Coronavirus (as it appears that it will come to North America soon inevitably), I try to cut down and schedule carefully with my business travel these days. In order for me to understand the nature of the meeting you suggested, can you let me know who are in the "team" that you referred to in your email below? My understanding is that several due diligence items (KPMG, update appraisal, GMP, etc) will take time to prepare or develop so it seems to me that it makes more sense to meet after these reports were delivered and that we have a chance to review and comment.

In any event, please let me know a bit more information so I can decide whether it is the right time to make a visit to Calgary or Toronto. Look forward to hearing from you. As usual, a phone call to chat is probably more easy but email is also fine.

Best regards,

Benny

On February 28, 2020 at 10:30 AM "James D. Brooks"

<james.brooks@oveldicapital.com> wrote:

Good morning Benny,

Since our conversation yesterday, and your offer to provide us some further

detail on your existing investment portfolio, I have been making progress in

solidifying Drew's partners' faith in this financing. In the likely outcome

that this financing will ultimately close on schedule, I am asking Drew's

team to provide you with these final due diligence materials as quickly as

possible. In fact, your gesture has been so well received, they are

wondering if you would be open to meeting the whole team in the interest of

providing you everything Barbican needs to close the due diligence. Is this

something you would be open to?

They are considering either meeting in Toronto, or in Calgary where both are

convenient for them because there are an equal number in each city. If this

is something you think you could accommodate, let me know where you would

prefer to meet. They are suggesting late next week, perhaps Thursday or

Friday if possible.

Best regards,

James D. Brooks

This is exhibit " J " referred to
in the affidavit of

Deva Atkin

sworn before me this 21st

day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: March 3, 2020 at 6:11:34 PM MST
To: "James D. Brooks" <james.brooks@oveldicapital.com>
Cc: drew.bland@mac.com
Subject: RE: Meeting on Final DD

Thanks, James. I just accepted your invitation. Look forward to our call

On March 3, 2020 at 8:04 PM "James D. Brooks" <james.brooks@oveldicapital.com> wrote:

Ok Benny. I just spoke to Drew. I hope 12 noon EST works for you. I will send out an invitation for you. If it is inconvenient, you can propose a different time in the invite.

Best,

James

-----Original Message-----

From: Benny Leung [mailto:bleung@barbicap.com]
Sent: Tuesday, March 3, 2020 7:55 PM
To: James D. Brooks
Cc: drew.bland@mac.com
Subject: RE: Meeting on Final DD

James:

Yes, I would very much like to discuss your official appointment with Drew. Let me know what time (in EST to avoid confusion) he is available.

Benny

On March 3, 2020 at 5:20 PM "James D. Brooks" <james.brooks@oveldicapital.com> wrote:

Hi Benny,

If you wanted, Drew is available in his am tomorrow. I think your suggestion to have me as the point man is what he'd like to discuss. I do also know that he has already spoken to KPMG who will be preparing the updated financials and tax returns. He has also contacted CBRE to do the update on the appraisal, as well as the feasibility letter. He has also reached out to the contactor, Volker Stevin, to provide a GMP Contract per the loan commitment. Hopefully these are the outstanding items you were expecting.

If you think a call is necessary in the morning, let me know. Otherwise, we will proceed with our list and endeavor to get it all done as quickly as possible.

Best regards,

James D. Brooks

Oveldi Strategic Capital Inc.

Office: +1-403-744-5063

Mtl: +1-514-228-1509

Mobile: +1-403-390-6144

US Mobile: +1-323-250-3290

Calendar: [Click Schedule](#)

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On March 3, 2020 10:55:34 AM Benny Leung <bleung@barbicap.com> wrote:

James:

Will do and revert. However, just to be clear, since our offer to provide additional information is under no obligation and on a voluntary basis, I do not want any time delay being claimed by Foothills as related to the waiting time for such information. In sum, whatever the deadlines stipulated in the Commitment Letter will remain the same and in full force and effect.

In addition, while I am glad that you can assist in this transaction, I need a short email from Drew to me indicating that you are now being appointed to be the "point man" for Foothills in negotiation and dealing with this transaction. The confirmation of your official capacity will ensure that there is no misunderstanding or claim of no apparent authority arising out of your representation.

Benny

On March 3, 2020 at 10:31 AM "James D. Brooks"


<james.brooks@oveldicapital.com> wrote:

Hi Benny,

I think we are in agreement. Being exposed to the corona virus seems an unnecessary risk. We can postpone any meetings until closing unless there is an urgent need for one. Also, we are still waiting for the NDA you said your lawyer would forward to us so we can review that portion of your portfolio Benny. I was hoping to get that out of the way as quickly as possible. Could you check into that for us please?

Thanks again,

James D. Brooks

<<https://oveldicapital.com>> 

Oveldi Strategic Capital Inc.

Office: + <tel:14037445063> 1-403-744-5063

Mtl: + <tel:1-514-228-1509> 1-514-228-1509

Mobile: + <tel:14033906144> 1-403-390-6144

US Mobile: + <tel:13232503290> 1-323-250-3290

Calendar: <<https://goo.gl/ryK2bk>> Click Schedule

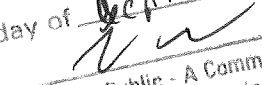
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<https://portal.azurerms.com/#/rmshelp>. This e-mail message and any attachments are confidential and are intended only for the person(s) or organization(s) named above. If you are not the intended recipient of this message, you are prohibited from disseminating, distributing, disclosing, reading, reproducing or otherwise using this communication. If you have received this communication in error, please notify the sender and delete all records of this e-mail message and any attachments from your computer.

Our business strategy is simple: We read our email and respond to it when we receive it. Thank you.

This is exhibit "10" referred to
in the affidavit of

Dre - Atkins
sworn before me this 26th
day of September, 2020


A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

AMENDED AND RESTATED ESCROW AGREEMENT

THIS AMENDED AND RESTATED ESCROW AGREEMENT made effective as of the 7th day of November, 2019, 2020 (the “**Effective Date**”).

AMONG:

BARBICAN CAPITAL PARTNERS, LLC

(the “**Lender**”)

AND:

ALBERTA FOOTHILLS PROPERTIES LTD.

(the “**Borrower**”)

AND:

MLT AIKINS LLP

(the “**Escrow Agent**”)

BACKGROUND

- A. ~~The Lender and the Borrower (collectively, the “**Parties**” and each a “**Party**”) have entered into a term sheet (the “**Term Sheet**”) made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the “**Commitment**”) relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master-planned community known as “Wind Walk” located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.~~
- B. ~~The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the “**Escrow Amount**”), being a portion of the Commitment Fee set out in the Term Sheet.~~
- A. The Lender, the Borrower, and the Escrow Agent are party to an escrow agreement dated November 7, 2019 (the “**Escrow Agreement**”);
- B. The Lender, the Borrower, 1067803 Alberta Ltd., as sponsor, and Drew Gordon Atkins, as principal, are party to a loan commitment, dated for reference February 17, 2020, made by the Lender to the Borrower (the “**Commitment**”) whereby the Lender provided the Borrower a C\$39,000,000 secured loan facility (the “**Loan**”), pursuant to which the Borrower delivered the Lender a Commitment Fee, as defined therein, in consideration of the Lender’s issuance of the Commitment and the processing, preparation, and maintenance of the Loan;
- C. The Lender, the Borrower, and the Escrow Agent have agreed to enter into this amended and restated Escrow Agreement (the “**Amended and Restated Escrow Agreement**”) in order to, among other things, amend the terms of the Escrow Agreement for the payment and release of the Escrow Amount to defray on-going expenses incurred by the Lender in connection with the preparation and maintenance of the Loan and Commitment; and
- D. ~~C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Although certain~~

defined terms used in this Amended and Restated Escrow Agreement will continue to have the meanings assigned to them in the Escrow Agreement, this Amended and Restated Escrow Agreement is intended to otherwise wholly supersede and replace the Escrow Agreement.

~~D. Capitalized words and expressions used in this Escrow Agreement but not otherwise defined herein will have the meanings ascribed thereto in the Term Sheet. For the purposes of this Escrow Agreement, the term "Business Day" means any day in which main branch of TD Canada Trust in Calgary, Alberta is ordinarily open for business and "Business Days" means more than one of them.~~

TERMS OF AGREEMENT

~~In consideration of the Parties' continued negotiation of the Commitment, and of their respective covenants and agreements hereinafter contained premises and the respective rights and obligations set out herein, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, it is hereby agreed by and among the Parties hereto as follows:~~

Article 1 – Escrow

1.1 Appointment of Escrow Agent. The Lender and the Borrower hereby appoint the Escrow Agent to act as escrow agent on the terms and conditions set forth in this Escrow Agreement, and the Escrow Agent accepts such appointment on such terms and conditions.

1.2 Delivery of Escrow Amount. Concurrent with the execution and delivery of this Escrow Agreement, the Borrower will deliver the Escrow Amount, which amount will represent a portion of the Commitment Fee set out in the Term Sheet, to the Escrow Agent by wire transfer to the following account:

Account Holder Name:	MLT AIKINS LLP, IN TRUST
Account Holder/Address:	2600 - 1066 West Hastings Street Vancouver, BC V6E 3X1
Bank Name/Address:	TD Canada Trust Toronto Dominion Tower Branch 700 W Georgia St Pacific Centre Vancouver, BC V7Y 1A2
Account Number:	0902-5416541
Transit Number:	94000
Bank Number:	004
Swift:	TDOMCATTOR
ABA:	026009593

1.3 Holding of Escrow Amount. Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Amount in escrow for the period commencing on the ~~Effective Date~~ November 7, 2019 until the later of the dates on which the Escrow Agent is required to release the Escrow Amount, or portions thereof, in accordance with Article 3 and Section 5.9 below.

Article 2 – Delivery of the Loan Commitment

2.1 Entry into Loan Commitment. Upon receipt of the Escrow Amount from the Borrower, the Escrow Agent will provide the Lender with written notice of receipt of the Escrow Amount (the “**Receipt Notice**”). Within seven Business Days of the Lender’s receipt of the Receipt Notice from the Escrow Agent, the Lender will cause its solicitor to deliver to the Borrower or its solicitor a draft form of Commitment as contemplated by the Term Sheet. The Parties will negotiate and finalize the Commitment in good faith. Upon execution of the Commitment, the Parties will deliver the executed Commitment to the Escrow Agent, to be held in escrow by the Escrow Agent with irrevocable instructions to deliver the fully-executed Commitment to both Parties only in accordance with Article 3 below.

Article 3 – Payment of Escrow Monies

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

(a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

i. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay \$50,000 CAD of the Escrow Amount to the Lender in such manner as requested by the Lender from time to time; and

ii. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay such amount of the Escrow Amount to satisfy the Lender’s legal fees and disbursements incurred in connection with the Commitment, in such manner to pay as requested by the Lender from time to time; and

iii. ~~ii-~~upon receipt of written notice from the Lender with acknowledgment by the Borrower that the remaining due diligence contingencies listed in the “Due Diligence Contingencies” section of the Commitment have been fully satisfied by Borrower and/or waived by Lender, the Escrow Agent will release the provide written notice to the Borrower and the Lender of the remaining balance of the Escrow Amount, being \$250,000 CAD, to the Lender within two Business Days. Upon the release of the remaining Escrow Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully executed Commitment; and within one Business Day (the “Escrow Amount Balance”), and:

1. the Escrow Agent will then release the Escrow Amount Balance to the Lender; and

2. the Borrower will pay the Lender the difference in amount between the Escrow Amount Balance and \$250,000 CAD (the “Difference Amount”),

within a further two Business Days. Upon the release of the Escrow Amount Balance and the payment of the Difference Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully-executed Commitment; and

iv. ~~iii.~~ notwithstanding Section ~~3.1(a)(iii)~~ 3.1(a)(iii) above, if the Escrow Agent receives written notice jointly by both Parties that any of the Due Diligence Contingencies cannot be satisfied and the Parties jointly elect to terminate the Commitment, the Escrow Agent will:

1. provide the Lender with a written demand for a summary of its expenses related to the Term Sheet, this Escrow Agreement, and the Commitment and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice"), which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses. The Lender's expenses appearing on any Expense Notice related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes of the Lender are hereby approved by the Borrower;
2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first \$50,000 CAD as a break fee to the Lender;
 - b. second the amount set out in the Expense Notice to the Lender; and
 - c. third, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section ~~3.1(a)(iv)~~ 3.1(a)(iv), the Escrow Agreement will terminate and no ~~party~~ Party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused; and

v. ~~iv.~~ notwithstanding Section ~~3.1(a)(iii)~~ 3.1(a)(iii) and ~~(iii)(iv)~~ (iii)(iv) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount Balance set forth in Section 3.1(a)(iii) and (iii)(iv) above are not satisfied on or before June 1, 2020 April 17, 2020 and the Lender provides written notice of its intention to terminate the Commitment, unless otherwise agreed to by the parties Parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and
2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount: to the Lender as liquidated damages for the Lender's processing and

~~preparation of the closing of the Commitment in such manner as requested by the Lender from time to time. Upon payment of the Escrow Amount to the Lender in accordance with this Section 3(a)(v), the Escrow Agreement will terminate and no Party will have any further obligation and/or liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;~~

~~a. — first the amount set out in the Expense Notice to the Lender; and~~

~~b. — second, the balance to the Borrower,~~

~~in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;~~

(b) upon the Escrow Agent's receipt of written notice by either Party, copying the other Party, in a form satisfactory to the Escrow Agent, acting reasonably, that the Parties have not entered into the Commitment within seven Business Days of the receipt of the Commitment by the Borrower pursuant to Section 2.1 above, the Escrow Agent will:

i. provide the Lender with a written demand an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and

ii. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:

1. first to the Lender, the amount set out in the Expense Notice; and

2. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(b)(ii), the Escrow Agreement will terminate and no ~~party-Party~~ will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement.

Article 4 – Investment of Escrow Amount

4.1 The Escrow Amount will be held by the Escrow Agent in a non-interest-bearing account in accordance with its standard trust fund procedures. The Lender and the Borrower, as applicable, will assume any obligations imposed now or hereafter by any applicable tax law with respect to any payment of the Escrow Amount to the Lender or the Borrower under this Escrow Agreement.

Article 5 – Protection of Escrow Agent

5.1 Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term or condition of any contract or agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.

5.2 The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Parties to this Agreement hereby agree will govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

- (a) except for the Escrow Agent's own acts of negligence or wilful misconduct, the Escrow Agent will not be liable for any act done or step taken or omitted to be done or taken by the Escrow Agent, or for any mistake of fact or law or error in judgment;
- (b) the Escrow Agent may at any time consult with, and obtain advice from, legal counsel (who may be selected by the Escrow Agent, in its sole discretion) in the event of any question as to any of the provisions hereof or the Escrow Agent's duties hereunder, and will incur no liability and will be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel; and
- (c) the Escrow Agent will have no duties except those which are expressly set forth herein, and will not be bound by any Indemnity Claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by the appropriate parties.

5.3 In the event that:

- (a) any action is threatened or instituted against the Escrow Agent;
- (b) any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the Escrow Amount; or
- (c) at any time the Escrow Agent is uncertain as to its obligations hereunder;

the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligations hereunder. In such event, or if any other person should apply to a court of competent jurisdiction on any matter affecting the obligations of the Escrow Agent hereunder or otherwise relating to the Escrow Amount, the Escrow Agent may and is hereby authorized to release, deliver or otherwise deal with the Escrow Amount in accordance with the direction, order, judgment or decree of such court. The Escrow Agent may deliver the Escrow Amount (or outstanding balance thereof) in to court pending resolution of a dispute among the Parties.

5.4 The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow

Agent's fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent will be reasonably compensated by the Borrower for such additional extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, again all of which will be paid by the Borrower alone, and the Lender will have no obligation or liability therefor.

- 5.5 The Escrow Agent will incur no liability hereunder or in connection herewith for anything whatsoever other than as a result of its own negligence or willful misconduct. The Lender and the Borrower will indemnify, hold harmless and defend the Escrow Agent from and against any and all actions, causes of action, claims, demands, damages, losses, costs, liabilities and expense, of any nature or kind, including reasonable legal fees, which may be made or brought against it by any third party (which, for greater certainty, does not include any of the Parties hereto), or which it may suffer or incur in connection with any such third party claim, as a result of or in respect of or arising out of its appointment as Escrow Agent hereunder, except such as will result solely and directly from its own negligence or willful misconduct.
- 5.6 Notwithstanding anything contained herein, in the event of any disagreement between the Parties hereto resulting in adverse claims or demands with respect to the Escrow Amount, the Escrow Agent will be entitled, at its option to refuse to comply with any claims or demands on it with respect thereto as long as such disagreement will continue, and in so refusing, may elect not to make delivery of the Escrow Amount in accordance with this Escrow Agreement. In so doing, the Escrow Agent will not be or become liable in any way to the Parties hereto for its failure or refusal to comply with such claims or demands. The Escrow Agent will be entitled to refrain from acting or refusing to act until such claims or demands: (a) will have been finally determined in a court of competent jurisdiction; or (b) will have been settled by agreement and the Escrow Agent will have been notified thereof by the Lender and the Borrower in writing.
- 5.7 The Parties acknowledge that the Escrow Agent is holding the Escrow Amount at their request and for their convenience only, and the Escrow Agent will not be deemed the agent of any of the Parties in respect of the escrow.
- 5.8 The Parties acknowledge that the Escrow Agent has acted and is acting as legal counsel to the Lender and further that the Escrow Agent has acted as counsel to the Lender in connection with the Term Sheet and Commitment and transactions contemplated therein and in negotiating and establishing this Escrow Agreement. Each of the Parties consents to the Escrow Agent continuing to act for the Lender in respect of any matter arising in relation to this Escrow Agreement, including any dispute regarding the disposition of the Closing Documents. The Escrow Agent will not be impeachable or accountable because of any conflicting or potentially conflicting duty to, or any advice provided by, the Escrow Agent to the Lender.
- 5.9 This Escrow Agreement will terminate, and the Escrow Agent will have no further responsibility under the terms of this Escrow Agreement and will be released and discharged from all claims and liabilities relating to the Escrow Amount and any interest accrued thereon, and the Escrow

Agent will not be subject to any claims made by or on behalf of any Party hereto, upon the later of:

- (a) the date that the Escrow Agent releases the balance of the Escrow Amount being held by it pursuant to Article 3 of this Escrow Agreement; or
- (b) delivery of the Escrow Amount into court.

Article 6 – General Provisions

- 6.1 The Escrow Agent may, at any time, resign from its obligations under this Escrow Agreement and be discharged from all further duties and liabilities hereunder by giving each of the Parties at least 30 days' notice in writing of its intention to resign. The Parties will immediately upon receipt of such notice, jointly appoint a new person to act in the place of the Escrow Agent and if they fail to agree on such appointment, any of the Parties or the Escrow Agent may apply to a justice of the court on such notice as such justice may direct for the appointment of a new escrow agent. Upon any new appointment, the new escrow agent will be vested with the same powers, rights, duties and obligations as if it had been originally named the escrow agent.
- 6.2 Any notice or other communication required or permitted to be given by this Escrow Agreement will be in writing and will be effectively given and made if (i) delivered personally; or (ii) sent by prepaid courier service; or (iii) sent by registered mail; or (iv) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Lender: **Barbican Capital Partners, LLC**
405 Lexington Avenue, Suite 2600
New York, New York 10174
Attention: Benny Leung
Email: bleung@barbicap.com

With a copy to: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

If to the Borrower: **Alberta Foothills Properties Ltd.**
3505 – 18th Street SW
Calgary, AB T2T 4T9
Attention: Drew Atkins
Email: drew.bland@me.com

With a copy to: **D. Allison Professional Law Corporation**
2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6
Attention: Douglas V. Allison
Email: Doug@allison-associates.ca

If to the Escrow Agent: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

or at such other address as the ~~party-Party~~ to whom such notice is to be given will have last notified the ~~party-Party~~ giving the same in the manner provided in this Section 6.2. Any notice personally delivered to the ~~party-Party~~ to whom it is addressed as provided above will be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice will be deemed to have been given and received on the next Business Day. Any notice transmitted by facsimile, e-mail or other form of electronic communication will be deemed given and received on the first Business Day after its transmission, provided that confirmation of receipt has been obtained by the ~~party-Party~~ delivering such notice. Any notice delivered by means of prepaid courier will be deemed to have been delivered on the second Business Day following the date on which the same has been sent via courier. Any notice delivered by means of registered mail will be deemed to have been delivered on the fifth Business Day following the date of mailing.

- 6.3 Neither the rights nor the obligations of any Party arising from this Escrow Agreement will be assignable without the prior written consent of the other Parties.
- 6.4 This Escrow Agreement may only be modified or amended by an agreement in writing signed by all of the Parties hereto.
- 6.5 Subject as aforesaid, this Escrow Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.
- 6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 6.7 Where the context requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.
- 6.8 This Escrow Agreement constitutes the only contract between the Parties pertaining to the subject matter thereof. No waiver of any of the provisions of this Escrow Agreement will be deemed or will constitute a waiver of any other provisions (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.9 Time will be of the essence of this Escrow Agreement.
- 6.10 The Parties hereto acknowledge that this agreement has been prepared by the law firm MLT Aikins LLP, as solicitors for the Lender, and that each of the other Parties hereto has been advised to obtain independent legal advice and has either done so or waived its right to do so.
- 6.11 This Escrow Agreement may be signed and delivered in counterparts, each of which may be executed by DocuSign, and each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Escrow Agreement may be transmitted by facsimile or email attachment or DocuSign and the reproduction of signatures in such manner will be binding as if originals. Each Party undertakes to provide each and every other Party hereto with a copy of this Escrow Agreement bearing original signatures forthwith upon request.

[Signature page follows.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement ~~effective as of the day and~~
year first above written Effective Date.

BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President

ALBERTA FOOTHILLS PROPERTIES LTD.

Per: _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

Per: _____
Name: Saravan J. Veylan
Title: Partner

This is exhibit "C" referred to
in the affidavit of

New Atkins
sworn before me this 21st
day of September, 2020
[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Begin forwarded message:

From: drew atkins <drew.bland@mac.com>
Date: March 18, 2020 at 9:17:38 AM MDT
To: brian lund <brian@financial-logic.com>
Subject: Fwd: phone call

FYI

Begin forwarded message:

From: "James D. Brooks" <james.brooks@oveldicapital.com>
Date: March 17, 2020 at 3:11:53 PM MDT
To: Benny Leung <bleung@barbicap.com>
Cc: drew.bland@mac.com
Subject: RE: phone call

Benny,

It was not my intention to insult you, and I think you know that. My apologies. I am simply trying to get the parties to agree to move along but each of you have issues with the other's performance. Frankly, I think you both make good points. That said, how can I assist you, with the understanding that we all would like this to proceed to the next step? Drew and his group have been asking you for assurances on your ability to fund this deal, and you would like to have your expenses, and a certain amount of your risk covered.

Shall we schedule a call to finalize these very points? Can we move forward? In the interest of simplicity, let's leave the signed agreements as they are, and discuss satisfying each other's current interests. I believe we can accomplish this in one short telephone call.

Best,

James

-----Original Message-----

From: Benny Leung [mailto:bleung@barbicap.com]
Sent: Tuesday, March 17, 2020 3:45 PM
To: james.brooks@oveldicapital.com
Cc: drew.bland@mac.com; drew atkins
Subject: Re: phone call

James:

I just want to put on record that I don't appreciate the insinuation tone you made on the phone regarding me and Barbican. While Drew and Foothills has sole discretion as to whether it wishes to deal with Barbican or its affiliates, as the representative of a family group, I feel offended by your statement.

By this email, I urge Drew (and all shareholders of Foothills) to make a final decision to either move forward or not move forward with Barbican based on terms under the loan commitment we recently signed. I also put on record again that Barbican

will enforce its deadline strictly and will not take any exception for missing of deadlines. To the extent Barbican elects to extend any deadline imposed under the signed loan commitment, it will be at Barbican's sole discretion.

Sincerely,
Benny

This is exhibit "M" referred to
in the affidavit of

Mr. Atkin

sworn before me this 26th

day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Begin forwarded message:

From: drew atkins <drew.bland@me.com>
Date: March 18, 2020 at 11:08:47 AM MDT
To: Benny Leung <bleung@barbicap.com>
Cc: brian lund <brian@financial-logic.com>, seth <sethatkins@makeitright.ca>
Subject: Re: various matters

\u-257 ?Benny,

I understand your frustration and appreciate your patience with my circumstances.
I hope that the devastation occurring out there has not overly hurt you or your family.

I am back in Calgary today to attempt to get our deal back on track once and for all.
I can confirm to you that there is no further infighting between the family or shareholders.

I was unable to just sign and send you the Amended Escrow Agreement because:

1. the dates are amended and the due diligence timelines therein are impossible; and,
2. there is a new liquidated damages clause that is unacceptable (unsure why added?).

I am meeting with Brian and Doug tomorrow to review same.
We are also going to review your call with Seth and Brian last Friday to make sure we all agree.

We will then send you a real red-line series of amendments or comments for your consideration.
I hope we can work together going forward and get this going given the world disaster out there.

Drew.

On Mar 16, 2020, at 5:19 PM, James D. Brooks <james.brooks@oveldicapital.com> wrote:

Good evening Benny,

I believe instructions were sent to Doug Allison today to move ahead with this, but we are unsure what happened after that. Communication has been an issue for everyone, which is likely due to the government declaring a state of emergency today in Calgary because of the Coronavirus. I have been trying to get information to update you, but haven't heard back.

