

Clerk's stamp

COURT FILE NUMBER
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF CANADIAN IMPERIAL BANK OF COMMERCE
DEFENDANTS 772921 ALBERTA INC.; SPRUCE IT UP LAND
CORP. and RIDGE MEADOWS PROPERTIES
LTD.
DOCUMENT **AFFIDAVIT (RECEIVERSHIP ORDER)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000
Toronto, Ontario M5K 1E7 CANADA
Evan Cobb
evan.cobb@nortonrosefulbright.com
Tel:+1 416.216.1929
Fax:+1 416.216.3930

Lawyers for Canadian Imperial Bank of Commerce

AFFIDAVIT OF GEOFFREY GOLDING

Sworn on November 8, 2023.

I, Geoffrey Golding, of the City of Toronto, in the Province of Ontario, SWEAR AND SAY THAT:

INTRODUCTION

1. I am a Vice President of Canadian Imperial Bank of Commerce ("**CIBC**" or the "**Agent**"). I have been directly involved with the financing arrangements of Carey Management Inc. (the "**Borrower**") and its subsidiaries (collectively, the "**CMI Group**") including Wallace & Carey Inc. ("**W&C**"), Loudon Bros. Limited ("**Loudon**"), 772921 Alberta Inc. ("**772**"), Spruce It Up Land Corp. ("**SIU**") and Ridge Meadows Properties Ltd. ("**Ridge Meadows**" and, together with W&C, Loudon, 772 and SIU, the "**Guarantors**") and as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and where so stated I do verily believe the same to be true.

2. I have also had the opportunity to review the business records of CIBC relevant to the CMI Group accounts and the within proceedings and application and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit on behalf of CIBC.

3. CIBC seeks to appoint KSV Restructuring Inc. as receiver (the “**Receiver**”) over the property, assets and undertaking of 772, SIU and Ridge Meadows (the “**Properties**”). CIBC also seeks an order approving the Receiver’s sale of certain assets and transfer of certain leases of 772 as part of a broader sale transaction with 7-Eleven Canada, Inc. (“**7-11**”).

4. Additional details regarding the Borrower and the Guarantors relevant to this Application are included in Affidavit No. 3 of Eric Rolheiser, sworn November 7, 2023 (the “**Rolheiser Affidavit**”), to be filed in the CCAA Proceedings (as defined below) and the Sixth Report of KSV Restructuring Inc., as Monitor and Proposed receiver (the “**Sixth Report**”). This Affidavit should be read together with the Rolheiser Affidavit and the Sixth Report.

BUSINESS OF THE CMI GROUP

5. The Borrower is the parent company of the CMI Group.

6. W&C carries on a logistics business supplying inventories of tobacco products, food products, and other convenience items to retailers across Canada. Until recently, Loudon carried on business similar to W&C from its location in Thunder Bay, Ontario but that business was recently discontinued in proceedings commenced by CMI, W&C and Loudon under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceedings**”).

7. The largest customer of W&C and Loudon is 7-Eleven Canada, Inc. (“**7-11**”).

8. 772 is registered on title as the owner of a warehouse facility in Kelowna and a warehouse facility in Calgary (the “**772 Real Estate Assets**”) that are used in the logistics business of W&C. Alberta and British Columbia land title search results setting out the details of each of the 772 Real Estate Assets are attached hereto as **Exhibit “A”**. 772 is also a tenant under two lease agreements related to a warehouse located in Calgary and related to a warehouse located in Nanaimo, British Columbia (the “**772 Leases**”). Copies of the 772 Leases are attached hereto as Exhibit “**B**”.

9. SIU is registered on title as the owner of a commercial real property asset at 159 210 Avenue SW, Calgary (the “**SIU Real Estate Asset**”). Alberta land title search results setting out the details of the SIU Real Estate Asset is attached hereto as **Exhibit “C”**. A yard and garden centre operates on the SIU Real Estate Asset.

10. Ridge Meadows is registered on title as the owner of an occupied residential real property asset at 255156 Range Road 25 NW, Calgary (the “**Ridge Meadows Real Estate Asset**”). Alberta land title search results setting out the details of the Ridge Meadows Real Estate Asset is attached hereto as **Exhibit “D”**.

THE LOAN AGREEMENTS

11. The Borrower, the Guarantors, the Agent and the lenders party thereto from time to time (the “**Lenders**”), entered into a Credit Agreement dated as of September 26, 2017, as amended from time to time (the “**Credit Agreement**”), pursuant to which the Lenders agreed to provide the Borrower with certain credit facilities all on the terms set out therein and in related and amending documents (the “**Credit Facilities**”). The Credit Facilities included:

(a) revolving loans, now in the maximum amount of \$55,000,000 (the “**Revolving Loans**”); and

(b) a term loan in the aggregate principal amount of up to \$6,250,000 (together with the Revolving Loans, the “**Loans**”).

12. The obligations under the Credit Agreement are guaranteed by the Guarantors.

13. Each of the Guarantors has granted security over its personal property pursuant to a General Security Agreement. A copy of the relevant General Security Agreement is attached hereto as Exhibit “**E**”. Copies of the Personal Property Security Registry searches for Alberta and British Columbia, current to November 6, 2023, provided to me by Evan Cobb of Norton Rose Fulbright Canada LLP, counsel to CIBC, are attached hereto as Exhibit “**F**”.

14. The Loans have been in default since June 2023. From June 22, 2023, the Loans were subject to a Forbearance Agreement among CMI, the Guarantors and the Agent (as amended from time to time, the “**Forbearance Agreement**”). A copy of the Forbearance Agreement and amendments thereto, as well as correspondence from the Agent in connection therewith are attached hereto as **Exhibit “G”**.

15. The Forbearance Agreement was entered into in the context of the CCAA Proceedings. CMI, W&C and Loudon required continued funding to implement a restructuring process and requested that the Agent and the Lender continue to make available the Revolving Loans to fund working capital requirements during that process. The Lenders agreed to do so subject to the terms and conditions of the Forbearance Agreement. Attached hereto as **Exhibit “H”** is an Affidavit

of Brian Birnie, sworn June 21, 2023, (without Exhibits) which provides background on the CCAA Proceedings.

16. 772, SIU and Ridge Meadows were not parties to the CCAA Proceedings.

17. On June 22, 2023, as a condition of the Forbearance Agreement and the continued provision of Revolving Loans thereunder, 772, SIU and Ridge Meadows agreed to grant mortgages on their real property assets to the Agent. The mortgages were granted on July 20, 2023 (the "**CIBC Mortgages**"). The mortgages are subordinate to prior registered mortgages of Canadian Western Bank ("**CWB**"). Copies of the CIBC Mortgages are attached as **Exhibit "I"**. A copy of the Subordination and Postponement Agreement between CIBC and CWB dated July 20, 2023, regarding the priorities of the CWB and CIBC claims and security is attached hereto as **Exhibit "J"**.

SALE AND INVESTMENT SOLICITATION PROCESS

18. On August 23, 2023, an order was granted in the CCAA Proceedings that, among other things, approved a sale and investment solicitation process for the business and assets of CMI, W&C and Loudon. Alvarez & Marsal Canada Securities ULC ("**A&M**") was engaged as advisor to the Applicants in the CCAA Proceedings to assist in the sale and investment solicitation process (the "**SISP**"). A copy of the order approving the SISP is attached hereto as **Exhibit "K"**.

19. The 772 Real Estate Assets were marketed as part of the SISP.

20. Through the SISP, CMI, W&C and Loudon, in consultation with A&M and the Monitor, determined that the transaction proposed by 7-11 was the highest or otherwise best transaction available (the "**7-11 Transaction**").

21. The 7-11 Transaction includes:

(a) the sale to 7-11 or its nominee of the 772 Real Estate Assets and the 772 Leases, free and clear of claims and encumbrances;

(b) a requirement to monetize the Borrower's subsidiary company assets, including the SIU Real Estate Asset and Ridge Meadows Real Estate Asset, if necessary to assist in satisfying the charges granted in the CCAA Proceedings. I am advised by Evan Cobb that such a sale to a third party (other than 7-11), free and clear of claims and encumbrances, can be achieved through a sale order approved in a receivership proceeding.

22. A description of the SISP and the results of the SISP are set out in the Sixth Report.

SALE OF 772 REAL ESTATE ASSETS

23. The sale of the 772 Real Estate Assets and the 772 Leases to 7-11 is an integral part of the 7-11 Transaction. A copy of the form of Agreement of Purchase and Sale for the 772 Real Estate Assets and 772 Leases is attached hereto as **Exhibit “L”**.

24. I am advised by Evan Cobb that 772 is not a party to the CCAA Proceedings. As a result, CIBC is also seeking approval of the sale of the 772 Real Estate Assets and the transfer of the 772 Leases by the Receiver, if appointed, in furtherance of the 7-11 Transaction that has been determined to be the highest or otherwise best transaction available through the SISP.

DISTRIBUTION OF PROCEEDS OF SALE OF 772 REAL ESTATE ASSETS

25. CIBC is also seeking an Order that upon closing of the sale of the 772 Real Estate Assets, the proceeds of such sale are to be distributed to stakeholders. Such distribution will permit the payment of any municipal property taxes and related amounts, any amounts owing to Canada Revenue Agency, and payment of CWB and CIBC, all in accordance with their respective priorities.

RECEIVER

26. On November 7, 2023, counsel for the Agent delivered Notices of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada) to 772, SIU and Ridge Meadows. Copies of those notices, as well as consents from 772, SIU and Ridge Meadows to waive the notice periods therein, are attached as **Exhibit “M”**.

27. By the terms of the CIBC Mortgages, in the event of a default by the Borrower or the Guarantors, the Agent is entitled to exercise various remedies, one of which is the appointment of a receiver.

28. In all of the circumstances, I believe that the appointment of the Receiver is necessary and appropriate to (i) maximize value from the 7-11 Transaction and from the collateral of CIBC; and (ii) protect the interests of CIBC and CWB and to preserve and realize upon their security.

29. I do verily believe that KSV Restructuring Inc. (“**KSV**”) is qualified and prepared to act as Receiver and will provide an executed consent to act as Receiver prior to the hearing of the application scheduled to appoint KSV as Receiver. KSV has also gained detailed knowledge and

experience regarding the business and assets of the CMI Group through its role as Monitor in the CCAA Proceedings commencing in June.

30. 772, SIU and Ridge Meadows have advised that they consent to the appointment of the Receiver.

CONCLUSION

31. I am authorized to swear this Affidavit on behalf of the Agent.

32. I make this Affidavit for no improper purpose.

33. I make this Affidavit in support of an Application to the Court to appoint KSV as Receiver and for the approval of the sale of the 772 Real Estate Assets and the 772 Leases by the Receiver.

SWORN BEFORE ME at the City of Toronto,
Ontario, this 8th day of November, 2023.

Evan Cobb

(Commissioner for Oaths in and for the
Province of Ontario)

Geoffrey Golding

Geoffrey Golding

This is Exhibit "A" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB



LAND TITLE CERTIFICATE

S
LINC SHORT LEGAL TITLE NUMBER
0016 820 532 7911396;1;4 981 361 399 +1

LEGAL DESCRIPTION
PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;1;25;2;SW

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 821 061 069 A .

REGISTERED OWNER(S)					
REGISTRATION	DATE (DMY)	DOCUMENT	TYPE	VALUE	CONSIDERATION
981 361 399	19/11/1998	TRANSFER OF LAND			SEE INSTRUMENT

OWNERS

772921 ALBERTA INC.
OF 5445-8 ST NE, PO BAG 3959, STN B
CALGARY
ALBERTA T2M 4M5

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION	DATE (D/M/Y)	PARTICULARS
NUMBER		
761 116 078	20/09/1976	EASEMENT "EXTENDED BY, OVER 20 FT. R/W ON PLAN 7610730 IN LOT 4 PLAN 7610729"
771 000 659	05/01/1977	EASEMENT "EXTENDED BY, OVER E. 20 FT. OF S. 20 FT. OF LOT 1 BLOCK 1 PLAN 7710004"
771 147 064	20/10/1977	ZONING REGULATIONS

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2

981 361 399 +1

REGISTRATION

NUMBER DATE (D/M/Y) PARTICULARS

SUBJECT TO CALGARY INTERNATIONAL AIRPORT ZONING
REGULATIONS

821 061 067 07/04/1982 EASEMENT
AS TO PORTION OR PLAN:8210578
"SUBJECT TO"

221 026 290 08/02/2022 MORTGAGE
MORTGAGEE - CANADIAN WESTERN BANK.
CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE
300,606-4TH STREET SW
CALGARY
ALBERTA T2P1T1
ORIGINAL PRINCIPAL AMOUNT: \$12,000,000

221 026 291 08/02/2022 CAVEAT
RE : ASSIGNMENT OF RENTS AND LEASES
CAVEATOR - CANADIAN WESTERN BANK.
CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE
300,606-4TH STREET SW
CALGARY
ALBERTA T2P1T1
AGENT - MOHAMMED ALI MEMON

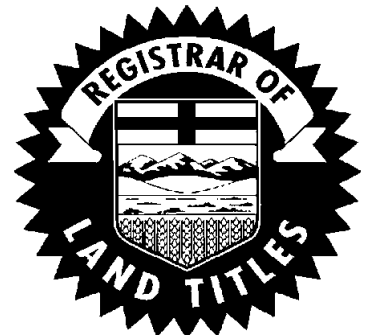
231 275 608 12/09/2023 MORTGAGE
MORTGAGEE - CANADIAN IMPERIAL BANK OF COMMERCE.
199 BAY STREET, 4TH FLOOR
TORONTO
ONTARIO M5L1A2
ORIGINAL PRINCIPAL AMOUNT: \$65,000,000

TOTAL INSTRUMENTS: 007

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN
ACCURATE REPRODUCTION OF THE CERTIFICATE OF
TITLE REPRESENTED HEREIN THIS 6 DAY OF
NOVEMBER, 2023 AT 12:08 P.M.

ORDER NUMBER: 48804603

CUSTOMER FILE NUMBER: 1000305633LP



END OF CERTIFICATE

(CONTINUED)

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).



LAND TITLE CERTIFICATE

S
LINC SHORT LEGAL TITLE NUMBER
0016 820 524 7911396;1;3 981 361 399

LEGAL DESCRIPTION
PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;1;25;2;SW

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 821 061 069

REGISTERED OWNER(S)					
REGISTRATION	DATE (DMY)	DOCUMENT	TYPE	VALUE	CONSIDERATION
981 361 399	19/11/1998	TRANSFER OF LAND			SEE INSTRUMENT

OWNERS

772921 ALBERTA INC.
OF 5445-8 ST NE, PO BAG 3959, STN B
CALGARY
ALBERTA T2M 4M5

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION	DATE (D/M/Y)	PARTICULARS
761 116 078	20/09/1976	EASEMENT "EXTENDED BY, OVER 20 FT. R/W ON PLAN 7610730 IN LOT 4 PLAN 7610729"
771 000 659	05/01/1977	EASEMENT AS TO PORTION OR PLAN:7710004 "EXTENDED BY, OVER E. 20 FT. OF S. 20 FT. OF LOT 1 BLOCK 1"

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2

981 361 399

REGISTRATION

NUMBER	DATE (D/M/Y)	PARTICULARS
771 147 064	20/10/1977	ZONING REGULATIONS SUBJECT TO CALGARY INTERNATIONAL AIRPORT ZONING REGULATIONS
791 207 758	10/12/1979	UTILITY RIGHT OF WAY GRANTEE - THE CITY OF CALGARY. AS TO PORTION OR PLAN:7911397
791 207 759	10/12/1979	RESTRICTIVE COVENANT
821 061 067	07/04/1982	EASEMENT AS TO PORTION OR PLAN:8210578 "SUBJECT TO"
221 026 290	08/02/2022	MORTGAGE MORTGAGEE - CANADIAN WESTERN BANK. CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE 300,606-4TH STREET SW CALGARY ALBERTA T2P1T1 ORIGINAL PRINCIPAL AMOUNT: \$12,000,000
221 026 291	08/02/2022	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - CANADIAN WESTERN BANK. CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE 300,606-4TH STREET SW CALGARY ALBERTA T2P1T1 AGENT - MOHAMMED ALI MEMON
231 275 608	12/09/2023	MORTGAGE MORTGAGEE - CANADIAN IMPERIAL BANK OF COMMERCE. 199 BAY STREET, 4TH FLOOR TORONTO ONTARIO M5L1A2 ORIGINAL PRINCIPAL AMOUNT: \$65,000,000

TOTAL INSTRUMENTS: 009

(CONTINUED)

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN
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END OF CERTIFICATE

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PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING
OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

TITLE SEARCH PRINT

2023-11-06, 11:11:23

File Reference: 1000305633

Requestor: sandra.ng@nortonrosefulbright.com

Declared Value \$1463000

****CURRENT AND CANCELLED INFORMATION SHOWN****

Land Title District KAMLOOPS
Land Title Office KAMLOOPS

Title Number CA4082498
From Title Number CA4061095

Application Received 2014-11-17

Application Entered 2014-11-20

Registered Owner in Fee Simple
Registered Owner/Mailing Address: 772921 ALBERTA INC.
5445 8TH STREET NE
CALGARY, AB
T2K 5R9

Taxation Authority West Kelowna, City of

Description of Land
Parcel Identifier: 003-862-682
Legal Description:
LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698

Legal Notations
THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 14 OF THE LOCAL GOVERNMENT ACT, SEE CA5704814

Charges, Liens and Interests
Nature: MORTGAGE
Registration Number: KD60641
Registration Date and Time: 1990-07-23 11:59
Registered Owner: BANK OF MONTREAL
Cancelled By: CA4150459
Cancelled Date: 2014-12-19

Nature: MORTGAGE
Registration Number: CA2322226
Registration Date and Time: 2011-12-20 10:04
Registered Owner: BUSINESS DEVELOPMENT BANK OF CANADA
Cancelled By: CA4113976
Cancelled Date: 2014-12-01

TITLE SEARCH PRINT

2023-11-06, 11:11:23

File Reference: 1000305633

Requestor: sandra.ng@nortonrosefulbright.com

Declared Value \$1463000

Nature: ASSIGNMENT OF RENTS
Registration Number: CA2322227
Registration Date and Time: 2011-12-20 10:04
Registered Owner: BUSINESS DEVELOPMENT BANK OF CANADA
Cancelled By: CA4113977
Cancelled Date: 2014-12-01

Nature: PRIORITY AGREEMENT
Registration Number: CA2322228
Registration Date and Time: 2011-12-20 10:04
Remarks: GRANTING CA2322226 PRIORITY OVER KD60641
Cancelled By: CA4113976
Cancelled Date: 2014-12-01

Nature: PRIORITY AGREEMENT
Registration Number: CA2322229
Registration Date and Time: 2011-12-20 10:04
Remarks: GRANTING CA2322227 PRIORITY OVER KD60641
Cancelled By: CA4113977
Cancelled Date: 2014-12-01

Nature: MORTGAGE
Registration Number: CA4082640
Registration Date and Time: 2014-11-17 11:52
Registered Owner: BANK OF MONTREAL
Cancelled By: CA6447898
Cancelled Date: 2017-11-16

Nature: ASSIGNMENT OF RENTS
Registration Number: CA4082641
Registration Date and Time: 2014-11-17 11:52
Registered Owner: BANK OF MONTREAL
Cancelled By: CA6447899
Cancelled Date: 2017-11-16

Nature: STATUTORY RIGHT OF WAY
Registration Number: CA5940341
Registration Date and Time: 2017-04-20 09:52
Registered Owner: BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Nature: STATUTORY RIGHT OF WAY
Registration Number: CA5940342
Registration Date and Time: 2017-04-20 09:52
Registered Owner: TELUS COMMUNICATIONS INC.
INCORPORATION NO. BC1101218

TITLE SEARCH PRINT

2023-11-06, 11:11:23

File Reference: 1000305633

Requestor: sandra.ng@nortonrosefulbright.com

Declared Value \$1463000

Nature: MORTGAGE
 Registration Number: CA6324578
 Registration Date and Time: 2017-09-26 14:28
 Registered Owner: ALBERTA TREASURY BRANCHES
Cancelled By: CA9521023
Cancelled Date: 2021-11-19

Nature: ASSIGNMENT OF RENTS
 Registration Number: CA6324579
 Registration Date and Time: 2017-09-26 14:28
 Registered Owner: ALBERTA TREASURY BRANCHES
Cancelled By: CA9521024
Cancelled Date: 2021-11-19

Nature: MORTGAGE
 Registration Number: CA9465179
 Registration Date and Time: 2021-10-28 10:20
 Registered Owner: CANADIAN WESTERN BANK

Nature: ASSIGNMENT OF RENTS
 Registration Number: CA9465180
 Registration Date and Time: 2021-10-28 10:20
 Registered Owner: CANADIAN WESTERN BANK

Nature: MORTGAGE
 Registration Number: CB806751
 Registration Date and Time: 2023-08-03 15:48
 Registered Owner: CANADIAN IMPERIAL BANK OF COMMERCE

Nature: ASSIGNMENT OF RENTS
 Registration Number: CB806752
 Registration Date and Time: 2023-08-03 15:48
 Registered Owner: CANADIAN IMPERIAL BANK OF COMMERCE

Duplicate Indefeasible Title NONE OUTSTANDING

Transfers NONE

Pending Applications NONE

Corrections NONE

This is Exhibit "B" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

INDUSTRIAL LEASE AGREEMENT

WILLOW HOLDINGS LTD.

