

Clerk's Stamp:

COURT FILE NUMBER	2301 - 08305
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , RSC 1985, c C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF WALLACE & CAREY INC., LOUDON BROS LIMITED, and CAREY MANAGEMENT INC.
DOCUMENT	<u>AFFIDAVIT NO.3 OF ERIC ROLHEISER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MILLER THOMSON LLP Barristers and Solicitors 3000, 700 – 9 th Avenue SW Calgary, AB, T2P 3V4 Attention: James W. Reid / Pavin Takhar Phone: 403-298-2418 / 403-298-2432 Email: jwreid@millერთhompson.com / ptakhar@millერთhompson.com File No.: 0221652.0006

AFFIDAVIT NO. 3 OF ERIC ROLHEISER
Sworn on November 7, 2023

I, Eric Rolheiser, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. This Affidavit is made in support of the application (the "**Application**") by Wallace & Carey Inc. ("**Wallace & Carey**"), Loudon Bros. Limited ("**Loudon Bros**"), and Carey Management Inc. ("**CMI**", and together with Wallace & Carey, and Loudon Bros, the "**Applicants**" or the "**Companies**") returnable November 17, 2023, before the Court of King's Bench of Alberta (the "**Court**").

2. I am the President and Chief Executive Officer at Wallace & Carey. In this role, I also oversaw the operations of Loudon Bros prior to its recent closure. Wallace & Carey and Loudon Bros (the "**Logistics Companies**") represent the logistics component of the Applicants' business.

3. CMI is the sole shareholder of Wallace & Carey. CMI provides management services to the Logistics Companies.

4. I have personal knowledge of the matters described in this Affidavit, except where I state that my knowledge is based upon information and belief, in which case I believe the statements to be true.

I. NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

5. This Affidavit is sworn in support of the Application for an Order, among other things:

- (a) abridging the time for service of the Application and the supporting material, if necessary, and deeming service thereof to be good and sufficient;
- (b) authorizing and approving the transaction (the "**Transaction**") contemplated, by among other documents the asset purchase agreement (the "**Sale Agreement**") between the Applicants and 7-Eleven Canada, Inc. (the "**Purchaser**") dated November 7, 2023;
- (c) authorizing and directing the Applicants to take all steps and execute all such deeds, documents, and instruments as may be reasonably necessary to consummate the Transaction;
- (d) upon closing of the Transaction, vesting all of the Applicants' right, title, and interest in and to the property purchased under the Sale Agreement (the "**Purchased Assets**") in the name of the Purchaser, free and clear from all claims and encumbrances;

- (e) approving the entering into by Wallace & Carey and CMI of a Transition Services Agreement (the "**TSA**") with the Purchaser and the Monitor (as defined below) upon closing of the Transaction, substantially in the form of the TSA attached to the Sale Agreement;
- (f) releasing all claims (the "**Releases**") against (i) the present and former directors, officers and employees of the Applicants; (ii) their respective legal counsel and advisors; (iii) the legal counsel and advisors of the Applicants and the Purchaser; and (iv) the Monitor and its legal counsel (the persons listed in (i), (ii), (iii) and (iv) being collectively, the "**Released Parties**") except in respect of claims for fraud, gross negligence, or willful misconduct, or any claims against the directors and officers of each of the Applicants that is not permitted to be released pursuant to section 5.1(2) of the CCAA;
- (g) assigning certain real property leases and a software license to the Purchaser without the necessity of obtaining consent from the requisite contract counterparties;
- (h) authorizing KSV Restructuring Inc. to make certain interim distributions from the proceeds of the Transaction; and
- (i) temporarily sealing the confidential and commercially sensitive exhibit (the "**Confidential Exhibit**") to the report of Alvarez & Marsal Canada Securities ULC (the "**Financial Advisor**") which is to be attached to the Sixth Report of the Monitor until such time as these proceedings conclude or further order of the Court,

(collectively, the "**Relief Sought**").

6. I understand that the Monitor, the Applicants' senior secured lender, Canadian Imperial Bank of Commerce ("**CIBC**"), and the Purchaser each support the Relief Sought in the Application.

II. **BACKGROUND**

A. Circumstances Leading to the CCAA Filing

7. Wallace & Carey is a family owned business founded in 1921. Prior to filing for creditor protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), Wallace & Carey was servicing more than 7,000 customers across the country and had grown to become one of Canada's largest independent wholesale distribution and logistics companies.

8. Wallace & Carey has owned and operated Loudon Bros since 2011. Loudon Bros was Thunder Bay's leading foodservice wholesaler and distributor, serving convenience stores, grocery stores, restaurants, foodservice providers, not-for-profits, and various retail sector businesses throughout Northwestern Ontario.

9. The Logistics Companies faced unprecedented challenges due to the COVID-19 global pandemic, the resulting supply chain disruptions and lockdowns, and the subsequent inflationary pressures and interest rate increases, all as set out in detail in the Affidavit of Brian M. Birnie sworn June 21, 2023.

10. The Logistics Companies fell into arrears with many of their creditors, and could not meet their obligations to creditors generally as they become due, putting the business and the jobs of the Logistics Companies' 650 employees at risk.

11. On June 22, 2023, the Applicants obtained a CCAA Initial Order in these proceedings, which order was amended and restated on June 30, 2023 (the "**ARIO**"). Among other things, the CCAA Initial Order appointed KSV Restructuring Inc. as monitor of the Applicants (the "**Monitor**").

B. Circumstances since the ARIO

12. Following the ARIO, the vendors and suppliers of the Logistics Companies required prepayment terms for the continued provision of goods and services. The prepayment arrangement caused variances in the cash flow forecasts prepared for these proceedings, which had been prepared on the assumption that suppliers and vendors would require cash-on-delivery.

13. The pre-payment terms impaired the Applicants' liquidity due to the significant delay from the time that the Applicants paid suppliers and vendors, and the time that they received inventory. As described in detail in the Second Report of the Monitor dated August 9, 2023, the Logistics Companies' inability to source inventory on a continuous basis caused sales and cash receipts to negatively vary from the cash flow forecasts.

14. Customers of the Logistics Companies' experienced lower fill rates than what their businesses required. As a result, a significant portion of the Logistics Companies' major customers terminated their relationship with Wallace & Carey.

15. Due to the decreased customer base, since August 2023, the Logistics Companies have been consolidating their business. This consolidation has included the wind-down of the operations of Loudon Bros, which is now substantially completed. On November 3, 2023, the Court approved the

sale of Loudon Bros' real property, its last remaining material asset. The transaction is scheduled to close on November 17, 2023.

16. Wallace & Carey has continued to operate its business in the ordinary course. The Purchaser is by far the most significant customer of Wallace & Carey, and presently accounts for substantially all of Wallace & Carey's revenue.

17. Wallace & Carey currently employs 458 full-time employees.

C. The SISP

18. The Applicants were required to commence a sale and investment solicitation process ("**SISP**") due to the liquidity challenges noted above and the absence of an executable restructuring plan.

19. The Applicants, in consultation with the Financial Advisor, the Monitor, and CIBC, developed a SISP to solicit interest in, and opportunities for, one or more or any combination of: (i) a restructuring, recapitalization, or other form of reorganization of the business and affairs of the Applicants as a going concern; or (ii) a sale of all, or substantially all, of the Applicants' business and operations as a going concern or otherwise.

20. On August 23, 2023, the Honourable Justice M. H. Hollins granted an Order approving the Applicants' form of SISP, and approved the Applicants' engagement of the Financial Advisor to conduct the SISP under the oversight of the Monitor.

21. The SISP set out the following milestones:

MILESTONE	DEADLINE
SISP Launch Date	August 30, 2023
Phase 1 Bid Deadline	October 5, 2023
Phase 2 Bid Deadline	November 2, 2023
Transaction Approval Application Hearing	Subject to Court availability
Target Closing Date	On or before December 4, 2023

22. The SISP was designed as a two-stage process, with letters of intent to be submitted by the Phase 1 Bid Deadline and binding agreements to be submitted on or before the Phase 2 Bid Deadline.

D. SISP Results

23. In accordance with the terms of the SISP, the Financial Advisor and Applicants:
 - (a) made a comprehensive assessment of the market for the Applicants' businesses to identify potential purchasers or investors;
 - (b) identified 190 prospective parties to contact and invite to participate in the SISP (the "**Potential Parties**");
 - (c) circulated a teaser document (the "**Teaser**") to the Potential Parties;
 - (d) established an online data room (the "**Data Room**");
 - (e) prepared a confidential information memorandum (the "**CIM**"); and
 - (f) prepared a non-disclosure agreement (the "**NDA**").
24. The foregoing was done in consultation and coordination with the Monitor.
25. Of the Potential Parties that were contacted, 47 executed an NDA, received the CIM and were given access to the Data Room (the "**Interested Parties**").
26. On September 22, 2023, the Interested Parties received a Phase 1 Process Letter, which contained the instructions on how to submit a non-binding letter of intent (an "**LOI**") by the October 5, 2023, LOI deadline (the "**Phase 1 Bid Deadline**").
27. Due to the Applicants' significant liquidity challenges, the Applicants, the Financial Advisor and the Monitor, with the consent of CIBC, determined that it was necessary to expedite the timeline set out in the SISP.
28. Accordingly, the Financial Advisor encouraged the Interested Parties to provide LOIs at the earliest possible opportunity, which LOIs were to include, among other things, an overview of the proposed transaction structure, an indication of value, any outstanding due diligence, and an estimated timeline to complete a transaction.
29. The Financial Advisor received five LOIs by the Phase 1 Bid Deadline, including a proposal from the Purchaser that outlined the principal terms of the Transaction (the "**Proposal**").
30. Given the critical importance of the Purchaser to the Wallace & Carey business, most of the LOIs submitted by Interested Parties were conditional upon a new service agreement being executed

with 7-Eleven Canada, Inc. The only LOI that did not include such a condition was submitted by an Interested Party that intended to become a lender to the Applicants, and required an equity investment.

31. Due to the Applicants' eroding financial and operational condition, the Applicants, the Financial Advisor, the Monitor and CIBC determined that the Proposal offered the highest and best recovery for creditors of the Applicants, with the best chance of closing in the short timeframe required.

32. As a result, the Applicants, the Financial Advisor, and the Monitor, with the assistance of their respective legal counsel, worked with the Purchaser to prepare the Sale Agreement based on the Proposal, which agreement is subject to the approval of this Court.

III. RELIEF REQUESTED

A. Approval of the Transaction

i. Sale Agreement

33. The Applicants seek approval of the Transaction contemplated, by the Sale Agreement in the form of an Approval and Vesting Order.

34. The Transaction is a going-concern transaction that, if approved, will preserve employment for a significant number of the Applicants' employees for the term of the TSA (as defined and detailed below) and potentially thereafter.

35. The Transaction is intended to maximize recoveries for the Applicants' stakeholders, including the amounts owed by the Applicants to tax authorities. CMI has consented to the appointment of a receiver over the assets of certain of its subsidiaries to facilitate a sale of those entities assets, which are not Applicants in these proceedings, in order to achieve this result.

36. The principal terms of the Sale Agreement are summarized below. All capitalized terms not defined in this section take their definitions from the Sale Agreement. A copy of the Sale Agreement is attached as **Exhibit "A"**:

<u>PARTIES</u>	
Vendors:	Wallace & Carey, Loudon Bros, Carey Management Inc.
Purchaser:	7-Eleven Canada Inc.

Transaction Timeline:	Target closing date (the “ Closing Date ”) of November 20, 2023, unless otherwise agreed by the Vendors, the Purchaser and the Monitor. The Outside Closing Date is November 30, 2023.
<u>TRANSACTION OVERVIEW</u>	
The Transaction:	<p>The Purchaser shall acquire the following assets on an “as is, where is” basis, free and clear of all claims and encumbrances:</p> <ul style="list-style-type: none"> (i) the Vendors’ personal property and equipment assets located in Alberta and British Columbia; (ii) intellectual property, technology, software and systems relating to the entire Logistics Companies’ logistics/distribution business across Canada; <p>In addition to the foregoing, the Purchaser will pay for: (a) 7-Eleven Designated Inventory; and (b) all validated accounts receivable owing by the Purchaser to Vendors.</p>
Purchase Price	<p>\$4,500,000</p> <p>For certainty, the Purchase Price does not include amounts to be paid by the Purchaser for Designated Inventory and validated accounts receivable.</p>
Employees	Treatment as contemplated under the TSA.
Optional Purchased Assets	At any time following the Closing Date but prior to the expiration of the term of the TSA, the Purchaser shall have the option to acquire or take assignment of, or facilitate a third-party partner’s acquisition of, any Optional Purchased Assets on an “as is, where is” basis, free and clear of all claims and encumbrances in accordance with the terms of the TSA.
Assumed Liabilities	(a) Any Cure Costs which are not paid at Closing; and (b) Liabilities relating to the Purchased Assets and Assigned Contracts, solely in respect of the period from and after the Closing Effective Time and not relating to the period prior to the Closing Effective Time.
Excluded Liabilities	All liabilities, other than Assumed Liabilities.

Assigned Contracts	<p>1. Lease Agreement dated as of June, 2021 entered into between Tariff Developments Inc., as landlord, and Wallace & Carey Inc., as tenant, with respect to the property municipally known as Units 120 and 130, 7350 Wilson Avenue, Delta, British Columbia.</p> <p>2. Lease Agreement dated as of April 16, 2013 (as amended by an amending agreement dated as of April 2, 2014, and further amended by an amending agreement dated as of November 17, 2015) entered into between Hoop Realty Inc., as landlord, and Wallace & Carey Inc., as tenant, with respect to the property municipally known as 14430-14494 157th Avenue NW, Edmonton, Alberta.</p> <p>3. All existing per-device licences for the LXEZ software package (including add-on library, connection server and application) that provides access to the WORCS server software.</p>
Excluded Assets	<p>All assets of the Companies as of the Closing Date other than the Purchased Assets. For certainty, all inventory and accounts receivable of the Vendors constitute Excluded Assets.</p>
Representations and Warranties	<p>The Transaction shall be on an 'as is, where is' basis with no representations or warranties except for the limited representations and warranties set out in Article 4.</p>
Key Closing Conditions	<p>The Sale Agreement includes the following closing conditions for the benefit of the Purchaser:</p> <ol style="list-style-type: none">1. The Court shall have issued and entered the Approval and Vesting Order and, if applicable, the Assignment Order, and such Orders shall not have been stayed, set aside, or vacated.2. The Competition Act Approval shall have been obtained and not been rescinded.3. The Purchaser and the Vendors shall have entered into the TSA.4. The 772 Transaction shall have closed such that the Purchaser is the owner of the real property owned by 772921 Alberta Inc., a subsidiary of CMI.

ii. Transition Services Agreement

37. Concurrent with the closing of the Transaction, the Vendors and the Purchaser intend to enter into a transition services agreement (“TSA”) pursuant to which the Vendors will continue to provide certain services to the Purchaser in accordance with the terms and conditions contained therein. A copy of the TSA is attached to the Sale Agreement as Schedule “C”.

38. Following the Closing of the Transaction, the Vendors will commence an orderly wind-down and termination of their third-party customer business such that the Purchaser is the only remaining customer of the Vendors. Wallace & Carey will continue to provide logistics services to the Purchaser on a revenue neutral basis, and will have access to the Purchased Assets to provide such services.

39. The term of the TSA is 15 months for the Wallace & Carey business in Alberta and British Columbia, and nine months for the Wallace & Carey business east of Alberta. Each transition services period is subject to two 90-day extensions at the option of the Purchaser.

40. The Purchaser will fund the operations of the Vendors for the term of the TSA, including costs relating to employment, real property, personal property, contracts and leases, and certain professional fees.

41. The Applicants will continue to employ certain warehouse, logistics, administrative, and managerial employees to operate the business and provide the services described in the TSA. The number of retained employees may be adjusted from time to time during the term of the TSA. The Purchaser may elect to offer employment to any Wallace & Carey employee.

42. Throughout the term of the TSA, the Vendors will work with the Monitor to monetize Excluded Assets for the benefit of the Vendors’ creditors.

iii. 772 APS

43. In conjunction with the Application, CIBC intends to bring an application in the Court seeking, among other things: (i) the appointment of KSV Restructuring Inc. as receiver (in such capacity, the “Receiver”) of the assets, property and undertaking of 772921 Alberta Inc. (“772”), including the real properties known municipally as 1230 Industrial Road, Kelowna, British Columbia and 5415 and 5445 8th Street N.E., Calgary, Alberta (collectively, the “772 Properties”).

44. The Receiver intends to seek approval of an agreement of purchase and sale dated as of November 6, 2023 (the “772 APS”), pursuant to which the Purchaser has agreed to purchase and the Receiver has agreed to sell, the 772 Properties for \$14.92 million. The Purchaser will also take

assignment of the leasehold interests in the real properties known municipally as Unit 5B, 4386 Boban Drive Nanaimo, British Columbia and 5225 8th Street N.E. Calgary, Alberta (the "772 Transaction").

45. The 772 Properties were marketed by the Financial Advisor as part of the SISP. The 772 Transaction is required to transfer the 772 Properties to the Purchaser, free and clear of encumbrances. The closing of the 772 Transaction is a condition precedent to the closing of the Transaction.

iv. The Realization of the Logistics Business

46. The Applicants are of the view that the Transaction represents the highest and best value for the business of Wallace & Carey in the circumstances, and the Sale Agreement is fair and reasonable for the following reasons:

- (a) the Sale Agreement resulted from the Proposal, which was submitted in compliance with the Court approved SISP;
- (b) the Sale Agreement is the result of extensive negotiations, and represents the best offer for the Purchased Assets given the liquidity challenges faced by the Applicants;
- (c) the Transaction maximizes value for the Applicants' business and assets for the benefit of all stakeholders; and
- (d) the Monitor, the Financial Advisor, and CIBC support the Transaction and Sale Agreement.

47. The Transaction, the TSA, and the 772 Transaction are part of a global realization deal for the entire Logistics Companies' business. These transactions realize on the inventory, the accounts receivable, and the real property assets of the business.

48. I understand that the Monitor will file a report that provides the total gross recoveries to the estate from this realization process to be between \$59,700,000 and \$67,100,000, and the report will provide analysis in support of its view that there is no viable better option to the Transaction.

B. Assignment of Contracts

49. As set out above, the Transaction is dependent on certain contracts being assigned to the Purchaser. In particular, the Sale Agreement requires that Wallace & Carey's warehouse leases in Edmonton, Alberta, and Delta, British Columbia be assigned to it.

50. In addition, the 772 Transaction requires that 772's warehouse leases, which Wallace & Carey sublets from 772, in Calgary, Alberta, and Nanaimo, British Columbia be assigned to the Purchaser.

51. Further, the Transaction requires the assignment of all existing per-device licenses for the LXEZ software package that provides access to the WORCS server software (the "**Software Licenses**").

52. The Purchaser is a well-capitalized corporation, and I understand the Purchaser has agreed that, subject to closing the Transaction, it will agree to perform all obligations of the tenant under each of the proposed assigned leases, and as licensee under the Software Licenses.

53. The Applicants have sought the consent of each landlord. As at today's date three of four landlords have given their consent to the assignment of their respective lease to the Purchaser, subject to entering into definitive documentation with the Purchaser. A copy of the email confirmations from each of the lessors to the Edmonton, Calgary and Nanaimo leases and request to assignment for Delta lease is collectively attached hereto as **Exhibit "B"**.

54. Copies of the Delta and Edmonton leases are collectively attached hereto as **Exhibit "C"**.

55. The Applicants have sought consents from the licensor in respect of the Software Licenses. A copy of the email correspondence is attached hereto as **Exhibit "D"**.

56. While none of the leases or licenses are in arrears, the Purchaser has agreed to pay any cure costs, as required by the CCAA that may exist in respect of the assigned contracts.

C. Third Party Releases

57. The Applicants seek approval of the Releases in favour of the Released Parties.

58. The Released Parties have made, and continue to make, material contributions to these CCAA Proceedings. The Released Parties have been critical to the negotiation and completion of the Sale Agreement, the Transaction, and will continue to be necessary for the ongoing obligations of Wallace & Carey under the TSA.

59. The requested Releases are reasonable and not overly broad. They do not apply to claims of fraud, gross negligence or willful misconduct on the part of any Released Parties. Further, they are subject to the limitations of Court-ordered releases under section 5.1(2) of the CCAA, which do not permit releases for claims against directors based on allegations of misrepresentation or wrongful or oppressive conduct.

60. The releases provide certainty and finality to the Transaction in the most efficient manner.

61. Further, if the Releases are approved, the director and officers of the Applicants have consented to forgo the benefit of the D&O Charge (as defined in the ARIO) in this proceeding. In that scenario, a further \$4,000,000 in funds that would otherwise be held back from a distribution to creditors to secure the D&O Charge would be released and made available to creditors.

62. In addition, CMI is consenting to the appointment of KSV Restructuring Inc. as receiver over its non-logistics business interests to monetize these CMI assets in order to generate further proceeds that may be needed to pay any shortfalls owing to the tax authorities after the closing the Transaction, if any.

63. I understand the Monitor will file a report explaining that the Transaction is expected to maximize recoveries and to provide an improved economic result as compared to that which could be realized from any other transaction, including liquidation. The Transaction is projected to provide the provincial tobacco tax authorities with their greatest possible recovery in any scenario. Further, during the TSA period, Wallace & Carey intends to continue to pay tobacco taxes in the ordinary course.

64. Throughout the CCAA proceedings, each of the Released Parties have acted in good faith and with due diligence.

D. Interim Distribution

65. Pursuant to the ARIO and the Order granted August 23, 2023, certain priority charges were granted by the Court over the Applicants' Property (as defined in the ARIO).

66. The Application seeks to authorize the Monitor to make distributions of the proceeds of sale from the Transaction to satisfy these priority charges, subject to certain holdbacks.

67. I understand the Monitor will be filing a report setting out the details of the proposed distribution of proceeds.

68. In the Applicants' view, no party will be prejudiced by the distribution, which was established by the Initial Order, as amended by the ARIO, and an August 23, 2023 Ancillary Court Order. All parties affected by those Orders are on the service list and have been served, and will continue to be served, with all relevant materials in these CCAA Proceedings.

E. Sealing of Confidential Appendix

69. I understand that the Financial Advisor has provided the Monitor with a report in respect of the results of the SISP.

70. I understand that the Financial Advisor's report will be appended to the report of the Monitor and that one of the Exhibits to that report contains commercially sensitive information on the LOIs that were received in the SISP.

71. I am advised by my counsel, James Reid of Miller Thomson LLP, that a temporary sealing order will be sought over this confidential Exhibit to avoid the tainting of any potential future sale or marketing process for the business of Wallace & Carey, or any part there of, following the term of the TSA.

72. Given Wallace & Carey will continue to operate following the closing of the Transaction, it would be significantly prejudiced in any future marketing and sales process for its remaining business if the information in the confidential Exhibit were made available to the public.

IV. CONCLUSION

73. I swear this affidavit in support of the Application and any other proper purpose in connection with these proceedings.

SWORN BEFORE me at the City of Calgary,
in the Province of Alberta, this 7th day of
November, 2023.

David Allison

A Commissioner for Oaths in and for Alberta

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ERIC ROLHEISER

David Josiah Allison
Student-at-Law
Notary Public & Commissioner for Oaths
in and for the Province of Alberta

This is Exhibit "A" referred to in the Affidavit of Eric Rolheiser sworn before me this 7th day of November 2023

David Allison

A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

David Josiah Allison
Student-at-Law
Notary Public & Commissioner for Oaths
in and for the Province of Alberta

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is entered into as of the 7th day of November, 2023

BETWEEN:

CAREY MANAGEMENT INC., a corporation incorporated pursuant to the laws of the Province of Alberta ("**CMI**")

– and –

WALLACE & CAREY INC., a corporation incorporated pursuant to the laws of the Province of Alberta ("**W&C**")

– and –

LOUDON BROS. LIMITED., a corporation incorporated pursuant to the laws of the Province of Ontario ("**Loudon**") and together with CMI and W&C, collectively, the "**Vendors**")

– and –

7-ELEVEN CANADA, INC., a corporation incorporated pursuant to the federal laws of Canada, or its nominee (the "**Purchaser**")

WHEREAS:

A. Pursuant to the Order of the Honourable Justice G.A. Campbell of the Alberta Court of King's Bench (the "**Court**") issued June 22, 2023 (as may be amended or amended and restated from time to time, the "**Initial Order**"), the Vendors were granted relief in proceedings commenced by the Vendors (the "**CCA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCA**"), and KSV Restructuring Inc. was appointed as the Monitor of the Vendors (in such capacity, the "**Monitor**").

B. On August 23, 2023, the Vendors sought and obtained within the CCA Proceedings an order of the Court (the "**SISP Order**") approving, among other things, a sale and investment solicitation process to be conducted in accordance with the terms of the SISP Order (the "**SISP**").

C. Also on August 23, 2023, the Court granted an ancillary order, among other things, approving the engagement of Alvarez & Marsal Canada Securities ULC (the "**Sales Agent**") as financial advisor of the Vendors, and authorizing the Vendors to conduct the SISP with the assistance of the Sales Agent.

D. In connection with the SISP, Canadian Imperial Bank of Commerce ("**CIBC**") intends to bring an application in the Court seeking, among other things: (i) the appointment of KSV Restructuring Inc. as receiver (in such capacity, the "**Receiver**") of the assets, property and undertaking of 772921 Alberta Inc. ("**772**"), including the real properties known municipally as 1230 Industrial Road, Kelowna, British Columbia and 5415 and 5445 8th Street N.E., Calgary, Alberta (collectively, the "**772 Properties**"); and (ii) the approval of an agreement of purchase and sale dated as of November 7, 2023 (the "**772 APS**") pursuant to which the Purchaser has agreed to purchase and the Receiver has agreed to sell the 772 Properties and assign its leasehold interests in the real properties known municipally as Unit 5B, 4386 Boban Drive Nanaimo, British Columbia and 5225 8th Street N.E. Calgary, Alberta (the "**772 Transaction**").

E. In accordance with the terms of the SISP, the Purchaser has submitted an offer to purchase the Purchased Assets (as defined herein) from the Vendors. The Purchaser's offer has been accepted subject to, and in accordance with, the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties hereby acknowledge and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Unless something in the subject matter or context is inconsistent therewith, the terms defined herein shall have the following meanings:

“**772**” has the meaning set out in the recitals hereto.

“**772 APS**” has the meaning set out in the recitals hereto.

“**772 Properties**” has the meaning set out in the recitals hereto.

“**772 Transaction**” has the meaning set out in the recitals hereto.

“**Accounting Methodologies**” has the meaning set out in Section 5.7(a).

“**Advance Ruling Certificate**” means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the *Competition Act* to the effect that the Commissioner is satisfied that they would not have sufficient grounds upon which to apply to the Competition Tribunal for an order under section 92 of the *Competition Act* in respect of the transactions contemplated under this Agreement.

“**Affiliate**” has the meaning given to the term “affiliate” in the *Business Corporations Act*, R.S.A. 2000, c.B-9.

“**Agreement**” means this asset purchase agreement, as may be amended and restated from time to time in accordance with the terms hereof, with the prior written consent of the Monitor, and “**Article**” and “**Section**” mean and refer to the specified article, section and subsection of this Agreement.

“**Applicable Law**” means, in respect of any Person, property, transaction or event, any: (i) domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order; (ii) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, instruments or awards of any Governmental Authority; and (iii) policies, practices, standards, guidelines and protocols having the force of law, that applies in whole or in part to such Person, property, transaction or event.

“**Approval and Vesting Order**” means an order by the Court, in form and substance satisfactory to the Purchaser and the Monitor, acting reasonably, among other things, approving and authorizing this Agreement and the Transaction, vesting title to the Purchased Assets in the Purchaser or its permitted designee on Closing, free and clear of all Encumbrances.

“**Assignment and Assumption Agreement**” means an assignment and assumption agreement effecting the assignment to, and assumption by, the Purchaser of the Assigned Contracts and the Assumed Liabilities, in form and substance satisfactory to the Parties, acting reasonably.

“Assignment Order” means an order of the Court, in form and substance satisfactory to the Purchaser and the Monitor, acting reasonably, assigning to the Purchaser the rights and obligations of the Vendors under the Assigned Contracts for which a consent, approval or waiver necessary for the assignment of such Assigned Contracts has not been obtained, and which will include, if necessary, a mechanism for the resolution of any disputed Cure Costs.

“Assigned Contracts” means the Contracts listed in Schedule “A”.

“Assumed Liabilities” means: (a) any Cure Costs which are not paid at Closing; and (b) Liabilities relating to the Purchased Assets and Assigned Contracts, solely in respect of the period from and after the Closing Effective Time and not relating to the period prior to the Closing Effective Time.

“Audited Designated Inventory” has the meaning set out in Section 5.7(c).

“Authorization” means any authorization, approval, consent, concession, exemption, license, lease, grant, permit, franchise, right, privilege or no-action letter from any Governmental Authority having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person’s property or business and affairs or from any Person in connection with any easements, contractual rights or other matters.

“Books and Records” means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including Tax and accounting books and records used or intended for use by, or in the possession of the Vendors or any of its Affiliates including information, documents and records relating to the Assigned Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, cost and pricing information, production reports and records, equipment logs, operating guides and manuals, credit records, records relating to present and former suppliers and contractors, plans and projections and all other records, data and information stored electronically, digitally or on computer-related media.

“Business” means the business conducted by the Vendors, comprising an integrated inter-provincial wholesale distribution and logistics business.

“Business Day” means a day on which banks are open for business in the Province of Alberta, but does not include a Saturday, Sunday or statutory holiday in the Province of Alberta.

“CCAA” has the meaning set out in the recitals hereto.

“CCAA Charges” means those priority charges granted pursuant to the Initial Order, or any other order of the Court, in the CCAA Proceedings.

“CCAA Proceedings” has the meaning set out in the recitals hereto.

“CIBC” has the meaning set out in the recitals hereto.

“CIBC Facility” means the asset-based credit facility established by the credit agreement dated as of September 17, 2017 among CMI, as borrower, certain other credit parties from time to time party thereto, as guarantors, the lenders from time to time party thereto, and CIBC, as agent.

“Claims” means any civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, audit, chose in or cause of action, suit, default,

assessment, litigation, prosecution, third party action, arbitral proceeding or proceeding, complaint or allegation, by or before any Person.

“**Closing**” means the closing and consummation of the Transaction.

“**Closing Date**” means November 20, 2023, unless otherwise agreed by the Parties hereto and the Monitor.

“**Closing Effective Time**” means 12:01 a.m. (Calgary time) on November 19, 2023 or such other time as the Parties may agree to in writing.

“**CMI**” means Carey Management Inc.

“**Commissioner**” means the Commissioner of Competition appointed under the *Competition Act* or any Person authorized to exercise the powers and perform the duties of the Commissioner of Competition.

“**Competition Act**” means the *Competition Act* (Canada).

“**Competition Act Approval**” means:

- (a) the Commissioner shall have issued (and not rescinded) an Advance Ruling Certificate to Purchaser; or
- (b) both of (i) the expiry or termination of the applicable waiting period (including any extension of such waiting period) under section 123 of the *Competition Act*, or the waiver of the obligation to provide a pre-merger notification in accordance with section 113(c) of the *Competition Act* and (ii) the Commissioner shall have issued (and not rescinded or amended) a No-Action Letter to Purchaser.

“**Contracts**” means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) to which any of the Vendors are a party or by which such entity is bound or in which such entity has, or will at the Closing Effective Time have, any rights or by which any of its property or assets are or may be affected, including any Contracts in respect of Employees.

“**Court**” has the meaning set out in the recitals hereto.

“**Cure Costs**” means, in respect of the Assigned Contracts, all amounts, costs, fees and expenses: (i) required under section 11.3(4) of the CCAA to be paid to remedy monetary defaults in relation to the Assigned Contracts, other than those arising by reason only of the Vendors’ bankruptcy, insolvency (including the commencement of the CCAA Proceedings) or failure to perform a non-monetary obligation; (ii) required to secure a counterparty’s consent to the assignment of an Assigned Contract and agreed to by the Purchaser in its sole discretion; or (iii) as may be required pursuant to the Approval and Vesting Order or the Assignment Order, as applicable, and which for greater certainty, may be an amount agreed to by the Purchaser and the counterparty to an Assigned Contract, subject to the approval of the Monitor.

“**Designated Inventory**” means inventory of the Vendors that the Purchaser designates, acting reasonably, as current, saleable Purchaser designated inventory, as confirmed by the Monitor, acting reasonably; provided that Designated Inventory shall only include inventory that is subject to the CIBC Facility and included in the borrowing base certificate.

“Excluded Assets” means all assets of the Vendors as of the Closing Effective Time other than the Purchased Assets.

“Excluded Contracts” means all Contracts other than the Assigned Contracts.

“Excluded Liabilities” has the meaning set out in Section 2.3.

“Employee” means any individual who is employed by any of the Vendors immediately prior to the Closing Effective Time.

“Encumbrance” means any security interest, lien, Claim, charge, CCAA Charge, right of retention, deemed trust, judgement, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, mortgage or right of a third party (including any contractual rights such as purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

“Estimated Designated Inventory” has the meaning set out in Section 5.7(b).

“Excise Tax Act” means the *Excise Tax Act*, R.S.C, 1985, c. E-15.

“Final Closing Date Designated Inventory” has the meaning set out in Section 5.7(d).

“General Conveyance” means a general conveyance evidencing the conveyance to the Purchaser of the Vendors’ interest in and to the Purchased Assets, in form and substance satisfactory to the Parties, acting reasonably.

“Governmental Authority” means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

“GST/HST” means all goods and services tax imposed under Part IX of the *Excise Tax Act*.

“Illustrative Designated Inventory and SEC A/R Schedule” has the meaning set out in Section 5.7(a).