I will be in touch with you in the morning.

Best regards,

James

-----Original Message-----

From: Benny Leung [mailto:bleung@barbicap.com]

Sent: Monday, March 16, 2020 11:17 AM

To: drew.bland@mac.com

Cc: drew atkins; james.brooks@oveldicapital.com

Subject: Re: various matters

Dear Drew:

I hope you are feeling better by now.

As you know, we had a conference call with your brother Seth, Brian and James last Friday. James subsequently sent me an email that you are working on the amendment to the Escrow Agreement. Since the amendment is quite self-explanatory and was prepared based on your desire to fund interim expenses (legal or others) from the \$300,000 Escrow Deposit, there should not be any controversy to it.

Our frustration (which was made known to you and your brother Seth last Friday) is Foothills's constant delay of executing matters either because of your unavailability or otherwise. Please note that our loan commitment has deadlines and I would appreciate that you pay attention to it. While I am aware of the constant "in-fighting" among shareholders or family members but that cannot and should not be used as a constant excuse for delay of executing things. As I said, Foothills has the choice of selling the property and makes a profit and if that is what Foothills' shareholders wish, that so be it. But indecisive or conflicting actions create confusion for us (Lender).

Please promptly review (if you have not done so) and sign back the amendment to the Escrow Agreement to us and also confirm that all the third-party reports are in a process of being prepared. Absent that, I do not see how the transaction can be moved forward to a successful finalization.

Sincerely,

Benny

This is exhibit "N" referred to
in the affidavit of

Neer Atkiss

sworn before me this 26th

day of September, 2020

RS

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Begin forwarded message:

From: drew atkins <drew.bland@me.com>
Date: March 19, 2020 at 9:26:08 AM MDT
To: doug allison <Doug@allison-associates.ca>
Cc: james brooks <james.brooks@oveldicapital.com>
Subject: various matters

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: March 19, 2020 at 9:13:29 AM MDT
To: drew atkins <drew.bland@me.com>
Cc: brian lund <brian@financial-logic.com>, seth <sethatkins@makeitright.ca>
Subject: Re: various matters

Good morning Drew:

I hope you feel better by now.

I think you saw the email I sent to James the other day. I want to put on record (for everyone's benefit) that the proposed amendment to the Escrow Agreement was a result of your desire not to fund the US\$25,000 legal retainer to our New York law firm which was required under the signed commitment ("Commitment"). We had subsequently paid such retainer to our legal counsel as we just cannot wait for you and the way you handled this matter. You (and James) indicated that since you already put up the C\$300,000 (the 1% initial commitment fee) in escrow, you would like to use that for funding such legal deposit in the interim until the Due Diligence Contingencies are being satisfied.

While the C\$300,000 initial commitment fee was supposed to be paid upfront at the execution of the Commitment, I caused Lender to agree to a deferred payment program to provide you and Foothills with comfort that the Lender is sincere in doing a deal with you and also because of your previous experience with the other lender and the pending Due Diligence Contingencies. The detail of such deferred payment program was stipulated in the signed Escrow Agreement. Despite the fact that the C\$300,000 initial commitment fee was a "loan fee", I go along with your request with aim to move the transaction forward. The amendment to the Escrow Agreement was therefore sent as a result of it.

Now it was almost a month since we mutually executed the Commitment, you should focus of getting those due diligence items to us so we can review and approve them, subject to they are satisfactory to us. Foothills has the ability to sell the land and makes a profit and that is your and Foothills's decision. However, you cannot make a decision to go forward but yet continues to second-guess us. That is counter-productive. You either feel comfortable to move forward or not and I was under the impression that you had made such decision when you signed the Commitment. If you have a change of heart, that is fine but the parties should sit down and work out a way to terminate the Commitment on an amicably manner.

In sum, we would be glad to review any comment you may have in the amendment to the Escrow Agreement but as I conveyed to you in the previous email, the parties should go by the terms of the Commitment in respect with this matter.

Sincerely,

Benny

This is exhibit "O" referred to
in the affidavit of

Dre A. Lewis

sworn before me this 26th

day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of ~~Ontario~~

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: March 26, 2020 at 9:58:23 AM MDT
To: drew.bland@mac.com
Cc: drew atkins <drew.bland@me.com>
Subject: re: phone call from Omar

Dear Drew:

I got a call yesterday from Omar but I missed it. I gather that he called on your behalf regarding our response to your request of the extension.

First and foremost, no lender that I know of in the United States will grant a long extension for 180 days (especially in view of the Covid-19 situation) as what you requested. Most of the recent extensions that I saw from our peers were 60 days. I am offering 90 days with hope that Covid-19 will go away soon and leave us enough time to complete the Due Diligence Contingencies and close the transaction as everyone would like to do.

Second, it is not unusual that I get a call from Omar in this instance. In the past, whenever you don't like something, I will hear from one of your "front" representatives (Omar, James, etc.) who made complaints on those things that you don't like, in particular, anything related to fees. I kind of get used to it.

Third, I hope you don't misread my email as if you think that the whole purpose for my email is to extract monies from you, you are very wrong. Please be advised of the following:

- a) By signing the Commitment, Lender is entitled to the payment of the C\$300,000 at execution of the Commitment. I caused Lender to make accommodation to you (due to your complaint about previous lender which has nothing to do with us) which resulted in our mutual execution of the Escrow Agreement.
- b) Every lender charges an extension fee for extending a loan. Because I know you are sensitive to that and always maintain the desire not to put up any more additional monies more than the C\$300,000 that you put up based on the Escrow Agreement. As such, I caused Lender to waive the 0.5% extension fee (C\$195,000) but re-structure the payment of an additional portion of the Commitment Fee to compensate Lender from the current escrow funds so that it can serve our mutual purposes. After all, you will be naïve to assume that Lender will not want something back as a consideration to extend a C\$39 million loan commitment.
- c) If you (or your advisors) think that Lender is out there just to get your monies, you are again wrong in such assumption. Under the Escrow Agreement, Lender can simply send a waiver to Escrow Agent stating all Due Diligence Contingencies are satisfied or waived by Lender and Lender would have gotten the remaining Commitment Fee (C\$250,000). In such case, Lender does not even have to respond to your extension request.

In sum, I sincerely hope that you will not view and misjudge our sincere response to your extension request as I know your judgment may somehow be clouded by the current dispute between you and Walter Welsh.

Sincerely,
Benny

This is exhibit " P " referred to
in the affidavit of

Dre Atchis

sworn before me this 21st

day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN

Barrister & Solicitor

My Commission is at the pleasure
of the Lieutenant Governor

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Begin forwarded message:

From: Benny Leung <bleung@barbicap.com>
Date: March 31, 2020 at 12:12:47 PM MDT
To: drew atkins <drew.bland@me.com>
Cc: doug allison <Doug@allison-associates.ca>, "Saravan J. Veylan" <sveylan@mltaikins.com>, kmehi@mltaikins.com
Subject: Re:
Reply-To: Benny Leung <bleung@barbicap.com>

\u-257 ?Hi Drew:

Thank you for your response below. I know we all are difficult times and caught off-guard by this deadly virius. I certainly hope you gradually recover from it. **Since you made a decision not to move forward at this time, there is no sense for me to comment on points you made below. Whether this is a short or long-term farewell, I value our personal relationship** and would like to have a short call with you so that we can have a clear mutual understanding and end this matter amicably as both parties seem to wish.

Please let me know your availability the remaining week so we can get on the call.

Sincerely and best regards,

Benny

On March 31, 2020 1:12 PM drew atkins <drew.bland@me.com> wrote:

Benny,

I appreciate your courtesy email yesterday about today's deadline, but I have had no problem responding to you anytime, because unlike Walter, you don't threaten a lawsuit every time we have a disagreement, but rather as reasonable men we find reasonable solutions together.

I presented your proposal to my management team at our usual Monday team meeting and respond to you with the following points:

First, we are concerned with your claim that we alone have not met our due diligence requirements, as both parties have been clearly unable to complete the Commitment Letter conditions (for example you also never sent any draft security documents), and these provisions are clearly subject to Force Majeure given the actual circumstances in Canada and even more so where you are in the U.S., especially NY City and State;

Second, we would be less concerned with further fee requirements from you if you actually had provided some references or proof of funding as you have promised on numerous occasions both orally and in writing, but have never actually done, as your representations are even more important today than ever, especially given the present economic circumstances;

Third, we are also concerned that given the unknown timeline regarding when law firms, accounting firms, and government agencies will return to their normal day to day activities there is a real possibility that your proposal to extend until the end of June for a significant fee release will also be similarly impossible to complete because of Force Majeure.

As it stands, we can therefore both agree to walk away amicably in alignment with your numerous oral and written representations, and re-visit our relationship at a later date, say May or June, in an attempt to complete our attempt at a mutually beneficial financing.

I have also copied both Allison & Associates and MLT Aiken with this email so that they can correspond together to release the escrow funds in alignment with your numerous oral and written representations and in accordance with the Escrow Agreement.

I am hopeful we can agree to a reasonable solution given the incredibly difficult situation.

I am happy to arrange a call anytime to discuss same with you.

I hope your friends and family are free of this deadly virus.

Drew.

This is exhibit "Q" referred to
in the affidavit of

Drew Atkinson

sworn before me this 20th
day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

From: Doug Allison
Sent: Wednesday, April 1, 2020 11:36 AM
To: Saravan J. Veylan <sveylan@mltaikins.com>; kmehi@mltaikins.com
Cc: drew atkins <drew.bland@me.com>
Subject: RE: Re:

Good morning. Pursuant to the communications below, we look forward to the return of the escrow funds. Our RBC trust account transfer information is attached.

Best,

Douglas V. Allison
doug@allison-associates.ca
403-984-5905

This is exhibit " R " referred to
in the affidavit of

Deo Atkies

sworn before me this 26th

day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING
 405 LEXINGTON AVENUE
 SUITE 2600
 NEW YORK, NEW YORK 10174
 TEL: (212) 271-5045 • FAX: (212) 271-5582

May 1, 2020

By Email and FedEx

Mr. Drew Atkins, Director
 Alberta Foothills Properties Ltd
 3505 18th Street SW
 Calgary, Alberta T2T 4T9
 drew.bland@mac.com; drew.bland@me.com

Re: Notice of Termination of Commitment and Demand for Payment of Commitment Fee

Dear Mr. Atkins:

We write to you regarding the loan commitment dated February 17, 2020 ("Commitment") entered into between Barbican Capital Partners, LLC ("Lender") and Alberta Foothills Properties Ltd. ("Borrower" or "you"). Lender hereby: (1) notifies Borrower that the Commitment is terminated; (2) formally revokes any previous offers by Lender to extend the Commitment; and (3) demands Borrower's payment to Lender of the C\$975,000 Commitment Fee. Capitalized terms used but not otherwise defined herein shall have their respective meanings attributed to them in the Commitment.

By its terms, the Commitment automatically expired and terminated on April 30, 2020, because of Borrower's default and Borrower's failure to satisfy certain conditions precedent to the closing. In addition, Lender has not received from Borrower the documents required by subsection 5 of the Termination section of the Commitment, and Borrower has failed to deliver the Due Diligence Contingencies to Lender within the required sixty (60) days of the execution of the Commitment, both of which are independent grounds for Lender to terminate the Commitment. Accordingly, Lender hereby notifies you that the Commitment is terminated. Any and all previous offers by Lender to extend the Commitment, including without limitation Lender's conditional offer in its March 25, 2020 letter to you, are hereby formally revoked.

As a result of the termination of the Commitment, you are obligated to pay Lender the C\$975,000 Commitment Fee, as well as Lender's fees and expenses. As set forth in the Loan Fees section of the Commitment, Borrower shall pay to Lender the Commitment Fee in consideration of Lender's issuance of the Commitment, regardless of whether the Commitment leads to a closing of the Facility. Of the C\$975,000 Commitment Fee, C\$300,000 was deposited by Borrower with the Escrow Agent. Of those C\$300,000 Escrow Funds, C\$50,000 was paid to Lender when the Commitment was executed, and the remaining C\$250,000 was due and payable to Lender after Borrower failed to deliver the Due Diligence Contingencies to Lender within the required sixty (60) days after execution of the Commitment. Accordingly, the remaining sum of C\$250,000 Escrow Funds are due and payable to Lender.

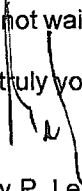
In addition, the Loan Fees section of the Commitment provides that the remaining C\$675,000 of the Commitment Fee will be "payable at...the expiration of the Commitment (i.e. April 30, 2020) if the Loan does not close for any reason other than Lender's willful default." As you are aware, Lender has not defaulted on any of its obligations in

the Commitment. To the contrary, it is Borrower's stated unwillingness to close the Facility that is preventing the closing. Accordingly, the entire C\$975,000 Commitment Fee is due and payable to Lender.

Lender hereby demands payment of the \$975,000 Commitment Fee from Borrower. Lender demands that Borrower release the C\$250,000 Escrow Funds to Lender by executing the attached joint release letter to Escrow Agent, and returning it Lender on or before May 8, 2020. Lender also demands that Borrower pays to Lender the remaining \$675,000 of the Commitment Fee by wire transfer of that amount to Lender's account on or before May 15, 2020. The wiring instructions for Lender's account are attached to this letter. If Borrower fails to both return the joint release letter and make payment of the balance of the Commitment Fee by wire transfer by the above dates, interest charges will accrue at the New York statutory rate of 9% per year, and Lender will pursue all appropriate legal remedies, which may include, but not be limited to, Lender initiating a lawsuit against Borrower.

This letter does not, and is not intended to, state all facts and circumstances regarding the issues it addresses. Lender does not waive any of its rights or remedies. To the contrary, Lender expressly reserves all of its rights and remedies.

Very truly yours,




Benny P. Leung
Manager

CC:

1367803 Alberta Ltd, as Sponsor

Drew Gordon Atkins, as Principal (drew.bland@mac.com; drew.bland@me.com)

MLT Aikins LLP, as escrow agent (sveylan@mltakins.com)

This is exhibit "5" referred to
in the affidavit of
Dr. Atkin
sworn before me this 21st
day of September, 2020


A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

MLT AIKINS

WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
Suite 2600 - 1066 West Hastings Street
Vancouver, British Columbia V6E 3X1
T: (604) 682-7737
F: (604) 682-7131

Saravan J. Veylan
* services provided by
SJ Veylan Law Corporation
Direct Line: (604) 608-4570
E-mail: sveylan@mltaikins.com

June 2, 2020

BY EMAIL bleung@barbicap.com

Barbican Capital Partners, LLC
405 Lexington Avenue, Suite 2600
New York, New York 10174

Attention: Benny Leung

Dear Mr. Leung:

**Re: Escrow Agreement among Barbican Capital Partners, LLC, Alberta
Foothills Properties Ltd. and MLT Aikins LLP dated November 7th, 2019
(the "Escrow Agreement")**

Capitalized terms used but not defined herein have the meanings given to them in the Escrow Agreement.

Pursuant to Section 3.1(a)(iv) of the Escrow Agreement, please provide us with the Expense Notice by June 4, 2020. Upon receipt of such Expense Notice, within two Business Days, we will pay:

- a) the amount set out in the Expense Notice to the Lender; and
- b) the balance of the Escrow Funds to the Borrower.

We look forward to hearing from you.

Sincerely,

MLT AIKINS LLP

Per:



Saravan J. Veylan
Partner

Cc: Alberta Foothills Properties Ltd., Attn: Drew Atkins (drew.bland@me.com)
D. Allison Professional Law Corporation, Attn: Douglas V. Allison (Doug@allison-associates.ca)

MLT AIKINS LLP | MLT AIKINS.COM

This is exhibit "T" referred to
in the affidavit of

Die Atkin

sworn before me this 21st
day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

BARBICAN CAPITAL PARTNERS, LLC

THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
SUITE 2600
NEW YORK, NEW YORK 10174
TEL: (212) 271-5045 • FAX: (212) 271-5582

Via Email

June 3, 2020

MLT Aikins LLP
1066 West Hastings Street
Suite 2600
Vancouver, BC V6E 3X1

Re: Escrow Agreement between Barbican Capital Partners, LLC, as Lender, Alberta Foothills Properties Ltd, as Borrower, and MLT Aikins LLP, as Escrow Agent, dated November 7, 2019 (the "Escrow Agreement")

Dear Sirs:

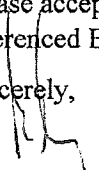
Pursuant to your letter dated June 2, 2020 requesting an expense notice ("Expense Notice") from Lender, please be advised that Lender's expenses in connection with the transaction are as follows:

MLT Aikins LLP C\$44,401.39 (Canadian Dollar)

Withers Bergman LLP US\$36,346.00

Please accept this as Expense Notice for the purpose and pursuant to Section 3.1 (a) (iv) of the above-referenced Escrow Agreement. Our wire instruction is enclosed herewith for your onward action.

Sincerely,


Benny P. Leung
Managing Member

This is exhibit "U" referred to
in the affidavit of

D. per K. H. W. S.
sworn before me this 21st
day of September, 2020

[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Begin forwarded message:

From: "Saravan J. Veylan" <sveylan@mltaikins.com>
Date: June 3, 2020 at 3:54:07 PM MDT
To: doug allison <Doug@allison-associates.ca>
Cc: Benny Leung <bleung@barbicap.com>, drew atkins <drew.bland@me.com>
Subject: RE: Demand for Expense Notice under Escrow Agreement

Doug,

We have received the attached expense notice. You will note that the Lender is claiming expenses related to legal fees.

Pursuant to the definition of "Expense Notice" in section 3.1(a)(iii)(1) of the Escrow Agreement, the Borrower must approve expenses in advance. Under the "Expenses and Indemnification" section of the attached, executed Commitment Letter, the Borrower has already approved its payment of legal fees of the Lender. Therefore, in our view, no further approval by the Borrower is required – it has already given its approval to these expenses. Pursuant to section 3.1(a)(iii)(1) of the Escrow Agreement, the Expense Notice provided by the Lender is definitive as to the amount of such expenses and the Borrower does not have approval rights as to the quantum of the expenses.

We intend to distribute the balance of the Escrow Amount first to pay the expenses listed under the Expense Notice and secondly the remaining balance to the Borrower. Under the terms of the Escrow Agreement, we are required to make these payments tomorrow. If you wish to discuss this further, please contact me forthwith.

Regards,
Sarav

Saravan J. Veylan*
Partner
* services provided by SJ Veylan Law Corporation
P: +1 (604) 608-4570 | E: sveylan@mltaikins.com

From: drew atkins <drew.bland@me.com>
Sent: Wednesday, June 3, 2020 1:58 PM
To: Saravan J. Veylan <sveylan@mltaikins.com>
Cc: doug allison <Doug@allison-associates.ca>
Subject: Re: Demand for Expense Notice under Escrow Agreement

\u9888 ? External Sender

Saravan,

Pursuant to 3.1(a)(iii)(1) of the Escrow Agreement it was required that such legal expenses be approved in advance by the Borrower.

Please also note that the Borrower has not approved any expenses in advance, and as such please do not release any such funds prior to AFPL approval.

Drew.

On Jun 2, 2020, at 6:43 PM, Saravan J. Veylan <sveylan@mltaikins.com> wrote:

Mr. Leung,

Please see our letter attached.

Regards,

Sarav

Saravan J. Veylan*

Partner

* services provided by SJ Veylan Law Corporation

P: +1 (604) 608-4570 | **E:** sveylan@mltaikins.com

F: +1 (604) 682-7131

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MLT Aikins LLP

Suite 2600 – 1066 West Hastings Street

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<Letter demanding expense notice.pdf>

This is exhibit "✓" referred to
in the affidavit of
Ore Atkinson
sworn before me this 21st
day of September, 2020
[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

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Begin forwarded message:

From: "Saravan J. Veylan" <sveylan@mltaikins.com>
Date: June 3, 2020 at 3:54:07 PM MDT
To: doug allison <Doug@allison-associates.ca>
Cc: Benny Leung <bleung@barbicap.com>, drew atkins <drew.bland@me.com>
Subject: RE: Demand for Expense Notice under Escrow Agreement

Doug,

We have received the attached expense notice. You will note that the Lender is claiming expenses related to legal fees.

Pursuant to the definition of "Expense Notice" in section 3.1(a)(iii)(1) of the Escrow Agreement, the Borrower must approve expenses in advance. Under the "Expenses and Indemnification" section of the attached, executed Commitment Letter, the Borrower has already approved its payment of legal fees of the Lender. Therefore, in our view, no further approval by the Borrower is required – it has already given its approval to these expenses. Pursuant to section 3.1(a)(iii)(1) of the Escrow Agreement, the Expense Notice provided by the Lender is definitive as to the amount of such expenses and the Borrower does not have approval rights as to the quantum of the expenses.

We intend to distribute the balance of the Escrow Amount first to pay the expenses listed under the Expense Notice and secondly the remaining balance to the Borrower. Under the terms of the Escrow Agreement, we are required to make these payments tomorrow. If you wish to discuss this further, please contact me forthwith.

Regards,
Sarvi

Saravan J. Veylan*
Partner
* services provided by SJ Veylan Law Corporation
P: +1 (604) 608-4570 | E: sveylan@mltaikins.com

From: drew atkins <drew.bland@me.com>
Sent: Wednesday, June 3, 2020 1:58 PM
To: Saravan J. Veylan <sveylan@mltaikins.com>
Cc: doug allison <Doug@allison-associates.ca>
Subject: Re: Demand for Expense Notice under Escrow Agreement

\u9888 ? External Sender

Saravan,

Pursuant to 3.1(a)(iii)(1) of the Escrow Agreement it was required that such legal expenses be approved in advance by the Borrower.

Please also note that the Borrower has not approved any expenses in advance, and as such please do not release any such funds prior to AFPL approval.

Drew.

On Jun 2, 2020, at 6:43 PM, Saravan J. Veylan <sveylan@mltaikins.com> wrote:

Mr. Leung,

Please see our letter attached.

Regards,

Sarav

Saravan J. Veylan*

Partner

* services provided by SJ Veylan Law Corporation

P: +1 (604) 608-4570 | E: sveylan@mltaikins.com

F: +1 (604) 682-7131

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<Letter demanding expense notice.pdf>

This is exhibit "W" referred to
in the affidavit of

Drew Atkinson

sworn before me this 26th
day of September, 2020

[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Alberta Law Society Code of Conduct

3.4 Conflicts**Duty to Avoid Conflicts of Interest**

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Acting Against Former Clients

3.4-6 Unless the former client consents, a lawyer must not act against a former client:

(a) in the same matter,

(b) in any matter, or

(c) except as provided by Rule 3.4-7, in any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

5.2 The Lawyer as Witness**Submission of Evidence**

5.2-1 A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless permitted to do so by law, the tribunal, the Rules of Court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

3.4 Conflicts

Duty to avoid conflicts of interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

5.2 The Lawyer as Witness

Submission of Evidence

5.2-1 A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless

(a) permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal;

(b) the matter is purely formal or uncontroverted; or

(c) it is necessary in the interests of justice for the lawyer to give evidence.

This is exhibit "X" referred to
in the affidavit of

Orea Adams
sworn before me this 21st
day of September, 2020

[Signature]
A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Hi Warren,

Thanks for the note.

As discussed with your colleague Shayne, As Escrow Agent, we have provided the Lender with a demand for a summary of its expenses (Term Sheet, Escrow Agreement and Commitment). The Borrower has provided its response – expenses are MLT Aikins' and New York counsel legal fees. As noted, Section 3.1(a)(iii)(1) states that the Lenders' expenses that appear on the Expense Notice related to legal costs "are hereby approved by the Borrower". This approval is in relation to the "kind and amount" of such expenses, and the expenses noted on the Expense Notice are "definitive" with respect to the kind and amount of the expense. Accordingly, the Borrower has already approved the legal fees and their quantum as a proper and payable expense.

Further, under 3.1(a)(iv), the mandated process (after June 1, 2020) is:

-Escrow Agent provide written notice requesting an Expense Notice [done]

-Lender provides Expense Notice [done]

-upon receipt, Escrow Agent pays Escrow Amount to the Lender (i.e. the amount set out in the Expense Notice), with the balance to the borrower.

As this is an Alberta matter, and given Mr. Struckoff's comment that he will treat such payment out as a breach of trust, we are proceeding with a court application to confirm the above. Jonathan Bouchier of our Calgary office is handling the application – you can communicate directly with him from now on about scheduling. As noted previously, the Escrow Agreement provides that our legal fees for this process are also to be paid by your client.

-Ryan

Ryan Morasiewicz

Senior Counsel

P: +1 (604) 608-4576 | E: rmorasiewicz@mltaikins.com

From: Foley, Warren <Warren.Foley@gowlingwlg.com>

Sent: Saturday, July 25, 2020 8:13 AM

To: Ryan Morasiewicz <RMorasiewicz@mltaikins.com>

Cc: Strukoff, Shayne <Shayne.Strukoff@gowlingwlg.com>

Subject: RE: Barbican Capital and Alberta Foothills Escrow Agreement

Ryan,

I work with Shayne Strukoff out of the Calgary office and will be handling the Chambers application with respect to the funds that are in Escrow (to the extent one is necessary). I won't rehash our position as I agree with the points previously made by Shayne. However, it is my understanding that in addition to taking the position that our client has already approved whatever legal expenses might have been incurred by the Lender, you are also taking the position that our client isn't entitled to see the back up for these expenses.