--AND--

772921 ALBERTA INC.

CONFIDENTIAL
Downloaded by:
Joel McClarty
Miller Thomson
Project Mercury
2023/10/30 15:19:06 -06:00

Initials



INDUSTRIAL LEASE

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Schedule "F" Hazardous Substances
Schedule "G" Maintenance Schedule
Schedule "H" *Canadian Imperial Bank of Commerce Landlord Bailee Letter*
Schedule "I" *Wallace & Carey Inc. Guarantee*

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INDUSTRIAL LEASE

ARTICLE 1 - SPECIAL DEFINITIONS

SECTION 1.01 - VARIABLE DEFINED TERMS

In this Lease the following terms will have the following meanings:

- (1) "Basic Rent" – from the Commencement Date to the end of the lease, the Basic Rent is payable per Schedule E, clause 1, absolute net per square foot of Rentable Area of the Leased Premises per annum payable pursuant to Section 4.02 hereof.
- (2) "**Building**" means the building presently designated by the Landlord as 5225 – 8 Street N.E., Calgary, Alberta in which the Leased Premises are situated.
- (3) "**Commencement Date**" means October 1, 2017.
- (4) "**Complex**" means the Lands and the buildings and other fixed improvements located thereon and includes all structures and improvements from time to time thereunder associated therewith including the Building, all as from time to time designated by the Landlord.
- (5) "**Deposit**" means the sum of *Forty-seven (47) Thousand, Seven (7) Hundred and Sixteen (16) dollars and Twenty (20) cents (\$47,716.20)* applied in accordance with Section 15.02 hereof.
- (6) "**Landlord**" - Willow Holdings Ltd. and its successors and assigns.
- (7) "**Landlord's Address**" c/o 11016 Willowisp Road S.E., Calgary, Alberta, T2J 1R2 or such other address as is designated by the Landlord.
- (8) "**Lands**" means the land described in Schedule "A" attached hereto.
- (9) "**Lease**" means this lease dated the *28th day of September, 2017*, and includes all schedules annexed hereto, as from time to time amended in writing. This lease replaces an existing lease between Landlord & Tenant for 48,000 sq. ft. space in the building which was due to expire on Sept. 30, 2017.
- (10) "**Leased Premises**" means those premises leased to the Tenant pursuant to Section 3.01 hereof, cross-hatched on Schedule "B" hereto, being all of the ground floor in the Building and having a municipal address of 5225 - 8th Street N.E., Calgary, Alberta.
- (11) "**Permitted Use**" The Leased Premises shall be used for the purpose as specified in Schedule E, sub-clause (7).
- (12) "**Rentable Area of Leased Premises**" Forty-eight thousand, (48,000) square feet of main floor area and a small mezzanine office section in Bay 4 determined in accordance with the provisions of this Lease, and subject to adjustment in accordance with Section 3.03 hereof.
- (13) "**Tenant**" – 772921 Alberta Inc. and its successors and permitted assigns.
- (14) "**Tenant's Address**" - Prior to the Commencement Date, 5225 – 8th Street. NE, Calgary Alberta, T2K 5R9 or such other address as is designated by the Tenant within the City of Calgary. from and after the Commencement Date.
- (15) "**Term**" - means, *Five (5) years* beginning on the above Commencement Date.

ARTICLE 2 - DEFINITIONS

SECTION 2.01 - STANDARD DEFINITIONS

- (1) "**Accounting Period**" means the calendar or such other accounting year as the Landlord may adopt from time to time for the Complex.
- (2) "**Additional Rent**" means all sums of money, other than Basic Rent, which are required to be paid by the Tenant pursuant to any provision of this Lease.

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- (3) **"Amortization"** means, for any Accounting Period, that amount of the Landlord's capitalized costs for furniture, signs, machinery and equipment (including electrical, mechanical, plumbing and HVAC systems) and of the Landlord's costs of capital replacements and major repairs to the Common Facilities which is expensed through such Accounting Period in accordance with generally accepted accounting principles together with simple interest on the unamortized portion of such costs at the Bank Rate.
- (4) **"Architect"** means the architect, professional engineer or surveyor named by the Landlord from time to time.
- (5) **"Bank Rate"** means the interest rate per annum as announced by Royal Bank of Canada at the principal office of such bank in Toronto and reported by it to the Bank of Canada as its prime rate.
- (6) **"Building Area"** means the total area of all floors of the Building expressed in square feet and computed by measuring from the outside surface of all outer building walls.
- (7) **"Common Facilities"** means those areas, improvements and facilities of or for the Complex which serve or benefit the Complex including, without limitation, roadways, parking lots or parking garages as the case may be, landscaped areas, sidewalks, public entrance doors, common halls and corridors, public lobbies, lavatories not wholly contained in any rentable premises for the exclusive use of the tenant of such premises, stairways, passageways, elevators, property management offices, signage including pylon signs, exterior weather walls, roofs, exterior and interior structural elements and bearing walls of the Complex, music and public address systems, fire prevention and fire detection systems, drainage equipment and installations, fountains, furniture, furnishings, customer and service stairways, elevators, directory boards, maintenance equipment, service, janitorial and mechanical rooms, transformer vaults, electrical distribution rooms, water meter rooms, service ramps and common loading and receiving facilities and Common Use Equipment, and which are designated from time to time by the Landlord, acting reasonably, for the common use or enjoyment of the tenants in the Complex and users of adjacent properties, and their agents, invitees, servants, employees and licensees, or for use by the public, but excluding rentable premises in the Complex and other portions of the Complex which are from time to time designated by the Landlord for private use by one or a limited group of tenants.
- (8) **"Common Use Equipment"** means all mechanical, plumbing, electrical and heating, ventilating, and air-conditioning equipment, pipes, ducts, wiring, machinery and equipment and other integral services, utility connections and the like providing services to the Complex, where such equipment serves the Common Facilities and/or more than a single rentable premise in the Complex.
- (9) **"Complex Area"** means the total area of all floors of all buildings comprising the Complex expressed in square feet and computed by measuring from the outside surface of all outer building walls.
- (10) **"Enclosed Area"** means, in respect of any rentable premises in the Building, the area of such premises expressed in square feet and computed by measuring, in the case of outer building walls, from the outside surface of such walls, and in the case of partition walls separating such premises from corridors or interior Common Facilities, from the corridor or Common Facility side of such partitions, and in the case of partition walls separating such premises from adjoining rentable premises, from the centre line of such partitions, but excluding from such area the areas of stairwells (other than stairwells contained within the premises of a tenant for exclusive use of such tenant) and elevator shafts.
- (11) **"Insurance Costs"** means, for any Accounting Period, the total cost to the Landlord, calculated in accordance with generally accepted accounting principles, for insuring the Complex, as set out in this Lease, less any portions of such costs reasonably allocated by the Landlord to the Common Facilities.
- (12) **"Insured Damage"** means that part of any damage occurring to the Complex, including the Leased Premises, of which the entire cost of repair (except as to any deductible amount provided for in the applicable policy or policies of insurance) is actually recovered by the Landlord under a policy or policies of insurance from time to time effected by the Landlord pursuant hereto.
- (13) **"Leasehold Improvements"** means all items generally considered as leasehold improvements, including, without limitation, all fixtures, equipment, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant, or any

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previous occupant of the Leased Premises in the Leased Premises, and by or on behalf of other tenants in other premises in the Building, including any stairways for the exclusive use of the Tenant, all partitions, however affixed and whether or not movable, and all wall-to-wall carpeting other than carpeting laid over finished floors and affixed so as to be readily removable without damage; but excluding trade fixtures, unattached furniture or free-standing partitions and equipment not of the nature of fixtures.

- (14) **"Mortgage"** means any mortgage, charge, deed of trust, document or security interest (resulting from any method of financing or refinancing) or blanket mortgage pledge or other charge (affecting the Complex as well as other property) now or hereafter secured upon the Complex or any part thereof including the Building, and includes all renewals, modifications, consolidations, replacements and extensions thereof.
- (15) **"Mortgagee"** means the mortgagee, chargee or other creditor or trustee for bondholders or others named in any Mortgage.
- (16) **"Notice"** means any notice, statement, consent, approval, demand or request herein required or permitted to be given by any party to another pursuant to this Lease and shall be in writing and, if to the Landlord, addressed to the Landlord at the Landlord's Address, and if to the Tenant, addressed to the Tenant at the Tenant's Address. All Notices shall be hand-delivered or delivered by telecopying device when the party receiving notice is equipped with such device and the effective date of such Notices shall be the date of delivery when hand-delivered and the date of receipt when received by telecopying device during normal business hours or the next business day if received after normal business hours on any business day or on a day other than a business day.
- (17) **"Operating Costs"** means, for any Accounting Period, the total cost to the Landlord calculated in accordance with generally accepted accounting principles, for the maintenance, repair and operation of the Common Facilities for such Accounting Period. The total cost to the Landlord for the maintenance, repair and operation of the Common Facilities shall include, without duplication or limitation, the Landlord's costs for Taxes and business taxes which have been reasonably apportioned by the Landlord to the Common Facilities, Amortization applicable to the Common Facilities, the Landlord's fee for property management and the Landlord's costs for cleaning, painting, controlling pests, supervising, policing, gardening, landscaping, snow removal, electricity, water, heating, ventilation, air conditioning, sewage and waste removal, materials, supplies, equipment rental, wages, salaries and benefits paid and provided for employees, maintenance, repairs, replacements, insurance and all other expenditures of a nature required to be made by a prudent owner. Operating Costs shall not include debt service or any ground rents payable by the Landlord in respect of the Complex.
- (18) **"Proportionate Share"** means, for any period, the fraction which has as its numerator the Rentable Area of the Leased Premises and as its denominator the Total Complex Rentable Area.
- (19) **"Recoverable Costs"** means, for any Accounting Period, the aggregate, without duplication, of Operating Costs, Utility Costs, Insurance Costs and Taxes for such Accounting Period.
- (20) **"Recoveries"** means, for any Accounting Period: (i) the amount determined by multiplying the Recoverable Costs for such Accounting Period by the Proportionate Share, or; (ii) such other portion of the Recoverable Costs for such Accounting Period as may be allocated without duplication to the Leased Premises by the Landlord, acting reasonably, having regard without limitation to:
- (a) with respect to Utility Costs, the consumption recorded by meters and check meters, engineering studies and the connected load of the Leased Premises and of specific areas of the Complex;
 - (b) with respect to Insurance Costs, the value of the Leasehold Improvements, the Permitted Use and directives from the Landlord's insurers;
 - (c) with respect to Taxes, prevailing assessment principles, separate tax bills for the Leased Premises, school support elected by the Tenant and information available from the authorities having jurisdiction over Taxes.

In all instances the allocation of the Landlord shall be final.



- (21) **"Rent"** means Basic Rent and Additional Rent.

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- (22) **"Rentable Area"** means, in respect of any rentable premises in the Building, the area of such premises expressed in square feet and computed by multiplying the Building Area by a fraction the numerator of which is the Enclosed Area of the premises in question and the denominator of which is the total Enclosed Area of all rentable premises in the Building.
- (23) **"Rules and Regulations"** means those rules and regulations stipulated in Schedule "C" annexed hereto, any amendments thereto and any further reasonable rules and regulations of which the Tenant receives Notice from the Landlord which the Landlord, in its judgment, may from time to time stipulate for the proper operation of the Complex, and all such amendments and further rules and regulations shall be read as forming a part of this Lease as if the same were embodied herein.
- (24) **"Taxes"** means, for any Accounting Period, the total cost to the Landlord, calculated in accordance with generally accepted accounting principles, for all taxes, rates, duties and assessments whatsoever, whether municipal, provincial, federal or otherwise, now charged or hereafter to be charged upon the Complex or upon the Landlord in respect thereof for such Accounting Period, less any portions of such costs reasonably allocated by the Landlord to the Common Facilities. The total of such costs to the Landlord shall include, without duplication or limitation, school taxes, municipal taxes and taxes for local improvements or work assessed against the Complex, capital taxes based upon or computed with reference to the Landlord's paid-up capital or place of business (provided however if the taxing authority does not proportion such taxes as if the Complex were the only establishment of the Landlord, the amount of such tax applicable to the Complex shall be determined by the Landlord on a reasonable basis) and any costs and fees incurred by the Landlord in contesting or negotiating with the public authorities as to the same. Taxes shall not include income taxes of the Landlord to the extent such income taxes are not levied in lieu of taxes, rates, duties and assessments as to the Complex or upon the Landlord in respect thereof.
- (25) **"Tenant's Taxes"** means the aggregate of:
- (a) all taxes imposed which are separately identified by the lawful taxing authority as being attributable to the personal property, furnishings, fixtures and Leasehold Improvements installed in the Leased Premises; and
 - (b) all taxes imposed upon the Tenant which are attributable to the business, income or occupancy of the Tenant or any other occupant of the Leased Premises, and to the use of any of the Common Facilities by the Tenant or other occupant of the Leased Premises.
- (26) **"Total Complex Rentable Area"** means the aggregate of all Rentable Area (including the Leased Premises) in the Complex determined in accordance with the provisions of this Lease and adjusted from time to time to reflect any addition, reduction, rearrangement or relocation of space.
- (27) **"Transfer"** means an assignment of this Lease, a sublease of all or any part of the Leased Premises, any transaction whereby the rights of the Tenant under this Lease to the Leased Premises are transferred to another, any transaction by which any right of use or occupancy of all or any part of the Leased Premises is conferred upon anyone, any mortgage, charge or encumbrance of this Lease or the Leased Premises or any part thereof, or other arrangement under which either this Lease or the Leased Premises becomes security for any indebtedness or other obligations, and includes any transaction or occurrence whatsoever which has changed or might change the identify of the person or persons having lawful use or occupancy of any part of the Leased Premises.
- (28) **"Unavoidable Delay"** means any delay by a party in the performance of its obligations under this Lease caused in whole or in part by any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented, but lack of funds on the part of such party shall not constitute an Unavoidable Delay
- (29) **"Utility Costs"** means, for any Accounting Period, the total cost to the Landlord calculated in accordance with generally accepted accounting principles, for electricity, heating, ventilating, air

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conditioning, fuel, gas, water and sewerage charges supplied or relating to the Complex during such Accounting Period including, without duplication or limitation, all taxes, surcharges or other charges thereon, applicable Amortization, the cost of all fittings, machines, apparatus, meters, materials, repairs, maintenance, labour, work or services required in connection with the supply of the above the Complex, or the removal of sewage therefrom, less any portions of such costs reasonably allocated by the Landlord to the Common Facilities.

ARTICLE 3 - LEASED PREMISES - TERM

SECTION 3.01 - LEASED PREMISES AND TERM

In consideration of the rents, covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Leased Premises for the Term.

SECTION 3.02 - USE OF ADDITIONAL AREAS

The use and occupation by the Tenant of the Leased Premises includes for the purposes of carrying on its business, the non-exclusive right of the Tenant, the Tenant's employees, agents, invitees, suppliers (subject to the Rules and Regulations) and persons having business with the Tenant in common with the Landlord, its other tenants, subtenants and all others entitled to or permitted the use of the Common Facilities.

SECTION 3.03 - ADJUSTMENT OF AREAS

Deleted

SECTION 3.04 - ACKNOWLEDGEMENT OF COMMENCEMENT DATE

The Tenant agrees to execute and return to the Landlord, within fifteen (15) days of written demand for the Landlord, an acknowledgement of the Commencement Date in the form set forth in Schedule "D" annexed hereto, subject to such variations as the facts require.

ARTICLE 4 - RENT

SECTION 4.01 - AGREEMENT TO PAY

The Tenant shall pay Basic Rent and Additional Rent as herein provided in lawful money of Canada, without any prior demand therefore and without any deduction, abatement, set-off or compensation whatsoever save as expressly provided in this Lease. The Tenant agrees to pay the Landlord, in addition to Basic Rent and Additional Rent, any goods and services tax, business transfer tax, value-added tax, multi-stage sales tax, sales, use or consumption tax, or any like tax imposed by any governmental authority in respect of this Lease or in respect of the property and services provided hereunder, including without limitation, such taxes calculated on or in respect of any Rent (whether Basic Rent or Additional Rent) payable under this Lease; any such tax shall be deemed not to be Rent, but the Landlord shall have the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease. The obligation to pay Additional Rent (and adjustments thereto) shall survive the expiration or sooner termination of this Lease. All mounts payable under this Lease, unless otherwise provided, become due with the next instalment of Basic Rent. The Landlord may, at its option, upon Notice to the Tenant direct that the Tenant pay any or all Rent by way of post-dated cheques and the Landlord may direct the Tenant to make such payments to any other party specified by the Landlord, and such payment, when made as directed, shall satisfy the obligation of the Tenant to pay hereunder.



SECTION 4.02 - BASIC RENT

The Tenant shall pay from and after the Commencement Date to the Landlord the Basic Rent, such Basic Rent to be computed in accordance with Section 1.01(1) and payable in equal monthly instalments in advance on the first day of each and every month. If the Commencement Date is not the first day of a calendar month, then the Basic Rent for the first and last months of the Term shall be appropriately adjusted, on a per diem basis, based upon a period of three hundred and sixty-five (365) days, and the Tenant shall pay upon the Commencement Date, the portion of the Basic Rent so adjusted from the Commencement Date to the end of the month in which the Commencement Date occurs.

SECTION 4.03 - RECOVERIES

The Tenant shall pay from and after the Commencement Date to the Landlord the Recoveries for each Accounting Period by monthly instalments on the first day of each and every month throughout the Term and the amount of such instalments shall be reasonably stipulated from time to time by the Landlord. Following the end of each Accounting Period the Landlord shall compute the Recoveries for such Accounting Period and shall submit a statement thereof to the Tenant. If the total of the monthly installments of Recoveries paid and payable by the Tenant in respect of such Accounting Period is less

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than the amount of Recoveries for such Accounting Period, the Tenant shall pay the difference to the Landlord forthwith. If the total of such monthly instalments of Recoveries paid and payable is greater than the amount of the Recoveries for such Accounting Period, the difference shall either, at the option of the Landlord, be repaid to the Tenant with such statement, be applied in payment of other amounts owing by the Tenant or be applied in reduction of future payments due under this Lease.

SECTION 4.04 - LATE PAYMENT CHARGE

Deleted

SECTION 4.05 - NET LEASE

The Basic Rent payable under this Lease is intended to be an absolutely net return to the Landlord, except as expressly herein set out to the contrary. The Landlord is not responsible for any expenses or outlays of any nature arising from or relating to the Leased Premises, or the use or occupancy thereof, or the contents thereof or the business carried on therein. The Tenant shall pay all charges, impositions and outlays of every nature and kind relating to the Leased Premises except as expressly herein set out to the contrary.