“Income Tax Act” means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

“Intellectual Property” means all intellectual property and industrial property used by the Vendors in the Business, whether or not registrable, patentable or otherwise formally protectable, and whether or not registered, patented, otherwise formally protected or the subject of a pending application for registration, patent or any other formal protection, including all rights, titles, interests, and benefits in and to: (i) trademarks, service marks, trade dress, corporate, partnership and business names, fictitious names and other trade names; (ii) inventions, patent rights, arts, processes, machines, manufactures, compositions of matter, utility models; (iii) works, copyrights, neighbouring rights, moral rights, software (whether source code or object code) and databases; (iv) designs and industrial designs; (v) know-how, show-how, trade secrets, proprietary information, formulae, recipes, algorithms, specifications, schematics, systems, methods and techniques and related documentation, patent, customer and supplier information and records, and

market and survey information; (vi) telephone numbers, domain names, websites and website portals and social media identities and accounts; (vii) integrative circuit topographies and mask works; and all derivatives, modifications and improvements of the foregoing, and all goodwill relating to the foregoing, and all re-examinations, reissues, continuations, extensions and divisions of any of the foregoing, and all income, royalties, damages and payments now and hereafter due or payable with respect to any of the foregoing (including damages and payments for past or future infringements, dilutions, misappropriations, misuse or unauthorized use of any of the foregoing), and all rights to sue, counterclaim and recover for past, present and future infringements, dilutions, misappropriations, misuse or unauthorized use of any of the foregoing.

“Landed Cost” means the total cost of Designated Inventory purchased by the Vendors, including without limitation, the purchase price, freight, shipping, handling, customs duties, insurance, and any other costs associated with the transportation of the Designated Inventory to its destination. For the avoidance of doubt, Landed Cost shall be calculated based only on the actual costs incurred and reasonably documented by the Vendors, and shall be generally consistent with the costs reflected in the Illustrative Designated Inventory and SEC A/R Schedule and Accounting Methodologies contained therein.

“Liability” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Loudon” means Loudon Bros Limited.

“Monitor” has the meaning set out in the recitals hereto.

“Monitor’s Certificate” has the meaning set out in Section 7.1(f).

“No-Action Letter” means written confirmation from the Commissioner that they do not, at that time, intend to make an application under section 92 of the *Competition Act* in respect of the transactions contemplated under this Agreement.

“Oakville Leased Property” means the leased real property municipally known as 2226 South Service Road, Oakville, Ontario.

“Optional Purchased Assets” has the meaning given to that term in the TSA.

“Ordinary Course” means when used in relation to the conduct of the Business, any transaction that constitutes an ordinary day-to-day business activity of the Business conducted in a manner consistent with the Vendors past practice, having regard for CCAA Proceedings.

“Organizational Documents” means any trust document, charter, certificate or articles of incorporation or amalgamation, articles of amendment, articles of association, articles of organization, articles of continuance, bylaws, as amended, partnership agreement or similar formation or governing documents of a Person (excluding individuals).

“Outside Date” means 11:59 pm (Calgary time) on November 30, 2023, or such later date and time as the Vendors and the Purchaser may agree to in writing (with the prior written consent of the Monitor).

“Parties” means the Vendors and the Purchaser.

"Party" means either CMI, W&C, Loudon or the Purchaser.

"Permits and Licenses" means the orders, permits, licenses, Authorizations, approvals, registrations, consents, waivers or other evidence of authority issued to, granted to, conferred upon, or otherwise created for the Vendors by any Governmental Authority related to the Business, the Purchased Assets and Assigned Contracts.

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

"Purchased Assets" has the meaning set out in Section 2.1.

"Purchase Price" has the meaning set out in Section 3.1.

"Purchaser" means 7-Eleven Canada, Inc., or its nominee.

"Receiver" has the meaning set out in the recitals hereto.

"Sales Agent" means Alvarez & Marsal Canada Securities ULC.

"SEC A/R" has the meaning set out in Section 5.8(a) .

"SISP" has the meaning set out in the recitals hereto.

"SISP Order" has the meaning set out in the recitals hereto.

"Taxes" means, with respect to any Person, all national, federal, provincial, local or other taxes, including income taxes, capital gains taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties.

"Trademark Assignment Agreement" means an assignment of trademark agreement evidencing the assignment to the Purchaser of each Vendor's rights, title, and interest in any and all trademarks forming part of such Vendor's Intellectual Property.

"Transaction" means all of the transactions contemplated by this Agreement, the TSA and the 772 APS, including the purchase and sale transaction whereby the Purchaser will acquire the Purchased Assets.

"Transfer Taxes" means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including GST/HST.

“TSA” has the meaning set out in Section 5.6.

“Vendor” means any of CMI, W&C, or Loudon and “Vendors” means all of them collectively.

“W&C” means Wallace & Carey Inc.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 General Construction

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.4 Extended Meanings

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings and the term “third party” means any other Person other than the Vendors or the Purchaser, or any Affiliates thereof.

1.5 Currency

All references in this Agreement to dollars, monetary amounts, or to \$, are expressed in Canadian currency unless otherwise specifically indicated.

1.6 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

1.7 Schedules & Amendments to Schedules

The following exhibits and schedules are attached hereto and incorporated in and form part of this Agreement:

SCHEDULES

Schedule A	-	Assigned Contracts
Schedule B	-	Form of Transition Services Agreement
Schedule C		Illustrative Designated Inventory and SEC A/R Schedule and accompanying Accounting Methodologies

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Exhibits and Schedules and the interpretation provisions set out in this Agreement will apply to the Exhibits and Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Exhibits and Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS

2.1 Purchase and Sale of Purchased Assets

At the Closing, subject to the terms and conditions set forth in this Agreement, the Vendors shall sell, assign, transfer and convey to the Purchaser, and the Purchaser shall purchase, acquire and assume from the Vendors, each Vendor's right, title and interest in, to and under all of the personal and tangible assets located in Alberta and British Columbia, and all of the intangible assets, whether now existing or hereafter acquired, which are used or held for use in connection with, the Business (collectively, the "**Purchased Assets**"), free and clear of all Encumbrances, including without limitation:

- (a) all furniture, fixtures, equipment, machinery and other tangible personal property owned by the Vendors and located in Alberta and British Columbia;
- (b) all Assigned Contracts as set out in Schedule "A" attached hereto;
- (c) each Vendor's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;
- (d) originals, or where not available, copies, of all Books and Records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records, strategic plans, internal financial statements and marketing and promotional surveys, material and research, that exclusively relate to the Purchased Assets or Assigned Contracts; and
- (e) all Intellectual Property owned by each Vendor and used in connection with the Business, including any registrations related thereto, including without limitation:
 - (i) all rights, title and interest in and to the WORCS warehouse management software platform (including all object code, source code, and documentation);
 - (ii) all rights, title and interest in and to the WOnline online ordering software portal (including all object code, source code, and documentation); and
 - (iii) all the Vendors' rights under its existing per-device licences for the LXEZ software package (including add-on library, connection server and application) that provides access to the WORCS server software.

2.2 Excluded Assets

Notwithstanding Section 2.1, the Purchased Assets shall not include the Excluded Assets.

2.3 Transfer of Purchased Assets and Assumption of Liabilities

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk, legal and beneficial ownership of the Purchased Assets shall transfer from the Vendors to the Purchaser on the Closing Date, and the Purchaser agrees to assume, discharge, perform and fulfill all of the Assumed Liabilities from and after the Closing Date. For certainty, the Purchaser is not assuming any Liabilities of the Vendors other than the Assumed Liabilities (collectively, the "**Excluded Liabilities**") and shall have no liability to any Person therefor.

2.4 Assigned Contracts

- (a) Until the Closing Effective Time, the Purchaser shall be entitled to make additions, deletions and modifications to the Contracts classified as "Assigned Contracts", in its sole discretion. For greater certainty: (i) any Assigned Contract subsequently designated by the Purchaser as an Excluded Contract after the date of this Agreement shall be deemed to no longer be an Assigned Contract, and shall be an Excluded Contract; and (ii) any Contract subsequently designated by the Purchaser as an Assigned Contract after the date of this Agreement shall be deemed an Assigned Contract for the purposes of this Agreement. Notwithstanding the foregoing, this Section 2.4 shall not apply to the lease agreement relating to the Oakville Leased Property, which shall constitute an Optional Purchased Asset and may be purchased by the Purchaser in accordance with the terms of this Agreement and the TSA.
- (b) Each of the Parties shall use reasonable commercial efforts to obtain, as may be required by the terms of such Assigned Contracts, all consents and approvals required to assign the Assigned Contracts to the Purchaser.
- (c) To the extent that any Assigned Contract is not assignable without the consent or approval of the counterparty or any other Person, and such consent or approval has not been obtained prior to the Closing: (i) any Vendor's interest in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order; (ii) any applicable Vendor will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing; and (iii) if an Assignment Order is obtained in respect of such Assigned Contract at the request of the Purchaser, the Purchaser shall accept the assignment of such Assigned Contract on such terms.
- (d) To the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall be responsible for and shall pay such Cure Costs, which shall be paid either directly to the applicable counterparty or to the Monitor, which Cure Costs shall be in addition to the Purchase Price. Unless the Parties otherwise agree, to the extent that any Cure Cost is payable with respect to any Assigned Contract, where such Assigned Contract is assigned pursuant to an Assignment Order, the Purchaser shall pay such Cure Costs in accordance with such Assignment Order, and where such Assigned Contract is not assigned pursuant to an Assignment Order, the Purchaser shall pay such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty.
- (e) Subject at all time to their obligations under the TSA, during the CCAA Proceedings the Vendors shall be entitled to disclaim or seek to disclaim any Excluded Contracts pursuant to the CCAA.
- (f) It shall be the sole obligation of the Purchaser, at the Purchaser's sole cost and expense, to provide any and all financial assurances, deposits or security, including without limitation any Cure Costs that may be required by Governmental Authorities or any third parties to permit the transfer of the Purchased Assets, including the Assigned Contracts, to the Purchaser.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The aggregate purchase price for the Purchased Assets shall be CAD\$4,500,000.00 (the "**Purchase Price**"). The Purchase Price shall be paid on the Closing Date, in full, by wire transfer of immediately available funds to an account designated by the Monitor.

3.2 Transfer Taxes

The Parties agree that:

- (a) The Purchase Price does not include Transfer Taxes and the Purchaser shall be liable for and shall pay any and all Transfer Taxes, if any, pertaining to the Purchaser's acquisition of the Purchased Assets.
- (b) Where a Vendor is required under Applicable Law to collect or pay Transfer Taxes, the Purchaser will pay the amount of such Transfer Taxes to W&C on the Closing Date. W&C shall pay such Transfer Taxes directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due.
- (c) Except where a Vendor is required under Applicable Law to collect or pay such Transfer Taxes, the Purchaser shall pay such Transfer Taxes directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due. Each Vendor will do and cause to be done such things as are reasonably requested to enable the Purchaser to comply with such obligation in a timely manner. If a Vendor is required under Applicable Law to pay any such Transfer Taxes which are not paid by the Purchaser on the Closing Date, the Purchaser shall promptly reimburse such Vendor the full amount of such Transfer Taxes upon delivery to the Purchaser of copies of receipts showing payment of such Transfer Taxes.
- (d) The Purchaser shall indemnify the Vendors for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendors may pay or for which the Vendors may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes.
- (e) Notwithstanding the foregoing, if available, the Purchaser and the Vendors shall jointly execute an election under section 167 of the *Excise Tax Act* in connection with the transfer of the Purchased Assets contemplated herein, and the Purchaser shall file such election with its applicable Tax return for the reporting period in which the sale of the Purchased Assets takes place. Any GST/HST incurred in connection with the purchase and sale of the Purchased Assets contemplated by this Agreement, including where an election pursuant to subsection 167(1) of the *Excise Tax Act* is not or cannot be validly made in respect of the Purchased Assets, shall be borne by Purchaser.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Vendors

Each Vendor hereby represents and warrants as of the date hereof and as of the Closing Date as follows, and acknowledges that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Incorporation and Status. It is a corporation incorporated and existing under the laws of the jurisdiction of its incorporation, is in good standing under such laws and has the power and authority to enter into, deliver and perform its obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and, subject to obtaining the Approval and Vesting Order in respect of the matters to be approved therein, performance by each Vendor of this Agreement has been authorized by all necessary corporate action on the part of each Vendor.
- (c) Execution and Binding Obligation. This Agreement has been duly executed and delivered by each Vendor and constitutes a legal, valid and binding obligation of each Vendor, enforceable against it in accordance with its terms, subject only to obtaining the Approval and Vesting Order.
- (d) Proceedings. There are no proceedings pending against each Vendor or, to the knowledge of each Vendor, threatened, with respect to, or in any manner affecting, their respective titles to the Purchased Assets, or which would reasonably be expected to enjoin, delay, restrict or prohibit the transfer of all or any part of the Purchased Assets or the Closing of the Transaction as contemplated by this Agreement, or which would reasonably be expected to delay, restrict or prevent the Vendor from fulfilling any of its obligations set forth in this Agreement.
- (e) No Consents or Authorizations. Subject only to obtaining the Approval and Vesting Order and the Competition Act Approval, and any consents, approvals or waivers required in connection with the assignment of the Assigned Contracts, each Vendor does not require any consent, approval, waiver or other Authorization from any Governmental Authority or any other Person, as a condition to the lawful completion of the Transaction.
- (f) Residency. Each Vendor is not a non-resident of Canada for purposes of the *Income Tax Act* or the *Excise Tax Act*, as applicable.
- (g) No Other Agreements to Purchase. Except for the Purchaser's rights under this Agreement and the SISP Order, no Person has any contractual right, option or privilege for the purchase or acquisition from each Vendor of any of the Purchased Assets.

4.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to and in favour of the Vendors as of the date hereof and as of the Closing Date, and acknowledges that the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Incorporation and Status. The Purchaser is a corporation incorporated and existing under the *Canada Business Corporations Act*, is in good standing under such act and has the power and authority to enter into, deliver and perform its obligations under this Agreement.

- (b) Corporate Authorization. The execution, delivery and performance by the Purchaser of this Agreement has been authorized by all necessary corporate action on the part of the Purchaser.
- (c) No Conflict. The execution, delivery and performance by the Purchaser of this Agreement do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the Organizational Documents of the Purchaser.
- (d) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject only to the Approval and Vesting Order.
- (e) Proceedings. There are no proceedings pending, or to the knowledge of the Purchaser, threatened, against the Purchaser before any Governmental Authority, which prohibit or seek to enjoin delay, restrict or prohibit the Closing of the Transaction, as contemplated by this Agreement, or which would reasonably be expected to delay, restrict or prevent the Purchaser from fulfilling any of its obligations set forth in this Agreement.
- (f) No Consents or Authorizations. Subject only to (i) obtaining the Approval and Vesting Order, (ii) obtaining the Competition Act Approval, (iii) filing a notification pursuant to the *Investment Canada Act* (Canada), and (iv) obtaining any consents, approvals or waivers required in connection with the assignment of the Assigned Contracts, the Purchaser does not require any consent, approval, waiver or other Authorization from any Governmental Authority or any other Person, as a condition to the lawful completion of the Transaction.
- (g) Residency. The Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act*.

4.3 As is, Where is

The representations and warranties of each Vendor shall merge on Closing and shall thereafter be of no further force and effect. Despite any other provision of this Agreement, the Purchaser expressly acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Effective Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is express or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign the same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing any and all conditions, warranties or representations expressed or implied pursuant to the Sale of Goods Act (Alberta) or other similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Agreement are for purpose of identification only and, no representation, warranty or condition has or will be given by the Vendor concerning completeness or accuracy of such descriptions.

ARTICLE 5 COVENANTS

5.1 Conduct of Business Before the Closing Date

From the date of this Agreement up to and including the Closing Date, except as otherwise provided in this Agreement or consented to in writing by the Purchaser, W&C and CMI shall: (a) conduct their Business in the Ordinary Course consistent with past practice; and (b) use their reasonable best efforts to maintain and preserve intact their current Business organization, operations and franchises and to preserve the rights, franchises, goodwill and relationships of their employees, customers, lenders, suppliers, regulators and others having relationships with their Business.

5.2 Closing Date

The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on or before the Outside Date.

5.3 Permits and Licenses

The Parties shall cooperate and work together in good faith, assist with submissions, share information and make any other efforts required to obtain any approval, Authorization, third-party consent, or permits and licences from any Governmental Authority necessary to effect the Closing.

5.4 Application for Approval and Vesting Order

As soon as practicable, the Vendors shall serve and file with the Court an application for the issuance of the Approval and Vesting Order and, if applicable, the Assignment Order, seeking relief that will, inter alia, approve this Agreement and the Transaction, and release the officers and directors of the Vendors, their advisors, the Monitor, the Monitor's counsel and the Sales Agent. The Vendors shall use commercially reasonable efforts to seek the issuance and entry of the Approval and Vesting Order and Assignment Order and the Purchaser shall use commercially reasonable efforts to cooperate with the Vendors in their efforts to obtain the issuance and entry of the Approval and Vesting Order and Assignment Order which will include supporting the full and final release of directors and officers of each Vendor (but shall not be a condition of the making of the balance of the order if rejected by the Court for any reason) in the Approval and Vesting Order.

5.5 Insurance Matters

Until Closing, the Vendor shall keep in full force and effect all existing insurance policies and give any notice or present any Claim under any such insurance policies consistent with past practice in the ordinary course of business.

5.6 Transition Services Agreement

Contemporaneous with the Closing contemplated herein the Vendors and the Purchaser shall enter into a transition services agreement substantially in the form attached hereto as Schedule "B" ("TSA") setting out the terms and conditions pursuant to which, among other things, (i) the Vendors will continue to provide logistics services to the Purchaser on a revenue neutral basis, (ii) the Vendors will continue to have access to the Purchased Assets for the purposes set out in the TSA, and (iii) realization may be made upon Excluded Assets in connection with the winding down of the Vendors.

5.7 Inventory

- (a) In addition to the Purchased Assets, the Purchaser shall acquire at the Closing, all of the Vendors' rights, titles and interests in and to the Designated Inventory, on the terms and conditions set forth in this Section 5.7. Schedule C attached hereto (the "**Illustrative Designated Inventory and SEC A/R Schedule**") contains an illustrative example of the determination of Designated Inventory as of October 28, 2023, including accompanying methodologies (the "**Accounting Methodologies**").
- (b) On or before November 14th, 2023, the Vendors shall prepare and deliver to Purchaser an estimate of Designated Inventory as of November 4, 2023. Such estimate of Designated Inventory shall be prepared consistently with the Illustrative Designated Inventory and SEC A/R Schedule and the Accounting Methodologies contained therein. The Purchaser shall provide any comments to such estimated Designated Inventory as promptly as practicable following their receipt. The Vendors and the Purchaser shall work in good faith (in consultation with the Monitor) to resolve any disputes among the Parties and agree upon a final estimated Designated Inventory as of November 4, 2023 (the "**Estimated Designated Inventory**").
- (c) On November 18th, 2023, the Vendors shall conduct a physical inventory count to determine the actual Designated Inventory on hand with the Vendors as of the Closing Effective Time, which shall be supervised and audited by an independent inventory valuation service acceptable to the Monitor, the Purchaser, the Vendors and CIBC, acting reasonably (the "**Auditor**"). The Purchaser shall be permitted and afforded every opportunity to participate in all aspects of such inventory count. The results of such inventory count, as verified by the Auditor, shall be referred to herein as the "**Audited Designated Inventory**". Such determination, and allocation of Audited Designated Inventory as Designated Inventory, shall be prepared consistently with the Illustrative Designated Inventory and SEC A/R Schedule and the Accounting Methodologies contained therein.
- (d) The Purchaser shall provide any comments they have on the calculation of Audited Designated Inventory as promptly as possible following their receipt of same. The Vendors and the Purchaser shall work in good faith (in consultation with the Monitor and the Auditor, if necessary) to resolve any disputes among the Parties and agree upon a final determination of the Designated Inventory as of the Closing Effective Time (such determination, as mutually agreed upon by the Parties, being referred to herein as the "**Final Closing Date Designated Inventory**").
- (e) Payment for the Designated Inventory shall be made as follows:
 - (i) On the Closing Date, the Purchaser shall pay a cash deposit to the Monitor in an amount equal to the lesser of (i) twelve million dollars (\$12,000,000), and (ii) seventy-five percent (75%) of the value of the Estimated Designated Inventory (the "**Designated Inventory Deposit**"). The Designated Inventory Deposit shall be held by the Monitor, in escrow, pending the determination of the Final Closing Date Designated Inventory in accordance with Section 5.7(d) above. For the avoidance of doubt, the Illustrative Designated Inventory and SEC A/R Schedule and the Accounting Methodologies contained therein shall reflect, and the Purchaser shall only be required to pay in accordance with this Section 5.7, a value for the Designated Inventory equal to the Vendors' Landed Cost for such Designated Inventory.

- (ii) Within two (2) Business Days following the determination of the Final Closing Date Designated Inventory in accordance with Section 5.7(c) above, the Purchaser shall pay to the Monitor an amount equal to (i) one-hundred percent (100%) of the value of the Final Closing Date Designated Inventory *minus* (ii) the Designated Inventory Deposit; provided that, if such amount is a negative number (the “**Deficit**”), then the Monitor shall reimburse the Purchaser an amount equal to the Deficit. The net proceeds from the Final Closing Date Designated Inventory shall be applied to reduce the secured debt obligations of the Vendors. For the avoidance of doubt, the Purchaser shall only be required to pay in accordance with this Section 5.7, a value for the Designated Inventory equal to the Vendors’ Landed Cost for such Designated Inventory.

5.8 Accounts Receivable

- (a) For purposes of this Agreement, “**SEC A/R**” means all validated accounts receivable of the Vendors that pertain to purchases by the Purchaser. An illustrative example of SEC A/R as of October 28, 2023, including accompanying Accounting Methodologies, is included in the Illustrative Designated Inventory and SEC A/R Schedule.
- (b) At Closing, the Purchaser shall determine in good faith (and subject to the consent and approval of the Monitor) and pay to the Monitor an amount equal to the SEC A/R outstanding as of two (2) Business Days prior to the Closing Date (the “**SEC A/R Deposit**”). The calculation of such SEC A/R shall be consistent with the Illustrative Designated Inventory and SEC A/R Schedule and accompanying Accounting Methodologies.
- (c) Within seven (7) days following the Closing Date, the Purchaser will determine, acting reasonably and in consultation with the Monitor, the actual amount of SEC A/R outstanding at the Closing Effective Time. The calculation of such SEC A/R shall be consistent with the Illustrative Designated Inventory and SEC A/R Schedule and accompanying Accounting Methodologies. In accordance with this determination, the Purchaser shall then, within two (2) Business Days, make such further and additional payment to the Monitor of SEC A/R that had not already been paid as of the Closing Date. The net proceeds from the SEC A/R shall be applied to reduce the secured debt obligations of the Vendors.

5.9 Carey Management Inc. Subsidiaries

Each Vendor covenants and agrees to work with the Monitor and any receiver of a CMI subsidiary to monetize any and all Excluded Assets and CMI subsidiary company assets, as necessary, to satisfy the CCAA Charges. CMI represents and warrants that, to the best of its knowledge, the balance sheets of Ridge Meadows Properties Ltd. and Spruce It Up Land Corp. dated as of October 30, 2023, as provided to the Monitor and the Purchaser, are true and accurate in all material respects.

5.10 Wind-Down

Following the Purchaser’s purchase of Designated Inventory contemplated in Section 5.7, and each Vendor’s sale of all of its other inventory which is not Designated Inventory after Closing, the Vendors shall commence an immediate orderly wind-down and termination of third party customer business of the Vendors under the supervision of the Monitor such that as soon as possible following Closing, other than residual wind-down activities, the Purchaser will be the only go-forward customer of the Vendors, all as contemplated by the TSA.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing

Closing shall take place on the Closing Date effective as of the Closing Effective Time electronically (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

6.2 Vendors' Closing Deliveries

At or before the Closing, the Vendors shall deliver or cause to be delivered to the Purchaser the following:

- (a) a true copy of the Approval and Vesting Order, as issued and entered by the Court;
- (b) a true copy of the Assignment Order, if applicable, as issued and entered by the Court;
- (c) all Tax elections contemplated by Section 3.2, duly executed by the Vendors;
- (d) the General Conveyance, duly executed by the Vendors;
- (e) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (f) the Trademark Assignment Agreement, duly executed by the Vendors;
- (g) the complete source code, object code, and documentation for the WORCS warehouse management software platform (including all previous versions, code branches, developer notes, designs, specifications, and other documents in the Vendors' possession or control);
- (h) the complete source code, object code, and documentation for the WOnline online ordering software portal (including all previous versions, code branches, developer notes, designs, specifications, and other documents in the Vendors' possession or control);;
- (i) certificates of an officer of each Vendor dated as of the Closing Date confirming that all of the representations and warranties of such Vendor contained in this Agreement are true in all material respects as of the Closing Date, with the same effect as though made at and as of the Closing Date, and that such Vendor has performed in all material respects the covenants to be performed by it prior to the Closing Date;
- (j) the Books and Records that relate to the Purchased Assets and Assigned Contracts; and
- (k) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

6.3 Purchaser's Closing Deliveries

At or before the Closing Date, the Purchaser shall deliver or cause to be delivered to the Vendors (or to the Monitor, as applicable), the following:

- (a) payment of the Purchase Price;
- (b) payment of the Designated Inventory Deposit and SEC A/R Deposit;

- (c) payment of all Transfer Taxes payable on Closing to the Monitor (or evidence of payment by the Purchaser thereof to the relevant Governmental Authorities) in accordance with Section 3.2;
- (d) payment of the Cure Costs to be paid by the Purchaser pursuant to Section 2.4 to the Monitor, or evidence that such Cure Costs have been or will be paid directly to the applicable counterparty;
- (e) all tax elections contemplated by Section 3.2, duly executed by the Purchaser;
- (f) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (g) a certificate of an officer of the Purchaser dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Date, with the same effect as though made at and as of the Closing Date, and that the Purchaser has performed in all material respects the covenants to be performed by it prior to the Closing Date; and
- (h) such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

ARTICLE 7 CONDITIONS OF CLOSING

7.1 Conditions Precedent in favour of the Parties

The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) Approval and Vesting Order. The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably. The Approval and Vesting Order may contain provisions which include full and final releases of the directors and officers of the Vendors, however the refusal or failure of the Court to grant such relief is not a condition to the balance of the Approval and Vesting Order, including for purpose of this section.
- (b) Competition Act Approval. The Competition Act Approval shall have been obtained and not been rescinded.
- (c) Assignment Order. The Court shall have issued and entered the Assignment Order, if applicable, which Assignment Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (d) No Order. No Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction; and

- (e) No Restraint. No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (f) Monitor's Certificate. The Monitor shall have provided an executed certificate of the Monitor substantially in the form attached to the Approval and Vesting Order (the "**Monitor's Certificate**") confirming that all other conditions to Closing have either been satisfied or waived by both the Purchaser and the Vendors.

The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in Section 7.1 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Parties to terminate this Agreement, provided that any election on the part of the Vendors may only be made with the consent of the Monitor.

7.2 Conditions Precedent in favour of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Vendors' Deliverables. The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchaser all the documents and payments contemplated in Section 6.2.
- (b) Transition Services Agreement. The Purchaser and the Vendors shall have entered into the TSA, which TSA shall have been approved by an Order of the Court and such Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (c) Purchase and Sale of Real Property. The 772 Transaction shall have closed such that the Purchaser is the owner of the 772 Properties.
- (d) Deliverables. The Purchaser shall have received from the Vendors customary closing deliverables with respect to the Transaction.

The foregoing condition is for the exclusive benefit of the Purchaser. This condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If the condition set out in this Section 7.2 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendors and the Monitor to terminate this Agreement.

7.3 Conditions Precedent in favour of the Vendors

The obligation of the Vendors to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Purchaser's Deliverables. The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 6.3.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 4.2 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date, or (ii) if made as of a date specified therein, as of such date.

- (c) No Breach of Covenants. The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 7.3 may be waived by the Vendors with the consent of the Monitor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in this Section 7.3 is not satisfied or performed on or prior to the Outside Date, the Vendors, with the consent of the Monitor, may elect on written notice to the Purchaser to terminate the Agreement.

7.4 Monitor's Certificate

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived, the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

ARTICLE 8 TERMINATION

8.1 Grounds for Termination

This Agreement may be terminated on or prior to the Closing Date:

- (a) by the mutual written agreement of the Vendors (with the consent of the Monitor) and the Purchaser; or
- (b) by the Vendors (with the consent of the Monitor) or the Purchaser upon written notice to the other Party if: (i) the Closing has not occurred on or prior to the Outside Date; or (ii) the Approval and Vesting Order is not obtained on or before the Outside Date (subject to availability of the Court); provided in each case that the failure to close or obtain such order, as applicable, by such deadline is not caused by a breach of this Agreement by the Party proposing to terminate the Agreement.

8.2 Effect of Termination

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder.

**ARTICLE 9
GENERAL**

9.1 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court, and any appellate courts of the Province of Alberta therefrom.

9.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:

- (a) in the case of the Purchaser, as follows:

7-Eleven Canada, Inc.
13450 102 Avenue, Suite 2400
Surrey, British Columbia V3T 5X3

Attention: General Manager of Canada

with a copy to:

7-Eleven Canada, Inc.
3200 Hackberry Road
Irving, Texas
75063 USA

Attention: Legal Department

and with a copy to:

DLA Piper (Canada) LLP
Suite 1000, Livingston Place West
250 2nd St SW
Calgary, Alberta, T2P 0C1, Canada

Attention: Edmond Lamek / Carole J. Hunter
Email: edmond.lamek@ca.dlapiper.com / carole.hunter@dlapiper.com

- (b) in the case of the Vendors, as follows:

5445 8th St NE
Calgary, AB T2K 5R9 Canada

Attention: Pat Carey
Email: careyp@careymgmt.com

with a copy to:

Miller Thomson LLP
3000, 700 - 9th Avenue SW
Calgary, Alberta, T2P 3V4, Canada

Attention: James Reid / Sam Massie
Email: jwreid@millerthomson.com / smassie@millerthomson.com

- (c) in each case, with a further copy to the Monitor as follows:

KSV Restructuring Inc.
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman / David Sieradzki
Email: bkofman@ksvadvisory.com / dsieradzki@ksvadvisory.com

with a copy to:

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West, 888 3 St SW
Calgary, AB T2P 5C5 Canada

Attention: Jeffrey Oliver / Jane Dietrich
Email: joliver@cassels.com / jdietrich@cassels.com

Any such notice or other communication, if transmitted by email before 5:00 p.m. (Calgary time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Calgary time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given on the date stipulated above for electronic delivery.

Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

9.3 Non-Disparagement

The Vendors shall not make, publish or communicate to any person or in any public forum any comments or statements (written or oral) that denigrate or disparage, discredit or cast a slur upon, or are detrimental to or likely to be injurious to, the reputation or stature of the Purchaser or its Affiliates, or its or their businesses or operations, or any of its or their employees, directors and officers.

9.4 Public Announcements

The Vendors shall be entitled to disclose this Agreement to the Court and parties in interest in the CCAA Proceedings, other than any information which the Purchaser advises the Vendors in writing as being confidential, and this Agreement may be posted on the Monitor's website maintained in connection with the CCAA Proceedings. Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein) or where required to meet timely disclosure obligations of the Vendors or any of its Affiliates under Applicable Laws (provided that the Purchaser shall be given prior written notice of any such disclosures), the Vendors shall not issue (prior to or after the Closing) any press release or make any

public statement or public communication with respect to this Agreement or the Transactions contemplated hereby without the prior consent of the other Parties, which shall not be unreasonably withheld or delayed.

9.5 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties.

9.6 Survival

The representations and warranties of the Parties contained in this Agreement shall merge on Closing. The covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

9.7 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

9.8 Entire Agreement

This Agreement and the Exhibits and Schedules attached hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Vendors and the Purchaser.

9.9 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with the transactions contemplated by this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency. Notwithstanding the foregoing, the terms of the TSA shall govern with respect to the subject matter contained therein.

9.10 Assignment

This Agreement may be assigned by the Purchaser five (5) days prior to the hearing scheduled for the issuance of the Approval and Vesting Order, in whole or in part, without the prior written consent of the Vendors or the Monitor, provided that: (i) such assignee is a related party or subsidiary of the Purchaser; (ii) the Purchaser provides prior notice of such assignment to the Vendors and the Monitor; and (iii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment; provided, however, that any such assignment shall not relieve the Purchaser of its obligations hereunder. This Agreement may not be assigned by any of the Vendors without the consent of the Purchaser.

9.11 Further Assurances

Each of the Parties shall (including following Closing), at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement and the transactions contemplated herein.

9.12 Counterparts

This Agreement may be executed electronically in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-

mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

9.13 Severability

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

9.14 Monitor's Capacity

In addition to all of the protections granted to the Monitor under the CCAA or any order of the Court in this CCAA Proceedings, the Vendors and the Purchaser acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors and not in its personal capacity, will have no Liability, in its personal capacity or otherwise, in connection with this Agreement or the Transaction contemplated herein whatsoever as Monitor.

[Signature Page Follows]

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

CAREY MANAGEMENT INC.

Per: DocuSigned by:
Pat Carey
Name: 4D2ADDC865CC484...
Patrick Carey
Title: President


WALLACE & CAREY INC.

Per: DocuSigned by:
Pat Carey
Name: 4D2ADDC865CC484...
Patrick Carey
Title: Chief Executive Officer

LOUDON BROS. LIMITED

Per: DocuSigned by:
Pat Carey
Name: 4D2ADDC865CC484...
Patrick Carey
Title: President

7-ELEVEN CANADA, INC.

Per: 
David Seltzer (Nov 6, 2023 19:18 CST)
Name: David Seltzer
Title: Treasurer

SCHEDULE "A"
ASSIGNED CONTRACTS

- Lease Agreement dated as of June, 2021 entered into between Tariff Developments Inc., as landlord, and Wallace & Carey Inc., as tenant, with respect to the property municipally known as Units 120 and 130, 7350 Wilson Avenue, Delta, British Columbia.
- Lease Agreement dated as of April 16, 2013 (as amended by an amending agreement dated as of April 2, 2014, and further amended by an amending agreement dated as of November 17, 2015) entered into between Hoop Realty Inc., as landlord, and Wallace & Carey Inc., as tenant, with respect to the property municipally known as 14430-14494 157th Avenue NW, Edmonton, Alberta.
- All existing per-device licences for the LXEZ software package (including add-on library, connection server and application) that provides access to the WORCS server software.

SCHEDULE "B"
FORM OF TRANSITION SERVICES AGREEMENT

See attached.

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this “TSA”) is made effective as of the 20th day of November, 2023 (the “Effective Date”),

AMONG:

**WALLACE & CAREY INC. (“W&C”) AND CAREY
MANAGEMENT INC. (“CMI”)**

(collectively, the “Debtors”)

- and -

7-ELEVEN CANADA, INC.