If my understanding is correct, I am confused by this position. For one, it might be that once our client sees the cost data they agree to pay the related charges. Your below email expresses some concern over whether it would be prudent to attend Court for a resolution of this dispute. Even if the chance is slight, in the spirit of prudence it would seem to make sense to share the expense data with us in advance to determine if an application is necessary. Moreover, if it turns out that an application is necessary, the expense data will have to be part of the Court record so I am unclear on the utility of denying us access to the data at this stage of the process.

I would ask that you reconsider your position on this issue and provide us with a breakdown of the expenses along with the backup. I am available at your convenience to discuss this matter.

Warren Foley

Partner

T +1 403 298 1878

warren.foley@gowlingwlg.com

[Redacted]
[Redacted]

From: Ryan Morasiewicz <RMorasiewicz@mltaikins.com>
Sent: June-18-20 11:03 AM
To: Strukoff, Shayne <Shayne.Strukoff@gowlingwlg.com>
Subject: RE: Barbican Capital and Alberta Foothills Escrow Agreement

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Mr. Strukoff,

I write further to your e-mail below and your subsequent discussions with Saravan Veylan of our office. I have assumed conduct of this matter from Sarvi, so please direct all future correspondence to my attention.

As you are aware, Section 3.1(a)(iii)(1) of the Escrow Agreement and the Expense Notice is at the core of this issue. As Escrow Agent, we have provided the Lender with a demand for a summary of its expenses (related to the Term Sheet, the Escrow Agreement, and the Commitment). I understand the demand has been made and the Borrower has responded with its expenses, which are comprised only of the legal fees from MLT Aikins and their New York counsel – totaling approximately \$93,703 (converting the USD to CAD at today's exchange rate). Thus, of the \$250,000 deposit remaining in escrow, your client would receive back approximately \$156,300.

I understand your client's position is that they have not yet had a chance to receive and approve the said expenses "in advance" as contemplated by the Escrow Agreement.

Respectfully, this position is not consistent with the entirety of that Escrow Agreement section.

The section does of course reference "advance" approval of the expenses. Section 3.1(a)(iii)(1), however, continues to state that the Lender's expenses that appear on the Expense Notice related to legal costs (among others) "are hereby approved by the Borrower". This approval is in relation to both the "kind and amount" (my emphasis) of such expenses. Further, the expenses that are noted on the Expense Notice are said to be "definitive" with respect to the kind and amount of the expense.

Thus, the Borrower has already approved legal fees (and their quantum, as noted on the Expense Notice) as a proper and payable expense, by virtue of the Escrow Agreement itself. It would be an absurdity to read the Escrow Agreement as requiring both 1) the Borrower to approve the quantum of the (legal fee) expense "in advance" [as your client alleges], but also at the same time stating that the legal fees listed on the Expense Notice are "determinative" with respect to their "kind and amount". In other words, if the fees (both their nature and the quantum) were "approved in advance" by the Borrower, there would be no need for the clause to go on and say that what is listed in the Expense Notice are determinative (as to "kind and amount") given that there would already be an agreement between the lender and borrower. The reference to "approved in advance" thus does not involve pre-approval of quantum, and approval of the type of fees (i.e. legal) is already contained in s.3.1(a)(iii)(1) itself, as well as explicitly in the commitment letter (which contains a specific provision wherein the borrower acknowledges and approves legal fees, and as you know, the expenses defined in the Escrow Agreement are related to the Commitment).

Given the circumstances and the quantum at issue, it would seem prudent for your client to not require us to expend the time and expense required to proceed to Court to confirm our ability to pay out the escrowed deposit funds as indicated. I note that the Escrow Agreement provides that our legal fees, and those of any external counsel retained by us in connection with Escrow Agreement matters, are to be paid by your client. Considering his additional exposure on this matter surrounding the Commitment Fee, I would not think it is in his interests to further deplete the deposit funds he ultimately receives back.

-Ryan

Ryan Morasiewicz
Senior Counsel
P: +1 (604) 608-4576 | E: rmorasiewicz@mltaikins.com
F: +1 (604) 682-7131

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From: Strukoff, Shayne <Shayne.Strukoff@gowlingwlg.com>
Sent: Wednesday, June 3, 2020 9:39 PM
To: Saravan J. Veylan <sveylan@mltaikins.com>
Cc: Atkins Drew <drew.bland@me.com>
Subject: Barbican Capital and Alberta Foothills Escrow Agreement

\u9888 ? External Sender

\u257 ?
Saravan,

We have been retained by Alberta Foothills Properties Ltd. We are responding on a without prejudice basis to your email and letter of June 3, 2020.

It appears that you are proposing to pay out significant legal fees from the Escrow Amount currently held in trust. In our view this would be a breach of the Escrow Agreement, and may also constitute a breach of trust.

Section 3.1(a)(iii)(1) of the Escrow Agreement has a specific definition of "Expense Notice". It is defined as those expenses "which have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice")". What this section contemplates is that the Lender will send the anticipated expenses in advance and the Borrower will have an opportunity to review and approve them. It does not contemplate the payout of amounts that have not been quantified, reviewed nor approved in advance, such as the legal fees set out in your letter.

We disagree with your interpretation that the commitment letter provisions somehow constitutes approval. Apart from other issues surrounding the commitment letter and whether the Lender met its obligations, the letter does not set out the amount of expenses, nor confirm that those expenses have been approved. If the Lender could establish that it was not in breach of such letter, it "may" give rise to an independent claim for indemnity of legal fees (which claim would be disputed), but this does not elevate it to an "Expense Notice" under the Escrow Agreement. Parenthetically, the commitment letter also only contemplates an indemnity of reasonable fees, and in this case the fees are not reasonable and will be disputed.

In sum, the anticipated legal fees were not sent to nor approved in advance by the Borrower. They do not meet the contractual definition of "Expense Notice" under the Escrow Agreement. In the circumstances, any payout by you may result in a claim for breach of contract and breach of trust.

We also note that under the Escrow Agreement, if there is a dispute in regard to entitlement to the escrowed funds (which now appears to be the case), section 5.3 of the agreement allows you to apply to court for directions, or to pay the Escrow Amount into court pending resolution of the dispute among the parties. My client would be open to either option.

We look forward to hearing from you or your independent counsel regarding this matter.

Best regards,

Shayne P. Strukoff, QC
604-891-2280
shayne.strukoff@gowlingwlg.com

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Hi Shayne,

As noted below, the borrower is not entitled to review the quantum/details of the expenses incurred by the lender, and all necessary approvals are already contained within the agreements. Given your indication to Sarvi that you will treat such payment out as a breach of trust, we will proceed to court for directions, an unfortunate need given the associated expenses are to be borne by your client.

Given the Escrow Agreement is governed by Alberta law, someone from our Calgary office will be in touch for scheduling. (Or, if someone from your Calgary office will be handling the court matters, let me know and I can route future communications over there.)

-Ryan

Ryan Morasiewicz
Senior Counsel

P: +1 (604) 608-4576 | E: rmorasiewicz@mltaikins.com

From: Strukoff, Shayne <Shayne.Strukoff@gowlingwlg.com>
Sent: Monday, June 22, 2020 8:25 AM
To: Ryan Morasiewicz <RMorasiewicz@mltaikins.com>
Subject: RE: Barbican Capital and Alberta Foothills Escrow Agreement

Ryan,

Can you kindly send us copies of the legal accounts that were issued, as well as the backup time entries and other supporting documents. We will then follow up with our client.

Regards,

Shayne

Shayne Strukoff, QC
Partner
T +1 604 891 2280
shayne.strukoff@gowlingwlg.com



From: Ryan Morasiewicz <RMorasiewicz@mltaikins.com>
Sent: Thursday, June 18, 2020 2:40 PM
To: Strukoff, Shayne <Shayne.Strukoff@gowlingwlg.com>
Subject: FW: Barbican Capital and Alberta Foothills Escrow Agreement

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Mr. Strukoff,

In my discussion below of the Escrow Agreement, I concentrated on section 3.1(a)(iii), to the exclusion of (iv).

Regardless of (iii) – and you have my analysis below of how that subsection mandates payment out as we are contemplating – what is mandated in (iv) is that, post-June 1/2020:

- the Escrow Agent provides a written notice requesting an Expense Notice [done]
- the Lender provides that Expense Notice [done]
- upon receipt, the Escrow Agent pays the Escrow Amount to the Lender (the amount set out in the Expense Notice), with the balance to the Borrower [we are here now]

Thus, (iv) just reinforces the conclusions of (iii) – the Escrow Agent is to pay out of the funds held in escrow to the Lender (what is noted on the Expense Notice), with

the balance going back to the Borrower. It just does not make sense to spend further time and fees (which are ultimately coming out of what your client would otherwise receive back) discussing this matter.

In my e-mail this morning I neglected to mention that we would like your final response – either agree or disagree with the release of funds as discussed – by end of business tomorrow. I understand that you have already had over 2 weeks to consider this matter, and our client needs to know the position of your client so that we can proceed with further steps if necessary.

-Ryan

**Ryan Morasiewicz
Senior Counsel**

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F: +1 (604) 682-7131

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From: Ryan Morasiewicz <RMorasiewicz@mltaikins.com>
Sent: Thursday, June 18, 2020 10:03 AM
To: Shayne.Strukoff@gowlingwlg.com
Subject: RE: Barbican Capital and Alberta Foothills Escrow Agreement

Mr. Strukoff,

I write further to your e-mail below and your subsequent discussions with Saravan Veylan of our office. I have assumed conduct of this matter from Sarvi, so please direct all future correspondence to my attention.

As you are aware, Section 3.1(a)(iii)(1) of the Escrow Agreement and the Expense Notice is at the core of this issue. As Escrow Agent, we have provided the Lender with a demand for a summary of its expenses (related to the Term Sheet, the Escrow Agreement, and the Commitment). I understand the demand has been made and the Borrower has responded with its expenses, which are comprised only of the legal fees from MLT Aikins and their New York counsel – totaling approximately \$93,703 (converting the USD to CAD at today's exchange rate). Thus, of the \$250,000 deposit remaining in escrow, your client would receive back approximately \$156,300.

I understand your client's position is that they have not yet had a chance to receive and approve the said expenses "in advance" as contemplated by the Escrow Agreement.

Respectfully, this position is not consistent with the entirety of that Escrow Agreement section.

The section does of course reference "advance" approval of the expenses. Section 3.1(a)(iii)(1), however, continues to state that the Lender's expenses that appear on the Expense Notice related to legal costs (among others) "are hereby approved by the Borrower". This approval is in relation to both the "kind and amount" (my emphasis) of such expenses. Further, the expenses that are noted on the Expense Notice are said to be "definitive" with respect to the kind and amount of the expense.

Thus, the Borrower has already approved legal fees (and their quantum, as noted on the Expense Notice) as a proper and payable expense, by virtue of the Escrow Agreement itself. It would be an absurdity to read the Escrow Agreement as requiring both 1) the Borrower to approve the quantum of the (legal fee) expense "in advance" [as your client alleges], but also at the same time stating that the legal fees listed on the Expense Notice are "determinative" with respect to their "kind and amount". In other words, if the fees (both their nature and the quantum) were "approved in advance" by the Borrower, there would be no need for the clause to go on and say that what is listed in the Expense Notice are determinative (as to "kind and amount") given that there would already be an agreement between the lender and borrower. The reference to "approved in advance" thus does not involve pre-approval of quantum, and approval of the type of fees (i.e. legal) is already contained in s.3.1(a)(iii)(1) itself, as well as explicitly in the commitment letter (which contains a specific provision wherein the borrower acknowledges and approves legal fees, and as you know, the expenses defined in the Escrow Agreement are related to the Commitment).

Given the circumstances and the quantum at issue, it would seem prudent for your client to not require us to expend the time and expense required to proceed to Court to confirm our ability to pay out the escrowed deposit funds as indicated. I note that the Escrow Agreement provides that our legal fees, and those of any external counsel retained by us in connection with Escrow Agreement matters, are to be paid by your client. Considering his additional exposure on this matter surrounding the Commitment Fee, I would not think it is in his interests to further deplete the deposit funds he ultimately receives back.

-Ryan

Ryan Morasiewicz
Senior Counsel

P: +1 (604) 608-4576 | E: rmorasiewicz@mltaikins.com
Vancouver

From: Strukoff, Shayne <Shayne.Strukoff@gowlingwlg.com>
Sent: Wednesday, June 3, 2020 9:39 PM
To: Saravan J. Veylan <sveylan@mltaikins.com>
Cc: Atkins Drew <drew.bland@me.com>
Subject: Barbican Capital and Alberta Foothills Escrow Agreement

\u9888 ? External Sender

Saravan,

We have been retained by Alberta Foothills Properties Ltd. We are responding on a without prejudice basis to your email and letter of June 3, 2020.

It appears that you are proposing to pay out significant legal fees from the Escrow Amount currently held in trust. In our view this would be a breach of the Escrow Agreement, and may also constitute a breach of trust.

Section 3.1(a)(iii)(1) of the Escrow Agreement has a specific definition of "Expense Notice". It is defined as those expenses "which have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice")". What this section contemplates is that the Lender will send the anticipated expenses in advance and the Borrower will have an opportunity to review and approve them. It does not contemplate the payout of amounts that have not been quantified, reviewed nor approved in advance, such as the legal fees set out in your letter.

We disagree with your interpretation that the commitment letter provisions somehow constitutes approval. Apart from other issues surrounding the commitment letter and whether the Lender met its obligations, the letter does not set out the amount of expenses, nor confirm that those expenses have been approved. If the Lender could establish that it was not in breach of such letter, it "may" give rise to an independent claim for indemnity of legal fees (which claim would be disputed), but this does not elevate it to an "Expense Notice" under the Escrow Agreement. Parenthetically, the commitment letter also only contemplates an indemnity of reasonable fees, and in this case the fees are not reasonable and will be disputed.

In sum, the anticipated legal fees were not sent to nor approved in advance by the Borrower. They do not meet the contractual definition of "Expense Notice" under the Escrow Agreement. In the circumstances, any payout by you may result in a claim for breach of contract and breach of trust.

REDACTED

We look forward to hearing from you or your independent counsel regarding this matter.

Best regards,

Shayne P. Strukoff, QC
604-891-2280
shayne.strukoff@gowlingwlg.com

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This is exhibit "Y" referred to
in the affidavit of

Dre - Athi's

sworn before me this 26th
day of September, 2020

[Signature]

A Notary Public - A Commissioner for Oaths
in and for the Province of Alberta

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor



Warren Foley
 Direct +1 403 298 1878
 Direct Fax +1 403 695 3582
 warren.foley@gowlingwlg.com
 File no. A164337

September 18, 2020

Via Email: jbourchier@mltaikins.com

Jonathan Bouchier
 MLT Aikins LLP
 222, 2100 Livingston Place – 3rd Avenue SW
 Calgary, AB T2P 0B4

Dear Sir:

Re: Dispute between Alberta Foothills Properties (“Alberta Foothills”) and Barbican Capital LLC (“Barbican”)

I write to you with respect to the above matter.

You and I had been discussing whether the parties might be able to arrive at an amicable solution to the current dispute. Having reviewed your application materials in more detail and the materials that have been provided to me by my client, I do not see how that will be possible.

Our client's position on the various issues in dispute is as follows:

- In our view, MLT is in a conflict of interest as a result of the duties owed to Alberta Foothills in its capacity as Escrow Agent, the duties owed to Barbican as its client and MLT's own interest in recovering the payment of legal fees. In addition, as noted below, this matter must proceed by way of Statement of Claim and as part of those proceedings we anticipate calling MLT lawyers as witnesses. Typically, the fact that some members of your firm are witnesses in a legal action calls into question the firm's ability to continue acting as legal counsel as a lawyer's duty to the client is potentially at odds with the duties of loyalty owed to the law firm. While we are happy to discuss this further, we are concerned that MLT should not be acting as legal counsel for Barbican in this dispute and will be raising this issue with the Court if we cannot separately resolve the matter amongst ourselves;

REDACTED

Gowling WLG (Canada) LLP
 Suite 1600, 421 7th Avenue SW
 Calgary AB T2P 4K9 Canada

T +1 403 298 1000
F +1 403 263 9193
gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal.

A164337\CAL_LAW\ 3765293\2

- This matter cannot proceed by way of originating application as there are material facts in dispute. For example, as will be detailed in our client's affidavit, our client does not agree that the Commitment Letter was lawfully terminated and does not agree that it failed to comply with the due diligence requirements. These issues directly impact whether any legal fees have to be paid by Alberta Foothills and cannot be resolved in the context of the originating application;
- MLT's and Withers Bregman's legal fees must be paid by Barbican – at least in the first instance. As previously discussed, our client's position is that Barbican acted in bad faith, may be liable for the tort of negligent misrepresentation and either wrongfully terminated the agreement or repudiated the agreement through its conduct (and that such repudiation was accepted by Alberta Foothills). These issues will need to be resolved before the Court can determine whether Barbican has any contractual right to demand payment of legal fees on a full indemnity basis. Further, as with every litigation matter, Barbican as Plaintiff does not get the benefit of the doubt prior to the final resolution of these matters. In our view, the totality of the funds held in trust must be returned to Alberta Foothills. While we suspect your client will not voluntarily agree to this suggestion, there should be no disagreement that those funds not in dispute must be returned to our client asap. Please indicate whether the funds unrelated to the legal fees in dispute will be returned and to the extent you are not prepared to do so, the basis for your position;
- There is no prejudice to MLT or Withers Bregman as the fees in question can and should be paid by Barbican who was instructing the subject law firms at the relevant time. Indeed, had the transaction proceeded, Barbican would have been responsible to pay these legal fees. There is also no prejudice to Barbican because if it is ultimately successful in this dispute, it will be in a position to recover said legal fees directly from Alberta Foothills as part of the litigation;
- With respect to the legal fees incurred by MLT in relation to this application, our position remains that those fees must be born by Barbican who appears to have instructed MLT to bring the application in the first place. While MLT, as Escrow agent had the right to seek clarification from the Court that is not what this application does. Rather, this application purports to take a particular interpretation of the contract and an interpretation, I might add, that favors MLT and its client to the detriment of Alberta Foothills. In other words, we do not accept that MLT is acting in its capacity as Escrow Agent by bringing this application. I would note that this is an example of one of the concerns we have with respect to the conflicts that exist because of MLT's dual role; and
- While in our view the matter should be converted to a Statement of Claim, to the extent Barbican wishes to advance the originating application despite there being material facts in dispute, we will require a special and we will require an opportunity to question Mr. Leung. I suspect you will want to cross-examine Mr. Atkins on his affidavit. Further, we fundamentally disagree with your view on whether the time entries for the subject invoices are producible. In our view they are producible and prior to the application being heard we will need an application seeking full disclosure of the invoices. I suspect this is done most efficiently once we have converted this matter to a statement of claim so I will wait to here your views on that issue before scheduling said application. I appreciate that you will want to view our client's affidavit before making a decision on this issue.



I would be happy to discuss the forgoing with you in more detail. Please confirm whether it will be necessary to seek assistance from the Court as to setting the matter down for a special. More importantly, please confirm your position on converting the matter to a Statement of Claim and your view on the legal conflict issue.

Finally, I note that we anticipate providing you with our client's affidavit on or before this coming Monday.

Yours truly,

Gowling WLG (Canada) LLP

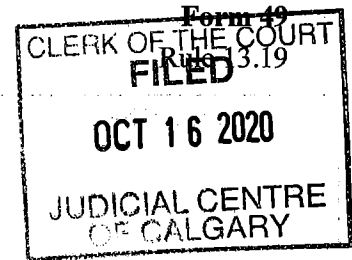
A handwritten signature in black ink, appearing to read "WLF", with a long horizontal line extending to the right.

Warren Foley

WPF:rcs

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “F” – AFPL Affidavit 2



COURT FILE NUMBER 2001-10006

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE CALGARY

APPLICANT(S) ALBERTA FOOTHILLS PROPERTIES LTD. ("ALBERTA
FOOTHILLS")

RESPONDENTS MLT AIKINS LLP ("MLT")

DOCUMENT **AFFIDAVIT**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9

 Telephone (403) 298-1878
 Facsimile (403) 695-3582

 File No. A164337

Attention: Warren Foley/Ram Sankaran

AFFIDAVIT OF: DREW ATKINS

SWORN OR AFFIRMED ON: October 16, 2020

I, Drew Atkins, of the City of Calgary, in the Province of Alberta, **SWEAR AND SAY THAT:**

1. I am the President of Alberta Foothills Properties Ltd. ("**Alberta Foothills**") and as such I have personal knowledge of the matters herein deposed to, except where these matters are stated to be based on information, in which case I believe that information to be true.
2. I am authorized to swear the within Affidavit on behalf of the Applicant, Alberta Foothills.
3. I am informed by my review of the documents and by being advised by legal counsel Alberta Foothills of all of the below

The First Affidavit

- 4. On September 21, 2020, I swore an Affidavit in the within proceedings (the "First Affidavit").
- 5. All capitalized terms not otherwise defined shall have the same meaning ascribed to them as set out in the First Affidavit.
- 6. This Supplemental Affidavit provides additional information for Alberta Foothill's concerns that MLT is in a conflict of interest and should be disqualified from continuing to act in this matter.

Additional Information

- 7. On September 21, 2020, counsel for MLT, Mr. Jonathan Bouchier, replied regarding the above matters, stating that, with respect to the Originating Application, MLT was acting as Escrow Agent and seeking to have its fees paid. Mr. Bouchier further indicated that Alberta Foothills has a dispute with Barbican which was outside MLT's mandate as Escrow Agent and that MLT was appearing at the Originating Application as Escrow Agent. Attached as Exhibit "A" to my Supplemental Affidavit is a copy of these e-mail correspondence.
- 8. On September 22, 2020, MLT's counsel, Catrina Webster, sent correspondence to Alberta Foothill's counsel requesting and adjournment of the Originating Application and indicating that their client was in the process of reviewing the First Affidavit and their client had requested they adjourn the Originating Application so "he can review and provide us with instructions." Attached as Exhibit "B" to my Supplemental Affidavit is a copy of this e-mail correspondence.
- 9. On September 22, 2020, Ms. Webster sent further correspondence to Alberta Foothill's Counsel indicating that "the next available date isn't until October 16, 2020 so I have requested Barbican's confirmation if they would still like to adjourn." Attached as Exhibit "C" to my Supplemental Affidavit is a copy of this e-mail correspondence.

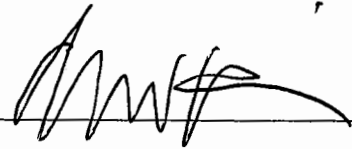
Purpose of Affidavit

- 10. I make this Supplemental Affidavit for the purpose of obtaining the relief requested in the Application Alberta Foothills has filed in this Action and in opposition to MLT's Application in this Action.

SWORN (OR AFFIRMED) BEFORE ME at)
the City of Calgary, Alberta, this 16th day of)
October, 2020.)

)

Ram Sankaran)
A Commissioner of Oaths in and for the)
Province of Alberta)

)

DREW ATKINS)

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Sankaran, Ram

From: Jonathan J. Bouchier <jbouchier@mltaikins.com>
Sent: September 21, 2020 12:25 PM
To: Foley, Warren <Warren.Foley@gowlingwlg.com>
Cc: Catrina Webster <cwebster@mltaikins.com>; Sankaran, Ram <Ram.Sankaran@gowlingwlg.com>
Subject: RE: Alberta Foothills Properties Ltd. v. MLT Aikins LLP

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Hi Warren,

I answered your question regarding our Originating Application in my previous email.

To the extent it is not clear from our multiple previous correspondences and discussions (and not clear from the express wording of the Escrow Agreement), I do not agree that your client, who expressly agreed there was no conflict in MLT Aikins acting as escrow agent, can now allege a conflict with MLT Aikins acting as escrow agent and seeking to have its fees paid.

I understand your client takes the position it has a dispute with Barbican. That dispute is outside of my firm's mandate as escrow agent and not something that we intend to argue.

Regards,

Jon

Jonathan J. Bouchier
Partner
P: +1 (403) 693-4310 | E: jbouchier@mltaikins.com
F: +1 (403) 508-4349

Visit our [COVID-19 Resource Centre](#) for information and resources designed to help you navigate the changing business and legal environment.

MLT Aikins LLP
2100 - 222 3rd Ave SW
Calgary, Alberta T2P 0B4
mltaikins.com

[BIO](#) [VCARD](#)

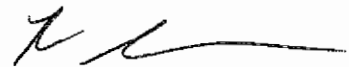
MLT AIKINS

WESTERN CANADA'S LAW FIRM

Winnipeg | Regina | Saskatoon | Calgary | Edmonton | Vancouver

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*This is Exhibit "A"
to the Affidavit of
Drew Atkins sworn
before me this
16th day of October, 2020*



RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

From: Foley, Warren <Warren.Foley@gowlingwlg.com>
Sent: Monday, September 21, 2020 12:13 PM
To: Jonathan J. Bouchier <jbouchier@mltaikins.com>
Cc: Catrina Webster <cwebster@mltaikins.com>; Sankaran, Ram <Ram.Sankaran@gowlingwlg.com>
Subject: Alberta Foothills Properties Ltd. v. MLT Aikins LLP

⚠ External Sender

Jon,

As discussed, enclosed is our affidavit and cross motion. These are in the process of being filed.