ARTICLE 5 - COMPLEX - CONTROL AND SERVICES

SECTION 5.01 - CONTROL OF THE COMPLEX BY THE LANDLORD

The Complex is at all times subject to the exclusive control, management and operation of the Landlord. Without limiting the generality of the preceding sentence, the Landlord has the right, in its control, management and operation of the Complex and by the establishment of Rules and Regulations and general policies with respect to the operation of the Complex or any part thereof at all times during the period when the Tenant is given possession of the Leased Premises and throughout the Term to:

- (a) construct improvements in or to the Complex and make alterations and additions thereto, subtractions therefrom, rearrangements thereof (including all entrances and exits thereto), build additional storeys on the Complex and construct additional facilities adjoining or proximate to the Complex;
- (b) relocate or rearrange the various facilities and improvements comprising the Complex or erected on the Lands from those existing at the Commencement Date;
- (c) do and perform such other acts in and to the Complex as in the use of good business judgement the Landlord determines to be advisable for the more efficient and proper operations of the Complex;

provided such alterations or additions do not result in a substantial reduction in the parking and loading areas available for use by the Tenant or a substantial increase in Recoverable Costs. Notwithstanding anything contained in this Lease, it is understood and agreed that if as a result of the exercise by the Landlord of its right set out in this Section 5.01, the facilities in or improvements to the Complex are diminished or altered in any manner whatsoever, the Landlord is not subject to any liability, nor is the Tenant entitled to any compensation, nor shall any such diminution or alteration of the facilities or improvements in or to the Complex be deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease or implied by law provided that the Landlord shall not materially impede access to the Leased Premises except when necessary during the completion of any such work and provided further that the Landlord shall complete all such work diligently and with due speed. The Landlord shall not grant any rights or privileges to other tenants of the Complex which would result in a substantial reduction in the parking and loading areas available for use by the Tenant.

SECTION 5.02 - SUBSTITUTION



Deleted

ARTICLE 6 - ADDITIONAL TENANT COSTS

SECTION 6.01 - THIRD PARTY SERVICES

The Tenant shall be solely responsible for, and promptly pay to the appropriate third party, all charges for services used or consumed in or provided to the Leased Premises. In no event will the Landlord be liable to the Tenant in damages or otherwise for any failure to supply any third-party services to the Leased Premises.

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SECTION 6.02 - TENANT'S TAXES

The Tenant shall pay to the appropriate and lawful taxing authorities, or to the Landlord, as appropriate, and shall discharge when the same become due and payable, all Tenant's Taxes. In the event that the Tenant fails to do so, the same shall be deemed a failure to pay a sum due hereunder as contemplated in Subsection 14.01(a) hereof and the Landlord shall have all of the rights or remedies provided in Article 14 in respect thereof.

SECTION 6.03 - TENANT'S RESPONSIBILITY

The Tenant shall promptly deliver to the Landlord copies of assessment notices, tax bills and other documents received by the Tenant relating to Taxes and Tenant's Taxes and receipts for payment of Taxes and Tenant's Taxes. The Tenant shall not contest any Taxes or Tenant's Taxes or appeal any assessments relating thereto without the Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. If the Tenant obtains such approval, the Tenant shall deliver to the Landlord such security for the payment of such Taxes or Tenant's Taxes as the Landlord deems advisable and the Tenant shall diligently prosecute any such appeal or contestation to a speedy resolution and shall keep the Landlord informed of its progress in that regard from time to time.

ARTICLE 7 - USE OF LEASED PREMISES

SECTION 7.01 - USE OF THE LEASED PREMISES

The Leased Premises shall be used only for the Permitted Use, provided such use complies with the terms, covenants and conditions of this Lease and all applicable laws, by-laws, regulations or other governmental ordinances from time to time in existence. The Leased Premises may not be used for any other purposes. The Tenant shall be wholly responsible for ensuring that the Permitted Use is a use of the Leased Premises permitted by law.

SECTION 7.02 - OBSERVANCE OF LAW


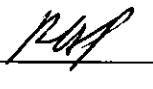
The Tenant shall at its sole cost and expense and, where applicable, in compliance with Sections 9.01 and 9.02 hereof, promptly observe and comply with all laws or requirements of all governmental authorities, including federal, provincial and municipal legislative enactments, by-laws and other regulations and all other authorities having jurisdiction, including fire insurance underwriters, now or hereafter in force which pertain to or affect the Leased Premises, the Tenant's use of the Leased Premises or the conduct of any business in the Leased Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Leased Premises. The Tenant shall carry out all modifications, alterations or changes of or to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which are required by any such authorities.

ARTICLE 8 - INSURANCE AND INDEMNITY

SECTION 8.01 - TENANT'S INSURANCE

- (a) The Tenant shall throughout the period that the Tenant is given possession of the Leased Premises and during the entire Term, at its sole cost and expense, take out and keep in full force and effect, the following insurance:
- (i) all-risk insurance (including but not limited to sprinkler leakage, flood, earthquake and collapse coverage) in an amount equal to the full replacement cost thereof upon property of every description and kind owned by the Tenant or for which the Tenant is liable, or installed by or on behalf of the Tenant and which is located within the Complex including, without limitation, Leasehold Improvements, tenant's fixtures, the Tenant's stock-in-trade, furniture, equipment and all other personal property provided that if there is a dispute as to the amount which comprises full replacement cost, the decision of the Landlord shall be conclusive;
 - (ii) business interruption insurance in such amount as will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against in subclause (i) and other perils commonly insured against by prudent tenants or attributable to prevention of access to the Leased Premises or the Building or the Complex as a result of such perils;
 - (iii) comprehensive general liability insurance, including property damage and bodily injury and personal injury liability, tenant's legal liability, contractual liability (including contractual liability with respect to this Lease) and owners' and contractors' protective insurance coverage with respect to the Leased Premises and the Tenant's use of the Complex, coverage to include the activities and operations conducted by the Tenant and any other person for whom the Tenant is in law responsible. Such policies shall be

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written on a comprehensive basis with inclusive limits of not less than Two Million Dollars (\$2,000,000.00) for bodily injury to any one or more persons or property damage, and such higher limits as the Landlord, acting reasonably, requires from time to time, and shall contain a severability of interests clause and a cross-liability clause;

- (iv) broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement cost of all Leasehold Improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in or serving the Leased Premises;
 - (v) motor vehicle insurance having third party liability limits not less than Two Million Dollars (\$2,000,000.00) covering all vehicles owned or operated by the Tenant which are at any time used in connection with the Tenant's business at the Leased Premises or which are at any time brought upon the Lands;
 - (vi) any other form of insurance which the Landlord, acting reasonably, requires from time to time in form, in amounts and for risks against which a prudent tenant would insure.
- (b) All policies shall:
- (i) Insurance shall be in the name of both 772921 Alberta Inc. and Wallace & Carey Inc and shall be taken out with insurers acceptable to the Landlord, acting reasonably;
 - (ii) be in a form satisfactory from time to time to the Landlord, acting reasonably, which form may include a reasonable deductible, the amount of which will be subject to the Landlord's approval, which approval may not be unreasonably withheld;
 - (iii) be non-contributing with and shall apply only as primary and not as excess to any other insurance available to the Landlord;
 - (iv) exclude the exercise of any claim of the insurer or insurers, whether by subrogation or otherwise, against the Landlord and against those for whom the Landlord is in law responsible;
 - (v) contain an undertaking by the insurers to notify the Landlord in writing not less than thirty (30) days prior to any cancellation thereof; and
 - (vi) name the Landlord as an additional insured party.
- (c) Certificates of insurance or if required by the Landlord certified copies of each such insurance policy will be delivered to the Landlord as soon as practicable after the placing of the required insurance and in any event within ten (10) days of the effective date of coverage. Provided that no review or approval of any such insurance certificate by the Landlord shall derogate from or diminish the Landlord's rights or the Tenant's obligations contained in this Article.
- (d) If the Tenant fails to take out or keep in force any insurance referred to in this Section, or should any such insurance not be approved by the Landlord and should the Tenant not commence diligently to rectify (and thereafter proceed diligently to rectify) the situation within twenty-four (24) hours after written notice by the Landlord to the Tenant (stating, if the Landlord does not approve of such insurance, the reasons therefore), the Landlord has 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 paid by the Tenant to the Landlord on demand as Additional Rent without prejudice to any other rights and remedies of the Landlord under this Lease.
- (e) The Tenant agrees that in the event of damage or destruction to the Leasehold Improvements in the Leased Premises covered by insurance pursuant to subclause (a)(i), the Tenant shall use the proceeds of such insurance for the purpose of repairing or restoring such Leasehold Improvements. In the event of damage to or destruction of the Complex or the Building entitling the Landlord to terminate the Lease pursuant to Section 10.01(b) or 10.02, then if the Leased Premises have also been damaged or destroyed and the Lease is terminated, the Tenant shall forthwith pay to the Landlord all of its insurance proceeds relating to the Leasehold Improvements in the Leased Premises and if the Leased Premises have not been damaged or destroyed, the Tenant shall upon demand deliver to the Landlord in accordance with the provisions of this Lease the Leasehold Improvements and the Leased Premises.

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SECTION 8.02 - INCREASE IN INSURANCE PREMIUMS

The Tenant shall not keep, use, sell or offer to sell in or upon the Leased Premises any article which may be prohibited by any fire insurance policy in force from time to time covering the Leased Premises, the Building or the Complex. If:

- (a) the occupation of the Leased Premises;
- (b) the conduct of business in the Leased Premises; or
- (c) any act or omission of the Tenant in the Complex or any part thereof;

causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Complex, the Tenant shall pay any such increase in premiums as Additional Rent forthwith upon demand by the Landlord. In determining whether increased premiums are caused by or result from the use or occupancy of the Leased Premises, a schedule issued by the organization computing the insurance rate on the Complex showing the various components of such rate shall be conclusive evidence of the several items and charges which make up such rate. The Tenant shall comply promptly with all requirements of any insurer now or hereafter in effect pertaining to or affecting the Leased Premises, the Building or the Complex.

SECTION 8.03 - CANCELLATION OF INSURANCE

If any insurance policy upon the Complex or any part thereof shall be cancelled or shall be threatened by the insurer to be cancelled or the coverage thereunder reduced in any way by the insurer by reason of the use or occupation of the Leased Premises or any part thereof by the Tenant or by any assigns or Subtenant of the Tenant, or by anyone permitted by the Tenant to be upon the Leased Premises, the Tenant shall remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within twenty-four (24) hours after Notice thereof by the Landlord.

SECTION 8.04 - LOSS OR DAMAGE


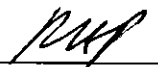
The Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Complex, or damage to property of the Tenant or of others located on the Leased Premises or elsewhere in the Complex, nor shall it be responsible for any loss of or damage to any property of the Tenant or others from any cause whatsoever, except for any such death, injury, loss or damage which results from the negligence of the Landlord, its agents, servants or employees or other persons for whom it may in law be responsible provided that in no event shall the Landlord be responsible for any loss, injury or damage contemplated by Section 8.07(b), or for any indirect or consequential damages sustained by Tenant or others. Without limiting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, dampness, falling plaster, falling ceiling tiles, falling ceiling fixtures or from steam, gas, electricity, water, rain, flood, snow or leaks from any rentable premises or from any rentable premises or from the pipes, sprinklers, appliances, plumbing works, roof windows or subsurface of any floor or ceiling of the Complex or from the street or any other place or by any other cause whatsoever. The Landlord shall not be liable for any such damage caused by other tenants or persons in the Complex or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of the Tenant only and the Tenant shall indemnify the Landlord and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Tenant's insurers.

SECTION 8.05 - LANDLORD'S INSURANCE

The Landlord shall at all times throughout the Term carry:

- (a) insurance on the Building and any machinery, boilers and equipment contained therein or servicing the Building and owned by the Landlord or the owners of the Complex and constituting Common Use Equipment (specifically excluding any property with respect to which the Tenant and other tenants are obliged to insure pursuant to Section 8.01 or similar sections of their respective leases) against damage by fire and extended perils or all-risks coverage;
- (b) public liability and property damage insurance with respect to the landlord's operations and interest in the Complex;
- (c) loss of rental income insurance, or loss of insurable gross profits commonly insured against by prudent landlords, including loss of all rentals receivable from tenants in the Complex in accordance with the provisions of their leases, including basic and additional rentals; and

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- (d) such other form or forms of insurance as the Landlord or the Mortgagee reasonably considers advisable.

Such insurance shall be in reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a reasonably similar building, having regard to size, age, use and location. Notwithstanding the Landlord's covenant contained in this Section, and notwithstanding any contribution by the Tenant to the cost of insurance premiums provided herein, the Tenant acknowledges and agrees that no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord, and the Tenant has no right to receive any proceeds of any such insurance policies carried by the Landlord.

SECTION 8.06 - INDEMNIFICATION OF THE LANDLORD

Except as provided in Section 8.07(a) but notwithstanding any other provision of this Lease, the Tenant shall indemnify the Landlord and save it harmless from and against any loss (including loss of Basic Rent and Additional Rent), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising out of this Lease, or any occurrence in, upon or at the Leased Premises, or the occupancy or use by the Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. If the Landlord shall, without fault on its part, be made a party of any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses and legal fees that may be incurred or paid by the Landlord in reasonably enforcing the terms, covenants and conditions in this Lease unless a court of law having jurisdiction shall decide otherwise.

SECTION 8.07 - LIMITATIONS OF LIABILITY

Notwithstanding anything else in this Lease:


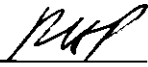
- (a) The Tenant shall not be liable to the Landlord in respect of any loss, injury or damage insured or required to be insured by the Landlord under Sections 8.05 (a) and (c); and
- (b) The Landlord shall not be liable to the Tenant in respect of any loss, injury or damage to property insured or required to be insured by the Tenant under Section 8.01(a)(i), (ii) and (iv).

ARTICLE 9 - MAINTENANCE, REPAIRS AND ALTERATIONS

SECTION 9.01 - MAINTENANCE AND REPAIRS BY THE TENANT

- (a) Subject to Sections 10.01 and 10.02, the Tenant shall at all times at its sole cost, keep, maintain and repair the Leased Premises, exclusive of Common Use Equipment, in good order, first class condition and repair (which shall include, without limitation, periodic painting and decoration), as determined by the Landlord, acting reasonably. The Tenant covenants to operate, keep, maintain and repair in accordance with the foregoing, any heating, cooling, ventilating, air conditioning system, plumbing or other mechanical installation serving only the Leased Premises, whether or not such items were installed or furnished by the Tenant and to maintain a temperature sufficient at all times to prevent damage to the Complex by cold or freezing and to prevent any other tenant of the Complex having to incur higher than normal heating costs; provided that the Landlord shall have the right, upon Notice to the Tenant, to maintain and repair any such system or installation and in such case the Tenant shall pay to the Landlord on demand as Additional Rent the cost to the Landlord of such maintenance and repair. The Tenant covenants to perform such maintenance such repairs, including major, minor, necessary and lesser repairs and hereby expressly releases the Landlord from performing necessary repairs. The Tenant shall not be required to effect those repairs in and to the Leased Premises which are expressly the obligation of the Landlord pursuant to Section 9.03 of this Lease.
- (b) The Tenant shall examine the Leased Premises before taking possession thereof and upon taking possession of the Leased Premises, the Tenant shall conclusively be deemed to have accepted the condition of the Leased Premises as in every way satisfactory to its purposes save as may be expressly stated herein. The Tenant agrees that there is no promise, representation or undertaking by or binding upon the Landlord with respect to the use of the Leased Premises or any alteration, remodelling or redecorating of or installation of equipment or fixtures in the Leased Premises, except such, if any, as are expressly set forth in this Lease and in Schedule "E" hereto.

Initials

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SECTION 9.02 - LANDLORD'S APPROVAL OF THE TENANT'S REPAIRS

- (a) Whether prior to the Commencement Date or during the Term of this Lease or any renewal or extension hereof, the Tenant shall not make any change, alteration, repair, Leasehold Improvements or installation in any part of the Leased Premises which affects the structure or perimeter walls, any sprinkler system, any heating, ventilating and/or air conditioning system, the plumbing, electrical and mechanical equipment or systems, the bearing floors, signage, ceilings, columns or roof nor make any change, alteration, major repair, addition or improvement to the Leasehold Improvements without first obtaining the Landlord's written approval, such approval not to be unreasonably withheld or delayed, and in connection therewith the Tenant shall, prior to commencing any such work, submit to the Landlord:
- (i) for its prior approval details of the proposed work, including drawings and specifications prepared by qualified architects or engineers acceptable to the Landlord and its architects or engineers and conforming to good engineering practice;
 - (ii) such indemnification against liens, costs, damages and expenses (including its costs and expenses incurred, or which may be incurred, in reviewing the proposed work and supervising its completion) and such insurance coverages as the Landlord requires; and
 - (iii) evidence satisfactory to the Landlord that the Tenant has obtained at its expense all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction.
- (b) All changes, alterations, repairs, Leasehold Improvements or installations made or installed by the Tenant in the Leased Premises shall be performed:
- (i) with first class materials owned by the Tenant at the sole cost of the Tenant;
 - (ii) by competent workmen whose labour union affiliations are compatible with others employed by the Landlord and its contractors;
 - (iii) in a good and workmanlike manner such that it will not interfere or conflict with any activities of the Landlord or any other Tenant or with the operation of the Complex;
 - (iv) in accordance with the drawings and specifications approved by the Landlord and its architects or engineers; and
 - (v) subject to the reasonable regulations, supervision, controls and inspection of the Landlord.
- (c) If any such repairs, replacements, Leasehold Improvements or trade fixtures would affect the structure of the Building, or any of the electrical, mechanical or other base building systems or their warranties, such work shall, at the option of the Landlord, be performed by the Landlord at the Tenant's expense. If such would affect such warranties, the Landlord may reasonably refuse to allow such work to be done. Upon completion thereof, and thereafter, to the extent requiring ongoing maintenance, repair or replacement, the Tenant shall pay to the Landlord as Additional Rent the cost of such work, maintenance, repair or replacement.
- (d) Upon being invoiced therefor, the Tenant shall pay to the Landlord, as Additional Rent, an amount equal to the reasonable costs and fees of the Landlord, direct and indirect for its services in monitoring the Tenant's construction and installation of Leasehold Improvements pursuant to any agreement between Landlord and the Tenant prior to or at the commencement of the Term (which costs shall include the costs of review and approval of plans and specifications by the Landlord's in-house staff, any cost or expense incurred by the Landlord in respect of approval of plans, and supervision and/or inspection of such work by the Landlord's architects and engineers, the cost of garbage removal from the Complex loading dock, and the cost of the utilities consumed in connection therewith (collectively, the "Included Costs")). Thereafter, in respect of future Leasehold Improvements and future repairs, alterations or replacements of or to the Tenant's Leasehold Improvements, the Tenant shall pay to the Landlord, as Additional Rent, an amount equal to the reasonable costs and fees of the Landlord, direct and indirect, for its services in monitoring the Tenant's construction and installation thereof or the conduct thereof, as the case may be (which costs and fees shall include the Included Costs).

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SECTION 9.03 - MAINTENANCE AND REPAIRS BY THE LANDLORD

- (a) Subject to Section 9.05 and Article 10, the Landlord shall make such repairs to the Common Facilities and structural components of the Complex as the Landlord, acting reasonably, considers necessary. The structural components of the Complex include, without limitation, footings, foundations, pads, piers, columns, bearing walls, beams and joists but do not include interior glass, glass forming exterior walls of the Complex or any other component of the Leased Premises.
- (b) If the Tenant refuses or neglects to carry out any repairs properly required to be carried out by it under this Lease and to the reasonable satisfaction of the Landlord, the Landlord may, but shall not be obliged to, make such repairs without being liable for any loss or damage that may result to the Tenant's merchandise, fixtures or other property or to the Tenant's merchandise, fixtures or other property or to the Tenant's business by reason thereof and upon completion thereof, the Tenant shall pay to the Landlord forthwith upon demand as Additional Rent the cost of such repairs.