(the “Purchaser”)

- and -

**KSV RESTRUCTURING INC., in its capacity as CCAA Monitor of
the Debtors and not in its personal or corporate capacity**

(“KSV”)

BACKGROUND:

- A. On June 22, 2023, upon application by the Debtors, the Court of the King’s Bench of Alberta (the “Court”) granted an initial order (the “Initial Order”) in respect of the Debtors under the *Companies Creditors’ Arrangement Act* (Canada) (“CCAA”, and the proceedings thereunder being the “CCAA Proceedings”);
- B. KSV is the monitor (the “Monitor”) of the Debtors in the CCAA Proceedings, and on November _____, 2023 was appointed by the Court as receiver (the “Receiver”) in respect of, *inter alia*, the real properties and associated personal property and assets of 772921 Alberta Inc. (“772921”), in particular the real properties known municipally as 1230 Industrial Road, Kelowna, British Columbia and 5415 and 5445 8th Street N.E., Calgary, Alberta (together, the “Acquired Properties”);
- C. The Debtors and the Purchaser are parties to an asset purchase agreement dated as of November 7, 2023 (the “APA”) pursuant to which the Purchaser has agreed to purchase (or take an assignment of), and the Debtors have agreed to sell or assign certain assets currently used in connection with the business (the “Business”) of the Debtors (the “Purchased Assets”), subject to Court approval, which Purchased Assets include the leases (the “Assumed Leases”) of the Debtor’s warehouse premises known municipally as (i) 7350 Wilson Avenue, Delta, British Columbia and (ii) 14430 - 1 4434 157 Avenue, Edmonton, Alberta, and 772921’s warehouse premises known municipally as (iii) 5225 8th Street N.E., Calgary, Alberta and (iv) Unit 5B, 4386 Boban Drive, Nanaimo, British Columbia (together, the “Assumed Lease Premises”);
- D. The Purchaser and the Receiver are parties to an agreement of purchase and sale dated as of November 7, 2023 (the “Warehouse APS”) pursuant to which the Purchaser has agreed to purchase, and the Receiver has agreed to sell the Acquired Properties, subject to Court approval;

- E. The Debtors shall continue to own and shall preserve its ownership (including any real or personal property leasehold interests, as the case may be) of all assets utilized by the Debtors in respect of the Debtor's services provided to the Purchaser prior to the Effective Date, and to be provided to the Purchaser or its designee in accordance with this TSA following the Effective Date, that are not Purchased Assets, including, without limitation, the leases (the "**Option WH Leases**") of premises located at (i) 2226 South Service Road, Oakville, Ontario (the "**Oakville Warehouse**"), (ii) 603 Park Street, Regina, Saskatchewan, (iii) Units 1-6 Bentall Street, Winnipeg, Manitoba, and (iv) 8-3703 Millar Avenue, Saskatoon, Saskatchewan (the "**Leased Option Premises**");
- F. In order to enable the Debtors to continue providing the Purchaser with the ongoing services as set out in **Schedule A** hereto (the "**Ongoing Services**") and the transition services as set out in **Schedule B** hereto (the "**Transition Services**", and together with the Ongoing Services, the "**Services**") in accordance with this TSA, following the Effective Date, the Debtors shall continue to employ a certain level of warehouse, logistics, administrative, and managerial employees of the Debtors as may be adjusted from time to time during the Term in accordance with this TSA (the "**Transition Employees**");
- G. The Purchaser requires the Debtors to maintain and preserve (i) certain contracts required for the operation of the Debtors' Business which are not part of the Purchased Assets (the "**Transition Contracts**", as set out in **Schedule C** hereto), as may be adjusted from time to time during the Term in accordance with this TSA, and (ii) the equipment leases and vehicle leases included in the Optional Purchased Assets (the "**Option Equipment Leases**", as set out in **Schedule D** hereto, and together with the Option WH Leases, the "**Optional Purchased Assets**"), as may be adjusted from time to time during the Term in accordance with this TSA;
- H. The Purchaser requires the Debtors to maintain and preserve certain licences and permits required for the operation of the Debtors' Business which are not part of the Purchased Assets (the "**Transition Permits**", as set out in **Schedule E** hereto), as may be adjusted from time to time during the Term in accordance with this TSA;
- I. The APA and the Warehouse APS were both approved by Orders of the Court dated November 17, 2023) (the "**APA AVO**" and the "**Warehouse APS AVO**" respectively); and
- J. The entry into this TSA was approved pursuant to the APA AVO and is a closing condition under the APA and the Warehouse APS.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Provision of the Services.** Subject to and strictly in accordance with the terms of this TSA and the APA AVO, the Debtors shall provide the Services to the Purchaser using the Purchased Assets and the Optional Purchased Assets.
2. **Occupation.** The Debtors shall remain in occupation of each of the Acquired Properties, the Assumed Lease Premises, and Leased Option Premises (together, the "**Premises**" and each, a "**Premise**") during the period (the "**Occupation Period**") from 12:01 a.m. (prevailing Calgary, Alberta time) on November 19, 2023 (the "**Effective Time**") until the earlier of (i) not less than 10 days following receipt of notice of termination from the Purchaser in respect of the Services being performed at a specified Premise (other than a Leased Option Premise), (ii) not less than 35 days following receipt of notice of termination from the Purchaser in respect of the Services being performed at a Leased Option Premise, or (iii) the date upon

which the Term of this TSA expires or is otherwise terminated in accordance with its terms and conditions (the "**Termination Date**").

3. Services of Transition Employees.

- (a) The Debtors shall provide the Purchaser with the Services utilizing the Transition Employees during the period (the "**Services Period**") from the Effective Date until the Termination Date. Except as provided in section 3(b) and section 21(b), during the Services Period, the Transition Employees shall remain employees of the Debtors. Except as provided in section 3(b), nothing in this TSA or the APA shall create a relationship of employer and employee between the Purchaser and any of the Transition Employees. During the Services Period, the Debtors shall perform all obligations and discharge all liabilities that may be imposed on them by applicable law as employers of the Transition Employees. The Debtors shall be responsible for the day to day supervision and management of the Transition Employees during the Services Period.
- (b) From time to time during the Services Period, the Purchaser may elect to offer employment to one or more Transition Employee(s) on such terms as the Purchaser may deem appropriate (each employee who accepts such offer being, a "**Hired Employee**"). A Hired Employee will thereafter be subject to control and direction from the Purchaser, and the Debtors will provide (i) all assistance reasonably requested by the Purchaser in facilitating the resignation of such Hired Employee(s) from the employ of the Debtors and their subsequent engagement by the Purchaser, and (ii) such Hired Employee(s) with continued access to the Premises and information in the same way as if they had remained employed by the Debtors for provision of the Services. For clarity, nothing in this TSA requires the Purchaser to hire any of the Transition Employees.

4. Access. The Debtors will allow all Purchaser personnel (including Hired Employees), the Monitor, any party appointed by Canadian Imperial Bank of Commerce, as agent for the secured lenders to the Debtor, and third parties designated by the Purchaser to access the Premises from time to time during the Services Period, including, without limitation, for the purpose of realizing upon any Excluded Assets that are not Optional Purchased Assets and to proceed with the wind down of the Debtors and their Affiliates, and will ensure that the Transition Employees cooperate with all reasonable requests made by such individuals.

5. Optional Purchased Assets.

- (a) During the Term, the Debtors shall remain party to or retain their ownership, and provide the Purchaser with the operational benefit, of the Optional Purchased Assets, including, without limitation, the Option WH Leases.
- (b) The Debtors hereby grant the Purchaser an exclusive and irrevocable option to acquire any or all of the Optional Purchased Assets on terms to be agreed upon between the Purchaser and the Monitor, each acting reasonably, and subject to approval of the Court if required (the "**Option**"). The Option in respect of all of the Optional Purchased Assets *other than the Oakville Warehouse lease* will be available for exercise by the Purchaser, in the Purchaser's sole discretion, during the entirety of the Term. The Option in respect of the Oakville Warehouse lease will be available for exercise by the Purchaser, in the Purchaser's sole discretion, until the later of four (4) months after the Effective Date or such date that the Monitor decides to market the Oakville Warehouse lease, unless otherwise agreed by the Purchaser and Monitor, acting reasonably, in writing.

- (c) The Purchaser may exercise the Option (from time to time during the Term) by providing the Debtors with 10 days' written notice detailing which Optional Purchased Asset(s) the Purchaser would like to purchase (the "**Option Notice**"). Upon receipt of such Option Notice, and upon the Purchaser reaching agreement with the Monitor on the purchase price in respect of the Optional Purchased Asset(s), the Debtors agree to sell (subject to the approval of the Court if required) the corresponding Optional Purchased Asset(s) to the Purchaser on an "as is, where is" basis, free and clear of all claims and encumbrances, and to otherwise cooperate with the Purchaser in effecting such purchase and transfer of title. The purchase price for Optional Purchased Assets shall be limited to CAD\$1.00 for all Option Equipment Leases and Option WH Leases (with the sole exception of the Oakville Warehouse lease which may have a purchase price in excess of CAD\$1.00¹).
- (d) If the Purchaser exercises its Option in respect of the Oakville Warehouse lease, the Monitor and the Debtors will use commercially reasonable efforts to obtain a lease assignment order in respect of same upon the Purchaser's request.
- (e) From time to time during the Services Period, if the Purchaser determines that it will not be exercising the Option in respect of a particular Optional Purchased Asset, the Purchaser may, in the Purchaser's sole discretion, provide the Debtors and the Monitor with 35 days' prior written notice (an "**Exclusion Notice**") detailing which Optional Purchased Asset(s) the Purchaser would like to exclude from the Option, and the Purchaser's responsibility for funding any costs of the Debtor's obligations in respect of such Excluded Asset pursuant to section 10 of this TSA shall cease upon the effective date of the Exclusion Notice.
- (f) Any Optional Purchased Assets remaining in the Debtor's possession and control on the Termination Date shall thereupon be deemed to be Excluded Assets.

6. **Provision of Transition Contracts.** The Debtors shall remain party to the Transition Contracts during the period (the "**Contract Period**") from the Effective Time until the earlier of: (i) expiration of the Transition Contract in accordance with its terms, unless arrangements reasonably satisfactory to the Debtors and the Purchaser are made to extend or renew such Transition Contract; (ii) 35 days following receipt of notice of termination from the Purchaser in respect of the Services which are reliant on a Transition Contract; (iii) the assignment of a Transition Contract to the Purchaser by the Debtors; or (iv) the Termination Date.

7. **Provision of Transition Permits.** The Debtors shall remain party to the Transition Permits during the period (the "**Permit Period**") from the Effective Time until the earlier of: (i) expiration of the Transition Permit in accordance with its terms, unless arrangements reasonably satisfactory to the Debtors and the Purchaser are made to extend or renew such Transition Permit; (ii) 35 days following receipt of notice of termination from the Purchaser in respect of the Services which are reliant on a Transition Permit; (ii) the assignment of the Transition Permit to the Purchaser by the Debtors; or (iii) the Termination Date.

8. **Licence.** The Purchaser hereby grants the Debtors a limited, revocable, non-exclusive, non-transferable, non-sublicensable, non-assignable licence to use any information technology systems that were included in the Purchased Assets during the Services Period, provided that the Debtors may only use such systems to the extent such use is necessary to provide the Purchaser with the Services or to realize

¹ The purchase price for the Oakville Warehouse lease shall be calculated as of the date that the Oakville Warehouse lease is assigned to Purchaser. It will be determined by taking 50% of the present value of the difference between the payments set out in the Oakville lease and market rent, as determined by Colliers International, using a discount rate equal to CIBC's prime rate as of the Effective Date.

upon the Excluded Assets and proceed with the wind down of the Debtors and their Affiliates. The foregoing licence is also granted to any receiver of the Debtors, or the Monitor, if so appointed to realize upon the Excluded Assets.

9. Trademarks.

- (a) The Purchased Assets included certain trademarks that the Debtors used in association with their Business, as set out in more detail in the APA (the “**Trademarks**”). The Purchaser hereby grants the Debtors a limited, non-exclusive, non-transferable and non-sublicensable right and licence, during the Services Period, to use the Trademarks for the sole purpose of performing the Services or to realize upon the Excluded Assets and proceed with the wind down of the Debtors and their Affiliates, all in accordance with this section 9. The Debtors shall not use the Trademarks in any way not expressly permitted by this TSA or by the Purchaser in writing. The foregoing licence is also granted to any receiver of the Debtors, or the Monitor, if so appointed to realize upon the Excluded Assets.
- (b) The Debtors shall: (i) use, reproduce and display the Trademarks in a manner consistent with the operation of their Business immediately before the Effective Date, and in accordance with the policies, specifications, regulations and standards authorized or stipulated by the Purchaser from time to time relating to the form and manner in which the Trademarks are to be used; (ii) upon written notice from the Purchaser, immediately modify or discontinue any use of any of the Trademarks that the Purchaser determines might adversely affect the Purchaser’s rights or interests in the Trademarks, except as necessary to realize upon the Excluded Assets and proceed with the wind down of the Debtors and their Affiliates; (iii) not use, display or reproduce or apply to register any of the Trademarks, or any trademarks, domain names, business names, corporate names, words, designs, characters, symbols or other identifiers that are identical to or confusing with or derived from or based on any of the Trademarks, except as expressly authorized by the Purchaser in writing; (iv) not oppose or otherwise challenge the validity of any of the Trademarks or the Purchaser’s interest in any of the Trademarks; and (v) cooperate with the Purchaser for the purpose of protecting, preserving and enhancing the Trademarks and the Purchaser’s interest in the Trademarks as the Purchaser may reasonably request from time to time, at the cost of the Purchaser.
- (c) Except as may be authorized by this TSA or by the Purchaser, the Debtors shall not directly or indirectly through any number of intermediaries: (i) use, reproduce, display or take the benefit of any of the Trademarks; (ii) do anything or omit to do anything, that might impair, jeopardize, violate, infringe, dilute, depreciate, prejudice, derogate from, tarnish or disparage the Trademarks, the goodwill associated with the Trademarks, or the Purchaser’s interest in the Trademarks; (iii) use any of the Trademarks, or any trademarks, domain names, business names, corporate names, words, designs, characters, symbols or other identifiers that, in whole or in part, reproduce or resemble any of the Trademarks, or is confusing with any of the Trademarks, or is derived from or based on any of the Trademarks, in a manner that defames, slanders, libels, criticizes, or ridicules the Purchaser or any of Purchaser’s business, products, services or activities; or (iv) assist, permit, or encourage any other person or entity to do any of the foregoing.
- (d) The Debtors acknowledge and agree that: (i) the Purchaser will have no liability to any of the Debtors for anyone who may claim prior use of any of the Trademarks; (ii) as between the Purchaser and the Debtors, the Purchaser exclusively owns the Trademarks and all goodwill associated with or appurtenant to the Trademarks; and (iii) all the benefit and

goodwill associated with the Debtors' use of the Trademarks will at all times enure entirely to the Purchaser.

- (e) The Debtors shall permit and assist the Purchaser and its designees to observe and inspect the Debtors' activities relating to the Trademarks in order to confirm compliance with this TSA. This will include permitting and assisting the Purchaser or its designees to enter premises where the Debtors exercises any of their rights under this TSA.
- (f) This trademark licence commences on the Effective Date and will automatically terminate when the Services Period ends, except as necessary to realize upon the Excluded Assets and proceed with the wind down of the Debtors and their Affiliates. When this trademark licence ends, the Debtors will immediately stop using and reproducing the Trademarks, except as necessary to realize upon the Excluded Assets and proceed with the wind down of the Debtors and their Affiliates.

10. Purchaser's Funding Obligations.

- (a) The Purchaser's funding under this TSA will be based on a not less than six week rolling budget (the "**Budget**") to be prepared (or updated) by the Debtors, in consultation with the Monitor, by 5:00 pm (Central Time) on Tuesday of each week during the Term for the period commencing the subsequent Monday. The Budget will be approved by the Purchaser in its sole discretion. The initial Budget ("**Initial Budget**") shall be prepared by the Debtors, in consultation with the Monitor and the Purchaser, not less than ten (10) days prior to the Effective Date, for approval by the Purchaser in its sole discretion (a Purchaser-approved Budget or Initial Budget, an "**Approved Budget**").
- (b) Notwithstanding anything in this TSA to the contrary, the parties acknowledge that all weeks in the then-current Approved Budget, with the sole exception of the first two weeks in the corresponding Approved Budget period, remain subject to ongoing review and adjustment by the Purchaser as may be necessary to reflect changes in circumstances. The Purchaser will endeavour in good faith to provide reasonable advance notice of a change in circumstance requiring a material adjustment to an Approved Budget.
- (c) Budgeted costs and expenses ("**Approved Budget Expenses**") shall include all costs and expenses reasonably incurred by the Debtors to provide the Transition Services, consistent with the Approved Budget, including (but not limited to): (i) (a) costs directly related to the Leased Option Premises during the Occupation Period, including, without limitation, rents, utility charges (including phone bills), maintenance costs, and property taxes payable by the Debtors under the Option WH Leases, and (b) all utility charges (including phone bills) and maintenance costs, associated with the Debtors' occupation of the Assumed Lease Premises and the Acquired Properties, to the extent payable under the Assumed Leases or in respect of the Acquired Properties (collectively, the "**Premises Costs**")²; (ii) all amounts owing by the Debtors under Option Equipment Leases until the effective date of a corresponding Option Notice or Exclusion Notice; (iii) the costs incurred by the Debtors in relation to the Debtors' employment of the Transition Employees (which costs shall not include any unpaid or banked overtime pay accrued before the Effective Date, unpaid vacation pay or other vacation-related entitlements accrued before the Effective Date, retention, or other bonuses, severance or termination pay at the end of the Services

² It is presumed Purchaser will pay rents and property taxes related to Assumed Lease Premises, as well as property taxes related to the Acquired Properties, directly (and not through Debtor).

Period for any Transition Employee) and the provisions of the Services during the Services Period in accordance with existing employment contracts (“**Services Costs**”); (iv) costs related to the Transition Contracts during the Contract Period in accordance with the terms thereof (the “**Contract Costs**”); (v) all applicable goods and services, harmonized sales, value added, sales, use, transfer and other similar taxes (collectively, “**Sales Taxes**”) in relation to the Premises Costs, Services Costs, Contract Costs, and other amounts payable by the Debtors in connection with the provision of the Services under this TSA; (vi) professional fees and disbursements of the Monitor and its counsel (other than in respect of Excluded Assets) incurred during the Term, and an amount not exceeding: (x) \$7,500 per week, on a non-cumulative basis, for the first eight (8) weeks following the Effective Date, and (y) \$4,000 per week on a non-cumulative basis thereafter, unless otherwise agreed to by the Purchaser, in respect of the fees and disbursement of any lawyers or other professional advisor to the Debtors relating to the Services and this TSA or otherwise in connection with the CCAA Proceedings; and (vii) any such amounts that the Purchaser chooses to fund, in its sole discretion. The Debtors shall be responsible for all other professional fees and out-of-pocket disbursements, costs and expenses incurred by the Debtors from and after the Effective Date, including costs incurred solely for the sale of Excluded Assets, unless otherwise agreed to by the Purchaser.

- (d) To the extent that the Debtors do not generate sufficient revenue from sales of inventory acquired after the Effective Date to the Purchaser or the provision of Services to the Purchaser after the Effective Date, the Purchaser shall be responsible to fund the Debtors by deposit to the bank account to be designated by the Monitor prior to the Effective Date (the “**Funding Account**”) such shortfall amounts set out in the Budget (“**Approved Budget Shortfalls**”), no later than the Friday of a given week for the subsequent work week during the Term or as otherwise agreed among the Purchaser, the Debtors, and the Monitor. In no event shall the Debtors have any obligation to fund the fees and/or costs of any Transition Services from the proceeds of sale of Excluded Assets or otherwise, except as otherwise set forth herein. In no event shall the Monitor have any funding obligations under this Agreement.

11. **Withholding Obligations.** If any Applicable Law requires the deduction or withholding of any Tax from any payment to the Debtors, then Purchaser shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law, and, with the exception of any amounts required by Applicable Law to be deducted or withheld in relation to Employees, the amount payable to the Debtors shall be increased as necessary for such amount deducted or withheld to the relevant Governmental Entity so that after such deduction or withholding has been made, the Debtors receive an amount equal to the amount it would have received had no such deduction or withholding been made.

12. **Initial Budget Funding.** On or before the Effective Date, the Purchaser shall fund the Funding Account with the amount reflected in the Approved Initial Budget.

13. **Revenue.**

- (a) Subject to Section 13(b), all revenue generated by the Debtors during the Term, regardless of the source of such revenue, will be solely for the Purchaser’s account. For greater certainty, in the event that an Approved Budget reflects a material surplus of revenue, the Purchaser may require that the Debtors refund to the Purchaser the amount of any prior advances made to the Funding Account from time to time. On the Termination Date, all

net revenue amounts remaining in the possession of the Debtors arising from and after the Effective Date shall be remitted to the Purchaser.

- (b) All revenue generated from any Excluded Assets for which the Debtors paid prior to the Effective Time, including any inventory that was paid for by the Debtors prior to the Effective Time which was not Designated Inventory or SEC A/R, shall be solely for the Debtors' account to be distributed to the Debtors' creditors in accordance with their respective priorities. For the avoidance of doubt, this section shall only apply to Excluded Assets for which the Debtors paid prior to the Effective Time, and all revenue generated from any assets of the Debtors which are paid for after the Effective Time shall be for the account of the Purchaser.

14. Winding-Down of Non-Purchaser Operations. The Debtors and the Monitor shall use their best commercial efforts to wind-down all business activities of the Debtors involving customers other than the Purchaser within the 60 day period following the Effective Date, subject to any extensions as may be consented to by the Purchaser in its sole discretion, on a customer specific basis.

15. Limitation of Liability. In no event will the Purchaser, its Affiliates, and its designee(s), and each of its and their respective employees, officers, directors, contractors, representatives, and agents (the "**Purchaser Released Parties**"), be liable to the Debtors for any direct, consequential, indirect, incidental, exemplary, special, or punitive damages whatsoever, whether arising out of breach of contract, tort (including negligence), or any other theory of liability, or otherwise (the "**Claims or Damages**"), regardless of whether such Claims or Damages were foreseeable and whether or not the Purchaser Released Parties were advised of the possibility of such Claims or Damages, other than the payment obligations of the Purchaser under this TSA, provided that the foregoing limitation of liability will not be applicable to the extent any such Claims or Damages are caused by or contributed to by the negligence, fraud, or willful misconduct of the Purchaser's, or the Purchaser's Affiliates', officers or directors. In no event will the Debtor, the Monitor, their Affiliates, and their designee(s), and each of their respective employees, officers, directors, contractors, representatives, and agents (the "**Debtor and Monitor Released Parties**"), be liable to the Purchaser for any Claims or Damages, regardless of whether such Claims or Damages were foreseeable and whether or not the Debtor and Monitor Released Parties were advised of the possibility of such Claims or Damages, provided that the foregoing limitation of liability will not be applicable to the extent any such Claims or Damages are caused by or contributed to by the negligence, fraud, or willful misconduct of the Debtors', or the Debtors' Affiliates', officers or directors.

16. Representations. The Debtors shall perform the Services: (a) in accordance with all Applicable Laws and regulatory requirements; and (b) in a good, workman-like manner and in accordance with a reasonable standard of effort, care, prudence, skill and quality. Other than the foregoing, the Debtors make no representations or warranties hereunder with respect to any Services.

17. Insurance. The Debtors shall maintain comprehensive general liability insurance coverage and such other insurance coverage as is typically maintained by the Debtors, including, without limitation, with respect to the Leased Option Premises during the Occupation Period and such insurance costs shall be a Lease Cost. The Debtors will ensure that all of the Debtors' insurance policies include the Purchaser and all of the Purchaser's Affiliates as additional named insureds during the Term, and the Purchaser shall be responsible for the pro-rata cost of such insurance from and after the Effective Time.

18. Term; Termination.

- (a) The term (the "**Term**") of this TSA will commence on the Effective Date and will terminate:

- (i) in respect of the Business conducted, and Services provided, by the Debtors east of Alberta (the "**Eastern Business**"), on the date that is nine months following the Effective Date; and
- (ii) in respect of Business conducted, and Services provided, by the Debtors in and west of Alberta (the "**Western Business**"), on the date that is 15 months following the Effective Date;

provided that the Purchaser shall have the right to elect to extend the Term for each of the Eastern Business and the Western Business two (2) times by 90 days each time, provided that such election notice is provided to the Debtors and the Monitor in writing at least 35 days (or such lesser number of days as may be agreed to by the Monitor) prior to the expiry of the then-current Term.

- (b) The Purchaser may terminate this TSA or suspend performance of its obligations hereunder upon notice to the Debtors if the Debtors materially breach this TSA and fail to cure such breach within five Business Days after the Purchaser provides the Debtors and the Monitor with notice of such breach. Upon termination by the Purchaser under this section 18(b) or section 23, the Debtors will undertake to wind down the remaining business as expeditiously as reasonably possible and the Purchaser remains liable for its funding obligations hereunder during such wind down.
- (c) The Debtors, with prior written consent of the Monitor, may terminate this TSA or suspend performance of their obligations hereunder upon notice to the Purchaser if the Purchaser materially breaches this TSA and fails to cure such breach within five Business Days after the Debtors provide the Purchaser with notice of such breach.
- (d) Notwithstanding the termination of this TSA in accordance with this section 18, sections 10, 11, 12 and 15 hereof shall survive such termination.

19. Disclaimer of Leases. Subject to the terms hereof, the Debtors shall not surrender possession of or disclaim, or otherwise terminate any interest the Debtors may have in, any of the Option WH Leases or Option Equipment Leases with effect prior to 35 days before the Termination Date even if such Optional Purchased Assets are subject to an Exclusion Notice, unless otherwise agreed by the Purchaser.

20. Disclaimer of Contracts. Subject to the terms hereof, the Debtors shall not surrender possession or disclaim, or otherwise terminate any interest the Debtors may have in, any of the Transition Contracts prior to the termination of the Contract Period with respect to such Transition Contract without the prior written consent of the Purchaser, provided however that the Purchaser acknowledges and agrees that the Debtors shall be entitled, in their sole discretion and without further notice to or consent of the Purchaser, to disclaim, or otherwise terminate any interest they may have in, any Transition Contract following the termination of the Contract Period in respect of such Transition Contract and may deliver a notice of disclaimer up to 30 days prior to the termination of the Contract Period in respect of such Transition Contract.

21. General Limitations.

- (a) Nothing contained in this TSA shall require the Debtors to provide (or cause the provision of) any services: (i) that would constitute the provision of any legal, financial, accounting or tax advice or regulated activity; (ii) that are in support of any business or operations other than the Business as conducted immediately prior to the date hereof; (iii) at a level of

quantity or volume in excess of the levels provided by the Debtors to the Business immediately prior to the date hereof; (iv) that exceed the scope of the services provided by the Debtors to the Business immediately prior to the date hereof; or (v) for the benefit of any Person other than the Purchaser, its Affiliates, or its designee(s).

- (b) In addition to the limitations in section 21(a), in no event shall the Debtors be: (i) obligated to provide (or cause the provision of) any Services if the provision of such Services violate any law, order (including the Initial Order or any related orders), contract (including any Transition Contract), licence or permit to which the Debtors are subject; (ii) obligated to provide any Services that, in the Debtors' reasonable determination after consultation with the Monitor, will create deficiencies in the Debtors' controls over financial information or adversely affect the maintenance of the Debtors' financial books and records; (iii) obligated to hire any additional employees to perform the Services unless the Purchaser agrees to bear all related costs and expenses thereof that the Debtors are unable to pay; (iv) obligated to hire replacements for Transition Employees who resign, retire, or are terminated; (v) obligated to maintain the employment of any specific Transition Employee who tenders their resignation, enter into retention agreements with Transition Employees, or otherwise provide any incentive beyond payment of regular salary and benefits; (vi) prevented from determining, in its sole discretion, the individual Transition Employees who will provide Services; (vii) obligated to purchase, lease or license any additional equipment or software or licences for provision of the Services; (viii) obligated to create or supply any documentation or information not currently existing or reasonably available (subject to any requirements or obligations hereunder to provide any documentation or information); or (ix) obligated to enter into new or additional contracts with third parties or change the scope of current contracts (including the Transition Contracts) with third parties or take any actions that would result in the breach of any contracts of the Debtors with third parties. The Debtors shall use commercially reasonable efforts to notify the Purchaser as promptly as practicable if the Debtors are unable to provide the Services due to circumstances arising under this section 21(b).
- (c) The Debtors shall not destroy or remove the books and records of the Business from their usual and ordinary location, and shall continue to maintain such books and records for a period of 7 years. The Purchaser and the Debtors shall make any books and records of the Business in their possession available to each other as required for the delivery of Services under this TSA.
- (d) In connection with the receipt and use of the Services and as applicable, Purchaser shall, and shall cause its Affiliates and representatives to, comply with the Debtors' then-current work processes, policies and procedures of which Purchaser has been made aware, and Purchaser acknowledges that the Debtors' ability to provide the Services is dependent on such compliance by the Purchaser and its Affiliates and representatives.

22. Indemnity.

- (a) The Purchaser shall indemnify, hold harmless, and defend the Monitor, its affiliates, and their designee(s), and each of their respective employees, officers, directors, contractors, representatives, and agents (the "**Monitor Indemnified Parties**") and, Debtors' directors, officers, and Transition Employees (the "**Debtor Indemnified Parties**") against any and all third party claims against any of the Monitor Indemnified Parties and Debtor Indemnified Parties to the extent directly arising out of or related to:

- (i) material breach or non-fulfilment of any provision of this TSA by the Purchaser or its Affiliates, representatives or agents, including the Hired Employees (collectively, "**Purchaser Personnel**");
- (ii) any gross negligence, wilful misconduct or more culpable act or omission of the Purchaser or Purchaser Personnel (including reckless misconduct) in connection with the performance of its obligations under this TSA;
- (iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the gross negligence, wilful misconduct or more culpable acts or omissions of Purchaser or Purchaser Personnel (including any reckless misconduct); or
- (iv) any failure by Purchaser or Purchaser Personnel to comply with any material applicable federal, provincial, or territorial laws, regulations or codes in the performance of its obligations under this TSA;

(collectively, "**Indemnifiable Claims**")

provided that the foregoing indemnification obligations will not be applicable to the extent any such Indemnifiable Claims are caused by or contributed to by a Debtor Indemnified Party.

- (b) The Purchaser shall indemnify, hold harmless, and defend the Debtors' directors and officers (the "**Debtors' D&Os**") against any third party claims brought against the Debtors' D&Os in their personal capacity, but solely to the extent that such claims: (i) strictly relate to statutory liabilities arising after the Effective Date; and (b) are a direct result of any such Debtors' D&Os acting as directors or officers of the Debtors during the Term. The foregoing indemnification obligations will not be applicable to the extent any indemnifiable claims arise due to fraud or gross negligence on the part of the Debtor's D&Os. In addition, the Purchaser will have no indemnification obligations for any claims pertaining to the period prior to the Effective Date, regardless of when such claims are brought against the Debtors' D&Os.

23. Force Majeure. If the Debtors or any third-party provider of the Debtors is wholly or partially prevented from, or delayed or restricted in, providing one or more Services, or one or more Services are interrupted or suspended, by reason of events beyond the Debtors' or third party providers' reasonable control (including failure by Purchaser or its Affiliates or representatives to comply with the terms and conditions of this TSA, failure by any third party to comply with the terms and conditions of any contract with the Debtors or its Affiliates (including any Transition Contract), acts of God, acts of nature, acts, decrees or orders of governmental, regulatory or military authorities, fire, explosion, lack of utilities, accident, embargoes, disruption or delay in transportation, epidemics, pandemics, war, acts of terrorism, infrastructure failure, IT systems or software failure, nuclear disaster, labour strikes, work stoppages or slowdowns, changes in law (or changes in the interpretation or enforcement thereof) or legal or regulatory actions, including restraining orders and injunctions, civil unrest and/or riots or disruption of internet access (including access disruptions as a result of any virus, worm, Trojan horse, etc.), or any other type of similar event), the Debtors shall: (i) give notice of suspension of Services as soon as reasonably practicable to the Purchaser stating the date and extent of such suspension and its cause; (ii) not be obligated to deliver, or cause to be delivered, the affected Services during such period provided it remains in strict compliance with this section 23; and (iii) resume the performance of their obligations as soon as reasonably practicable after the removal of the cause, provided that following receipt by the Purchaser of a notice pursuant to (i),

Purchaser shall have the right in its sole discretion to immediately terminate this TSA, provided the Purchaser pays all amounts owing to the date of termination.

24. **Services.** Subject to the terms hereof, the Debtors may terminate the employment of any Transition Employees prior to termination of the applicable Services Period for each Transition Employee, provided that the Services obligations hereunder continue to be met by the Debtors and the then-current Approved Budget is complied with. The Purchaser acknowledges and agrees that the Debtors shall be entitled, in their sole discretion and without further notice to or consent of the Purchaser, to terminate the employment of any Transition Employees following the termination of the Services Period for such Transition Employee.

25. **No Assignment of Lease.** The Debtors and the Purchaser each hereby acknowledge and agree that nothing in this TSA is intended to, or shall be construed to, create a lease, sublease or assignment of lease in favour of the Purchaser or otherwise impose on the Purchaser any obligations as a lessee, sublessee or assignee of any of the Leased Option Premises.

26. **Independent Contractors; No Employer Relationship.** The relationship between the Debtors, on the one hand, and the Purchaser, on the other hand, is that of independent contractors, not partners or joint venturers. The Debtors and the Purchaser each hereby acknowledge and agree that nothing in this TSA is intended to, or shall be construed to, create or deem the Purchaser to be the employer of the Transition Employees. For greater certainty, except as provided expressly herein with regards to Hired Employees, nothing in this TSA shall deem or cause the Purchaser to become the employer of the Transition Employees and nothing herein modifies in any way the protections provided to the Debtors pursuant to the Order. For the avoidance of doubt, the Transition Employees will at all times remain under the control or direction of the Debtors and will not be, nor deemed to be, under the common control or direction of the Purchaser, nor will such Transition Employees have any entitlement to receive payment of compensation or severance from the Purchaser or otherwise participate in, or accrue or receive benefits in respect of, any retirement, employee benefit or incentive plan sponsored or maintained by the Purchaser or its Affiliates.

27. **Confidential Information.** Each party hereto shall, in its performance of this TSA, be bound by the confidentiality provisions set out in the APA.