I left you a number of questions in Friday's letter – and your response was 'see you next week'. I guess I was looking for something a little more substantive. I understand that that do not agree on the issue of whether there is a legal conflict. However, I think it is pretty obvious that we cannot proceed in morning chambers and cannot proceed by way of originating application. I would be grateful if you could formally advise me of your position on these points and whether it is your intention to try argue the merits of your application.

I am around all afternoon and most of tomorrow should you wish to discuss this tomorrow.

Warren Foley
Partner
T +1 403 298 1878
warren.foley@gowlingwlg.com



Sankaran, Ram

From: Catrina Webster <cwebster@mltaikins.com>
Sent: September 22, 2020 11:49 AM
To: Jonathan J. Bouchier <jbouchier@mltaikins.com>; Foley, Warren <Warren.Foley@gowlingwlg.com>
Cc: Sankaran, Ram <Ram.Sankaran@gowlingwlg.com>
Subject: RE: Alberta Foothills Properties Ltd. v. MLT Aikins LLP

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Hi Warren,

Our client has received the Affidavit of Drew Atkins and is in the process of reviewing it. Due to the length of the Affidavit and the relief sought in your Application, our client has requested that we adjourn our Application for one week so he can review and provide us with instructions. Please confirm we can adjourn tomorrow's Application to September 29, 2020.

Best regards,

Catrina Webster
Lawyer
P: +1 (403) 693-4347 | E: cwebster@mltaikins.com
F: +1 (403) 508-4349

*This is Exhibit "B"
to the Affidavit of
Drew Atkins sworn
before me this 16th day of
October, 2020*

Visit our [COVID-19 Resource Centre](#) for information and resources designed to help you navigate the changing business and legal environment.

MLT Aikins LLP
2100 - 222 3rd Ave SW
Calgary, Alberta T2P 0B4
mltaikins.com



RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

[BIO](#) [VCARD](#)

MLT AIKINS

WESTERN CANADA'S LAW FIRM

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Sankaran, Ram

From: Catrina Webster <cwebster@maitkins.com>
Sent: September 22, 2020 1:41 PM
To: Foley, Warren <Warren.Foley@gowlingwlg.com>; Jonathan J. Bouchier <jbouchier@maitkins.com>
Cc: Sankaran, Ram <Ram.Sankaran@gowlingwlg.com>
Subject: RE: Alberta Foothills Properties Ltd. v. MLT Aikins LLP

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Hi Warren,

The next available date isn't until October 16, 2020 so I have requested Barbican's confirmation if they would still like to adjourn. I will follow-up shortly.

Best regards,

Catrina Webster
Lawyer
P: +1 (403) 693-4347 | E: cwebster@maitkins.com

*This is Exhibit "C" - The
Affidavit of Drew Atkins
sworn before me this
16th day of October, 2020*



RAM C. SANKARAN
Barrister & Solicitor
My Commission is at the pleasure
of the Lieutenant Governor

Appendix “G” – Cross Application of AFPL

To appear by video:

<https://www.albertacourts.ca/qb/court-operations-schedules/scheduling>

Calgary Masters Chambers Courtroom 2 - Virtual Courtroom 56 (CCC QB)

To appear by telephone:

Dial in Number: 780-851-3573

Access code: 961 851 797

ENTERED

Form 27

Rule 6.3 and 10.52(1)



COURT FILE NO.: 2001-10006

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE CALGARY

APPLICANT ALBERTA FOOTHILLS PROPERTIES LTD.

RESPONDENTS MLT AIKINS LLP

DOCUMENT **NOTICE OF CROSS-APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9

Telephone (403) 298-1878
Facsimile (403) 263-9193

File No. A164337

PM
\$50
100541

Attention: Warren Foley/Ram Sankaran

NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: October 20, 2020

Time: 10:00 a.m.

Where: Virtually via WebEx

Before Whom: Presiding Masters in Chambers

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, Alberta Foothills Properties Ltd. ("**Alberta Foothills**"), seeks:
 - (a) An Order disqualifying MLT Aikins LLP ("**MLT**") from continuing to act in this matter;
 - (b) An Order compelling MLT to produce all un-redacted invoices relating to the Expense Notice, as defined below, as well as backup information related to the legal expenses claimed in the Expense Notice;
 - (c) An Order directing MLT to return the entirety of the Escrow Funds to Alberta Foothills;
 - (d) In the alternative, an Order directing MLT to return the entirety of the undisputed Escrow Funds (as defined below) to Alberta Foothills;
 - (e) An accounting of the Escrow Funds;
 - (f) An order abridging the time for service of this application;
 - (g) Costs of this Application; and
 - (h) Such further and other relief as this Honourable Court deems appropriate.

Grounds for making this application:

2. Alberta Foothills is an Alberta based property development company.
3. Barbican Capital LLP ("**Barbican**") is private lending firm based in the United States of America.
4. In the summer of 2019, Alberta Foothills and Barbican began discussing the possibility of Barbican providing loan financing for a property development project in Southern Alberta. The parties entered into a series of agreements related to the potential financing arrangement. Ultimately, the financing did not close, no loan funds were advanced by Barbican and Alberta Foothills was forced to obtain alternative financing.
5. After the financing failed to close, Barbican submitted an Expense Notice ("**Expense Notice**") to MLT seeking payment of all applicable legal fees on a full indemnity basis.
6. Prior to determining whether full indemnity costs are appropriate in the circumstances, a number of disputes are required to be resolved between Alberta Foothills and Barbican, including but not limited to:
 - (a) Whether Barbican engaged in negligent misrepresentation regarding their ability to provide the financing funds;
 - (b) Whether Barbican acted contrary to the common law duty of good faith and or/in breach of the agreements between the parties;

- (c) Whether Barbican wrongfully terminated the applicable agreements and the financing arrangement more specifically;
 - (d) Whether the due diligence efforts related to the financing transaction were completed;
 - (e) Whether Barbican waived any further due diligence requirements or represented that it would waive any further due diligence requirements;
 - (f) Whether Barbican's conduct amounted to a repudiation of the agreements between the parties which was accepted by Alberta Foothills;
 - (g) Whether the agreements in question are in breach of the *Consumer Protection Act*, RSA 2000, C-26; and
 - (h) Whether the terms of the applicable agreement were frustrated do to Covid-19.
7. At all material times, MLT acted in a dual capacity:
- (a) As legal counsel for Barbican with respect to the loan financing; and
 - (b) Escrow Agent pursuant to the terms of an Escrow Agreement dated November 7, 2019, between MLT, Alberta Foothills and Barbican ("**Escrow Agreement**").
8. There are approximately \$250,000.00 remaining in Escrow Funds which were exclusively funded by Alberta Foothills. MLT seeks to have a portion of the funds held in Escrow used to pay the legal fees incurred by Barbican in relation to the financing transaction and the Originating Application, filed August 11, 2020, in which MLT seeks to an order with respect to payment of the legal fees ("**Originating Application**"). MLT seeks to have the legal fees, including its own legal fees, paid on a full indemnity basis.
9. As Escrow Agent, MLT, has and continues to owe fiduciary duties to Alberta Foothills relating to the administration of the Escrow Account and the Escrow Funds.
10. MLT purports to bring this application in its capacity as Escrow Agent and, while the Escrow Agreement permits the Escrow Agent to seek clarification from a Court of competent jurisdiction as to the extent of its own obligations as Escrow Agent, MLT is instead advocating on behalf of its client's interests and its own interests. Some examples of MLT not maintaining neutrality in its capacity as Escrow Agent include:
- (a) With respect to the dispute over the payment of full indemnity legal fees, MLT elected to advance a specific interpretation of the Escrow Agreement that was favorable to Barbican and MLT but unfavorable to Alberta Foothills;
 - (b) As part of the discussions between the parties, MLT has advanced the position that if Alberta Foothills did not agree to pay all outstanding legal fees on a full indemnity basis, Barbican would seek damages arising from a breach of the financing agreements;

- (c) MLT has refused to provide un-redacted copies of the legal invoices in question again relying on a specific interpretation of the Escrow Agreement; and
 - (d) MLT was taking instruction from its client Barbican in relation to the timing and substance of the Originating Application.
11. In taking these actions, MLT have breached their duty of fairness and duty to avoid conflicts to Alberta Foothills by taking instruction from and serving the legal interests of Barbican. The approach taken by MLT has unnecessarily increased legal costs and exceeds the authority granted to the Escrow Agent in the Escrow Agreement.
 12. Additionally, Alberta Foothills may seek to question members of MLT in relation to the legal expenses claimed in the Expense Notice. This eventuality may leave MLT in a conflict as the duties owed to their client may be at odds with these individuals duty of loyalty owed to MLT.

Request for Documentation Relating to Expenses Claimed in Expense Notice

13. Alberta Foothills takes the position that:
 - (a) It is not responsible for the legal fees incurred by Barbican; and
 - (b) The Originating Application is not appropriate given that there are material facts in dispute.
14. However, if the Originating Application is allowed to proceed then Alberta Foothills must be permitted to the right to meaningfully review the legal expenses submitted under the Expense Notice. Under the Escrow Agreement, Alberta Foothills must be permitted to meaningfully to review any expenses submitted pursuant to an Expense Notice to determine whether the expenses have been properly incurred in relation to the subject matter of the Escrow Agreement.
15. Alberta Foothills has demanded MLT produce unredacted invoices and related backup data regarding the expenses submitting in the Expense Notice. MLT has refused to produce these documents.

Return Of Escrow Funds

16. On April 1, 2020, Alberta Foothills demanded repayment of the remaining Escrow Funds. MLT has refused to return any portion the Escrow Funds.
17. Given the dispute between the parties and material facts in disputes that still need to be resolved, the balance of the Escrow Funds should be returned to Alberta Foothills pending resolution of these disputes.
18. In the alternative, the portion of the Escrow Funds that do not relate to the legal fees incurred in relation to the loan financing should be returned immediately.

Material or evidence to be relied on:

19. The Affidavit of Drew Atkins, sworn September 21, filed.

Applicable rules:

20. Rules 1.2, 1.4, 3.2, 3.12, 6.3, 10.29, 10.30, 10.31 and 10.33 of the *Alberta Rules of Court*.
21. Law Society of Alberta *Code of Conduct*, and in particular, Rules 3.4-1, 3.4-6 and 5.2-1.
22. Law Society of British Columbia *Code of Professional Conduct*, and, in particular, Rules 3.4-1 and 5.2-1.

Applicable Acts and regulations:

23. None.

Any irregularity complained of or objection relied on:

24. None

How the application is proposed to be heard or considered:

25. Electronically, via WebEx.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “H” – MLT Letter

Jonathan J. BouchierDirect Line: (403) 693-4310
E-mail: jbouchier@mltaikins.com

August 3, 2021

VIA EMAIL (Deryck.Helkaa@fticonsulting.com)

Joy Mutuku

Legal Assistant

Direct Line: (403) 693-5403

E-mail: jmutuku@mltaikins.comFTI Consulting Canada Inc.
1610 – 520 5th Ave SW
Calgary, AB T2P 3R7**Attention: Deryck Helkaa****Re: MLT Aikins LLP (“MLT Aikins”) v. Alberta Foothills Properties Ltd. (“Alberta Foothills”) and Barbican Capital Partners LLC (“Barbican”); Court of Queen’s Bench of Alberta Action No. 2001-10006 (the “Action”)**

We write on our firm’s behalf and in conjunction with Barbican to confirm FTI Consulting Canada Inc.’s (“**FTI**”) position on the issues in the above-noted Action, as the Court-appointed receiver (the “**Receiver**”) of Alberta Foothills.

As you may be aware, the issues in the above-noted Action primarily relate to the interpretation of an escrow agreement (the “**Escrow Agreement**”), dated November 7, 2019, between MLT Aikins, as Escrow Agent, Barbican, as lender, and Alberta Foothills, as borrower and the funds in the amount of \$300,000 (the “**Escrow Funds**”) deposited to MLT Aikins pursuant to the terms of the Escrow Agreement. A copy of the Escrow Agreement is enclosed with this correspondence.

The financing contemplated by the Escrow Agreement was unsuccessful and, pursuant to the terms of the Escrow Agreement, MLT Aikins seeks to retain a portion of funds for its legal fees and those of US legal counsel, and provide the remaining funds to FTI as the Receiver of Alberta Foothills.

Barbican has not disputed MLT Aikins’ proposed distribution, but Alberta Foothills previously maintained a position contrary to the terms of the Escrow Agreement that it is entitled to all Escrow Funds. There is a half-day Master’s special application scheduled for September 14, 2021 to determine how MLT Aikins should distribute the escrow funds (the “**Special Application**”).

Pursuant to a May 17, 2021 Order of Master Mattis, the filing deadlines for the Special Application are as follows:

- (a) MLT Aikins’ written argument is due on August 3, 2021;
- (b) Barbican’s and Alberta Foothills’ written arguments are due on August 17, 2021; and
- (c) all written reply arguments, if any, are due on August 31, 2021.

If the Receiver does not dispute MLT Aikins' proposed distribution, as set out in further detail below, there will be no need to continue with the Special Application, and MLT Aikins will distribute the Escrow Funds pursuant to the terms of the Escrow Agreement.

The Escrow Agreement

Pursuant to the Escrow Agreement, Alberta Foothills deposited the Escrow Funds in the amount of \$300,000.00 with MLT Aikins to hold in escrow pending the parties' completion of a financing arrangement. If the financing was not successful, Section 3.1(a)(iv) of the Escrow Agreement provided that MLT Aikins was to distribute the Escrow Funds first, to pay Barbican's expenses as set out in an "Expense Notice", and second, to Alberta Foothills.

The Escrow Agreement defined "Expense Notice" as a written summary of Barbican's expenses related to the intended financing arrangement, all of which had been approved in advance by Alberta Foothills. Alberta Foothills agreed that the Expense Notice would be definitive of Barbican's kind and amount of expenses. Barbican had retained both MLT Aikins and Withers Bergman LLP, as US counsel, to act on its behalf in the financing arrangement.

Beyond the expenses contemplated in the Expense Notice, Section 5.4 of the Escrow Agreement provided that if the conditions for disbursing the Escrow Funds were not satisfied, or if any material controversy arose under the Escrow Agreement, then MLT Aikins, as Escrow Agent, was to be reasonably compensated by Alberta Foothills for such additional extraordinary services. Alberta Foothills agreed that all of MLT Aikins' fees and disbursements, on a solicitor and own client basis, were payable by Alberta Foothills alone.

If any dispute arose concerning the entitlement of any person to the Escrow Funds, or if at any point MLT Aikins was uncertain as to its obligations under the Escrow Agreement, then pursuant to Section 5.3, the Escrow Agent could apply to the Court of Queen's Bench for clarification or direction.

Further, if any disagreement arose between Barbican and Alberta Foothills, then pursuant to Section 5.6, the Escrow Agent was entitled, at its option, to refuse to deliver the Escrow Funds and refrain from acting or refusing to act until such claims or demands: (a) were finally determined in a court of competent jurisdiction; or (b) were settled by agreement, with notice to MLT Aikins.

Termination of Commitment Letter

On February 18, 2020, Barbican provided an executed copy of the commitment letter to MLT Aikins, and directed MLT Aikins to release \$50,000.00 of the Escrow Funds to Barbican, which MLT Aikins released accordingly.

On May 1, 2020, Barbican issued a notice terminating the loan commitment in the commitment letter and demanding payment from Alberta Foothills of the full amount of the commitment fee.

On June 2, 2020, pursuant to Section 3.1(a)(iv) of the Escrow Agreement, MLT Aikins sent a letter to Barbican requesting the Expense Notice, which Barbican completed and returned on June 3, 2020 (the "**Expense Notice**").

Under the Expense Notice, Barbican claimed \$44,401.39 CAD for MLT Aikins' legal fees and \$36,346.00 USD for Withers Bergman LLP's legal fees, for an approximate total of \$93,475.76 CAD. On June 3, 2020, MLT Aikins advised Alberta Foothills that it would release the Escrow Funds first, towards the amount claimed in the Expense Notice, and second, the remaining balance to Alberta Foothills.

Alberta Foothills responded by disputing MLT Aikins' proposed distribution under Section 3.1(a)(iv) of the Escrow Agreement, and claiming that it was entitled to the entirety of the remaining Escrow Funds. In response, MLT Aikins filed an Originating Application for an Order directing MLT Aikins to distribute the Escrow Funds pursuant to Section 3.1(a)(iv) of the Escrow Agreement, and for payment of its invoices. The Special Application is scheduled for the purpose of adjudicating these two issues.

MLT Aikins' Position on Escrow Funds

MLT Aikins takes the position that: (1) the Escrow Funds are properly distributable under Section 3.1(a)(iv) of the Escrow Agreement; and (2) its legal fees are payable by Alberta Foothills on a solicitor and own client (full-indemnity) basis out of the Escrow Funds.

First, Section 3.1(a)(iv) is clear that once MLT Aikins' received notice that the commitment letter was terminated before June 1, 2020, and then a copy of the Expense Notice, it was to distribute the Escrow Funds: "1. first, to the Lender [Barbican], the amount set out in the Expense Notice; and 2. second, the balance to the Borrower [Alberta Foothills]." Alberta Foothills agreed in advance to Barbican's expenses related to due diligence costs, legal and other advisory fees, disbursements, and taxes. There is nothing in the agreement to suggest that Barbican's legal fees would not be paid.

Second, it is appropriate for MLT Aikins' fees to be paid on a solicitor and own client (full-indemnity) basis out of the Escrow Funds. Alberta Foothills agreed that it, alone, was responsible for MLT Aikins' "costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event" and additional extraordinary services beyond those contemplated in the Escrow Agreement. The Alberta Court of Appeal confirmed in *Mearns, Re*, 2000 ABCA 189, that legal counsel for a bankrupt was entitled to have its fees paid from retainer funds held in trust for work already performed.

As an additional matter, MLT Aikins has been treating the Escrow Funds as subject to a trust that are not available to the Receiver until they have been distributed.

In *Acepharm Inc., Re* (1999), 9 CBR (4th) 1 (Ont CA), the Ontario Court of Appeal confirmed that money held by a law firm pending the outcome of litigation was not property of the bankrupt, and that the bankrupt was, at most, a contingent beneficiary of the trust. In *Locke Stock & Barrel Co. v Bearcat Explorations Ltd.*, 2006 ABCA 368, the Court confirmed that an interim receiver had no ability to distribute funds that were held for the debtor in trust unless the trust conditions were satisfied.

MLT Aikins has held back the Escrow Funds on the basis of Alberta Foothills' dispute, and does not intend to distribute the Escrow Funds until a determination of the issues can be made at the

Special Application, or by agreement between the parties. To date, only Alberta Foothills has disputed MLT Aikins' proposed distribution.

If the Receiver agrees with MLT Aikins' position, there would be no further need to proceed with the Special Application on a contested basis and we would propose that this matter be dealt with by Consent Order, and MLT Aikins would distribute the remaining \$250,000.00 Escrow Funds as follows:

- (a) \$44,401.39 CAD for MLT Aikins' legal fees pursuant to the Expense Notice;
- (b) \$36,346.00 USD for Withers Bergman LLP's legal fees pursuant to the Expense Notice;
- (c) pending final confirmation, approximately \$45,000.00 CAD for MLT Aikins' legal fees pursuant to Section 5.4 of the Escrow Agreement; and
- (d) the remainder of the Escrow Funds to FTI as the Receiver of Alberta Foothills.

If there is any dispute between Barbican and Alberta Foothills about the remainder amount, we would propose to have the Receiver hold those remaining funds in trust pending a resolution of this dispute.

If the Receiver does not agree with the proposed distribution, we propose proceeding with the Special Application on September 14, 2021 and MLT Aikins file written arguments on August 10, 2021 and the Receiver may provide responding written arguments on behalf of Alberta Foothills by August 24, 2021.

Please advise of the Receiver's position on MLT Aikins' proposed distribution and we will proceed accordingly. Please do not hesitate to contact us if you would like discuss further.

Yours truly,

MLT AIKINS LLP

J. Bouchier

Jonathan J. Bouchier

Encl.

c. Matthew Huys, Osler, Hoskin, & Harcourt LLP (via email)

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “I” – Barbican Letter

Osler, Hoskin & Harcourt LLP
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2
403.260.7000 MAIN
403.260.7024 FACSIMILE

OSLER

Calgary

March 18, 2022

Sean Sutherland
Direct Dial: 403.355.7458
ssutherland@osler.com
Our Matter Number: 1215245

Toronto

Montréal

Sent by Electronic Mail

Ottawa

Code Hunter LLP
850, 440 2nd Avenue SW
Calgary, AB T2P 5E9

Vancouver

New York

Attention: Carla Murray

Dear Ms. Murray:

Re: Alberta Foothills Properties Ltd.

We write in respect of claims to monies currently held in escrow by MLT Aikins LLP (“MLT”) pursuant to the Escrow Agreement effective November 7, 2019, between Barbican Capital Partners, LLC (“**Barbican**”), Alberta Foothills Properties Ltd. (“**Alberta Foothills**”) and MLT.

As you know, we act for Barbican and there is presently a dispute regarding the release of funds held in escrow pursuant to the same Escrow Agreement, entered into 18+ months prior to the Receivership of Alberta Foothills. MLT asks that, among other things, approximately \$44,401.39 CAD be released to it from escrow as compensation for its work as escrow agent. MLT seeks an additional \$36,346.00USD to compensate US counsel (Withers Bergman LLP) for its work with respect to same.

Barbican seeks the remaining amounts held in escrow on the basis that Alberta Foothills breached a Commitment Agreement dated February 17, 2020, entitling Barbican to liquidated damages in the amount of \$975,000CAD.

The purpose of this letter is to respond to your request to review legal invoices with respect to MLT’s claim and to expand on Barbican’s position with respect to its claim for the remaining amounts in escrow. Barbican is optimistic that, with this information, the Receiver will consent to a release of the escrow funds to MLT and Barbican.

With respect to MLT’s claim, Barbican has instructed us to provide copies of invoices that are unredacted as to fees that Barbican considers to be within the scope of MLT’s claim. While Barbican disagrees that provision of these invoices is required under the Escrow Agreement or otherwise, and reserves all rights in this regard, it is willing to provide them to the Receiver for review in the interests of resolving this issue as soon as reasonably practicable without further and unnecessary recourse to the courts. Once Barbican has completed its review of invoices for proper scope we will provide copies. We trust that

OSLER

these invoices will be sufficient for the Receiver to assess whether MLT's fees as escrow agent were "reasonably incurred" in connection with performance of duties of the escrow agent. To be clear, Barbican takes the position that any additional fees that MLT may claim, including fees in relation to preparing and advancing its application in Court File No. 2001-10006, are not compensable under the Escrow Agreement or otherwise.

With respect to Barbican's claim, Barbican's entitlement to the remaining amounts in escrow arises pursuant to the Commitment Agreement, which the parties agreed "shall be governed by, and shall be construed in accordance with, the laws of the State of New York applicable to agreements entered into and to be performed entirely within New York." As such, we attach a letter from Barbican's New York legal counsel explaining Barbican's position that it is entitled to the remaining amounts held in escrow pursuant to New York law.

As the amounts held in escrow are not part of the estate, we trust that following its review of this letter and the legal invoices the Receiver will consent to MLT releasing the funds held in escrow as per this letter.

Please contact the undersigned if you wish to discuss this matter further.

Yours truly,



Sean Sutherland

Encl.

c: Matt Huys, *Osler, Hoskin & Harcourt LLP*
Ronald J. Campione, *Bressler Amery & Ross, P.C.*
Client

March 4, 2022

Via e-mail to ssutherland@osler.com

Sean Sutherland
Osler, Hoskin & Harcourt, LLP
Suite 2700 Brookfield Place
226-th Avenue S.W.
Calgary, AB T2P 1N2

Re: Barbican Capital Partners, LLC v. Alberta Foothills Properties, LTD

Dear Sean:

This firm represents Barbican Capital Partners, LLC (“Barbican”) with regard to its claims against Alberta Foothills Properties, LTD (“Alberta”). Barbican’s claims arise from the February 2020 Commitment Letter (“Commitment Letter”) and the November 7, 2019 Escrow Agreement (“Escrow Agreement”). The latter document was entered into between Barbican, Alberta and MLT Aikins, LLP as the Escrow Agent. You have asked me to provide an opinion, to be shared with the Receiver of Alberta, regarding the enforcement of the obligations in the Commitment Letter under New York Law because that agreement unambiguously selected New York law, and New York courts as the forum, for the resolution of all claims arising out of the agreement. My opinion, as a practicing New York Lawyer for over seventeen years, is set forth below.

New York law provides for a a breach of contract action with the following elements: (1) the making of an agreement; (2) performance of the agreement by one party; (3) breach by the other party; and (4) damages.” *J&L American Enterprises, Ltd. v. DSA Direct, LLC*, 10 Misc.3d 1076, 814 N.Y.S.2d 890 (N.Y. Sup. 2006). An agreement is made if there is a “meeting of the minds, such that there is a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms.” *Stonehill Capital Mgt. LLC v. Bank of the W*, 28 N.Y.3d 439, 448 (N.Y. Ct. App. 2016).¹

Moreover, New York law permits a lender to include in a loan agreement a provision providing for liquidated damages. *JMD Holding Corp. v. Cong. Fin. Corp.*, 4 N.Y.3d 373, 379 (N.Y. Ct. App. 2005). New York Courts characterize liquidated damages as “an estimate, made by the parties at the time they enter into their agreement, of the extent of the injury that would be sustained as a result of breach of the agreement.” *Id.* To be sustained, the liquidated damages provision must bear a reasonable proportion to the probable loss “and the amount of actual loss is incapable or difficult of precise estimation.” *Id.*

¹ The Court of Appeals is New York’s highest court.