SECTION 9.04 - SURRENDER OF THE LEASED PREMISES

At the expiration of the Term or earlier termination of this Lease, the Tenant shall peaceably surrender and yield up the Leased Premises to the landlord in as good condition and repair as the Tenant is required to maintain the Leased Premises throughout the Term, reasonable wear and tear excepted, and the Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of rent. The Tenant shall, however, remove all of its trade fixtures and any Leasehold Improvements if requested by the Landlord as provided in Section 9.08 hereof before surrendering the Leased Premises as aforesaid. The Tenant's obligations under this covenant shall survive the expiration of the Term or earlier termination of this Lease.

SECTION 9.05 - REPAIR WHERE THE TENANT IS AT FAULT

Save for the limitation of liability contained in Section 8.07(a) but notwithstanding any other provision of this Lease, if the Complex or any part thereof, or any equipment, machinery, facilities or improvements contained therein or made thereto, or the roof or outside walls of the Complex or any other structural portions thereof require repair or replacement or become damaged or destroyed by reason of any act, omission to act, neglect or default of the Tenant or those for whom the Tenant is in law responsible or through any of them in any way stopping up or damaging the climate control, heating apparatus, water pipes, drainage pipes or other equipment or facilities or parts of the Complex or the Building, the cost of the resulting repairs, replacements or alterations together with an additional amount equal to fifteen percent (15%) of such costs shall be forthwith paid by the Tenant as Additional Rent:

SECTION 9.06 - TENANT NOT TO OVERLOAD FACILITIES

The Tenant shall not install any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises, and the Tenant will not bring into the Leased Premises or install any utility, electrical or mechanical facility or service which the Landlord does not approve. The Tenant agrees that if any changes proposed or use by the Tenant requires additional utility, electrical or mechanical facilities, the Landlord may, in its sole discretion, if they are available, elect to install them in accordance with plans and specifications to be approved in advance in writing by the Landlord and the cost thereof shall be paid to the Landlord as Additional Rent.

SECTION 9.07 - TENANT NOT TO OVERLOAD FLOORS

The Tenant shall not bring upon the Complex or the Leased Premises or any part thereof any machinery, equipment, article or thing that by reason of its weight, size or use might in the reasonable opinion of the Landlord damage the Complex or the Leased Premises and shall not at any time overload the floors of the Leased Premises.

SECTION 9.08 - REMOVAL AND RESTORATION BY TENANT

All Leasehold Improvements shall immediately become the property of the Landlord upon affixation or installation without compensation therefore to the Tenant, but the Landlord is under no obligation to repair, maintain or insure any Leasehold Improvements. Leasehold Improvements and trade fixtures shall not be removed from the Leased Premises either during or at the expiration or earlier termination of the Term except that:

- (a) the Tenant may during the Term in the usual or normal course of its business and without the prior written consent of the Landlord remove its trade fixtures provided that the Tenant is not in default under this Lease; and
- b) the Tenant shall, immediately prior to the expiration of the Term and at its own cost, remove all trade fixtures and such of the Leasehold Improvements as the Landlord requires to be removed and all signs of the Tenant and repair any damage to the Leased Premises caused by installation

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and removal of such trade fixtures, Leasehold Improvements or signs, failing which such may be completed and repaired by the Landlord and the cost to the Landlord shall be paid by the Tenant to the Landlord as Additional Rent.

- c) The *previous* Tenant Wallace & Carey Inc over previous years installed the following refrigeration systems in the building:
- (i) a milk cooler in Bay 5 c/w refrigeration equipment mounted on the building roof
 - (ii) a second cooler in Bay 6 c/w refrigeration equipment mounted on the building roof
 - (iii) a large ice cream freezer in Bay 2 c/w Bay 3 floor mounted refrigeration compressors plus condensing systems and economizers either mounted on Bay 2 or 3 roof or hung from the Bay 2 or 3 roof steel support girders. The ice cream freezer was installed with special circulating glycol heating coils underneath or embedded in the new freezer concrete floor. This floor was poured on top of the existing Bay 2 concrete floor. The heating coils were to prevent freezing of the existing concrete floor and of the existing piles holding up the roof of the building.
 - (iv) A small size ice cream freezer in Bay 1 c/w refrigeration compressor mounted inside the bay and on the roof of the cooler unit.

This equipment is all considered in this lease as a Tenant trade fixture and as such when the *existing* lease or a *future* lease terminates shall be removed by Tenant at Tenant's sole expense, leaving the various bays in the same general condition prior to the Tenant doing these Tenant Improvements.

The following areas are herein specifically identified as requiring special attention and Tenant shall bring the building back to original condition when removing Tenant's trade fixtures:

- all roof penetrations for cold air ducting, for refrigerant fluid piping, and for electrical wiring shall be removed and the roof holes shall be filled in and patched to the same standard as the existing roof covering.
- all previous bay lighting which may have been deactivated due to the refrigeration systems installation shall be reinstalled or replaced with new lighting to provide adequate lighting where the coolers/freezers were removed by Tenant.
- anchor bolts for the coolers/freezers shall be cut off flush and any holes in the concrete shall be repaired.
- the concrete floor c/w heating coils in Bay 2 freezer area shall all be removed and the floor shall be restored to original condition, repairing any damage
- any protective padding installed on the roof to minimize roof damage which could result from the weight of refrigeration equipment shall be removed and the roof shall be repaired if necessary.

For clarity, the following items are not Tenant's trade fixtures and are considered as Leasehold Improvements to be left in the building on eventual lease termination: all electrical panels, switches, wiring and conduit, the main building transformer upgrade, except any wiring protruding through the roof which shall be removed from the roof in a manner to provide a safe working electrical supply system.

All property of the Tenant remaining on the Leased Premises after the termination of the tenancy shall be deemed to have been abandoned by the Tenant in favour of the Landlord and may be disposed of by the Landlord at its discretion without prejudice to the rights of the Landlord to claim damages from the Tenant for failure to remove the same. The Tenant's obligations under this Section shall survive the expiration of the Term or earlier termination of this Lease.

SECTION 9.09 - NOTICE BY THE TENANT

The Tenant shall when it becomes aware of same notify the Landlord by Notice of any material damage to or deficiency or defect in any part of the Complex, including the Leased Premises, and any Common Facilities notwithstanding the fact that the Landlord may have no obligations with respect to same.

SECTION 9.10 - TENANT TO DISCHARGE ALL LIENS

The Tenant shall at all times ensure that no person has any right to register any lien against either the Leased Premises or the Lands on account of any services or materials supplied with respect to the Leased Premises. In the event of any such lien being so registered, the Tenant shall promptly discharge the same. The Landlord shall be entitled to discharge any such lien registered and not discharged by the Tenant within fifteen (15) business days of registration and the Tenant shall pay to the Landlord forthwith all amounts, costs and expenses including the Landlord's legal fees on a solicitor and client basis incurred by the Landlord as a result of its discharging such lien together with an additional amount equal to fifteen percent (15%) of such amounts.

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Landlord Waiver (Bailee letter) to Canadian Imperial Bank of Commerce – Landlord has executed a waiver in favour of the CIBC re rights to the Collateral of Wallace & Carey Inc. This waiver is attached to this lease document as Schedule H.

SECTION 9.11 - SIGNS AND ADVERTISING

All signs installed by the Tenant at the Leased Premises shall conform to the Landlord's policy for identification signs for the Complex, and other than such identification signs, the Tenant shall not paint, affix or display any sign, picture, advertisement, notice, lettering or decoration on any part of the Complex or the Leased Premises for exterior view without the prior written consent of the Landlord which consent may be unreasonably withheld. Any such signs shall remain the property of the Tenant and shall be maintained at the Tenant's sole cost and expense.

ARTICLE 10 - DAMAGE AND DESTRUCTION

SECTION 10.01 - DESTRUCTION OF THE LEASED PREMISES

- (a) If the Leased Premises are at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty required to be insured against by the Landlord pursuant to Section 8.05 hereof or otherwise insured against by the Landlord, and if as a result of such occurrence:
- (i) the Leased Premises are rendered untenable only in part, this Lease shall continue in full force and effect and the Landlord shall, subject to Sections 10.01(b) and 10.02(a) hereof, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent only of its obligations under Section 9.03, and if the damage is such that the portion of the Leased Premises rendered untenable is not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of ten (10) days, Rent shall abate proportionately to the portion of the Leased Premises rendered untenable from and after the date the damage occurred and until the Landlord's repairs have been completed;
 - (ii) the Leased Premises are rendered wholly untenable for a period in excess of ten (10) days, this Lease shall continue in full force and effect and the Landlord shall, subject to Sections 10.01(b) and 10.02(a) hereof, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent only of its obligations under Section 9.03 and Rent shall abate entirely from and after the date the damage occurred and until the Landlord's repairs have been completed;
 - (iii) the Leased Premises are not rendered untenable in whole or in part, this Lease shall continue in full force and effect, the Rent and other amounts payable by the Tenant shall not terminate, be reduced or abate and the Landlord shall, subject to Sections 10.01(b) and 10.02(a) hereof, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent only of its obligations under Section 9.03.
- (b) Notwithstanding anything contained in Section 10.01(a), if the Leased Premises are damaged or destroyed by any cause whatsoever, and if, in the opinion of the Landlord reasonably arrived at, the Leased Premises cannot be reconstructed, rebuilt or repaired and made fit for the purposes of the Tenant within one hundred and twenty (120) days of the happening of the damage or destruction, the Landlord, instead of reconstructing, rebuilding or repairing the Leased Premises in accordance with Section 10.01(a), may at its option elect to terminate this Lease by giving to the Tenant Notice of termination within forty-five (45) days after such damage or destruction, and thereupon Rent and other payments for which the Tenant is liable under this Lease shall be apportioned and paid to the date of such damage or destruction, and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord in accordance with the terms of this Lease.
- (c) Upon the Tenant being given Notice by the Landlord that the Landlord's reconstruction, rebuilding or repairs have been substantially completed, the Tenant shall forthwith complete all repairs to the Leased Premises which are the Tenant's responsibility under Section 9.01 and all other work required to fully restore the Leased Premises for business in every case at the Tenant's cost and without any contribution to such cost by the Landlord, whether or not the Landlord has at any time made any contribution to the cost of supply, installation or construction of Leasehold Improvements in the Leased Premises. The Tenant shall diligently complete the Tenant's repairs and if the Leased Premises have been closed for business, commence carrying on business within sixty (60) days after Notice that the Landlord's reconstruction, rebuilding or repairs have been substantially completed.

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- (d) Nothing in this Section 10.01 requires the Landlord to rebuild the Leased Premises in the condition and state that existed before any such occurrence, provided that the Leased Premises as rebuilt will have reasonably similar facilities and services to those in the Leased Premises prior to the damage or destruction having regard, however, to the age of the Complex at such time.

SECTION 10.02 - DESTRUCTION OF THE COMPLEX

- (a) Notwithstanding anything contained in this Lease and specifically notwithstanding the provisions of Section 10.01 hereof, if:

- (i) thirty-five percent (35%) or more of the area of the Building or the Complex; or
- (ii) fifty percent (50%) or more of the Total Building Rentable Area;

is damaged or destroyed by any cause whatsoever (irrespective of whether the Leased Premises are damaged or destroyed) and if, in the opinion of the Landlord reasonably arrived at, such area of the Building or the Complex or the Total Building Rentable Area, as the case may be, so damaged or destroyed cannot be rebuilt or made fit for the purposes of such space within one hundred and twenty (120) days of the happening of the damage or destruction; then and so often as any of such events occur, the Landlord may, at its option (to be exercised by Notice to the Tenant within thirty (30) days following any such occurrence), elect to terminate this Lease. In the case of such election, the Term and the tenancy hereby created shall expire upon the sixtieth (60th) day after such Notice is given, without indemnity or penalty payable by, or any other recourse against the Landlord, and the Tenant shall, within such sixty (60) day period, vacate the Leased Premises and surrender them to the Landlord, with the Landlord having the right to re-enter and repossess the Leased Premises discharged of this Lease and to expel all persons and remove all property therefrom. Rent shall be due and payable without deduction or abatement subsequent to the destruction or damage and until the date of termination, unless the Leased Premises shall have been destroyed or damaged as well, in which event Section 10.01 shall apply.

- (b) If all or any part of the Complex is at any time destroyed or damaged as set out in Section 10.02 (a), and the Landlord does not elect to terminate this Lease in accordance with the rights hereinbefore granted, the Landlord shall, following such destruction or damage, commence diligently to reconstruct, rebuild or repair, if necessary, that part of the Complex or the Building which was damaged or destroyed, but only to the extent of the Landlord's responsibilities pursuant to the terms of the various leases for the premises in the Complex and the Building, as the case may be, and exclusive of any tenant's responsibilities set out therein. If the Landlord elects to repair, reconstruct or rebuild the Complex and the Building, as the case may be, or any part thereof, the Landlord may repair, reconstruct or rebuild according to plans and specifications and working drawings other than those used in the original construction of the Complex and the Building, as the case may be, or any part thereof.



ARTICLE 11 - TRANSFER AND SALE

SECTION 11.01 - ASSIGNING AND SUBLETTING

The Tenant will not enter into, consent to or permit a Transfer without the prior written consent of the Landlord in each instance, which consent shall not be unreasonably withheld. It shall not be considered unreasonable for the Landlord to take into account the following factors in deciding whether to grant or withhold its consent:

- (a) whether any such Transfer is in violation or breach of any covenants or restrictions granted by the Landlord to its Mortgagee, other tenants or occupants or prospective tenants or occupants in the Complex;
- (b) whether in the Landlord's opinion the financial background, business history and capability of the proposed transferee is satisfactory;
- (c) whether in the Landlord's opinion the proposed use of the Leased Premises by a proposed transferee presents an unacceptable risk of environmental contamination; and
- (d) Deleted
- (e) whether the proposed person or entity to whom the Transfer is being made is an existing tenant in the Complex.

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(f) Deleted

The consent by the Landlord to any Transfer, if granted, shall not constitute a waiver of the necessity for such consent to any subsequent Transfer, whether by the Tenant or any sublessee of the Tenant. This prohibition against a Transfer is construed so as to include a prohibition against any Transfer by operation of law and Transfer shall take place or be deemed to have been consented to or approved by reason of a failure by the Landlord to give notice to the Tenant within thirty (30) days as required by Section 11.02.

SECTION 11.02 - CONDITIONS OF TRANSFER

- (a) If there is a permitted Transfer, the Landlord may collect rent from the transferee and apply the net amount collected to the Rent required to be paid pursuant to this Lease, but no acceptance by the Landlord of any payments by the transferee shall be deemed a waiver of the provisions of Article 11 hereof or the acceptance of the transferee as tenant or a release of the Tenant from the further performance by the tenant of the covenants or obligations on the part of the Tenant herein contained. Any consent by the Landlord shall be subject to the Tenant executing and causing any such transferee to execute promptly an agreement directly with the Landlord agreeing:
- (i) to be bound by all of the terms, covenants and conditions contained in this Lease as if such transferee had originally executed this Lease as tenant; and
 - (ii) to pay Rent directly to the Landlord if requested to do so by the Landlord.
- (b) Notwithstanding any such Transfer permitted or consented to by the Landlord, the Tenant shall be jointly and severally liable with the transferee under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.
- (c) The Tenant agrees that if this Lease is ever disclaimed, terminated or repudiated in a bankruptcy proceeding or proposal relating to a transferee, or if the Landlord terminates this Lease as a result of any act or default of any transferee, the Tenant shall, at the Landlord's option exercised by Notice to the Tenant, enter into a new lease of the Leased Premises on terms identical to this Lease for a term commencing on the date which the Landlord exercises its right to require the Tenant to enter into such new lease and expiring upon the date of expiry of this Lease; in such event, the Tenant will accept the Leased Premises in an "as is" condition.
- (d) The Landlord's consent to any Transfer shall be subject to the condition that the Basic Rent payable by the transferee thereafter shall be the greater of (i) the Basic Rent payable hereunder and (ii) the Basic Rent payable under the Transfer agreement, and the Tenant (or the transferee at the election of the Landlord) shall pay the full amount payable by the transferee as Basic Rent to the Landlord.
- (e) Any document or consent evidencing any Transfer permitted by the Landlord or setting out any terms applicable to such Transfer or the rights and obligations of the Tenant or the transferee thereunder, shall be prepared by the Landlord or its solicitors, and all reasonable legal and other costs with respect thereto shall be paid by the Tenant to the Landlord or its solicitors forthwith upon demand as Additional Rent.

SECTION 11.03 - NO ADVERTISING OF THE LEASED PREMISES

The Tenant shall not print, publish, post, display, or broadcast any notice or advertisement or otherwise advertise the whole or any part of the Leased Premises for the purpose of any Transfer and it shall not permit any broker or other person to do any of the foregoing, unless the complete text and format of any such notice or advertisement is first approved in writing by the Landlord, such consent not to be unreasonably withheld. Without in any way restricting or limiting the Landlord's right to refuse any text or format on other grounds, any text or format proposed by the Tenant shall not contain any reference to the Rent nor to any proposed rent sought by the Tenant of and for the Leased Premises.



SECTION 11.04 - CORPORATE OWNERSHIP

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SECTION 11.05 - ASSIGNMENT BY THE LANDLORD

The Landlord, at any time and from time to time, may sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in the Complex, and at any time and from time to time may enter into any Mortgage of the whole or any part of its interest in the Complex. If the party acquiring such interest shall have agreed, so long as it holds such interest, to assume and to perform each of the covenants, obligations and agreements of the Landlord under this Lease in the same manner and to the same extent

Initials

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as if originally named as the Landlord in this Lease, the Landlord shall thereupon be released from all of its covenants and obligations under this Lease.

ARTICLE 12 - ACCESS AND ALTERATIONS

SECTION 12.01 - RIGHT OF ENTRY

The Landlord and its agents have the right to enter the Leased Premises at all reasonable times on prior reasonable notice and at any time in cases of emergency to examine the same and to make such repairs, alterations, changes, checks, adjustments, calibrations, improvements or additions to the Leased Premises or the Complex or any part thereof or systems therein or any adjacent to the Leased Premises. The Tenant shall not obstruct any pipes, conduits, ducts, mechanical shafts or electrical equipment so as to prevent reasonable access thereto.

SECTION 12.02 - RIGHT TO SHOW LEASED PREMISES

The Landlord and its agents have the right to enter the Leased Premises at all times during business hours to show them to prospective purchasers, lessees or Mortgagees and during the twelve (12) months prior to the expiration of the Term, the Landlord may place upon the Leased Premises the usual "For Rent" notices which the Tenant shall permit to remain thereon without molestation or complaint.

SECTION 12.03 - ENTRY NOT FORFEITURE

No entry into the Leased Premises or anything done therein by the Landlord pursuant to a right granted by this Lease shall constitute a breach of any covenant for quiet enjoyment, or (except where expressed by the Landlord in writing) shall constitute a re-entry of forfeiture, or any actual or constructive eviction. The Tenant shall have no claim for injury, damages or loss suffered as a result of any such entry of thing done by the Landlord unless the Landlord acted negligently or recklessly in effecting such entry. The Rent required to be paid pursuant to this Lease shall not abate or be reduced due to loss or interruption of business of the Tenant or otherwise while any repairs, alterations, changes, adjustments, improvements or additions permitted by this Lease are being made by the Landlord.

SECTION 12.04 - LANDLORD'S COVENANT FOR QUIET ENJOYMENT

The Landlord hereby agrees to perform or cause to be performed all of the obligations of the Landlord under this Lease and further agrees that if the Tenant pay the Basic Rent and Additional Rent and continuously performs all its obligations under this Lease, the Tenant shall, subject to the terms and conditions of this Lease, peaceably possess and enjoy the Leased Premises throughout the Term without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming by, through or under the Landlord.

