

Clerk's stamp:

COURT FILE NUMBER	25-1859192
ESTATE NO.	25-1859192
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
PROCEEDING	<b>IN THE MATTER OF THE PROPOSAL OF 3 EAU CLAIRE DEVELOPMENTS INC.</b>
DOCUMENT	<b>AFFIDAVIT OF BRETT SANDLER</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	John Sandrelli / Afshan Naveed Dentons Canada LLP Bankers Court 15 <sup>th</sup> Floor, 850 - 2 <sup>nd</sup> Street S.W. Calgary, Alberta T2P 0R8 Ph. (403) 268-7015 Fx. (403) 268-3100  File No.: 504781-4

**AFFIDAVIT OF BRETT SANDLER**

**Sworn on July 28, 2014**

I, Brett Sandler, DO SWEAR/AFFIRM AND SAY THAT:

1. I am the Chief Financial Officer at Bosa Properties Inc. ("**Bosa Properties**"), which is an affiliate of Bosa Properties (Eau Claire) Inc. ("**Bosa**"). Bosa is a secured creditor of 3 Eau Claire Developments Inc. ("**3 Eau Claire**"), and as such I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, in which case I verily believe the same to be true.

**BACKGROUND ON BOSA**

2. Bosa Properties is a well-capitalized multifamily and commercial developer with its head office in Vancouver, British Columbia. Affiliates of Bosa within the Bosa Group of Companies, including

Axiom Builders Inc. ("**Axiom Builders**"), its construction company, have a tremendous amount of experience and expertise. They have successfully completed, or have ongoing, projects over the last ten years with construction budgets in excess of \$2 Billion, including:

- (a) Projects in Calgary with budgets in excess of \$160 Million:
    - (i) The Drake, a concrete residential high-rise on 7th Street, S.W.;
    - (ii) The Guardian Towers, residential high-rises on 11th Street, S.E.; and
  - (b) Projects for their own account and on behalf of other reputable real estate developers including Concert Properties, Intracorp, Wesgroup and Grosvenor.
3. Axiom Builders is a highly reputed and well-experienced construction company, affiliated with Bosa Properties. Notwithstanding the fact that it is owned by the Bosa Group, a competitor in the residential marketplace, arms' length third party residential owners and developers engage Axiom Builders to construct their projects because Axiom Builders is a trusted leader in the construction industry.

#### **RELATIONSHIP WITH 3 EAU CLAIRE**

4. In or about March 2013, Bosa was introduced to 3 Eau Claire as 3 Eau Claire was seeking a partner to assist with the development of the Project (as defined in Affidavit of Andrew Seong-Jin Lee, sworn May 5, 2014 (the "**First Lee Affidavit**")) (the "**Introduction Phase**").
5. During the Introduction Phase, 3 Eau Claire, though Andrew Seong-Jin Lee ("**Lee**") and James Park ("**Park**") made representations to Bosa that 3 Eau Claire owned the Land (as defined in the First Lee Affidavit) free and clear without any debt encumbrances. Accordingly, the proposed arrangement between the parties would see Bosa bring some equity and its development expertise to the Project and 3 Eau Claire would leverage Bosa's involvement to obtain third party financing for the Project.
6. In or about the end of April 2013, 3 Eau Claire entered into a term sheet with Bosa Properties, or an affiliate, setting out terms by which Bosa Properties, through a subsidiary or affiliate, would prosecute and control the overall development, delivery and sales of the Project (the "**Term Sheet**"). Attached hereto and marked as **Exhibit "A"** is a copy of the Term Sheet.
7. From about April 2013 to August 2013, Bosa Properties and/or Bosa and 3 Eau Claire continued negotiations regarding definitive documents, specifically a co-ownership agreement, a development management agreement by which Bosa or an affiliate would develop the Project and a purchase agreement by which Bosa would purchase a share of the beneficial interest in the Project (the "**Definitive Documents**").
8. Although 3 Eau Claire indicated that it wanted to retain a significant ownership interest in the Project, it lacked experience in any development of this nature and consequently, all negotiations in respect of the Term Sheet and the Definitive Documents were predicated on Bosa having day-to-day control and management of the Project with 3 Eau Claire retaining certain ownership and major decision approval rights.

9. On or about September 4, 2013, 3 Eau Claire and Bosa, entered into a co-ownership agreement, which contained certain conditions precedent, including the execution of a purchase agreement and development management agreement, execution by the parties and the proposed commercial tenant (the "**Commercial Tenant**") of a binding lease agreement in respect of office space in the Project (the "**Co-Ownership Agreement**").
10. The Co-Ownership Agreement was extended by consent, but eventually lapsed.
11. The parties never executed a development management agreement or a purchase agreement.
12. In or about August, 2013, Bosa learned that, in fact, the Land was encumbered by debts owed to The Hyundai Wise Calgary Private Investment Trusts ("**Hyundai Wise**") in the range of 25 billion Korean Won ("**KRW**"). I understand that Hyundai Wise was comprised of a syndicate of Korean Banks, most of which became insolvent and accordingly management of the debt portfolio was taken over by a Korean Government entity, Korea Deposit Insurance Corporation ("**KDIC**"). I also understand that, the debt owed to KDIC was secured by way of a mortgage registered against the Land, which mortgage is now reflected on title to the Land as being in favour of Computershare Trust Company of Canada ("**Computershare**").
13. Prior to Bosa learning about the debt owing to KDIC, 3 Eau Claire had represented to Bosa that no amounts were owing under the mortgage in favour of Computershare.
14. Bosa also confirmed that the balance owing under the mortgage against title to the Land held by Korea Exchange Bank ("**KEB**") was the approximate sum of \$8,500,000 (Canadian Dollars) plus interest.
15. During the period from April 2013 through early 2014, Bosa's involvement had a significant positive impact on the viability and the anticipated profitability of the Project, including:
  - (a) Bosa's design and construction team redesigned the building plans resulting in additional rentable and saleable square footage in the building and reducing construction costs by a substantial margin;
  - (b) Bosa negotiated substantial reductions in cost for the Project's immediate construction needs, such as provision of steel for the Project site;
  - (c) Bosa's ability to obtain financing, and ability to provide guarantees and a parent corporation covenant enabled negotiations on the lease with the Commercial Tenant and other contracts to proceed at a lower cost to the Project than had counterparties negotiated with 3 Eau Claire alone. Bosa's financial strength and reputation resulted in 3 Eau Claire being able to:
    - (i) secure competitive market financing for construction of the entire Project from two competing lenders; and
    - (ii) substantially reduce the costs obligations to the Commercial Tenant under the lease

enabling the project to proceed at a lower cost, or at all, than if 3 Eau Claire had attempted to proceed with the Project alone.

**COMMERCIAL TENANT**

16. Prior to September 2013, Bosa was involved in discussions with the Commercial Tenant only through 3 Eau Claire and their counsel and any communication with the Commercial Tenant regarding Bosa's concerns about the lease with the Commercial Tenant and the suite of ancillary documents (including agreements related to the custom construction of the office space, an option to purchase and right of first refusal, covenants and guarantees from Bosa in relation to project completion) were filtered through 3 Eau Claire and its counsel.
17. With Bosa's involvement a significant majority of the hurdles or concerns of the Commercial Tenant were eliminated and the parties came close to closing the lease negotiation and finalizing documents on the lease with the Commercial Tenant.
18. In January 2014, Bosa met with the Commercial Tenant alone as part of its due diligence in respect of the Project. As set forth in paragraph 24 of the First Lee Affidavit, 3 Eau Claire was informed of such meeting and did not object to the meeting (the "January Meeting").
19. At all times, except for the January Meeting, all dialogue between Bosa and the Commercial Tenant included, either directly or indirectly, 3 Eau Claire or its counsel. Following the January meeting, Bosa disclosed to 3 Eau Claire and Bosa's counsel disclosed to 3 Eau Claire's counsel, the nature and substance of the discussions with the Commercial Tenant which took place at the January Meeting.
20. Negotiations regarding the lease and ancillary documents proceeded among the Commercial Tenant, 3 Eau Claire and Bosa until February 2014.
21. Representatives from Bosa met with representatives from the Commercial Tenant and 3 Eau Claire several times in Calgary, together with their respective counsel, to further the commercial aspects of the Project.
22. I am advised by Colin Bosa, Chief Executive Officer of Bosa Properties ("Colin"), and verily believe the same to be true, that in February 2014, the Commercial Tenant advised Colin that it was concerned with the large amount of outstanding debt with KDIC and KEB (the "Korean Debt"). The Commercial Tenant felt that 3 Eau Claire's ability to resolve the Korean Debt situation was questionable and as such did not want to go forward with the office lease agreement.
23. In February 2014, following the withdrawal of the Commercial Tenant and the failure of 3 Eau Claire to arrange refinancing terms with KDIC, Bosa decided to no longer continue its relationship with 3 Eau Claire and informed 3 Eau Claire of same in writing. Attached hereto and marked as Exhibit "B" is a copy of the email from counsel for Bosa to counsel for 3 Eau Claire advising of same.

### KOREA TRIPS

24. After learning about debts owed to KDIC and KEB, Bosa needed to learn directly from the lender about their willingness to accommodate the Project and how they would be able to discharge or subordinate their positions to accommodate the construction financing necessary to successfully complete the Project.
25. Bosa tried on multiple occasions to obtain from 3 Eau Claire details regarding the amount and status of the existing debt on the Project, but did not receive satisfactory responses from 3 Eau Claire. Accordingly, I personally travelled to Korea on three separate occasions on: October 1, 2013; January 27, 2014 and March 5, 2014 (collectively the "Korea Trips") in order to meet with Mr. Gye Hwang Cho and Ms. Hyo Jung Yang, representatives of KDIC.
26. The primary purpose of the Korea Trips was to come to an arrangement whereby KDIC would refinance and postpone their debt and security interest against the Land to construction financing necessary to complete the Project as contemplated in the Co-Ownership Agreement.
27. The discussions with KDIC during the Korea Trips were ultimately fruitless as KDIC informed me it was not interested in refinancing the Project or subordinating its debt unless imposed as part of a Court-approved process. KDIC made it clear to Bosa that it wanted to be paid out and thereafter have nothing further to do with 3 Eau Claire.
28. I have had direct discussions with representatives of KDIC since the September 30, 2013 letter (the "Wise Letter") referred to as Exhibit "A" of the Third Affidavit of Andrew Seong-Jin Lee sworn July 15, 2014 (the "Third Lee Affidavit"). The Wise Letter was issued by Wise Asset Management Co., Ltd. and not by KDIC. Representatives of KDIC informed me that KDIC always maintained that any arrangements purportedly asserted by the author of the Wise Letter were subject to approval by KDIC and that KDIC was not willing to agree to the terms of the Wise Letter.
29. Bosa engaged legal counsel both in Canada and in South Korea to attempt to secure concessions from KDIC that would permit construction financing to rank ahead of KDIC to permit the Project to proceed. After many months of such correspondence and personal meetings, and notwithstanding the terms of the Wise Letter, I am confident that there is no likelihood that KDIC will agree to any restructuring of the KDIC debt that will permit construction financing of the Project to proceed unless it is part of a Court-approved proposal led by a reputable and financially strong developer proponent such as Bosa.
30. My direct personal knowledge of discussions with representatives from KDIC has yielded contrary information to that of the opinion of Hyukjin Jeong as contained in Exhibit "B" of the Third Lee Affidavit as noted in the immediately preceding paragraph of this, my Affidavit.

### BOSA'S CREDITOR POSITION

31. On September 12, 2013, 3 Eau Claire executed, in favour of Bosa, a Grid Promissory Note (the "First Grid Note") secured by a Collateral Mortgage in the face principal amount of \$2,000,000, with interest accruing at 10% per annum from the date advanced, to pay expenses related to

the Project. Attached hereto and marked as **Exhibits "C" and "D"**, respectively are copies of the Frist Grid Note and Collateral Mortgage.

32. On December 2, 2013, 3 Eau Claire executed, in favour of Bosa, a Second Grid Promissory Note (the "**Second Grid Note**"), with interest accruing at a rate of 10% per annum from the date of advances. The Collateral Mortgage was concurrently amended to secure additional sums advanced under the Second Grid Note, to a maximum principal amount of \$5,000,000. Attached hereto and marked as **Exhibits "E" and "F"**, respectively are copies of the Second Grid Note and Mortgage Amending Agreement.
33. The Collateral Mortgage and Mortgage Amending Agreement were registered against title to the Land as Instrument Numbers 131 239 113 and 131 321 066, respectively.
34. On April 2, 2014, through its counsel, Bosa issued a demand for repayment on 3 Eau Claire pursuant to the Frist Grid Note and the Second Grid Note together with a Notice of Intention to Enforce Security (the "**Demand**"). Attached hereto and marked as **Exhibit "G"** is a copy of the Demand.

#### **VIABILITY OF EXISTING PROJECT**

35. Based on the withdrawal of the Commercial Tenant and economic realities it is unlikely that the Project could be constructed as initially represented to purchasers who executed presale contracts. Given the likely material changes to occur to any project on the Land and due to the delay in commencement of the Project, 3 Eau Claire is unlikely to be in a position to provide completed condominium units in the time required or otherwise in accordance with the presale contracts. As such, the presale contracts are likely unenforceable against all such purchasers.

#### **BOSA'S OPPOSITION TO THE STAY EXTENSION**

36. Bosa has serious concerns with respect to the ability of 3 Eau Claire to finalize the LOI entered into with the potential Joint Venture Partner, which 3 Eau Claire inadvertently disclosed to be an entity known as "TriWin", for the following reasons:
  - (a) 3 Eau Claire misrepresented the debt position with respect to the Land in the Introduction Phase;
  - (b) The Wise Letter, being Exhibit "A" to the Third Lee Affidavit, is the same document from September 30, 2013 which was presented to Bosa when 3 Eau Claire was attempting to refinance its debt with KDIC in 2013, in order to give Bosa comfort that it should continue with the Project. KDIC made it clear during the Korea Trips, and on multiple occasions since the Wise Letter, that it was not willing to refinance 3 Eau Claire's debts or postpone its interest in the Land except in conjunction with a Court process as part of a redevelopment with a reputable and financially strong developer. Bosa has no reason to believe that KDIC has changed its position and as recently as mid-July, 2014, conversations between myself, through local Korean counsel, and representatives of KDIC support this statement.