March 4, 2022

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On November 7, 2019, Barbican and Alberta negotiated the Escrow Agreement specifically to hold Alberta's \$300,000 CAD deposit "being a portion of the Commitment Fee set out in the Term Sheet." See *Escrow Agreement at B*. The Commitment Letter was executed on February 17, 2020 and the parties were in agreement with respect to all of the material terms. The Commitment Fee to which the parties agreed was \$975,000 CAD. See *Commitment Letter at 23 "Loan Fees."* The parties agreed that the Commitment Fee was payable as follows: (1) \$50,000 CAD simultaneously released from escrow at the execution of the Commitment letter; (2) \$250,000 CAD when lender approves the Due Diligence Contingencies identified in the letter; (3) \$675,000 CAD payable, *inter alia*, upon the expiration of the commitment for any reasons other than Lender's willful default.

If the borrower failed to meet the Due Diligence Contingencies by a date that is sixty (60) days after the date of execution of the Commitment, then Lender had the unilateral right to terminate the Commitment. (Commitment Letter at 23-24.) On May 1, 2020, Barbican advised that Alberta had breached the Commitment and that the full Commitment Fee of \$975,000 CAD was payable to Barbican pursuant to the agreement. See *attached letter dated May 1, 2020 from Barbican to Alberta*. "Under such circumstance, the remaining Escrow Funds shall be released from escrow and payable to Lender as liquidated damages for Lender's processing and preparation of the closing of the loan." Commitment Letter at 24 (emphasis added). Notwithstanding the balance of the Escrow Funds, the full amount of the Commitment Fee was due and payable in event of Borrower's failure to satisfy the conditions precedent. *Id.* at 24. The Commitment Fee of \$975,000 CAD was due from Alberta to Barbican with payment of the balance of the Escrow immediately to Barbican and the balance of the fee paid by Alberta.

Under New York law, the Commitment Letter is an enforceable contract that requires payment of the \$975,000 CAD Commitment Fee. The parties agreed that the fee would be paid, partially, from the Escrow Deposit of \$300,000 CAD. The Commitment Letter is an agreement that was made (1) after a meeting of the minds between Barbican and Alberta, (2) was fully executed by all parties involved who were represented by legal counsel, and (3) is sufficiently definite to assure that the parties "were truly in agreement with respect to all material terms." *Stonehill Capital Mgt., LLC*, 28 N.Y. 3d at 448.

Further, the value placed on the Commitment Fee bears a reasonable proportion to the probable losses that Barbican would suffer, in not closing on the \$39,000,000 CAD loan. The Commitment Fee was only two and one-half percent and the extent of Barbican's loss, at the time of the agreement, was difficult of precise estimation. The parties agreed to this clear, unambiguous term of the Commitment Letter.

March 4, 2022
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If you should have any questions, please do not hesitate to contact me.

Respectfully submitted,



RONALD J. CAMPIONE

EXECUTION VERSION

February 1, 2020

Alberta Foothills Properties Ltd.
3505-18th Street SW
Calgary, AB T2T 4T9

Attention: Drew Atkins, President and Director

Re: C\$39 Million First Mortgage Development and Construction Loan for Phase I of a multi-phase master-planned community ("MPC") known as "Wind Walk" located at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Project")

Gentlemen:

Based upon recent discussions between Barbican Capital Partners, LLC, a Delaware limited liability company (the "Lender") and you, and based on Lender's (and its Investment Committee's) preliminary review and relying upon the information which you have previously provided to us, the Lender is pleased to confirm its willingness to offer a C\$39,000,000 secured loan facility (the "Facility" or the "Loan") to Alberta Foothills Properties Ltd., subject to the terms and conditions set forth in this letter (the "Commitment Letter"), including, without limitation, the paragraph below entitled "Due Diligence". It is understood and agreed that the terms and conditions herein contained and of the Facility are not limited to those set forth in this Commitment Letter and in Exhibit A annexed hereto and made a part hereof. The Lender reserves the right to modify and/or supplement such terms and conditions at any time after the date hereof, based on events occurring after the date hereof, on the results of the due diligence described in this Commitment Letter or otherwise, in its sole discretion.

Lender: Barbican Capital Partners, LLC or its designee and/or affiliate.

Borrower: Alberta Foothills Properties Ltd., a single purpose and bankruptcy-remote entity duly incorporated and existing under the laws of the

Province of Alberta, and authorized to carry on business therein, subject to commercially reasonable practices under the laws of the Province of Alberta and the laws of Canada applicable therein (collectively, "Applicable Canadian Law") as to be advised by MLT Aikins LLP (the "Lender's Local Counsel") in Lender's Local Counsel's sole and absolute discretion, that holds title to the land on which the Project is being developed (the "Borrower"). The final organizational structure of Borrower, along with all documentation supporting such structure, shall be subject to the approval of Lender in its sole discretion. The Principals and Borrower shall make certain representations, warranties and covenants concerning the organization of Borrower and Guarantors (as hereinafter defined) to be set forth in the Loan Documents (as hereinafter defined) and Borrower shall make certain representations, warranties and covenants concerning its organization to be set forth in the Loan Documents. The Facility will be a full recourse obligation of the Borrower.

The "Sponsor" shall be 1367803 Alberta Ltd.

The "Principals" shall be Drew Gordon Atkins and/or any other individual to be approved by Lender based on due diligence.

Guarantors:

Upon completion of Lender's due diligence of the Project (as hereinafter defined) and the financial conditions and creditworthiness of the Sponsor and Principal but prior to the closing of the Facility, Lender may require, in its sole and absolute discretion, that any or all of the Sponsor or Principal on a joint and several basis (or an alternate individual or corporate entity acceptable to Lender) (the "Guarantors") provide any or all of the following guaranties to Lender in form satisfactory to Lender:

- Standard Non-Recourse Carve-Out Guaranty (which shall include fraud and intentional misrepresentation, any voluntary act of bankruptcy of Borrower, and other standard non-recourse carveouts).
- A Completion and Carrying Guarantee.
- A limited guarantee in an amount to be determined upon the finalization of the Final Project Budget (as hereinafter

defined) in form and by a guarantor satisfactory to Lender

- Project Cost Overrun and Recourse Guaranty (which shall include due prompt and punctual completion of all improvements in accordance with approved plans and specifications, payments of all "hard costs" and all "soft costs" and expenses incurred in connection with such completion (including interest) and payments of all overruns in excess of items reflected in the Final Project Budget). Any and all cost overruns of the Project will be the sole responsibility of Borrower, Sponsor, and Principal.
- Any other Guarantee that Lender deems necessary upon completion of due diligence.

In connection with making such guarantees, Guarantors shall additionally provide with any and all certificates and other documents required to be issued pursuant to the *Guarantees Acknowledgment Act* (Alberta).

Project: Phase I of a multi-phase, master planned community known as "Wind Walk" located on a site (approximately 144.66 acres of land (the "Land")) at the intersection of Hwy 7 and Southridge Drive (Hwy 738), Okotoks, Alberta ("Property") based on a master plan ("Master Plan") to be approved by Lender.

Facility Amount: C\$39,000,000 subject to due diligence and underwriting of all relevant aspects of the Project (e.g., site and market feasibility, credit, legal and tax arrangements, etc.). It is contemplated that the Loan shall be structured and funded into two tranches: (i) a senior tranche in an amount equal to the least of (a) 60% of Lender's approved "as is" appraised value of the Project as determined by a MAI Appraisal or an equivalent appraisal acceptable to Lender in its sole and absolute discretion (the "Appraisal") to be obtained by Lender prior to the closing of the Facility, (b) 60% Loan-To-Costs (based on Lender's approved Total Project Costs (as hereinafter defined)) and (c) C\$28,500,000 ("Tranche A Loan") and (ii) a mezzanine tranche of an amount equal to the least of (x) 20% of Lender's approved "as is" appraised value of the Project as determined by the Appraisal, (y) 20% Loan-To-Costs, and (z) C\$10,500,000 ("Tranche B Loan"). The final loan amount for each

of the Tranche A Loan and the Tranche B Loan shall be determined upon the occurrence of all of the following (A) completion of due diligence, (B) the receipt and approval of the Appraisal and such other material as reasonably requested by Lender for its final underwriting purposes, and (C) the determination of the Final Project Budget.

The Facility is non-revolving and shall mature at the end of the Facility Term (as hereinafter defined). After expiration of the Facility Term, subject to any applicable extensions described herein or termination of the Facility, no additional Advances (as hereinafter defined) shall be made hereunder.

Upon closing of the Facility, the Facility shall be advanced (the "Advance") to and used by the Borrower for the purposes described herein subject to the satisfaction of all conditions precedent to such Advance established in the Loan Documents and based upon the results of the Lender's due diligence with respect such Advance and the Borrower's compliance with the terms of the Loan Documents.

**Equity
Requirement:**

Borrower shall provide a total cash equity contribution (or quasi equity contribution approved by the Lender in its sole and absolute discretion) equal to the difference between the Total Project Costs (approved by the Lender upon completion of due diligence) and the Loan ("Borrower's Equity"). Lender shall determine the final amount of the Borrower's equity requirement (the "Equity Requirement") within five (5) Business Days after the occurrence of the following events: (i) Borrower's delivery of the final GMP Contract (as hereinafter defined) for the Project, (ii) Lender's receipt of a final report (the "Construction Review Report") from Lender's Construction Consultant (as hereinafter defined) that concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project (which review and report shall also include for the avoidance of doubt the Lender's Construction Consultant's approval of the GMP Contract and the Construction Management Contract), and (iii) verification of Borrower's equity contributed to such point into the Project. Borrower shall grant prompt access to Lender's accountants and consultants upon execution of this Commitment Letter to

Borrower's books and records in order for such accountants and consultants to verify the contribution of the Equity Requirement. Evidence of such contribution will constitute cancelled checks or wire transfer receipts (if funds were already disbursed into the Project) along with bank statements or any other form acceptable to Lender.

Manager: Borrower shall manage the Project. Lender shall hire a third-party consultant to monitor the progress of the construction and development of the Project. The expenses for such hire shall be borne by Borrower.

Plans & Specs: Lender and the Lender Construction Consultant shall be satisfied with its review of all the plans and specifications.

GMP Contract: The Project shall have a guaranteed maximum price contract ("GMP Contract") in form and substance satisfactory to Lender. The GMP Contract shall be performed by a qualified GC (as hereinafter defined) satisfactory to Lender. In addition, in Lender's sole discretion, the GC shall provide (i) a performance bond from a major insurance company or a financial institution satisfactory to Lender or (ii) a standby letter of credit to guarantee such performance in form and from a financial institution satisfactory to Lender.

Total Project Costs: Total Project Costs will include the interest expense on the Facility, "soft" and "hard" costs of the construction of the improvements of the Project and other carrying and development costs, establishment of required reserves, and closing costs associated with the Facility.

Total Project Costs shall be subject to review and verification by the Lender. Upon satisfactory completion of its due diligence, Lender shall put forth a final project budget ("Final Project Budget") that will be final for purpose of Lender's underwriting of the Loan.

Facility Term: Thirty-six (36) months from the closing of the Facility.

Extension Option: Borrower shall be entitled to one extension of twelve (12) months upon satisfaction of the following conditions for such extension:

(a) no Event of Default or default shall have occurred and then be continuing, (b) Borrower shall have paid to Lender an extension fee equal to 1% of the principal balance of the Facility, and (c) Borrower shall have given Lender not more than 120 days nor less than 30 days' notice of such extension.

Pre-Sale

Contracts/Deposits: Borrower acknowledges that the "pre-sales" aspect is a crucial consideration for Lender to consider the provision of the Loan. Upon the execution of this Commitment Letter and upon Borrower's submission of relevant information and future marketing plan for Phase 1 regarding such "pre-sales", Lender shall establish the exact pre-sales requirement of the Project (the "Pre-Sale Requirement"). The Loan Documents shall provide that all pre-sale deposits relating to the sales of lots shall (i) for pre-sale deposits relating to any "unit" (as defined in the *Condominium Property Act* (Alberta)), be held in trust by a prescribed trustee in compliance with the provisions of the *Condominium Property Act* (Alberta), (ii) for pre-sale deposits paid by individuals who are residents of British Columbia, be held in trust by a brokerage, lawyer, notary public or prescribed person in compliance with the provisions of the *Real Estate Development Marketing Act* (British Columbia), and (iii) otherwise be placed in escrow and released to (a) the Lender upon commencement of construction as a prepayment of the Tranche A Loan, or (b) the unit purchaser if commencement of construction does not occur on the date as specified under the agreement for sale (unless mutually extended). Exceptions will be approved by Lender, such approval not to be unreasonably withheld.

Distribution to

Equity: No equity distributions by Borrower to any of its partners (general or limited), shareholders, Sponsor, directors and Principals will be permitted without the Lender's prior written consent until the Facility has been repaid in full.

Interest Rate: Tranche A Loan: The non-default floating interest rate ("Based Rate") equal to the higher of (i) Bank of Canada Prime rate (as announced in the Daily Digest published by Bank of Canada from time to time) + 4% or (ii) 3-month Canada Dollar Offer Rate

(CDOR) (as published by Thomson-Reuters from time to time) +5.5%. Interest shall be payable current via cash flow and/or Interest Reserve (as hereinafter defined) during the loan period and such amount shall be incorporated into the Total Project Costs.

Tranche B Loan: Interest rate of 8% per annum ("Fixed Rate"), fixed and payable monthly in arrears.

To the extent permitted by law, Borrower waives the provisions of the *Judgment Interest Act* (Alberta).

Payments: Interest on the Tranche A Loan and the Tranche B Loan shall be calculated on an actual day elapsed 360 basis. All interest accrued shall be due and payable at the end of the Loan Term as it may be extended. Interest on the Loan (i.e., each of the Tranche A Loan and the Tranche B Loan) shall be paid monthly from the Interest Reserve until such Interest Reserve has been fully advanced. The inadequacy, if any, of such Interest Reserve shall not relieve Borrower of its obligation to make interest payments on a timely basis.

Interest Reserve: An interest reserve will be established promptly after the finalization of the Final Project Budget, in an amount to be determined by the Lender prior to the closing of the Facility but sufficient to fully fund the payment of interest for the Facility during the initial Facility Term, which reserve shall be maintained at a financial institution designated by the Lender, and which reserve may, in the Lender's sole discretion, be financed with the proceeds of the Facility (the "Interest Reserve"). The Interest Reserve shall be used to secure the Borrower's obligations under the Loan Documents, including, without limitation, the obligation to pay interest as the same becomes due.

Additional Reserves: Borrower shall establish necessary reserves (expected to be satisfied by adequate provisions in the Final Project Budget and related undrawn proceeds of the Facility) including, without limitation, for taxes and insurance, and for specific operating expenses of Borrower identified by Lender to be excluded from the Final Project Budget.

Insurance: The Property including the improvements thereon, Borrower, the

GC and all subcontractors will be covered by insurance at limits, with deductibles and by carriers customary for similar transactions consummated by Lender. Insurance policies may not exclude coverage for events related to terrorism.

Cash Flow Sweep: To the extent that there is available cash flow (including 90% of net proceeds from the sale of each improved lot), 90% of all such cash flow less any approved working capital shall be put into a "lock box" and shall be used to (i) first, pay any accrued and unpaid interests on the Facility, (ii) second, prepay or repay the Facility and (iii) lastly, pay the Exit Fee (as hereinafter defined) and the Make Whole Amount (as hereinafter defined).

Release: Lender shall release its lien upon each relevant improved lot upon its receipt of the net payment for each such improved lot.

**Purpose/
Use of Proceeds:** Subject to the terms and conditions contained herein and in the Facility's Loan Documents, the Loan shall be used by the Borrower solely to (i) retire an existing loan with Alberta Treasury Branches in an amount of approximately C\$13,007,000 (to be verified by Lender during due diligence), (ii) advance certain pre-construction costs approved by Lender pursuant to the Master Plan, and (iii) pay for all closing and related costs consistent with "EXHIBIT C" (contained herein) and approved by Lender.

Upon the retirement of the foregoing loan with Alberta Treasury Branches, the Borrower shall be required to obtain and register discharges for (or otherwise cause the discharge of) any and all encumbrances registered against title to the Property relating to such loan.

Closing: The date of the execution and delivery of definitive Loan Documents for the Facility (the "Closing Date") is anticipated to occur on or about March 31, 2020, or such later date as determined by the Lender, in its sole discretion.

Prepayment: Any partial prepayments made pursuant to the "Cash Flow Sweep" section above are allowed with no prepayment penalty, provided that any such prepayment shall not be less than C\$1,000,000 Canadian Dollars per occurrence. Prepayment of the Tranche A Loan shall be

permitted with the payment of the Exit Fee. Prepayment of the Tranche B Loan shall be permitted with the payment of the Make Whole Amount.

**Exit Fee and
Make Whole
Amount:**

Tranche A Loan: 2% exit fee (the "Exit Fee") payable at prepayment, repayment or maturity.

Tranche B Loan: At any prepayment, repayment or maturity of the Tranche B Loan, including as a result of an acceleration after a default, the Borrower shall pay Lender, in addition to any unpaid interest and principal, a lump sum amount which, when taking into account the payment of the Loan fees and interests, shall yield Lender an overall internal rate of return (IRR) of 15% (the "Make Whole Amount").

Default Rate:

Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) on unpaid principal, interest and other amounts secured by the Loan Documents, payable on demand.

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)).

Late Charge:

Tranche A Loan: A *per annum* rate equal to the Based Rate, plus five percent (5%) of the amount then due and payable (other than the payment on the maturity date).

Tranche B Loan: A *per annum* rate equal to the Fixed Rate, plus five percent (5%) (i.e., thirteen percent (13%)) of the amount then due and payable (other than the payment on the maturity date).

Security:

Each of the Tranche A Loan and the Tranche B Loan and all obligations of the Borrower under the Loan Documents shall be fully recourse to the Borrower and shall be secured by:

1. A promissory note executed by Borrower in favor of Lender with respect to the Facility.
2. A first priority (and with respect to the Tranche B Loan, second priority) mortgage and assignment of rents over the Borrower's

interest in the Property granted by the Borrower (the "Legal Mortgage").

3. Stock pledges of Sponsor.
4. A first priority or ranking all assets general security agreement under Applicable Canadian Law granted by the Borrower (including an assignment of all key construction and development documents and step-in rights where appropriate), together with a security agreement under New York law and a UCC-1 financing statement.
5. An assignment of all rights of the Borrower's title and interest in and to the Project including all agreements related to the Property.
6. A first priority or ranking perfected security interest in all fixtures, furnishings and equipment at the Project now owned and hereafter acquired by the Borrower, together with any financing statement or other perfection instrument required under Applicable Canadian Law.
7. A collateral assignment of all the material construction-related contracts including, without limitation, the architect's agreement and all other construction and development agreements, including any GC's agreements and subcontractors' agreements (including the GMP), and collateral assignment of the plans and specifications for the Project.
8. A mortgagee's policy of title insurance (the "Title Insurance Policy") or Canadian equivalent with respect to the Legal Mortgage, satisfactory to the Lender, its insurance advisors, and Lender's Local Counsel in their sole and absolute discretion, in an amount equal to the Facility with such endorsements thereto as the Lender may require insuring the first priority ranking of the Legal Mortgage in favor of the Lender.
9. An assignment of all proceeds and claims arising from damage to or condemnation of the Project and/or the improvements or a portion thereof.

10. An assignment of all inventory, accounts and general intangibles (including, without limitation, all contract rights, licenses, permits, entitlements and other customary documents).
11. If applicable, an assignment of all leases and occupancy agreements, if any, for the Project together with all rents, profits and issues therefrom (or Canadian equivalent). The assignment shall provide that the Lender has the right in its sole and absolute discretion to approve the form of leases to be used at the Project and require minimum standards with respect to rent, term and expense recoveries.
12. An assignment of all deposits (including purchase contract deposits under any purchase contracts for the lots).
13. A perfected security interest in all reserve accounts required under the Loan Documents.
14. Assignment of insurance.
15. Postponement and assignment agreement granted by the Sponsor and the Principals in favor of the Lender, postponing and assignment any right, title and interest in and to any payment owing by the Borrower to the Sponsor or Principals, as the case may be, to the Lender.
16. Any additional items which Lender and its New York and/or Canadian counsel may reasonably require in connection with the foregoing security interests.

Other customary items of security for a construction loan of this size and type, and together with items 1-16, collectively, the "Security Documents".

Documentation:

The closing of the Facility will be subject to (i) the negotiation, execution and delivery of a definitive loan agreement (including schedules, exhibits and ancillary documentation) (the "Facility Agreement"), (ii) guaranties (if applicable), (iii) all of the Security Documents described in the previous "Security" section hereof, (iv) all waivers, postponements, subordination and priority agreements and other documents required by Lender to provide

Lender with all such priority or ranking as required in the previous "Security" section hereof, (v) promissory note(s) evidencing the Facility, (vi) an environmental indemnity agreement executed by the Borrower, Sponsor and Principal, and (vii) such other and additional documentation as the Lender shall require, all containing terms and conditions as shall be satisfactory to the Lender and its counsel in all respects in their sole discretion (collectively, the "Loan Documents").

Conditions

Precedent:

The Lender's obligation to make the Facility available to the Borrower shall be subject to the satisfaction of certain conditions precedent which shall include, but shall not be limited to the following:

1. Receipt by Lender of its final Investment Committee's and Board of Directors' approval of the transaction contemplated by this Commitment Letter.
2. Satisfactory completion of Lender's legal, business and other due diligence and satisfactory completion of Lender's underwriting of the Project.
3. Receipt of any consents, third-party estoppels, subordination, non-disturbance and attornment agreements as required by Lender.
4. Loan Documents satisfactory to Lender which shall include, such terms and conditions as shall be required by the Lender and its counsel, including, without limitation, the terms and conditions outlined in this Commitment Letter, and in Exhibit A.
5. Satisfaction of closing conditions set forth in final documentation, including, without limitation, Loan Agreement, Security Agreement, Pledge Agreement, Guarantees, Promissory Notes, Performance Bonds, Subordination Agreement, Title Insurance Policies or Canadian equivalent (if applicable), Survey and Legal Opinions, each satisfactory to Lender.

6. Review and approval of design and construction items, including, contractors, plans and specifications, construction budgets, performance and payment bonds, construction contracts, subcontracts, design contracts, architect and design professional agreements, soils reports, licenses, permits and approvals relating to the construction by Lender.
7. Verification by Lender of the Equity Requirement.
8. Receipt of all organizational documents of Borrower, Sponsor and personal information of the Principal and all property related due diligence items Lender or its counsel deem necessary for the subject transaction.
9. Receipt of the total Project costs (the "Total Project Costs") (with a breakdown of line items) in form and substance acceptable to the Lender
10. Subject to Borrower's satisfaction of item 12 below, receipt of evidence satisfactory to Lender of the Project's compliance with all laws and zoning regulations, including, without limitation, issuance of all governmental permits.
11. Borrower has entered into Qualified Contracts for the sale of lots sufficient to meet the Pre-Sale Requirement, based on at least the approved minimum sales price schedule.
12. Approval of the general contractor ("GC") by Lender in its sole discretion, and receipt of a GMP Contract in an amount not more than provided for in the budget in form and substance approved by Lender and its construction consultant.
13. Approval of the Master Plan of the Project.
14. The absence of any material adverse change, as determined by Lender, in the condition of the Property, the financial condition or prospects of Borrower, Sponsor or Principal, the Property, the Project or political, economic, capital markets, or other market conditions.
15. Receipt of payment and performance guaranty from the GC in the form of payment and performance bonds from insurers with

ratings of A or better (from acceptable rating agency) and acceptable to Lender in its sole discretion, for the GC or, at Lender's sole discretion and election, a standby letter of credit acceptable to Lender with respect to GC's performance in an amount and from a financial institutions acceptable to Lender in its sole discretion. Dual Obligee riders in favor of Lender will also be required for the performance bonds.

16. Receipt of marketing materials for the Project that comply with all applicable laws and regulations.
17. All relevant filings required by the Canadian authorities, to be made under the relevant laws and regulations and any other governmental or regulatory requirement relating to the Master Plan, have been accepted and approved by the appropriate agencies.
18. Environmental Site Assessment (or Canadian equivalent) from a qualified engineer acceptable to Lender to be received prior to closing of the Loan.
19. All guarantees in form and substance and financial condition of Guarantor all satisfactory to Lender in its sole discretion prior to closing of the Loan.
20. Prior to closing the Loan, Lender shall receive, review and accept an MAI Appraisal (or Canadian equivalent) which indicates an "as is" and "as completed" market value satisfactory to Lender in its sole discretions.
21. Lender's receipt of a feasibility report to be prepared by a consultant, all in form and content satisfactory to Lender to be received prior to the closing of the Loan.
22. Borrower shall deliver its full financial statements (i.e., Profit & Loss Statement, Balance Sheet and Cash Flow Statement) in either "Audited" or "Review" format based on GAAP (or local equivalent) under AICPA (or Canadian CICA) guidelines for the fiscal period ended May 31, 2018, May 31, 2019 and a 9-month "stub" period ended January 31, 2020. The Audited or Review report (the "Financial Review") shall be prepared by a qualified certified public accountant or chartered accountant

firm approved by Lender. The Financial Review shall be subject to review and approval by Lender and its accountant as a condition to closing.

