

10.4 When the context hereof makes it possible, the word “person” appearing in this instrument includes in its meaning any firm and any body corporate or politic.

10.5 If the Assignor is more than one person, then all covenants, agreements, liabilities, and obligations entered into by or imposed upon the Assignor hereunder will be deemed to be joint and several.

10.6 The headings appearing in this instrument have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of the provisions of this instrument.

10.7 All grants, covenants, provisos, conditions, agreements, rights, powers, privileges, and liabilities contained or provided for herein will be read, held, and construed as made, undertaken, and entered into by and with, granted to, imposed and binding upon, and enuring to the benefit of the parties hereto and their respective heirs, executors, administrators, legal personal representatives, successors, and assigns.

IN WITNESS WHEREOF the Assignor has executed this instrument this *[month, day, year]*.

[insert appropriate execution provisions]

VII. PAYMENT RESERVE AGREEMENT [§6.14]

A. PURPOSE OF PAYMENT RESERVE AGREEMENT [§6.15]

The purpose of a Payment Reserve Agreement is to set up a fund from which the lender can draw instalment payments due on a mortgage and thereby ensure that the instalment payments owed by the borrower to the lender are made as they become due. Payment Reserve Agreements are most commonly used in situations where the lender wants the benefit of having funds advanced, and the comfort of knowing instalments will be paid without delay. One could use a Payment Reserve Agreement in a transactional loan situation. A Payment Reserve Agreement would not be used in an operating loan situation because payments in that case would be taken from the borrower’s operating account.

As an example of how a Payment Reserve Agreement works, assume that the borrower’s budget to acquire land and construct a building is \$1,100,000, which includes the following:

- (1) \$200,000 cost of land;
- (2) \$800,000 cost to construct building; and
- (3) \$100,000 cost to service loan required to acquire land and construct building.

First Advance: The lender advances \$300,000 to the borrower; \$200,000 is used to purchase the land and \$100,000 is put into a trust account to be drawn on by the lender for debt servicing.

The lender should be made aware that there is a potential problem under s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46 (which prohibits a lender from offering or agreeing to receive interest at a “criminal rate” or advertising an offer to do so) when a debt servicing account is set up. If there were a s. 347 issue in the example above, then the \$100,000 would be deducted in the calculation of the amount of “Credit Advanced”. See the commentary to clause 5.23 of the “Commercial Term Mortgage” in chapter 3 for a further explanation of the issue and the definition of “Credit Advanced”, noting the rate has lowered and the method of its calculation has changed with amendments to s. 347 effective January 1, 2025.

B. PAYMENT RESERVE AGREEMENT [§6.16]

THIS AGREEMENT dated for reference *[month, day, year]* is made
BETWEEN:

[name of Borrower], a company registered under the laws of the Province of British Columbia under number *[incorporating number]*, having its registered office at *[address]*;
(the “Borrower”)

AND:

[name of Lender], a chartered bank of Canada, having an office at *[address]*;
(the “Lender”)

RECITALS

A. Pursuant to the Commitment Letter, the Lender has agreed to lend and the Borrower has agreed to borrow the monies representing the Loan for the purposes of, inter alia, constructing the Improvements upon the Lands;

B. To secure the payment, observance, and performance of the Loan Obligations, the Borrower has agreed, inter alia, to deliver the Reserve to the Lender, prior to or contemporaneously with the execution and delivery of this Agreement, for deposit, investment, and application as herein provided;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TEN DOLLARS (\$10.00) of lawful money of Canada now paid by the Lender to the Borrower (the receipt and sufficiency of which is hereby acknowledged by the Borrower) the Borrower herewith delivers the Reserve to the Lender (or confirms previous delivery of the Reserve to the Lender, if such be the case, for the purposes hereof), pledges and charges and grants a security interest in the Reserve Monies in favour of the Lender (who hereby takes a security interest in the Reserve Monies) and covenants and agrees with the Lender as follows:

Bear in mind the need to register a financing statement under the *Personal Property Security Act* to protect the lender’s interest in the deposit monies.

1. IN THIS AGREEMENT:

- (a) “Borrower” means *[name]*, its successors, and assigns;
- (b) “Commitment Letter” means the letter dated *[month, day, year]* issued by the Lender to and accepted by the Borrower upon and subject to the terms and conditions therein set forth, as amended, extended, or renewed from time to time;
- (c) “Improvements” mean *[number of lots]* fully serviced individually titled single-family residential building lots to be developed on the Lands for the purposes of re-sale;
- (d) “Lands” mean *[name of city or municipality]*, *[legal description of property]*;
- (e) “Loan” means the sum of *[\$amount]*;
- (f) “Loan Obligations” mean the obligations and liabilities due or payable to the Lender in connection with the Loan under the Commitment Letter and under any security

including the Mortgage, now or hereafter granted to the Lender in connection therewith by the Borrower or any other person (or persons) or both; and

- (g) “Mortgage” means the \$[amount] mortgage of the Lands and the Improvements in favour of the Lender registered or to be registered at the [location] land title office as security for, inter alia, the repayment of the Loan.
- (h) “Reserve” means the sum of \$[amount]; and

The lender will usually determine the amount of the reserve based on an analysis of the borrower’s budget and the amount of interest that it anticipates will be paid over the term of the loan.