- (c) Without retiring the KEB mortgage debt and restricting the KDIC debt in a manner that receives the endorsement of KDIC, such as through a Court-approved proposal by a financially strong and reputable developer, it is unlikely that the Project could obtain market-based construction financing. Failure to do so would significantly impair the economic viability of any project on the Land.
- (d) 3 Eau Claire lacks any skill or expertise in developing a real estate project. It therefore requires an experienced partner to take control of the property to see it developed in a profitable manner.
- (e) According to various Google searches done by myself on "TriWin" or "Tri-Win International", little information on TriWin is available and the search results do not provide any information which provides Bosa comfort that TriWin is a credible, well capitalized developer.
- (f) With 3 Eau Claire's lack of skill and expertise and the lack of any information to lead me to believe TriWin is a credible and well-capitalized developer, I am very doubtful that 3 Eau Claire and TriWin are capable of obtaining construction financing in the order of nearly \$200,000,000 or that they are capable of successfully prosecuting any development on the Land.
- (g) In the Third Report of the Trustee, at paragraph 15, the Trustee states that:

"Based on the Trustee's discussion with Avison, the JV Partner [which Bosa believes to be TriWin] appears to be negotiating in good faith and appears to have sufficient financial resources to complete the transaction."

This statement provides little comfort to Bosa as to the financial position of TriWin as it is not based on independent investigation by the Trustee but is based on representations made by Avison Young Real Estate Alberta Inc. or 3 Eau Claire to the Trustee.
- (h) Construction costs in Calgary are rising. Delay in prosecuting the project will prove detrimental for all creditors.

#### **BOSA's PROPOSAL**

- 37. As the fifth place secured creditor, Bosa will be significantly prejudiced if 3 Eau Claire is unable conclude its LOI.
- 38. Bosa and its affiliates comprise a group of companies which is a well-capitalized developer and has participated in other successful work-out situations:

In 2009 an affiliate of Bosa Properties was instrumental in supporting and ultimately completing the Jameson House Project, a 36 storey, mixed-use high-rise development project in downtown Vancouver with a development value of \$180 million through a ground-breaking restructuring under the *Companies' Creditors Arrangement Act*. When the Bosa Properties affiliate came on the scene, the project had no construction financing and over \$50MM in creditor claims. The Bosa Group brought both creativity

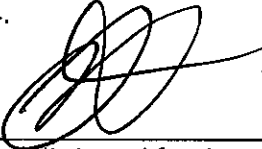
and experience and the Plan of Arrangement was ultimately passed repaying the majority of secured and unsecured creditors on the project. Creditor realization of approximately 97% was achieved.

- 39. On July 11, 2014, Bosa, through counsel, had a meeting with the Trustee where Bosa put forward a proposal which would see Bosa take control of the Project and substantially repay all of the creditors. The proposal provided at the meeting was in draft format. Attached hereto and marked as Exhibit "H" is a copy of the detailed Bosa Proposal.

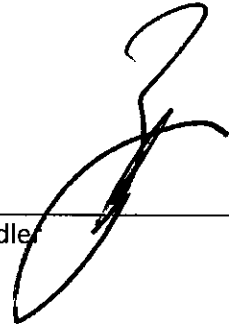
**APPOINTMENT OF RECIEVER**

- 40. I make this Affidavit in opposition to the Application of Eau Claire seeking an extension of its time to file a proposal to creditors and in support of an application for PricewaterhouseCoopers Inc. to be appointed as Receiver and Manager over 3 Eau Claire.

SWORN BEFORE ME )  
 at Vancouver, British Columbia, this 28<sup>th</sup> day of )  
 July, 2014. )



\_\_\_\_\_  
 A Notary Public in and for the Province of  
 British Columbia



\_\_\_\_\_  
 Brett Sandler

*Appointment not limited in duration*  
 \_\_\_\_\_  
 PRINT NAME AND EXPIRY/LAWYER

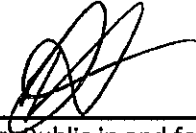
**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
 20th Floor, 250 Howe Street  
 Vancouver, B.C. V6C 3R8  
 Telephone (604) 687-4460



THIS IS EXHIBIT "A"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



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A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

SIGNED/  
FINAL.

### 3 EAU CLAIRE

#### CONFIDENTIAL TERM SHEET

This term sheet sets forth the principle business terms on which Bosa Properties Inc. ("Bosa") and Three Eau Claire Developments Inc. (the "Owner") have agreed to negotiate agreements relating to a 50/50 joint venture between them or their affiliates in respect of the development of a mixed-use office and residential building to be constructed by them in Calgary, Alberta. Bosa or its affiliates, and the Owner, are referred to herein as a "Party" and collectively as the "Parties". This term sheet is in no way intended to reflect final contractual language, create binding obligations (except as specifically provided herein) or to address every provision to be included in the final definitive agreements.

1. **Bosa** Bosa Properties Inc. or an affiliate thereof
2. **Owner** Three Eau Claire Developments Inc.
3. **Property** 633 3<sup>rd</sup> Avenue S.W., Calgary Alberta, legally described as: Plan 1 - 10, Block A1, Lot 14.
4. **Project** A 45 storey, approximately 648,572 square foot mixed-use building to be constructed on the Property consisting of a retail and office component (the "Commercial Component") of approximately 268,198 square feet (to be subdivided out from the Property as a separate strata/air space parcel) and a residential component (the "Residential Component") of approximately 435 residential condominium units comprising approximately 380,374 square feet, and an underground parkade (the "Parkade") containing approximately 507 parking stalls of which approximately 73 will be for the use of and contained within the Commercial Component.

The Owner has obtained all zoning approvals required for the Project.

If determined by the Parties, the Project may be developed in stages whereby the Commercial Component is completed first and the Residential Component completed in the future.

5. **Acquisition of 40% Interest in the Property** The Parties will enter into a purchase and sale agreement (the "Co-Owners Interest PSA") pursuant to which Bosa will acquire an undivided 40% interest in the Property from the Owner (subject to the Permitted Encumbrances as hereinafter defined) and all related agreements (including the offer to lease with Shaw CableSystems Limited (the "Shaw Offer to Lease") and existing condominium pre-sale agreements), plans, approvals, permits, rights and benefits, on the basis that Bosa shall be entitled to receive 50% (fifty percent) of all profits from the project, in consideration of the parties entering into the Co-Owners Agreement as hereinafter defined. It shall be a mutual condition of the Co-Owners Interest PSA that Bosa shall have obtained a written commitment to finance construction of the Project, or the Commercial Component and the whole of the Parkade if the Parties agree to proceed with the Project in stages, satisfactory to the parties, acting reasonably. It shall be a condition for Bosa's benefit under the Co-Owner's Interest PSA that an agreement shall have been reached with Shaw CableSystems Limited to convert

their option to purchase the Commercial Component contained in the Shaw Offer to Lease into an option to purchase the Owner's undivided 50% interest in the Commercial Component and own the Commercial Component as a co-owner with Bosa.

6. Co-Owners Agreement

On completion of Bosa's acquisition of an undivided 50% interest in the Property, the Parties will enter into a Co-Owners Agreement which will provide, *inter alia*, that:

- the Parties will own the Property as tenants in common, each as to their respective undivided interests, and will jointly develop the Project;
- the Owner will receive a credit for a co-owner's contribution equal to the value of the Property, which the Parties agree is \$32,500,000.00 plus soft costs substantiated by the Owner to Bosa's satisfaction;
- Bosa will contribute any additional capital required to complete the Project, or each stage of the Project, as the case may be, in excess of the amount to be financed by third party mortgage financing, and will receive credit for co-owner's contributions equal to the amount contributed;
- Bosa will be the development manager for the Co-Owners in consideration of a fee equal to 2.5% of hard construction costs and the Owner shall also be entitled to a fee equal to 2.5% of hard construction costs provided always that if a reduction of such fees is required in order to obtain financing for construction of the Project, Bosa and the Owner will reduce their respective fees equally under this provisions by the amount required;
- Bosa, in its capacity as development manager, will enter into an employment or consulting contract with Norm Starnes or Starnes Corporation under which they will provide project management services in respect of the Project;
- Bosa's affiliate, Axiom Builders Inc. ("Axiom"), will be the general contractor for the Project under a fixed price construction contract between the Parties and Axiom;
- ~~certain specified major decisions will require approval by both Parties except that all major decisions relating to construction and development matters shall be solely within the discretion of Bosa (unless one Party is in default under the Co-Owners Agreement in which case the Party not in default will have the right to approve such major decisions unilaterally);~~
- both Parties will provide any guarantees required by the construction lender for the Project; and
- net available cash, including from the disposition of the Commercial Component and the Residential Component, after repayment of the construction financing and other liabilities (including development

Ⓢ day to day

management fees) and provision of adequate reserves, will be paid first to repay the Parties' co-owners' contributions on a pro-rata basis and thereafter on a 50-50 basis.

7. **Purchase of Commercial Component by Bosa** On completion of Bosa's acquisition of a 40% interest in the Property, Bosa shall have the option to cause an affiliate to enter into a purchase and sale agreement (the "Commercial Component PSA") with the Parties in which such affiliate agrees to purchase the Commercial Component for the Commercial Component Purchase Price on completion of construction thereof.
8. **Commercial Component Purchase Price** \$145,000,000
9. **Bosa's Due Diligence** Within three business days after the execution of this Term Sheet by the Parties, the Owner will provide or make available to Bosa for inspection and copying all studies, tests, audits, surveys, investigations, reports (including environmental reports), plans, permits, agreements (including agreements with consultants, trades and contractors, marketing and leasing services/brokerage agreements, agreements with the City of Calgary, condominium pre-sale agreements for the Residential Component and the Shaw Offer to Lease), title documents, budgets, pro formas, financial statements for the Project showing the current state of accounts and costs incurred to date in respect thereof, and other information concerning the Property which are in the possession or control of the Owner and which could reasonably be expected to be relevant to Bosa's evaluation of the transactions contemplated herein.

In addition, Bosa and its consultants and representatives may enter at their own risk onto the Property and carry out such inspections, tests, studies, appraisals, surveys and investigations thereof as Bosa may reasonably require.

Bosa will have 30 days after receipt of all of the foregoing material to evaluate the feasibility of its participation in the Project as contemplated herein and to advise the Owner whether it intends to proceed (which, for greater certainty, will be on a non-binding basis, pending settlement and execution of the Definitive Agreements. If Bosa does not advise the Owner within such 30 day period that it wishes to participate in the Project, either Party may terminate further dealings between them with respect to the Property by giving written notice to the other.

10. **Definitive Agreement** As soon as possible after Bosa advises the Owner that it wishes to participate in the Project pursuant to section 9 above, Bosa will provide the Owner with drafts of a definitive Co-Owners Interest PSA, Co-Owners Agreement and Commercial Component PSA (the "Definitive Agreements"), which will reflect the principal business terms set out herein as appropriate, and will also include such additional representations, warranties, covenants and provisions (but not any additional conditions) as each Party may require and as the other Party may agree to. The Parties will negotiate the Definitive Agreement in good faith with a view to entering into the Definitive Agreements within 30 days after Bosa advises the Owner that it wishes to participate in the Project. If the Parties are unable to settle and execute the Definitive Agreement by such

date, either Party may terminate further dealings between them with respect to the Property by giving written notice to the other.

11. **Permitted Encumbrances** All encumbrances registered against title on the date of this Term Sheet, including financial encumbrances, together with:

  - (a) easements, utility rights of way and all other caveats, instruments required by The City of Calgary in connection with rezoning, subdivision, servicing and development of the Project;
  - (b) the implied easements under the *Condominium Property Act* (Alberta), registered caveats, private easements, charges, restrictive covenants, encumbrances and any easements in favour of utility companies or public authorities as they exist on the date of this Term Sheet.
  
12. **Governing Law** This Term Sheet is governed by the laws of the Province of Alberta and the laws of Canada applicable therein.
  
13. **Exclusive Dealing** The Owner hereby agrees that until 30 days after Bosa advises the Owner that it wishes to participate in the Project pursuant to section 9 above, it will deal exclusively with Bosa with respect to matters set out herein and to take no action which would impair Bosa's ability to complete the proposed transactions, and, without limitation, the Owner hereby agrees and undertakes that it will not permit any of its officers, directors, shareholders, employees, agents or representatives or any subsidiary or affiliated entity, whether directly or indirectly, at any time on or before such date to enter into, negotiate, solicit or knowingly encourage or participate in any negotiations or discussions relating to participation in the Project. This Section 13 is binding on the Owner notwithstanding the non-binding nature of this Term Sheet.
  
14. **Confidentiality** Each of the Parties agrees to keep strictly confidential the terms of this Term Sheet. Bosa agrees to keep strictly confidential any materials or information provided by the Owner regarding the Project. This Section 14 is binding on the Parties notwithstanding the non-binding nature of this Term Sheet and will survive the termination of discussions between them.
  
15. **Assignment** The Owner agrees that Bosa may participate in the Project and enter into the Definitive Agreements through one or more affiliated entities, including limited partnerships.

IN WITNESS WHEREOF the Parties have executed this Term Sheet effective as of the date first above written.

**THREE EAU CLAIRE DEVELOPMENTS  
INC.**

**BOSA PROPERTIES INC.**

By: \_\_\_\_\_

[Name]  
[Title]

*James Hoig Park*

By: \_\_\_\_\_

[Name]  
[Title]

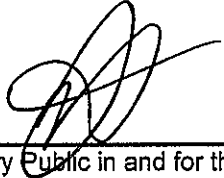
By: \_\_\_\_\_

[Name]  
[Title]

THIS IS EXHIBIT "B"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



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A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

## NAME OF COMMERCIAL TENANT REDACTED

**From:** Dachner, Arnon [<mailto:arnon.dachner@dentons.com>]

**Sent:** 18-Feb-14 5:18 PM

**To:** [jsselby@parlee.com](mailto:jsselby@parlee.com)

**Cc:** [linda.dow@dentons.com](mailto:linda.dow@dentons.com); [cbosa@bosaproperties.com](mailto:cbosa@bosaproperties.com); [bsandler@bosaproperties.com](mailto:bsandler@bosaproperties.com); [robert.nikelski@dentons.com](mailto:robert.nikelski@dentons.com)

**Subject:** 3 Eau Claire Developments Inc/Bosa Properties (Eau Claire) Inc.

Hi Jeff,

As you know, [REDACTED] informed our client last week that it would not be consummating any lease deal for the 3 Eau Claire site and was terminating its involvement with the project. Colin Bosa informed your client of this development immediately after learning about it.