ARTICLE 13 - STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

SECTION 13.01 - STATUS STATEMENT

Within ten (10) days after request by Notice therefor by the Landlord, the Tenant shall deliver, in a form supplied by the Landlord, a status statement or a certificate to the Landlord, or to the Mortgagee or to any proposed Mortgagee or purchaser, or as the Landlord may otherwise direct stating that this Lease is in full force and effect, certifying the amount, if any, of any prepaid Rent, certifying the existence or not, as the case may be, of any defaults and any amendments to this Lease and any other matter which the Landlord may reasonably request.

SECTION 13.02 - SUBORDINATION AND ATTORNMENT

It is a condition of this Lease and the Tenant's rights granted hereunder that this Lease and all of the rights hereunder are and shall at all times be subject and subordinate to any and all Mortgages from time to time in existence against the lands. Upon request, the Tenant shall subordinate the Lease and all of its rights hereunder in such form as the Landlord reasonably requires to any and all Mortgages, and to all advance made or hereafter to be made upon the security thereof and, if requested, the Tenant shall attorn to the holder thereof. Any subordination will provide that the rights of the Tenant under this Lease shall not be interfered with so long as the Tenant is not in default hereunder. The form of such subordination shall be as required by the Landlord or any Mortgagee.

Initials _____



ARTICLE 14 - DEFAULT

SECTION 14.01 - RIGHT TO RE-ENTER

If and whenever:



- (a) the Tenant fails to pay any Basic Rent or Additional Rent or other sums due hereunder on the day or dates appointed for the payment thereof; or
- (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 subparagraphs (c) to (l), inclusive, for which no Notice shall be required), provided the Landlord first gives the Tenant ten (10) days' (or such shorter period of time as is otherwise provided herein) Notice of any such failure to perform and the Tenant within such period of ten (10) days (or such shorter period, as aforesaid) fails to commence diligently and, thereafter, to proceed diligently to cure any such failure to perform; or
- (c) the Tenant or any agent of the Tenant falsifies any report or statement required to be furnished to the Landlord pursuant to this Lease; or
- (d) the Tenant or any person occupying the Leased Premises or any part thereof or any licensee, concessionaire or franchisee operating any business in the Leased Premises becomes bankrupt or insolvent or takes the benefit of any act 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; or
- (e) a receiver or a receiver and manager is appointed for all or a portion of the property of the Tenant, or any such occupant, licensee, concessionaire or franchisee or a material adverse change in the financial status of the Guarantor occurs; or
- (f) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up, or liquidation of the Tenant or its assets; or
- (g) the Tenant makes a sale in bulk of any of its assets wherever situate (other than a bulk sale made pursuant to a permitted transfer hereunder and pursuant to applicable legislation); or
- (h) the Tenant abandons or attempts to abandon the Leased Premises or sells or disposes of a substantial part of the trade fixtures, goods and chattels of the Tenant or removes them from the Leased Premises; or
- (i) the Leased Premises become and remain vacant for a period of thirty (30) consecutive days or are used by any persons other than such as are entitled to use them hereunder; or
- (j) the Tenant purports to make a Transfer, except in a manner permitted by this Lease; or
- (k) this Lease or any of the Tenant's assets are taken under any writ of execution; or
- (l) re-entry is permitted under any other terms of this Lease,

then and in every such case, the Landlord, in addition to any other rights or remedies it has pursuant to this Lease or by law, has the immediate right of re-entry upon the Leased Premises and it may repossess the Leased Premises and enjoy them as of its former estate and may expel all persons and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord as it 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 resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

SECTION 14.02 - RIGHT TO RE-LET

If the Landlord elects to re-enter the Leased Premises as herein provided or it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as are necessary to re-let the Leased Premises or any part thereof for such terms or terms (which may be for a term extending beyond the Term) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion, acting reasonable, considers advisable. Upon each such reletting, all rent received by the Landlord from such re-letting shall be applied, first, to the payment of any indebtedness

Initials

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other than Basic Rent or Additional Rent due hereunder from the Tenant to the Landlord; second, to the payment of any brokerage fees and legal fees and of costs of such alterations, repairs and re-letting (including tenant inducements); third, to the payment of Basic Rent and Additional Rent due and unpaid hereunder; and the residue, if any, to the extent applicable to any period of time within the Term, shall be held by the Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If such rent to be received from such re-letting during any month is less than that to be paid during that month by the Tenant hereunder, the tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a Notice of such intention is given to the Tenant. Notwithstanding any such re-letting without termination, the Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

SECTION 14.03 - TERMINATION

If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of such breach, including the reasonable cost of recovering the Leased Premises, reasonable legal fees on a solicitor and his client basis and including the worth at the time of such termination of the amount of Basic Rent, Additional Rent and other charges required to be paid pursuant to this Lease for the remainder of the stated Term together with all other damages incurred by the Landlord by reason of any other default or breach of this Lease prior to such termination, all of which amounts shall be immediately due and payable by the Tenant to the Landlord.

SECTION 14.04 - ACCELERATED RENT

In any of the events referred to in Section 14.01, in addition to any and all other rights available to the Landlord, the full amount of the current month's instalment of Basic Rent and of all Additional Rent for the current month, together with the next three (3) months' instalments of Basic Rent and Additional Rent shall immediately become due and payable as accelerated rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

SECTION 14.05 - EXPENSES

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Basic Rent or Additional Rent or any other amount due under the Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the tenant to be kept or performed including damages sustained by the Landlord because of such breach, and such breach is established, the Tenant shall pay to the Landlord all reasonable expenses incurred therefor, including legal fees on a solicitor and client basis.

SECTION 14.06 - WAIVER OF DISTRESS

The Tenant hereby agrees that notwithstanding any law or statute now in force or hereafter enacted, none of the goods and chattels of the Tenant on the Leased Premises shall be exempt from levy by distress. If any claim is made for such exemption this provision may be pleaded as an estoppel against the Tenant. In the event that the Landlord is entitled to levy by distress for any arrears of Rent, the Tenant hereby authorizes the Landlord to enter the Leased Premises for the purpose of effecting such distress and the Landlord may use a pass key or such force as may in the circumstances be necessary to gain entrance to the Leased Premises for such purpose and the use of a key or such force shall not be deemed a re-entry or termination of this Lease.

SECTION 14.07 - LANDLORD MAY CURE TENANT'S DEFAULT OR PERFORM TENANT'S COVENANTS

If the Tenant fails to pay when due any amounts or charges required to be paid pursuant to this Lease, the Landlord after giving five (5) days' Notice to the Tenant may, but shall not be obligated to, pay all or any part of the same. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of Basic Rent, Additional Rent or other sums required to be paid pursuant to this Lease), the Landlord may, but shall not be obliged to, from time to time after giving such Notice as it considers sufficient (or without notice as provided for herein or in the case of an emergency) having regard to the circumstances, perform or cause to be performed any of such covenants or obligations, or any part thereof, and for such purpose may do such things as may be required, including, without limitation, entering upon the Leased Premises and doing such things upon or in respect of the Leased Premises or any part thereof as the Landlord reasonably considers requisite or necessary. All expenses incurred and expenditures made pursuant to this Section 14.07 including the Landlord's overhead in connection therewith shall be paid by the Tenant as Additional Rent forthwith upon demand.

SECTION 14.08 - ADDITIONAL RENT

If the Tenant is in default in the payment of any amount or charges required to be paid pursuant to this Lease, they shall, if not paid when due, be collectible as Additional Rent forthwith on demand, but

Initials _____

nothing herein contained is deemed to limit any other remedy of the Landlord. All such monies payable to the Landlord hereunder and all arrears of rent generally shall bear interest at a rate per annum which is two (2) percentage points in excess of the Bank Rate calculated on a daily basis from the time such sums or any Rent becomes due until paid by the Tenant.

SECTION 14.09 - REMEDIES GENERALLY

Mention in this Lease of any particular remedy of the Landlord in respect of the default by the Tenant does not preclude the Landlord from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided in this Lease. No remedy shall be exclusive or dependant upon any other remedy, but the Landlord may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative. In the event of a breach or threatened breach by the Tenant of any of the covenants, provisions or terms hereof, the Landlord shall have the right to invoke any remedy allowed at law or in equity (including injunction) as if re-entry and other remedies were not provided for herein.

SECTION 14.10 - HOLDING OVER

If the Tenant shall hold over after the original Term or any term hereof with the consent of the Landlord, such holding over shall be construed to be a tenancy from month to month only and shall have no greater effect, any custom, statute, law or ordinance to the contrary notwithstanding. Such month-to-month tenancy shall be governed by the terms and conditions hereof, notwithstanding any statutory provision or rule of law to the contrary. During any such period of holding over, whether with the consent of the Landlord or not, the Tenant shall be required to pay twice the monthly Basic Rent payable during the month immediately preceding the expiration or termination of this Lease, plus all Additional Rent payable hereunder. The rights of the Landlord under this section shall be in addition to all other remedies available to the Landlord under this Lease or otherwise at law or in equity arising as a result of such holding over.

SECTION 14.11 - NO WAIVER

The failure of the Landlord to insist upon a strict performance of any of the covenants and provisions herein contained shall not be deemed a waiver of any rights or remedies that the Landlord may have and shall not be deemed a waiver of any subsequent breach or default in the covenants and provisos herein contained.

ARTICLE 15 - MISCELLANEOUS

SECTION 15.01 - RULES AND REGULATIONS


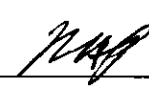
The Rules and Regulations adopted and promulgated by the Landlord from time to time acting reasonably including, without limitation, those set out in Schedule "C" attached, are hereby made a part of this Lease as if they were embodied herein, and the Tenant shall comply with and observe the same. Failure by the Tenant to keep and observe any of the Rules and Regulations now or from time to time in force constitutes a default under this Lease. The Landlord reserves the right from time to time to amend or supplement the Rules and Regulations applicable to the Leased Premises or the Complex. Notice of amendments and supplements to Rules and Regulations shall be given to the Tenant and the Tenant shall thereupon comply with and observe all such Rules and Regulations, provided that no Rule or Regulation shall contradict any terms, covenants and conditions of this Lease. The Landlord is not responsible to the Tenant in the event of non-observance or violation of any of such Rules and Regulations or of the terms, covenants or conditions of any other lease of the premises in the Complex and is under no obligation to enforce any such Rules and Regulations or terms, covenants or conditions. The Landlord shall use its reasonable efforts to obtain compliance of the Rules and Regulations by all tenants and other occupants within the Complex, but the Landlord may permit reasonable waivers so long as such waivers do not unreasonably interfere with or materially and adversely affect the Tenant in the conduct of its business in the Leased Premises or violate any right granted to the Tenant under this Lease.

SECTION 15.02 - DEPOSIT AND SECURITY DEPOSIT

The Landlord acknowledges receipt from the Tenant of a Deposit in the amount of *Forty-Seven (47) Thousand, Seven (7) Hundred, Sixteen (16) dollars and Twenty (20) (\$47,716.20)* This Deposit is allocated as follows:

Basic Rent for October, 2017	\$29,200.00
Additional Rent for October, 2017	\$16,244.00
GST - for October, 2017	\$2,272.20
Total Deposit	\$47,716.20

Initials

Landlord holds a damage deposit of \$37,063.34 consisting of the existing long time deposit of \$6,063.34 including GST presently held by landlord from the original lease of bays 5 & 6 plus an additional damage deposit of \$11,000 without any GST paid in a previous lease agreement dated September, 2005 and \$10,000 without any GST paid in the previous lease agreement dated September, 2010 and \$10,000 without any GST paid in the lease agreement with 772921 Alberta Inc. dated September 8, 2015. The Tenant acknowledges that at any given time the portion of the Damage Deposit which has not previously been applied to Basic Rent shall also be held by the Landlord to secure performance by the Tenant of its obligations and covenants under this Lease. The Landlord may apply the Damage Deposit to the payment of any amount not paid by the Tenant when due and payable hereunder without notice to the Tenant and the Tenant shall then forthwith pay to the Landlord on demand an amount equal to such payment to replenish the Damage Deposit.

SECTION 15.03 - HAZARDOUS SUBSTANCES

Schedule "F" attached forms a part of this Lease.

SECTION 15.04 - PEST CONTROL

The Tenant shall, at its expense and at such reasonable intervals as the Landlord may require, use such pest extermination contractors for the Leased Premises as the Landlord may direct. If the Tenant fails to exercise such pest control measures as so directed by the Landlord, the Landlord shall have the right at its option to exercise such pest control measures for the Leased Premises and the cost thereof shall be forthwith paid by the Tenant as Additional Rent.

SECTION 15.05 - OBLIGATIONS AS COVENANTS

Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

SECTION 15.06 - AMENDMENTS AND SUPPLEMENTARY LEASE PROVISIONS

This Lease shall not be modified or amended except by an instrument in writing of equal formality herewith and signed by the parties hereto or by their permitted successors or assigns. Each of the Landlord and Tenant agrees that, if a Schedule "E" is annexed to this Lease, the terms and provisions thereof shall be binding upon the parties hereto as part of the Lease.

SECTION 15.07 - TIME

Time shall in all respects be of the essence of this Lease.

SECTION 15.08 - SUCCESSORS AND ASSIGNS

This Lease and everything contained shall extend to and bind and enure to the benefit of the Landlord and its successors and assigns and the Tenant, and its successors and permitted assigns. No rights shall enure to the benefit of any transferee unless the provisions of Article 11 hereof relevant to such transferee are complied with.

SECTION 15.09 - GOVERNING LAW

This Lease shall be construed and governed by the laws of the province in which the Lands are situated.

SECTION 15.10 - HEADINGS

The Section numbers, article numbers headings and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs or articles of this Lease nor in any way affect this Lease.

SECTION 15.11 - ENTIRE AGREEMENT



This Lease and the schedules attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than as are herein and therein set forth.

SECTION 15.12 - SEVERABILITY

If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, 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 or unenforceable shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 15.13 - NO OPTION

Initials

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant.

SECTION 15.14 - EXTENDED MEANINGS

The words "hereof", "herein", "hereunder" and similar expressions used in any section or subsection of this Lease relate to the whole of this Lease and not to that section or subsection only, unless otherwise expressly provided. The use of the neuter singular pronoun to refer to the Landlord or the Tenant is deemed a proper reference, even though the Landlord or the Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, association, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

SECTION 15.15 - UNAVOIDABLE DELAY

Notwithstanding anything to the contrary contained in this Lease, if either party hereto is bona fide delayed, or hindered in or prevented from the performance of, any term, covenant or act required hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. However, the provisions of this Section do not operate to excuse the Tenant from the prompt payment of Basic Rent, Additional Rent or any other payments required by this Lease, unless, through the fault of the landlord, the Leased Premises are not available for early occupancy by the Tenant by in which case the Commencement Date and the date on which Basic Rent first becomes payable shall be extended to dates acceptable to both Landlord and Tenant.

SECTION 15.16 - REGISTRATION

The Tenant agrees with the Landlord not to register this Lease under *The Land Titles Act*. The Tenant may, with the prior approval of the Landlord, not to be unreasonably withheld, register a Caveat under *The Land Titles Act* in respect of this Lease.

SECTION 15.17 - JOINT AND SEVERAL LIABILITY

The liability to pay Rent and perform all other obligations under this Lease of each individual, corporation, group, partnership or business association signing this Lease or otherwise agreeing to be bound by the terms hereof and of each partner or member of any such group, partnership or business association the partners or members of which are by law subject to personal liability, shall be deemed to be joint and several (including, in any event any person who ceases to be a partner or member or any person who becomes a partner or member, in each case following the execution of this Lease.)

SECTION 15.18 - NAME OF COMPLEX

The Landlord may designate, change, alter or remove the name of the Complex or any part thereof at any time without requiring the Tenant's consent thereto or incurring any liability to the Tenant thereby. Any trade name or mark adopted by the Landlord for the Complex shall be used by the Tenant only in association with its business conducted in or from the Leased Premises and subject to such limitations, regulations and restrictions as the Landlord may from time to time impose on its use. The Tenant will not acquire any rights to or interest in any such trade name or mark and shall cease all use thereof upon ceasing to be a permitted occupant of the Leased Premises.

SECTION 15.19 - CHANGES IN THE COMPLEX



This Lease shall affect only the Lands from time to time directly benefiting the Building as designated by the Landlord and as such Lands may from time to time be altered, varied, diminished, enlarged or supplemented by the Landlord. The Tenant shall, at the request of the Landlord, enter into such further assurances, releases or other documents as may reasonably be required by the Landlord to give effect to such alteration, variation, diminution, enlargement or supplementation, provided such does not unreasonably affect access to the Leased Premises.

IN WITNESS WHEREOF the Landlord and the Tenant have executed this Lease.

WILLOW HOLDINGS LTD.

Per: 

Initials

772921 ALBERTA INC.

Per: _____

Per: _____

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Miller Thomson
Project Mercury
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MLT


SCHEDULE "A"
LEGAL DESCRIPTION

PLAN 7710004
BLOCK 1
LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS

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Joel McClarty
Miller Thomson
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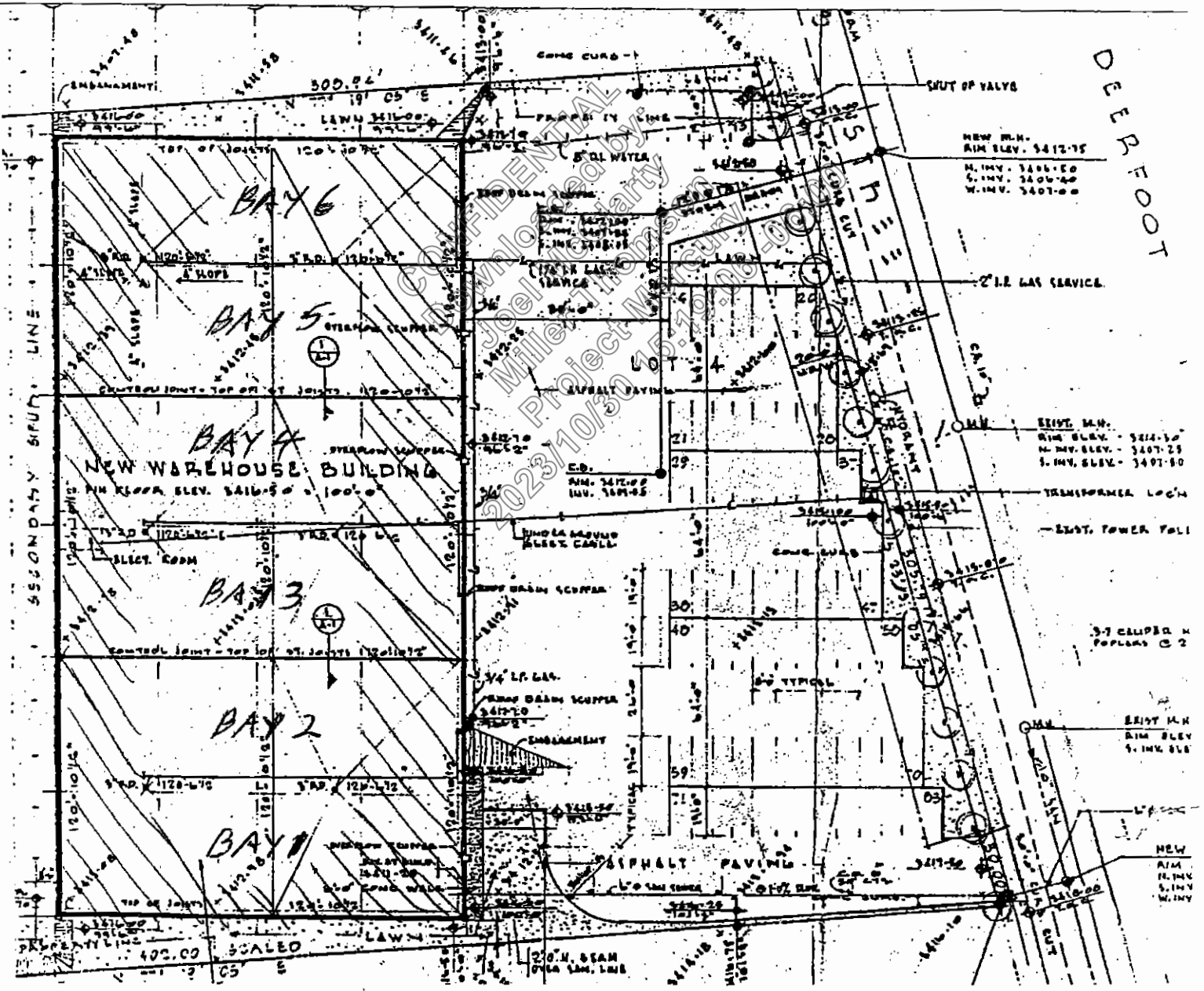
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Schedule "B"

PLAN SHOWING LOCATION OF LEASED PREMISES

The building location plan is for identification purposes only and is not to be interpreted as being a representation of warranty on the part of the Landlord as to the exact location, configuration and layout.