28. **Access.** If either party has access (either on-site or remotely) to any of the computer systems and/or information stores of the other party in connection with the Services to be provided under this TSA, it shall limit such access solely to the use of such systems and information stores as required to so perform or receive the Services and shall not access or attempt to access any computer systems, information stores, files, software or services other than those required to perform or receive the Services. Each party shall limit such access to those of its personnel with a bona fide need to have such access and who have agreed to maintain the confidentiality of the other party's Confidential Information. Each party shall, and shall cause its personnel to, follow all applicable security rules and procedures communicated to it for restricting access to any computer systems and information stores of the other party to which it is provided access.

29. **Security.** The Debtors shall perform the Services using at least the same level of security practices and procedures as used in the provision of analogous or similar services by the Debtors in the twelve (12) months prior to Closing, but in any event, no less than commercially reasonable security measures. The Debtors shall promptly notify the Purchaser of any known security breaches potentially giving unauthorized third parties access to the Purchaser's data.

30. **Interpretation.** Capitalized terms used but not defined in this TSA have the meanings ascribed to such terms in the APA.

31. **Designee(s).** From time to time, upon providing the Debtors with prior written notice, the Purchaser may require that any or all Services, as well as any or all rights granted to the Purchaser hereunder, be provided to, or exercised by, one or more designee(s) of the Purchaser.

32. **Successors and Assigns.** This TSA shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

33. **Governing Law.** This TSA shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

34. **Further Assurances.** Each of the parties will, from time to time, execute and deliver all such further documents, and instruments and do all acts and things as any other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this TSA.

35. **Counterparts.** This TSA may be executed by the parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

36. **Amendment.** This TSA may be amended or supplemented only by a written agreement signed by each party.

37. **Assignment.** This TSA may be assigned by the Debtors only with the prior written consent of the Purchaser, which consent may be unreasonably withheld. The TSA may be assigned by the Purchaser only with the prior written consent of the Debtors and the Monitor, which consent may not be unreasonably withheld.

38. **Severability.** If any provision of this TSA is determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this TSA and the remaining provisions shall continue in full force and effect.

39. **Entire Agreement.** This TSA, together with the APA, and all exhibits and schedules hereto and thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters.

[Signature page follows]

IN WITNESS WHEREOF the parties have duly executed this TSA as of the Effective Date.

WALLACE & CAREY INC.

By: _____
Name: Patrick Carey
Title: Chief Executive Officer

CAREY MANAGEMENT INC.

By: _____
Name: Patrick Carey
Title: President

7-ELEVEN CANADA, INC.

By: _____
Name: David Seltzer
Title: Treasurer

**KSV RESTRUCTURING INC., in its capacity as
CCAA Monitor of the Debtors and not in its personal
or corporate capacity**

By: _____
Name:
Title:

SCHEDULE "C"
ILLUSTRATIVE DESIGNATED INVENTORY AND SEC A/R SCHEDULE, INCLUDING
ACCOMPANYING ACCOUNTING METHODOLOGIES

See attached.

DATA AS OF OCTOBER 28

LINE ITEM	7-Eleven	B&C (W&C)	Basis/Notes	SOURCE	VALIDATION	APX. DAYS FOR VALIDATION POST-CLOSING/AUDIT
7-ELEVEN INVENTORY						
SELLABLE WAREHOUSE INVENTORY	\$22,931,706	\$22,931,706	All items with active 7-Eleven SLIN# *	W&C WMS REPORT AND 7-ELEVEN ITEM MASTER	CLOSING AUDIT **	4
W&C PAID PO's, NOT RECEIVED YET	\$3,185,047	\$3,185,047	PO's W&C paid to suppliers but inventory hasn't yet been received in warehouse. ***	W&C WMS REPORT	CONFIRMATION OF PAYMENT AND SHIPMENT WITH SUPPLIERS ***	7
7-ELEVEN PICKED ORDERS NOT YET INVOICED (IN STAGING/TRANSIT TO STORES)	\$809,629	\$809,629	Plan to manage this to ~\$0 as of closing	WMS REPORT	CONFIRMATION OF DELIVERY TO STORES - 7-ELEVEN LOGISTICS	3
* AUDIT SHORTAGE @5%	(\$1,146,585)	(not included)	Missing / damaged / expired / out of code, per audit	ASSUMPTION	CLOSING AUDIT	4
** RISK ON UNRECEIVED PO's @ 25%	(\$796,262)	(not included)	Not shipped by time of true-ups	ASSUMPTION	CONFIRMATION WITH SUPPLIERS	7
OTHER ADJUSTMENTS			TBD, if any			TBD up to 7
ESTIMATED NET PAYABLE INVENTORY	\$24,983,535	\$26,926,382				

RECEIVABLE FROM 7-ELEVEN

CURRENT AND PRIOR WEEK A/R	\$9,350,000	\$9,624,179	Valid store invoices for current and immediately prior weekly cycles (e.g. October 16-28, inclusive)	W&C ACCOUNTING	7-ELEVEN ACCOUNTING/LOGISTICS	7
OLDER A/R	\$7,744	\$10,067	Residual from prior cycles is small and likely to be errors by drivers or in store check-in (not valid A/R). Apply 50% of 3 weeks prior to the above, zero thereafter.	W&C ACCOUNTING	7-ELEVEN ACCOUNTING/LOGISTICS	7
7-ELEVEN PRE-BUY FUNDS W&C USED TO PROCURE INVENTORY ***	(\$4,628,176)	(\$4,628,176)	Expected to be zero at closing	7-ELEVEN ACCOUNTING/LOGISTICS	W&C	2
INVENTORY RECEIVED BUT NOT PAID FOR			TBD, if any	W&C PROCUREMENT	CONFIRMATION WITH SUPPLIERS	TBD up to 7
ESTIMATED NET RECEIVABLES AMOUNT	\$4,729,568	\$5,006,070				
<i>Excluding Pre-Buy Offsets</i>	<i>\$9,357,744</i>	<i>\$9,634,246</i>				
TOTAL ESTIMATED INVENTORY + A/R	\$29,713,103	\$31,932,452				
<i>Excluding Pre-Buy Offsets</i>	<i>\$34,341,279</i>	<i>\$36,560,628</i>				

CLOSING DEPOSITS (based on estimates above):

Inventory			
75% of Inventory	\$18,737,651	\$20,194,787	
Maximum per 7-Eleven APA	\$12,000,000		
A/R (estimated)			
Current and prior week A/R 2 days before Closing	\$6,233,333	\$6,416,119	Assumes 2/3 of total will be invoiced in APA timeframe
Aged A/R	\$0	\$0	
TOTAL A/R	\$6,233,333	\$6,416,119	
Total Deposits at Closing	\$18,233,333	\$18,416,119	

POST-CLOSING TRUE-UPS (estimated)

Inventory	\$12,983,535	\$14,926,382	Most of difference due to 7-Eleven assumed shortages
A/R	\$3,124,410	\$3,218,126	
TOTAL True Ups	\$16,107,945	\$18,144,508	

This is Exhibit "B" referred to in the Affidavit of Eric Rolheiser sworn before me this 7th day of November 2023

David Allison

A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

David Josiah Allison
Student-at-Law
Notary Public & Commissioner for Oaths
in and for the Province of Alberta

From: Dominic Bonin <dbonin@SkylineGRP.ca>
Sent: Thursday, November 2, 2023 7:17 AM
To: Reid, James; Alex LeLiever; Susan Zizek
Cc: 'Pat Carey'
Subject: Re: [EXTERNAL] RE: Edmonton Lease

Categories: Red Category

Good morning James,

This shouldn't be an issue at all and we will get started on the assignment. [@Alex LeLiever](#) and [@Susan Zizek](#) will be leading this for Skyline.

We will back to you shortly with the required information.

Best,

Dominic Bonin

Vice President, Industrial Asset Management

T. 519.826.0439 x430

C. 613.462.1541

[Skyline Commercial Asset Management Inc.](#)

1655 Russell Rd., Unit 2, Suite 200

Ottawa, Ontario, K1G 0N1

Visit us at www.SkylineGroupOfCompanies.ca
Please consider the environment before printing this email.

From: Reid, James <jwreid@millerthomson.com>
Sent: Wednesday, November 1, 2023 10:02:21 PM
To: Dominic Bonin <dbonin@SkylineGRP.ca>
Cc: 'Pat Carey' <careyp@careymgmt.com>
Subject: [EXTERNAL] RE: Edmonton Lease

You don't often get email from jwreid@millerthomson.com. [Learn why this is important](#)

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Hi Dominic,

7-Eleven Canada, Inc. is purchasing the Alberta and BC assets, property, and business of Wallace & Carey Inc., and its related party, 722921 Alberta Inc.

As a result, 7-Eleven will be taking over as tenant under the Lease Amending Agreement between Hoopp Realty Inc., as landlord, and Wallace & Carey Inc., as tenant, commencing April 2, 2014, as amended from time to time, attached for your reference.

We are looking for confirmation that the Landlord consents to 7-Eleven replacing Wallace & Carey Inc. as tenant.

If you have any questions, please don't hesitate to call.

Sincerely,

JAMES W. REID

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

3000, 700 - 9th Avenue SW
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From: Pat Carey <careyp@careymgmt.com>
Sent: Wednesday, November 1, 2023 4:01 PM
To: Reid, James <jwreid@millerthomson.com>; Dominic Bonin <dbonin@skylinegrp.ca>
Subject: [****EXT****] Edmonton Lease

Howdy James,

Please send Dominic the details on the Edmonton lease.

Thanks

Pat

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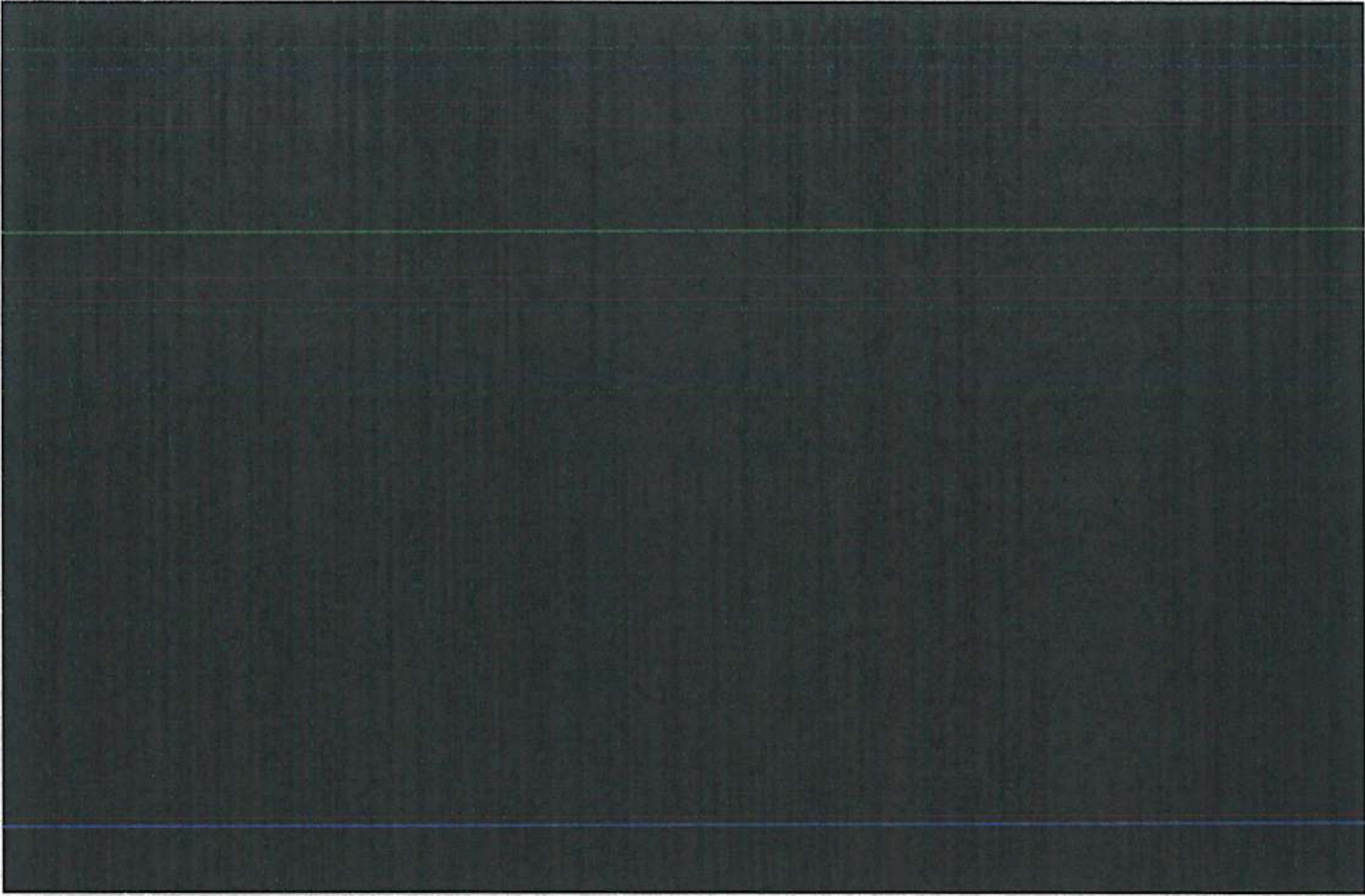
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Hi Pat Willow Holdings Ltd hereby give our consent to have 7-Eleven take over the lease agreement replacing 722921 Alberta Inc effective October 1, 2023. Regards Ronald Price, Director

From: Pat Carey <careyp@careymgmt.com>
Sent: Tuesday, October 31, 2023 3:10 PM
To: tprice@telusplanet.net
Cc: James W. REID (jwreid@millertthomson.com) <jwreid@millertthomson.com>
Subject: Calgary lease agreement

Howdy Ron and Todd,

Thank you for the call. As discussed, 7-Eleven Canada, Inc. is purchasing the Alberta and BC assets, property, and business of Wallace & Carey Inc., and its related party, 722921 Alberta Inc.

As a result, 7-Eleven will be taking over as tenant under the Industrial Lease Agreement between Willow Holdings Ltd., as landlord, and 722921 Alberta Inc., as tenant, commencing October 1, 2012, as extended by a Lease Extension Amending Agreement made effective September 30, 2022, attached for your reference.

Please confirm by reply e-mail that you consent to 7-Eleven replacing 722921 Alberta Inc. as tenant.

If you have any questions, please don't hesitate to call.

Cheers

Pat

For more information: **403.298.2400** or **millერთhompson.com**

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Takhar, Pavin

From: Jason Hendricks <jhendricks@noorthomes.com>
Sent: Thursday, November 2, 2023 8:56 AM
To: Pat Carey
Cc: Reid, James
Subject: **[**EXT**]** Re: Nanaimo lease
Attachments: 772921 Alberta Inc. - Nanaimo - Lease Renewal - 2022-03 (signed).pdf; Nanaimo Facility Lease Agreement.pdf

Categories: Red Category

Hi Pat,

Field Investments consents to 7-11 taking over the lease subject to the Landlords review and approval of the assignment of lease which shall be provided by the tenant.

Thanks,
Jason

On Oct 31, 2023, at 3:01 PM, Pat Carey <careyp@careymgmt.com> wrote:

You don't often get email from careyp@careymgmt.com. [Learn why this is important](#)

Howdy Jason,

Thank you for the call. As discussed, 7-Eleven Canada, Inc. is purchasing the Alberta and BC assets, property, and business of Wallace & Carey Inc., and its related party, 722921 Alberta Inc.

As a result, 7-Eleven will be taking over as tenant under Lease at #5 – 4386 Boban Drive, dated December 19, 2016, between Field Construction Ltd., as landlord, and 722921 Alberta Inc., as tenant, as extended by a lease extension agreement dated June 29, 2021, attached for your reference.

Please confirm by reply e-mail that you consent to 7-Eleven replacing 722921 Alberta Inc. as tenant.

If you have any questions, please don't hesitate to call.

Sincerely,

Pat

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Takhar, Pavin

From: Reid, James
Sent: Tuesday, November 7, 2023 8:37 AM
To: Pat Carey
Cc: norm@regalideas.com; Takhar, Pavin; Ceko, Marica
Subject: Re: **[**EXT**]** Fwd: Delta LL email
Attachments: image2b77e5.PNG; imagef2a614.PNG; Delta Facility Lease Agreement.pdf

Hi Norm,

Further to the below, can you please confirm that Tariff Developments is ok with 7-Eleven taking over as tenant from Wallace & Carey, and assuming the obligations under the lease?

Sincerely,

JAMES W. REID

Providing services on behalf of a Professional Corporation
Partner


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On Oct 31, 2023, at 3:06 PM, Pat Carey <careyp@careymgmt.com> wrote:

Howdy Norm,

As discussed see below.

Thanks

Pat

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From: Reid, James <jwreid@millerthomson.com>

Sent: Tuesday, October 31, 2023 3:01:36 PM

To: Pat Carey <careyp@careymgmt.com>

Subject: Delta LL email

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Howdy [Name],

Thank you for the call. As discussed, 7-Eleven Canada, Inc. is purchasing the Alberta and BC assets, property, and business of Wallace & Carey Inc., and its related party, 722921 Alberta Inc.

As a result, 7-Eleven will be taking over as tenant under the Lease Agreement between Tariff Developments Inc., as landlord, and Wallace & Carey Inc., as tenant, made June 18, 2021, as amended from time to time, attached for your reference.

Please confirm by reply e-mail that you consent to 7-Eleven replacing Wallace & Carey Inc. as tenant.

If you have any questions, please don't hesitate to call.

Sincerely,

JAMES W. REID

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

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This is Exhibit "C" referred to in the Affidavit of Eric Rolheiser sworn before me this 7th day of November 2023

David Allison

A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

David Josiah Allison
Student-at-Law
Notary Public & Commissioner for Oaths
in and for the Province of Alberta

CONFIDENTIAL - FILE
EDM. LEASE

LEASE AMENDING AGREEMENT

THIS AGREEMENT made as of April 2, 2014.

BETWEEN:

HOOPP REALTY INC.

(the "Landlord")

- and -

WALLACE & CAREY INC.

(the "Tenant")

RECITALS:

1. By a lease made as of April 16, 2013 between the Landlord and the Tenant (the "Lease"), the Landlord leased to the Tenant certain premises (the "Premises") comprising approximately 66,820 square feet in the building located at 142 Street and 157 Avenue, Edmonton, Alberta (the Premises being more particularly described in the Lease), for a term of 10 years, commencing on the date determined in accordance with the terms of the Lease;
2. The parties wish to make certain amendments to the Lease in accordance with the terms of this Agreement;

NOW THEREFORE the parties covenant and agree as follows:

1. Definitions

All capitalized words used in this Agreement have the meaning given such words in the Lease, unless otherwise defined in this Agreement or the context otherwise requires.

2. Confirmation of the Dates

The parties confirm that:

- (a) the Landlord's Work was substantially completed on March 17, 2014;
- (b) the Fixturing Period will expire on June 16, 2014;
- (c) the Commencement Date will be June 17, 2014;
- (d) the last day of the Term will be June 16, 2024, subject to extension in accordance with paragraph 3 of Schedule "K" attached to the Lease; and
- (e) the last day of the term of the Existing Lease will be June 16, 2014.

3. Rentable Area of the Premises

Pursuant to section 2.4 of the Lease, the Landlord has caused the Rentable Area of the Premises to be determined and, attached as Schedule "A", is a measurement statement showing the Rentable Area of the Premises to be 66,820.2 square feet.

4. Minimum Rent

In accordance with section 2.4 of the Lease, the Minimum Rent is amended to be the following:

<u>Period of the Term</u>	<u>Annual Minimum Rent</u>	<u>Monthly Minimum Rent</u>	<u>Rate Per Square Foot</u>
First 36 Months of the Term	\$501,151.50	\$41,762.63	\$7.50 ⁺
Next 24 Months	\$551,266.65	\$45,938.89	\$8.25 ^x
Next 24 Months	\$567,971.70	\$47,330.98	\$8.50
Next 36 Months	\$584,676.75	\$48,723.06	\$8.75

Jan 17/14

Jan 14-16

Jan 16-18

5. General Amendments

All references in the Lease to "Complex Common Areas" are deleted and all references in the Lease to the "Complex Lands" are changed to the "Lands".

6. General Contract Provisions

(a) Recitals

The recitals to this Agreement are incorporated as an integral part of this Agreement.

(b) Entire Agreement

This Agreement, including any Schedules attached to this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no representations, warranties or other agreements, whether oral or written, between the parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding on the parties unless same is in writing and signed by all of the parties.

(c) Applicable Law

This Agreement is to be construed in accordance with the laws of the Province in which the Premises are located and the laws of Canada applicable in such Province.

(d) Invalidity

If any provision of this Agreement or any part of any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision or part shall not affect the validity, legality or enforceability of any other provision of this Agreement or the balance of any provision of this Agreement absent such part and such invalid, illegal or unenforceable provision or part are deemed to be severed from this Agreement and this Agreement will then be construed and enforced as if such invalid, illegal or unenforceable provision or part had never been inserted in this Agreement.

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(e) Further Assurances

The parties shall with reasonable diligence do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement. Each party shall provide and execute such further documents or instruments as may be reasonably required by any other party, exercise its influence and do and perform or cause to be done or performed such further and other acts as may be reasonably necessary or desirable to affect the purpose of and to carry out the provisions of this Agreement.

(f) Counterparts and Execution

This Agreement may be executed by the parties in separate counterparts all of which, when taken together, will constitute a single agreement among the parties. Execution of this Agreement by a party may be evidenced by way of a faxed or emailed (by way of an Adobe Acrobat PDF file) transmission of such party's signature, or by a photocopy of a party's signature, each of which will constitute the original signature of such party to this Agreement. Any party who evidences its signature of this Agreement by fax or emailed PDF file shall, promptly following a request by any other party, provide an originally executed counterpart of this Agreement, but its failure to do so will not invalidate this Agreement.


(g) Binding Effect

This Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have executed this Agreement


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HOOPP REALTY INC., by its agent, Lasalle
Investment Management

Per: 
Name: Edmund Lee
Title: Asst

Per: _____
Name: _____
Title: _____

WALLACE & CAREY INC.

Per: 
Name: BRIAN M. BIRNIE
Title: CHIEF FINANCIAL OFFICER

Per: _____
Name: _____
Title: _____

SCHEDULE "A"

MEASUREMENT CERTIFICATE

See Attached Certificate

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14430-14434 157th Ave. Edmonton
(Rampart)



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Miller Thomson
Project Mercury
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PREPARED FOR:

Kennington Properties

SCALE: 1:200



	33.17	33.17
Fraser Area	4087.7	1011.5
Office Area	4586.1	379.8
Workshop Area	32941.4	4818.0
Total Rentable Area	46028.2	6209.3

• denotes Oclara Location



Element Land Surveys Inc.	
1425, 45th Ave. Suite 100	Edmonton, Alberta T6C 2C5
Phone: 780-441-1111	Fax: 780-441-1112
Surveyor No. 3288	Issue 04/08
Exp. No. 74014	Exp. 15/02/2014

LEASE AGREEMENT

BETWEEN:

TARIFF DEVELOPMENTS INC.
(the "Landlord")

AND:

WALLACE & CAREY INC.
(the "Tenant")

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W&C

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Initial


LEASE AGREEMENT

THIS LEASE AGREEMENT made the ___ day of June, 2021

BETWEEN:

Tariff Developments Inc.

(the "Landlord")

AND:

Wallace & Carey Inc.

(the "Tenant")

WITNESSES THAT in consideration of the mutual covenants, conditions and agreements herein contained, the Landlord, the Tenant and the Indemnifier all covenant and agree as follows:

**ARTICLE 1
TERMS / DEFINITIONS**

1.1 **Basic Terms** - Each reference in the Lease to any of the basic terms shall be construed to include the terms as set forth below as well as all of the additional terms and conditions of the applicable Sections of the Lease where such basic terms are more fully set forth.

.1	Landlord:	Tariff Developments Inc.	
	(i) Address of Landlord:	150 - 7350 Wilson Avenue, Delta, BC, V4G 1H3	
	(ii) Contact Info for Landlord:	Ph: 604-952-4290 Fax: 604-952-4209 Email: norm@regalideas.com (Norm Liefke)	
.2	Tenant (Full Legal Name):	Wallace & Carey Inc.	
	(i) Operating Name:	"_____"	Section 3.3
	(ii) Incorporation No. Extraprovincial Registration No.:	207980509 (Alberta) A0048275	
	(iii) Address of Tenant:	5445 8 th Street NE, Calgary, AB, T2K 5R9	
	(iv) Tenant Registered & Records / Head Office Address:	20 th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8 (Michael R. Axford) 1500 - 850 2 nd Street SW, Calgary, AB, T2P 0R8	
	(v) Contact Info for Tenant:	Ph: 403-730-2290 Fax: Email: birnieb@waci.com (Brian Birnie)	
.3	Indemnifier:	NA	
.4	Description of Land:		
	(i) Legal:	Municipality of Delta Parcel Identifier: 028-756-070 Lot A District Lot 128 Group 2 New Westminster District Plan EPP9595	
	(ii) Civic Address:	7350 Wilson Avenue, Delta, BC, V4G 1H3	

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5	Premises:	Units 120 and 130, being that portion of the Building shown on the plan attached hereto as Schedule "1.1.5"				
6	Rentable Area of the Premises:	Approximately 112,066 sf				Section 1.3
7	Permitted Use:	Only for the purposes of distribution of goods including cooler and freezer products				Section 3.2
8	Parking:	Exclusive use of those spaces as allocated by the Landlord				Section 2.1
9	Term:	Ten(10) years				Section 2.2
	(i) Commencement Date:	November 1, 2021				
	(ii) Lease Expiration Date:	October 31, 2031				
	(iii) Fixturing Start Date:	Two (2) months prior to Commencement Date				
10	Minimum Rent:					Section 4.1
		(i)	(ii)	(iii)	(iv)	(v)
		<u>Lease Period From</u>	<u>Lease Period To</u>	<u>Per Sqft</u>	<u>Per Annum</u>	<u>Per Month</u>
	(i)	November 1, 2021	October 31, 2022	\$15.25	\$1,709,006.50	\$142,417.21
	(ii)	November 1, 2022	October 31, 2023	\$15.71	\$1,760,556.86	\$146,713.07
	(iii)	November 1, 2023	October 31, 2024	\$16.18	\$1,813,227.88	\$151,102.32
	(iv)	November 1, 2024	October 31, 2025	\$16.66	\$1,867,019.56	\$155,584.96
	(v)	November 1, 2025	October 31, 2026	\$17.16	\$1,923,052.56	\$160,254.38
	(vi)	The annual Minimum Rent for years six (6) through ten (10) of the term shall be as agreed upon between the parties nine (9) months prior to the commencement of year six (6), based upon the prevailing fair market minimum rent at that time, with increases of 3% per annum for each year thereafter, provided that the annual minimum rent payable by the Tenant in year six (6) of the Term shall not be less than the annual Minimum Rent payable by the Tenant in year five (5) of the Term				
11	Security Deposit:	\$320,508.76 plus GST at 5%				Section 4.4
12	Option to Renew:	At the annual market rental value, provided the Minimum Rent in the first year of the renewal shall not be less than the Minimum Rent payable in the last year of the Term with the Minimum Rent in each subsequent year in the renewal term increasing by 3% per annum				Section 2.5
	(i) Number of Renewal Options:	2				
	(ii) Length of Renewal:	Five (5) years per Renewal				
13	Tenant Improvement Allowance:	NA				Schedule "10"
14	Letter of Credit:	NA				Section 4.5
15	List of Schedules:	SCHEDULE "1.1.5" PLAN OF PREMISES SCHEDULE "2.5" OPTION TO RENEW SCHEDULE "8.1(s)" RULES AND REGULATIONS SCHEDULE "10" IMPROVEMENTS / ALTERATIONS SCHEDULE "12.8" CONSENT TO DISCLOSE INFORMATION				Section 20.12

1.2 Additional / Modification of Terms - Terms of the Lease which are not set forth in Articles 2 to 23 (the "Standard Provisions") or which amend the Standard Provisions shall be set forth in this Section. In case of discrepancy, these specific provisions shall prevail over the Standard Provisions.

1.2.1 Early Occupancy / Fixturing Period

Notwithstanding Section 2.2 of this Lease, provided:

- a. the Tenant has provided the Landlord with proof that the Tenant has obtained the insurance it is required to obtain pursuant to this Lease;
- b. if applicable, the Landlord has completed the Landlord's Work or completed the Landlord's Work to an extent that the Tenant can take possession of the Premises to perform the

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Tenant's Work in conjunction with the Landlord's Work; and
c. there is a Fixturing Start Date pursuant to Subsection 1.1.9(iii),

the Tenant may take occupancy of the Premises from and including the Fixturing Start Date up to but not including the Commencement Date (the "Fixturing Period") for the sole purpose of carrying out and completing the Tenant's Work in accordance with Article 10 and moving into the Premises. Non-completion of the Tenant's Work or the inability of the Tenant to open for business by the Commencement Date shall not affect the Commencement Date or the amount or dates for payment of Rent.

If the Tenant opts to and does take occupancy of the Premises during the Fixturing Period, the Tenant shall not be required to pay Minimum Rent but shall be required to pay Additional Rent and all separately metered expenses for the Premises from the date the Tenant takes occupancy of the Premises up to and including the last day of the Fixturing Period and shall be subject to all of the terms and conditions of this Lease insofar as they are applicable, including, without limiting the foregoing, the provisions relating to the liability and indemnity of the Tenant for its acts or omissions or the acts or omissions of its agents, contractors, employees, servants, licensees, or concessionaires or anyone permitted by the Tenant to be on the Premises.

Notwithstanding the early occupancy of the Tenant as herein provided, the Term shall not commence to run until the Commencement Date.

If the Tenant has, through no delay on the part of the Landlord, not signed and delivered this Lease to the Landlord before the Fixturing Start Date, the Tenant shall not be entitled to have occupancy of the Premises until this Lease has been signed and delivered to the Landlord. In such event, the Fixturing Period shall be reduced accordingly so that the Commencement Date remains unaffected.

If the Tenant has, through no delay on the part of the Landlord, not signed and delivered the Lease to the Landlord and/or has not obtained the requisite insurance on or before the Commencement Date, the Tenant shall not be entitled to have occupancy on or before the Commencement Date. In such event, the date for occupancy will be delayed until the Tenant has signed the Lease and delivered it to the Landlord. Notwithstanding the foregoing, the Tenant shall pay Minimum Rent and Additional Rent pursuant to this agreement and the Lease as if occupancy had been granted on the Commencement Date.

1.2.2 Security Deposit

Notwithstanding anything to the contrary in Section 4.4, the Security Deposit shall be held by the Landlord as security for the faithful performance by the Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by the Tenant, without liability for interest, for the duration of the Term, and any renewals thereof.

1.2.3 Late Payment Penalty

Without prejudice to any other right or remedy of the Landlord hereunder, should the Tenant fail to pay Rent, or any money payable by the Tenant to the Landlord, when due, whether such failure is caused by the Tenant directly by not delivering payment to the Landlord on time, or indirectly by the Tenant not having sufficient funds in their bank account to cover any cheque or authorized withdrawal, then in addition to any NSF fees incurred by the Landlord, the Tenant agrees to and will pay to the Landlord, a late payment penalty amount equal to eighteen percent (18%) of the overdue amount owing to the Landlord, which shall be collectible as Additional Rent and unless otherwise provided in this Lease, shall be immediately payable along with the overdue amount. For the purposes of clarification, the late payment penalty amount herein set out is in addition to, and not inclusive of, any late payment interest the Landlord is entitled to pursuant to Section 4.7.

1.2.4 Tenant Improvement Allowance

Paragraph 4 of Schedule "10" is hereby deleted in its entirety.

1.2.5 Rules and Regulations

If there is a contradiction between the Rules and Regulations and the terms and conditions of this Lease, the Lease shall prevail.