Although our respective clients were out of contract on the Co-Ownership Agreement, Bosa's interest in pursuing the project remained but it has always indicated that [REDACTED] involvement was a condition of Bosa's willingness to proceed with the deal. Without [REDACTED] in the deal, Bosa is not willing to proceed with the co-development transaction on the basis that was previously discussed between the parties. Accordingly, Bosa Properties (Eau Claire) Inc. is no longer interested in pursuing the reinstatement of the Co-Ownership Agreement or other related documents with 3 Eau Claire Developments, Inc.

Colin spoke to Sung-Jin earlier today to follow up on yesterday's phone call relating to Bosa's need to ensure it protected its financial outlay to date. Bosa has informed Eau Claire that it will immediately commence discussions with KDIC to ascertain whether there is any opportunity for Bosa to work with KDIC to protect Bosa's outlays. Those discussions will be solely for and on behalf of Bosa's own account as Bosa. Bosa reserves all of its rights under the promissory notes issued by your client and the mortgage security granted collateral thereto.

Regards,  
Arnon



Arnon Dachner  
Partner

D +1 604 443 7145  
[arnon.dachner@dentons.com](mailto:arnon.dachner@dentons.com)  
Bio | Website

Dentons Canada LLP  
20th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Canada

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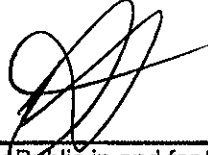
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THIS IS EXHIBIT "C"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



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A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

## PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, 3 Eau Claire Developments Inc. (the "**Borrower**"), hereby promises to pay on demand to or to the order of Bosa Properties (Eau Claire) Inc. (the "**Lender**") at 1201 – 838 Hastings Street, Vancouver, British Columbia, V6C 0A6, the Outstanding Balance (as defined herein). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain co-ownership agreement made between the Borrower and the Lender dated September 4, 2013 (the "**Co-Ownership Agreement**").

This Promissory Note evidences the balance owing by the Borrower to the Lender from time to time under a current or running account (the "**Outstanding Balance**") as a result of advances made by or on behalf of the Lender to, or to the order of, the Borrower in respect of any and all costs relating to the Project which may be developed by the Lender and the Borrower pursuant to the Co-Ownership Agreement, and any repayment made by the Borrower to the Lender and accepted by the Lender, all as may be endorsed by the Lender from time to time on the grid attached as Schedule A. Such costs shall include, without limitation to the generality of the foregoing, any amounts paid by the Lender on account of any claims, liabilities, or damages whatsoever, to any prior ranking lenders due to the registration of the collateral security hereto by the Lender.

Interest on the Outstanding Balance will accrue unless otherwise provided herein until payment in full at the rate of 10% per annum, compounded monthly, not in advance, based upon the daily amount of the Outstanding Balance during any interest calculation period, with the first calculation to be made on the last day of October, 2013. Accrued interest hereunder will be paid by the Borrower to the Lender unless otherwise provided herein together with Outstanding Balance on demand. Any accrued and unpaid interest may, at the option of the Lender, be added to the Outstanding Balance hereunder and will bear interest at the same rate, calculated in the same manner.

The Borrower hereby agrees that any and all costs and expenses incurred by the Lender in connection with the enforcement of this Promissory Note shall be for the account of the Borrower provided always that if:

- (a) the Co-Ownership Agreement between the Borrower and the Lender becomes unconditional; and
- (b) the Cross Charge granted by the Borrower in favour of the Lender becomes registered against title to the Project Lands,

then the Outstanding Balance shall, without duplication, be, either, repaid to the Lender from the proceeds of Project Financing as described below; or, if not so repaid, be for all purposes treated, as part of the Bosa Initial Contribution under the terms of the Co-Ownership Agreement, and, in either event, any security granted by the Borrower in respect of this promissory note shall be released and no interest shall be payable in respect of the Outstanding Balance except as specifically provided in the Co-Ownership Agreement. The Borrower further confirms and agrees with the Lender that subject to the circumstances set forth in subparagraphs (a) and (b) above, and to the extent advances made by the Lender under this Promissory Note shall not be repaid from the Proceeds of Project Financing or become a part of the Bosa Initial Contribution under the terms of the Co-Ownership Agreement (as defined in the Co-Ownership Agreement), the advances hereunder shall be considered Project Financing and that the Lender shall be entitled to repayment of such sums from the proceeds of the first advance of such Project Financing.

No remedy for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other of such remedies, but the Lender may from time to time exercise any one or more of such remedies independently of or in combination with any other of such remedies.

This Promissory Note is not a negotiable instrument but may be assigned by the Lender or any Intermediate Lender hereof. This Promissory Note shall enure to the benefit of the Lender, its successors and assigns and shall be binding on the Borrower, its successors and assigns.

All references to dollar amounts contained herein and on the grid attached hereto as Schedule A are references to currency of Canada.

The Borrower hereby waives presentment for payment, notice of non-payment, protest and notice of protest of this Promissory Note and agrees to pay to the Lender and to completely indemnify the Lender for all costs and expenses (including legal fees and costs) paid or incurred in collecting any monies due hereunder.

This Promissory Note shall be governed by and construed in accordance with the laws of Alberta and the laws of Canada applicable therein.

This Promissory Note is executed effective the 15<sup>th</sup> day of September, 2013.

**3 EAU CLAIRE DEVELOPMENTS INC.**

By: 

Title: Authorized Signatory Officer

SCHEDULE A

Date	Principal Advanced	Principal Repaid	Outstanding Balance	Initials
October 7, 2013	250,000 CAD		250,000 CAD	BS SL
OCTOBER 29, 2013	356,431.10 CAD		606,431.10 CAD	BS SL
JULY 31, 2013	7,875.00 CAD		614,306.10 CAD	BS SL
JULY 31, 2013	141.30 CAD		614,447.40 CAD	BS SL
SEPTEMBER 9, 2013	50,000 CAD		664,447.40 CAD	BS SL
SEPTEMBER 30, 2013	90,000 CAD		754,447.40 CAD	BS SL
OCTOBER 29, 2013	1,147,345 CAD		1,902,792.40 CAD	BS SL
OCTOBER 31, 2013	939.75 CAD		1,902,732.15 CAD	BS SL
November 6, 2013	14,328.00 CAD		1,917,060.15 CAD	BS SL
November 8, 2013	29,154.04 CAD		1,946,214.19 CAD	BS SL
November 8, 2013	10,920.00 CAD		1,957,134.19 CAD	BS SL
<del>November 8, 2013</del>	<del>60,000.00 CAD</del>		<del>2,017,134.19 CAD</del>	<del>BS SL</del>
<del>November 8, 2013</del>	<del>1,543.50 CAD</del>		<del>2,018,677.69 CAD</del>	<del>BS SL</del>
November 8, 2013	50,000.00 CAD		2,007,134.19 CAD	BS SL
November 8, 2013	1,543.50 CAD		2,008,677.19 CAD	BS SL

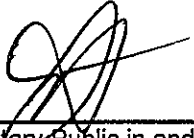
## SCHEDULE A

Date	Principal Advanced	Principal Repaid	Outstanding Balance	Initials
Balance brought forward from previous page.		-	CAD 2,008,677.49	SR
September 12, 2013	CAD 44,621.45		CAD 2,053,298.94	SR
September 27, 2013	CAD 1,696.22		CAD 2,054,995.16	SR
September 30, 2013	CAD 38,273.89		CAD 2,093,269.05	SR
October 1, 2013	CAD 3,535.35		CAD 2,096,804.40	SR
October 2, 2013	CAD 10,500.00		CAD 2,107,304.40	SR
October 7, 2013	CAD 6,972.55		CAD 2,114,276.95	SR
October 8, 2013	CAD 21,833.74		CAD 2,136,110.69	SR
October 11, 2013	CAD 27,169.28		CAD 2,163,279.97	SR
October 25, 2013	(CAD 11,151.93)		CAD 2,152,128.04	SR
October 30, 2013	CAD 3,360.00		CAD 2,155,488.04	SR
October 31, 2013	CAD 3,071.94		CAD 2,158,559.98	SR
November 1, 2013	CAD 157.58		CAD 2,158,717.56	SR
November 8, 2013	CAD 14,079.05		CAD 2,172,796.61	SR
November 14, 2013	CAD 48,510.00		CAD 2,221,306.61	SR
November 15, 2013	CAD 22,783.72		CAD 2,244,090.33	SR
November 15, 2013	CAD 500.00		CAD 2,244,590.33	SR
November 22, 2013	CAD 13,681.56		CAD 2,258,271.89	SR
November 25, 2013	CAD 1,446.33		CAD 2,259,718.22	SR
November 28, 2013	CAD 16,243.50		CAD 2,275,961.72	SR
November 30, 2013	CAD 142,505.43		CAD 2,418,467.15	SR
December 1, 2013	CAD 50,602.34		CAD 2,469,069.49	SR
Interest	CAD 24,128.99		CAD 2,493,198.48	SR
Tfr to Promissory Note 2		2,493,198.48	CAD 0.00	SR

THIS IS EXHIBIT "D"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



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A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

ALBERTA

THE LAND TITLES ACT

COLLATERAL MORTGAGE

**3 EAU CLAIRE DEVELOPMENTS INC.** (hereinafter referred to as the "Mortgagor"), is registered as the owner of an estate in fee simple in possession, subject however to such encumbrances, liens or interests as are notified on the Certificates of Title therefor, in all those lands more particularly described as follows:

**PLAN A1  
BLOCK 14  
LOTS 1 to 10  
EXCEPTING THEREOUT ALL MINES AND MINERALS**

TOGETHER WITH the appurtenances thereto belonging or appertaining and the reversion or reversions, remainder or remainders, rents, issues and profits thereof and all buildings, erections, improvements, and all apparatus and equipment appurtenant thereto which are now or shall hereafter be placed or installed thereupon including buildings now or hereafter erected or placed thereon and all of which to the extent the parties may do so, are declared and deemed to be fixtures, an accession to the freehold, a part of the realty and a portion of the security for the indebtedness herein mentioned, and all the estate, right, title, interest, property and claim therein of the Mortgagor, in, to or upon the same and of, in and to every part and parcel thereof (all of the foregoing being herein collectively referred to as the "Land");

WHEREAS **BOSA PROPERTIES (EAU CLAIRE) INC.**, whose address for the purposes of this mortgage is:

1201-838 W. Hastings Street  
Vancouver, BC  
V6C 0A6

(who and whose respective successors and assigns are hereinafter referred to as the "Mortgagee") may advance, pursuant to the terms of a grid promissory note dated the 4<sup>th</sup> day of September, 2013 (as the same may be amended, replaced, substituted or altered from time to time) (the "Promissory Note"), to the Mortgagor an amount up to **TWO MILLION (\$2,000,000) DOLLARS**;

**AND WHEREAS** the Mortgagor has further agreed to grant unto the Mortgagee this mortgage as continuing collateral security for the payment and performance of all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, joint or several, matured or unmatured, from time to time, owing by the Mortgagor to the Mortgagee under the Promissory Note;

**AND WHEREAS** the Mortgagor has agreed and hereby does agree that this mortgage shall be in the amount of **TWO MILLION (\$2,000,000.00) DOLLARS** of lawful money of Canada notwithstanding that no demand for payment has yet been made by the Mortgagee and notwithstanding that the indebtedness of the Mortgagor to the Mortgagee may fluctuate from time to time;

IN CONSIDERATION of the premises hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, the Mortgagor does hereby covenant and agree with the Mortgagee as follows:

1. The Mortgagor will pay to the Mortgagee at the above mentioned address or at such other address as the Mortgagee may in writing direct, the principal sum of up to **TWO MILLION (\$2,000,000.00) DOLLARS** in lawful money of Canada in accordance with the terms of the Promissory Note, together with interest thereon or on such portion thereof as remains unpaid both before and after maturity, default or judgment at a rate per annum equal to **TEN PERCENT (10.0%)** per annum. Interest at the aforesaid rate on the total of all amounts from time to time advanced or secured hereunder shall be calculated daily and shall be compounded in accordance with the terms of the Promissory Note.

This mortgage is given and taken as additional and continuing collateral security for the payment and performance of all of the present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, joint or several, matured or unmatured, of the Mortgagor to the Mortgagee arising under the Promissory Note. Neither the granting of this mortgage nor any proceedings taken under this mortgage or with respect to this mortgage, nor any judgment obtained in such proceedings, shall operate as a merger of the Promissory Note or any other document or agreement entered into between the Mortgagor and the Mortgagee or provided to the Mortgagee by the Mortgagor, any security or any evidence of indebtedness or in any way suspend payment of, or affect or prejudice the rights, remedies, or powers, legal or equitable, of the Mortgagee in connection with the Promissory Note or such other document, agreement, security or evidence of indebtedness or be deemed to constitute a payment or satisfaction of the Promissory Note or any such other document, agreement, security or evidence of indebtedness or any part thereof or merge therein. Any default under the Promissory Note or any other document or agreement entered into between the Mortgagor and the Mortgagee or provided to the Mortgagee by the Mortgagor, any other security or evidence of indebtedness from time to time now or hereafter held by the Mortgagee as evidence of or security for any of indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee shall constitute default hereunder; and default under the provisions of this mortgage shall constitute default under the other documents and agreements entered into between the Mortgagor and the Mortgagee or provided to the Mortgagee by the Mortgagor and all other security and evidence of indebtedness now or hereafter held by the Mortgagee.

The taking of judgment or other proceedings under any of the Promissory Note or any other security or evidence of indebtedness shall not operate as a merger of any of the covenants in this mortgage or affect the Mortgagee's right to interest on the indebtedness hereby secured or any other of the Mortgagee's rights hereunder, and any right reserved to the Mortgagee under any document may be exercised by the Mortgagee concurrently or consecutively with or to any other rights reserved to it.

All monies received by the Mortgagee on account of this mortgage in advance of the date upon which payment thereof would otherwise be required under and by virtue of the terms hereinbefore set forth, whether by reason of expropriation or otherwise, shall be applied first in or towards the payment of the last payment of principal and interest required under and by virtue of the terms contained in this mortgage, and, in case of a surplus, in or towards the payment of the payment next preceding, and so on until the whole of the amount secured



hereunder shall be paid, provided that no monies received in advance shall be applied so as to alter or modify the amounts or the dates for payment of the required payments of principal and interest under and by virtue of the terms contained in this mortgage.