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SCHEDULE "C"

RULES AND REGULATIONS

1. The sidewalks, loading areas, hallways, entries, passages, elevators and staircases shall not be obstructed or used by the Tenant, his agents, servants, contractors, invitees or employees for any purpose other than ingress to and egress from the Leased Premises.
2. The Tenant shall not place or cause to be placed any additional locks or locking device upon any doors of the Leased Premises without the approval of the Landlord, and subject to any conditions imposed by the Landlord.
3. The water closets and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein and Tenants shall not let the water run unless it is in actual use. Any damage resulting from misuse shall be borne by the Tenant by whom or by whose agents, servants, or employees the same is caused.
4. No one shall use the Leased Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for business purposes.
5. Canvassing, soliciting and peddling in or about the Complex is prohibited.
6. No animals or birds shall be brought into the Complex or kept in the Leased Premises.
7. The Tenant shall not install or permit the installation or use of any machine dispensing goods for sale in the Leased Premises or the Complex other than vending machines designated for use by employees of the Tenant.
8. No Tenant shall do or permit anything to be done in or upon the Leased Premises, or bring or keep anything therein, which will in any way conflict with the laws relating to fire or with the regulations of the Fire Department or the Health Department, or with any of the rules or regulations of any governing authority having jurisdiction over the Complex.
9. Each Tenant shall keep the Leased Premises in a good state of preservation and cleanliness.
10. The Tenant shall not place or maintain any supplies, merchandise or other articles outside the Leased Premises.
11. The Tenant shall not place any debris, garbage, trash or refuse or permit the same to be placed or left in or upon any part of the Complex outside of the Leased Premises except areas designated for such purposes, and the Tenant shall not allow any undue accumulation of any debris, garbage, trash or refuse in the Leased Premises. If the Tenant is using perishable articles or generates wet garbage, the Tenant shall provide suitable storage facilities approved by the Landlord in writing and remove such garbage at such time or times as required by the Landlord.
12. No flammable oils or other flammable, dangerous or explosive materials (save those approved in writing by the Landlord's insurers), shall be kept or permitted to be kept in the Leased Premises which the Landlord's insurers prohibit and, if not prohibited by the Landlord's insurers, shall be kept in protective containers.
13. The Tenant shall give the Landlord prompt notice of any accident to or any defect in any Common Use Equipment.
14. If the Tenant desires any electrical or communications wiring, the Landlord reserves the right to direct qualified persons as to where and how the wires are to be introduced, and without such directions, no borings or cuttings for wires shall take place. No other wires or pipes of any kind shall be introduced without the prior written consent of the Landlord.
15. The Landlord shall have the right to make such other and further reasonable rules and regulations and to alter the same as in its judgement, reasonably exercised, may from time to time be necessary for the safety, care, cleanliness, operation and appearance of the Leased Premises and the Complex and for the preservation of good order therein, and the same shall be kept and observed by the tenants, their employees and servants. The Landlord also has the right, acting reasonably, to suspend or cancel any or all of these rules and regulations herein set out.
16. No auction sales shall be allowed to take place in the Leased Premises.

Initials

17. The Landlord shall have exclusive control of all parking areas forming part of the Complex. The Tenant shall not park or allow its employees, customers, invitees, suppliers or others with whom it does business to park in areas other than those designated for parking. No vehicles shall remain parked in any parking area overnight except with consent of the Landlord. The Landlord shall not be responsible for damage to or theft of any vehicle, its accessories or contents, whether the same be the result of negligence or otherwise.

Tenant will be allocated all parking spaces at the front of the building.

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SCHEDULE "D"

ACKNOWLEDGMENT OF COMMENCEMENT DATE

TO: WILLOW HOLDINGS LTD.
(the "Landlord").

The undersigned Tenant under a certain lease between the undersigned and the Landlord dated *September 28, 2017* (the "Lease"), hereby acknowledges and certifies to you that:

1. The Commencement Date of the Lease was *October 1st, 2017*.
2. We have accepted possession of the Leased Premises pursuant to the terms of the Lease and are now in possession thereof.
3. The Leased Premises have been erected and delivered in accordance with the terms of the Lease.
4. The Leased Premises have been fixtured and our normal business operations are being conducted therein.
5. There has been no violation of any of the terms of the Lease, there is no set-off of Rent or any other payment under the Lease, and none of the Rent reserved under the Lease has been prepaid.
6. There is no violation of any of the terms of the Lease either on the part of the Landlord or the Tenant.
7. The Lease is now in full force and effect in accordance with the terms, and there are no oral or written modifications, violations or alterations thereof.
8. We have no knowledge of any assignment of the Lease.

DATED at Calgary, this *28th* day of *September*, 2017.

772921 ALBERTA INC.

Per: 

Per: _____

Initials *WJ* *WJ*

SCHEDULE "E"

SUPPLEMENTARY LEASE PROVISIONS

1. Basic Rent Plus Additional Rent

Recoverables, referred to as Additional Rent shall be defined as having Landlord pay for certain Operating Costs, Insurance Costs and Property Taxes and recover such costs from the Tenant.

Landlord and Tenant hereby agree that Basic Rent and Additional Rent will be fixed for the five (5) year lease period as described below.

Additional Rent as included in the fixed rent payments includes the following:

- a) Building Taxes
- b) Building Insurance
- c) Landscaping Maintenance
- d) Parking Lot Maintenance - Sweeping, Line Painting, Signs
- e) Snow Removal
- f) General Exterior Building Maintenance
- g) Painting of Building
- h) Asphalt Roof Replacement
- i) Parking Lot – Asphalt Repair
- j) Management Fees

and any other Landlord responsibilities as per attached Schedule "G".

Basic Rent payable during the lease term shall be as follows:



	Rate (\$/sq. ft.)	Monthly Rent (Excluding GST)
Oct.1, 2017 – Dec. 31, 2017	\$7.30	\$29,200.00
Jan.1, 2018 – Dec. 31, 2018	\$7.30	\$29,200.00
Jan.1, 2019 – Dec. 31, 2019	\$7.40	\$29,600.00
Jan.1, 2020 – Dec. 31, 2020	\$7.50	\$30,000.00
Jan.1, 2021 – Dec. 31, 2021	\$7.60	\$30,400.00
Jan.1, 2022 – Sept. 30, 2022	\$7.70	\$30,800.00

Additional Rent payable during the lease term shall be fixed to minimise accounting work as follows:

	Rate (\$/sq. ft.)	Monthly Rent (Excluding GST)
Oct.1, 2017 – Dec. 31, 2017	\$4.061	\$16,244.00
Jan.1, 2018 – Dec. 31, 2018	\$4.11	\$16,440.00
Jan.1, 2019 – Dec. 31, 2019	\$4.18	\$16,720.00
Jan.1, 2020 – Dec. 31, 2020	\$4.25	\$17,000.00
Jan.1, 2021 – Dec. 31, 2021	\$4.32	\$17,280.00
Jan.1, 2022 – Sept. 30, 2022	\$4.37	\$17,480.00

The above fixed Additional Rent is based on City of Calgary taxes of \$100,256.00 for year 2017. This may increase for years 2018 and beyond. Increases above the base of \$100,256.00 will be additive to the rates above stated for each year and will be advised to Tenant once the final tax notices are received by Landlord. In addition to City of Calgary taxes, the cost of fees charged by

Initials _____

 : 

tax consultants assisting Landlord in challenging tax increases shall be included in the annual tax cost for purposes of this clause, provided that Landlord has received prior written approval of the hiring of such tax consultant from Tenant. *Landlord hereby agrees that Tenant may choose the "tax consultant" rather than use the Landlord's choice, provided that Tenant shall pay for such services.* Tenant shall reimburse Landlord within 30 days of Landlord's invoice for shortfalls in Additional Rent caused by the above total tax increases.

2. LANDLORDS WORK

Prior to the commencement date of *October 1st, 2017*, the Landlord has completed all necessary work:

3. ASSIGNMENT AND SUBLETTING

Further to Article 11 of the Lease Proper:

For purposes of maintaining the nature of the building in regard to the type of tenancy, both Tenant and Landlord hereby agree that Landlord may withhold permission for Tenant to sublease to companies such as furniture or other type moving companies, companies servicing or repairing trucks or automobiles including auto body repairs, video or adult movie businesses, or other type companies requiring excessive parking for their customers which could impede building traffic flow.

4. TENANT'S SIGNAGE

Tenant signage on the building will be located in the middle of the east wall of Tenants space at a height location matching tenant's standard for the building. Signs shall be of good taste and tenant shall provide details of these proposed sign for Landlords approval prior to being installed. Installation shall be using bolting with sealing compound built into the bolt to prevent water penetration through the bolt holes. All signage shall be in strict accordance with City of Calgary sign regulations.

5. TENANT'S WORK

The Landlord will allow the Tenant to make alterations from time to time to the LEASED PREMISES necessary to the Tenant's business, provided the Tenant receives the Landlord's prior written approval for alterations, such approval not to be unreasonably withheld or delayed. All Tenants work shall comply with all Municipal and Provincial Government regulations. Any such work shall be at the sole cost and expense of the Tenant.



Landlord may require Tenant prior to doing the work to commit in writing to remove any or all alterations and restore the building to prior condition. Should such alterations be extensive in cost, then Tenant must restore the premises to original condition and Landlord may also require an increase in the Damage Deposit to ensure funds are available for such future restoration process.

Tenant Improvements which were approved during the previous lease are listed as follows:

- 1) Landlord in a previous lease with *Wallace & Carey Inc.* dated September 2005, agreed to allow the Tenant to install a new freezer compartment in Bay 2 provided the power draw does not exceed the existing main power system supply in the building.

For clarity it is hereby agreed that any and all freezer or cooler compartments and their associated components installed by *previous Tenant Wallace & Carey Inc.* either previous to the *September, 2005* lease agreement or subsequent to this *September 2005* lease agreement shall be considered as trade fixtures *and must be removed at the end of this lease or at the end of a future lease.* When a freezer or cooler is removed, the building heating units, building lighting and building concrete floor and any other features affected by the freezer or cooler installation shall be returned to the original condition existing before the freezers or coolers were installed by *previous Tenant.* *Previous Tenant's* equipment used for the execution of Tenant's business shall be considered as trade fixtures.

Initials _____

- 2) A cooler compartment installed in Bay 6 was never approved by Landlord in a previous lease with Wallace & Carey Inc. and must be removed and the building must be restored similar to Clause 5 above at the end of the lease.

Possible future "Tenant Improvements" which are hereby conceptually approved but still require Landlord's final approval, once details are in place, are listed as follows:

- a) Again provided the power supply is adequate, Landlord hereby agrees to allow Tenant to sublease space in Bay 1. As part of this sub-tenancy Tenant is permitted to install ventilation ducting penetrating through the roof of Bay 1. When Tenant vacates the space all of the above roof penetrations made as part of the Tenant Improvements shall be repaired by removing the exhaust ducting, replacing the roof steel q-deck and installing insulation and a tar & gravel roof system matching that which was originally removed to accommodate the penetrations.
- b) Deleted

All of the above Tenant improvements shall be strictly governed by the appropriate clauses in Article 9 of this lease agreement.

6. UTILITIES

Upon occupancy including early occupancy as provided for in this lease, the Tenant shall be responsible for and pay for all **UTILITIES** consumed or used in the **LEASED PREMISES** during the **TERM** of the lease. The obligation of the Tenant to pay for **UTILITIES** shall extend to, but not be limited to, payment of gas, water, sewer, electricity, and telephone used or consumed in the **LEASED PREMISES**.

Tenant shall pay all utilities such as City of Calgary electricity, water and sewage charges and Direct Energy natural gas charges and such utilities shall be in the name of the Tenant.

7. TENANT USAGE

Landlord warrants that the zoning is correct for the Tenant's use. The Leased premises shall be used and occupied only for the purpose of general warehouse, storage of food including dry cooler & freezer, bakery operation and general merchandise, and general office space, with Tenant having the right to invite the public into the building on a regular basis, and for no other purposes whatsoever. Tenant will not be doing any welding in the building but will be permitted to do some occasional soldering provided the City of Calgary is advised of this activity and Tenant meets the City of Calgary ventilation requirements by adding any exhaust fans as required.

8. JANITORIAL

Tenant shall also handle and pay for janitorial costs. Such janitorial work shall be frequent, of professional quality, and shall ensure that carpets, walls and general office space do not deteriorate unduly due to inadequate janitorial work quality.



9. MAINTENANCE RESPONSIBILITY MATRIX

See Schedule "G"

10. TENANT OPTION TO RENEW

It is agreed that, provided the Tenant pays the Basic Rent and Additional Rent as and when due and punctually observes and performs all of the terms, covenants, and conditions contained in the lease, then the Landlord will, upon the written request of the Tenant delivered to the Landlord not later than six (6) months before the lease expiration, grant to the Tenant the right to renew the terms of this lease for a further *three year* term at lease rates that are fair market value.

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11. ARBITRATION

In the event that the parties are unable to agree on the amount of rent to be payable under a renewal lease pursuant to Clause 10. hereof, or in the event that the Tenant and Landlord fail to agree as to any of the terms, conditions, rights, duties or liability under this agreement, the dispute shall be referred (unless the parties mutually concur in the appointment of a single arbitrator) to two arbitrators (one appointed to each party of the dispute) who shall meet, establish their procedure and resolve the dispute pursuant to the Alberta Arbitration Act and their decision shall be final and binding upon the parties. In no event shall the Basic Rent and or Additional Rent be lower than the last month prior to the renewal period.

In the event of dispute requiring arbitration as to the rent payable during any such three year renewal period, the Tenant shall continue to pay rent at the rate payable during the time period immediately preceding the renewal period in question, and upon receipt of the arbitration decision setting the revised rent if such decision provides for an increase in the rental rate payable, the Tenant shall forthwith and without demand pay to the Landlord the total amount of such increase accrued during the period from the first day of the renewal period to and including the last day of the month in which the arbitration decision setting the rent is received together with interest thereon at the prime rate plus two percent (2%).

SCHEDULE "F" HAZARDOUS SUBSTANCES

SECTION 1 - DEFINITIONS

- (1) **"Environmental Audit"** means an inspection or inspections of the Leased Premises or other affected locations at the Complex by an independent contractor acceptable to the Landlord together with such other tests, surveys and inquiries as such contractor deems advisable in the circumstances into the use, transport, storage, disposal, handling, sale or manufacture of any Hazardous Substance in, on or about the Leased Premises or the Complex by the Tenant, those for whom the Tenant is in law responsible or any other person using or occupying the Leased Premises, or into the condition or status of the Leased Premises in relation to possible contamination by any hazardous Substance, and any Environmental Audit by such contractor shall include the said contractor's written report delivered to the Landlord summarizing the nature and results of all inspections, tests, surveys and inquiries conducted by the contractor, and the said contractor's recommendations for any remedial or precautionary actions to be taken in relation to the presence of Hazardous Substance on the Leased Premises or the Complex.
- (2) **"Environmental Claim"** means all claims, losses, costs, expenses, fines, penalties, payments and/or damages (including, without limitation, all solicitors' fees on a solicitor and client basis) relating to, arising out of, resulting from or in any way connected with the presence of any Hazardous Substance at the Leased Premises or the complex, including, without limitation, all costs and expenses of any remediation or restoration of the Leased Premises, the Complex and/or any property adjoining or in the vicinity of the Complex required or mandated by the Environmental Law.
- (3) **"Environmental Law"** means any law, bylaw, order, ordinance, ruling, regulation, certificate, approval, policy, guideline, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any Court of competent jurisdiction, relating to environmental matters and/or regulating the import, storage, distribution, labelling, sale, use, handling, transport or disposal of any Hazardous Substance which may be in force from time to time.
- (4) **"Hazardous Substance"** means:
 - (a) any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing, the following:
 - (i) radioactive materials;
 - (ii) explosives;
 - (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
 - (b) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (i) endangers the health, safety or welfare of persons or the health of animal life;
 - (ii) interferes with normal enjoyment of life or property; or

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- (iii) causes damage to plant life or to property;
- (c) toxic substances; and
- (d) any material or substance declared or deemed to be hazardous, deleterious, caustic, dangerous, a contaminant, a waste, a source of contaminant, a pollutant or toxic under the Environmental Law.

SECTION 2 - TENANT'S COVENANT AS TO HAZARDOUS SUBSTANCES



The Tenant covenants and agrees that it will:

- (a) not bring or allow any Hazardous Substance to be brought onto the Complex or the Leased Premises except in compliance with the Environmental Law;
- (b) comply at all times and require all those for whom the Tenant is in law responsible to comply at all times with the Environmental Law as if affects the Leased Premises or the complex;
- (c) give Notice to the Landlord of the presence at any time during the Term of any Hazardous Substance on the Leased Premises (or the Complex if such substance is in the control of the Tenant) together with such information concerning such Hazardous Substance and its presence on the Leased Premises or the Complex as the Landlord may require;
- (d) give Notice to the Landlord of any occurrence which might give rise to a duty under the Environmental Law in either the Tenant or the Landlord with respect to the presence of any Hazardous Substance on the Leased Premises or the Complex including, without limitation, Notice of any spill or escape into the environment of any Hazardous Substance at the Leased Premises or the Complex;
- (e) in any case where the Tenant has given Notice as to the presence of a Hazardous Substance at the Leased Premises or the Complex or is required to give such Notice or where the Landlord has reasonable grounds to believe that any Hazardous Substance is or has been brought upon the Leased Premises or the Complex by the Tenant or any person for whom the Tenant is in law responsible, to commission an Environmental Audit at the Tenant's expense when required by the Landlord to do so;
- (f) comply with any investigative, remedial or precautionary measures required under the Environmental Law or as reasonably required by the Landlord, and the Tenant shall be fully and completely liable to the Landlord for any and all clean up costs or costs incurred to comply with the Environmental Law or any request by the Landlord that investigative, remedial or precautionary measures be taken;
- (g) protect, indemnify and save each of the Landlord and its directors, officers, employees, agents, successors and assigns completely harmless from and against any Environmental Claim, directly or indirectly incurred, sustained or suffered by or asserted against the Landlord and/or its directors, officers, employees, agents, successors and assigns caused by or attributable to, either directly or indirectly, any act or omission of the Tenant and/or any person for whom the Tenant is in law responsible;
- (h) enter into any additional contract of insurance respecting the Leased Premises which the Landlord may reasonably require to protect the Landlord and its directors, officers, employees, agents, successors and assigns from any Environmental Claim respecting the Leased Premises; and
- (i) provide to the Landlord such security as the Landlord may from time to time require, acting reasonably, to ensure compliance by the Tenant of its covenants herein contained.

SECTION 3 - INQUIRIES BY LANDLORD

The Tenant hereby authorizes the Landlord to make inquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with the Environmental Law at the Leased Premises, and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information. The Landlord or its authorized agent may inspect the Leased Premises from time to time, without Notice, in order to verify the Tenant's compliance with the Environmental Law and the requirements of this Lease respecting Hazardous Substances. Upon request by the Landlord from time to time, the Tenant shall provide to the Landlord a certificate executed by a senior officer of the Tenant certifying ongoing compliance by the Tenant with its covenants contained herein.