1.3 Definitions - In this Lease:

"Additional Rent" means all monies payable to the Landlord pursuant to this Lease, save and except Minimum Rent;

"Arbitration Act" means the Arbitration Act (BC) and amendments thereto or legislation in substitution therefor;

"Article" means an Article in this Lease and includes all Sections and Subsections therein;

"Authority" means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, the Landlord, the Tenant, the Building or the Lands, including the businesses carried on therein;

"Building" means the building situated on the Lands in which the Premises are located having the civic address stated in Subsection 1.1.4(m) and includes all amenities and all improvements thereto;

"Business Days" means Monday to Friday inclusive in each week, save and except any such day that shall be declared, by lawful Authority, a statutory holiday or a day that businesses shall not be required to open for business;

"Chattels" shall have the meaning set forth in Section 10.12;

"Commencement Date" means the date on which the Lease officially begins which date shall be the date set forth in Subsection 1.1.9(i);

"Common Areas" means those areas, facilities, utilities, improvements, equipment and installations on or serving the Lands and/or the Building which are not designated or intended by the Landlord to be leased to tenants of the Building, are designated by the Landlord as Common Areas or are provided or designated by the Landlord for the use or benefit of the tenants, their agents, invitees, employees, licensees and customers in common with others entitled to their use or benefit;

"Contaminant" means any solid, liquid, gas, odour, heat, sound vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may, if released into the environment, have an adverse effect on the natural environment or on people, property or the normal conduct of business;

"Discharge" means any movement, whether purposeful or accidental, of a Contaminant into the indoor or outdoor air, onto or into the ground, or into the sewers or any watercourse. For greater certainty, such movement includes leaks and spills;

"Environmental Laws" means the statutes, regulations, bylaws, policies, codes, directives, guidelines, orders, approvals and other legal requirements of an Authority or of the common law which affect the Lands, the Building and/or the Premises or the Tenant's business, and which impose any obligations relating to the protection, conservation or restoration of the natural or human environment;

"Environmentally Sensitive Tenant" means a tenant who uses, stores, handles or transports Toxic Substances or who generates Hazardous Waste at the Premises or on the Lands. For greater certainty, this includes but is not limited to gasoline and/or automobile service stations, dry cleaners, photographic developers, medical and/or dental offices or laboratories, and printers. In addition, a tenant who has been convicted of a breach of an Environmental Law shall also be deemed to be an Environmentally Sensitive Tenant;

"Fixturing Period" shall have the meaning set forth in Subsection 1.2.1;

"Goods and Services Tax" or "GST" means any and all taxes, levies, duties and assessments, imposed on the Tenant, the Landlord or both, or for which the Landlord is obliged to collect from the Tenant, with respect to:

- (i) any or all amounts paid or payable by the Landlord for goods and services, repairs, maintenance, estate taxes, taxes of the nature described in Article 6 (Taxes), insurance, and all other outlays and expenditures (including capital expenditures) for and in connection with the operation and management of the Building and the Lands as an industrial building, including without limiting the generality of the foregoing, repairs, maintenance and replacements in respect of the Building and the Lands;
- (ii) any or all amounts paid or payable by the Tenant pursuant to this Lease, including Rent; and
- (iii) this Lease or services or goods supplied or provided or deemed to have been supplied or provided by the Landlord or which the Landlord is deemed responsible to provide in accordance with the terms of this Lease or the consideration for such goods and services;

whether in each case characterized as goods and services tax, sales tax, multi-stage sales tax, harmonized sales tax, value added tax, consumption tax or any other such tax, levy, duty or assessment;

"Hazardous Substances" mean those substances which at any time during the Term or any renewal thereof are regulated as a threat or are capable of posing a threat to public health or the environment under any Environmental Laws, including but not limited to Hazardous Waste and Toxic Substances;

"Hazardous Waste" means waste which is designated as "hazardous waste" or as "liquid industrial waste" by applicable Authorities, or enactments (including any statutes or regulations) of British Columbia as amended from time to time, or by any replacement legislation. This includes, but is not limited to:

- (i) any waste which is composed in whole or in part of substances which are:
 - (A) corrosive,
 - (B) ignitable,
 - (C) pathological,
 - (D) radioactive,
 - (E) reactive, or
 - (F) toxic, and
- (ii) liquid waste from a commercial or industrial process that cannot lawfully be disposed of through the municipal sewers;

"Landlord's Work" shall have the meaning set forth in Schedule "10", paragraph 1;

"Lands" means all those lands and premises located in the municipality where the Premises are located, as referred to and more particularly described in Subsection 1.1.4;

"Lease" means this lease document, including all schedules attached hereto, as it may be amended;

"Leasehold Improvements" shall have the meaning set forth in Section 10.1;

"Management Fee" shall have the meaning set forth in Section 4.3;

"Minimum Rent" means the rent reserved for the Landlord as set out in Subsection 1.1.10;

"Operating Costs" means the total costs and expenses of every kind, whether direct or indirect, paid, payable or incurred by or on behalf of the Landlord in the ownership, maintenance, repair, replacement, operation, administration, supervision and management of the Lands and Building. For greater certainty, such costs and expenses include, without limitation and without duplication:

- (i) The total annual costs of insuring the Lands, the Building, and the improvements and equipment and other property in the Building and facilities of the Building owned by the Landlord or for which the Landlord is legally liable, from time to time, in such manner, with such companies and forms, with such coverage and in such amounts as the Landlord, or its mortgagees may, from time to time, determine, including, without limitation the following insurance:

- (A) risks of physical loss or damage insurance to all property owned by the Landlord relative to the Building;
 - (B) boiler, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus insurance on a broad form blanket cover repair and replacement basis;
 - (C) loss of the Landlord's contingent rental income from other premises in the Building arising out of damage or destruction to any part of the Building;
 - (D) third party liability coverage including the exposure of personal injury, bodily injury, property damage occurrence, including all contractual obligations coverage and including actions of all authorized employees, subcontractors and agents working on behalf of the Landlord; and
 - (E) any other form or forms of insurance as the Landlord or its mortgagees may reasonably require including lease guarantee insurance from time to time for insurable risks and in amounts against which a prudent landlord would protect itself;
- (ii) landscaping, gardening, janitorial, cleaning, snow removal, garbage and waste collection and disposal, operating and maintaining any supply or merchandise holding areas, storage areas or the loading and receiving areas and truck docks;
 - (iii) lighting, (including ballasts, starters and tubes but excluding specialty lighting installed by or for tenants) electricity, telephone, gas, hot and cold water, and all other utilities, fire prevention and alarm systems and the cost of electricity of any signs deemed by the Landlord to be part of the Building;
 - (iv) any necessary policing and supervising and traffic control for parking and otherwise;
 - (v) any salaries and wages of all personnel including supervisory personnel employed to carry out maintenance and operations, including contributions towards usual fringe benefits, unemployment insurance, pension plan contributions and similar contributions;
 - (vi) any costs of heating, air-conditioning and ventilation of the Building;
 - (vii) any service contracts with independent contractors;
 - (viii) any water rates, special taxes and licences for the Lands and Building but excluding Tenant's Taxes and taxes solely based on income or profits;
 - (ix) accounting costs incurred in connection with the Building including computations required for the imposition of charges to tenants and audit fees incurred for the determination of any costs hereunder and the reasonable costs of collecting and enforcing payment of such charges;
 - (x) the cost of all equipment rented and acquired and maintenance thereof including, cleaning and maintenance supplies, any employee uniforms and dry-cleaning, if expensed in full in the fiscal year in which such equipment is acquired;
 - (xi) if expensed fully in the fiscal year in which the expense is incurred, the cost of any improvement, replacement, repair or alteration whether with respect to buildings, improvements, equipment, fixtures or otherwise and whether on-site or off-site which, in the opinion of the Landlord, is necessary to reduce or limit increases in Operating Costs or is required by the Landlord's insurance carriers or by any changes in the laws, rules, regulations or orders of any Authority having jurisdiction, including those necessary to comply with energy conservation, pollution and environmental control standards and the costs of any procedures required with respect thereto;
 - (xii) the cost of investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Hazardous Substance which is in or about the Building or the Lands or any part thereof or which has entered the environment from the Building or the Lands, if the Landlord is required to do so or if, in the Landlord's opinion, it is harmful or hazardous to any Person or to the Building or any part thereof or to the environment;

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- (xiii) the cost of maintenance, repairs and replacements to or in respect of the Building including those resulting from normal wear and tear and otherwise and including, but not limited to, maintenance, repairs and replacements with respect to window coverings, decorations, roof of Building or any parking area;
- (xiv) the cost of maintenance, repairs, replacements and improvements to machinery, equipment, facilities, systems or property in the Building including, without limitation, the heating, ventilating, air conditioning, energy-saving, safety and security systems;
- (xv) at the Landlord's election (such election to be evidenced by the method of calculating Operating Costs for each fiscal year of the Landlord), either the amortization of the cost (whether incurred before or during the Term and whether or not incurred by the party constituting the Landlord at any time or its predecessor in title or interest) of any repair, replacement, decoration or improvement of the Building noted in subsections (xi) and (xii) above not expensed within the said fiscal year in which the expenditure was incurred and of all equipment required for the operation and maintenance of the Building not included within the fiscal year in which the expenditure occurred or depreciation in an amount determined by the Landlord's accountant based on the cost (whether incurred before or during the Term and whether or not incurred by the party constituting the Landlord at any time or its predecessor in title or interest) of any of those items which the Landlord in its absolute discretion has elected to treat as capital in nature together with, in each case, an amount equal to interest at the Prime Rate plus one and one half percent (1½%) per annum on the undepreciated or unamortized amount thereof;
- (xvi) the cost of energy audits, conservation studies and other measures taken to conserve energy or reduce costs or liability as per Article 5;
- (xvii) the cost of renting, operating and maintaining Building signs and providing directional signage;
- (xviii) the cost of operating, maintaining and repairing elevators and other lifting devices, if any;
- (xix) the cost of direct supervision attributable to any of the above;
- (xx) the fair rental value of any space in the Building occupied by the Landlord, its manager or personnel in connection with the operation and management of the Building;
- (xxi) reasonable contribution towards the administrative, accounting, legal and other professional fees incurred by the Landlord in connection with the maintenance, operation and management of the Leased Property, which amount will be calculated at 1.85% of Rent; and
- (xxii) all other expenses of every nature inclusive of reasonable legal fees and other professional fees incurred in connection with the maintenance, operation and management of the Building.

And there shall be excluded from such costs and expenses:

- (i) amounts directly chargeable by the Landlord to the Tenant hereunder or which would be chargeable to any tenant as otherwise provided herein or in such tenant's lease; and
- (ii) costs for which the Landlord is reimbursed by the proceeds of insurance claims to the extent of such reimbursement. For greater certainty, the amount of the deductible portion of such insurance claim shall not be deducted from the costs and expenses included in Operating Costs;

And for greater certainty, Operating Costs do not include:

- (i) costs of correcting structural defects in or inadequacy of the initial design or construction of the Building;
- (ii) structural repairs or replacements to the Building unless the need for such has been caused by the Tenant, its employees, and/or invitees; and
- (iii) except as otherwise provided herein, the amount of any Income Tax, Corporation Capital Tax or any similar tax or levy on the income, profits or gains of the Landlord;

"Parties" shall mean the parties to this Lease, as stated in Subsection 1.1.1 through Subsection 1.1.3 inclusive;

"Person" means any individual, firm, corporation, partnership, or any group of individuals, firms, corporations or partnerships, or any trust, other legal entity or other business association and includes a government or departmental subdivision thereof;

"Premises" means the space within the Building hereby leased to the Tenant as described in Subsection 1.1.5 and designated as "Premises" on the plan(s) attached hereto as Schedule "1.1.5";

"Prime Rate" means the annual rate of interest set from time to time by the Canadian chartered bank chosen by the Landlord for its Canadian dollar commercial/business loans. For the purposes of this definition the bank chosen by the Landlord shall be that bank currently being used by the Landlord;

"Rent" means both Minimum Rent and Additional Rent;

"Rentable Area" means the square footage set forth in Subsection 1.1.6(i) which in the case of a whole floor of the Building includes all areas within the outside walls computed by measuring to the outside, finished surface of the outer Building walls, without deduction for columns and projections necessary to the Building, and including the Service Areas within and exclusively serving the floor, but not including stairs, elevator shafts, flues, pipe shafts, vertical ducts, and other open vertical shafts supplied by the Landlord for use in common with other tenants; and in the case of part of a floor of the Building includes all areas occupied and computed by measuring from the outside, finished surface of the outer Building walls to the premises side of corridors or other permanent partitions and to the centre of partitions which separate the area occupied from adjoining premises, without deduction for columns and projections necessary to the Building, and including a portion of the Service Areas within and exclusively serving only that floor (which portion shall be an amount equal to the product of the fraction having as its numerator the occupiable area contained in the Premises on such floor and as its denominator the sum of the occupiable area of such floor, multiplied by the total area in square feet of the Service Areas, if any, on such floor), but not including stairs, elevator shafts, flues, pipe shafts, vertical ducts, or other open vertical shafts and the wall enclosing them supplied by the Landlord for use in common with other tenants; and all of the foregoing without deduction for any space occupied by or used for any recessed doorway areas;

"Rules and Regulations" shall have the meaning set forth in Section 8.1(r) and attached hereto as Schedule "8.1(r)", together with any amendments, deletions and additions made by the Landlord from time to time;

"Security Deposit" shall have the meaning set forth in Section 4.4;

"Service Areas" means the area of corridors, elevator lobbies, service elevator lobbies, washrooms, air-cooling rooms, fan rooms, janitor's closets, telephone and electrical closets, and all other facilities on the floor serving the Premises and other premises on such floor should the floor be a multiple tenancy floor;

"Storage Tanks" shall mean any containers used by the Tenant in conjunction with the Tenant's operations at the Premises and containing from time to time any Contaminant and/or Hazardous Substances;

"Taxes" means all taxes, rates and assessments, whether general or special, levied or assessed by the municipality where the Lands are located, for local improvement, municipal, school or other purposes, or levied or assessed by any other Authority for such purposes or any other purposes payable by the Landlord in respect of the Lands and the Building or the capital the Landlord has invested in the Lands and the Building, as the Landlord may reasonably allocate thereof, and includes any other taxes, rates and assessments payable by the Landlord which are imposed in substitution for the foregoing, the whole as finally determined for each calendar year as a result of assessment, appeal or judicial review and includes any legal fees or appraisers' fees or like costs incurred by the Landlord in respect of such final determination, but shall not include Tenant's Taxes;

"Tenant Property" shall have the meaning set forth in Section 10.1;

"Tenant's Proportionate Share" means that proportion, the numerator of which is the Rentable Area of the Premises and the denominator of which is the Rentable Area of the entire Building;

"Tenant's Taxes" means all taxes, licence fees, rates, charges, duties and assessments imposed or levied by any Authority covering any period during the Term and relating to or in respect of the business or businesses or uses carried on at the Premises or relating to or in respect of improvements, fixtures, machinery, chattels or equipment brought onto the Premises by the Tenant, or being the property of the

Tenant, or relating to or in respect of improvements to the Premises built, made or installed by the Tenant or at the Tenant's request, or being any special or additional taxes, licence fees, rates, charges, duties, and assessments which the Tenant or any sub-lessee or licensee of the Tenant shall elect or cause to have the Premises or any part thereof assessed or charged with, whether any such taxes, licence fees, rates, charges, duties and assessments are payable in law by the Tenant or by the Landlord and whether such taxes, licence fees, rates, charges, duties and assessments are included by the taxing authority in the taxes, licence fees, rates, charges, duties and assessments imposed or levied on or with respect to the Lands and the Building;

"Tenant's Work" shall have the meaning set forth in Section 10.2;

"Term" means the period of time referred to and described in Subsection 1.1.9; and

"Toxic Substance" means any substance which is listed on the List of Toxic Substances prescribed under the *Canadian Environmental Protection Act* SC 1999 c. 33 (as amended from time to time, or any replacement legislation), or is designated to be toxic or hazardous by an Authority.

"Trade Fixtures" shall have the meaning set forth in Section 10.1;

ARTICLE 2 DEMISE / TERM

- 2.1 **Grant of Lease** - The Landlord, in consideration of the rents, covenants, agreements and conditions herein to be paid, observed and performed by the Tenant, hereby agrees to and does lease the Premises to the Tenant for the Term, "as is", subject only to the completion of the Landlord's Work, and on the terms and conditions set out herein, together with
- (a) the exclusive right to use those parking spaces allocated to the Tenant pursuant to Subsection 1.1.8 for vehicle parking;
 - (b) the non-exclusive right for the Tenant and its agents, invitees, employees, licensees and customers, in common with the Landlord and other tenants and their respective agents, invitees, employees, licensees and customers to use the Common Areas to the extent allowed by, and in accordance with, the Rules and Regulations established by the Landlord from time to time; and
 - (c) the non-exclusive right of ingress and egress by the Tenant and its agents, invitees, employees, licensees and customers to the Lands, the Building and the Premises.
- 2.2 **Term** - The Tenant shall have and hold the Premises for and during the Term commencing on the Commencement Date and ending on the date stated in Subsection 1.1.9(ii).
- 2.3 **Irregular Commencement Date** - If the Term commences upon a day other than the first day of a calendar month, then the Tenant shall pay, upon the Commencement Date, Minimum Rent until the first day of the month following the Commencement Date calculated on a per diem basis and the last monthly instalment of Minimum Rent shall also be prorated accordingly.
- 2.4 **Expiry of Term** - Upon the expiry of the Term and any permitted renewals of the Term, or upon the earlier termination of this Lease for any reason whatsoever, the Tenant shall surrender and deliver up vacant possession of the Premises to the Landlord in a clean condition and in a good state of repair suitable for immediate reuse and substantially in the condition the Premises was delivered to the Tenant, subject to the Landlord's Work. Notwithstanding that this Lease has expired or been terminated, should the Tenant fail to deliver up vacant possession of the Premises in the condition required pursuant to this Section 2.4, the Tenant shall be liable for all Rent that would be payable for the Premises from the time of the expiration or termination of the Lease until such time as the Tenant has removed the Tenant's Property and has removed and lawfully disposed of all waste and other Contaminants at the Premises, and shall also be liable for any and all costs or expenses incurred by the Landlord to clean the Premises and put the Premises into the state required pursuant to this Section 2.4.

- 2.5 **Renewal** - Should the Tenant have an option to renew the Lease pursuant to Subsection 1.1.12, the Landlord and Tenant covenant and agree that the renewal of the Lease shall be determined in accordance with the provisions of Schedule "2.5".
- 2.6 **Overholding** - If the Tenant continues to occupy the Premises after the expiration of the Term and any permitted renewals of the Term and the Landlord accepts Rent from the Tenant, the new tenancy thereby created shall be deemed to be month to month and shall be subject to the covenants and conditions in this Lease insofar as the same are applicable to a tenancy from month to month, save and except those relating to the amount of the Minimum Rent payable which shall be equal to one and one-half (1½) times the monthly amount of Minimum Rent payable during the last month of the Term or renewal Term, as the case may be.

ARTICLE 3 USE OF THE PREMISES

- 3.1 **Acceptance of Premises** - The Tenant hereby accepts the Premises in its condition as at the Commencement Date or as at the beginning of the Fixturing Period, as the case may be, and on an "as is where is" basis, subject only to the completion of the Landlord's Work, if applicable, and the Tenant agrees that the use of the Premises and all appurtenances thereto are at the sole risk of the Tenant without any recourse against the Landlord.
- 3.2 **Use of Premises** - The Tenant shall use the Premises for the purposes stated in Subsection 1.1.7 and for no other purpose without the prior written consent of the Landlord and, subject to the provisions of Article 15, shall not permit any part of the Premises to be used or occupied by any person other than the Tenant, its employees and invitees.
- 3.3 **Operating Name** - In connection with the business to be conducted by the Tenant from and on the Premises, the Tenant shall only use the name stated in Subsection 1.1.2(i) and shall not change the advertised name of the business to be operated in the Premises without the prior written consent of the Landlord which consent shall not be unreasonably withheld. Any costs or expenses associated with the Tenant changing its operating name, including but not limited to costs for new signage on or at the Building, will be borne solely by the Tenant.
- 3.4 **Conditions for Conduct of Business by Tenant** - The Tenant shall occupy the Premises from and after the Commencement Date and shall thereafter continuously conduct, subject to reasonable interruptions for holiday schedules, the business set out in Section 3.2 above in the whole of the Premises. In the conduct of the Tenant's business pursuant to the terms of this Lease, the Tenant shall not:
- (a) display any merchandise or advertising of services or merchandise outside the Premises at any time without the prior written consent of the Landlord;
 - (b) perform any acts or carry on any practices which may injure the Premises or the Building or be a nuisance or menace to the Landlord or other tenants in the Building, including without limitation, breaching any intellectual property laws;
 - (c) erect, on the roof of the Building, or on any exterior walls of the Building or Premises, or in any of the Common Areas, or on the Lands, any aerial, receiving dish or similar telecommunications device without in each instance, the written consent of the Landlord and any aerial, receiving dish or similar telecommunications device so installed without such written consent shall be subject to removal without notice at any time and at the cost of the Tenant; and
 - (d) use any loud speakers, televisions, phonographs, radios, stereos or other devices in a manner so as to be heard or seen outside the Premises, without the prior written consent of the Landlord.

ARTICLE 4
RENT / PAYMENT

- 4.1 **Minimum Rent** - The Tenant covenants and agrees to pay to the Landlord, during the Term, the Minimum Rent set out in Subsection 1.1.10, plus GST, payable monthly in advance on the first day of each month of the Term.
- 4.2 **Additional Rent** - The Tenant covenants to pay to the Landlord Additional Rent in the same manner and at the same time Minimum Rent is paid, unless otherwise expressly provided for in this Lease.
- 4.3 **Management Fee** - The Tenant covenants to pay to the Landlord, as Additional Rent, a management fee of five percent (5%) of the Rent.
- 4.4 **Security Deposit** - The Tenant shall, contemporaneously with execution of this Lease, cause to be deposited with the Landlord the sum referred to in Subsection 1.1.11. ~~Part of such deposit shall be applied by the Landlord to the payment of Rent plus GST for the first month of the Term in which the Tenant is to pay Rent.~~ The balance of such deposit, ~~namely the amount referred to in Subsection 1.1.11 minus Rent plus GST for the first month of the Term in which the Tenant is to pay Rent~~ (the "Security Deposit"), shall be held by the Landlord, as security for the faithful performance by the Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by the Tenant during the Term.

If at any time during the Term any of the Rent reserved herein is overdue and unpaid then the Landlord may, at its option, appropriate and apply any portion of the Security Deposit to the payment of any such overdue Rent. In the event of the failure of the Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by the Tenant, then the Landlord, may at its option, appropriate and apply the Security Deposit or so much thereof as may be necessary, to compensate the Landlord for loss or damage sustained or suffered by the Landlord due to such breach on the part of the Tenant. Should the entire Security Deposit, or any portion thereof, be appropriated and applied by the Landlord for the payment of overdue Rent or other sums due and payable to the Landlord by the Tenant hereunder, then the Tenant shall, upon the written demand from the Landlord, forthwith remit to the Landlord, by certified cheque or bank draft, a sum sufficient to restore the Security Deposit to the original sum deposited and the Tenant's failure to do so within five (5) Business Days after receipt of such demand shall constitute a default under this Lease and the Landlord shall have the right of re-entry upon the Premises.

If the Tenant complies with all the terms, covenants and conditions of this Lease and promptly pays all of the Rent provided for herein as it falls due and, at the end of the Term, leaves the Premises in the same condition as they are required to be maintained under this Lease, the Security Deposit shall be returned in full to the Tenant by the Landlord within sixty (60) days of the end of the Term. However, if the Tenant leaves the Premises in a damaged, untidy, unsightly or hazardous condition, the Landlord, acting reasonably, shall be entitled to use the entire Security Deposit, or any portion thereof, to remedy same. If the cost to remedy the condition of the Premises is less than the entire Security Deposit, the Landlord shall return any remaining balance to the Tenant within sixty (60) days of completing the remedying of the condition of the Premises, or if the cost to remedy the condition of the Premises is greater than the Security Deposit, the Landlord, shall be entitled to pursue a claim against the Tenant for that amount that the costs of remedying the condition of the Premises exceed the Security Deposit.

The Landlord may deliver the Security Deposit hereunder to a purchaser of the Landlord's interest in the Premises in the event that such interest is sold, transferred or assigned and thereupon the Landlord shall be discharged from any further liability with respect to the Security Deposit.

- 4.5 **Net Lease** - The Tenant covenants and agrees that this Lease shall be a completely triple net lease for the Landlord, that the Landlord shall not be responsible during the Term of the Lease for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, or the contents thereof, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises, except as expressly set out herein.



- 4.6 **Method of Payment to Landlord** - All payments by the Tenant to the Landlord, of whatsoever nature, required or contemplated by this Lease, including all payments of Rent, shall be:
- (a) paid to the Landlord by the Tenant by cheque, bank draft or electronic funds transfer payable to the Landlord in the lawful currency of Canada;
 - (b) made when due hereunder, without prior demand, without any set off, compensation, abatement or deduction whatsoever, at the office of the Landlord at the address stated in Subsection 1.1.1(i) or at such place as the Landlord may designate in writing from time to time to the Tenant;
 - (c) applied towards amounts then outstanding hereunder, in such manner as the Landlord may see fit;
 - (d) deemed to be Rent, in partial consideration for which this Lease had been entered into, and shall be payable and recoverable as Rent, such that the Landlord shall have all rights and remedies against the Tenant for default in making any such payment which may not be expressly designated as Rent, as the Landlord has for default in payment of Rent; and
 - (e) made, if the Landlord so requests, by a series of cheques post-dated to the respective due dates of such payments, which the Tenant shall supply to the Landlord at the commencement of each year of the Term or any renewal of the Term, or earlier should the Landlord so request, or by way of an automatic debiting system by which payments are deducted from the Tenant's bank account and credited to the Landlord's bank account, the cost of which shall be borne by the Tenant, and all without prejudice to any other right or remedy of the Landlord.
- 4.7 **Interest on Arrears** - Without prejudice to any other right or remedy of the Landlord hereunder, any money payable by the Tenant to the Landlord, including any instalment of Rent, shall bear interest at the rate of eighteen percent (18%) per annum, compounded monthly, calculated from the date such money became payable by the Tenant to the Landlord, and such interest shall be collectible as Additional Rent and unless otherwise provided in this Lease, shall be immediately payable.
- 4.8 **Acceptance of Partial Payments** - No payment by or on behalf of the Tenant, accepted by the Landlord, of a lesser amount than the Rent stipulated is deemed to be an acknowledgement by the Landlord of full payment or accord and satisfaction. The Landlord may accept any payment without prejudice to the Landlord's right to recover the balance of the whole of the Rent due or to pursue any other remedy provided in this Lease.
- 4.9 **Rent for a Monthly Tenancy** - Further to Section 2.6, if a monthly tenancy is created, the monthly Minimum Rent to be paid by the Tenant to the Landlord shall be one and one-half (1½) times the most recent Minimum Rent amount set forth in this Lease and shall be paid monthly, unless the Landlord and Tenant have agreed otherwise. Additional Rent shall continue to be paid by the Tenant in accordance with the terms of this Lease.

ARTICLE 5 OPERATING COSTS

- 5.1 **Estimate of Operating Costs** - Prior to the Commencement Date and prior to the commencement of each ensuing calendar year of the Term, the Landlord shall furnish to the Tenant an estimate of the Operating Costs, for the balance of the then ensuing calendar year in the case of the first year of the Term, and for each calendar year thereafter. The Tenant shall pay to the Landlord on the first day of each month during the calendar year, or portion thereof, the following:
- (a) for the balance of the calendar year after the Commencement Date, the amount, as calculated by the Landlord, which is the Tenant's Proportionate Share of such estimate of the Operating Costs divided by the number of months from the Commencement Date to the end of the ensuing calendar year; and

- (b) for each full calendar year thereafter, the amount, as calculated by the Landlord which is one-twelfth (1/12) of the Tenant's Proportionate Share of such estimate of the Operating Costs,

provided that if on the first day of any such calendar year, the Landlord has not furnished to the Tenant the estimate as aforesaid, the Tenant shall pay to the Landlord the amount due in respect of such calendar months as soon as such estimate is furnished by the Landlord to the Tenant.

Notwithstanding the foregoing, upon the Landlord's direction, the Tenant will pay the Tenant's Proportionate Share of such estimate of the Operating Costs related to the Landlord's insurance as set out in subsection (l) of the definition of "Operating Cost" in equal and consecutive monthly instalments commencing on the Commencement Date and thereafter on the 1st of January of each calendar year until the 1st day of the month in which such insurance costs are due and payable by the Landlord.

- 5.2 **Actual Operating Costs** - As soon as reasonably possible after the end of each calendar year of the Term, the Landlord shall furnish to the Tenant a statement of the actual Operating Costs incurred for the previous calendar year just ended. In the event that the actual Operating Costs in any calendar year, or part thereof in the case of the commencement of the Term, exceed the estimated Operating Costs for that year the Tenant shall pay, within thirty (30) days of written demand from the Landlord, the Tenant's Proportionate Share of such actual Operating Costs subject to credit being given for the monthly payments made under the provisions of Section 5.1 and subject to making due adjustment where the Term did not subsist during the whole of such calendar year. In the event that the actual Operating Costs for such calendar year or part thereof are less than the estimate of the Operating Costs for such calendar year or part thereof, the Landlord shall refund, or give credit, to the Tenant for the amount of any overpayment made by the Tenant. The certificate of a chartered accountant appointed by the Landlord shall, in the event of dispute, be conclusive and binding upon the Landlord and the Tenant as to any amount payable under this Section 5.2.
- 5.3 **Changes in Service by Law** - In the event that the Landlord is required to make a change in the service provided by the Landlord to the Tenant in the Building as a result of the Tenant or the Landlord complying with any statute, regulation, bylaw or order of an Authority having lawful jurisdiction, then the cost of complying with such statute, regulation, bylaw or order shall be shared by the Tenant and the Tenant shall pay the Tenant's Proportionate Share. Any reduction or delay in the quality of service provided by the Landlord to the Tenant under this Lease as a result of complying with any such statute, regulation, bylaw or order shall not be a breach on the part of the Landlord pursuant to this Lease.
- 5.4 **Computing Expenses on Full Building** - For the purpose of computing Operating Costs, if less than one hundred percent (100%) of the full floor Rentable Area of all the floors of the Building are occupied during any period for which a computation of Operating Costs must be made, the amount of Operating Costs shall be increased, as estimated by the Landlord acting reasonably, to reflect the additional costs that would have been incurred had one hundred percent (100%) of the full floor Rentable Area of all floors of the Building been occupied during that period.
- 5.5 **Alternative Allocation of Operating Costs** - Notwithstanding any other provision in this Lease, the Landlord may, at any time, allocate any particular Operating Costs amongst the tenants in the Building in proportion to the extent that such tenants benefit from such Operating Costs, determined by the Landlord acting reasonably, and the Tenant covenants to pay any such Operating Costs so allocated to the Tenant by the Landlord. Any Operating Costs allocated by the Landlord under this section shall not be included in the Operating Costs payable by the Tenant under Sections 5.1 and 5.2. Any Operating Costs allocated to the Tenant under this section shall be paid by the Tenant to the Landlord upon demand or, at the option of the Landlord with respect to any particular cost, in the same manner and at the same time the Tenant pays to the Landlord Tenant's Proportionate Share of the Operating Costs.

**ARTICLE 6
TAXES**

6.1 Estimate of Taxes - Prior to the Commencement Date, the Landlord shall furnish to the Tenant an estimate of the Taxes for the Tenant's Proportionate Share of the Taxes for the balance of the then ensuing calendar year (the "First Tax Year"), and the Tenant shall pay the Landlord as follows:

- (a) That amount, as calculated by the Landlord, which is the Tenant's Proportionate Share of the actual Taxes from the Commencement Date to the end of the calendar year, shall be paid by the Tenant to the Landlord as a single lump sum payment on or before the Commencement Date.

On or before January 1st of each calendar year of the Term after the First Tax Year, the Landlord shall furnish to the Tenant an estimate of the Tenant's Proportionate Share of the Taxes for that following calendar year and the Tenant shall pay the Landlord that amount, as calculated by the Landlord, which is the Tenant's Proportionate Share of the estimated Taxes for that following calendar year by way of six (6) equal monthly installments on the first day of each month from January 1st through to and including the 1st day of June. Provided that, if the Landlord has not furnished to the Tenant the estimate of the Taxes as aforesaid, the Tenant shall pay to the Landlord the respective amount due as soon as such estimate is furnished by the Landlord to the Tenant.

6.2 Actual Taxes - After the bill for Taxes for each calendar year is received by the Landlord, the Tenant shall pay to the Landlord within fourteen (14) days after receipt of written demand from the Landlord, the Tenant's Proportionate Share of the actual Taxes for such year subject to credit being given for the monthly payments made under the provisions of Section 6.1 and subject to making due adjustment where the Term did not subsist during the whole of such year. In the event that the actual Taxes for such calendar year or part thereof are less than the estimate of the Taxes for such calendar year or part thereof, the Landlord shall refund, or give credit, to the Tenant for the amount of any overpayment made by the Tenant. The certificate of a chartered accountant appointed by the Landlord shall, in the event of dispute, be conclusive and binding upon the Landlord and the Tenant as to any amounts payable under this Section 6.2.

6.3 Tenant's Taxes - The Tenant shall pay any Tenant's Taxes as they become due. Upon written request of the Landlord, the Tenant shall promptly deliver to the Landlord for inspection, receipts for payment of all Tenant's Taxes which were due and payable up to three (3) months prior to such request.

6.4 Default of Tenant - If the Landlord is required by any Authority, or considers it desirable, to pay the Tenant's Taxes which the Tenant has failed or neglected to pay, the Tenant shall pay the amount thereof to the Landlord forthwith after written request from the Landlord as though such payment was a payment of Rent due under this Lease.

6.5 Goods and Services Tax - The Tenant shall pay to the Landlord GST as follows:

- (a) at the same time and in the same manner as monthly payments of Minimum Rent are due and payable; or
(b) at the time the Authority in respect of GST requires the same to be paid by the Landlord, if such time is earlier than the time in (a) above.

The Landlord shall, for the purposes of (a) above, estimate the amount of GST to be paid in advance, along with monthly payments of Additional Rent, for the period for which the estimate applies. Any necessary adjustment after the period in question shall be made in the same manner as is done for Operating Costs, pursuant to Article 5. All GST shall be calculated and paid without regard to any input tax credits, set-offs, exceptions, exemptions or deductions to which the Landlord is or may be entitled. If a specific assessment of GST is unknown for whatever reason, or the Landlord has not estimated a monthly payment of GST and no amount of GST has been paid in accordance with this Section 6.5, then the Tenant shall pay to the Landlord within five (5) Business Days of receipt of notice from the Landlord the amount or amounts of GST specified in such notice. Notwithstanding the definition of Additional Rent in Section 1.3, the amounts payable by the Tenant as GST shall be deemed not to be Additional Rent, however the

Landlord shall have the same rights and remedies in the event of non-payment of GST as it has for non-payment of Additional Rent.

ARTICLE 7 INSURANCE

7.1 Tenant's Insurance - The Tenant shall, during the entire Term and any renewal thereof, at its sole cost and expense, take out and keep in full force and effect, in the name of the Tenant, and naming the Landlord, and if requested the Landlord's mortgagees, as additional insureds as their respective interest may appear, the following insurance:

- (a) "all-risk" insurance upon property of every description and kind owned by the Tenant, or installed by or on behalf of the Tenant, and for which the Tenant is legally liable, including without limitation, Leasehold Improvements, Trade Fixtures and Tenant Property, in an amount not less than the full replacement cost thereof, against, at a minimum, the perils of fire and standard extended coverage, including sprinkler leakages (where applicable), earthquake, flood and collapse and, in the event that there is a dispute as to the amount which comprises full replacement cost, the decision of the Landlord or its mortgagees shall be conclusive;
- (b) insurance against mechanical breakdown, explosion, rupture or failing of boilers, pressure vessels, heating, ventilation and air conditioning equipment, electrical apparatus and other like apparatus owned or installed by the Tenant on a broad form basis without deduction for depreciation, covering all Leasehold Improvements, Trade Fixtures and Tenant Property owned or installed by the Tenant in the Building;
- (c) comprehensive general liability insurance including personal liability, contractual liability, non-owned automobile liability, lease agreement contractual coverage and owners' and contractors' protective insurance coverage with respect to the Premises and the Building, coverage to include the business operations conducted by the Tenant and any other Person on the Premises; such policies shall be written on a comprehensive basis with limits of not less than Five Million Dollars (\$5,000,000) for bodily injury to any one or more Persons and for property damage, and such higher limits as the Landlord or its mortgagees may reasonably require from time to time;
- (d) insurance for loss of insurable gross profit, including all Rent payable to the Landlord in accordance with this Lease, in an amount of not less than the full insurable gross profit as shall be determined by the Tenant and its auditors or in such other amount or amounts as the Landlord or its mortgagees shall from time to time require;
- (e) tenant's legal liability insurance for the full replacement cost of the Premises, such coverage to include the activities and operations conducted by the Tenant and any other persons on the Premises, and in the event that there is a dispute as to the amount which comprises full replacement cost, the decision of the Landlord shall be conclusive; and
- (f) any other form or forms of insurance as the Tenant or Landlord or the Landlord's mortgagees may reasonably require from time to time, including plate glass insurance, in amounts and for insurance risks against which a prudent tenant would protect itself,

provided always, that if the Tenant wishes to vary the aforesaid insurance requirements, it shall do so only with the prior written consent of the Landlord.