23. In addition to the satisfaction of all other contingencies and conditions precedent contained herein, this Commitment Letter shall remain contingent and the closing of the Facility shall be predicated upon the Lender's Construction Consultant's receipt of the final GMP Contract, the Final Project Budget and the plans and specifications and such Lender's Construction Consultant's issuance of the Construction Review Report which concludes that the Final Project Budget is sufficient to complete the improvements contemplated as part of the Project.
24. Review and approval of the due diligence contingencies listed on Exhibit B annexed hereto (the "Due Diligence Contingencies").
25. All usual and customary terms and conditions precedent for loan facilities of this size, type and purpose, together with such other terms and conditions as the Lender may require in its sole discretion, shall have been satisfied, including, without limitation:
 - a. Delivery of a certificate of a duly authorized signatory for Borrower and Sponsor containing an incumbency certificate and attaching: (i) its certificate of formation and by-laws, (ii) its resolutions authorizing the transactions, and (iii) good standing certificates, in each case in form and substance acceptable to the Lender and its counsel or the equivalent documents under the jurisdiction of formation of each entity.
 - b. Opinions of counsel to Borrower and Guarantors, in form and substance acceptable to the Lender and its counsel, including, without limitation, opinions as to such regulatory matters as the Lender and its counsel shall require and a "non-consolidation" opinion with respect to the Borrower.
 - c. Lender shall have received a lien search for Borrower and each Sponsor and Principal (including, without limitation,

with respect to any assets acquired by the Borrower) and a background report on each Principal, and the results thereof shall be satisfactory to Lender and its counsel.

- d. The Lender shall have received a litigation search for Borrower and each Sponsor and Principal and verification that there are not prior or pending actions, and the results thereof shall be satisfactory to the Lender and its counsel.
- e. The Lender shall have received a tax lien search for Borrower and each Sponsor and Principal, and the results thereof shall be satisfactory to the Lender and its counsel.
- f. The Borrower shall have paid all fees and disbursements of Lender and its counsel when due, except for those fees which are going to be paid from the Facility proceeds at closing.
- g. The Lender shall be satisfied in all respects with the Borrower's insurance and shall have received satisfactory certificates naming the Lender loss payee and additional insured.
- h. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.

**Representations
and Warranties:**

The Loan Documents shall include such representations and warranties as are usual and customary for loan facilities of this size, type and purpose, together with such other representations and warranties as the Lender or its counsel may require in their sole discretion, including, without limitation, representations and warranties relating to the existence, good standing, capacity, power and authority of the Borrower, the due authorization of all Loan Documents, receipt of all necessary governmental approvals and authorizations, ownership by each Guarantor of its assets, absence

of liens or material litigation, payment of taxes and other material obligations, no material adverse change in any of Borrower's, Sponsor's or Principal's operations or financial condition, possession and validity of all licenses, permits, consents and authorizations to operate the Borrower's business as shall be deemed necessary or advisable by the Lender, solvency, compliance with agreements, compliance with laws, and litigation matters.

Covenants:

The Loan Documents shall include such affirmative and negative covenants as are usual and customary for loan facilities of this size, type and purpose, including, without limitation, financial covenants (e.g. DSCR), covenants regarding insurance, covenants limiting distributions, due on sale and due on encumbrance covenants, covenants restricting the incurrence of debt, covenants restricting affiliate transactions, and covenants regarding the SPE status of the Borrower; together with such additional covenants as the Lender or its counsel may require in their sole discretion, including, without limitation, the following:

1. Prohibitions or limitations on additional indebtedness (other than customary trade payables) and guaranties
2. Prohibitions on granting liens on assets or permitting the existence of builders' liens on the Property (or any portion thereof).
3. Prohibitions on dividends, distributions and other restricted payments.
4. Prohibitions on transactions with affiliates, except on terms which are intrinsically fair and no less favorable to Borrower than would be obtained in an arms-length transaction with an unrelated third party.
5. Restrictions on issuance of stock, changes in ownership, capital structure and nature of business.
6. Prohibitions or limitations on capital expenditures (limitations shall be based on amounts set forth in Borrower's budget unless otherwise approved by Lender), acquisitions, asset sales (other than pre-sales in accordance with the terms of this Commitment

Letter and the Facility) and exchanges, investments, mergers, sale leasebacks, lines of business, prepayments of other debt, restrictions on subsidiaries and transactions with affiliates.

7. The Borrower shall deliver to the Lender the following information (wherever applicable):
 - a. As soon as available and in any event within forty-five (45) days following the close of each fiscal quarter, copies of quarterly unaudited consolidated financial statements, certified by the chief financial officer or a director of the Borrower.
 - b. As soon as available, and in any event, within ninety (90) days following the close of each fiscal year, financial statements prepared on a consolidated and consolidating basis in accordance with generally accepted accounting principles applied on a consistent basis and audited by an independent certified public accountant (or Canadian equivalent) satisfactory to the Lender.
 - c. Copies of tax returns filed by the Borrower for fiscal year 2018 and 2019 or promptly upon filing with the appropriate taxing authorities.
 - d. Copies of all registration statements, SEC forms 10-K, 8-K and 10-Q (or equivalents under Applicable Canadian Law) and all other information, forms, notices, applications and documents for all Borrower, Sponsor and Principal received or filed with all federal and state government agencies and authorities, including, without limitation, all reports, notices and correspondence filed with, sent to or received from the Securities and Exchange Commission or any state securities agency, HUD, any state banking authority or any regulatory authority in the jurisdiction of the Property.
 - e. Copies of (i) personal financial statements of Principal (to the extent such Principal is a Guarantor and natural person) as of December 31, 2019, and (ii) all financial statements, reports, written material notices and correspondence filed with, sent to or received from any state or federal agency or governmental body or otherwise made public by the

Borrower or such agency or governmental body.

f. Such other information relating to the Borrower, Sponsor or the Principal as the Lender may request in its reasonable discretion.

8. Compliance with applicable real estate development marketing legislation.

No Borrower's Fees: Other than compensation and/or fees approved by Lender (except in the event of a default by the Borrower) as set forth in the Final Project Budget and paid in accordance with such Final Project Budget approved by Lender, no management fees or other similar compensation shall be payable to Borrower, Sponsor or Principal or their respective owners, directors, officers or employees during the Loan Term without the prior approval of Lender.

Events of Default: The Loan Documents shall contain such events of default as are usual and customary for credit facilities of this size, type and purpose, together with such other events of default as the Lender or its counsel may require in their sole discretion, including without limitation, nonpayment of principal, interest and other sums due the Lender after five (5) days following the date such payments are due, failure to keep the Facility "in balance" after a specified number of days following Borrower's receipt of notice from Lender, failure to remedy a breach of covenants, breach of representations and warranties, bankruptcy and insolvency related matters (including matters relating to creditor arrangements and receivership), change of control, ERISA issues (or issues under equivalent Applicable Canadian Law), violation of laws, material adverse change in the assets, business, operations or financial condition of the Borrower, Sponsor or Principal, violation of laws, and termination, suspension or non-renewal of material licenses, in each case after grace, notice, or cure periods as will be further defined in the loan documentation.

Recourse: Fully recourse to Borrower but not to Sponsor and the Principal; provided, however, (i) standard "bad-boy" recourse carve-outs (which shall include fraud and misrepresentation and any voluntary act of bankruptcy of Borrower) and environmental indemnity shall apply to Sponsor and the Principal and (ii) the Sponsor and the

Principal shall guarantee the Project Cost overruns in excess of items reflected in the final approved Project Budget and lien-free completion of construction and also those obligations described in the "Guarantors" section if applicable.

**Cost and Yield
Protections:**

Standard provisions for illegality, increased costs or reduced return, including those arising from taxes, withholding and capital requirements.

Transferability:

Except for partial releases described above, the Loan Documents shall provide that the Property and the direct and indirect ownership interests in Borrower shall not be directly or indirectly sold, transferred, encumbered, mortgaged or otherwise disposed of, in whole or in part, without Lender's consent.

**Compliance with
Law:**

Lender shall be satisfied that the Project complies with all applicable laws including, without limitation, planning and development, zoning, environmental, municipal, and tax laws. In addition to all other requirements set out in this Commitment Letter, the Loan Documents as well as compliance with all applicable laws governing the Project, the Borrower shall ensure that prior to the transfer of any and all lots in the Project, it procures (at its own cost and expense) the registration of a subdivision plan (and any further subdivision, strata and/or condominium plans as required), bylaws and all requisite easements/rights of way/restrictive covenants (collectively, the "Registration Documents") for the Project, and provides any required municipal land dedications or payments in lieu thereof, all pursuant to Applicable Canadian Law (as revised and in accordance with their respective regulations). The Lender shall have the right to inspect and comment on the Registration Documents prior to submission to the Alberta Land Title Office.

Environmental:

The Project shall be clear from any environmental issue as required under the applicable laws. Any documentation in connection with the clearance shall be of form and substance satisfactory to Lender and the Borrower shall provide an environmental assessment from the Alberta Energy Regulator relating to energy resource activity on the Property to the Lender. As applicable, any abandonment,

reclamation and remediation costs and other environmental obligations relating to the Property shall be the sole responsibility of Borrower, and shall not be satisfied (in whole or in part) using the Loan without Lender's prior approval.

Approval: Among other approval rights, Lender will have sole approval rights with respect to admission of new partners or principals, changes to the Final Project Budget and sales agent arrangements. Agreements with each sales agent will be subordinated to the Facility. Lender shall be satisfied that the Borrower has secured all necessary approvals for the development of the Project. Such approvals include, without limitation, Master Plan, site, planning, designs, zoning, environmental, development agreement, building permit and any other relevant approvals as identified by Lender's Local Counsel.

Construction Consultant: Lender shall engage an independent consultant ("Lender's Construction Consultant") who will review the Final Project Budget and construction draws on a monthly basis. The closing of the Loan is predicated upon the Lender's receipt of an acceptable review of the budget and the Lender's Construction Consultant's conclusion that the budget is sufficient to complete the improvements.

Assignment: Borrower hereby specifically acknowledges that Lender shall reserve the right to transfer, syndicate, or sell part or whole of the Loan (which may be effectuated at the closing of the Loan or at any time thereafter). Borrower agrees to cooperate with any such transfer or sale but will only be responsible for its own costs. Borrower is prohibited to assign any of its rights under the Loan to any third-party without Lender's prior approval.

Structuring: Lender may, and Borrower shall fully cooperate with Lender to, structure all or part of the Facility, as a wraparound loan, co-lending facility (with or without agents), or other structure at no additional cost or financial exposure to Borrower.

Termination: This Commitment Letter may be terminated at Lender's option by Lender giving written notice to Borrower at the address set forth above upon the occurrence of any of the events or conditions

described elsewhere in this commitment letter giving rise to such termination right (including, without limitation, under the provision entitled "Due Diligence" hereof), or upon any of the following events:

1. Any of Borrower's, Guarantors' or Principals' assignment for the benefit of its creditors, admission in writing of its inability to pay its debts as they become due, filing of a petition of bankruptcy or being adjudicated a bankrupt or insolvent, or voluntary filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation.
2. Any material adverse change in the condition of the Property or any of the Borrower, Guarantors or Principals (financial or otherwise), subsequent to the date of this Commitment Letter.
3. If any statement, representation or warranty made in any application, submittal or other written statements made to Lender by any of the Borrower, Guarantors or Principals in connection with the Facility shall prove to have been untrue or misleading when made in any material respect, or shall have failed to disclose information necessary to make such statement not materially misleading in light of the circumstances under which it was made.
4. If the Environmental Audit (as defined in Exhibit A hereto) discloses the presence of any existing or potentially hazardous material contamination or physical conditions that may result in such contamination of the Property.
5. If Lender has not received the Appraisal, Environmental Audit, the Construction Review Report, verification of Presale Contracts, the Financial Review and any other reports reasonably required by Lender, and approved them all by March 13, 2020, in its sole discretion.
6. If the Closing Date does not occur by March 31, 2020 unless otherwise extended by Lender, in its sole discretion.

Delay in the exercise of Lender's right to terminate this

Commitment Letter shall not be construed as a waiver of any such right to terminate with regard to the occurrence of any specific event referred to above, and Lender's failure to act as to any such event shall not be construed as a waiver of its rights or remedies with respect to any subsequent event of default. Any termination of this Commitment Letter shall not affect Lender's rights to enforce, or any Borrower's and Principal's obligations under Section "Loan Fees" and Section "Expenses and Indemnification", including legal fees and disbursements, which rights shall survive any such termination. Upon termination of this Commitment Letter, the Lender shall have no further obligations hereunder except to return that portion of the Commitment Fee which has been received by Lender, and Expense Deposit subject to the terms and conditions set forth herein.

Loan Fees:

Commitment Fee: In consideration of the Lender's issuance of this Commitment Letter, the Borrower shall pay to the Lender a total commitment fee in the amount of two and one-half percent (2.5%) of the Facility (C\$975,000) (the "Commitment Fee"). Prior to the issuance of this Commitment Letter, Lender acknowledges that a portion of the Commitment Fee in the amount of C\$300,000 (the "Escrow Funds") from Borrower was deposited with MLT Aikins LLP pursuant to an escrow agreement by and among the Lender, the Borrower, and MLT Aikins LLP as the escrow agent, dated November 7, 2019 (the "Escrow Agreement"). The Commitment Fee shall be due and payable as follows: (a) C\$50,000 payable simultaneously at the execution of this Commitment Letter, with such funds to be released from the Escrow Funds, (ii) C\$250,000 payable when Lender approves the Due Diligence Contingencies in Exhibit B, with such funds to be released from the Escrow Funds, and (iii) C\$675,000 payable at the earlier of (x) the closing of the Loan and to be funded from the Loan proceeds or (y) the expiration of the Commitment if the Loan does not close for any reason other than Lender's willful default. Notwithstanding the foregoing, if Lender is unable to approve the Due Diligence Contingencies by the date that is thirty (30) days after the date of execution of the Commitment Letter due solely to Borrower's failure to submit the required documentation under Exhibit B (the Due Diligence Contingencies) to Lender, then Borrower agrees to release from the Escrow Funds on the thirty-first (31st) day and pay to Lender an additional C\$50,000 Commitment Fee. If Borrower

fails to deliver all of the required documentation under Exhibit B (the Due Diligence Contingencies) prior to the date that is sixty (60) days after the date of execution of the Commitment, then Lender shall have the unilateral right to terminate the Commitment and will incur no liability to Borrower. Under such circumstance, the remaining Escrow Funds shall be released from escrow and payable to Lender as liquidated damages for Lender's processing and preparation of the closing of the Loan. If the closing does not occur due to Borrower's failure to satisfy the conditions precedent to the closing or due to any other Borrower's default, then the total Commitment Fee of 2.5% shall be due immediately thereafter. Borrower, Sponsor and the Principal shall jointly and severally guarantee the payment of such Commitment Fee under such circumstance.

Legal Fees and Disbursements. Upon the execution of this Commitment Letter, Borrower shall deposit US\$25,000 with Lender or with Withers Bergman LLP, Lender's New York counsel (the "Expense Deposit"), which sum shall be used by Lender to defray on-going expenses in connection with the Facility, including, without limitation, to pay Lender's legal fees and disbursements in connection with the preparation, review and negotiation of this Commitment Letter, and thereafter such fees and disbursements as may be incurred in consummating the transactions that are the subject thereof. Borrower shall be obligated to pay all reasonable fees and disbursements of Lender's counsel (U.S. and Canadian) regardless of whether the Closing Date occurs.

Broker: Nova Capital Advisors, Inc ("Nova"). Borrower shall enter into a fee agreement with Nova regarding its finder's fee for introduction of Lender to Borrower. The Borrower shall pay any brokerage or finder's fees, commissions or other compensation payable to Nova in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.

Expenses and Indemnification: Without limiting the Borrower's obligations contained elsewhere in this Commitment Letter, the Borrower will pay the out-of-pocket costs, fees and expenses of the Lender incurred in connection with its due diligence, the negotiation, preparation and closing of the

Loan Documents regardless of whether any transaction contemplated hereby is therein consummated, and will provide indemnification thereto on terms and conditions that are usual and customary for a facility of this size, type and purpose, including, without limitation, costs, fees and expenses of the Lender in connection with the establishment (including, without limitation, legal fees and disbursements, due diligence expenses, fees of accountants, consultants and other third parties in connection with search, audit and appraisal services, filing, recording and registration fees, title insurance policy costs, and other costs and expenses) of, and fees, costs and expenses of the Lender in connection with, the preservation of its rights and the enforcement of the Facility; provided, however, in no event shall Borrower indemnify Lender for losses, claims, damages, liabilities, or related expenses to the extent such expenses are primarily caused by the willful misconduct or gross negligence of Lender.

Due Diligence:

By accepting this Commitment Letter, the Borrower specifically acknowledges that this Commitment Letter is being issued at a time when the Lender has not completed a full business, credit and legal due diligence and analysis of the Borrower, the Sponsor or the Principal, the collateral for the Facility or other aspects of the Facility contemplated by this Commitment Letter. As a result of further investigation and analysis by the Lender and its consultants, agents, representatives, analysts, accountants and counsel, which investigation and analysis shall include a review of the documents and information required under this Commitment Letter and the Loan Documents, information with respect to the Borrower, the Sponsor and the Principal, and the collateral for the Facility, of which the Lender is not now aware, may be revealed and affect the Lender's decision and/or ability to close the Facility. The Lender may, in its discretion, based on such information, decide to not close the Facility (in which case this Commitment Letter shall be deemed terminated and withdrawn) or to require that the terms of this Commitment Letter be modified or that new conditions be added hereto to address appropriately the issues raised by such information. In the event that, based upon the results of the Lender's due diligence, the Lender exercises its rights under this paragraph and determines not to close the Facility as contemplated in the Commitment Letter, the Borrower acknowledges and agrees that the Lender's sole liability shall be to return the portion of the

Commitment Fee that has been received by Lender, and Expense Deposit less any and all out-of-pocket amounts expended by the Lender in connection with this Commitment Letter, the Loan Documents and the transactions contemplated hereby and thereby. In such event, the Borrower agrees not to make any claim or bring any proceeding or action against the Lender arising out of this Commitment Letter, the Loan Documents or the transactions contemplated hereby or thereby, and the Borrower further releases and acquits the Lender, its subsidiaries and affiliates and their respective employees, officers, directors, shareholders, agents, attorneys, accountants and consultants from any and all known or unknown claims, proceedings, damages, liabilities and obligations, except for the obligations specifically provided in this paragraph.

**Rights of
Shareholders:**

It is expressly understood and agreed that the rights of the shareholders (or partners, as the case may be) of Borrower with respect to their equity in Borrower, Sponsor, and/or Guarantors and the return on same or repayment thereof shall at all times be fully subordinated to Lender's rights under the Loan Documents and to Lender's rights to receive repayment of the Facility, together with all interest accrued thereunder and the payment of the additional interest, subject to the distribution priorities set forth herein, if any.

**No Third Party
Beneficiary:**

This Commitment Letter has been prepared for the sole use and benefit of Borrower (and its constituent owners) and Lender and its affiliates, and no other persons or entities shall have any right to rely upon this Commitment Letter or any of the terms or provisions contained herein for any purpose, except that each Indemnified Party (as hereinafter defined) may rely on the provisions contained herein relating to indemnity and limitation of liability.

**Lender Not a
Joint Venturer:**

Any provision hereof to the contrary notwithstanding, Lender, by virtue of its issuance of this Commitment Letter or any action taken pursuant hereto, shall not be deemed to be a partner or joint venturer with any of the Principals, Borrower, Sponsor, Guarantors or any other parties. Each of the Borrower, Guarantors, Sponsor and Principal shall jointly and severally indemnify, defend (with counsel approved selected by Lender) and hold harmless Lender, in its capacity as the provider of the Facility, from and against any

and all losses, costs, damages, expenses (including, without limitation, those of defending or settling any such claims or demands and all reasonable fees and disbursements of outside legal counsel engaged by Lender in defending and settling such claims or demands resulting from such a construction of the parties and their relationship) and liabilities occasioned by Lender being deemed to be a partner or joint venturer with any of the Borrower, Guarantors, Sponsor or Principal or any other parties as a result of the issuance of this Commitment Letter or providing the Facility to Borrower. Any inspection of the Property, any review of the plans and specifications therefor or other documents submitted to Lender or Lender's consultants or any analysis of any Property or related facts, documents, conditions and circumstances made by Lender or any of its agents, architects or consultants is intended solely for the benefit of Lender and shall not be deemed to create or form the basis of any warranty, representation, covenant, implied promise or liability to any of the Borrower, Guarantors, Principal, Sponsor or any other person or entity.

Conflicting Terms: The terms, conditions and provisions of this Commitment Letter shall, if this Facility is funded, terminate upon the execution of the Loan Documents except to the extent such terms are expressly stated to survive the closing of the Facility. If there is any conflict or inconsistency between the terms, conditions and provisions of this Commitment Letter and the terms, conditions and provisions of the Loan Documents, the Loan Documents shall control.

**Governing Law/
Consent
to Jurisdiction:**

Irrespective of the place of execution and/or delivery, this Commitment Letter and the Loan Documents (except that the Legal Mortgage and the provisions in the other Loan Documents with respect to the creation, perfection and enforcement of the liens and security interests created pursuant to the Loan Documents will be governed by, and construed in accordance with, the internal laws of Alberta, Canada) shall be governed by, and shall be construed in accordance with, the laws of the State of New York applicable to agreements entered into and to be performed entirely within New York. The Borrower and the Lender hereby consent and submit to the jurisdiction of the state and federal

courts located in New York City, New York with respect to any claim or litigation arising hereunder or under the Loan Documents or any alleged breach of any of the covenants or provisions contained herein or therein, and acknowledge and agree that proper venue in any matter so claimed or litigated shall be in the New York State Supreme Court or other state court located in the Borough of Manhattan, in the City of New York, State of New York, or in the United States District Court for the Southern District of New York, as appropriate.

**Waiver of
Jury Trial:**

EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS COMMITMENT LETTER OR OTHERWISE RELATED TO THE FACILITY CONTEMPLATED HEREBY OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS COMMITMENT LETTER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Borrower hereby represents and covenants that: (i) to Borrower's knowledge, all information (the "Information") other than projections (the "Projections") that has been or will be made available to Lender by Borrower or any of its representatives is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made, and (ii) the Projections that have been or will be delivered have been prepared in good faith based upon reasonable assumptions. Borrower acknowledges that we may have shared, and that we may in the future share, non-public information concerning the Borrower, Sponsor, Principal and their affiliates with our affiliates. By your execution of this Commitment Letter, you consent and agree to such sharing of information. Any breach by you of the provisions contained in the Commitment Letter, shall, at the option of the Lender, terminate all of the Lender's obligations under this Commitment Letter. This paragraph shall survive the closing of the Facility.

The Lender's willingness to offer the Facility is further subject to, among other things: (i) the negotiation and execution of Loan Documents containing such terms as are described above and otherwise in form and substance satisfactory to the Lender and its counsel; (ii) the absence of any material adverse change in the condition (financial or otherwise), business, assets, properties, prospects, operations, performance or current

capital structure of the Borrower, Sponsor, or Principal, (iii) our verification of the Information, (iv) our not becoming aware after the date hereof of any information or other matter which is inconsistent with any Information or the Projections and our otherwise being satisfied with our due diligence concerning the Borrower, Sponsor, Principal and such aspects of their respective businesses and assets that we choose to investigate, (v) the resolution and satisfaction of all contingencies contained herein, and (vi) the absence of any disruption of or adverse change in the financial, banking or capital markets (including the market for debt financing) that we deem material.

By executing this Commitment Letter, Borrower hereby agrees to indemnify and hold harmless the Lender, its subsidiaries and affiliates and each of its and their officers, directors, employees, affiliates, agents, representatives, counsel, accountants, consultants and controlling persons (each, an "Indemnified Party") from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding howsoever relating to this Commitment Letter, the Facility (including the use of the proceeds thereof), or any related transaction, whether or not any Indemnified Party is a party thereto, and to reimburse each Indemnified Party upon demand for all out-of-pocket legal and other fees and expenses incurred in connection with investigating or defending any of the foregoing; provided, however, that the foregoing indemnity will not, as to any Indemnified Party, apply to losses, claims, damages, liabilities or related expenses to the extent arising from the willful misconduct or gross negligence of such Indemnified Party. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter, Borrower represents that it has secured all requisite consents, authorizations and internal approvals, including, without limitation, from the partners, members, managers, Board of Directors and/or shareholders of the Borrower (as applicable), required to execute and deliver this Commitment Letter and fulfill Borrower's obligations hereunder. To the extent there is any future dispute arising from the breach by Borrower of this representation, the Guarantors and Borrower shall indemnify each Indemnified Party from and against any and all losses, claims, damages and liabilities to which any such Indemnified Party may become subject arising out of or in connection with any claim, litigation, investigation or proceeding arising from such dispute.