2. The amount of principal secured by this mortgage is the sum of up to **TWO MILLION (\$2,000,000.00) DOLLARS**, and the rate of interest applicable thereto both before and after demand, maturity, default and judgment is a rate per annum equal to ten percent (10.0%) per annum.
3. Arrears of both principal and interest shall bear interest at the rate above mentioned payable on demand, or if not demanded, on the date the next payment of interest is due, and such interest on arrears shall be a charge on the Land in the same manner as all other monies hereby secured.
4. Any payments provided hereunder to be made by the Mortgagor shall become due and payable at the times herein provided, and, at the discretion of the Mortgagee, the Mortgagee may, but shall not be obligated to, charge any account or accounts of the Mortgagor maintained with the Mortgagee with the amount or amounts of any or all such payments. Any payments received by the Mortgagee after 1:00 o'clock p.m. local time at the place of receipt shall be deemed to have been received on the next following business day.
5. The Mortgagor hereby represents and warrants to the Mortgagee that:
  - (a) the Mortgagor has a good title to the Land;
  - (b) the Mortgagor has the right to mortgage the Land;
  - (c) on default the Mortgagee shall have quiet possession of the Land free from all encumbrances, except those encumbrances registered in priority to the registration of this mortgage;
  - (d) the Mortgagor will execute such further assurances of the Land as may be requisite;
  - (e) the Mortgagor has done no act to encumber the Land other than as noted on the current certificate of title.
6. Every part, lot or unit into which the Land is or may hereafter be divided does and shall stand charged with the whole of the monies hereby secured and no person shall have any right to require the monies hereby secured to be apportioned upon or in respect of any such part, lot or unit.
7. All erections, buildings or improvements that now are or that shall hereafter be put or built upon the Land shall be fixtures and be a part of the realty and form a part of the security under this mortgage even though not attached to the Land otherwise than by their own weight and shall not be removed during the continuance of this mortgage.
8. If the Land is subject to one or more mortgages, agreements for sale, leases or other charges (herein collectively called the "Other Mortgage"), the Mortgagor shall pay or cause to be paid as they become due all payments, whether for principal, interest, taxes or otherwise under or by virtue of the Other Mortgage and will otherwise observe, perform and comply with the

Mortgagor's covenants, provisos and agreements therein contained. Any default by the Mortgagor under an Other Mortgage shall be deemed to be a default hereunder.

9. The Mortgagor shall promptly pay the full amount of:
  - (a) any liens, charges and encumbrances upon the Land;
  - (b) any reasonable charges or expenses of the Mortgagee in inspecting, protecting or valuing the Land;
  - (c) all costs, fees, disbursements, charges and expenses, which have been or may be incurred by the Mortgagee in negotiating this mortgage; in investigating or perfecting title to the Land and the capacity of the Mortgagor to borrow the monies secured by this mortgage, in preparing and registering this mortgage and all documents incidental or collateral hereto; in advancing any portion of the monies hereby secured; in taking, recovering and keeping or attempting to procure possession of the Land or any part thereof; in enforcing, or attempting to enforce, the personal remedies or any other remedies available hereunder; in collecting or attempting to collect any of the monies hereby secured, or in realizing or attempting to realize on any security collateral hereto; in any foreclosure or other proceedings, judicial or otherwise, to protect the Land or to realize on this mortgage or any security collateral hereto; or in connection with any receivership; and if a solicitor is retained in connection with any of the foregoing, such solicitor's fees and disbursements shall be paid on a solicitor and his own client basis and, at the option of the Mortgagee, on the basis of a lump sum bill; and, if any other professional person or firm is retained or employed, such person's or firm's fees shall be paid on the basis of its normal professional charges; and
  - (d) all other reasonable costs and expenses of the Mortgagee incurred in connection with the loan secured by this mortgage and not covered by any other covenant herein.
10. The Mortgagor shall, on the due date thereof, pay and satisfy all taxes, rates, levies, charges, rents, assessments, or other impositions whatsoever already rated, charged, assessed or imposed or hereafter to be rated, charged, assessed or imposed, no matter by whom or by what authority or howsoever on the Land, or on the Mortgagor or Mortgagee in respect of the Land (hereinafter collectively called the "taxes"); provided however that, in respect of taxes, at the option of the Mortgagee:
  - (a) the Mortgagee may deduct from any advance of the monies secured by this mortgage an amount sufficient to pay any taxes which have become due and payable as at the date of such advance and if any taxes are not yet payable the Mortgagee may deduct, by way of a reserve for taxes, an amount equal to one-twelfth (1/12th) of the annual taxes (as estimated by the Mortgagee) multiplied by the number of months between the date one year prior to the next due date of such taxes and the date of the first monthly instalment hereunder;
  - (b) the Mortgagor shall pay to the Mortgagee an amount or amounts on account of taxes (as estimated by the Mortgagee) in order that the Mortgagee may have, on account of taxes payable or to become payable, an amount sufficient to meet the full year's taxes next due by at least thirty (30) days prior to the due date thereof. If the taxes actually

charged for any one year, together with any interest and penalties thereon, exceed the estimated amount, the Mortgagor shall pay to the Mortgagee on demand the amount required to make up the deficiency;

- (c) without restricting the generality of the foregoing, the Mortgagor, upon request by the Mortgagee, shall monthly on the last day of each and every calendar month pay to the Mortgagee one-twelfth (1/12th) of the amount (as estimated by the Mortgagee) of the taxes becoming due and payable. If the Mortgagor desires to take advantage of any discounts or avoid any penalties in connection with the payment of taxes, the Mortgagor shall pay to the Mortgagee such additional amounts as are required for that purpose;
- (d) the Mortgagee may pay the taxes for each year on or before the due date of payment thereof, or, if taxes are payable in instalments, on or before the due date for payment of the first instalment. The Mortgagee shall apply the deduction and payments referred to in subparagraphs (a), (b) and (c) hereof to taxes so long as the Mortgagor is not in default under any covenants, proviso or agreement contained in this mortgage, but nothing herein contained shall oblige the Mortgagee to apply such payments on account of taxes more often than yearly; provided however that, if, before any deductions or payments have been so applied, there shall be default by the Mortgagor in respect of any payment of principal, interest or other charges as provided in this mortgage, the Mortgagee may apply such sum or sums in or towards payment of the principal, interest or other charges in default; and
- (e) any debit balance from time to time in the tax account shall bear interest at the mortgage rate and such amount and interest shall be a charge on the Land, but nothing herein contained shall render the Mortgagee liable to allow or pay interest on any credit balance from time to time in the tax account. The Mortgagor shall transmit to the Mortgagee the tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by the Mortgagor.

11. The Mortgagor further covenants with the Mortgagee as follows:

- (a) The Mortgagor shall at the request of the Mortgagee forthwith insure, if not already so insured, and during the continuance of this mortgage keep insured in favour of the Mortgagee, with loss payable to the Mortgagee as its interests may appear, the Land and each and every building, structure, erection, improvement and fixture situated thereon and all replacements thereof, including and without limiting the generality of the foregoing, all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever now on the Land or which may hereafter be erected or placed thereon, both during erection and thereafter (all of the foregoing being hereinafter referred to as the "premises") for the full amount permitted by law but in any event at least for the full insurable replacement value thereof on a non-reporting completed value basis in lawful money of Canada and in such forms and with a company or companies and policy or policies of insurance approved by the Mortgagee against all risk of direct physical loss with only such exclusions as the Mortgagee may approve.

- (b) Such insurance policies shall either be without co-insurance or have a stated or stipulated amount co-insurance clause for an amount equal to or less than the policy limit.
  - (c) All policies of insurance required hereby shall contain "mortgage clauses" in favour of the Mortgagee in a form approved by the Mortgagee.
  - (d) The Mortgagor shall forthwith upon request furnish, at its own expense, a certificate of a competent appraiser or other competent person selected by the Mortgagee as to the sufficiency or otherwise of any insurance, and as to the type and amount thereof.
  - (e) The Mortgagor shall not allow any such policy or policies of insurance to be invalidated, and shall forthwith assign, transfer and deliver to the Mortgagee such policy or policies and receipts thereto appertaining, and does hereby irrevocably assign the proceeds of any such insurance to the Mortgagee. If the Mortgagor shall neglect to keep any part of the premises insured as herein provided, or to deliver any such policy or receipts, or to produce to the Mortgagee at least thirty (30) days before termination of any insurance coverage evidence, to the reasonable satisfaction of the Mortgagee, of the renewal thereof, or if the Mortgagee receives notice of the intended cancellation of any such policy, the Mortgagee shall be entitled to insure the premises; provided however that the Mortgagee shall not be bound to insure the premises or, in the event of insuring the premises, to insure other than the interest of the Mortgagee, or to see to the payment of the premiums on any policy, or to see to any matter arising out of any defect in any policy or failure of any insurance company to pay for any loss thereunder.
  - (f) The Mortgagor shall forthwith on the happening of any loss or damage, furnish at its own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies; and any insurance monies received may, at the option of the Mortgagee, be applied in rebuilding, reinstating or repairing the premises or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Land, or be applied or paid partly in one way and partly in another, or may be applied, in the sole discretion of the Mortgagee, in whole or in part, on the interest or other monies owing hereunder then due, or on the mortgage debt, or any part thereof, whether due or not then due, notwithstanding any law, equity or statute to the contrary, and in particular the Insurance Act (Alberta) and the Fires Prevention (Metropolis) Act, 1774, all rights and benefits of the Mortgagor thereunder being hereby expressly waived.
12. THAT in the event that this mortgage is a building or construction mortgage, it is the intention of the parties hereto that:
- (a) the building or buildings or other improvements being erected or to be erected on the land form part of the security for the full amount of the monies secured by this mortgage;
  - (b) all advances on this mortgage are to be made from time to time in the future in accordance with the progress of construction of such building or buildings or other improvements or upon its or their completion and occupation;

- (c) the Mortgagor will construct the building, buildings and other improvements on the land in accordance with plans and specifications which have been or which may hereafter be approved by the Mortgagee, in accordance with applicable building codes, in accordance with the Mortgagee's construction standards, and will carry on diligently to completion the construction of the said building, buildings and other improvements, and will complete such construction in compliance with the requirements of all municipal and other governmental authorities, laws, by-laws or regulations and will, when so required by the Mortgagee, supply the Mortgagee with evidence or confirmation from any such municipal or governmental authority of such compliance;
  - (d) in the event that any such building, buildings and other improvements now or hereafter in the course of construction remain unfinished and without any work being done for a period of ten consecutive days, the Mortgagee may enter the land and do all work necessary to protect the same from deterioration and to complete the construction in such manner as the Mortgagee may see fit, and any monies expended by the Mortgagee pursuant to this sub-clause shall be a charge on the land and bear interest at the rate of interest specified herein and shall be deemed to constitute part of the mortgage monies;
  - (e) the Mortgagee shall be entitled, at the expense of the Mortgagor, to inspect all aspects of the construction and make tests of materials, and the Mortgagor will not cover any portion of the construction work requiring inspection by the Mortgagee until the Mortgagee has inspected the same, and the Mortgagor shall forthwith remedy and carry out again any work which does not conform to the Mortgagee's reasonable requirements; and
  - (f) the Mortgagee shall not be obliged to holdback loan proceeds to provide the lien fund or other protection to the Mortgagor under the *Builders' Lien Act* of Alberta; provided that if the Mortgagee holds back loan proceeds in a manner similar to the way the said Act provides for an owner to make holdbacks then, notwithstanding such holdbacks by the Mortgagee, such holdbacks shall not constitute the lien fund under the said Act and the Mortgagee shall not be a mortgagee authorized by the owner to disburse money secured by a mortgage as referred to in the said Act.
13. The Mortgagor shall not permit or suffer the Land to become or remain vacant or permit or suffer any act of waste on the Land, and the Mortgagor shall during the currency of this mortgage well and sufficiently repair, amend and keep the erections, buildings and improvements now or hereafter erected on the Land and all fixtures and things thereunto belonging in good and substantial repair.
14. The Mortgagor shall not make or permit to be made any alterations or additions to the buildings, structures, erections and improvements on, under or upon the Land without the consent of the Mortgagee and shall not use the Land or permit it to be used other than for the purpose for which it is presently used or for such other purposes as shall be specifically permitted by the Mortgagee in writing.
15. The Mortgagor shall not lease or rent the whole or any portion of the Land without the express written consent of the Mortgagee, which consent shall not be unreasonably withheld; provided

however that the granting of such consent shall not be or be deemed to be a grant of priority for any such lease over this mortgage. The Mortgagor shall assign, in a form satisfactory to the Mortgagee, the rentals payable under any lease or rental agreement, whether written or oral, to the Mortgagee as additional collateral security for payment of the monies secured hereby. The Mortgagor shall not assign, charge or encumber such rentals in any way whatsoever other than to the Mortgagee.

16. The Mortgagor, within ten (10) days after receipt of a request to do so, shall certify to the Mortgagee or any person designated by the Mortgagee, the amount of principal then due hereunder, the date to which interest is paid, that it has no right of set-off against the monies due hereunder, or if it has such a right of set-off, the amount thereof, and that there have been no amendments hereof or, if there have been any such amendments, specifying them.
17. The Mortgagor shall obey or cause to be obeyed all laws, rules, regulations and by-laws, whether federal, provincial or municipal, which in any way relate to the Land or the use thereof.
18. The Mortgagee or agent of the Mortgagee may, at any time and from time to time, enter upon the Land to inspect the Land or any portion thereof.
19. The Mortgagee, without the consent of the Mortgagor, may assign in whole or in part the debt hereunder, this mortgage and any security collateral to this mortgage.
20. Interest as aforesaid shall continue to run and accrue until retirement or satisfaction of the amount owing to the Mortgagee has occurred in accordance with the terms of the Promissory Note. The Mortgagee shall have a reasonable time after the presentation thereof to execute a discharge of this mortgage and all legal and other expenses for the preparation and execution of such a discharge shall be borne by the Mortgagor.
21. The Mortgagor acknowledges that, in advancing the principal sum or any part thereof to the Mortgagor, the Mortgagee is relying on the financial ability, in the opinion of the Mortgagee, of the Mortgagor alone to repay the same and the Mortgagor agrees that, if the Mortgagor sells, transfers or assigns the Land or any portion thereof or interest therein, or agrees to do so, without the prior written consent of the Mortgagee, which consent the Mortgagee in its discretion may withhold, the whole of the principal sum outstanding hereunder together with interest, costs and charges thereon and all other monies secured hereby, shall, at the option of the Mortgagee, forthwith become due and payable.
22. None of the proceeds of this mortgage may be assigned by the Mortgagor without the express written consent of the Mortgagee.
23. Any default hereunder or under any other security instrument held by the Mortgagee in respect of the loans hereby secured shall constitute default under each and every item of security held by the Mortgagee in respect of any other loan now or hereafter made by the Mortgagee to the Mortgagor and any default under any item of security held by the Mortgagee in respect of any other loan now or hereafter made by the Mortgagee to the Mortgagor shall constitute default hereunder and under every other item of security held by the Mortgagee in respect of the loans hereby secured, in each case as if the time for payment under all of the securities aforesaid had fully come and expired.

24. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the expropriation of the Land or any part thereof, shall notify the Mortgagee of such proceedings. If the Land or any part thereof is taken or damaged in or by any such expropriation proceedings or otherwise, the award or compensation payable to the Mortgagor shall be paid to the Mortgagee, to whom it is hereby assigned.
25. The Mortgagor acknowledges that it has been advised by its counsel as to the meaning of Sections 49 and 52 of the Expropriation Act (Alberta), and being fully aware that under the terms of the said Act the Mortgagee may be restricted to recovering the market value of this mortgage at the date of any expropriation, the Mortgagor hereby waives the provisions of Sections 49 and 52 of the Expropriation Act and further waives any provisions which may be enacted and in force from time to time in replacement of or in addition to the provisions of the said Sections 49 and 52 of the Expropriation Act.

If the Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's uncontrolled opinion, materially affects this mortgage security or any collateral security therefor, the full amount of the principal and interest and of any other monies secured by this mortgage then outstanding shall, at the election of the Mortgagee, be deemed to become due and payable in full on the day before the Land is expropriated, and interest shall accrue thereon, at the aforesaid rate, until the Mortgagee has been paid in full and the Mortgagor shall be estopped from denying the same.

The Mortgagor shall pay or cause to be paid to the Mortgagee, upon request of the Mortgagee, and from any expropriation proceeds, the full amount of the principal and interest and any other monies then outstanding hereunder.

26. If there occurs any material adverse change in the financial position of the Mortgagor, or if the Mortgagor defaults under any other loan or mortgage or other security to which it is a party, or if any warranty or representation made by the Mortgagor herein or in connection with this mortgage shall be or shall become untrue, then the Mortgagor shall be deemed to be in default hereunder.
27. If the Mortgagor shall make default in payment of any monies hereby secured or any part thereof, or in performance of any of the covenants, provisos, agreements and stipulations herein expressed or implied, or if default otherwise occurs under any of the provisions of this mortgage, or if the Mortgagor or any guarantor of the principal sum hereby secured shall become bankrupt or insolvent or shall be subject to the provisions of the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Winding-up Act or any other Act for the benefit of creditors or go into liquidation either voluntarily or under an order of a court of competent jurisdiction, or make a general assignment for the benefit of its creditors or suffer any distress or execution to be levied on its goods, or allow a creditor to enter judgment against it by reason of its financial inability to pay creditors or otherwise acknowledge its insolvency, or upon the registration of any builders' lien against the Land, then in any such case the monies hereby secured and every part thereof shall, at the option of the Mortgagee, become due and payable in like manner and to all intents and purposes as if the time or times herein mentioned for payment thereof had come and expired.

28. For better securing the punctual payment of the said mortgage monies, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Land at a monthly rental equivalent to the monthly instalments secured hereby, the same to be paid on each day appointed for the payment of instalments; and if any judgment, execution or attachment shall be issued against any of the goods of the Mortgagor or the Land or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or shall take the benefit of any statute relating to bankrupt or insolvent debtors then such rental shall, if not already payable, be payable immediately thereafter. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor, but neither this clause nor anything done by virtue thereof shall render the Mortgagee a mortgagee in possession or accountable for any monies except those actually received. The Mortgagee may at any time after default hereunder enter upon the Land, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit.
29. If the Mortgagor shall make default in payment of any part of the said principal, interest or other monies hereby secured at any of the times hereinbefore limited for the payment thereof, it shall and may be lawful for the Mortgagee, and the Mortgagor does hereby grant full power and license to the Mortgagee, to enter, seize and distrain upon the Land or any part thereof and by distress warrant to recover by way of rent reserved as in the case of a demise of the Land, as much of such principal, interest and other monies as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent.
30. In the event of default in the payment of any portion of the monies hereby secured, or on breach of any covenant or proviso contained herein or in any other agreement or document entered into by the Mortgagor and the Mortgagee, the Mortgagee may at such time or times as it may deem necessary and without the concurrence of any other person, enter upon the Land and may make such arrangements for repairing and putting in order any buildings or other improvements on the Land, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the Land as it may deem expedient.
31. In case default is made in payment of the said principal sum or interest secured hereby, or any part thereof, or in the observance of any express or implied covenant contained herein or in any other agreement or document entered into by the Mortgagor and the Mortgagee or otherwise provided by the Mortgagor to the Mortgagee, provided that such default that has occurred is continuing, the Mortgagee may, without further consent or concurrence on the part of the Mortgagor, (i) enter into possession of the Land and receive and take rents, issues and profits thereof, and, whether in or out of possession thereof, may make any lease of the same or of any part thereof as the Mortgagee may see fit, and/or (ii) sell the Land or any part thereof and all the estate and interest therein of the Mortgagor; and the Mortgagor hereby assigns to the Mortgagee the rents and profits of the Land without any obligation on the part of the Mortgagee to collect the same or any part thereof.
32. The Mortgagee may lease or sell as aforesaid without entering into possession of the Land.
33. No purchaser at any sale or lessee in any lease purported to be made in pursuance of any of the aforesaid powers shall be bound or concerned to see or enquire whether any such default has been made or continues, or whether any such notice has been given as aforesaid, or as to the



necessity or expediency or existence of the stipulations subject to which such sale or lease shall have been made, or otherwise, as to the propriety of such sale or lease or the regularity of the proceedings, or be affected by notice that default has not been made or does not continue or that notice was not given as aforesaid, or that the sale or lease has been otherwise unnecessary, improper or irregular, nor shall any irregularity or want of notice invalidate any such sale or lease. Any such sale or lease may be on such terms and subject to such conditions, including special conditions as to title or otherwise, as the Mortgagee shall deem fit, and, notwithstanding any impropriety or irregularity in any such sale or lease or notice thereof, the sale or lease as regards such purchaser or lessee shall be deemed to be within the aforesaid power and valid accordingly and the remedy, if any, of the Mortgagor in respect of any impropriety or irregularity whatsoever in any such sale or lease shall be in damages only.

34. The Mortgagee may sell the whole or any part or parts of the Land by public auction or private contract, or partly one and partly the other, on such terms as to credit and otherwise as to the Mortgagee shall appear most advantageous and for such prices as can reasonably be obtained therefor. Sales may be made from time to time of portions to satisfy interest or parts of the principal, interest or other monies overdue, leaving the balance thereof to run with interest, payable as aforesaid. The Mortgagee may make any stipulations as to title, or evidence of commencement of title, or otherwise, as the Mortgagee shall deem proper. The Mortgagee may buy in any sale of, or rescind or vary any contract for sale of, any of the Land and resell, without being answerable for loss occasioned thereby. In case of a sale on credit the Mortgagee shall only be bound to pay to the Mortgagor such monies as have been actually received from the purchaser after the satisfaction of the Mortgagee's claim. For any of such purposes the Mortgagee may make and execute all agreements and assurances as the Mortgagee deems fit.
35. The Mortgagee may by writing under the hand of any solicitor or agent authorized on its behalf, upon any default whatsoever on the part of the Mortgagor in payment of any principal sum or interest hereby secured, or in the observance of any of the covenants and conditions herein contained, appoint a receiver or manager, or receiver and manager, or receiver-manager (hereinafter in each case called "Receiver") of the Land, and every such Receiver shall be deemed the agent of the Mortgagor, and the Mortgagor shall be solely responsible for the acts or defaults of the Receiver and the Receiver shall have power to demand, recover and receive all the income of the property of which he may be appointed receiver by action, distress or otherwise, either in the name of the Mortgagor or the Mortgagee, and give effectual receipts therefor, and any Receiver shall be possessed with all discretions of the Mortgagee for which provision is made in this mortgage, and such Receiver may complete or carry on the business of the Mortgagor relating to the Land or any part thereof and may exercise all the powers conferred upon the Mortgagee hereby; and that the Receiver may be removed, in which case and if any Receiver dies or refuses to act or becomes incapable of acting, a new Receiver may be appointed from time to time by the Mortgagee by writing under the hand of any authorized solicitor or agent as aforesaid; and that the Mortgagee may from time to time fix the remuneration of every such Receiver and may recompense every such Receiver for all disbursements properly incurred by him in carrying out his duties and his fees, and such payments shall be a charge upon the Land, shall be payable on demand and shall bear interest at the mortgage rate, but the Mortgagee shall not be deemed to be a mortgagee in possession and shall not be accountable except for the monies actually received by it, and the person paying money to or in any way dealing with the Receiver shall not be concerned to inquire whether any case has happened to authorize the Receiver to act; and that, subject to the

retention of such remuneration and disbursements as aforesaid, any such monies so received may be expended in any of the following modes and in such order or priority as the Mortgagee may from time to time at its option direct in writing, namely, in discharge of all rents, taxes, rates, assessments and outgoings or other payments, and any payments due under any prior mortgage or lien; and in payment of any premiums on fire, or other insurance, if any, properly payable under this mortgage, payment of which is directed or confirmed in writing by the Mortgagee; and in payment of the cost of executing necessary or proper repairs to the Land or any part thereof directed or confirmed in writing by the Mortgagee; and in payment of the cost of carrying out or executing any of the powers, duties or discretions which vest in or may be vested in the Receiver by reason of the provisions contained in this mortgage; and in payment of the interest accruing due under this mortgage, and in or towards the discharge of the principal money or any instalment thereof or solicitors' costs or other monies due and payable under this mortgage, if and to the extent directed in writing by the Mortgagee; and shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the Receiver, would have been entitled to receive the income of which he is appointed receiver.

36. The Mortgagee shall have the right but shall not be obliged to:
- (a) pay (either out of the monies to be advanced hereunder, or otherwise if the full amount to be advanced hereunder has been advanced) any sums of money required to be paid hereunder by the Mortgagor, or which the Mortgagor should have paid, or which the Mortgagor has the right to pay; and
  - (b) perform any covenant, agreement or obligation of the Mortgagor.

All payments, costs, disbursements, fees, charges and expenses of every nature and kind incurred or paid by the Mortgagee or for which the Mortgagee may either be or become directly or indirectly liable, shall be payable immediately by the Mortgagor and shall so long as any portion thereof remains unpaid bear interest at the aforesaid interest rate, from the time incurred or paid by the Mortgagee, computed and compounded daily and payable on demand, or if not demanded, on the date the next payment of interest is due, and all such sum or sums, together with interest thereon shall be secured by the charge of this mortgage. All such sums shall be deemed to be secured by this mortgage notwithstanding the date the same may be advanced or incurred. If the Mortgagee pays the amount of any charge or encumbrance or of any taxes charged against the Land, the Mortgagee shall be entitled to all the rights, equities and securities of the person or persons, company, corporation or government so paid off.

37. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies hereunder or under any security collateral hereto, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any security collateral hereto or now or hereafter existing at law or in equity or by statute. Every power and remedy given by this mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee.
38. Waiver of or failure to enforce at any time or from time to time the performance of any covenant, proviso, condition or agreement herein contained or implied shall not abrogate such covenant, proviso, condition or agreement or be a waiver of any subsequent breach of the same.

39. The Mortgagee shall not be charged with any monies receivable or collectible out of the Land or otherwise except those actually received, and all revenue from the Land received or collected by the Mortgagee from any source, other than payment by the Mortgagor, may at the option of the Mortgagee be retained in a suspense account or used in maintaining or insuring or improving the Land, or in payment of taxes or other charges against the Land, or applied on the mortgage account, and the Mortgagor shall not be entitled to receive nor shall the Mortgagee be responsible or liable to pay interest on any such revenue in such suspense account.
40. The taking of a judgment or judgments on any of the covenants or agreements herein contained shall not operate as a merger of such covenants or agreements or affect the Mortgagee's right to interest at the rate and times aforesaid, and that any such judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.
41. Neither the preparation, execution or registration of this mortgage, nor the advance in part of the monies intended to be secured hereby, shall bind the Mortgagee to advance the monies intended to be secured hereby or any unadvanced portion thereof, it being understood and agreed that the advance of monies, or any part thereof, from time to time shall be in the sole discretion of the Mortgagee.
42. No sale or other dealing by the Mortgagor with the Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of the monies hereby secured. The Mortgagor shall not sell or enter into any agreement of sale of the whole or any part of the Land, without the express written consent of the Mortgagee. The Mortgage Monies shall, at the election of Mortgagee, immediately become due and payable in full without notice by nor demand from Mortgagee if the Property or any part thereof or interest therein is, without the prior consent in writing of Mortgagee sold, transferred, conveyed, foreclosed, exchanged, assigned, mortgaged, leased or otherwise disposed of, or if Mortgagor enters into an agreement to effect any of the foregoing whether by registered instrument and whether for valuable or nominal consideration (and if Mortgagor is a corporation, any change in control of the corporation constitutes a default under this clause); and provided further that the acceptance by Mortgagee of any instalment payment or other payment under this Mortgage from any entity other than Mortgagor does not constitute a waiver by Mortgagee of its rights under this clause, nor a consent by Mortgagee of any such sale or disposal of the Property as above described; and provided further that if Mortgagee gives its consent to any such sale or disposition as above described, it may do so upon such conditions as it may in its uncontrolled discretion decide upon including, without limiting the generality of the foregoing, the execution and delivery (by any intended transferee or successor in whole or in part of Mortgagor's title to the Property) of an agreement in Mortgagee's form whereby such transferee or successor assumes all covenants and obligations of Mortgagor under this Mortgage and all other security documents given by Mortgagor with respect to this Mortgage loan. For the purposes of this clause, "control" shall have the meaning attributed to such term by the *Business Corporations Act of Alberta*.
43. The Mortgagee in its discretion and with or without notice to or the consent of the Mortgagor may enter into an agreement with anyone who has assumed this mortgage to grant an extension of time, or to change the rate of interest, or to alter in any way the terms of payment

of this mortgage; or take any additional security; or waive the performance of any covenants herein; and may compound with or release the Mortgagor or anyone claiming under the Mortgagor or any other person or persons liable hereunder; or surrender, release or abandon or omit to perfect or enforce any security, remedies or proceedings which the Mortgagee may now or hereafter hold or have; and may take, acquire or discharge, either with or without payment, part or all of the Land and may apply all monies received from the Mortgagor or others or from any security upon such part of the monies hereby secured as the Mortgagee may think best, without prejudice to or in any way limiting or lessening the liability of the Mortgagor, any surety, guarantor or any other person liable for payment. The Mortgagee shall incur no liability to any person by reason of anything aforesaid, and any agreement or liability aforesaid shall continue in full force as long as any money remains unpaid on this mortgage, but the Mortgagee shall not be bound to exhaust its recourses against the Mortgagor or other parties, or the security it may hold, before being entitled to payment from any surety or guarantor of the amounts secured hereby.