7.2 Waiver of Subrogation - All property damage policies written on behalf of the Tenant shall contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and against those for whom the Landlord is in law responsible whether any such damage is caused by the act, omission or negligence of the Landlord or by those for whom the Landlord is in law responsible.

7.3 Severability of Interest - All insurance policies written on behalf of the Tenant shall provide that: where a loss occurs and there has been a breach of a condition of the policy relating to a matter happening before the loss, which breach would otherwise disentitle the insured to recover under the policy, the breach shall not disentitle the insured to recover if the insured establishes that the loss was not caused or contributed

to by such breach of a condition; and any act or breach of a condition of the policy by one of the parties insured thereby shall not prevent recovery by any other party thereby insured who is innocent of such act or breach.

- 7.4 Insurers Acceptable** - All insurance policies shall be taken out with insurers acceptable to the Landlord; shall be in form satisfactory from time to time to the Landlord; shall be primary insurance; and shall not call under contribution any insurance carried by the Landlord, the Tenant or any mortgagee of the Tenant or the Landlord. The Tenant agrees that certificates of insurance or, if required by the Landlord or its mortgagees, certified copies of each such insurance policies, shall be delivered to the Landlord as soon as practicable after the placing of the required insurance. All policies must contain an undertaking by the insurers to notify the Landlord and its mortgagees in writing not less than thirty (30) days prior to any material change, cancellation, or other termination thereof.
- 7.5 Payment of Proceeds** - In case of loss or damage, the proceeds of all insurance policies shall be and are hereby assigned and made payable to the Landlord, and to the extent that such proceeds of insurance have been paid to the Landlord, they shall be released to the Tenant (provided the Tenant is not in default hereunder) upon the Tenant's written request, in progress payments at stages determined by the Landlord's architect and upon receipt by the Landlord of a certificate from the Landlord's architect stating that repairs at each such stage have been satisfactorily completed by the Tenant free of liens. If the Tenant is in default in making such repairs and if the Landlord performs such repairs, the proceeds may be applied by the Landlord to the cost thereof.
- 7.6 Tenant's Failure to Keep in Force** - The Tenant agrees that if the Tenant fails to take out or to keep in force any insurance referred to in this Article 7 or should any such insurance not be approved by either the Landlord or its mortgagees and should the Tenant not rectify the situation within forty-eight (48) hours after receipt of written notice by the Landlord to the Tenant (stating, if the Landlord or its mortgagees do not approve of such insurance, the reasons therefor) the Landlord shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord shall be immediately payable by the Tenant to the Landlord as Additional Rent and shall be due on the first day of the next month following said payment by the Landlord without prejudice to any other rights and remedies of the Landlord under this Lease.
- 7.7 Change of Use** - The Tenant agrees that, notwithstanding Section 3.2 of this Lease, the Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article, including fuel, which may be prohibited by the standard form of fire insurance policy in force from time to time covering the Building. In the event the Tenant's occupancy of, conduct of business in, or sale of any merchandise from or on the Premises, whether or not the Landlord has consented to the same, causes any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Building, the Tenant shall pay any such increase in premium as Additional Rent within ten (10) days after notice of such additional premiums are rendered by the Landlord to the Tenant. The Tenant shall comply promptly with all requirements of the Canadian Underwriters Association or of any insurer, now or hereafter in effect, pertaining to or affecting the Premises.
- 7.8 Cancellation** - If any insurance policy upon the Building or any part thereof is cancelled or is threatened by the insurer to be cancelled, or the coverage thereunder reduced in any way by the insurer by reason of the use and occupation or improvement of the Premises by the Tenant, or by anyone permitted by the Tenant to be upon the Premises, including a subtenant, and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage within twenty-four (24) hours after receiving notice thereof from the Landlord, the Landlord may, at its option, either (i) re-enter the Premises forthwith by leaving upon the Premises a notice in writing of its intention so to do and thereupon the provisions of Article 19 shall apply, or (ii) enter upon the Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction of coverage, and the Tenant shall forthwith pay the cost thereof to the Landlord, which cost may be collected by the Landlord as Additional Rent and the Landlord shall not be liable for any damage or injury caused to any property of the Tenant or of others located on the Premises as a result of any such entry. Such entry shall not be



construed as an election on the part of the Landlord to terminate this Lease unless a written notice of that intention is given to the Tenant.

- 7.9 **Landlord's Insurance** - The Landlord shall, throughout the Term and any renewal thereof, carry insurance to insure the Building (excluding foundations and excavations) and the machinery, boilers and equipment contained therein owned by the Landlord (specifically excluding any property with respect to which the Tenant is obliged to insure pursuant to the provisions of Section 7.1) against damage by fire and extended perils coverage and shall carry public liability and property damage insurance with respect to the operation of the Building in such reasonable amounts as would be carried by a prudent owner of a similar Building. Notwithstanding that the Tenant shall pay the Tenant's Proportionate Share of the costs of such insurance, pursuant to the definition of Operating Costs in Section 1.3, no insurable interest in the Building is conferred upon the Tenant under any policies of insurance carried by the Landlord.

ARTICLE 8 TENANT'S COVENANTS

- 8.1 **Tenant's Covenants** - The Tenant covenants to the Landlord:
- (a) **Utility Charges** - to be fully responsible for, and pay, the cost of all separately metered and/or separately billed utilities and expenses for the Premises consumed or utilized by the Tenant, including but not limited to electricity, gas, cable and/or telephone as applicable, and to pay the Tenant's Proportionate Share of all non-metered utilities and expenses for the Building, including but not limited to, electricity, water and sewer;
 - (b) **Energy Conservation and Security** - to cooperate with the Landlord in the conservation of all forms of energy in the Building, including without limitation, the Premises, and to cooperate with the Landlord with respect to all programs and systems instituted by the Landlord in connection with reducing the costs of energy consumed in the Building, improving the security of the Building and/or improving the safety of the Building, including the Premises;
 - (c) **Communications Equipment** that the installation, including wiring, of any special communications equipment, including the receiving, transmitting and processing of data requiring facilities beyond the Building's standard services, shall first be approved by the Landlord in writing.
 - (d) **Lighting Fixtures** - to pay all such sums as may be payable in respect of the Premises on account of the maintenance and cleaning of light fixtures, ballasts, starters and tubes in the Premises and of any specialty lighting installed by or for the Tenant;
 - (e) **Glass** - to restore forthwith, at the Tenant's expense, and with glass of the same colour and quality, any broken or damaged glass forming a part of the Premises;
 - (f) **Signs** - to follow and comply, at the Tenant's expense, with the uniform pattern of identification signs for Building tenants as prescribed by the Landlord, and other than such identification sign, not to design, manufacture, build, paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction on the outside of the Building or any part of the Premises visible from the outside of the Building or the Premises, without the prior written consent of the Landlord and without first obtaining all necessary municipal permits and approvals. At the end of the Lease, to remove, at the Tenant's expense, all signs, pictures, advertisements, notices, letterings or directions the Tenant may have installed, and to make good any damage caused by such installation and/or removal and if it does not do so, the Tenant acknowledges and agrees that the Landlord may remove same and make good any damage caused by their installation and/or removal, all at the expense of the Tenant;
 - (g) **Overloading Floors** - not to place on the Premises any safes, heavy business machines or other heavy items which exceeds the specifications for the Building relating to bearing loads without obtaining the prior written consent of the Landlord, which may include the Landlord obtaining the written approval of the Landlord's structural engineer, all at the Tenant's expense;

- (h) **Condition of Premises** - not to permit the Premises to become untidy, unsightly or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and to permit the Landlord, its agents and/or employees, to enter the Premises to view the condition and/or state of repair of the Premises;
- (i) **Janitorial Services** - to provide janitorial service on a continuous basis in accordance with standards for an industrial space and to provide window washing services at such times as the Landlord shall from time to time determine, unless such service is already provided by the Landlord for the entire Building;
- (j) **Recycling and Conservation** - to participate and cooperate with the Landlord in the all recycling and water conservation programs and/or systems instituted by the Landlord in the Building from time to time. Should the Tenant fail to comply with any such recycling or water conservation programs and/or systems, including but not limited to failing to properly sort the refuse and recyclables into the appropriate containers, the Landlord shall be entitled to charge the Tenant for any costs it incurs as a result of the Tenant's failure to comply;
- (k) **Waste and Nuisance** - not to do, suffer or permit any act or neglect which may in any manner, directly or indirectly, cause injury or damage to the Lands, the Premises or the Building, or any fixtures or appurtenances thereof; or which may be or become a nuisance or interference to the Landlord or any other occupants of the Building; or which may, in the opinion of the Landlord, render the Building or any part thereof less desirable or injure the reputation thereof as an industrial space;
- (l) **Combustible Materials** - not to store any combustible materials on the Premises, including propane fuel, except for incidental amounts used in the Tenant's business operations, provided that such materials and their containers are stored in accordance with all applicable laws, regulations, codes and bylaws and all requirements, standards, policies and guidelines, established from time to time by any Authority or by the Landlord's insurers, and that the said materials are first approved by the Landlord;
- (m) **Repairs Generally** - at all times during the Term, at its own cost and expense, to keep the Premises in a good and reasonable state of repair consistent with the general standards of an industrial space, including all Leasehold Improvements and Trade Fixtures therein and all glass, both interior and exterior, save and except reasonable wear and tear which are the responsibility of the Landlord. All repairs shall be in accordance with the standard of specification of the Building and to the approval of the Landlord and shall be carried out by contractors approved by the Landlord (which approval shall not be unreasonably withheld) but employed by the Tenant;
- (n) **Repairs to Utilities** - without limiting the generality of Section 8.1(m), to repair, maintain and replace all wires, lines, pipes, vents, stacks, drains, hot and cold water, natural gas, waste removal material and electrical power from and to the main source of supply for such service and utilities for the Premises or in the case of waste removal, the main vertical plumbing stacks and vents for all of the Building, located both within and without the Premises; provided however if the repair is required to such utilities and services outside the Premises, then the Tenant shall only be responsible for carrying out such repair in the event the repair is necessitated as a result of the negligence, carelessness or misuse of the Tenant, its employees, agents, invitees or anyone permitted by it to be on the Premises or in the Building;
- (o) **Repairs to Building** - that if any part of the Building including, without limiting the generality of the foregoing, the Premises, water pipes, drainage pipes, electric equipment, boilers, engines, any other apparatus or equipment which may be used for the purpose of heating, ventilating or air-conditioning the Building or any elevators, roof, stairways, passageways, entrance halls or outside walls, get out of repair or become damaged or destroyed through the negligence, carelessness or misuse of the Tenant, its employees, agents, invitees or anyone permitted by it to be in the Building, or through it or them in any way stopping up or injuring any of the aforesaid, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant which shall pay the same to the Landlord forthwith on demand;
- (p) **Failure of Tenant to Repair** - that if the Tenant fails to make any repairs in accordance with the provisions hereof, the Landlord, its agents or employees, may forthwith enter the Premises and

make the required repairs and for that purpose the Landlord may bring and leave upon the Premises all necessary tools, materials and equipment and the Landlord shall not be liable to the Tenant for any inconvenience, annoyance or loss of business or any injury or damages suffered by the Tenant by reason of the Landlord, its agents or employees effecting such repairs and the expense of such repairs shall be borne by the Tenant who shall pay it to the Landlord forthwith upon demand;

- (q) **Carrying Out of Repairs** - to allow the Landlord to carry out by its agents and/or employees all repairs, maintenance and cleaning required on the Premises whether such are the responsibility of the Landlord or the Tenant and, except for repairs which are the responsibility of the Tenant, the Landlord shall use reasonable efforts to carry out the Landlord's repairs, maintenance and cleaning so as to minimize any inconvenience to the Tenant;
- (r) **Deliveries** - not to cause or permit deliveries to be made to or from the Premises except in accordance with the Rules and Regulations;
- (s) **Rules and Regulations** - that the Tenant and its agents, contractors, and employees and all persons visiting or doing business with the Tenant shall comply strictly with the Rules and Regulations (which term shall mean any rules and regulations attached as Schedule "8.1(s)" and such other and further rules and regulations as the Landlord may from time to time adopt, and of which written notice shall be given to the Tenant); that nothing in this Lease contained shall be construed to impose upon the Landlord any duty or obligation to enforce the Rules and Regulations or the terms, covenants or conditions in any other lease against any other tenant of the Building, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its agents, contractors, employees, invitees or licensees; and that the Rules and Regulations as aforesaid shall be deemed to be incorporated into and form part of this Lease;
- (t) **Notice of Fire, Defects or Damage** - to immediately notify the Landlord of any fire or accident, or malfunctioning of the air-conditioning system, heating system or plumbing system, or of any occurrence of damage, disfiguration, injury or break-in to, at, on or in the Premises, the Building or the Lands, of which the Tenant or its agents, contractors or employees may be or become aware of;
- (u) **Estoppel Certificate / Certificate as to Lease** - at any time and upon not less than seven (7) days prior notice, to execute and deliver to the Landlord, in a form satisfactory to or requested by the Landlord or the Landlord's financial lender, a statement in writing certifying, among other things, that this Lease is unmodified and in full force and effect (or, if modified, stating the modifications and that the same is in full force and effect as modified), the amount of the Rent then being paid hereunder, the dates to which the same and other charges hereunder have been paid, by instalments or otherwise, whether or not there is any existing default on the part of the Landlord or the Tenant of which the Tenant is aware or has notice, and any other information about the Lease or the tenancy created hereunder that the Landlord or the Landlord's financial lender requires;
- (v) **Observance of Law** - to abide by and comply with, at its own expense, all federal, provincial and municipal statutes, laws, bylaws, rules and regulations or those of any other Authority which in any manner relate to or affect the business conducted on or the use of the Premises by the Tenant, including but not limited to obtaining and complying with the terms of all licences, certificates of approval, permits and other approvals required, necessary or appropriate for the safe and lawful conduct of the Tenant's business at or from the Premises, and to save harmless the Landlord from all costs, charges or damages to which the Landlord may be put or suffer by reason of any breach by the Tenant of such statute, law, bylaw, rule or regulation;
- (w) **Maintain Good Standing** - where the Tenant is a company, to keep in good standing with the Corporate Services Registry in British Columbia and, if applicable, the register of companies in the jurisdiction in which they were incorporated;
- (x) **Necessary Authority** - that the Tenant has all the requisite power and authority to carry on its business, including but not limited to the possession of the necessary licences and permits, and has the approvals and other rights necessary to enable the Tenant to enter into this Lease and carry out its provisions;



- (y) **Confidentiality** - to keep confidential all information in respect of this Lease, specifically but not limited to financial information, provided that it may disclose such information to its auditors, consultants and professional advisors so long as they have first agreed to respect such confidentiality; and
- (z) **Registration of the Lease** - it will not register or request the Landlord to deliver this Lease in form registrable under the *Land Title Act* (British Columbia);

8.2 No Representations, Warranties or Conditions - The Tenant agrees that it has leased the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein and that no agreement collateral hereto shall be binding upon the Landlord unless it is in writing and signed by or on behalf of the Landlord.

ARTICLE 9 LANDLORD'S COVENANTS

9.1 Landlord's Covenants - The Landlord covenants to the Tenant:

- (a) **Quiet Enjoyment** - that if the Tenant pays the Rent hereby reserved, and performs and observes the covenants herein on its part to be performed and observed, the Tenant may peaceably possess and enjoy the Premises during the Term and any renewals thereof without any unreasonable interruption or disturbance from the Landlord or any other person lawfully claiming by, from or under the Landlord;
- (b) **Maintenance** - to maintain the Building as an industrial space in a good quality state of repair;
- (c) **Water Supply** - to supply water for normal drinking, washing and sanitary requirements of the Tenant and, at the Tenant's request and expense, to make water available to the Premises for other reasonable uses of the Tenant without in any case being liable for any loss, damage or inconvenience resulting from failure of the water supply to the Building; and
- (d) **Electrical Supply** - to supply metered electrical power for normal lighting and office equipment but not for amounts disproportionate to that used by other tenants in the Building, or where there are no other tenants in the Building, for amounts disproportionate to the Standards Council of Canada standards of electrical supply for buildings similar to the Building.

9.2 Interruption of Services - The Landlord does not warrant that any service or facility provided by it in accordance with the provisions of this Lease shall be free from interruption by any cause which is beyond the Landlord's reasonable care and control, including without limitation, strikes, riots, insurrections, labour disputes, accidents, fuel shortages, governmental intervention, force majeure and acts of God. No such interruption shall be deemed to be a disturbance of the Tenant's quiet enjoyment of the Premises nor render the Landlord liable for any injury or damage to the Tenant nor relieve the parties from their obligations under this Lease.

9.3 Heating, Ventilating and Air-Conditioning - The Landlord has installed in the Building a system for the purpose of ventilating and air-conditioning the Premises (except any storage areas) in summer, and ventilating and heating the Premises (except any storage areas) in winter (the "HVAC System"), which is designed for normal occupancy of the Premises for industrial purposes and subject to the use of an average amount of electrical power for illumination and for other similar purposes. However, the Landlord shall not be responsible for the inadequacy or failure of the HVAC System as a result of any use of the Premises which is not normal occupancy for industrial purposes, or for arrangements of partitioning which interfere with the normal operating of the HVAC System and which may require changes or modifications in the HVAC System or the ducts through which the processed air operates. Any changes or modifications so required, if such can be accommodated by the Landlord's equipment, shall be made by the Tenant at its cost and expense, but only with the prior written consent of the Landlord and in accordance with drawings and specifications and by a contractor all first approved in writing by the Landlord.

**ARTICLE 10
IMPROVEMENTS / ALTERATIONS**

10.1 Leasehold Improvements - For the purposes of this Lease, the term "Leasehold Improvements" shall mean leasehold improvements in, on, to, for or which serve the Premises, determined according to common law, and includes, without limitation, all fixtures (excluding Trade Fixtures), equipment, alterations, changes, repairs, renovations, rearrangements, additions, modifications, improvements, installations and decorations from time to time made, constructed, erected, or installed by, for or on behalf of the Tenant or any previous occupant of the Premises in, on, to, for or which serve, the Premises, whether or not easily disconnected or movable, including, without limitation, all:

- (a) partitions, doors, and hardware;
- (b) mechanical, plumbing, electrical, sprinkler, fire detection, safety, utility, computer, communication, telecommunication, heating, humidity, ventilating and air-conditioning systems, facilities, installations, fixtures, devices, controls, fittings and equipment;
- (c) carpeting, drapes and other floor, wall, ceiling and window coverings and drapery hardware;
- (d) light fixtures;
- (e) grill and other security or locking devices securing all or any part of the Premises;
- (f) counters, cabinets, shelves and built-in furniture;
- (g) ceilings and ceiling panels; and
- (h) any items that would not normally be considered to be Trade Fixtures or Tenant Property.

For the purposes of this Lease, the term "Trade Fixtures" shall mean trade fixtures as determined at common law and includes the personal chattels installed during the Fixturing Period or the Term by or on behalf of the Tenant, in, on, to, for or which serve the Premises for the sole purpose of the Tenant carrying on its business in the Premises pursuant to Section 3.2, and includes the Tenant's telephone and alarm systems and, if applicable, any bank vault or safe, and which Trade Fixtures the Tenant is permitted to remove only to the extent permitted by the terms of this Lease, but the term Trade Fixtures does not include Leasehold Improvements or any unattached trade fixtures, equipment, chattels, millwork, inventory, merchandise, furnishings and personal effects within the Premises, all of which are defined herein as "Tenant Property".

10.2 Landlord's Consent - The Tenant shall not make any Leasehold Improvements or install any Trade Fixtures in, on, to, for or which serve the Premises (the "Tenant's Work") without obtaining the Landlord's prior written consent in accordance with Section 10.3; such consent, other than to do with matters stated in Subsections 10.3(a) through (d), shall not be unreasonably withheld by the Landlord. The Tenant's Work shall be done only by qualified and licensed contractors or tradesmen or mechanics, approved in writing by the Landlord and at the Tenant's sole expense, and at such times and in such manner as the Landlord may approve, such approval not to be unreasonably withheld. All Tenant's Work, whether structural or otherwise, shall comply with all applicable statutes, regulations or bylaws of any Authority and shall be made in accordance with Schedule "10".

10.3 Plans and Specifications - The Tenant's request of the Landlord to consent to any Tenant's Work must be accompanied by detailed plans and specifications of the work to be done. In no event shall the Tenant without first obtaining the written consent of the Landlord, which may include the Landlord obtaining the consent of the Landlord's structural engineer or other consultants as necessary:

- (a) cover, affect or alter any heating or ventilator or air-conditioning system or part thereof;
- (b) attach any article or thing to the Building, including the walls, weighing over one hundred pounds (100 lbs);
- (c) core within the concrete structure of the Building; or
- (d) alter or change any structural elements of the Building,

and consent for such may be absolutely withheld by the Landlord. Notwithstanding an ultimate withholding of consent by the Landlord, the Tenant shall be responsible for all costs reasonably incurred by the Landlord and the Landlord's consultants with respect to such requests by the Tenant.

- 10.4 Permits and Approvals** - The Tenant shall at all times be responsible for obtaining all necessary approvals, consents, permits and/or licences, including zoning, development and/or building for the Tenant's Work and must submit all applications for such approvals to the Landlord for its consent prior to making any application. The Tenant shall indemnify and defend the Landlord and save it harmless from and against all expenses, losses or damage incurred or suffered by the Landlord directly or indirectly arising out of the Tenant's application for such approvals and permits or the resulting approvals and permits with respect to the Tenant's Work, whether such expenses, losses or damage are in respect of the Premises or in respect of the Building. Notwithstanding the Landlord's consent to an application or otherwise, the Landlord makes no representations or warranties, express or implied, as to the condition or suitability of the Premises, including fixtures, for the Tenant's use or intended use, nor as to whether necessary approvals can be obtained for the Tenant's use or intended use, and the Tenant acknowledges and agrees that the Landlord makes no such representations or warranties.
- 10.5 Insurance or Tax Increases** - The Tenant shall pay to the Landlord the amount of the increase of any insurance coverage and/or Taxes to the extent that such increase is directly attributable to any action by the Tenant under this Article 10.
- 10.6 Property of the Landlord** - All Leasehold Improvements in, on, for, or which serve the Premises, shall immediately become the absolute property of the Landlord upon any manner of affixation or installation, without compensation therefor to the Tenant, but the Landlord shall have no obligation to repair, replace, operate, maintain, insure or be responsible in any way for them, all of which shall be the Tenant's responsibility. No Leasehold Improvements or Trade Fixtures shall be removed by, or on behalf of, the Tenant from the Premises either during or at the expiration or earlier termination of this Lease except that:
- (a) the Tenant may during the Term in the usual or normal course of its business and with the prior written consent of the Landlord remove its Trade Fixtures from the Premises if such Trade Fixtures have, in the Tenant's opinion, become excess for the Tenant's purposes or if the Tenant is substituting new and similar Trade Fixtures therefor, but only if in each case:
 - (i) the Tenant is not in default under this Lease; and
 - (ii) such removal is done at the Tenant's sole cost and expense; and
 - (b) the Tenant shall, at the expiration or earlier termination of the Lease, at its own cost and expense, remove from the Premises:
 - (i) all its Trade Fixtures; and
 - (ii) such Leasehold Improvements as the Landlord at its option, acting reasonably upon notice to the Tenant, requires be removed.
- 10.7 Removal of Trade Fixtures** - If the Tenant does not remove its Trade Fixtures at the expiration or earlier termination of the Term pursuant to this Lease, such Trade Fixtures shall, at the option of the Landlord, thereupon become the property of the Landlord, without compensation therefor to the Tenant and without notice to the Tenant, and the Landlord may enter the Premises and remove such Trade Fixtures, without liability on the Landlord's part, at the Tenant's expense, plus an administration charge equal to fifteen percent (15%) of such costs, which shall be paid by the Tenant to the Landlord as Additional Rent on demand, and such Trade Fixtures may, without notice to the Tenant or to any other person and without obligation to account for them, be sold, destroyed, disposed of or used by the Landlord in such manner as the Landlord determines, or may be stored in a public warehouse or elsewhere, all at the Tenant's expense, plus an administration charge equal to fifteen percent (15%) of such costs, which shall be paid by the Tenant to the Landlord as Additional Rent on demand.

- 10.8 **Removal of Leasehold Improvements** - If the Tenant does not remove the Leasehold Improvements required by the Landlord to be removed at the expiration or earlier termination of this Lease, the Landlord may, without liability on the Landlord's part, and without notice to the Tenant, enter the Premises and remove such Leasehold Improvements at the Tenant's expense, plus an administration charge equal to fifteen percent (15%) of such costs, which shall be paid by the Tenant to the Landlord as Additional Rent on demand, and such Leasehold Improvements may, without notice to the Tenant or to any other person and without obligation to account for them, be sold, destroyed, disposed of, or used by the Landlord in such manner as the Landlord determines, or may be stored in a public warehouse or elsewhere, all at the Tenant's expense, plus an administration charge equal to fifteen percent (15%) of such costs, which shall be paid by the Tenant to the Landlord as Additional Rent on demand.
- 10.9 **Unauthorized Removal** - If the Tenant, removes, or commences or attempts or threatens to remove any Leasehold Improvements, Trade Fixtures, or Tenant Property from the Premises contrary to the provisions of this Lease, the Tenant hereby consents, without limiting any of the Landlord's other rights or remedies hereunder, to the Landlord obtaining an injunction in a court of competent jurisdiction to restrain the Tenant from doing such, and the Tenant shall pay to the Landlord all fees, including, without limitation, all professional and legal fees, and all expenses incurred by or on behalf of the Landlord with respect to obtaining such injunction, plus an administration charge equal to fifteen percent (15%) of such costs, all of which shall be paid by the Tenant to the Landlord as Additional Rent on demand.
- 10.10 **Tenant to Make Good Any Damage** - The Tenant, at its expense, shall, in the case of every installation or removal of Leasehold Improvements, Trade Fixtures or Tenant Property, either during or at the expiration or earlier termination of this Lease, immediately make good any damage caused to the Premises by such installation or removal. The Tenant agrees that each and every such installation or removal shall take place only at a time or times designated by the Landlord and in the presence of the Landlord or its representative or agent.
- 10.11 **Personal Property of Prior Tenant** - If, at the Commencement Date, chattels (as such term is defined and determined at common law), are left in or on the Premises, whether attached or unattached, by a prior tenant or other third party, then, unless the Landlord advises the Tenant that all or some of the said chattels are the property of the Landlord, the Tenant acknowledges and agrees that the Landlord makes no representation or warranty as to the ownership or right of the Tenant to such chattels. If the Tenant decides to use the chattels belonging to a prior tenant or other third party without the permission of the rightful owner, then it agrees it does so at its own risk and without any colour of right. If the Landlord advises the Tenant that all or some of the said chattels are the property of the Landlord (the "Chattels"), then, subject to Section 10.12, the Tenant shall be permitted to use the chattels for the Term and any renewal of the Term.
- 10.12 **Chattels** - with respect to the Chattels:
- (a) the Tenant acknowledges and agrees that the Landlord makes no representation or warranty as to the fitness and suitability of the Chattels for any particular purpose;
 - (b) any use of the Chattels for a particular purpose is at the sole risk and responsibility of the Tenant;
 - (c) the Tenant shall maintain, repair (and replace where the life of the chattel is beyond repair) the Chattels; and
 - (d) the Tenant shall leave the Chattels in the Premises in the same condition as at the Commencement Date, save and except reasonable wear and tear, or if so directed by the Landlord promptly remove such of the Chattels from the Premises at no cost to the Landlord.
- 10.13 **Chattels Not Leasehold Improvements** - The Parties agree that the Chattels do not include any Leasehold Improvements.
- 10.14 **Improvements to Building** - The Landlord shall have the right to make additions, improvements, installations and/or repairs to, on or in the Building and the Common Areas and in relation to any such additions, improvements, installations or repairs, the Landlord may cause such reasonable obstructions of

and interference with the use or enjoyment of the Building, the Premises or the Common Areas as may be necessary for the purposes aforesaid and may interrupt or suspend the supply of electricity, water or other services when necessary and during the period of such additions, improvements, installations or repairs there shall be no abatement in Rent nor shall the Landlord be liable by reason thereof.

- 10.15 Painting Restrictions** - Notwithstanding anything to the contrary in this Lease, in no event shall the Tenant paint any concrete columns or walls within the Premises or the Common Areas. If the Tenant is in breach of this covenant, then, in addition to any other remedies the Landlord has under this Lease, the Landlord shall have the right, at the cost of the Tenant and without notice and without creating a termination of the Lease, to enter the Premises and remove such paint or otherwise do whatever is required to eliminate the damage caused by such paint. In addition, the Tenant shall indemnify and defend the Landlord and save it harmless from and against all expenses, losses or damage incurred or suffered by the Landlord directly or indirectly due to such painting of concrete columns or walls in the Building by the Tenant.
- 10.16 Survival of Obligations** - The Tenant's obligation to observe and perform the provisions of this Article 10 shall survive the expiration or earlier termination of this Lease.

ARTICLE 11 LIENS / ENCUMBRANCES

- 11.1 Builders Liens** - The Tenant shall, throughout the Term and at its own cost and expense, cause any and all builders' liens and other liens, charges or encumbrances for labour, services or materials alleged to have been furnished with respect to the Premises by or on behalf of the Tenant which may be registered or are pending registration against the Lands, Building, Premises or Landlord, to be paid, satisfied, released, discharged or vacated within thirty (30) days after receiving notice thereof from the Landlord.
- 11.2 Notice to Contractors** - The Tenant shall give notice to its contractors, subcontractors, material men, and workmen that services, improvements or materials are provided to the Tenant at its request and for its sole benefit and that the Landlord has not requested the services, improvements or materials and shall not be responsible for them.
- 11.3 No Security Interest or Other Encumbrance** - The Tenant shall not create any security interest, charge or encumbrance in respect of any of the Leasehold Improvements, Trade Fixtures or Tenant Property (or any or all improvements, equipment or structures constituting replacements, alterations, and additions thereto) installed in or on the Premises by the Tenant, nor shall the Tenant permit any such security interest, charge or encumbrance to be attached to the Lands, Building, Premises or the Lease, including the filing of a notice pursuant to the *Personal Property Security Act* (British Columbia), save and except a mortgage given by the Tenant pursuant to Section 15.9 and/or a security interest where the secured party covenants with the Landlord that the secured party's interest is subordinate to the Landlord's. If the Tenant does create any such security interest, charge or encumbrance, other than those permitted herein, the Tenant shall cause such security interest, charge or encumbrance to be paid, satisfied, released or discharged within thirty (30) days after receiving written notice thereof from the Landlord.
- 11.4 Landlord's Remedies** - In the event the Tenant fails to release or discharge from the Lands, Building, Premises or Lease any such security interest, charge or encumbrance referred to in Sections 11.1 and/or 11.3, the Landlord may, in addition to all of the remedies under this Lease, make any payments required to procure the discharge or release of any such security interest, charge or encumbrance and shall be entitled to be reimbursed by the Tenant as provided for in Section 19.4. The Landlord's right to reimbursement shall not be affected or impaired if the Tenant then or subsequently establishes or claims that a security interest, charge or encumbrance so discharged and released was without merit or excessive or subject to any abatement, set off or defence.

**ARTICLE 12
ENVIRONMENTAL SAFETY**

- 12.1 Compliance with Environmental Laws** - Notwithstanding any other provision of this Lease, the Tenant shall fully comply with all applicable Environmental Laws. The Tenant represents and warrants that it has informed the Landlord of all breaches of an Environmental Law of which it has been convicted, and shall promptly inform the Landlord in writing should it breach an Environmental Law during the Term or any renewal thereof. If the Tenant breaches an Environmental Law in relation to the Premises, Building or Lands, the Tenant, in addition to complying with all applicable Environmental Laws shall be deemed to be an Environmentally Sensitive Tenant and shall immediately comply with all of the provisions contained in Section 12.11 below.
- 12.2 Operations and Maintenance** - The Tenant shall design, install, operate, repair, replace and maintain, or shall cause to be designed, installed, operated, repaired, replaced and maintained, all equipment located in the Premises, and shall train all of its staff, so as to minimize the risk of spills and other accidents, particularly those accidents which might result in the Discharge of Contaminants. If the Tenant uses pollution control equipment, or any pollution control equipment is located in the Premises, the Tenant shall conduct regular preventative maintenance on such pollution control equipment, and shall keep it in good working order at all times.
- 12.3 Pesticides** - The Tenant shall not use pesticides at the Premises or Building or upon the Lands unless the Tenant has first obtained written consent to do so from the Landlord, such consent may be withheld if in the Landlord's sole opinion it is reasonable to do so.
- 12.4 Waste Disposal** - The Tenant shall store and dispose of all of its waste in a lawful manner. In particular, the Tenant shall use the garbage collection service provided by the Landlord to dispose only of solid waste (which is not Hazardous Waste) which can lawfully be transported to, and dumped at, the closest landfill site without requiring payment of surcharges or penalties, and shall use the sewers to dispose only of liquid waste (which is not Hazardous Waste) which may be lawfully discharged into the municipal sewer.
- All other waste shall be disposed of by the Tenant, at its expense, at least once every three (3) months, using a properly licensed waste hauler retained by the Landlord, subject to the Landlord's right to require the Tenant retain a properly licensed waste hauler by giving the Tenant notice thereof, to take away all of the Tenant's waste. Regardless of whether the waste hauler is retained by the Landlord or the Tenant, the Tenant, and not the Landlord, shall be deemed to be the generator of the Tenant's waste. If the Tenant is required by law to keep any waste at the Lands for more than three (3) months, the Tenant shall store the waste in a manner and location which comply with all Environmental Laws, all at the Tenant's expense.
- The Tenant shall comply with all reasonable requirements imposed by the Landlord with respect to the implementation of a system for the storage, disposal, and separation of waste at the Building, and specifically with any waste reduction work plan prepared by the Landlord, and shall permit the Landlord to perform an audit of the Tenant's waste. Where the Landlord provides separate waste collection facilities for different types of wastes, the Tenant shall separate its wastes and shall deliver each waste to the appropriate facility. If contamination of separated waste occurs as a result of Tenant's failure to comply with the foregoing, the Tenant shall indemnify the Landlord for all damages and costs incurred by the Landlord with respect to such contamination, together with an administration charge equal to fifteen percent (15%) of such costs.
- 12.5 Used Refrigerant** - No refrigerant may be vented into the atmosphere at any time. When it is necessary to remove refrigerants from equipment for servicing, or when equipment containing refrigerant is to be removed from service or decommissioned, the Tenant shall ensure that the refrigerants are recaptured into approved refrigerant recovery cylinders and drums and shall be responsible for complying with all regulatory requirements relating to the recapture, transportation and disposal of recaptured refrigerants.