By executing this Commitment Letter, Borrower: (i) agrees that Borrower will not make any claim against any Indemnified Party for any special, punitive, indirect or consequential damages in respect of any breach or wrongful conduct (whether the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated and the relationship established

by this Commitment Letter, or any act, omission or event occurring in connection herewith, and (ii) waive, release and agree not to sue upon any such claim for any such damages whether or not accrued and whether or not known or suspected to exist in your favor. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

By executing this Commitment Letter and without limiting any provision hereof, Borrower agrees that Borrower will pay all fees, costs and expenses incurred by the Lender in connection with the negotiation and preparation of this Commitment Letter and the Loan Documents relating to the Facility (including, without limitation, costs and expenses in connection with Lender's due diligence investigations and fees and expenses of our counsel) whether or not the loan documentation is finalized and whether or not the Facility is extended or other financial accommodations are made, and regardless of the reasons for which such documentation is not finalized or the Facility is not extended or other financial accommodations are not made. Such fees and expenses include, without limitation, fees and expenses incurred in connection with documenting this Commitment Letter and the Loan Documents, due diligence expenses, costs of appraisals, search fees, costs of title insurance policies, fees and expenses of counsel, accountants and consultants, environmental review, and recording, filing and registration costs. In the event of a default under the Loan Documents, the Borrower, Sponsor and Principal shall pay all of the Lender's fees, costs and expenses incurred in connection with enforcing its rights.

If Lender decides to not close the Facility based on Lender's due diligence analyses as set forth in this Commitment Letter, Lender shall have no liability for any losses or damages sustained by any of the Borrower, Guarantors and Principal as a result of such decision by Lender and Lender shall, subject to Lender's receipt of a legal release from Borrower and related parties, promptly refund the portion of the Commitment Fee paid to or for the benefit of Lender, less expenses incurred in connection with the Facility or this Commitment Letter. If the Facility does not close for any reason other than as a result of Lender's due diligence analysis or Lender's willful default, Lender shall retain all fees previously paid under the terms of this Commitment Letter as liquidated damages and Lender shall have no liability for any losses or damages sustained by Borrower by reason thereof.

Borrower agrees that this Commitment Letter is for its confidential use only and will not, without Lender's prior written consent, be disclosed by Borrower or any of its representatives to any person other than its accountants and attorneys, and then only in connection with the transactions contemplated hereby and only on a confidential basis, except that, following Borrower's acceptance of this Commitment Letter, Borrower may make such disclosure of the terms and conditions of this Commitment Letter as Borrower

is required by law to make. This paragraph shall survive the closing of the Facility and the expiration or other termination of this Commitment Letter.

This Commitment Letter shall not be assignable by Borrower, and may not be amended or any provision hereof waived or modified except by a document in writing signed by Borrower and the Lender.

The foregoing is not and shall not be deemed to be a binding agreement by the Lender to make available the Facility described herein. Such agreement will arise only upon the execution and delivery by the Lender and the Borrower of a definitive loan agreement and such other agreements, instruments and documents as shall be required by the Lender and its counsel, and the fulfillment of the conditions precedent set forth herein and therein. All of such documents may contain any terms, provisions or conditions as the Lender may deem necessary or desirable.

This Commitment Letter sets forth the entire understanding of the parties hereto as to the scope of the obligations of the parties hereto and supersedes all prior agreements, written or oral, representations and understandings, if any, relating to the subject matter hereof. THIS COMMITMENT LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES OF SUCH STATE. EACH OF THE UNDERSIGNED PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF OR IN CONNECTION WITH, THIS COMMITMENT LETTER AND ANY OTHER COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY OF THE UNDERSIGNED PARTIES IN CONNECTION HEREWITH. IN NO EVENT SHALL ANY PARTY TO THIS COMMITMENT LETTER BE LIABLE FOR PUNITIVE OR CONSEQUENTIAL DAMAGES.

Withers Bergman LLP will act as U.S. counsel and MLT Aikins LLP will act as Canadian counsel to Lender in connection with the Facility. Each of the Borrower and Guarantors are requested to deliver copies of all correspondence and documentation in connection with the Facility to their attention. Please have your counsel contact our legal counsel in order to begin the necessary due diligence and documentation processes.

This Commitment Letter shall automatically expire if not accepted by Borrower in accordance with the terms hereof on or before 5:00 P.M. (New York City time) on February 14, 2020. Please indicate Borrower's acceptance of this Commitment Letter

and agreement to the terms hereof by signing this Commitment Letter where indicated below and returning it to the Lender, together with (a) the initial installment of the Commitment Fee of C\$300,000 (which Lender acknowledges has been deposited with MLT Aikins LLP pursuant to the Escrow Agreement), and (b) US\$25,000 Expense Deposit to Lender or Withers Bergman LLP, Lender's New York legal counsel, at Lender's election for the expense deposit. By so doing, Borrower will be bound by the terms hereof and will pay all fees, costs and expenses as provided herein.

Even if accepted in accordance with the provisions of the previous paragraph, the obligations of the Lender under this Commitment Letter shall expire and terminate automatically, without further act or condition and regardless of cause or circumstance, if loan documentation satisfactory in form and substance to us and our counsel is not executed on or before April 30, 2020.

[The rest of this page has been intentionally left blank.]

This Commitment Letter may be executed in counterparts, all of which together shall be considered one and the same document.

Very truly yours,

BARBICAN CAPITAL PARTNERS, LLC

By: _____

Name: Benny P. Leung

Title: Manager

THE BORROWER ACKNOWLEDGES THAT IT WAS REPRESENTED BY COUNSEL SELECTED BY IT IN CONNECTION WITH THIS COMMITMENT LETTER, THAT IT HAS READ THIS COMMITMENT LETTER AND EXHIBIT A AND UNDERSTANDS, ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN EXHIBIT A.

Borrower:

ALBERTA FOOTHILLS PROPERTIES LTD.

By: MWA
Name: Arum Atkins
Title: President

Sponsor:

1067803 ALBERTA LTD.

By: MWA
Name: Arum Atkins
Title: President

Principal:

MWA

DREW GORDON ATKINS

EXHIBIT A**General Terms and Conditions**

1. **Loan Document Provisions.** The Loan Documents shall in all respects be satisfactory to Lender and its counsel, and shall contain such terms and provisions as Lender may require, including, without limitation, the following:
 - (a) **Due on Sale and Other Default Provisions.** The Loan Documents shall prohibit (i) any sale, conveyance, assignment or transfer of all or any portion of any security for the Facility or any interest therein, without the prior written consent of Lender, or (ii) any change in the ownership interests in Borrower, including, without limitation, the Sponsor's or Principal's respective interests (whether direct or indirect) or management of the Property, or the sale, pledge, hypothecation or other transfer of any interests in Borrower or Borrower's assets, or Guarantor, if any, or Guarantor's assets (except to the extent following any asset transfer by Guarantor, Guarantor continues to meet all financial covenants), in any such case without the prior written consent of Lender. The promissory note(s) to be executed by Borrower with respect to the Facility (collectively, the "Note"), and all indebtedness with respect to the Facility, may be declared due and payable in its entirety in the event that (i) the Property or any of the security for the Facility or any portion thereof or interest therein (whether direct or indirect) is pledged, hypothecated, mortgaged or encumbered, or any lien for indebtedness (which may be the result of other than a Facility transaction) is placed thereon, without the prior written consent of Lender, (ii) any of the Borrower or Guarantors shall fail to observe or perform any term of the Note or of any of the other Loan Documents and such failure shall continue beyond applicable notice, grace, and/or cure periods thereunder, or (iii) any default shall occur (and any required notice shall have been given and grace or cure period shall have expired) under the terms of any of the Loan Documents. No subordinate financing (secured or unsecured) or other claims against the Property shall be permitted without Lender's prior written approval, which approval may be withheld in Lender's sole discretion. Borrower and the Principals agree that the Loan Documents shall provide for such events and conditions of default as may be required by Lender in Lender's sole discretion.

In connection with the foregoing, it is expressly acknowledged and agreed by Borrower and the Principals that Lender is relying on the

creditworthiness and experience of Principals in owning, servicing, developing, operating and selling properties such as the Property in Lender agreeing to issue this Commitment Letter, and Lender will rely on the Principals' continued direct or indirect ownership in Borrower for so long as the Facility is outstanding.

- (b) Material Adverse Changes. It shall constitute an immediate Event of Default under the Loan Documents if any of the Borrower, Guarantors or Principals shall suffer a material adverse change in its or his financial condition at any time during the term of the Facility, as determined by Lender in Lender's sole discretion. Among other events, each of the Borrower, Guarantors or Principals shall be deemed to have suffered a material adverse change in its or his financial condition if, in Lender's sole judgment, its or his financial condition has changed in a manner which could impair the value of Lender's security for the Facility, prevent timely repayment of the Facility in accordance with the provisions of the Note, or otherwise prevent any of the Borrower, Guarantors or Principals from performing its or his obligations under any of the Loan Documents to which any of them is a party.
- (c) Cross Default; Cross Collateralization. The occurrence of a default or event of default under any loan document executed and delivered by Borrower in connection with the Facility shall constitute an Event of Default under each of the Loan Documents. The Property and all related rights, titles and interests, encumbered by a mortgage, deed of trust or other Loan Document in favor of Lender, shall constitute collateral security for the entire Loan and all amounts required to be paid and obligations required to be performed by Borrower in connection therewith.
- (d) Financial Reporting Requirements. The Borrower will be required to comply with certain financial reporting requirements including, inter alia, providing to Lender at Borrower's expense, not later than ninety (90) days after the end of each calendar year audited financial statements as of December 31 of such year and for the year then ended, all prepared by a certified public accountant (or Canadian equivalent) acceptable to Lender in accordance with generally accepted accounting principles. Guarantors shall deliver to Lender an operating budget for the Property and such other financial information with respect to the Property as Lender may require, all certified as true, complete and correct by the senior financial officer of the Borrower. Within thirty (30) days following the end of each calendar quarter, Guarantors shall deliver to Lender unaudited financial statements

for the Property for such quarter, each in such form and containing such information regarding revenues, expenses and sources and uses of funds for the Property, each as Lender may require and certified as true, complete and correct by the senior financial officer of the Borrower. Each of the Borrower and Guarantors shall provide such additional financial information as Lender may reasonably require.

- (e) Loan Provisions. To the extent applicable, the Loan Documents shall contain various provisions relating to the construction and carrying out of the Project to Lender's satisfaction, including without limitation, provisions relating to delivery of the construction budget, construction contract, architect's agreement, plans and specifications, sign-offs by Lender's Construction Consultant and the retention and release of statutory holdbacks.
2. Further Conditions to Closing. In addition to delivery of the Loan Documents and compliance with all other requirements set forth in this commitment letter, the delivery to Lender of the items set forth below, each in form and substance satisfactory to Lender and its counsel, as the case may be, shall be conditions to the closing of the Tranche A Loan:
- (a) Organizational Documents. Evidence satisfactory to Lender of each of the Borrower's and Guarantors' (to the extent such Guarantor is not an individual) due incorporation and good standing in the State of their formation and authorization to do business, and their corporate capacity, power, legal right and authority to enter into and perform the Loan Documents, or the equivalent forms of evidence provides by such entities' jurisdiction of formation. Such evidence proof shall include, but not be limited to, certified copies of certificates or articles of incorporation and by-laws, applicable resolutions and incumbency certificates and good standing certificates for each of them.
 - (b) Financial Statements. Financial statements of Borrower and each Guarantor as required by the commitment letter, and such other financial information as Lender may reasonably request. Each such financial statement of the Borrower shall be prepared in accordance with generally accepted accounting principles, and (except as otherwise set forth in the commitment letter) certified by a certified public accountant (or Canadian equivalent) acceptable to Lender, and shall describe in reasonable detail all contingent liabilities of the subject thereof, and shall evidence to Lender's satisfaction that there has occurred no material adverse change in the

financial condition reflected therein from the financial condition of the subject thereof reflected in any financial statements previously delivered to Lender.

- (c) Opinions of Counsel. Opinions of counsel for Borrower addressing such legal issues concerning each of the Borrower, Guarantors, and the Property as Lender may reasonably require for a transaction of this nature, including, without limitation, the organization of each of the Borrower and Guarantors, authorization of the execution and delivery of the Loan Documents, the proper execution and delivery of the Loan Documents, the enforceability of the Loan Documents under State law (which may be subject to customary qualifications acceptable to Lender), absence of violations of applicable law (including usury laws) as a result of the payment of any interest, fees or charges due under the Loan Documents, compliance with zoning, land use, environmental and similar laws (addressing specific problems that may be identified by Lender, and otherwise to the extent such opinions generally would be requested by a lender making a loan similar to that provided for herein), the choice of law provisions contained in the Loan Documents, non-consolidation bankruptcy opinion, absence of insolvency, receivership and creditor arrangements, and such other matters as counsel for Lender may request relating to the validity and enforceability of the Loan Documents and the liens and security interests created thereby, and any other matters relating to any of the Borrower, Guarantors and Principals as Lender shall require.
- (d) Insurance. Not less than ten (10) days prior to the closing of the Facility, evidence that the insurance coverages to be required by the Loan Documents are in effect with respect to the Property.
- (e) Title Insurance. A title report or commitment for a lender's Title Insurance Policy or Canadian equivalent (the "Title Policy"), which shall become a binding title insurance policy at the closing of the Facility, issued by a nationally recognized title insurance company satisfactory to Lender (the "Title Insurer"), to insure the liens of the debenture, mortgage or deed of trust encumbering the Property as each a first lien upon Borrower's interest in the Property, insuring the entire Facility, naming Lender as the insured, insuring all utility, access, support and other appurtenant easements necessary for the operation of the Property, and subject to no exclusions or exceptions other than those expressly approved by Lender in writing. If required by Lender, the Title Policy shall be with customary form of reinsurance agreements and direct access agreements satisfactory to

Lender with title insurance companies satisfactory to Lender. The share of liability assumed by each title company shall be satisfactory to Lender. Upon each Advance under the Facility, the amount of coverage under each Title Policy shall be increased to reflect such Advance. In addition, the Title Policy shall, if Lender requires and if available, include an endorsement protecting against forfeiture or reversion due to covenants, restrictions or encroachments, a survey endorsement, a usury endorsement, a so-called lender's doing business endorsement, a so-called lender's comprehensive endorsement and such other endorsements as Lender may require.

- (f) Survey. A current, accurate real property report of the Property prepared by a qualified land surveyor acceptable to Lender, which survey shall be in form and substance satisfactory to Lender and its counsel and shall be certified to Lender and the Title Insurer with the certificate dated not more than thirty (30) days prior to the Closing Date. The survey shall show, among other things, the dimensions and total square foot area of the land, the legal description thereof, all interior lot lines, the dimensions and locations of all improvements, easements, parking areas, rights of way, adjoining sites, encroachments and the extent thereof and their distance from the lot lines, established building lines and street lines, means of ingress and egress, the nearest intersecting streets and such other details as Lender may request.
- (g) Utilities: Evidence establishing to the satisfaction of Lender that the Property is serviced at its boundaries by adequate storm sewer, sanitary sewer, telephone, gas, electricity, water and other utility services or will-serve letters by the appropriate utility providers confirming the same.
- (h) Permits and Licenses. Copies of all environmental permits, utility permits, land use permits, development permit and building permits and any other permits, approvals or licenses required for the commencement of construction.
- (i) Searches. Such real estate, personal property, statutory lien, bankruptcy, insolvency, zoning or building code violation and other searches of public records as Lender may require with respect to Borrower, Guarantor, any Principal, and the Property.
- (j) Environmental Survey. A Phase I environmental survey or Canadian equivalent (satisfactory to Lender and Lender's environmental consultant)

prepared at Borrower's sole expense by a qualified environmental consultant satisfactory to Lender for the Property and dated not earlier than thirty (30) days prior to closing (the "Environmental Audit"). Such Environmental Audit shall, at a minimum, (a) disclose any existing or potential hazardous material contamination, and physical conditions that may result in such contamination, at the Property, (b) include the results of all sampling or monitoring to confirm the extent of existing or potential hazardous material contamination at the Property, including the results of leak detection tests for each underground storage tank located at the Project, if any, (c) describe response actions appropriate to remedy any existing or potential hazardous material contamination, and (d) report the estimated cost of any appropriate response. All costs and charges by Lender's environmental consultant will be borne by Borrower.

- (k) Appraisal. Lender shall have received and approved the Appraisal as described in the Commitment Letter to which this Exhibit A is attached.
- (l) Easements. Evidence that the Property is benefited by such easements or other rights as may be necessary for operation and use thereof and vehicular and pedestrian ingress and egress, and for the maintenance of utilities, parking and other site improvements necessary or appropriate.
- (m) Compliance with Laws. Evidence of the payment of all amounts owing with respect to the recordation and/or filing of any of the Loan Documents in or with the applicable registry or filing office and evidence, satisfactory to Lender in all material respects, that the Property complies in all material respects with all applicable statutes, rules, regulations, laws and ordinances.
- (n) Capital Budget. A detailed capital budget for carrying out the Project acceptable to the Lender.
- (o) Officer's Certificate. A certificate of an authorized officer, manager, or managing member of Borrower addressed to the Lender and in form and substance satisfactory to the Lender, certifying that the Equity Requirement, as at the Closing Date, is not less than the amount required by the Lender as determined by the Lender's final underwriting requirements.
- (p) Filings and Registrations. All filings and registrations of or in respect of the Loan Documents necessary to preserve, perfect and protect the

mortgages, charges, assignments and security interests created thereby shall have been duly effected to the satisfaction of the Lender.

- (q) Lock-Box Account. The required lock-box account shall have been established by the Borrower.
 - (r) Additional Documents and Information. Such certificates, opinions, materials, documents, correspondence (including a letter from the appropriate governmental authority regarding the zoning of the Property) and other papers regarding the Property, Borrower, Guarantor or the Facility as Lender may require. In addition, all legal matters in connection with the Facility in addition to those discussed elsewhere in this Commitment Letter shall be satisfactory in form and substance to Lender.
3. Conditions of Advances. The obligation of Lender to make any Advance of the Facility, whether the first Advance or any Advance made subsequently to the first Advance, is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Request for Advance. Lender shall have received, at least five (5) Business Days prior to the requested Advance, a request for Advance, which request for Advance shall be in form and content satisfactory to Lender, wherein, among other things, Borrower shall confirm the accuracy of all representations and warranties set forth in the Loan Documents and which shall be accompanied by a certificate of an authorized officer, manager or managing member of Borrower as to hard and soft costs, together with, in each case, invoices and/or receipts, all of which shall be in form and content satisfactory to the Lender.
 - (b) Discharge of Encumbrances. Except for permitted encumbrances, Borrower shall have paid and discharged or caused to be paid and discharged all encumbrances affecting the Property and Lender shall have received a favorable opinion of its counsel as to title to the Property and priority of the Loan Documents.
 - (c) Payment of Project Costs. Borrower shall timely pay all Project costs in respect of which prior Advances were made hereunder and shall, if requested by Lender, provide to the Lender evidence thereof satisfactory to the Lender.

- (d) Limitation on Amount. Lender shall not be obligated to advance any amount hereunder in respect of any item of Project costs that is not an approved cost or that is in excess of the maximum amount of such item as set forth in the approved capital budget.
 - (e) No Construction Liens. Lender shall not have received written notice of, nor shall there have been registered against title to the Property, any claim for a construction lien.
 - (f) Other Documents. Lender shall have received and approved such other documents, consents, acknowledgements, opinions and agreements as Lender or its counsel may reasonably request.
4. Conditions of All Advances. The obligation of Lender to make any Advance of the Facility is subject to the following conditions to be fulfilled or performed on or prior to the date of such Advance, which conditions are for the exclusive benefit of Lender and may be waived in whole or in part by Lender in its sole discretion:
- (a) Truth of Representations and Warranties. The representations and warranties of the Borrower contained in the Commitment Letter, this Exhibit A or in any other Loan Document shall be true and correct as of such date with the same force and effect as if such representations and warranties had been made on and as of such date.
 - (b) Performance of Covenants by the Borrower. The Borrower shall have fulfilled or complied with all covenants contained in the Loan Documents which are to be performed by it at or prior to such time.
 - (c) No Default. No Event of Default shall have occurred and be continuing.
 - (d) No Change in Laws. No law, proposed law, any change in any law, or the interpretation or enforcement of any law shall have been introduced, enacted or announced (including the introduction, enactment or announcement of any law respecting taxes or environmental matters or any change therein or in the interpretation or enforcement thereof), the effect of which will be to prohibit Lender from making the Facility or to increase materially the cost thereof to Lender.
 - (e) Review and Approval. Review and approval of such Advance and the use of proceeds thereof, receipt of copies of all permits obtained, receipt of invoices for use of funds, approval by Construction Consultant with

respect to pre-construction work completed, and such other items as Lender, its U.S. and/or Canadian counsel may reasonably require.

5. Limitations on Advances. No Advance shall be made within a period of thirty (30) days after the making of a prior Advance.
6. Insurance. Borrower shall maintain adequate insurance at all times with responsible insurance carriers in amounts and pursuant to insurance policies reasonably acceptable to Lender against (i) loss or damage by fire and other hazards; (ii) comprehensive general liability on account of damage to Persons and property in minimum amount of C\$5,000,000 per occurrence or such greater amount as may be required by Lender, acting reasonably, and notified by Lender to Borrower from time to time; and (iii) such other risks as Lender may reasonably request. Each insurance policy covering tangible property shall (iv) provide that, in the case of each separate loss, the full amount of insurance proceeds with respect thereto shall be payable to Lender as secured party or otherwise as its interests may appear; (v) provide for at least thirty (30) days' prior written notice to Lender of the cancellation or substantial modification thereof; (vi) provide that, in respect of the interests of Lender and Borrower, as the case may be, such insurance shall not be invalidated by any action or inaction of Borrower or any other person; (vii) insure Lender's interests regardless of any breach of or violation by Borrower or any other person of any warranties, declarations, or conditions contained in such insurance; (ix) provide that Lender shall have the right (but not the obligation) to cure any default by Borrower under such insurance. Each liability policy shall (x) name Lender as an additional insured; (xi) be primary without right of contribution from any other insurance which is carried by Lender to the extent that such other insurance provides Lender with contingent or excess liability insurance, or both, with respect to its interest as such in the Property; and (xii) expressly provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and except liability for premiums (which shall be solely a liability of Borrower) shall operate in the same manner as if there were a separate policy covering each insured.

Currency. Unless otherwise indicated, all references in this Agreement to dollars or to \$ are expressed in United States currency and all references in this Agreement C\$ are expressed in Canadian currency.

7. Criminal Code. If any provision of the Commitment Letter, this Exhibit A or of any of the other Loan Documents would obligate Borrower, Guarantors or any Principal to make any payment of interest or other amount payable to the Lender

in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by such Lender of interest at a criminal or usurious rate, as such terms are construed under applicable law then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Lender of interest at a criminal or usurious rate, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to such Lender under the applicable Loan Document, and thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" under applicable law.

EXHIBIT B**Due Diligence Contingencies**

1. Three years tax returns for any Principal and Guarantor named, complete with all K-1 (or local partnership tax reporting equivalent) schedules for any real estate or other assets owned by such Principal and Guarantors. If no such tax return is available, please provide a written explanation as to the reason for the non-delivery of such tax return.
2. Personal financial statements (with detailed footnote of any liabilities) of any Principal and Guarantor named dated no earlier than December 31, 2019; audited financial statements for the Borrower and its corporate parent entity (if applicable) with detailed footnotes for any liabilities for each of the last three fiscal years plus "stub" period no earlier December 31, 2019. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements must include the individuals' full name, full-time occupation, Social insurance Number, Birth date and current address.
3. Detailed description (by phases) of the final approved Master Plan for the Project with details of category of real estate for each such phase.
4. Copy of the closing statements for the original acquisition of the Land.
5. Copy of final plans & specifications (in electronic format).
6. Background information on the Borrower, Principal and Guarantors.
7. Detailed Total Project Costs for Phase 1 (including detailed line items).
8. Copy of the final fully executed Development Agreement and any related documentation from municipality of Okotoks.
9. Copy of the fully executed Guaranteed Maximum Price Contract (GMP) on the AIA form (or local equivalent) and the profile of the GC.

10. Copy of detailed financial pro forma for Phase 1 of the Project for five (5) years.
11. It is Lender's intention to review and sign off on the above items within thirty (30) days from execution of this Commitment Letter (the "Target Sign-Off Date"). Borrower shall deliver the above items promptly to Lender, but in no event, later than ten (10) days prior to the Target Sign-Off Date. Borrower shall bear the consequences for any late submission of the above listed items to Lender, including, without limitation, the consequences set forth in the section entitled "Loan Fees" of the Commitment Letter.

EXHIBIT C**The Use of Proceeds**

Use of Proceeds	CAD	USD	
Currency Conversion Rate	1.000000	0.7601600	
Proceeds from New Debt	\$39,000,000.00	\$29,646,240.00	
Pre-Paid Interest (12 months)	\$1,950,000.00	\$1,482,312.00	5%
Net Proceeds	\$37,050,000.00	\$28,163,928.00	100.00%

PLANNED UTILISATION

Capital Expenditure

Existing 1st Mortgage	\$13,007,000.00	\$9,887,401.12	
Stakeholder Buyout (2nd)	\$3,100,000.00	\$2,356,496.00	
Settlement to Debenture Holders	\$4,320,000.00	\$3,283,891.20	
ACA (Title Release)	\$1,037,000.00	\$788,285.92	
Consultant Fees	\$780,000.00	\$592,924.80	
Other Capital Expenditures	\$100,000.00	\$76,016.00	
Total Capital Expenditure	\$22,344,000.00	\$16,985,015.04	60.31%

Working Capital

Startup Marketing Team (1 Year)	\$330,000.00	\$250,852.80	
Rentals	\$25,000.00	\$19,004.00	

Legal and Compliance	\$45,000.00	\$34,207.20	
Travel and Living	\$25,000.00	\$19,004.00	
General Expenditure	\$50,000.00	\$38,008.00	
Other Miscellaneous Expenses	\$50,000.00	\$38,008.00	
Total Working Capital	\$525,000.00	\$399,084.00	1.42%
Investment Expenditure			
Other Buyouts and Acquisitions	\$250,000.00	\$190,040.00	
Total Investment Expenditure	\$250,000.00	\$190,040.00	0.67%
Construction Expenses			
Please see detailed construction budget	\$14,560,650.00	\$11,068,423.70	39.30%
Total Utilization of Funds	\$37,679,650.00	\$28,642,562.74	101.70%

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made effective as of the 7th day of November, 2019 (the "**Effective Date**").