44. The Mortgagee may at any time release any part of the Land, or any of the covenants and agreements herein contained, or any collateral security, either with or without any consideration therefor, and without being accountable for the value thereof, or for any money except what is actually received, and without thereby releasing or affecting any other part of the Land or any of the other covenants or agreements herein contained or releasing any surety or any other security.
45. If any one or more of the provisions contained in this mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any or all other provisions of this mortgage, and this mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
46. If the Land, or any portion thereof, is held by the Mortgagor as a partner of a partnership and/or joint venturer of a joint venture, this mortgage shall be and be deemed to be a mortgage of the entire interest of such partnership in the Land and/or such joint venture in the Land as well as a mortgage of the interest of the Mortgagor in the Land; and all covenants herein shall be deemed to be joint and several covenants of any such partnership and/or joint venture and of the Mortgagor.
47. Any notice required to be given hereunder shall be in writing addressed to the party to whom it is given and shall be delivered, in the case of the Mortgagor, to the last known address of the Mortgagor as shown on the records of the Mortgagee and, in the case of the Mortgagee, to the address hereinbefore stated or to such other address as the Mortgagee shall have specified by written notice.
48. This mortgage shall enure to the benefit of and be binding upon the Mortgagor and Mortgagee and their respective successors and permitted assigns; words importing gender include masculine, feminine and neuter genders; where a term or expression is defined herein, derivations of such terms and expressions shall have corresponding meanings; time shall be of the essence in this mortgage; and if there be more than one mortgagor all covenants of the Mortgagor shall be deemed to be joint and several covenants of such mortgagors and each of them.

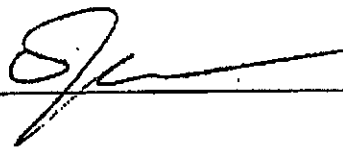
49. The Mortgagor covenants and agrees that no subsequent financing of the Land shall be permitted at any time by the Mortgagor without the prior written consent of the Mortgagee. Any subsequent financing in contravention of this provision shall constitute a default under this mortgage.
50. THAT in the event of any conflict between the provisions of this mortgage and the Promissory Note, the Promissory Note shall govern, provided, however, that no conflict shall be deemed to exist simply because one document refers to a specific matter and another does not, or because one document clarifies or enlarges a particular matter and the other does not.
51. For the better securing to the Mortgagee the repayment in the manner aforesaid of the said principal and interest and other charges and monies hereby secured, and for the due performance by the Mortgagor of all and each of the covenants, provisos and conditions herein expressed or implied, the Mortgagor does hereby mortgage to the Mortgagee all the estate and interest of the Mortgagor in and to the Land.

IN WITNESS WHEREOF the Mortgagor has executed this mortgage this 2<sup>nd</sup> day of September, 2013.

3 EAU CLAIRE DEVELOPMENTS INC.

Witness

Per:



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**AFFIDAVIT OF EXECUTION**

CANADA	)	I, _____, of the City of
PROVINCE OF ALBERTA	)	Calgary, in the Province of Alberta, MAKE
TO WIT	)	OATH AND SAY:

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

SWORN BEFORE ME at the City of Calgary, in	)	
the Province of Alberta, this ____ day of	)	
September, 2013.	)	
_____	)	_____
A Commissioner for Oaths in and for the	)	
Province of Alberta	)	

**AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY**

Canada	)	
Province of Alberta	)	
To Wit:	)	

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

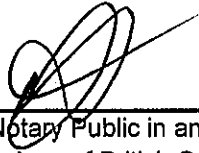
1. That I am an officer or a director of **3 EAU CLAIRE DEVELOPMENTS INC.** named in the within annexed instrument.
2. I am authorized by **3 EAU CLAIRE DEVELOPMENTS INC.** to execute this instrument without affixing a corporate seal.

SWORN BEFORE ME at the City of	)	
Calgary, in the Province of Alberta, this	)	
____ day of September, 2013.	)	
_____	)	_____
A Commissioner for Oaths in and for the	)	
Province of Alberta	)	

THIS IS EXHIBIT "E"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



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A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

## PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, 3 Eau Claire Developments Inc. (the "Borrower"), hereby promises to pay on demand to or to the order of Bosa Properties (Eau Claire) Inc. (the "Lender") at 1201 - 838 Hastings Street, Vancouver, British Columbia, V6C 0A6, the Outstanding Balance (as defined herein).

This Promissory Note evidences the balance owing by the Borrower to the Lender from time to time under a current or running account (the "Outstanding Balance") as a result of advances made by or on behalf of the Lender to, or to the order or on behalf of, the Borrower and any repayment made by the Borrower to the Lender and accepted by the Lender, all as may be endorsed by the Lender from time to time on the grid attached as Schedule A.

Interest on the Outstanding Balance will accrue unless otherwise provided herein until payment in full at the rate of 10% per annum, compounded monthly, not in advance, based upon the daily amount of the Outstanding Balance during any interest calculation period, with the first calculation to be made on the last day of December, 2013. Accrued interest hereunder will be paid by the Borrower to the Lender unless otherwise provided herein together with Outstanding Balance on demand. Any accrued and unpaid interest may, at the option of the Lender, be added to the Outstanding Balance hereunder and will bear interest at the same rate, calculated in the same manner.

The Borrower hereby agrees that any and all costs and expenses incurred by the Lender in connection with the enforcement of this Promissory Note shall be for the account of the Borrower. Nothing contained herein has the effect of amending, replacing, modifying, cancelling, merging or terminating the existing promissory note granted by the Borrower to the Lender dated the 12<sup>th</sup> day of September, 2013 (the "Original Note") or any security granted collateral thereto and the Original Note and all security collateral thereto remains in full force and effect and binding on the Borrower.

No remedy for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other of such remedies, but the Lender may from time to time exercise any one or more of such remedies independently of or in combination with any other of such remedies.

This Promissory Note is not a negotiable instrument but may be assigned by the Lender or any intermediate Lender hereof. This Promissory Note shall enure to the benefit of the Lender, its successors and assigns and shall be binding on the Borrower, its successors and assigns.

All references to dollar amounts contained herein and on the grid attached hereto as Schedule A are references to currency of Canada.

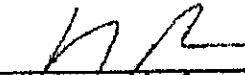
The Borrower hereby waives presentment for payment, notice of non-payment, protest and notice of protest of this Promissory Note and agrees to pay to the Lender and to completely indemnify the Lender for all costs and expenses (including legal fees and costs) paid or incurred in collecting any monies due hereunder.



This Promissory Note shall be governed by and construed in accordance with the laws of Alberta and the laws of Canada applicable therein.

This Promissory Note is executed effective the 2nd day of December, 2013.

3 EAU CLAIRE DEVELOPMENTS INC.

By:   
Title: Authorized Signatory Officer

## SCHEDULE A

Date	Principal Advanced	Principal Repaid	Outstanding Balance	Initials
December 2, 2013	Tfr from Promissory Note 1	-	CAD 2,493,198.48	JS
December 2, 2013	CAD 135,000.00		CAD 2,628,198.48	JS
December 6, 2013	CAD 11,181.23		CAD 2,639,379.71	JS
December 8, 2013	CAD 379.28		CAD 2,639,758.99	JS
December 10, 2013	CAD 14.93		CAD 2,639,773.92	JS
December 13, 2013	CAD 253.78		CAD 2,640,027.70	JS
December 18, 2013	CAD 1,672.06		CAD 2,641,699.76	JS
December 20, 2013	CAD 15,535.11		CAD 2,657,234.87	JS
December 30, 2013	CAD 91,737.68		CAD 2,748,972.55	JS
December 31, 2013	CAD 33,197.25		CAD 2,782,169.80	JS
January 3, 2014	CAD 11,331.38		CAD 2,793,501.18	JS
January 10, 2014	CAD 12,359.62		CAD 2,805,860.80	JS
January 11, 2014	(CAD 40.73)		CAD 2,805,820.07	JS
January 13, 2014	CAD 405.72		CAD 2,806,225.79	JS
January 14, 2014	CAD 6,704.39		CAD 2,812,930.18	JS
January 16, 2014	CAD 20,285.80		CAD 2,833,215.98	JS
January 17, 2014	CAD 73,521.46		CAD 2,906,737.44	JS
January 23, 2014	CAD 325.40		CAD 2,907,062.84	JS
January 25, 2014	CAD 422.71		CAD 2,907,485.55	JS
January 30, 2014	CAD 79,585.52		CAD 2,987,071.07	JS
January 31, 2014	CAD 1,113,064.75		CAD 4,100,135.82	JS
February 6, 2014	CAD 6,634.60		CAD 4,106,770.42	JS
February 7, 2014	CAD 4,707.58		CAD 4,111,478.00	JS
February 14, 2014	CAD 10,581.30		CAD 4,122,059.30	JS
February 17, 2014	CAD 420.00		CAD 4,122,479.30	JS
February 20, 2014	CAD 10,467.18		CAD 4,132,946.48	JS
February 21, 2014	CAD 2,997.75		CAD 4,135,944.23	JS
February 28, 2014	CAD 139,134.72		CAD 4,275,078.95	JS
March 1, 2014	(CAD 149.95)		CAD 4,274,929.00	JS
March 14, 2014	CAD 7,167.65		CAD 4,282,096.65	JS

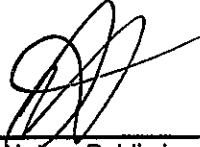
**SCHEDULE A**

Date	Principal Advanced	Principal Repaid	Outstanding Balance	Initials
March 28, 2014	CAD 19,474.25		CAD 4,301,570.90	JK
March 31, 2014	CAD 41,631.30		CAD 4,343,202.20	JB
April 11, 2014	CAD 78.75		CAD 4,343,280.95	JB
April 17, 2014	CAD 31,605.25		CAD 4,374,886.20	JK
April 30, 2014	CAD 11,147.69		CAD 4,386,033.89	JK
May 31, 2014	CAD 8,199.61		CAD 4,394,233.50	JK
June 16, 2014	CAD 75,280.04		CAD 4,469,513.54	JK
July 15, 2014	CAD 9,450.00		CAD 4,478,963.54	JB
July 31, 2014	CAD 98,056.38		CAD 4,577,019.92	JK
Interest to July 31, 2014	CAD 260,665.75		CAD 4,837,685.67	JK

THIS IS EXHIBIT "F"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



---

A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

## MORTGAGE AMENDING AGREEMENT

THIS AGREEMENT made this 2<sup>nd</sup> day of December, 2013, between:

**3 EAU CLAIRE DEVELOPMENTS INC.**, a corporation incorporated pursuant to the laws of the Province of Alberta (the "Mortgagor")

- and -

**BOSA PROPERTIES (EAU CLAIRE) INC.**, a corporation registered pursuant to the laws of the Province of Alberta (the "Mortgagee")

WHEREAS pursuant to the Mortgage the Mortgagor mortgaged the Lands to the Mortgagee;

AND WHEREAS the Mortgagor and the Mortgagee have agreed to amend the terms of the Mortgage;

NOW THEREFORE In consideration of the mutual agreements contained herein, the parties hereto agree as set forth below:

### **ARTICLE 1** **INTERPRETATION**

1.1 **Definitions.** In this agreement, unless the context otherwise requires:

(a) "Lands" means the lands legally described in the Alberta Land Titles Office as follows:

PLAN A1  
BLOCK 14  
LOTS 1 TO 10  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(b) "Mortgage" means that certain collateral mortgage dated the 12<sup>th</sup> day of September, 2013, whereby the Mortgagor mortgaged the Lands to the Mortgagee, which mortgage was registered in the Alberta Land Titles Office on September 23, 2013, as Registration No. 131 239 113.

1.2 **Interpretation.** For all purposes of this agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless otherwise stated, all references in this agreement to designated "articles", "sections", "schedules" and other subdivisions are to the designated articles, sections, schedules and other subdivisions of this agreement.

(b) The words "herein", "hereof" and "hereunder" and other words of similar import refer to this agreement as a whole and not to any particular article, section, schedule or other subdivision of this agreement.

- (c) The headings are for convenience only and do not form a part of this agreement nor are they intended to interpret, define or limit the scope, extent or intent of this agreement or any provision hereof.
- (d) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations to be made hereunder shall be made, in accordance with generally accepted accounting principles in Canada applicable to the undertaking of a corporation.
- (e) All references to currency herein are references to Canadian currency.
- (f) Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.
- (g) Any reference to an entity shall include and shall be deemed to be a reference to any entity that is a successor to such entity.
- (h) Words in the singular include the plural and words in the masculine gender include feminine and neuter genders, and vice versa.

**ARTICLE 2**  
**AMENDMENTS TO MORTGAGE**

**2.1 Change in Principal Sum.** The Mortgage is hereby amended as follows:

- (a) By deleting the words "a grid promissory note dated the 12<sup>th</sup> day of September, 2013 (as the same may be amended, replaced, substituted or altered from time to time (the "Promissory Note"), to the Mortgagor in an amount up to Two Million (\$2,000,000.00) Dollars;" which appear in the sixth line of the second paragraph on page 1 of the Mortgage and by replacing them with the words "grid promissory notes dated the 12<sup>th</sup> day of September, 2013 and the 2<sup>nd</sup> day of December, 2013 (as the same may be amended, replaced, substituted or altered from time to time (collectively, the "Promissory Note"), to the Mortgagor in an amount up to, collectively, Five Million (\$5,000,000.00) Dollars;"
- (b) By increasing the principal amount (as described in the Mortgage) from Two Million (\$2,000,000) Dollars to Five Million (\$5,000,000.00) Dollars. All references contained in the Mortgage to the principal amount of Two Million (\$2,000,000) Dollars shall be amended to refer to the new principal sum of Five Million (\$5,000,000.00) Dollars set forth herein.