- 12.6 Discharge of Contaminants** - The Tenant shall not cause or permit the Discharge of Contaminants into the indoor or outdoor air, onto or into the ground, or into the sewers or any watercourse, under any circumstances where the Discharge would be illegal or would cause or be likely to cause any adverse effect on the natural environment or on people, property or the normal conduct of business.

Where a Discharge does occur, the Tenant shall forthwith report the occurrence of the Discharge to all Authorities to whom notification is legally required to be made in the circumstances, and to the Landlord. The Tenant shall then forthwith clean up the Discharge and restore the natural environment affected by the Discharge to the standard required under any Environmental Laws and to the satisfaction of the Landlord and all Authorities. If the Tenant fails or refuses to promptly clean up the Discharge and to restore the natural environment affected by the Discharge to the standard required under any Environmental Laws and to the satisfaction of the Landlord and all Authorities, or if, in the Landlord's opinion, the Tenant is not competent to do so, the Landlord may elect, in writing, to carry out the whole or any part of the said clean up and restoration at the Tenant's expense. In such circumstances, and where it is reasonably necessary in order to prevent further environmental problems, the Landlord shall have the right to prevent the Tenant from obtaining access to the Premises for a reasonable period of time (taking into account the circumstances) to perform the cleanup, but no such prevention from obtaining access shall constitute an eviction or a termination of this Lease or a breach of the Landlord's covenant for quiet enjoyment or entitle the Tenant to any abatement of Rent.

The Tenant shall comply with any Contaminant Discharge reduction work plan prepared by the Landlord, if the Landlord is required to prepare and implement such a work plan by any Environmental Laws or other applicable law and shall permit the Landlord to perform an audit of the Tenant's Discharge of Contaminants into the natural environment if the Landlord is required to do so by any Environmental Laws or other applicable law.

- 12.7 Orders of an Authority** - The Tenant shall fully comply with all orders of an Authority which may be directed to the Tenant and which relate to the Premises, Building or Lands. If an order of an Authority is issued to the Landlord, requiring the Landlord to do anything in relation to an environmental problem caused by the Tenant, the Tenant shall, upon receipt of written notice from the Landlord, carry out the order at the Tenant's expense.

If the Tenant fails or refuses to promptly and fully carry out an order referred to in this Section 12.7, or if, in the Landlord's opinion, the Tenant is not competent to carry out the order, the Landlord may elect, in writing, to perform a cleanup or carry out the whole or any part of the order at the Tenant's expense. In such circumstances, and where it is reasonably necessary in order to prevent further environmental problems, the Landlord shall have the right to prevent the Tenant from obtaining access to the Premises for a reasonable period of time (taking into account the circumstances) to carry out the order, but no such prevention from obtaining access shall constitute an eviction or a termination of this Lease or a breach of the Landlord's covenant for quiet enjoyment or entitle the Tenant to any abatement of Rent.

- 12.8 Information on Tenant's Compliance** - The Tenant hereby authorizes the Landlord to make enquiries of any Authority at any time during and after the Term or any renewal thereof, concerning the Tenant's compliance with Environmental Laws in any matter relating to the Premises, Building or Lands. Upon request of the Landlord, the Tenant shall execute promptly one or more Consent to Disclose Information forms, in the form attached as Schedule "12.8". If the Tenant has not executed such document within ten (10) days after the date of a written request by the Landlord, the Tenant hereby irrevocably appoints the Landlord as the Tenant's attorney with full power and authority to execute and deliver in the name of the Tenant any such document.

- 12.9 Inspection** - The Landlord may, at any time, inspect the Premises and the Tenant's records to determine whether the Tenant is fully complying with all Environmental Laws and its environmental obligations under this Lease. The Landlord may also inspect the Premises to evaluate the risk of Discharges referred to in Section 12.6. Where the Landlord reasonably considers it necessary, the inspection may be performed in whole or in part by experts, and may include sampling, monitoring, and other tests, all performed at the Tenant's expense.

If the Landlord's inspection discloses a breach of an Environmental Law, or a situation which could reasonably be anticipated to result in a breach of an Environmental Law, the Landlord shall have the right to take whatever steps are reasonably required to rectify such breach, or prevent such breach from occurring, as the case may be.

12.10 Indemnification of Landlord's Costs - Where the Landlord has carried out an order referred to in Section 12.7, or has cleaned up or restored a Discharge referred to in Section 12.6, or has otherwise incurred any expense or damage relating to an environmental problem caused by the Tenant, the Tenant shall indemnify the Landlord for all costs incurred by the Landlord with respect to any of the foregoing, together with:

- (a) an administration charge equal to fifteen percent (15%) of the total expense and damage; and
- (b) interest at the Prime Rate from the date the expense or damage was incurred by the Landlord.

12.11 Environmentally Sensitive Tenants - A Tenant that is an Environmentally Sensitive Tenant, or becomes an Environmentally Sensitive Tenant at any time during the Term or any renewal thereof, shall not use Toxic Substances or generate Hazardous Waste at the Premises, in the Building or on the Lands, except when the Tenant is in full compliance with this Section 12.11.

- (a) **Notice** - An Environmentally Sensitive Tenant shall give the Landlord ninety (90) days' prior notice in writing before commencing to use Toxic Substances or generate Hazardous Waste at the Premises, in the Building or on the Lands. Such notice is for the information of the Landlord only, however the Landlord may file the notice with an Authority if required, and the Landlord shall not be deemed to have approved or consented to anything referred to in the notice.

The notice shall:

- (i) specify the nature and estimated quantity of each Toxic Substance to be used and/or each Hazardous Waste being generated;
- (ii) specify the method to be used by the Environmentally Sensitive Tenant to ensure that each Toxic Substance and/or Hazardous Waste is safely and lawfully stored, handled and disposed of;
- (iii) include a detailed contingency plan for the cleanup of Discharges; and
- (iv) designate an individual representative who shall be responsible for all environmental matters which affect the Premises, the Building and/or the Lands, and who may be contacted by the Landlord at any time should there be an environmental emergency (the Environmentally Sensitive Tenant shall notify the Landlord in writing within ten (10) days if the designated representative is changed).

If an Environmentally Sensitive Tenant proposes to make a material change in the nature or quantity of its Toxic Substances or Hazardous Waste, or in its method of storing, handling or disposing of them, the Environmentally Sensitive Tenant shall first submit a new notice to the Landlord in compliance with this Subsection 12.11(a).

- (b) **Operation and Maintenance** - The Environmentally Sensitive Tenant shall do everything within its power to minimize its use of Toxic Substances and to minimize its generation of Hazardous Waste at the Premises, in the Building or on the Lands and shall ensure that no Hazardous Waste is kept at the Premises or in the Building or on the Lands for more than three (3) months.

The Environmentally Sensitive Tenant shall use the highest degree of care to prevent spills and other accidents, particularly those accidents which might result in the Discharge of Contaminants into the indoor or outdoor air, onto or into the ground, or into the sewers or any watercourse and shall establish a system to ensure that unlawful Discharges are promptly detected and are reported forthwith to the appropriate Authorities when required by law, and to the Landlord.

Toxic Substances and Hazardous Waste, created at or brought to the Premises or on the Lands by or for the Environmentally Sensitive Tenant, shall remain the property of the Environmentally Sensitive Tenant and shall not become the property of the Landlord, whether or not they become affixed to the Premises.

- (c) **Condition at End of Tenancy** - At the expiration or termination of this Lease, an Environmentally Sensitive Tenant shall demonstrate to the satisfaction of the Landlord that the Premises are free of waste and other Contaminants. If requested by the Landlord, the Tenant shall provide, at the Tenant's expense, a report prepared by a consultant reasonably satisfactory to the Landlord, which report shall be addressed to the Landlord, shall confirm that the Premises are free of waste and other Contaminants, and shall be accompanied by a certificate (or similar confirmation) from the appropriate Authority (unless such Authority does not make a practice of issuing such certificates or similar confirmations).

Notwithstanding that this Lease has expired or been terminated, an Environmentally Sensitive Tenant shall be liable for all Rent that would be payable for the Premises from the time of expiration or termination until such time as the Landlord is satisfied that the Premises are free of waste and other Contaminants that might affect the market value of the Premises, Building or Lands or the ability of the Landlord to sell or finance the Building or Lands or to use the Premises, Building or Lands for any purpose, provided however, that nothing in this Subsection 12.11(c) shall in any way limit any rights the Landlord may have against the Tenant at law or in equity or by statute or pursuant to this Lease.

- (d) **Insurance** - An Environmentally Sensitive Tenant shall make all reasonable efforts to obtain and maintain in good standing insurance, in the name of the Landlord and Tenant and any mortgagees of the Lands or Premises, against the risk of injury or damage to Persons or property for health or other hazards due to the Discharge of Contaminants at the Premises or to any other breach of this Article 12. If an insured event occurs, the proceeds of any such insurance shall be used first to repair the injury or damage and to clean up and restore the environment affected, in priority to all other claims.

- (e) **Storage Tanks** - Storage Tanks are deemed to form part of the Premises regardless of whether they:

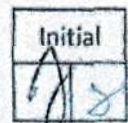
- (i) were installed by the Landlord or the Tenant;
- (ii) are located above or below ground; or
- (iii) are located inside or outside the Premises or the Building.

The Tenant shall be responsible for:

- (i) inspecting, maintaining, repairing and replacing the Storage Tanks so that the Storage Tanks comply with all Environmental Laws; and
- (ii) registering the Storage Tanks with the appropriate Authorities as required.

12.12 Indemnity by Tenant - The Tenant shall indemnify and hold the Landlord harmless from and against every demand, claim, proceeding, cause of action, judgment and expense, and all loss and damage arising from any death of or injury or damage to the person or property of the Landlord, the Tenant, any other tenant in the Building or on the Lands, any other Person rightfully in the Building or on the Lands, or any Person in the vicinity of the Building or the Lands, or any fines or penalties imposed on the Landlord, its directors, officers, or employees by an Authority, or any other loss or damage, which is caused by or related to:

- (a) the Discharge of Contaminants into the indoor or outdoor air, onto or into the ground, or into the sewers or any watercourse, where the Discharge was caused or permitted by the Tenant, its agents, servants or employees; or the clean up of any such Contaminants;
- (b) the presence in the Building or on the Lands of any Toxic Substance or Hazardous Waste, where the Toxic Substance or Hazardous Waste was created at or brought to the Lands by or for the Tenant, its agents, servants or employees; or
- (c) the Tenant, its agents, servants or employees failure to comply with any of the provisions contained in this Article 12.



ARTICLE 13
RIGHT OF ACCESS TO THE PREMISES

13.1 Access Generally - The Landlord, its employees, agents, contractors and representatives shall be entitled at all times, except where there would be an unreasonable interference or disturbance with the Tenant's use of the Premises, to enter upon the Premises for any of the following purposes:

- (a) inspecting the Premises;
- (b) inspecting the performance by the Tenant of the terms, covenants, agreements and conditions of this Lease;
- (c) carrying out any obligations of the Tenant which the Tenant has failed to observe or perform under this Lease;
- (d) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof, as required or permitted by any law;
- (e) exhibiting the Premises to prospective lessees, purchasers, lenders or their respective agents and, during the last nine (9) months of the Term, posting, and keeping posted thereon, notices that the Premises are for rent or sale; or
- (f) any other reasonable purpose,

but no such entry shall constitute an eviction or a termination of this Lease or a breach of the Landlord's covenant for quiet enjoyment or entitle the Tenant to any abatement of Rent.

13.2 Access in the Event of an Emergency - The Landlord, its agents and/or employees, shall be entitled at all times to enter upon the Premises by any means necessary in the event of an emergency situation in the Building or within the Premises which requires, in the opinion of the Landlord, its agents and/or employees, immediate access in order to remedy or attempt to remedy the situation. Examples of such emergency situations are a flood or a fire in the Premises or in the Building. The Landlord shall notify the Tenant as soon as reasonably possible if the Landlord, its agents and/or employees have, by necessity, accessed the Premises for any such emergency situation. The Landlord, its agents and/or employees shall not be liable for any loss or damage caused to the Premises or any Leasehold Improvements, Trade Fixtures or Tenant Property as a result of such emergency access unless such loss or damage is caused by a negligent act or negligent omission on the part of the Landlord, its agents or employees.

13.3 Materials and Keys - When entering the Premises pursuant to Section 13.1 the Landlord, its employees, agents, contractors and representatives shall be allowed to take into the Premises all material which may be required for such purposes. The Landlord shall be entitled to use a master key or unlocking system for purposes of entering the Premises or any other improvement permitted under the provisions of this Lease and the Tenant shall not change such unlocking system or key without providing the Landlord access thereto or a copy of same.

13.4 Liability for Monitoring Systems - The Landlord shall not be liable nor responsible for, and the Tenant shall hold and save the Landlord harmless from, any cost, expense, loss or damage either the Landlord or the Tenant may suffer or incur as a result of:

- (a) any charges claimed by third parties for monitoring security systems and responding to security systems located on, in, at or in respect of the Premises, including but not limited to the cost of the Landlord's personnel processing and collecting said charges from the Tenant for the third party;
- (b) any charges claimed by the municipality where the Premises are located for municipal police or other municipal personnel responding to security monitoring systems located on, in, at or in respect of the Premises, including but not limited to the cost of the Landlord's personnel processing and collecting said charges from the Tenant for the municipality;
- (c) the Landlord's personnel responding and assisting third party security personnel, police or municipal personnel to respond to security monitoring systems located on, in, at or in respect of the Premises; and

- (d) the inability of the Landlord, its employees, agents, contractors or representatives to enter the Premises as a result of security monitoring systems, for any purpose set out herein including the safety, security and maintenance of the Building.

**ARTICLE 14
DAMAGE TO THE PREMISES**

- 14.1 Abatement of Rent** - If the Building and/or Premises are damaged by fire or other casualty there shall be no abatement of Rent.
- 14.2 Repair of Damage** - Subject to Section 14.3, if the Premises are damaged by fire or other casualty, the damage to the Premises shall be repaired by the Landlord with reasonable diligence, at its expense, and repairs to Leasehold Improvements made by the Tenant shall be performed by the Landlord at the expense of the Tenant and the Tenant shall at its own expense make all repairs and replacements of its Trade Fixtures and Tenant Property.
- 14.3 Right to Terminate Lease** - If the Premises are expropriated, or are rendered untenable by fire or other casualty such that they cannot be restored within six (6) months, or if the Building is so damaged that the Landlord decides not to restore it, then in any of such events, either party shall have the right to give to the other party notice in writing to terminate the tenancy and thereupon the Term of this Lease shall expire forthwith and the Tenant shall immediately vacate the Premises and surrender the Premises to the Landlord. Upon the termination of this Lease under the provisions of this Section 14.3, the Tenant's liability for Rent shall cease as of the day following the Tenant's vacating of the Premises.

**ARTICLE 15
ASSIGNMENT / SUBLETTING**

- 15.1 Assignment or Subletting** - The Tenant covenants with the Landlord that it shall not assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor suffer or permit the occupation of all or any part of the Premises, nor part with or share possession of all or any part of the Premises by or with any Person (all of the foregoing being collectively referred to in this Article 15 as a "Transfer") without the prior written consent of the Landlord in each instance. The prohibition against a Transfer without the consent of the Landlord shall include a prohibition against any Transfer by merger or operation of law. The consent by the Landlord to any Transfer shall not constitute a waiver of the necessity for any such consent to any subsequent Transfer. The Landlord shall not unreasonably withhold its consent with respect to any Transfer so long as the Tenant is not in default of the Lease and has fully complied with the provisions of this Article; however, in addition to any other rights the Landlord may have in law to reasonably withhold its consent to a Transfer, the Landlord may withhold its consent and the parties agree that it shall be reasonable for the Landlord to withhold its consent whenever any of the following occurs:
- (a) the financial strength and creditworthiness of the proposed Transferee is not satisfactory to the Landlord;
 - (b) the business reputation of the proposed Transferee is not, in the Landlord's opinion, in accordance with generally acceptable commercial standards or negatively reflects on the Landlord's business reputation;
 - (c) the use of the Premises by the proposed Transferee violates or creates any potential violation of any laws and/or violates another agreement affecting the Building, Premises, the Landlord or other tenants;
 - (d) the nature or character of the business of the proposed Transferee is such that, in the Landlord's opinion, it might harm the Landlord's business or reputation or reflect unfavourably on the Building, the Landlord, or other tenants of the Building, or the image of any of them, or is unethical or immoral; and

- (e) the proposed Transferee is a landlord and is in competition with the Landlord with respect to the leasing of premises such as the Premises.

15.2 Amalgamation - If the Tenant is a corporation and it amalgamates with one or more corporations, then such amalgamation shall be deemed to be a Transfer within the meaning of Section 15.1 and the resulting amalgamated company shall be deemed for the purposes of the provisions of this Article 15 to be a Transferee.

15.3 Transfer of Shares - If the Tenant is a corporation, other than a corporation the shares of which are listed on a stock exchange recognized as such by a government regulatory body having jurisdiction over the exchange of such shares, and if by the sale, encumbrance or other disposition by any shareholder or shareholders of the Tenant, or the allotment or issuance by the Tenant of shares of the Tenant, the effective control or the beneficial ownership of the Tenant is changed directly or indirectly at any time after the execution of this Lease, such change shall be deemed to be a Transfer within the meaning of Section 15.1. The party or parties receiving effective control or the beneficial ownership as a result of change of ownership of such shares shall be deemed for the purposes of the provisions of this Article 15 to be the Transferee.

15.4 Particulars of Transfer - No request for consent of a Transfer shall be considered by the Landlord unless the Tenant provides the Landlord with full particulars of the proposed Transfer, including its terms, copies of any offers, draft agreements or the documents which record and embody the particulars of its terms, the identity of the Persons who shall acquire the right to use and occupy the Premises, reasonable information regarding the responsibility, reputation, financial standing and business carried on by the Person or Persons to use or occupy the Premises, and any further reasonable information relating to the proposed Transfer requested by the Landlord.

If requested by the Landlord, a copy of any or all final instruments and documents evidencing the Transfer, including assignments, lease and sublease, shall be furnished to the Landlord by the Tenant.

15.5 Final Approval - Any consent of the Landlord given under this Article 15 shall be:

- (a) based upon the particulars and documentation provided to the Landlord under Sections 15.1 and 15.4;
- (b) subject to receipt of a reasonable approval fee determined by and payable to the Landlord in an amount not less than five hundred dollars (\$500.00);
- (c) based upon due diligence carried out by the Landlord and/or the Landlord's solicitors;
- (d) subject to such further security or indemnity from any principal of any party to the Transfer as may be required by the Landlord;
- (e) subject to documentation executed by all parties in a form drafted by the Landlord's solicitors or as may be otherwise approved by the Landlord's solicitors; and
- (f) subject to payment by the Tenant of all legal fees and disbursements incurred by the Landlord through the Landlord's solicitors,

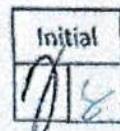
and the Landlord may refuse such approval if the final instrument is not in accordance with the particulars and documentation provided to the Landlord pursuant to Sections 15.1 and 15.4. If for any reason the Landlord wrongfully or unreasonably withholds its consent, the Tenant agrees that its remedy shall be expressly limited to its out-of-pocket expenses and that it shall not have any right to terminate this Lease.

15.6 Transferee to Execute Agreement - If requested by the Landlord, any consent to a Transfer shall be subject to the Tenant causing the Transferee to promptly execute an agreement directly with the Landlord agreeing to be bound by all of the terms, covenants and conditions contained in this Lease as if the Transferee had originally executed this Lease as tenant. This agreement shall be prepared by the Landlord or the Landlord's solicitors, and all legal costs with respect thereto shall be paid by the Tenant to the Landlord as a condition precedent to such approval.

- 15.7 **Tenant to Remain Liable** - Notwithstanding any such Transfer permitted or consented to by the Landlord and notwithstanding the Landlord exercising any of its rights and privileges under this Article 15, the Tenant shall be jointly and severally liable with the Transferee to the Landlord for the observance of the terms and conditions of this Lease and any renewals thereof pursuant to any option or options to renew set out herein; and the Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease and any renewals thereof pursuant to any option or options to renew set out herein, even if such renewals are entered into with a Transferee only. Without limiting the foregoing, if the Transferee makes an assignment for the benefit of creditors or if a receiver-manager is appointed to control the conduct of the business of the Transferee in or from the Premises, or if the Transferee becomes bankrupt or insolvent or takes the benefit of a statute now or hereafter in force for bankrupt or insolvent debtors, or if an order is made for the winding-up of the Transferee, then the Tenant shall be liable for the loss of Rent and all other amounts payable hereunder as well as all other damages, including prospective damages, suffered by the Landlord as a result of the early termination of this Lease.
- 15.8 **Rent from Transferee** - If there is a permitted Transfer, the Landlord may, at the Landlord's option, collect rent from the assignee, subtenant or occupant (all of the foregoing being hereinafter and hereinbefore collectively referred to as the "Transferee") rather than from the Tenant, and apply the net rent collected to the Rent required to be paid pursuant to this Lease, but no acceptance by the Landlord of any payment from the Transferee shall be deemed a waiver of any covenants under this Lease including this Article on the part of the Tenant to be observed or performed, or the acceptance of the Transferee as tenant, or a release of the Tenant from the further performance by the Tenant of the covenants and obligations on the part of the Tenant herein contained. Any increase in Rent to be paid by the proposed Transferee over that payable by the Tenant under this Lease shall be paid to the Landlord.
- 15.9 **Tenant's Mortgages** - If not in default hereunder, and with the prior knowledge and consent of the Landlord, such consent not to be unreasonably withheld, the Tenant may sublet the whole or part of the Premises by way of mortgage, provided however, that in such event the Tenant shall be and remain liable for the payment of all rent and the performance of all the terms, covenants and conditions of this Lease and every mortgage shall be made expressly subject to the rights of the Landlord under this Lease. If requested by the Landlord, a copy of any or all mortgages shall be furnished to the Landlord by the Tenant together with particulars, if any, of registration in the Lower Mainland Land Title Office within five (5) days of the Tenant receiving such request.
- 15.10 **Mortgagee to Attorn** - The Tenant covenants with the Landlord that it shall be a condition of any mortgage permitted by this Article 15 and granted by the Tenant that in the event the mortgagee acquires title to the Tenant's interest in the Premises, the mortgagee shall thereupon become subrogated to the rights of the Tenant under this Lease and attorns to the Landlord as tenant and covenants and agrees to be bound by and perform the covenants and agreements of this Lease.
- 15.11 **Transfer by Landlord** - In the event the Landlord sells, transfers, or assigns its interest in the Building and the Lands, then so long as the purchaser, transferee or assignee agrees to assume, observe and perform, as landlord, the covenants, conditions and agreements on the part of the Landlord to be observed and performed in this Lease, the Landlord shall no longer have any duties and obligations under this Lease, and consequently, shall not be liable to the Tenant for the performance of any such duties and obligations arising subsequent to any such sale, transfer or assignment.

**ARTICLE 16
SUBORDINATION / ATTORNMENT**

- 16.1 **Subordination** - If required by the Landlord so to do, the Tenant shall subordinate this Lease to any mortgages, including any deeds of trust and mortgage and all indentures supplemental thereto, which now or hereafter during the Term, affect or relate to the Premises or this Lease and all modifications or renewals thereof. The Tenant agrees to promptly execute from time to time any instrument which the Landlord or the Landlord's mortgagee may require to confirm and evidence the subordination and hereby



constitutes the Landlord as the agent or attorney of the Tenant for the purpose of executing any such instrument and of making application at any time to register postponement of this Lease in favour of any such mortgage in order to give effect thereto.

- 16.2 Attornment** - In the event any proceedings are brought for foreclosure, or in the event of exercise of the power of sale under any mortgage, charge, deed of trust or lien resulting from any other method of financing or refinancing made by the Landlord covering the Building, the Tenant shall attorn as tenant to the mortgagee, chargee, trustee, other encumbrancer or to the purchaser upon any such foreclosure or sale; shall recognize such mortgagee, chargee, trustee, other encumbrancer or the purchaser as the landlord under this Lease; and shall promptly execute any instrument which the Landlord or the Landlord's mortgagee chargee, trustee, other encumbrancer or the purchaser may require to confirm and evidence the attornment.

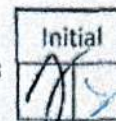
ARTICLE 17 LIABILITY / INDEMNITY

- 17.1 Damage to Persons or Property** - The Landlord and its agents, contractors and employees, or any of them, shall not be liable for the death of or injury to any Persons in or about the Premises, Building or Lands, or for any theft, loss, or damage to the leasehold improvements, Trade Fixtures or Tenant Property or the property of others located on the Premises, from any cause whatsoever. Without limiting the generality of the foregoing, the Landlord and its agents, contractors and employees, or any of them, shall not be liable for any death, injury, theft, loss, or damage to Persons or property resulting from fire, smoke, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Lands, Building or Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature; and shall not be liable for any such death, injury, theft, loss or damage caused by other tenants or Persons in the Premises, occupants of the Building or of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. All the Trade Fixtures and Tenant Property kept or stored on the Premises shall be so kept or stored at the risk of the Tenant only and the Tenant shall hold the Landlord harmless from any claims arising out of damages to the same, including subrogation claims by the Tenant's insurers.
- 17.2 Consequential Loss** - Without limiting the generality of the sections in this Article 17, the Landlord and its agents, contractors and employees, or any of them, shall not, under any circumstances, including circumstances involving negligence or wilful misconduct of the Landlord or any of its agents, contractors, employees or any Person for whom the Landlord is in law responsible, be liable or responsible in any way for:
- (a) consequential loss, damage or injury to Persons or property, including death resulting therefrom, with respect to the Tenant or any other Person while in or about the Lands, Building or the Premises and with respect to the Trade Fixtures or Tenant Property or the property of any other Person while such is in or about the Lands, Building or Premises;
 - (b) any loss or damage of any nature whatsoever, however caused, to books, records, files, money, securities negotiable instruments, papers or other valuables of the Tenant or any other Person while such are in or about the Lands, Building or Premises; and
 - (c) any business, economic or indirect loss or damage suffered or sustained by the Tenant of any nature whatsoever, howsoever caused.
- 17.3 Insured Loss** - Notwithstanding anything to the contrary herein, the Landlord and its agents, contractors and employees, or any of them, shall under no circumstances, including circumstances involving the negligence or wilful misconduct of the Landlord or any of its agents, contractors or employees, be liable or responsible in any way for any loss which the Tenant is obliged to insure against under this Lease or has insured against.

- 17.4 **Tenant's indemnity** - The Tenant shall defend, indemnify and save harmless the Landlord and its agents, contractors and employees, or any of them, from and against any and all loss (including loss of rentals), claims, actions, damages, liability and expenses in connection with any loss of life, personal injury and/or theft, loss or damage to property occurring in, upon or at the Premises, or in connection with the occupancy or use by the Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant, its agents, contractors, employees, servants, licensees or concessionaires or by anyone permitted by the Tenant to be on the Premises. If the Landlord, or its agents, contractors or employees are, without fault on their part, made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect and hold the Landlord and its agents, contractors and employees, harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord and its agents, contractors and employees in connection with such litigation. The Tenant shall also pay all costs, expenses and reasonable legal fees that may be incurred or paid by the Landlord in enforcing the covenants and agreements in this Lease.
- 17.5 **Indemnifier's indemnity** - In consideration of the Landlord leasing the Premises to the Tenant and entering into this Lease, the Indemnifier agrees to and does, personally, individually and unconditionally indemnify the Landlord for, and guarantee the payment of, any amounts or obligations of the Tenant arising from this Lease, including but not limited to Rent, and covenants and agrees to enter into an indemnity agreement in the form attached as Schedule "17.5" concurrently with or immediately after the execution of the Lease.

**ARTICLE 18
DISTRESS**

- 18.1 **Accelerated Rent** - Upon the occurrence of an event listed in Subsection 19.1(c), the full amount of the then current month's instalment of Rent, together with the next ensuing three (3) months' instalments of Rent, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and, provided the Landlord has not effected a re-entry because of such event, the Landlord may immediately distress for such accelerated Rent, together with any arrears then unpaid. Such accelerated Rent shall be recoverable by the Landlord in the same manner as the Rent reserved in this Lease and as if Rent were in arrears.
- 18.2 **Goods Not Exempt from Distress** - The Tenant agrees that notwithstanding anything contained in any present or future statute or rule of law to the contrary, none of the Tenant Property which is on or has at any time been on the Premises nor any goods and chattels of any other Person which are on the Premises shall be exempt from levy by distress for Rent in arrears by the Tenant.
- 18.3 **Triple Damages for Removal** - If the Landlord or its agent has effected a distress through words or action which evidences a present and clear intention to assume control of the Tenant Property or the goods and chattels of any other Person which are on the Premises, and the Tenant or such other Person removes the Tenant Property or such goods and chattels from the Premises, the Tenant shall pay to the Landlord triple damages and the costs of any action which the Landlord must take against the Tenant or any other Person with regard to such removal and all such monies owing to the Landlord shall be payable as Additional Rent.
- 18.4 **Fraudulent Removal of Goods** - If the Tenant Property is fraudulently or clandestinely removed from the Premises by the Tenant, or any Person acting for or assisting the Tenant, for the purpose of preventing the Tenant Property from being lawfully seized by the Landlord for arrears of Rent, the Landlord or its agent, after requesting the assistance of a peace officer, may lawfully seize the Tenant Property from wherever it is suspected of being concealed as distress for Rent in arrears. The Tenant shall be liable for all costs incurred by the Landlord with respect to such seizure and all such costs shall be payable to the Landlord as Additional Rent.



- 18.5 Notice of Sale of Goods - If the Landlord seizes the Tenant Property or the goods and chattels of any other Person, the Landlord shall not sell or otherwise dispose of such unless at least five (5) days written notice has been given by the Landlord to the Tenant.

ARTICLE 19 DEFAULT

- 19.1 Right to Re-enter - If and whenever:
- (a) the Tenant fails to pay any Rent on the day or dates appointed for payment, including payment pursuant to Section 4.4, and does not rectify such failure within 3 days after the Landlord gives the Tenant written notice of the Tenant's failure;
 - (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than the terms, covenants or conditions set out below in subparagraph (c) for which no notice shall be required), and does not rectify or remedy such failure within ten (10) days' (or such shorter period of time as is otherwise provided in this Lease) of receiving written notice of the Tenant's from the Landlord; or
 - (c) the Tenant:
 - (i) has on a minimum of three (3) occasions during the Term (which for the purposes of this subsection shall include all renewals of the Term) failed to pay any Rent on the day or dates appointed for payment;
 - (ii) or any Indemnifier becomes bankrupt or insolvent or takes the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise;
 - (iii) has a receiver or a receiver-manager appointed for all or a portion of the Tenant's or the Indemnifier's property;
 - (iv) or any other Person, has taken any steps or instituted any action or proceedings to dissolve, wind-up or liquidate the Tenant or the Tenant Property or the Indemnifier or its assets;
 - (v) makes a sale in bulk of the Tenant Property other than a bulk sale to a permitted Transferee or a bulk sale in the course of normal sales to customers;
 - (vi) abandons the Premises, or sells or disposes of the Tenant Property or removes such from the Premises so that in the opinion of the Landlord there would not in the event of a sale or disposal be sufficient Tenant Property on the Premises subject to distress to satisfy all Rent due or accruing hereunder for a period of at least three (3) months;
 - (vii) has left the Premises vacant for a period of five (5) consecutive days without the prior notice to and consent of the Landlord;
 - (viii) allows the Premises to be used by any Person other than those entitled to use them under the terms of this Lease;
 - (ix) effects or permits a Transfer without the Landlord's consent, where required;
 - (x) is in a position where this Lease or any of the Tenant Property is taken under any writ of execution; or
 - (xi) causes any insurance policy to be cancelled or not renewed by an insurer by reason of the Tenant's use or occupation of the Premises,

then the Landlord has the immediate right of re-entry upon the Premises.

- 19.2 Right to Relet - If and whenever the Landlord becomes entitled to re-enter the Premises, or if the Landlord takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, the Landlord may, without terminating this Lease, give written notice to the Tenant of entry to relet and may re-enter the Premises with a view to reletting the Premises on behalf of the Tenant. The Landlord may then remove all Tenant Property and other property from the Premises and such Tenant Property

and other property may be sold or disposed of by the Landlord as the Landlord deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or the Landlord having to resort to the legal process and without the Landlord being considered guilty of trespass or conversion or becoming liable for any loss or damage which may be occasioned. The Landlord may make any alterations and repairs as are necessary in order to relet the Premises and may relet the Premises as agent for the Tenant for such term and at such rental and upon such other terms and conditions as the Landlord, in its reasonable discretion, considers advisable but in no event shall the term of the relet exceed the Term of this Lease or if there has been a renewal of the Term, the Term as renewed.

Upon each reletting all rent received by the Landlord shall be applied, first to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of reletting including brokerage fees and solicitor's fees and the costs of alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the Landlord and applied in payment of future Rent as it becomes payable hereunder. If the rent received from a reletting during any month is less than that payable by the Tenant under the terms of this Lease, then the Tenant shall be responsible for the payment of the deficiency and shall pay the deficiency in advance on the first day of each month.

No re-entry or taking possession of the Premises by the Landlord under this Section 19.2 shall be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant. Notwithstanding any reletting without termination, the Landlord may at any time thereafter terminate this Lease for the previous default of the Tenant and if the Landlord so terminates this Lease the provisions in Sections 19.3 and 19.4 shall apply.