AMONG:

BARBICAN CAPITAL PARTNERS, LLC

(the "**Lender**")

AND:

ALBERTA FOOTHILLS PROPERTIES LTD.

(the "**Borrower**")

AND:

MLT AIKINS LLP

(the "**Escrow Agent**")

BACKGROUND

- A. The Lender and the Borrower (collectively, the "**Parties**" and each a "**Party**") have entered into a term sheet (the "**Term Sheet**") made the 22nd day of August, 2019, whereby the Parties have agreed to negotiate the terms of a loan commitment (the "**Commitment**") relating to a \$30 million CAD first mortgage development and construction loan for Phase I of a multi-phase, master planned community known as "Wind Walk" located at the intersection of Highway 7 and Southridge Drive, Okotoks, Alberta.
- B. The Borrower has agreed to deposit \$300,000 CAD to the Escrow Agent (the "**Escrow Amount**"), being a portion of the Commitment Fee set out in the Term Sheet.
- C. The Escrow Amount is to be held by the Escrow Agent in trust and is to be dealt with by the Escrow Agent in accordance with the terms and conditions provided in this Escrow Agreement.
- D. Capitalized words and expressions used in this Escrow Agreement but not otherwise defined herein will have the meanings ascribed thereto in the Term Sheet. For the purposes of this Escrow Agreement, the term "**Business Day**" means any day in which main branch of TD Canada Trust in Calgary, Alberta is ordinarily open for business and "**Business Days**" means more than one of them.

TERMS OF AGREEMENT

In consideration of the Parties' continued negotiation of the Commitment, and of their respective covenants and agreements hereinafter contained, it is hereby agreed by and among the Parties hereto as follows:

Article 1 – Escrow

1.1 Appointment of Escrow Agent. The Lender and the Borrower hereby appoint the Escrow Agent to act as escrow agent on the terms and conditions set forth in this Escrow Agreement, and the Escrow Agent accepts such appointment on such terms and conditions.

1.2 Delivery of Escrow Amount. Concurrent with the execution and delivery of this Escrow Agreement, the Borrower will deliver the Escrow Amount, which amount will represent a portion of the Commitment Fee set out in the Term Sheet, to the Escrow Agent by wire transfer to the following account:

Account Holder Name: MLT AIKINS LLP, IN TRUST
Account Holder/Address: 2600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1

Bank Name/Address: TD Canada Trust
Toronto Dominion Tower Branch
700 W Georgia St Pacific Centre
Vancouver, BC V7Y 1A2

Account Number: 0902-5416541
Transit Number: 94000
Bank Number: 004
Swift: TDOMCATTOR
ABA: 026009593

1.3 Holding of Escrow Amount. Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Amount in escrow for the period commencing on the Effective Date until the later of the dates on which the Escrow Agent is required to release the Escrow Amount, or portions thereof, in accordance with Article 3 and Section 5.9 below.

Article 2 – Delivery of the Loan Commitment

2.1 Entry into Loan Commitment. Upon receipt of the Escrow Amount from the Borrower, the Escrow Agent will provide the Lender with written notice of receipt of the Escrow Amount (the "**Receipt Notice**"). Within seven Business Days of the Lender's receipt of the Receipt Notice from the Escrow Agent, the Lender will cause its solicitor to deliver to the Borrower or its solicitor a draft form of Commitment as contemplated by the Term Sheet. The Parties will negotiate and finalize the Commitment in good faith. Upon execution of the Commitment, the Parties will deliver the executed Commitment to the Escrow Agent, to be held in escrow by the Escrow Agent with irrevocable instructions to deliver the fully-executed Commitment to both Parties only in accordance with Article 3 below.

Article 3 – Payment of Escrow Monies

3.1 Payment of the Escrow Amount. The Escrow Agent is hereby authorized to release monies from the Escrow Amount only as follows:

- (a) If the Escrow Agent receives of a copy of a fully-executed Commitment pursuant to Section 2.1 above:

- i. upon receipt of a written direction from the Lender with a copy to the Borrower, the Escrow Agent will pay \$50,000 CAD of the Escrow Amount to the Lender in such manner as requested by the Lender from time to time; and
- ii. upon receipt of written notice from the Lender with acknowledgment by the Borrower that the remaining due diligence contingencies listed in the "**Due Diligence Contingencies**" section of the Commitment have been fully satisfied by Borrower and/or waived by Lender, the Escrow Agent will release the balance of the Escrow Amount, being \$250,000 CAD, to the Lender within two Business Days. Upon the release of the remaining Escrow Amount, the Escrow Agreement will terminate and the Escrow Agent will deliver to both Parties the fully-executed Commitment; and
- iii. notwithstanding Section 3.1(a)(ii) above, if the Escrow Agent receives written notice jointly by both Parties that any of the Due Diligence Contingencies cannot be satisfied and the Parties jointly elect to terminate the Commitment, the Escrow Agent will:
 1. provide the Lender with a written demand for a summary of its expenses related to the Term Sheet, this Escrow Agreement, and the Commitment and the transactions contemplated thereby, which expenses have been approved in advance by the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned (the "Expense Notice"), which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses. The Lender's expenses appearing on any Expense Notice related to due diligence costs, legal and other advisory fees (including, without limitation, accounting, environmental, appraisal, construction review and other consultant fees), disbursements and taxes of the Lender are hereby approved by the Borrower;
 2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first \$50,000 CAD as a break fee to the Lender;
 - b. second the amount set out in the Expense Notice to the Lender; and
 - c. third, the balance to the Borrower,in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused; and
- iv. notwithstanding Section 3.1(a)(ii) and (iii) above, if the conditions necessary to satisfy the release of the entirety of Escrow Amount set forth in Section 3.1(a)(ii)

and (iii) above are not satisfied on or before June 1, 2020, unless otherwise agreed to by the parties in writing, the Escrow Agent will:

1. provide the Lender with a written demand for an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses;
2. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 - a. first the amount set out in the Expense Notice to the Lender; and
 - b. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(a)(iv), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement, and the Escrow Agent shall return the executed copy of the Commitment to the Party that executed it on demand, unused;

(b) upon the Escrow Agent's receipt of written notice by either Party, copying the other Party, in a form satisfactory to the Escrow Agent, acting reasonably, that the Parties have not entered into the Commitment within seven Business Days of the receipt of the Commitment by the Borrower pursuant to Section 2.1 above, the Escrow Agent will:

- i. provide the Lender with a written demand an Expense Notice, which the Lender will provide to the Escrow Agent within two Business Days of such demand and which will be definitive with respect to the kind and amount of such expenses; and
- ii. upon receipt of the Expense Notice by the Escrow Agent, the Escrow Agent will, within two Business Days, pay the Escrow Amount:
 1. first to the Lender, the amount set out in the Expense Notice; and
 2. second, the balance to the Borrower,

in such manner as requested by each of the payee Parties from time to time. Upon payment of the Escrow Amount in accordance with this Section 3.1(b)(ii), the Escrow Agreement will terminate and no party will have any further obligation and liability in respect of the Term Sheet or this Escrow Agreement.

Article 4 – Investment of Escrow Amount

4.1 The Escrow Amount will be held by the Escrow Agent in a non-interest-bearing account in accordance with its standard trust fund procedures. The Lender and the Borrower, as applicable, will assume any obligations imposed now or hereafter by any applicable tax law with respect to any payment of the Escrow Amount to the Lender or the Borrower under this Escrow Agreement.

Article 5 – Protection of Escrow Agent

- 5.1 Notwithstanding anything contained herein to the contrary, the Escrow Agent will have no duty to determine the performance or non-performance of any term or condition of any contract or agreement between the Parties or to ascertain the identity, authority or rights of the Parties (or their agents) executing or delivering this Escrow Agreement or any documents related thereto, and the duties and responsibilities of the Escrow Agent are limited to those specifically stated in this Escrow Agreement.
- 5.2 The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Parties to this Agreement hereby agree will govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:
- (a) except for the Escrow Agent's own acts of negligence or wilful misconduct, the Escrow Agent will not be liable for any act done or step taken or omitted to be done or taken by the Escrow Agent, or for any mistake of fact or law or error in judgment;
 - (b) the Escrow Agent may at any time consult with, and obtain advice from, legal counsel (who may be selected by the Escrow Agent, in its sole discretion) in the event of any question as to any of the provisions hereof or the Escrow Agent's duties hereunder, and will incur no liability and will be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel; and
 - (c) the Escrow Agent will have no duties except those which are expressly set forth herein, and will not be bound by any Indemnity Claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by the appropriate parties.
- 5.3 In the event that:
- (a) any action is threatened or instituted against the Escrow Agent;
 - (b) any dispute arises, or any action is threatened or instituted, concerning the entitlement of any person to the Escrow Amount; or
 - (c) at any time the Escrow Agent is uncertain as to its obligations hereunder;
- the Escrow Agent may apply to a court of competent jurisdiction in Alberta for clarification or direction with respect to its obligations hereunder. In such event, or if any other person should apply to a court of competent jurisdiction on any matter affecting the obligations of the Escrow Agent hereunder or otherwise relating to the Escrow Amount, the Escrow Agent may and is hereby authorized to release, deliver or otherwise deal with the Escrow Amount in accordance with the direction, order, judgment or decree of such court. The Escrow Agent may deliver the Escrow Amount (or outstanding balance thereof) in to court pending resolution of a dispute among the Parties.
- 5.4 The Escrow Agent is entitled to compensation based on the hourly rates of the lawyers that act for the Escrow Agent in respect of this matter, plus applicable taxes and reimbursement of all disbursements reasonably incurred by it in connection with the performance of its duties hereunder from and after the date hereof. All of such fees and disbursements will be paid by the

Borrower alone and the Lender will have no obligation or liability whatsoever for the Escrow Agent's fees or expenses. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent will be reasonably compensated by the Borrower for such additional extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, again all of which will be paid by the Borrower alone, and the Lender will have no obligation or liability therefor.

- 5.5 The Escrow Agent will incur no liability hereunder or in connection herewith for anything whatsoever other than as a result of its own negligence or willful misconduct. The Lender and the Borrower will indemnify, hold harmless and defend the Escrow Agent from and against any and all actions, causes of action, claims, demands, damages, losses, costs, liabilities and expense, of any nature or kind, including reasonable legal fees, which may be made or brought against it by any third party (which, for greater certainty, does not include any of the Parties hereto), or which it may suffer or incur in connection with any such third party claim, as a result of or in respect of or arising out of its appointment as Escrow Agent hereunder, except such as will result solely and directly from its own negligence or willful misconduct.
- 5.6 Notwithstanding anything contained herein, in the event of any disagreement between the Parties hereto resulting in adverse claims or demands with respect to the Escrow Amount, the Escrow Agent will be entitled, at its option to refuse to comply with any claims or demands on it with respect thereto as long as such disagreement will continue, and in so refusing, may elect not to make delivery of the Escrow Amount in accordance with this Escrow Agreement. In so doing, the Escrow Agent will not be or become liable in any way to the Parties hereto for its failure or refusal to comply with such claims or demands. The Escrow Agent will be entitled to refrain from acting or refusing to act until such claims or demands: (a) will have been finally determined in a court of competent jurisdiction; or (b) will have been settled by agreement and the Escrow Agent will have been notified thereof by the Lender and the Borrower in writing.
- 5.7 The Parties acknowledge that the Escrow Agent is holding the Escrow Amount at their request and for their convenience only, and the Escrow Agent will not be deemed the agent of any of the Parties in respect of the escrow.
- 5.8 The Parties acknowledge that the Escrow Agent has acted and is acting as legal counsel to the Lender and further that the Escrow Agent has acted as counsel to the Lender in connection with the Term Sheet and Commitment and transactions contemplated therein and in negotiating and establishing this Escrow Agreement. Each of the Parties consents to the Escrow Agent continuing to act for the Lender in respect of any matter arising in relation to this Escrow Agreement, including any dispute regarding the disposition of the Closing Documents. The Escrow Agent will not be impeachable or accountable because of any conflicting or potentially conflicting duty to, or any advice provided by, the Escrow Agent to the Lender.
- 5.9 This Escrow Agreement will terminate, and the Escrow Agent will have no further responsibility under the terms of this Escrow Agreement and will be released and discharged from all claims and liabilities relating to the Escrow Amount and any interest accrued thereon, and the Escrow

Agent will not be subject to any claims made by or on behalf of any Party hereto, upon the later of:

- (a) the date that the Escrow Agent releases the balance of the Escrow Amount being held by it pursuant to Article 3 of this Escrow Agreement; or
- (b) delivery of the Escrow Amount into court.

Article 6 – General Provisions

- 6.1 The Escrow Agent may, at any time, resign from its obligations under this Escrow Agreement and be discharged from all further duties and liabilities hereunder by giving each of the Parties at least 30 days' notice in writing of its intention to resign. The Parties will immediately upon receipt of such notice, jointly appoint a new person to act in the place of the Escrow Agent and if they fail to agree on such appointment, any of the Parties or the Escrow Agent may apply to a justice of the court on such notice as such justice may direct for the appointment of a new escrow agent. Upon any new appointment, the new escrow agent will be vested with the same powers, rights, duties and obligations as if it had been originally named the escrow agent.
- 6.2 Any notice or other communication required or permitted to be given by this Escrow Agreement will be in writing and will be effectively given and made if (i) delivered personally; or (ii) sent by prepaid courier service; or (iii) sent by registered mail; or (iv) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Lender: **Barbican Capital Partners, LLC**
405 Lexington Avenue, Suite 2600
New York, New York 10174
Attention: Benny Leung
Email: bleung@barbicap.com

With a copy to: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

If to the Borrower: **Alberta Foothills Properties Ltd.**
3505 – 18th Street SW
Calgary, AB T2T 4T9
Attention: Drew Atkins
Email: drew.bland@me.com

With a copy to: **D. Allison Professional Law Corporation**
2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6
Attention: Douglas V. Allison
Email: Doug@allison-associates.ca

If to the Escrow Agent: **MLT Aikins LLP**
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Saravan J. Veylan
Email: sveylan@mltaikins.com

or at such other address as the party to whom such notice is to be given will have last notified the party giving the same in the manner provided in this Section 6.2. Any notice personally delivered to the party to whom it is addressed as provided above will be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice will be deemed to have been given and received on the next Business Day. Any notice transmitted by facsimile, e-mail or other form of electronic communication will be deemed given and received on the first Business Day after its transmission, provided that confirmation of receipt has been obtained by the party delivering such notice. Any notice delivered by means of prepaid courier will be deemed to have been delivered on the second Business Day following the date on which the same has been sent via courier. Any notice delivered by means of registered mail will be deemed to have been delivered on the fifth Business Day following the date of mailing.

- 6.3 Neither the rights nor the obligations of any Party arising from this Escrow Agreement will be assignable without the prior written consent of the other Parties.
- 6.4 This Escrow Agreement may only be modified or amended by an agreement in writing signed by all of the Parties hereto.
- 6.5 Subject as aforesaid, this Escrow Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.
- 6.6 This Escrow Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 6.7 Where the context requires, words importing the singular will include the plural and vice versa, and words importing gender will include all genders.
- 6.8 This Escrow Agreement constitutes the only contract between the Parties pertaining to the subject matter thereof. No waiver of any of the provisions of this Escrow Agreement will be deemed or will constitute a waiver of any other provisions (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.9 Time will be of the essence of this Escrow Agreement.
- 6.10 The Parties hereto acknowledge that this agreement has been prepared by the law firm MLT Aikins LLP, as solicitors for the Lender, and that each of the other Parties hereto has been advised to obtain independent legal advice and has either done so or waived its right to do so.
- 6.11 This Escrow Agreement may be signed and delivered in counterparts, each of which may be executed by DocuSign, and each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Escrow Agreement may be transmitted by facsimile or email attachment or DocuSign and the reproduction of signatures in such manner will be binding as if originals. Each Party undertakes to provide each and every other Party hereto with a copy of this Escrow Agreement bearing original signatures forthwith upon request.

[Signature page follows.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.

BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: ~~President~~
Manager

ALBERTA FOOTHILLS PROPERTIES LTD.

Per: _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

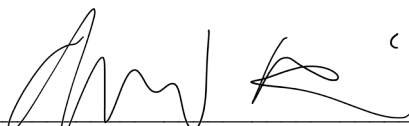
Per: _____
Name: Saravan J. Veylan
Title: Partner

IN WITNESS WHEREOF the Parties hereto have executed this Agreement effective as of the day and year first above written.


BARBICAN CAPITAL PARTNERS, LLC

Per: _____
Name: Benny Leung
Title: President

ALBERTA FOOTHILLS PROPERTIES LTD.

Per:  _____
Name: Drew Atkins
Title: President

MLT AIKINS LLP

Per:  _____
Name: Saravan J. Veylan
Title: Partner

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “J” – Gowlings Email

From: [Foley, Warren](#)
To: [Carla Murray](#)
Subject: Alberta Foothills
Date: Thursday, March 3, 2022 10:05:43 AM
Attachments: [DVA - Trust Account Wire \(00012263xF72A5\).pdf](#)
[Xerox Scan_01142022091237.pdf](#)
[Saperstein.pdf](#)

Carla,

Thanks for the call last week.

As discussed, I act for Drew Atkins and Ron Saperstein and I wanted to give you a general overview of our position.

As you know, Alberta Foothills Properties Ltd. (“AFPL”) was incorporated in 2015 to develop the Wind Walk community in Okotoks, Alberta. The 90 percent shareholder of AFPL is Holmes Communities Ltd., of which Drew Atkins and Mike Holmes are the majority shareholders. In January 2018, Mr. Holmes refused to sign financing for AFPL and walked away from the project to return to the production of his TV show with his children.

This made it very difficult to secure any further financing for the project and ATB placed the project in forbearance, with the consent of Mr. Atkins and Mr. Holmes, to allow Mr. Atkins time to find alternate financing. After a number of failed attempts, Mr. Atkins approached Mr. Leung of Barbican and the parties began to discussing financing options.

In December of 2019, Mr. Saperstein agreed to help Mr. Atkins to secure the funding necessary to buy out Mike Holmes and AFPL from Forbearance. More specifically, Mr. Saperstein provided the funds that were required pursuant to the Escrow Agreement with Barbican (i.e., the funds that are currently located in MLT’s trust account). As shown in the documents, the funds were provided by Mr. Saperstein to his counsel who then wired the funds to MLT’s Vancouver office from his trust account (Records are attached).

The potential financing with Barbican was cancelled shortly after Mr. Leung advised that he required additional funds to complete the necessary due diligence (even though at this point Barbican’s lawyers had reviewed thousands of documents). In response, Mr. Atkins requested that Mr. Leung demonstrate “proof of funding” before agreeing to release any further funds from those being in escrow. During a conference call at the end of February 2020 between Mr. Atkins and Mr. Leung (of which Mr. Saperstein was also a party), Mr. Leung indicated that he would provide proof of funding if Mr. Atkins provided him with an additional 50 thousand dollars (USD). After discussing said “request”, Mr. Atkins and Mr. Saperstein were both of the view that Mr. Leung may have been committing "mortgage fee fraud". Mr. Atkins requested that the deal be cancelled and the funds in trust be released. As we know, MLT did not release the funds and the parties became embroiled in a dispute over legal fees, among other things.

Our position is that is that the funds held in trust are not part of the estate of AFPL, are not covered by the terms of Receivership order and should be returned to Mr. Saperstein. The money was clearly funded by Mr. Saperstein and these funds were never considered by any of the parties above, whether ATB, Mr. Holmes, Mr. Atkins, or Mr. Saperstein, to be funds for/or on behalf of AFPL. There is no loan agreement between Mr. Saperstein and AFPL and the

funds were never been entered into AFPL's corporate books.

In addition, all or a substantial portion of the funds should have been released by MLT when the dispute first arose. Meaning that the funds should have been returned to Mr. Saperstein long before AFPL was placed into receivership by ATB.

I would be happy to discuss the matter with you in more detail once you have spoken with your client.

Warren Foley

Partner

T +1 403 298 1878

warren.foley@gowlingwlg.com



The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

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References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.

Second Report of FTI Consulting Canada Inc.,
In its capacity as Receiver of Alberta Foothills Properties Ltd.

Appendix “K” – ATB Letter

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

350 7th Avenue SW, Suite 3400
Calgary, Alberta T2P 3N9
Canada

T +1 403 261 5350
+1 877 336 5350
F +1 403 261 5351
fasken.com

April 5, 2022
File No.: 279839.45/19994

Mihai Tomos
Direct +1 403 261 7386
mtomos@fasken.com

Via Email: carla.murray@codehunterllp.com
deryck.helkaa@fticonsulting.com

Code Hunter LLP, Barristers
850, 440 – 2 Avenue SW
Calgary AB T2P 5E9

FTI Consulting Canada Inc.
1610 – 520 5th Ave SW
Calgary, AB T2P 3R7

Attention: Carla A. Murray

Attention: Deryck Helkaa

Dear Sir and Madam:

Re: The Receivership of Alberta Foothills Properties Ltd. (“AFPL”) and funds held in escrow by MLT Aikins LLP

As you are aware, we are counsel to ATB Financial (“ATB”) in the above noted matter.

We are writing with respect to the funds held in escrow by MLT Aikins LLP (“MLT”) pursuant to an Escrow Agreement dated November 7, 2019 (the “**Escrow Agreement**”), between MLT, as escrow agent, Barbican Capital Partners LLC (“**Barbican**”), as lender, and AFPL, as borrower.

We understand that the Escrow Agreement was entered into in respect of certain financing contemplated by Barbican in favour of AFPL, which financing was ultimately not successful. Specifically, we understand that, pursuant to the Escrow Agreement, AFPL paid MLT the amount of \$300,000 (the “**Escrow Funds**”) and that on or around February 18, 2020, MLT released from the Escrow Funds \$50,000 to Barbican, leaving MLT to hold \$250,000 of the Escrow Funds.

We also understand that MLT and Barbican have each advanced a claim to the Escrow Funds pursuant to the Escrow Agreement, on the basis that the Escrow Agreement governs the use and release of the Escrow Funds.

ATB’s position is that any claims by Barbican or MLT to the Escrow Funds constitute unsecured claims in the receivership of AFPL. In particular, neither MLT or Barbican have been granted a security interest in the Escrow Funds.

On the other hand, as you are aware, AFPL executed in favour of ATB a General Security Agreement dated August 17, 2015 (the “**GSA**”), pursuant to which AFPL granted ATB a security interest charging all present and after acquired personal property of AFPL.



FASKEN

ATB has registered this interest at the Alberta Personal Property Registry (the “**AB PPR**”) pursuant to:

- a) AB PPR Registration #15082605923, which was made on August 26, 2015 and which lapsed on August 26, 2020; and
- b) AB PPR Registration #20092317766, which was made on September 23, 2020, is still active, and is a re-registration of AB PPR Registration # 15082605923.

Although Ackroyd LLP made a writ of enforcement registration against AFPL on June 6, 2019, pursuant to section 35(8) of the *Personal Property Security Act* (Alberta) (the “**PPSA**”), Ackroyd LLP’s registration ranks behind ATB’s registrations given that ATB re-registered its lapsed registration within 30 days. Specifically, section 35(8) of the PPSA provides the following with respect to registrations that lapse:

35(8) If the secured party re registers a security interest within 30 days after the lapse or discharge of its registration, the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest or registered writ of enforcement that, immediately prior to the lapse or discharge, had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re registration.

As such, ATB’s AB PPR registrations in respect of the GSA granted to it by AFPL rank first in priority *vis a vis* any other registrations.

Based on all of the foregoing, it is ATB’s view that it has a first charge security interest over the remaining Escrow Funds.

Copies of the following are enclosed herein:

- a) GSA;
- b) AB PPR search result respecting AFPL dated June 9, 2016, which shows that AB PPR Registration # 15082605923 was made on August 26, 2015;
- c) AB PPR search result respecting AB PPR Registration #15082605923, which shows that this registration expired on August 26, 2020; and
- d) AB PPR search result respecting AFPL dated April 5, 2022, which shows that AB PPR Registration #20092317766 was made on September 23, 2020 and is still active.

Based on the foregoing, on behalf of ATB, we ask that FTI Consulting Canada Inc., in its capacity as the Court appointed Receiver of AFPL, take whatever steps it deems appropriate to realize on the remaining Escrow Funds and distribute such funds to ATB, subject to any priorities set out in the Receivership Order granted in this matter on May 17, 2021.



FASKEN

Should you wish to discuss any of the foregoing, please contact the undersigned.

Yours truly,

FASKEN MARTINEAU DUMOULIN LLP



Mihai Tomos

MT/

cc

Catrina Webster (MLT Aikins LLP)

Matthew Huys, Sean Sutherland (Osler, Hoskin & Harcourt LLP)