**2.2 Mortgage of the Lands.** The Mortgagor, subject to the terms and conditions of the Mortgage as herein amended and as security for the payment of the monies hereby and thereby secured including, without limitation, the principal sum of Five Million (\$5,000,000) Dollars hereby mortgages and charges to and in favour of the Mortgagee all of its estate and interest in the Lands.

2.3 **Mortgage.** This agreement shall be read and construed with the Mortgage and shall be treated as a part thereof and for such purpose and so far as may be necessary to effectuate this agreement, the Mortgage and any other collateral securities delivered to the Mortgagee shall be regarded as being hereby amended, and the Mortgage and the other collateral security so amended together with all the covenants and conditions thereof shall remain in full force and effect.

**ARTICLE 3  
GENERAL**

3.1 **Notices.** Any notice required or permitted to be given hereunder shall be given in the manner contemplated in the Mortgage.

3.2 **Amendment.** This agreement may only be amended by an agreement in writing signed by the parties hereto.

3.3 **Waivers.** No condoning, excusing or overlooking by either party of any breach of any of the terms of this agreement shall take effect or be binding upon that party unless the same be expressed in writing by that party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect rights with respect to any other past, present or future breach.

3.4 **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the province of Alberta and the parties hereby submit to the jurisdiction of the courts of the Province of Alberta for all matters arising out of or in connection with this agreement.

3.5 **Entire Agreement.** This agreement and the Mortgage set forth the entire understanding of the parties as to the subject matter hereof and thereof and merges all prior discussions between them. Neither party shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this agreement or the Mortgage other than as expressly provided for herein and therein, or as is duly set forth subsequent to the date hereof and in writing signed by an authorized representative of the party to be bound thereby.

3.6 **Time of the Essence.** Time shall in all respects be of the essence with respect to this agreement.

3.7 **Severability.** Any provision of this agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereunder.

3.8 **Further Assurances.** The parties hereto agree that they will from time to time at the reasonable request of either of them execute and deliver such assignments, consents, instruments and conveyances and take such further action as may be required to accomplish the purposes and implement the provisions of this agreement.

3.9 **Enurement.** This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors and administrators, successors and permitted assigns.

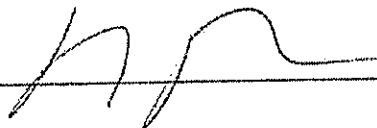
ARTICLE 4  
EXECUTION

4.1 Counterparts. This agreement may be executed in counterparts with the same effect as if the parties hereto had signed the same document. All counterparts and adopting instrument shall be construed together and shall constitute one and the same agreement.

4.2 Execution. IN WITNESS WHEREOF the Mortgagor has executed this agreement as of the day and year first above written.

3 EAU CLAIRE DEVELOPMENTS INC.

Per: \_\_\_\_\_

A handwritten signature in black ink, appearing to be initials or a stylized name, written over a horizontal line.

\_\_\_\_\_  
Witness

BOSA PROPERTIES (EAU CLAIRE) INC.

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness



**ARTICLE 4**  
**EXECUTION**

4.1 **Counterparts.** This agreement may be executed in counterparts with the same effect as if the parties hereto had signed the same document. All counterparts and adopting Instrument shall be construed together and shall constitute one and the same agreement.

4.2 **Execution.** IN WITNESS WHEREOF the Mortgagor has executed this agreement as of the day and year first above written.

**3 EAU CLAIRE DEVELOPMENTS INC.**

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

**BOSA PROPERTIES (EAU CLAIRE) INC.**

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

COLIN BOSA

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

**AFFIDAVIT OF EXECUTION**

CANADA	)	I, _____, of the City of
PROVINCE OF ALBERTA	)	Calgary, in the Province of Alberta, MAKE
TO WIT	)	OATH AND SAY:

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

SWORN BEFORE ME at the City of Calgary, in	)	
the Province of Alberta, this ____ day of	)	
December, 2013.	)	
_____	)	_____
A Commissioner for Oaths in and for the	)	
Province of Alberta	)	

**AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY**

Canada	)	
Province of Alberta	)	
To Wit:	)	

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

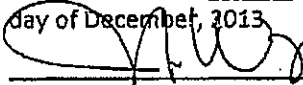
1. That I am an officer or a director of 3 EAU CLAIRE DEVELOPMENTS INC. named in the within annexed instrument.
2. I am authorized by 3 EAU CLAIRE DEVELOPMENTS INC. to execute this instrument without affixing a corporate seal.


SWORN BEFORE ME at the City of	)	
Calgary, in the Province of Alberta, this	)	
____ day of December, 2013.	)	
_____	)	_____
A Commissioner for Oaths in and for the	)	
Province of Alberta	)	

AFFIDAVIT OF EXECUTION

CANADA	)	I, Arnon Dachner, of the City of Vancouver, in
PROVINCE OF ALBERTA	)	the Province of British Columbia, MAKE OATH
TO WIT	)	AND SAY:

3. That I was personally present and did see Colin Bosa named in the within instrument who is personally known to me to be the person named therein, duly sign and execute the same for the purposes name therein.
4. That the same was executed at the City of Vancouver, in the Province of British Columbia, and that I am the subscribing witness thereto.
5. That I know the said Colin Bosa and he is in my belief to be of the full age of eighteen years.

SWORN BEFORE ME at the City of Vancouver  
 in the Province of BC, this 2nd  
 day of December, 2013  
  
 \_\_\_\_\_  
 A Commissioner for Oaths in and for the  
 Province of British Columbia

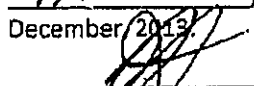
  
 \_\_\_\_\_  
 ARNON DACHNER


AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

Canada	)
Province of Alberta	)
To Wit:	)

I, Colin Bosa, of the City of West Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

6. That I am an officer or a director of BOSA PROPERTIES (EAU CLAIRE) INC. named in the within annexed instrument.
7. I am authorized by BOSA PROPERTIES (EAU CLAIRE) INC. to execute this instrument without affixing a corporate seal.

SWORN BEFORE ME at the City of  
Vancouver, in the Province of  
BC, this 2nd day of  
December, 2013  
  
 \_\_\_\_\_  
 A Commissioner for Oaths in and for the  
 Province of BC

  
 \_\_\_\_\_  
 COLIN BOSA.

ARNON A. DACHNER  
 Barrister & Solicitor  
 DENTONS CANADA LLP  
 20th Floor, 250 Howe Street  
 Vancouver, B.C. V6C 3R8  
 Telephone (604) 687-4466

THIS IS EXHIBIT "G"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



---

A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

April 2, 2014

File No.: 002002-18

**DELIVERED VIA COURIER & VIA EMAIL**3 Eau Claire Developments Inc.  
#102, 615 – 3<sup>rd</sup> Avenue SW  
Calgary AB T2P 0G6

Dear Sir/Madam:

**Re: Bosa Properties (Eau Claire) Inc. ("Bosa") and 3 Eau Claire Developments Inc.  
("Eau Claire")**

We are counsel to Bosa in connection with credit it has advanced to Eau Claire as evidenced by Promissory Notes dated September 12, 2013 and December 2, 2013, executed by Eau Claire in favor of Bosa (collectively the "Promissory Notes").

In this regard, reference is made to the following security granted to Bosa by Eau Claire:

1. Collateral Mortgage dated September 12, 2013 with respect to lands legally described as:

Plan A1  
Block 14  
Lots 1 to 10  
Excepting thereout all mines and minerals; and

2. Mortgage Amending Agreement dated December 2, 2013 between Eau Claire and Bosa.

(collectively the "Mortgage").

The amounts owing by Eau Claire to Bosa, as evidenced by the Promissory Notes and secured by the Mortgage, are due and payable on demand.

Accordingly, demand is hereby made upon you for full payment of all amounts due and owing pursuant to Promissory Notes and the Mortgage, which amounts equal, as of April 1, 2014, the sum of \$4,737,248.29.

Please note that these amounts will continue to accrue interest at the rates agreed to, and costs, including legal costs on a solicitor and own client full indemnity basis, will continue to be incurred by Bosa for which you will be responsible, until payment of all amounts owing hereunder is received by either certified cheque or bank draft at the following address:

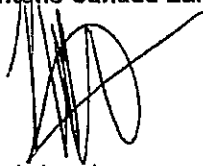
Attention: Brett Sandler  
Bosa Properties Inc.  
1201 – 838 W Hastings Street  
Vancouver, B.C. V6C 0A6

or to Dentons Canada LLP, at the above noted address, to the attention of the undersigned.

If full payment, as set forth above, is not received by close of business April 14, 2014, our client will take whatever steps it deems appropriate to seek repayment of the said amount. To this end we enclose for service upon you a Notice of Intention to Enforce Security in accordance with subsection 244 of the *Bankruptcy and Insolvency Act (Canada)*.

Please note that Bosa reserves the right to proceed against you prior to the time stipulated above in the event that it determines that its position is further jeopardized.

Yours truly,  
**Dentons Canada LLP**



Travis Lysak

TPL/rc  
Enclosures

cc. Parlee McLaws LLP  
Attn: J. Selby

Bosa Properties (Eau Claire) Inc.  
Attn: B. Sandler  
Attn: C. Bosa

Dentons Canada LLP  
Attn: L. Zulak  
Attn: A. Dachner

FORM 115

NOTICE OF INTENTION TO ENFORCE SECURITY

(Subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada))

TO: 3 Eau Claire Developments Inc., an insolvent person (the "Debtor")

TAKE NOTICE THAT:

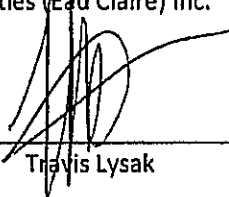
1. The Bosa Properties (Eau Claire) Inc. ("Bosa"), a secured creditor of the Debtor, intends to enforce its security on the property of the Debtor as set out below:
  - (a) the lands legally described as:
    - Plan A1
    - Block 14
    - Lots 1 to 10
    - Excepting thereout all mines and minerals; and
  - (b) all proceeds of the foregoing collateral.
  
2. The security that is to be enforced is in the form of a:
  - (a) Collateral Mortgage, dated September 12, 2013, granted by the Debtor in favour of Bosa with respect to lands legally described as:
    - Plan A1
    - Block 14
    - Lots 1 to 10
    - Excepting thereout all mines and minerals; and
  - (b) Mortgage Amending Agreement dated December 2, 2013 between the Debtor and Bosa.
    - (the "Security").
  
3. The total amount of indebtedness secured by the Security is, as of April 1, 2014, the sum of \$4,737,248.29 CDN plus all further accruing interest and legal costs incurred with respect to collection of the foregoing amounts.

4. Bosa will not have the right to enforce its Security until after the expiry of the 10 day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at the City of Calgary, in the Province of Alberta, this 2<sup>nd</sup> day of April 2014.

**DENTONS CANADA LLP**, solicitors and agents  
for Bosa Properties (Eau Claire) Inc.

Per: \_\_\_\_\_

  
Travis Lysak



**CONSENT AND WAIVER**

**THE UNDERSIGNED** hereby:

1. Acknowledges receipt of the Notice herein;
2. Waives the 10 days of notice required under section 244 of the *Bankruptcy and Insolvency Act* (Canada); and
3. Consents to the immediate enforcement Bosa Properties (Eau Claire) Inc. of the Security referred to herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

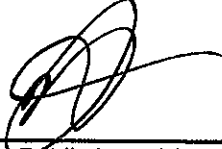
3 Eau Claire Developments Inc.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Position: \_\_\_\_\_

THIS IS EXHIBIT "H"

referred to in the Affidavit of Brett Sandler

Sworn before me this 28<sup>th</sup> day of July, AD 2014



---

A Notary Public in and for the  
Province of British Columbia

**ARNON A. DACHNER**  
*Barrister & Solicitor*  
**DENTONS CANADA LLP**  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

**BOSA PROPERTIES (EAU CLAIRE) INC. PROPOSAL FOR DEVELOPMENT  
AND CREDITOR REPAYMENT OF THE 3 EAU CLAIRE PROJECT**

**BACKGROUND**

- Without a major office tenant, the existing development approval before the City of Calgary (the "City") which contemplates two residential towers atop a retail and office podium is no longer economically viable.
- Bosa Properties (Eau Claire) Inc. ("Bosa") has redesigned the project to comprise two residential towers atop a much smaller retail podium, excluding the office portion (the "New Project"). The newly designed project fits squarely within the zoning and density already approved by the City and no new zoning approvals will be required. The building permit drawings must be revised and resubmitted to the City for approval.
- The time required to finalize the redesign of the New Project and obtain City approval for the newly designed development and building permits would be approximately six months from court approval of this transaction.
- Due to the major redesign of the New Project and the delay in commencement of the originally planned development, it is highly unlikely that any existing pre-sale contracts are enforceable against purchasers. The economic viability of the New Project will depend, in part, on the strength and velocity of new sales and the willingness of lenders to finance against the sales. It is doubtful that any lender would consider the existing sales valid or reliable for the purposes of financing any portion of the New Project or even the existing development.

**NEW PROJECT**

- The New Project proposed by Bosa comprises approximately 490,000 sq. ft. of residential condominium and rental units, being approximately 600 residential units and 25,000 sq. ft. of retail as a podium over an underground parkade.

**IMMEDIATE STEPS**

- Upon court approval of the Bosa proposal, the following would immediately occur:
  - Bosa would repay the first ranking mortgage in favour of Korea Exchange Bank of Canada ("KEB") and will take an assignment of the KEB mortgage position (or have it assigned to an affiliate of Bosa);
  - ownership in the subject property will be transferred to Bosa by way of a vesting order or the shares of 3 Eau Claire Developments Inc. ("3 Eau Claire") will be transferred to Bosa, discussed further below in connection with a gratuitous payment to the existing shareholders of 3 Eau Claire;
  - Bosa will pursue the New Project building permit with the City;
  - Bosa will pursue a commitment for construction financing for the New Project from a commercial lender;

- Bosa will commence marketing of the New Project to prospective condominium purchasers;
- Existing pre-sale contracts to purchase units in the former development proposed by 3 Eau Claire will be ordered terminated and the deposit holders will be directed by the Court to refund all deposits held back to the purchasers thereunder in full and final satisfaction of any claims of any purchasers.