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SECTION 4 - OWNERSHIP OF HAZARDOUS SUBSTANCES

If the Tenant shall bring or create upon the property of the Leased Premises or the Complex any Hazardous Substance or of the conduct of the Tenant's business shall cause there to be any Hazardous Substance upon the Complex or the Leased Premises then, notwithstanding any rule of law to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Leased Premises or the Complex and notwithstanding the expiry or earlier termination of this Lease.

SECTION 5 - LANDLORD'S REMEDIES UPON DEFAULT

Upon the Tenant's material default under this Article and in addition to the rights and remedies set forth elsewhere in this Lease, the Landlord shall be entitled to the following rights and remedies:

- (a) at the Landlord's option, to terminate this Lease; and/or

- (b) to recover any and all damages associated with the material default, including without limitation, in addition to any rights reserved or available to the Landlord in respect of an early termination of this Lease, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by the Landlord and other tenants of the Complex, any and all damages and claims asserted by third parties and Landlord's solicitors' fees and costs.

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Schedule G
LANDLORD & TENANT RESPONSIBILITIES MATRIX
WALLACE & CAREY
5225 – 8TH STREET N.E

	<u>Landlord</u>	<u>Tenant</u>
A) EXTERIOR MAINTENANCE & REPAIRS		
• Lawn maintenance and landscaping incl. irrigation system repair	X	
• Repair/ replacement of the front, side and rear personnel doors and overhead doors unless caused by Tenant neglect or vehicle collision	X	
• Concrete step repairs including steel railings	X – Note 2	
• Snow removal from concrete steps		X – Note 2
• Repair or replacement of parking lot drains, building drains, water and sewer lines	X	
• Parking lot repairs/maintenance incl. painting of parking spot divider lines and repair of potholes	X	
• Cleaning of the parking lot including snow removal and sweeping of gravel.	X – Note 3	
• Repair or replacement of window glass unless caused by the negligence of the Tenant	X	
• Repair of exterior lighting including bulb replacement	X	
• Repair and painting of the building	X – Note 4	
• Repairs and maintenance to the roof to prevent roof leaks	X – Note 5	
• Management and administrative costs of the landlord	X	
• Garbage removal (bins)		X
• Building signs (approved by landlord)		X

Schedule G
LANDLORD & TENANT RESPONSIBILITIES MATRIX
WALLACE & CAREY
5225 - 8TH STREET N.E

- | | <u>Landlord</u> | <u>Tenant</u> |
|--|-----------------|---------------|
| <ul style="list-style-type: none"> • Repairs and maintenance of the roof mounted heating & air conditioning unit, including filter replacement every six months maximum time plus thermostat repair/replacement | | X -Note 1 |
| <ul style="list-style-type: none"> • Exterior building washing incl. exterior windows | X | |

B. Interior Maintenance & Repairs

- | | <u>Landlord</u> | <u>Tenant</u> |
|---|-----------------|---------------|
| <ul style="list-style-type: none"> • Drywall and interior door repair - spackling and painting of drywall where repairs are required and repair of interior doors | | X |
| <ul style="list-style-type: none"> • Concrete floor "pot hole" repair | X | |
| <ul style="list-style-type: none"> • Repair and maintenance of all electrical wiring, receptacles, switches, fixtures, etc. including emergency lighting | | X |
| <ul style="list-style-type: none"> • Replacement of all incandescent, metal halide, and fluorescent bulbs and ballasts and replacement of broken fluorescent fixture lenses in office areas. | | X |
| <ul style="list-style-type: none"> • Repair and maintenance of toilets and hot water heaters including any blocked sewer lines within Tenant's bays (between toilets/sinks and main sewer line connection only). | | X |
| <ul style="list-style-type: none"> • Repair and maintenance of all interior main water & main sewer line(sanitary/storm/water) s | X | |
| <ul style="list-style-type: none"> • Repair and maintenance of all telephone lines and equipment, including internet and computer networks and security systems | | X |
| <ul style="list-style-type: none"> • Repair of forklift damage to concrete block | | X |

Schedule G
LANDLORD & TENANT RESPONSIBILITIES MATRIX
WALLACE & CAREY
5225 – 8TH STREET N.E

	<u>Landlord</u>	<u>Tenant</u>
walls and other interior walls/partitions		
• Carpet repair or replacement (if required) unless due to Tenant neglect.	X	
• All janitorial services		X
• All Tenant leasehold improvements including repairs, alterations and additions (approved in advance by Landlord)		X
• Repair / replacement of all Landlord-supplied window blinds		X
• Repair of dock load levelers, dock seals, and dock bumpers		X
• Repair and maintenance to the firewater sprinkler system	X – Note 6	
• Window washing (interior)		X
• Repair and maintenance of the warehouse unit heaters incl. thermostat repair/replacement		X-Note 1
C. Miscellaneous	Landlord	Tenant
• Provision and maintenance of fire extinguishers		X
• Liability insurance	X	X
• Fire and water damage insurance including monitoring cost for firewater sprinkler system		X
• Business taxes		X
• License fees		X
• Payment of all utilities including water supply for office, warehouse and lawn		X

Schedule G
LANDLORD & TENANT RESPONSIBILITIES MATRIX
WALLACE & CAREY
5225 – 8TH STREET N.E

	<u>Landlord</u>	<u>Tenant</u>
irrigation		
• All capital taxes including property, real estate, local improvement, school taxes, etc.	X	
• Insurance - building inside contents and exterior parking lot contents.		X
• Insurance – general liability and fire, building rents	X	

Note 1 - Landlord intends to inspect the Tenant's proper maintenance of the office HVAC unit and the various warehouse unit heaters. Unit heaters must be inspected once a year and dirt shall be blown out and the pilot operation shall be checked. Tenant shall be ready to present evidence that a certified commercial heating contractor has been employed by Tenant to perform the proper maintenance on all units including filter changes on the HVAC unit.

Note 2 – Damage to the concrete steps and the associated handrails has been caused by Tenant using salt on the concrete for "safety reasons" as well as trucks backing into them. Concrete spalling is the result of such salt application as is corrosion of the steel at the bottom of the handrails. Repair costs to concrete or handrails will be an extra cost invoiced to Tenant by Landlord each year, unless Tenant agrees to eliminate salt usage. Damage caused by trucks backing into them will be an extra cost invoiced to Tenant each year.

Note 3 – Snow cleaning is done only when Tenants trucks have problems navigating the snow, especially around the loading docks. Gravel shall be spread by Landlord when Tenant advises Landlord of slippery conditions causing trucks to lose traction and be without adequate control. Frequency of snow removal and gravel spreading shall conform to normal standards agreed to between Tenant and Landlord during the past five years lease period. Gravel removal from the parking lot shall be limited to one time per year in late spring.

Note 4 – Painting of the building shall be done about every 7-8 years. The entire building was repainted in the 2009 – 2010 years. Graffiti on the building shall not be cause for re-painting, being beyond the control of the Landlord (Unless it is on the east side of the building). Steel railings on the east side concrete stairways shall be repainted every 3 years.

Note 5 – When Tenant installed the freezer system in Bay 2 they added roof mounted equipment and thus needed numerous pipe penetrations through the roof. Roof leaks



Schedule G
LANDLORD & TENANT RESPONSIBILITIES MATRIX
WALLACE & CAREY
5225 – 8TH STREET N.E

caused by such equipment or associated piping are the responsibility of the Tenant for the entire term of the lease.

Note 6 – Repair and maintenance of the firewater sprinkler system includes one annual inspection done at the same time each year as the lawn irrigation system backflow device testing is being done. Vendor shall supply an inspection tag on the water room door as evidence that this test has been done. Any testing that is in excess of this requirement due to changes in the Tenant’s insurance companies or the City of Calgary’s standards shall be at extra cost to the Tenant.

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BAILEE LETTER

September ____, 2017

Willow Holdings Ltd.
11016 Willowisp Road S.E.
Calgary, AB T2J 1R2

Re: Wallace & Carey Inc. (the "Bailor")

Ladies and Gentlemen:

This letter (the "**Letter**") is to advise Willow Holdings Ltd. (the "**Bailee**") that the Bailor executed and delivered to Canadian Imperial Bank of Commerce, in its capacity as Agent for certain lenders (the "**Agent**") a Credit Agreement (as may be modified, amended, renewed, extended, restated, or replaced from time to time, the "**Credit Agreement**"), pursuant to which the Bailor granted to the Agent a security interest in, among other things, all inventory of the Bailor, some of which is in possession of the Bailee from time to time (the "**Controlled Inventory**"). By executing this Letter, the Bailee acknowledges that from time to time the Bailee is in possession of Controlled Inventory and that, because of the Agent's interest in the Controlled Inventory, the instructions contained in this Letter are irrevocable and cannot be altered or amended without the prior written consent of the Agent. The Bailor's execution of this Letter is conclusive evidence to the Bailee of its confirmation of, and agreement to, the foregoing and of its agreement to be bound by all terms of this Letter on which the Bailee is entitled to rely for all purposes until written notice of termination of this Letter is given to the Bailee by the Agent.

The Bailee recognizes the Agent's continuing security interest in the Controlled Inventory and in the proceeds thereof. The Bailee covenants and agrees that the Controlled Inventory is and shall remain owned by the Bailor, and that the Agent may at any time and from time to time inspect, remove and/or repossess the Controlled Inventory while in possession of the Bailee without accountability to the Bailee therefor and free of any lien, security interest, right or claim which the Bailee may now or hereafter have, such right of the Agent being independent of any other right or remedy the Agent may have. The Bailee hereby authorizes and empowers the Agent to access the premises where the Controlled Inventory is located for the purposes of guarding and maintaining the Controlled Inventory, preparing and showing the same for sale and/or conducting a sale thereof. The Bailee hereby waives and releases, for the benefit of the Agent, its successors and assigns, any and all liens, security interests, rights and claims of every kind, whether statutory, contractual or by law, which the Bailee may now or hereafter have with respect to the Controlled Inventory, including, without limitation, any rights to seize, hold, restrain, levy upon, take possession of, sell or otherwise transfer or dispose of the Controlled Inventory and the Bailee further acknowledges and agrees that no negotiable warehouse receipts or documents of title will be issued covering the Controlled Inventory.

So long as no Default Period (hereinafter defined) is continuing, the Bailor may control the Controlled Inventory. From the date on which the Agent notifies the Bailee that an "Event of Default" (as defined in the Credit Agreement) has occurred and thereafter until the Bailee receives notice from the Agent that such Event of Default is no longer continuing and that no other Event of Default is continuing (such period being referred to herein as a "Default Period"), the Bailee, the Bailor and the Agent agree that the Agent shall have the exclusive right to direct the Bailee as to control of the Controlled Inventory, which includes, without limitation, the right to dispose of, repossess or remove the Controlled Inventory, and the Bailee shall not comply in

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any respect with any request or direction by the Bailor in connection with the Controlled Inventory, unless consented to in writing by the Agent.

At any time when the Bailee has possession of the Controlled Inventory, the Bailee agrees to prevent the commingling of the Controlled Inventory in its possession with other Inventory, goods or items in the Bailee's possession by clearly separating, dividing or otherwise isolating the Controlled Inventory from all such other items in the Bailee's possession. The Bailee will also clearly identify the Controlled Inventory as belonging to the Bailor, through the use of labels, tags, or other similar coding methods.

The Bailee will from time to time deliver to the Agent, upon the written request of the Agent (which request may be by facsimile transmission) and at the Bailor's cost and expense, such information regarding the Controlled Inventory as may be reasonably requested by the Agent, and the Bailee will notify the Agent promptly if the Bailee acquires knowledge that the Controlled Inventory shall become subject to any injunction, writ or warrant of attachment or garnishment, judgment, levy and execution, or similar process. The Bailee confirms in favour of the Agent that it has not, prior to the date hereof, executed in favour of any third party any document, instrument or agreement pursuant to which (a) the Bailee has acknowledged a security interest in the Controlled Inventory in favour of such third party, or (b) the Bailee has agreed to follow the instructions of such third party in respect of the Controlled Inventory.

The Bailor agrees that the Bailee shall be fully protected in acting on any notice or direction by the Agent relating to the Controlled Inventory without making any inquiry whatsoever as to the Agent's right or authority to give such notice or direction. Further, the Bailee shall have no liabilities to the Bailor or the Agent other than those imposed upon it by law for its own lack of good faith, gross negligence or wilful misconduct. The Bailee shall not be liable for consequential, indirect or special damages, even if the Bailee has been advised of the possibility of such damages. The Bailee shall not be liable for any failure or delay in performing any service under this Letter in the event and to the extent that such failure arises out of causes beyond the Bailee's control, including but not limited to war, civil commotion, an Act of God, fire, flood, explosion, sabotage, failure or interruption of electrical or other power supplies or of transportation services, compliance with governmental laws, regulations or orders, and strikes and lockouts.

The Bailor agrees to pay the Bailee's costs and expenses, including reasonable legal fees, in connection with the execution, delivery and administration of this Letter.

The Bailor and the Agent, jointly and severally, hereby agree to indemnify and save the Bailee harmless from and against any and all losses, costs and expenses arising out of the compliance by the Bailee with the terms of the instructions contained herein.

If the Bailor is unable to fulfill its obligations to the Bailee in respect of warehouse fees and other expenses payable by the Bailor to the Bailee in connection with the storage, handling and delivery of the Controlled Inventory (collectively, the "Storage Fees"), the Agent agrees that, as a condition to the Agent's rights of access to the Controlled Inventory and the Agent's rights of inspection, removal and/or repossession of the Controlled Inventory provided for in this Letter, it will pay to the Bailee all Storage Fees which remain unpaid as at the commencement of any Default Period together with any Storage Fees incurred during the continuance of a Default Period.

The Bailor acknowledges and agrees that (a) any amounts paid by the Agent to the Bailee hereunder shall constitute "Obligations" of the Bailor for purposes of the Credit

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom left of the page.

Agreement, and (b) that this Letter is a "Loan Document" as such term is defined in the Credit Agreement dated September __, 2017 between the Agent and the Bailor, as borrower.

This Letter may only be terminated by the Agent upon written notice to the Bailee.

This Letter may be execute in one or more counterparts by facsimile transmission, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

If the foregoing instructions, terms and agreements are acceptable to the Bailee, please indicate the Bailee's acceptance by signing this letter in the space provided below and returning it to the Bailor.

Sincerely,

WALLACE & CAREY INC.

By:

Name:

Title:

AGREED AND ACCEPTED:

CANADIAN IMPERIAL BANK OF COMMERCE Address for Notice:

By: _____ 199 Bay Street, 4th Floor
Name: _____ Toronto, ON M5L 1A2
Title: _____ Attention: Senior Director, Portfolio Management,
Asset Based Lending Group

WILLOW HOLDINGS LTD.

By: Ronald A Price
Name: RONALD A PRICE
Title: DIRECTOR

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Schedule "T"

September 28, 2017

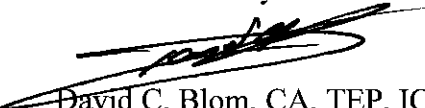
Willow Holdings Ltd.
1101 Willowisp Rd S.E.
Calgary, Alberta T2J 1R2

Subject: Guarantee and Addendum Letter Clarification to Industrial Lease Agreement dated
September 28, 2017
Re: Warehouse at 5225 – 8 Street NE, Calgary, Alberta

772921 Alberta Inc. will be leasing the warehouse located at 5225 – 8th Street NE, Calgary, Alberta to Wallace & Carey Inc.

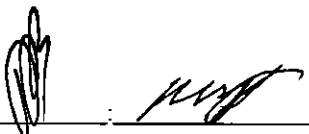
In consideration of Willow Holdings Ltd. entering into a Lease of the warehouse located at 5225 – 8 Street NE, Calgary, Alberta to 772921 Alberta Inc., the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Wallace & Carey Inc. guarantees performance of all obligations of the tenant under the Lease between Willow Holdings Ltd and 772921 Alberta Inc. dated September __ 2017.

Yours Truly,
Wallace & Carey Inc.


David C. Blom, CA, TEP, ICD.D
Vice President – Finance
I am authorized to bind Wallace & Carey Inc.

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Initials _____



LEASE EXTENSION AND AMENDING AGREEMENT

THIS AGREEMENT made effective as of the 30th day of September, 2022.

BETWEEN:

WILLOW HOLDINGS LTD.
(the "Landlord")

OF THE FIRST PART

AND

772921 ALBERTA INC.
(the "Tenant")

OF THE SECOND PART

WHEREAS:

- A. By a Lease (the "**Original Lease**") between Standard Life Assurance Company ("**SLAC**") and Wallace & Carey Inc. ("**W&C**"). SLAC leased to W&C two (2) of six (6) industrial bays located at 5225 – 8th Street NE, Calgary, Alberta (the "**Lands**"), for a term expiring on December 30, 2000.
- B. In or around 1997, the Landlord became the successor to all right, title and interest of SLAC in the Lands and all the leases thereof.
- C. In or around 2000, the Landlord and W&C entered into a Lease Renewal Agreement to renew the Original Lease for a further period of five (5) years, commencing on January 1, 2001 and expiring on December 31, 2005, and agreed that a third (3rd) bay would be leased by W&C.
- D. In or around 2005, the Landlord and W&C entered into a new Lease (the "**2005 Lease**") for all six (6) bays on the Lands, for a period of approximately four (4) years, commencing on September 16, 2005 and expiring on September 30, 2010.
- E. In or around 2010, the Landlord and W&C entered into a new Lease (the "**2010 Lease**") for all six (6) bays on the Lands, for a period of five (5) years, commencing on October 1, 2010 and expiring on September 30, 2015.
- F. In or around 2015, W&C requested that a new lease be entered into with the Tenant, being an affiliate of W&C, as tenant, and the Landlord and Tenant entered into a new Lease (the "**2015 Lease**") for all six (6) bays on the Lands, for a period of two (2) years, commencing on October 1, 2015 and expiring on September 30, 2017.
- G. In or around 2017, the Landlord and the Tenant entered into a new Lease (the "**Lease**") for all six (6) bays on the Lands (the "**Leased Premises**"), for a period of five (5) years, commencing on October 1, 2017 and expiring on September 30, 2022 (the "**Term**").

- H. The Landlord and the Tenant have agreed to extend the Term of the Lease and to amend certain provisions of the Lease, as more particularly set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements between the parties to this Agreement and the sum of One (\$1.00) Dollar paid by each party to the other (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. The foregoing recitals are true and form part of this Agreement.
2. All capitalized terms in this Agreement, unless otherwise defined herein, shall have the same meaning as those ascribed to them in the Lease.
3. The Term of the Lease is hereby extended for a period of Three (3) years and Three (3) months, commencing on October 1, 2022 and expiring on December 31, 2025 (the “**Extension Term**”).
4. The Tenant shall have the right to extend the Term of the Lease for up to one (1) further period of three (3) years, provided that the Tenant is not then in default of the Lease and delivers a written request for extension to the Landlord not less than Six (6) months and no greater than Twelve (12) months prior to the expiry of the Extension Term. Any extension of the Term will be on the same terms and conditions as provided for herein, save and except for the Basic Rent, any leasehold incentives and any further options to extend (unless otherwise agreed to in writing). Basic Rent for the extension term will be an amount equal to the then fair market rent for improved premises in the Building, taking into consideration the rents for comparable buildings in comparable locations in Calgary, Alberta (the “**Fair Market Rent**”), which amount will be negotiated by the Landlord and Tenant acting in good faith and concluded no later than Ninety (90) days following the receipt of the Tenant’s notice to exercise the option to extend. If the Landlord and Tenant cannot agree on the Fair Market Rent, the Fair Market Rent will be determined in accordance with the *Arbitration Act* of Alberta and the decision of the arbitrator(s) will be final and binding on the parties.
5. The Lease is hereby amended as follows:
 - (a) In Section 1.01, subsection 1.01(15) is deleted in its entirety and replaced by the following:

“**Term**” – means Eight (8) years and Three (3) months beginning on the above Commencement Date.
 - (b) In Section 8.01(a)(iii), “Two Million Dollars (\$2,000,000.00)” is deleted and replaced by “Five Million Dollars (\$5,000,000.00)”.
 - (c) In Section 8.01(c), the following is added to the end of the paragraph:

“For any insurance policy that is renewed or replaced, the Tenant shall deliver new certificate(s) of insurance or if required by the Landlord certified copies of each such insurance policy as soon as practicable after the renewal or replacement of the required insurance and in any event within (10) days of the effective date of coverage.”
 - (d) In Section 9.08, subsection b) is deleted in its entirety and replaced by the following:

“the Tenant shall, immediately prior to the expiration or earlier termination of the Lease and at its own cost, remove all trade fixtures, such Leasehold Improvements that the

Landlord requests to be removed (including the removal of any additional concrete poured by the Tenant), all signs of the Tenant, and shall restore the Leased Premises to base building conditions as viewed by W&C or the Tenant, as the case may be, when possession of each bay of the Premises was originally delivered. The Tenant shall not remove any Leasehold Improvements that the Landlord specifically requests not to be removed. The Tenant shall repair any damage to the Leased Premises caused by the installation or removal of such trade fixtures, Leasehold Improvements or signs, failing which such repairs may be completed by the Landlord and the costs of repair shall be paid by the Tenant to the Landlord as Additional Rent.”