19.3 Right to Terminate - If and whenever the Landlord becomes entitled to re-enter the Premises under any provision of this Lease, the Landlord shall have the right to terminate this Lease forthwith by leaving at the Premises notice in writing of such termination. If the Landlord elects to terminate this Lease it may recover from the Tenant all damages the Landlord incurs by reason of the Tenant's default, including prospective damages suffered by the Landlord for the loss of the benefit of this Lease over the unexpired portion of the Term. Without limiting the generality of the foregoing, such damages shall include the cost of recovering the Premises, all costs of mitigation on the part of the Landlord, the present value of unpaid future Rent for the unexpired portion of the Term less any actual rent received by the Landlord for the Premises, all legal expenses incurred by the Landlord, and any other consequential loss including loss from the Tenant's failure to carry on business in the Premises, all of which shall be immediately due and payable by the Tenant to the Landlord.

19.4 Dishonoured or Partial Payments - If the Tenant, after receiving notice pursuant to Subsection 19.1(a), purports in whole or in part to pay the overdue Rent but the form in which such payment is made is not honoured by the Landlord's or the Tenant's bank or trust company, the Landlord may immediately and without further notice to the Tenant proceed to exercise all or any of its remedies for non-payment of Rent pursuant to this Lease.

If the Tenant, after receiving notice pursuant to Subsection 19.1(a), pays to the Landlord a portion of the overdue Rent and the Landlord accepts such portion, such acceptance shall not eliminate the Tenant's obligation to pay the balance of the overdue Rent and all such overdue Rent shall be immediately due and payable without further notice from the Landlord. If such overdue Rent is not forthcoming, the Landlord may immediately and without further notice to the Tenant proceed to exercise all or any of its remedies for non-payment of Rent pursuant to this Lease.

19.5 Landlord May Perform Tenant's Covenants - If the Tenant fails to pay when due any amount which is payable to third parties, the Landlord, after giving five (5) days' notice in writing to the Tenant, may, but shall not be obligated to, pay all or any part of such amount. If the Tenant is in default in the performance of any of its other covenants or obligations under this Lease, including without limitation:

- (a) the Tenant's insurance obligations under Article 7; and
- (b) the Tenant's maintenance and repair obligations under Article 8,

the Landlord may, but shall not be obligated to, after giving such notice as it considers sufficient (or without notice in the case of an emergency), perform or cause to be performed any of the unperformed covenants or obligations, and if necessary the Landlord shall be entitled to enter into the Premises without further notice and any such entry shall be deemed not to constitute an election by the Landlord to terminate this Lease, unless, at the time of such entry, the Landlord gives written notice to the Tenant that the Landlord has elected to terminate this Lease. The Tenant shall pay to the Landlord as Additional Rent all expenses incurred and expenditures made by the Landlord hereunder plus a sum equal to fifteen percent (15%) of the sum of such expenses and expenditures, representing the Landlord's overhead, within five (5) days after demand by the Landlord. The Landlord may, at its option, apply or allocate any sums received from or due to the Tenant against any amounts due and payable under this Lease in any manner the Landlord deems advisable.

- 19.6 **Fees and Expenses** - If any action is taken by the Landlord or its agent or any legal proceeding is brought for recovery of Rent or any other amount due under this Lease, or for recovery of possession of the Premises, or for recovery of prospective damages pursuant to Section 19.3, or because of default by the Tenant of any other term, covenant or condition, or to enforce the Landlord's rights under the Lease, the Tenant shall pay to the Landlord, upon demand, all costs and expenses incurred therefor, including without limitation, all professional and consultant fees, all legal fees, all disbursements, and all court costs and expenses of any legal proceeding; and the term "proceeding" shall include, without limitation, any arbitration, administrative, governmental, quasi-governmental or any other mediation proceeding, as if the same were Additional Rent.
- 19.7 **Remedies Generally** - Mention in this Lease of any particular remedy of the Landlord does not preclude the Landlord from any other remedy, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy shall be exclusive of or dependent upon any other remedy, and the Landlord's remedies are cumulative and not alternative.

ARTICLE 20
INTERPRETATION / MISCELLANEOUS

- 20.1 **Headings and Definitions** - The headings to the Articles, Sections and Subsections of this Lease are for convenience only and shall not constitute a part of this Lease. The definition of any words used in any Article of this Lease shall apply to such words when used in any other Article hereof whenever the context is consistent.
- 20.2 **Entire Agreement** - This Lease, which includes any schedules attached hereto, sets forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Premises and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them other than which are set forth therein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or the Tenant unless in writing and signed by each of them.
- 20.3 **Covenants** - All the obligations on the part of each of the Parties shall be construed and read as if such obligations are covenants notwithstanding that the term covenant is not used. The Tenant's obligation to observe and perform its covenants and agreements under this Lease shall survive the expiration of the Term or any renewal thereof or the earlier termination of this Lease.
- 20.4 **Invalid Term** - If any term, covenant or condition of this Lease or the application thereof to any Person or circumstance shall, to any extent, be held or rendered invalid, void, unenforceable or illegal, it or its application shall be considered separate and severable from this Lease and the remainder of this Lease, or the application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid, void, or unenforceable or illegal, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

- 20.5 **Time of the Essence** - Time shall be of the essence in this Lease and of every part hereof.
- 20.6 **Enurement** - This Lease shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the Parties hereto, subject to the granting of consent by the Landlord as provided in Article 15 to any assignment or sublease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party, and where there is more than one Tenant or there is a female party or a corporation, the provisions hereto shall be read with all grammatical changes thereby rendered necessary and in the event of more than one Tenant, all covenants shall be deemed joint and several.
- 20.7 **Governing Law** - This Lease shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein. The venue of proceedings taken in respect of this Lease shall be in the municipality where the Premises are located, so long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue of any proceedings taken elsewhere to the municipality where the Premises are located.
- 20.8 **Non-Waiver** - The failure of the Landlord to insist upon strict performance of any covenant or condition contained in this Lease or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by the Landlord save only express waiver in writing. The acceptance of any Rent by the Landlord or the performance of any obligation hereunder by a Person other than the Tenant shall not be construed as an admission by the Landlord of any right, title or interest of such Person as a subtenant, assignee, transferee or otherwise in the place and stead of the Tenant.
- 20.9 **Notices** - Any notice required or contemplated by any provision of this Lease or which the Landlord or Tenant may desire to give to the other shall be in writing and shall be deemed to have been duly and properly given if given by personal delivery or transmitted by facsimile or other form of electronic transmission or by registered letter, postage prepaid and mailed in one of the government's post offices in British Columbia, and addressed to the party to whom such notice is to be given, at the address, facsimile number or electronic address, of such party as given in this Lease or at such other address, facsimile number or electronic address as either party may notify the other of in writing during the Term or any renewal thereof. Any such notice shall be deemed to be received as of the day of such personal delivery or if sent by facsimile or other form of electronic transmission then the next Business Day after such is transmitted, or if sent by registered letter then the fifth (5th) Business Day following the date of such posting, provided that if there is at the time such notice is required a mail strike, slowdown or other labour dispute which might affect the delivery of such notice by mail, then such notice shall only be effective if actually delivered or sent by the other methods described in this Section.
- 20.10 **Schedules** - The Landlord and Tenant covenant and agree that the covenants, terms and conditions (if any) set forth in the attached Schedules as referred to in Subsection 1.1.15 are incorporated within and form part of this Lease.
- 20.11 **Counterparts** - This Lease may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which together shall constitute one and the same document. Such executed copy may be transmitted by facsimile or other electronic method of transmission and the reproduction of signatures by facsimile or other electronic method of transmission will be treated as binding as if originals.

[Execution Page on Next Page]



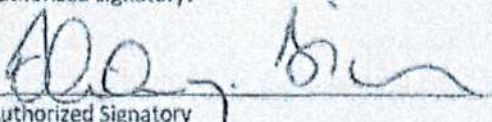
IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first above written.

THE LANDLORD, TARIFF DEVELOPMENTS INC., by its
duly authorized signatory:)



Authorized Signatory

THE TENANT, WALLACE & CAREY INC., by its duly
authorized signatory:)

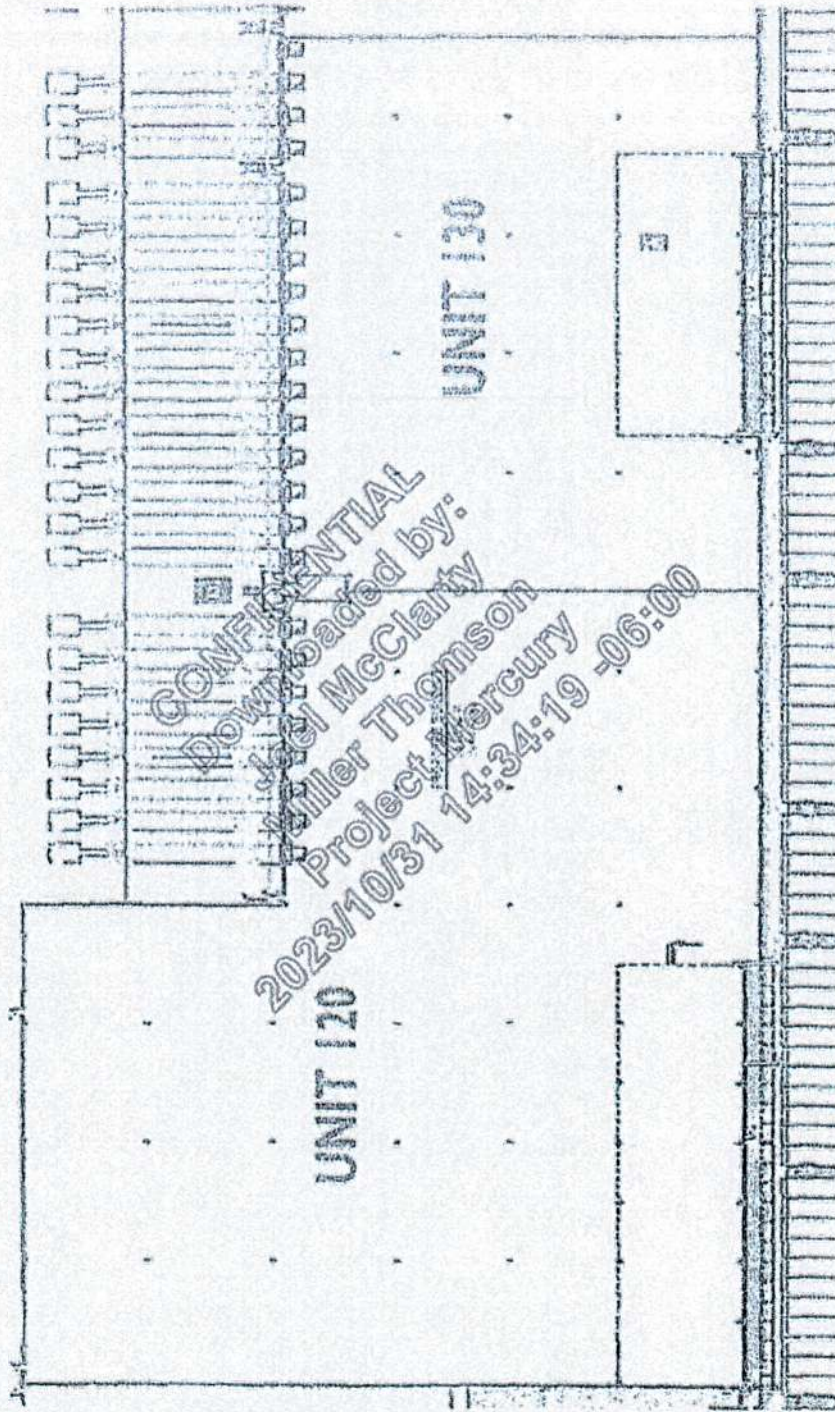


Authorized Signatory

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SCHEDULE "L.L.S"
PLAN OF PREMISES



Initial
<i>MLC</i>

SCHEDULE "2.5"
OPTION TO RENEW

1. **Renewal Provisions** - If the Tenant duly and regularly pays the Rent reserved by this Lease and has not been in default of the covenants, provisos and agreements in this Lease on the part of the Tenant to be observed and performed, and if the Tenant has an option to renew pursuant to Subsection 1.1.12 and Section 2.5 and makes a written request to renew the Lease and such request is delivered to the Landlord in accordance with the notice provision set forth in the Lease not later than nine (9) months before the expiration of the Term and not earlier than twelve (12) months before the expiration of the Term, then:
 - 1.1 subject to the provisions herein, the Landlord shall, at the cost of the Tenant, grant to the Tenant a renewal of this Lease for an additional term of the length set forth in Subsection 1.1.12(ii) (the "Renewal Term"), except for any further rights of renewal (unless the Tenant has more than one (1) option to renew set out in Subsection 1.1.12(i), in which case the number of options to renew will be reduced accordingly and the remaining option(s) to renew shall continue to be in full force and effect) and except that the Minimum Rent to be paid during the Renewal Term shall be determined by agreement between the Landlord and the Tenant as soon as possible after the date on which the Landlord receives the renewal request from the Tenant but not later than three (3) months prior to the end of the Term.
 - 1.2 The Landlord and Tenant agree that Minimum Rent for the first year of the Renewal Term and any further renewal period shall be based on the current annual market rental value for the Premises, provided that the Minimum Rent shall not be less than the Minimum Rent payable in the last year of the Term, the Renewal Term or any subsequent renewal period, as the case may be with the Minimum Rent increasing by 3% in each of the subsequent years in the Renewal Term or any further renewal period, as applicable. In determining current annual market rental value, the Landlord and the Tenant shall make their determination based upon like premises in the municipality where the Premises are located, if like premises exist, or like premises closest in proximity to the Premises.

The current annual market rental value shall exclude any cash payment, Leasehold Improvement allowance, rent free period or other inducement, payment or benefit either paid or given to the Tenant, the aforementioned to which the Tenant shall not be entitled.
 - 1.3 Should the Landlord and the Tenant fail to reach an agreement regarding the amount of the Minimum Rent for the Renewal Term or any further renewal period prior to three (3) months before the end of Term or Renewal Term or other renewal period, as the case may be, the amount of Minimum Rent for the Renewal Term shall be determined by appraisal as hereinafter set forth with such Minimum Rent being based on current annual market rental value and not less than the Minimum Rent payable in the last year of the Term, the Renewal Term or any subsequent renewal period, as the case may be.
2. **Arbitration** - If the Landlord and the Tenant fail to agree on the amount of the Minimum Rent as aforesaid, the matter shall be determined by arbitration by appraisers as set out herein:
 - 2.1 Either party may serve the other with a notice to arbitrate and each party shall, within fifteen (15) days after service of such notice, appoint an appraiser and advise the other party in writing of such appointment.
 - 2.2 If either party fails to so appoint an appraiser or to advise the other party of such appointment, the person who has been appointed appraiser may appoint a second appraiser to represent the party in default. The two appraisers shall then promptly attempt to jointly establish the current annual market rental value for the Renewal Term or subsequent renewal period, as the case may be.
 - 2.3 If within seven (7) days after attempting to do so, the two appraisers are unable to agree on the current annual market rental value, the appraisers shall each notify the parties in writing of their individual determinations. If the difference between the amounts determined by the two appraisers is not greater than ten percent (10%) of the higher of the two amounts so determined, the current



annual market rental value shall be the average of the two amounts.

2.4 If the difference between the two amounts is greater than ten percent (10%) of the higher of the two amounts so determined, upon application of either party, the incumbent presiding officer of the Appraisal Institute of Canada or its successor in the Province of British Columbia shall appoint a third appraiser. In such case, the current annual market rental value for the Renewal Term or subsequent renewal period, as the case may be, shall be the average of the amount determined by the third appraiser and the amount determined by the appraiser that is closest to that of the third appraiser. If the neither amount determined by the initial appraisers is closer to that of the third appraiser than the other initial appraisers, then the current annual market rental value for the Renewal Term or subsequent renewal period, as the case may be, shall be the average of the three appraised amounts.

2.5 Each party shall pay the cost of its own first appraisal, with the cost of any third appraisal to be borne equally by the Landlord and the Tenant. All appraisers shall be disinterested persons who are members in good standing of the Appraisal Institute of Canada, or its successor. In the event of any dispute as to the procedure to be followed by the appraisers, the legislation applicable to arbitration in the Province of British Columbia shall govern or if no such legislation exists, the *Commercial Arbitration Act* of British Columbia shall govern.

3. Payment until Determination of the New Minimum Rent

3.1 From the first month after the Term and continuing until the amount of the Minimum Rent for the Renewal Term is finally determined, the Tenant shall pay to the Landlord monthly instalments on account of Minimum Rent for the Renewal Term equal to the monthly instalment of Minimum Rent payable for the last month of the Term plus twenty-five percent (25%) (the "Interim Minimum Rent"), together with monthly instalments of Additional Rent as may be estimated from time to time by the Landlord pursuant to the provisions of the Lease.

3.2 Once the appraisers have determined the amount of the Minimum Rent for the Renewal Term (the "Arbitrated Minimum Rent"), then the difference, if any, between the Interim Minimum Rent paid as aforesaid and the Arbitrated Minimum Rent shall be paid forthwith to the party entitled thereto.

3.3 Should the Arbitrated Minimum Rent be more than the Interim Minimum Rent, in addition to the difference between the Interim Minimum Rent and the Arbitrated Minimum Rent due and payable to the Landlord from the Tenant (the "Underpayment Amount"), the Tenant shall also pay to the Landlord interest at Prime Rate plus two percent (2%) per annum on the Underpayment Amount from the first month after the Term to the date the Landlord receives payment, in full, of the Underpayment Amount from the Tenant.

3.4 Should the Arbitrated Minimum Rent be less than the Interim Minimum Rent, in addition to the difference between the Interim Minimum Rent and the Arbitrated Minimum Rent due and payable to the Tenant from the Landlord (the "Overpayment Amount"), the Landlord shall also pay to the Tenant interest at Prime Rate plus two percent (2%) per annum on the Overpayment Amount from the first month after the Term to the date the Tenant receives payment, in full of the Overpayment Amount from the Landlord.

4. New Lease and Indemnities to be Executed

4.1 Notwithstanding anything to the contrary herein, at the option of the Landlord, any renewal of the Lease may be on the Landlord's then most current form of Lease and any Indemnifier to the original Lease shall provide its indemnity on renewal on the Landlord's then most current form of Indemnity Agreement, provided that any modification for such updating of the Lease or the Indemnity Agreement form, does not increase the monetary obligations of the Tenant (save and except for the change in Minimum Rent for the Renewal Term pursuant to this Schedule 2.5) or materially adversely affects the leasehold interest of the Tenant or the Tenant's use and enjoyment of the Premises without the Tenant's consent.

**SCHEDULE "8.1(s)"
RULES AND REGULATIONS**

Access Keys

- 1 The Tenant shall not install or cause to be installed any additional locks on any doors of the Premises without the approval of the Landlord and subject to any conditions imposed by the Landlord. If additional locks are permitted by the Landlord, the Tenant shall supply two (2) keys to the Landlord for each such lock.

No Personal Use

- 2 The Tenant shall not use the Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles not required for business purposes.

Safety / Security

- 3 The Tenant shall comply with the Landlord's requirements in respect of any systems and/or procedures adopted by the Landlord from time to time for the security and safety of the Building and the tenants and occupants and contents of the Building.
- 4 The Tenant shall not bring any weapons, including firearms, knives (except normal kitchen utensils and office equipment such as scissors), fireworks or other similar implements, into the Premises or the Building at any time.
- 5 The Tenant shall take all reasonable steps to minimize the incidents of false alarms in the Premises and/or the Building, including but not limited to training all of the Tenant's employees and contractors on the proper usage of the security system(s) installed at the Building and/or Premises.

Nuisance / Litter / Obstruction

- 6 The Tenant, its agents, servants, contractors, invitees or employees shall not obstruct or use any entrances, passages, escalators, elevators or staircases into or to the Building or the sidewalks or driveway outside the Building for any purpose other than ingress to and egress from the Premises and the Building.
- 7 The Tenant shall not place or maintain any merchandise or other articles in any vestibule or entry of the Premises or Building, or on the sidewalks adjacent to or elsewhere on the exterior of the Building, or elsewhere in the interior of the Building that is not specifically designated as Tenant storage.
- 8 The Tenant shall place all debris, garbage, trash, refuse or recyclables in the appropriate garbage and recycling containers provided by the Landlord and/or the Tenant, which containers shall at all times be kept within the Premises with the exception of large metal dumpsters, and shall not place or permit any debris, garbage, trash, refuse or recyclables to be placed or left in or upon any part of the Lands or Building outside of the Premises.
- 9 The Tenant shall not permit or allow any obnoxious odours, vapours, steam, water, vibrations, noises or other undesirable effects to emanate from the Premises or any equipment or installation therein which, in the Landlord's opinion, are objectionable or cause any interference with the safety, comfort or convenience of the Landlord or the other tenants of the Building or their agents, servants, invitees.

Deliveries / Elevator Usage

- 10 The Tenant shall not make or receive any deliveries from or to the Premises except through the entrances of the Premises and/or the loading bay(s) for the Premises

Window Coverings

- 11 It is important for the Building to be uniform in appearance when viewed from the exterior or Common Areas of the Building and the exterior of the Premises. As such, security bars are not permitted to be installed on any window at the Premises nor is it permitted to frost any of the windows of the Premises, and the Tenant shall not install any security bars on or frost any windows of the Premises. In addition, any window coverings installed by the Tenant (at its own cost) must be roller shades with a white outside

finish for all exterior windows of the Premises and all interior windows of the Premises which look onto Common Areas of the Building. If the Tenant wishes to use window coverings other than roller shades with a white outside finish, the Tenant must first provide to the Landlord a sample of what the Tenant would prefer and request the consent of the Landlord. The Landlord shall act in a reasonable manner in this regard however any decision is at the Landlord's sole discretion.

Labour Affiliation

- 12 The Tenant shall not, without in each case obtaining the prior written consent of the Landlord, cause or permit any work to be done within the Premises by its contractors or by or for any public utility company if, by reason of any labour dispute then existing, the performance of such work shall result in, or in the opinion of the Landlord is likely to result in, the picketing of the Building, or any other property of the Landlord, whether or not such picketing would be lawful.

Smoking Prohibitions

- 13 The Tenant shall at all times abide by the Tobacco and Vapour Products Control Act (BC) and the Cannabis Control and Licensing Act (BC) and any amendments thereto or replacements thereof, and in particular, the Tenant, its owners, officers, directors, managers, employees, agents, invitees, and any other person in the Premises or in the Building at the request or instruction of the Tenant shall not smoke or vape, cannabis or tobacco, hold lit tobacco or cannabis or use or hold an activated e-cigarette within the Premises or Building or within three (3) metres of a doorway, window or air intake of the Premises or the Building.

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SCHEDULE "10"
IMPROVEMENTS / ALTERATIONS

1 Landlord's Work

- (a) At the cost of the Landlord, the Landlord shall perform the following work and make the following improvements to the Premises (the "Landlord's Work"), prior to the Commencement Date:
- (i) "not applicable";
- (b) As soon as reasonably possible after the execution of any agreement to lease between the Tenant and the Landlord with respect to the Premises, the Tenant shall submit detailed plans and specifications for the Landlord's Work for the review and written approval of the Landlord;
- (c) Any costs incurred by the Landlord attributable to changes in the Landlord's Work requested by the Tenant and agreed to by the Landlord, after the Landlord's approval of the plans and specifications for the Landlord's Work submitted by the Tenant pursuant to (b) above, including but not limited to any costs for additional labour, materials, equipment, architectural fees, engineering fees and applicable taxes, plus an overhead and supervision charge of fifteen percent (15%) of the total cost to the Landlord for such changes, shall be paid by the Tenant to the Landlord as a "back charge", as Additional Rent, in accordance with the Landlord's payment schedule to be determined by the Landlord;
- (d) If there is any delay by the Landlord in completing the Landlord's Work or in making available the services which the Landlord is obliged to furnish to the Premises and if such delay has been occasioned by the Tenant's delay in furnishing its plans or any other information required by this Lease on or before the respective dates set out for the furnishing of such plans or the giving of such information, or by any failure of the Tenant to comply with any of the provisions of this Lease, or by the performance by the Tenant of the Tenant's Work (as to any and all of which the Landlord's Architect shall be the sole judge), then the Commencement Date of the Term shall be conclusively deemed to be the date fixed by the Landlord's Architect as the date when the Landlord would have completed the Landlord's Work and made the services available therefore had the Landlord not been delayed by the Tenant as aforesaid and the Tenant shall not be entitled to any abatement of Rent by reason of any such delay in occupancy.

2 Tenant's Work

- (a) The Tenant shall, prior to the commencement of the Tenant's Work, complete each of the following obligations to the Landlord's satisfaction:
- (i) further to Section 10.3, submit detailed plans and specifications of the Tenant's Work for the review and written approval of the Landlord. Any changes to the Premises desired by the Tenant which depart from the Building's standard or which involve the use of materials not standard to the Building must be specifically noted on the plans submitted and should the Landlord consent to such changes, shall be made at the expense of the Tenant;
- (ii) provide the Landlord with certificates of insurance evidencing that the insurance required to be placed by the Tenant pursuant to the Lease has been contracted;
- (iii) ensure that all work on or in respect of the Premises is to be performed by competent workmen whose labour union affiliations are compatible with others employed by the Landlord and its contractors. All contractors shall be subject to the prior reasonable approval of the Landlord;
- (iv) provide evidence satisfactory to the Landlord that the Tenant has obtained at its expense all necessary approvals, consents, permits and licenses for the Tenant's Work from all appropriate Authorities. Should the Tenant fail to obtain any such required approval, consent, permit or license, the Landlord may, but shall not be obliged to, obtain same on behalf of the Tenant, and the cost or expense incurred by the Landlord shall be payable by the Tenant as Additional Rent forthwith on demand; and

- (v) provide evidence satisfactory to the Landlord of the Tenant's work schedule for completion of the Tenant's Work.
- (b) Should the Tenant require access to any portion of the Building or the Premises for the Tenant's Work prior to the Commencement Date, and the Landlord and the Tenant have agreed to a Fixturing Period, the Tenant may enter upon and take possession of the Premises on the first day of the Fixturing Period to perform the Tenant's Work provided that the Landlord's Work (if any) has been substantially completed or completed to an extent that the Tenant can take possession of the Premises to perform the Tenant's Work in conjunction with the Landlord's Work.
- Should the Landlord's Work not be substantially completed or completed to an extent that the Tenant can take possession of the Premises to perform the Tenant's Work in conjunction with the Landlord's Work by the first day of the Fixturing Period, the Tenant shall not be entitled to enter upon or take possession of the Premises to perform the Tenant's Work until the date the Landlord's Work is substantially completed or completed to an extent that the Tenant's Work can be performed in conjunction with the Landlord's Work which date the Landlord shall give the Tenant ten (10) days' prior written notice of.
- (c) The Tenant and its contractors are responsible for removing any and all garbage and debris generated by the installation of the Leasehold Improvements from the Premises and the Building daily, and placing the garbage and debris into garbage containers for that purpose as provided. Any of the Tenant's garbage or debris generated by the installation of the Leasehold Improvements removed by the Landlord shall be charged to the Tenant's account.
- (d) Any costs incurred by the Landlord attributable to changes in the Tenant's Work requested by the Tenant and agreed to by the Landlord, after the Landlord's approval of the plans and specifications for the Tenant's Work submitted by the Tenant pursuant to (a) above, plus an overhead and supervision charge of fifteen percent (15%) of the total cost to the Landlord for such changes, shall be paid by the Tenant to the Landlord as a "back charge", as Additional Rent, in accordance with the Landlord's payment schedule to be determined by the Landlord;
- (e) The Tenant shall pay to the Landlord forthwith upon demand:
- (i) a fee equal to the cost of the Landlord's supervision and overhead for the duration of the Tenant's Work; and
 - (ii) all reasonable costs incurred by the Landlord during the period of the Tenant's Work, to vertically transport men and materials with respect to the carrying out of the Tenant's Work in the Premises.
- (f) The Tenant shall, upon completion of any Tenant's Work, provide the Landlord with:
- (i) a statutory declaration (the "Declaration"), which:
 - (A) states that the installation of the Leasehold Improvements and/or Trade Fixtures have been performed in accordance with all of the provisions of the plans as stipulated by this schedule and that all deficiencies (if any) which the Landlord has brought to the Tenant's attention have been corrected;
 - (B) states that there are no builder's, construction or mechanics' lien or other liens or encumbrances registered or otherwise outstanding against the Premises, the Building, or the Lands in respect of work, services or materials relating to the Tenant's Work and that all accounts for such work, services or materials have been paid in full;
 - (C) lists each contractor and subcontractor who did work or provided materials in connection with the Leasehold Improvements; and
 - (D) confirms the date on which the last work was performed and materials were supplied;
 - (ii) a clearance certificate issued under the *Workers Compensation Act* (British Columbia) in respect of each contractor and subcontractor listed on the Declaration;

- (iii) an itemized list of all the costs actually expended by the Tenant for the completion of the Tenant's Work, where the Tenant is to receive a Tenant Improvement Allowance pursuant to Subsection 1.1.13 and clause 4 of this Schedule "10";
- (iv) a certificate of a professional engineer acceptable to the Landlord, certifying that the Tenant's Work has been carried out in accordance with the plans and specifications as approved by the Landlord and the Landlord's engineering consultants; and
- (v) a copy of every occupancy and other permit which may be required by any Authority having jurisdiction, to permit the Tenant to open for business upon the reasonable request of the Landlord.

3 Landlord's Right to Complete Tenant's Work

Notwithstanding anything contained in the Lease to the contrary, the Landlord shall be entitled, at its option, to tender to the Tenant a price for the completion by the Landlord, as the Tenant's contractor, of the Tenant's Work (excluding the Tenant's Trade Fixtures). If the Landlord's tender is at a price which is within five percent (5%) of any other bona fide tender which the Tenant may receive with respect to such work (and the Tenant hereby agrees to obtain bona fide tenders for such work from others) then the Tenant's Work shall in fact be done by the Landlord at the Tenant's cost, based upon the tender price submitted by the Landlord.

4 Tenant Improvement Allowance

The Landlord shall pay to the Tenant, once only, as a contribution toward the cost of all Leasehold Improvements installed by or on behalf of the Tenant which by the terms of this Lease shall be the property of the Landlord immediately upon such installation, the lesser of the actual cost of such Leasehold Improvements or the sum indicated in Subsection 1.1.13 (the "Tenant Improvement Allowance").

Such contribution shall be payable to the Tenant (after deducting any amounts then owing by the Tenant to the Landlord) forty-five (45) days after the:

- (a) execution of this Lease by both Landlord and Tenant;
- (b) the Commencement Date and the payment of the first Rent due under the Lease;
- (c) compliance by the Tenant with its obligations contained within this Schedule including delivery to the Landlord of the Declaration; and
- (d) upon the reasonable request of the Landlord, delivery to the Landlord of satisfactory evidence of the payment of all contractors, sub-contractors and others supplying work or materials to the Premises.

5 Liens

The Tenant shall ensure that no builder's lien or other construction liens or other liens or encumbrances shall be registered against or shall otherwise affect the Lands, the Building or the Premises or any part thereof or the Landlord's or the Tenant's interest in the Premises in respect of materials supplied or work done or to be done by the Tenant or on behalf of the Tenant or related to the Tenant's Work. If the Tenant fails to promptly discharge or cause any such lien to be discharged, then, in addition to any other rights or remedies of the Landlord, the Landlord may (but shall not be obligated to) discharge the lien by paying the amount claimed into court or directly to the lien claimant and the amount so paid, a sum equal to fifteen percent (15%) thereof representing the Landlord's overhead, and all costs and expenses (including legal costs and expenses) plus interest as set out in the Lease shall be immediately due and payable by the Tenant to the Landlord as Additional Rent forthwith on demand.

6 Failure to Pay

Failure by the Tenant to pay any amounts due under the provisions of this Schedule in the manner provided herein shall entitle the Landlord to terminate this Lease, to retain the Security Deposit paid by the Tenant, and to retain for its own use, without payment therefor, any Tenant's Work which has been commenced or completed within the Premises, all without prejudice to the Landlord's right to claim and prove any additional damages from the Tenant.

SCHEDULE "12.8"
CONSENT TO DISCLOSE INFORMATION

To Whom It May Concern:

Re: ♦ (the "Tenant") and ♦ (the "Premises")

The Tenant hereby authorizes ♦ (the "Landlord") or its agents to make enquiries of, and receive information from, any federal, provincial or municipal government department, or any court, or any administrative or quasi-judicial board or tribunal or any other organization or entity with the lawful authority to regulate environmental matters, concerning the Tenant and its compliance with any statutes, regulations, policies, directives, orders, approvals, or any other legal requirement with respect to the protection, conservation or restoration of the natural environment as they relate to the Premises.

Yours truly

Per: _____

Authorized Signatory for the Tenant

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This is Exhibit "D" referred to in the Affidavit of Eric Rolheiser sworn before me this 7th day of November 2023

David Allison

A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

David Josiah Allison
Student-at-Law
Notary Public & Commissioner for Oaths
in and for the Province of Alberta



From: Paul Bethke (WACL Internal) <bethkep@wacI.com>
Sent: Sunday, November 5, 2023 3:01 PM
To: Pat Carey <careyp@careymgmt.com>; David Morgan <morgan@wacI.com>
Subject: RE: Inventory

Pat and Dave,

We provided W&C an "escrow" copy of the LXEZ software in event that we were no longer able to support you.

W&C has added that "escrow" copy of the LXEZ software to their software repository. Can you please remove that from your repository if you're going to change ownership? The "escrow" is provided as a courtesy for you by request, not a future owner.

Thoughts?

From: Pat Carey <careyp@careymgmt.com>
Sent: Sunday, November 5, 2023 2:31 PM
To: Paul Bethke (WACL Internal) <bethkep@wac1.com>; David Morgan <morgan@wac1.com>
Cc: Brian Birnie <birnieb@wac1.com>; Eric Rolheiser <RolheiserE@wac1.com>; James W. REID
(jwreid@millerthomson.com) <jwreid@millerthomson.com>
Subject: Re: Inventory

Howdy Paul,

I did share your responses to the questions that 7-11 had. They are enquiring about the latest source code. Can we ensure we have the latest version?

Thanks

Pat

[EXTERNAL EMAIL / COURRIEL EXTERNE]

Please report any suspicious attachments, links, or requests for sensitive information.

Veillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspectes.