#### **GRATUITOUS PAYMENT TO SHAREHOLDERS OF 3 EAU CLAIRE**

- Provided the shareholders of 3 Eau Claire are willing to transfer all of the issued and outstanding shares of 3 Eau Claire to Bosa as noted above, Bosa will pay, concurrently with the court order and the transfer of said shares to Bosa, a gratuitous payment of \$500,000 to the shareholders of 3 Eau Claire.

#### **COMMERCIAL BUSINESS PLAN AS PART OF IMPLEMENTING PROPOSAL**

- Once condominium unit sales are sufficient to support the development of the New Project, Bosa will finalize the proposed construction financing, obtain the building permit from the City and proceed with development of the New Project.
- Prior to drawing on the construction financing and commencing construction, Bosa may elect not to proceed with the New Project if, among other things, market conditions and pre-sales of condominium units do not support the economic model for the New Project. In that unlikely event, the creditors will revert to their previous position of debt and security, except that KEB will have no obligation to repay the funds advanced by Bosa and Bosa will have taken over that position. Similarly, in the event Bosa has obtained the shares of 3 Eau Claire, the shareholders will have no obligation to repay the sum received.
- Attached is Bosa's proforma budget of revenues and expenses for the development and sales of the New Project. Aggregate expenses to develop the New Project, including land costs based on Bosa's expenditures on the KEB mortgage and its own secured creditor position, are expected to be approximately \$218,000,000 with revenues of approximately \$258,000,00 showing a net profit, before distribution to any creditors, of \$40,000,000.
- Only a developer with sufficient expertise, capital backing and reputation will be capable of facilitating a development such as the New Project. In particular, Bosa brings the ability to secure very competitive financing given its parent company's ability to provide financial guarantees and the skill and expertise of Bosa's affiliated construction and development entities are well known in the industry. A construction program of this magnitude, roughly \$200,000,000 can only be carried out by a limited number of seasoned, professional developers of a certain size. Bosa's affiliation with the Bosa Group of Companies certainly places it within this very limited class of prospective developers.

## BENEFITS TO CREDITORS

- Upon the successful completion of the New Project, budgeted sales are anticipated to well exceed the costs of the New Project and after retirement of the construction financing, payments will be made in the following priority:
  - (a) to Bosa or its affiliate mortgage holding entity to repay the amount of the KEB mortgage and, if applicable, the \$500,000 paid to the shareholders of 3 Eau Claire;
  - (b) \$2,000,000 to KDIC;
  - (c) \$8,500,000 *pari passu* to KDIC and Bosa (\$4,250,000 each);
  - (d) \$12,000,000 *pari passu* to KDIC, Bosa and the other creditors approved by the court, as set out below, as to \$5,000,000, \$5,000,000 and \$2,000,000 respectively;
  - (e) *pari passu* to KDIC and Bosa on a 50/50 basis until KDIC has received, in aggregate from all of the above distributions, \$25,000,000; and
  - (f) the balance, if any, to Bosa.
- In addition, given that there appear to be a number of smaller creditors who may wish to have an early recovery, Bosa will offer to pay the lesser of 20% and \$1,000 to all creditors with claims of \$10,000 or less upon approval of the proposal, all such claims to be assigned to Bosa or its affiliate.
- Based on the above priorities, by the time distributions in item (e) above are complete, creditors will have received \$36+ million, including the repayment of the KEB mortgage as acquired by Bosa, the payment of smaller creditor claims and the \$500,000 gratuitous payment to the 3 Eau Claire shareholders.
- Upon the completion of the distributions noted above the following creditors will receive the amounts set out as follows being the percentage of their total claimed amounts as set out in the table below:

Creditor	Amount Claimed	Amount Paid	Percentage Recovered
KEB*	\$8,500,000	\$8,500,000	100%
Computershare (KDIC)	\$26,680,000	\$25,000,000	93.70%
Other Creditors**	\$3,222,000	\$2,000,000	62.07%

\* The KEB Mortgage may be closer to \$9,000,000 based on accrued interest and costs, but Bosa will pay 100% of the outstanding balance of the KEB Mortgage to obtain an assignment to Bosa or its affiliate once that balance is determined with certainty.

\*\* Sherbrook Capital Inc., MMP Structural Engineers Ltd., PM Rec Holdings Inc. and the entire group of the unsecured creditors claiming, according to the Trustee's report, approximately \$1,800,000.

- Bosa does not propose to pay any amount to 1713744 Alberta Ltd. as we understand this represents 3 Eau Claire's original equity (or the equity of its shareholders) in the original project and as such, the amount should be fully subordinated. Further, repaid fair recovery is reflected in the proposed \$500,000 payment for the share transfer should such occur.

- Bosa would not propose to obtain any priority in respect of the distribution of proceeds on account of its registered mortgage of roughly \$4,700,000 that ranks ahead of a number of the Other Creditors, except as otherwise set out in the above distribution.

### **CLASSIFICATION OF CREDITORS**

- While the precise structure for voting may change depending upon which position the related party, 1713744 Alberta Ltd. takes, the following is currently envisioned:

Class I – KEB

Class II – Computershare (KDIC)

Class III – All other creditors excluding 1713744 Alberta Ltd., (Bosa agrees to subordinate its claims as set out above).

### **TIMELINE**

- The development program and timing for the New Project would be as follows from the date of Court approval of this Proposal:

<b>Time from Milestone</b>	<b>Time From Court Approval of Proposal</b>	<b>Action</b>
+6 months from Court Approval	+6 months	Finalize revised plans and obtain building City approvals in principal to building permit for the New Project;
+9 months from revised plans/City approvals	+15 months	Marketing and securing pre-construction condominium sales (pre-sales)
+3 years from commencement of pre-sales	+51 months (4 years, 3 months)	Construction and delivery of the New Project
+3 months from delivery of New Project	+54 months (4 years, 6 months)	Cash distributions to all creditors after sales of the condominiums are complete and cash flow is realized

### **BOSA'S STRENGTHS**

- Affiliates of Bosa within the Bosa Group of Companies, including Axiom Builders Inc., its construction company, have a tremendous amount of experience and expertise. They have successfully completed projects over the last ten years with construction budgets in excess of \$2 Billion, including:
  - (a) Projects in Calgary with budgets in excess of \$160 Million:
    - (i) The Drake, a concrete residential high-rise on 7<sup>th</sup> Street, S.W.;

- (ii) The Guardian Towers, residential high-rises on 11<sup>th</sup> Street, S.E.; and
  - (b) Projects for their own and account and on behalf of other reputable real estate developers including Concert Properties, Intracorp, Wesgroup and Grosvenor.
- Bosa has demonstrated its ability to obtain financing for, and improve the design and economics of, the existing project. The ability to secure market financing for a project of this magnitude is enjoyed only by a limited class of developers and entities with covenants sufficient to satisfy market lenders. 3 Eau Claire, even before the bankruptcy proceeding, lacked the expertise and creditworthiness to satisfy lender requirements for construction financing necessary to carry out the development.
  - Bosa's intimate knowledge with the site and the market eliminates the due diligence risk of a new proponent and increases the likelihood of the New Project proceeding in the most timely and economical manner which will ultimately benefit the creditors.

Finally, it is important to note that Bosa has previous experience with financing and ultimately completing distressed projects. In 2009, an affiliate of Bosa Properties was instrumental in supporting and ultimately completing the Jameson House Project, a 36 storey, mixed-use high-rise development project in downtown Vancouver with a development value of \$180 million through a ground-breaking restructuring under the *Companies' Creditors Arrangement Act*. When the Bosa Properties affiliate came on the scene, the project had no construction financing and over \$50MM in creditor claims. The Bosa Group brought both creativity and experience and the Plan of Arrangement was ultimately passed and repaying the majority of secured and unsecured creditors on the project. Creditor realization of approximately 97% was achieved.

<b>PROJECT INCOME</b>					
Residential - Condo		\$	151,937,500		
Residential - Rental		\$	93,368,636		
Retail		\$	13,227,273		
<b>Total Income</b>		\$	<b>258,533,409</b>		

<b>PROJECT COSTS</b>					
<b>Land Costs</b>					
Land Cost		\$	14,200,000	\$	28
PTT		\$	5,780		
		\$	<b>14,205,780</b>		

<b>Construction Costs</b>					
Construction Budget		\$	154,087,534		
Construction Contingency		\$	3,852,188		
		\$	<b>157,939,723</b>		

<b>Soft Costs</b>		<b>Units</b>	<b>Unit Rate</b>		
<b>Land Mitigation &amp; Servicing</b>					
Offsite Servicing	1	\$	1,600,000	\$	1,600,000
City Eng Fees	1		50,000		50,000
Telus	1		35,000		35,000
Atco Gas	1		50,000		50,000
Cable	1		35,000		35,000
Offsite Misc	1		100,000		100,000
Other	-		-		-
Other	-		-		-
Other	-		-		-
Public Art	-		-		-
Other	-		-		-
				\$	<b>1,870,000</b>

<b>Professional Fees</b>					
Misc Consultants	\$ 157,939,723	5.00%	\$	7,900,000	
			\$	<b>7,900,000</b>	

<b>Development &amp; Misc</b>					
Predevelop	1		-		-
Land Carrying	1		-		-
Rezoning App	1		20,000		20,000
Subdivision Application	604		315		190,124
Dev Permit	1		490,000		490,000
+1S Contribution	1	\$	750,000		750,000
Parking Cash In Lieu	-		40,000		-
Building Permit	1		1,400,000		1,400,000
Strata Survey	1		150,000		150,000
Condominium Certificate	1		25,000		25,000
Building Signage	1		60,000		60,000
Amenity Furnishings/Art	1		300,000		300,000
Airspace Subdivision	1		300,000		300,000
Road Closure App	1		-		-
Servicing Agreemt	1		75,000		75,000
				\$	<b>3,760,124</b>

<b>Legal Fees</b>					
General	1	\$	300,000	\$	300,000
Disclosure Statemt	1		30,000		30,000
Unit Closings	322		650		210,000
Purchaser Defaults	-		-		-
				\$	<b>540,000</b>
Strata Survey	604	\$	300.00	\$	190,000
Insurance	\$ 157,939,723	0.5%	\$	790,000	

<b>Customer Service</b>					
New Home Warranty	322	\$	500.00	\$	161,207
Manual & Tool Boxes	322	\$	75.00	\$	24,181
Customer Service	322	\$	1,900.00	\$	612,586
Homeowner Protection	322	\$	775.00	\$	249,871
				\$	<b>1,047,845</b>

<b>Administration</b>					
Property Taxes During Constr	1	\$	2,930,000	\$	2,330,000
Dev Mgmt Fee	154,087,534	1.50%	\$	2,000,000	
Post Completion Costs, Util	1		50,000		50,000
				\$	<b>4,380,000</b>

<b>Financing Costs</b>					
Interest During Construction			4.50%	\$	11,700,000
Loan Placement Fee	\$ 184,935,503	0.50%			924,678
Appraisals	1		6,000		6,000
Legal Fees	1		50,000		50,000
Bank Charges	1		7,000		7,000
Discharge fees	604		150		100,000
Guarantee Fee	\$ 183,465,503	1.50%			2,700,000
Letters of Credit	1		10,000		10,000
Subtotal				\$	<b>3,797,678</b>

<b>Total Financing</b>				\$	<b>15,497,678</b>
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<b>Marketing &amp; Sales</b>	\$ 151,937,500	5.00%	\$	7,600,000	
				\$	<b>7,600,000</b>

<b>Commercial Lease up</b>					
Marketing	1	\$	300,000	\$	300,000
TI Allowance	25,000	\$	40.00	\$	1,000,000
GST on Asset	\$ 93,368,636	3.20%	\$	-	
				\$	<b>1,300,000</b>

Subtotal Soft Costs				\$	<b>29,377,969</b>
Contingency		5.00%	\$	1,420,000	
<b>Total Soft Costs &amp; Other</b>				\$	<b>30,847,969</b>

<b>TOTAL PROJECT COSTS</b>				\$	<b>218,491,149</b>
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<b>PROJECT PROFIT</b>				\$	<b>40,042,260</b>
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**PROJECT STATISTICS/ASSUMPTIONS**

Component	Gross Area	Net Area	Efficiency	Units	Parking	Avg Unit Size
Site	32,592					
Residential	275,000	233,750	85%	322	322	725
Rental	215,000	182,750	85%	281	183	650
COM	25,000	25,000	100%		50	
<b>Total Project</b>	<b>515,000</b>	<b>441,500</b>			<b>604</b>	<b>555</b>
RES FSR	15.03					
COM FSR	0.77					
<b>Total FSR</b>	<b>15.80</b>					

**PROJECT REVENUES, COSTS, PROFIT**

**PROJECT REVENUE & VALUATION**

Component	Revenue (NOI)	Net Area	Rate	Subtotal	Vac & Other Deduct
Residential Condo		233,750	\$ 650.00	\$ 151,937,500	\$ 151,937,500
Residential Rental		182,750	\$ 511	\$ 93,368,636	\$ 93,368,636
CRU		25,000	\$ 30.00	\$ 750,000	
	Less:			\$ 750,000	
	Struct. & Vac.		3%	\$ 22,500	
			NOI	\$ 727,500	
	Cap Rate		5.50%		\$ 13,227,273
	T.I.		\$ 40.00		1,000,000
<b>Total</b>					<b>\$ 258,533,409</b>

**ESTIMATED CONSTRUCTION COSTS**

	Units	Rate		
Demolition	1	\$ -	\$ -	
Parking	555	\$ 46,000.00	\$ 25,537,534	
Residential - Condo	275,000	\$ 261	\$ 71,775,000	
Residential - Rental	215,000	\$ 240	\$ 51,600,000	
CRU	25,000	\$ 207	\$ 5,175,000	
	Subtotal Construction		\$ 154,087,534	\$ 299.20
	Environmental		\$ -	
	Subtotal Construction		\$ 154,087,534	
		2.50%	\$ 3,852,188	
<b>Total Construction Cost</b>			<b>\$ 157,939,723</b>	<b>\$ 306.68</b>