- (i) “Reserve Monies” means the outstanding balance of the Reserve and all interest from time to time payable by the Lender to the Borrower on account thereof.

2. The Lender shall be and is hereby irrevocably directed to forthwith credit the Reserve to an interest bearing account maintained by the Lender in the name of the Borrower at the Lender’s address above.

3. The Reserve shall bear interest from the date it is credited on the books maintained by the Lender at the Lender’s rate of interest for such deposits in effect from time to time and such interest shall be calculated and paid to the aforesaid account, monthly, not in advance, on the first day of each and every month while the outstanding balance of the monies representing the Reserve remains in credit to the Borrower.

4. Subject to the provisions of clauses 5 and 6 hereof, the Reserve shall be invested and reinvested by the Lender and bear interest as herein provided until the Loan Obligations have been fully paid, observed, or performed at which time the outstanding balance of the Reserve Monies shall be paid to the Borrower.

5. Until the earlier of the date upon which:

- (a) the Borrower shall be in default under the Mortgage or any other security from time to time held by the Lender in connection with the Loan; or
- (b) the Reserve Monies cease to be in credit to the Borrower;

the Borrower hereby irrevocably authorizes and directs the Lender to pay from the Reserve Monies each and every instalment of principal or interest or both due and payable by the Borrower to the Lender under the Mortgage as and when the same is due thereunder; provided that nothing herein contained shall be construed so as to relieve the Borrower from the due and punctual payment of such instalments pursuant to the Mortgage whether before or after default or after the Reserve Monies cease to be in credit to the Borrower.

6. In the event of default under the Mortgage or any other security from time to time held by the Lender in connection with the Loan, then notwithstanding anything herein contained to the contrary, the Lender shall forthwith have the right to apply the Reserve Monies in whole or in part on account of the Loan Obligations, without prejudice to or in satisfaction of any other right or remedy available to the Lender occasioned by such default.

7. The Reserve Monies and this Agreement shall be and remain valid and continuing security for the payment, observance, and performance of the Loan Obligations in the manner and to the extent herein provided until the Reserve Monies have been paid to the Borrower or applied by the Lender in the manner contemplated hereby.

8. The Reserve Monies and this Agreement shall be in addition to and not in substitution for any other security now or hereafter held by the Lender in connection with the Loan Obligations and shall not merge in any other security now or hereafter held by the Lender therefor.

9. The taking of a judgment on any covenant contained herein will not operate to create any merger or discharge of any liability or obligation of the Borrower hereunder or any security, including the Mortgage, of any form held or which may be held hereafter by the Lender as provided by the Borrower or from any other person (or persons) whomsoever.

10. The records of the Lender as to the payment, observance, or performance of the Loan Obligations or any part (or parts) thereof, the outstanding balance of the Reserve Monies, the Borrower being in default, or any demand for payment, observance, or performance having been made in connection with the Loan Obligations, shall be conclusive evidence of such payment, observance, performance, default, or demand, as the case may be.

11. The Lender may grant extensions, take and give up security, accept compositions, grant releases and discharges, and otherwise make arrangements and deal with the Borrower and with other persons and security as the Lender may see fit without prejudice to the liability of the Borrower to the Lender or the Lender's rights to hold, deal with, enforce, and realize on the Reserve Monies.

12. All expenses whatsoever incurred by the Lender in applying the Reserve Monies in the manner herein contemplated shall be added to and shall be deemed to be a part of the Loan Obligations and be secured by the Mortgage and any other security from time to time held by the Lender in connection with the Loan.

13. The Borrower hereby acknowledges receipt of a copy of this Agreement and waives the right to receive a copy of any financing statement, financing change statement, financing renewal statement, verification statement, or other statement relating to the registration hereof or thereof.

14. If more than one person signs this Agreement as Borrower, such persons are jointly and severally liable to observe and perform all of the Borrower's obligations herein.

15. If the Reserve Monies or any portion thereof is held by the Borrower as a partner of a firm, as a trustee, as an agent, or in any other similar capacity, whether fiduciary or otherwise, each and every:

- (a) warranty, representation, covenant, agreement, term, condition, proviso, and stipulation; and
- (b) assignment, security interest, and other charge constituted hereby;

made by or imposed upon the Borrower hereunder shall be and be deemed to be jointly and severally made by or imposed upon the Borrower and the partnership, the beneficiary (or beneficiaries) of the trust, the principal (or principals) of the agent, or other entity (or entities), as the case may be, and each assignment, security interest, and other charge contained in this Agreement shall be deemed to be an assignment, security interest, or charge against the interest and title of the partnership, the beneficiary (or beneficiaries), the principal (or principals), or such entity (or entities), as the case may be, in, and to the Reserve Monies, as well as being an assignment of or charge against the interest and title of the Borrower in and to the Reserve Monies.

16. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17. This Agreement may be executed in counterparts, by electronic signatures, and delivered by electronic means. Each electronic copy will be deemed an original and may be used as evidence of execution. All counterparts together will constitute the same document.

IN WITNESS WHEREOF this Agreement has been duly executed on the day and year first above written.