- (e) In Schedule “E”, the following is added to the end of section 1:

“Basic Rent payable during the lease term shall be as follows:

Period	Rate (Per sq. ft.)	Monthly Amount (Excluding GST)
Oct. 1, 2022 – Dec. 31, 2022	\$7.70	\$30,800.00
Jan. 1, 2023 – Dec. 31, 2023	\$7.85	\$31,400.00
Jan. 1, 2024 – Dec. 31, 2024	\$8.00	\$32,000.00
Jan. 1, 2025 – Dec. 31, 2025	\$8.17	\$32,680.00

Beginning on January 1, 2023, Additional Rent payable by the Tenant will not longer be fixed. Prior to the beginning of each Accounting Period, the Landlord shall compute and deliver to the Tenant a bona fide estimate of the Additional Rent for such Accounting Period based on the actual operating costs, property taxes and other items of Additional Rent actually incurred in the previous Accounting Period. The Tenant shall pay to the Landlord in monthly installments one-twelfth of such estimate simultaneously with the Tenant’s payments of Basic Rent. The Landlord may from time to time re-estimate any items of Additional Rent and may fix monthly instalments for the then remaining balance of the Accounting Period so that such items will be entirely paid during such Accounting Period.

The Landlord shall deliver to the Tenant within six (6) months from the end of an Accounting Period, a written statement (the “**Statement**”) setting out in reasonable detail the amount of such items of Additional Rent that were actually incurred. If the Additional Rent paid by the Tenant to the Landlord during such Accounting Period differs from the actual amount incurred, the Tenant shall pay such difference or the Landlord shall credit the Tenant’s account (as the case may be), without interest within 30 days after the date of delivery of the Statement. Failure of the Landlord to render any Statement shall not prejudice the Landlord’s right to render such Statement thereafter or with respect to any other Accounting Period. The Landlord may render amended or corrected Statements. Notwithstanding the foregoing, should the Landlord become aware of an occurrence or circumstance that would reasonably be expected to result in a material change in the amount of Additional Rent the Landlord estimated for the current Accounting Period, the

Landlord will notify, in writing and within a reasonable period of time, the Tenant of the change and the estimated amount of and the particulars of such change, in reasonable detail.

6. The estimate for Additional Rent for 2023 is set out in Schedule "A" hereto.
7. This Agreement is subject to W&C entering into an indemnity agreement in favour of the Landlord in the form set out in Schedule "B" hereto.
8. Other than the provisions set out in this Agreement, all other terms of the Lease will remain unchanged and will continue to apply during the Extension Term.
9. This Agreement expresses the entire agreement between the parties and there are no other agreements, covenants, representations, warranties, or conditions, whether expressed or implied, in addition to this Agreement.
10. If any provision of this Agreement is or later becomes invalid or unenforceable, such provision will be severed from this Agreement and the remainder of this Agreement will remain in force.
11. This Agreement will enure to the benefit of and be binding upon the parties and the successors and assigns of the Landlord and the permitted successors and assigns of the Tenant.

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12. This Agreement may be executed in counterparts with the same effect as if all parties had signed one document and all of which together will constitute and be construed as one document. Counterparts may be delivered by facsimile, in PDF format, or by other electronic means and will be binding on the parties as an originally signed counterpart.

IN WITNESS WHEREOF the Landlord and the Tenant have properly executed this Lease Extension and Amending Agreement as of the day and year first above written.

LANDLORD:

TENANT:

WILLOW HOLDINGS LTD.

772921 ALBERTA INC.

Per: Kathy Motherwell
Name: Katherine Motherwell
Title: Director

Per: Brian M. Birnie
Name: BRIAN M. BIRNIE
Title: SUP FINANCE & CORPORATE DEVELOPMENT

Name:
Title:

Name:
Title:

I/we have the authority to bind the corporation.

I/we have the authority to bind the corporation.

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SCHEDULE "A"**ESTIMATE ADDITIONAL RENT FOR 2023**

Based on the new lease strategy of estimating the upcoming annual lease "Additional Rent" costs and adjusting the actual cost at the end of the calendar year, the 2023 Additional Rent costs are as follows:

1) City of Calgary Taxes + Challenge Cost	\$110,000
2) Amortization (Condo Costs)	\$52,172
3) Operating Costs	\$50,350
4) Willow Management Costs @ 9.1%	\$19,340
Total Annual "Additional Rent"	\$231,862
Total Monthly "Additional Rent"	\$19,322

The resultant predicted monthly total rent for 2023 calendar year is as follows:

	Basic Rent	Additional Rent	Total Rent
	Monthly	Monthly	Monthly
Year 2023 payments:	\$31,400	\$19,322	\$50,722

Building Replacement Reserves (AMORTIZATION - Item 2 above)

(per Section 2.01 (3) of September 28, 2017 previous Lease Agreement)

A) Asphalt Roof Replacement Reserve

Building Size = 48,000 Sq. Ft.
 Asphalt Surface Replacement Cost - \$17 / Sq. Ft. (per Peddie Roofing estimate)
 Total Charge for Asphalt Roof when Replaced = \$816,000
 Roof Life Estimated = 25 Years
 Annual Reserve Set Aside for Eventual Roof Replacement
 = $\$816,000 / 25 = \$32,640 / \text{Year} = \$0.680 / \text{year}$

B) Building Repainting Reserve

Building Size = 300 Ft. x 160 Ft. x 26 Ft. High
 Estimated Repainting Cost = \$65,000
 Estimated Normal Paint Life = 8 Years
 Annual Reserve Set Aside for Eventual Repainting of Entire Building
 = $\$65,000 / 8 = \$8,125 / \text{Year} = \$0.169 / \text{year}$

C) Interior Unit Heater Replacement

Heater Size Large Size 4 units @ \$6,500 = \$26,000
 Medium Size 5 units @ \$6,000 = \$30,000
 Total Replacement Cost : \$56,000
 Estimated Normal Unit Life : 25 years
 Annual Reserve Set Aside for Eventual Replacement
 = $\$56,000 / 25 = \$2,240 / \text{Year} = \$0.0467 / \text{year}$

D) Exterior HVAC Unit

Unit Size : 3 Ton
 Replacement Cost : \$13,000
 Estimated Normal Unit Life: 20 years
 Annual Reserve Set Aside for Eventual Replacement
 $= \$13,000 / 20 = \$650 / \text{year} = \$0.0135 / \text{year}$

E) Overhead Doors

Sizes: 9 @ 8 ft W x 8 ft T Replace Cost = \$3,500 ea = \$31,500 total
 1 @ 10 ft W x 10 ft T Replace Cost = \$4,200 ea = \$4,200 total
 Total Replacement Cost = \$35,700
 Estimated Normal Life: 15 years
 Annual Reserve Set Aside for Eventual Replacement
 $= \$35,700 / 15 = \$2,380 / \text{year} = \$0.04958 / \text{year}$

F) Personnel Doors

Glass 36" x 84" 7 units @ \$1,300 / door
 Steel 36" x 84" 9 units @ \$1,000 / door
 Total Replacement Cost = \$18,100
 Estimated Normal Life: 15 years
 Annual Reserve Set Aside for Eventual Replacement
 $= \$18,100 / 15 = \$1,207 / \text{year} = \$0.025 / \text{year}$

G) Plate Glass Windows

Sizes : 1 @ 27" x 117" @ \$2,500 / unit
 15 @ 39" x 117" @ \$2,700 / unit
 4 @ 48" x 117" @ \$2,900 / unit
 Total Replacement Cost = \$54,600
 Estimated Normal Life: 20 years
 Annual Reserve Set Aside for Eventual Replacement
 $= \$54,600 / 20 = \$2,730 / \text{year} = \$0.057 / \text{year}$

H) Electrical Room Switch/Breakers

Estimated Main Breakers Replacement Costs = \$29,000
 Estimated Panel Breakers or Main Panel Replacements = \$15,000
 Total Replacements = \$44,000
 Estimated Normal Life = 20 years
 Annual Reserve Set Aside for Eventual Replacement
 $= \$44,000 / 20 = \$2,200 / \text{year} = \$0.046 / \text{year}$

GRAND TOTALS: \$52,172 / year \$1.087 / year / Sq.Ft.

General Annual Operating Costs – Estimate for Calendar Year 2023 – Item 3 Above

A) Building Insurance	\$11,000
B) Jobs that we contract out to 3rd Party Companies	
1) Unit Heater Repairs	\$300
2) Snow Removal – Parking Lot	\$4,500
3) Electrical Room Switch/ Breaker Every 2 Years Heat Sense Testing	\$1,500
4) Bay 1 HVAC Repairs & Filter Changes	\$600
5) External Roofing Repairs	\$1,500
6) Plumbing – Hot Water Tanks and Major Emergencies	\$600
7) Sprinkler System Repairs and Annual Testing	\$1,300
8) Concrete Work – Parking Lot	\$7,000
9) Parking Lot Sweeping - Annual	\$1,400
10) Irrigation System – Major Repairs	\$500
11) Electrical Panel – Breaker Repairs	\$300
12) Roof Lighting Repairs & Replacement	<u>\$600</u>
Subtotal	\$20,100
C) Jobs that Willow Staff does or participates in	
1) Landscaping, Tree Pruning, Lawn Fertilization & Mowing, Weed Spraying	\$8,000
2) Irrigation System – Minor Repairs	\$500
3) Interior Lights Replacement – Labour & Fixtures	\$3,200
4) Building Repairs Miscellaneous	\$500
5) Cleanup of Misc. Roof Leaks	\$250
6) Parking Lot Maintenance & Garbage Cleanup	\$600
7) Graffiti Repainting – Material and Labour	\$600
8) Fixing Concrete Floors – Interior	\$500
9) Exterior Window Cleaning – Spring & Fall	\$300
10) Interior Painting	\$200
11) Electrical – Various Unknowns	\$400
12) Ceiling Tile repairs	\$300
13) Concrete Stair Repairs	\$600
14) Asphalt Patching	\$2,000
15) Truck Bumper Pads	\$1,000
16) Painting Stair Railings	<u>\$300</u>
Subtotal	\$19,250
GRAND TOTAL	\$50,350

NOTES

- 1) Above estimated costs of sections A & B will not include any cost of Willow staff. Such costs of Willow staff are handled by the management fee of 9.1%.
- 2) Section C involves Willow staff doing some or all of this work. Willow staff charges summarized below includes tools and truck usage and included in the estimated cost of section C.

Todd Price - \$85/ hr

Ronald Price - \$65/ hr

Pierre Arsenault - \$40/ hr

Willow staff will keep monthly timesheets of their time and the type of work performed.

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SCHEDULE "B"

FORM OF INDEMNITY AGREEMENT

INDEMNITY AGREEMENT

THIS AGREEMENT is made effective the 1st day of October, 2017.

BETWEEN:

WILLOW HOLDINGS LTD.
(the "Landlord")

- and -

WALLACE & CAREY INC.
(the "Indemnifier")

WHEREAS:

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- A. The Landlord is the owner of the lands and buildings located at 5225 – 8th Street NE, Calgary, Alberta (the "Lands");
 - B. By a Lease (the "Lease") made between the Landlord, as landlord, and the 772921 Alberta Inc. (the "Tenant"), as tenant, a copy of which is attached hereto as Schedule "A", the Landlord leased to the Tenant six (6) industrial bays located on the Lands;
 - C. By a Lease Extension and Amending Agreement (the "Amendment"), a copy of which is attached hereto as Schedule "B", the Landlord and the Tenant agreed to extend the term of the Lease and to amend certain provisions of the Lease, as more particularly set out therein; and
 - D. It is a condition of the Amendment that the Indemnifier enter into an Indemnity Agreement in favour of the Landlord to ensure the performance of all the Tenant's obligations under the Lease, as amended.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Indemnifier), the Indemnifier agrees with the Landlord as follows:

- 1. The Indemnifier shall be bound, as principal obligor, to make all payments due by the Tenant, and to perform all of the obligations of the Tenant under the Lease and any extension, renewal, or overholding thereof and any period of abandonment by the Tenant, and any possession by the Landlord on behalf of the Tenant, to the same extent and with the same effect as if the Indemnifier was the Tenant named in the Lease as the sole Tenant and, without limiting the generality of the foregoing, the Indemnifier shall:
 - (a) make due and punctual payment of all Basic Rent, Additional Rent, and any other money payable;
 - (b) promptly observe and perform of all terms, covenants and conditions contained in the Lease or in any renewal, extension or overholding thereof on the part of the Tenant to be

kept, observed and performed; and

- (c) indemnify and save harmless the Landlord from and against all losses or damages arising directly or indirectly from any failure of the Tenant to pay any Basic Rent, Additional Rent or other money payable, and from any failure of the Tenant to observe or perform any of the terms, covenants and conditions on the part of the Tenant to be kept, observed and performed.
2. The obligations of the Indemnifier under this Indemnity Agreement are absolute and unconditional and shall not be released, discharged or reduced, and the rights of the Landlord shall be in no way be prejudiced or impaired, by any act, default, neglect or omission of the Landlord or any other person whatsoever, and the Landlord's right to enforce the obligations of the Indemnifier shall continue in all such events and nothing but payment and satisfaction in full of all money due to the Landlord under the Lease and any extension, renewal, or overholding thereof, and the due observance and performance of all terms, covenants and conditions on the part of the Tenant to be observed and performed shall release the Indemnifier from the Indemnifier's obligations under this Indemnity Agreement. Without limiting the generality of the foregoing, the obligation of the Indemnifier shall not be released, discharged or reduced, and the rights of the Landlord shall not be prejudiced or impaired by:
- (a) the unenforceability of any term or provision of the Lease or any extension, renewal, or overholding thereof as against the Tenant;
 - (b) the termination of any obligations of the Tenant under the Lease by operation of law or otherwise or any other event or occurrence which otherwise may have the effect at law of terminating the existence of obligations of the Tenant under the Lease or any renewal, extension or overholding thereof;
 - (c) the bankruptcy, receivership, insolvency or other liquidation or creditor's proceedings of or against the Tenant, or by the winding up or dissolution of the Tenant, or any surrender, repudiation, disaffirmation or disclaimer of the Lease by the Tenant or a trustee in bankruptcy of the Tenant, or a Receiver, Receiver-Manager or other creditor or creditor's agent;
 - (d) any waiver or failure by the Landlord to enforce any of the terms or covenants of the Lease or any renewal, extension or overholding thereof, against the Tenant, the Indemnifier or any other obligated person, including, without limitation, any neglect, delay or forbearance in demanding, requiring or enforcing performance or payment of any obligation or payment, except as to the particular performance or payment which has been waived;
 - (e) any amendment, alteration or modification of the Lease and any agreements or other dealings between the Landlord and the Tenant having the effect of amending, modifying or altering the Lease or any renewal, extension, or overholding thereof or the obligations of the Tenant thereunder, with or without the knowledge or consent of the Indemnifier;
 - (f) any renewal or extension of the Term or any overholding or other possession by the Tenant thereafter, or any abandonment of the Leased Premises;
 - (g) the expiration or earlier termination of the Term or of any renewal, extension, overholding or other possession of the Tenant;
 - (h) the repossession of the Leased Premises by the Landlord on behalf of the Tenant pursuant to the terms of the Lease;

- (i) any proceeding, action, recovery, judgment or collection by the Landlord against the Tenant or any Indemnifier, guarantor, or other person with regard to the Lease or any extension, renewal, overholding or other possession by the Tenant of the Leased Premises or this or another Indemnity Agreement;
 - (j) any transfer, assignment or sublease of all or any part of the Leased Premises by the Tenant or any trustee, receiver, receiver manager or liquidator, or any change of control of the Tenant, even if consented to by the Landlord;
 - (k) any sale, transfer, assignment, or encumbrance by the Landlord of the Lease (or any extension, renewal, overholding or other possession by the Tenant), the Leased Premises, the Building or the Lands;
 - (l) any relocation, expansion or reduction of the Leased Premises and any resulting changes to the Lease or any extension, renewal, or overholding thereof; or
 - (m) any other guarantees, indemnities or additional security accepted by the Landlord.
3. The obligations of the Indemnifier under this Indemnity Agreement shall continue during the Term and during any renewal or extension of the Term and during any overholding or other possession by the Tenant or the sooner termination thereof or the repossession of the Leased Premises by the Landlord on behalf of the Tenant until all money due to the Landlord has been paid and all terms, covenants and conditions to be observed or performed by the Tenant have been observed and performed.
4. In the event of any default by the Tenant, the Landlord may in its sole discretion bring any actions or pursue any remedy available directly and immediately against any Indemnifier, and shall not be required to first proceed against the Tenant or any other Indemnifier, guarantor or other person for any other remedy available under the Lease, in equity or at law, and the Landlord may apply or withhold any prepaid rent and security deposit, or other security in favour of the Tenant, and shall not be required to apply any such prepaid rent and security deposit, or security before bringing any actions or pursuing any remedy available against the Indemnifier or either of them.
5. The Indemnifier waives notice of the acceptance of this Indemnity Agreement and of any notice of non-payment, non-observance, non-performance or default on the part of the Tenant of any of the terms, covenants and conditions contained in the Lease or any renewal, extension, overholding or other possession thereof or the obligations of the Tenant thereunder. Without limiting the generality of the foregoing:
- (a) All notices, demands and requests which may be or are required to be given to the Indemnifier shall be in writing and shall be sufficiently given if delivered personally to the Indemnifier or if mailed prepaid and registered to the address of the Indemnifier as specified herein. A party may, from time to time by notice in writing to the other, change that party's address.
 - (b) The date of receipt of any such notice, demand, or request shall be deemed to be the date of delivery of such notice, demand, or request if delivered; or if mailed as aforesaid it shall be deemed to be received on the third (3rd) day (excluding Saturdays, Sundays, and statutory holidays in Alberta) next following the date of such mailing, unless there is, between the date of mailing and actual receipt, a mail strike or other labour dispute which adversely affects mail service in Alberta, in which case the party giving the notice, demand, or request shall deliver such notice, demand, or request by an alternative method.
 - (c) Any notices under this Indemnity shall be given to the Landlord as provided in the Lease.

6. The Landlord shall not be obliged to exercise its remedies against the Tenant or any other person or against the Leased Premises or to exhaust any security given by the Tenant before demanding payment of monies or performance of covenants by the Indemnifier or otherwise enforcing this Indemnity Agreement against the Indemnifier.
7. This Indemnity Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the Indemnifier, and shall enure to the benefit of and be enforceable by the Landlord and the Landlord's successors, transferees and assigns. Any assignment by the Landlord of its interest in the Lease operates as an assignment to such assignee of the benefit of this Indemnity Agreement.
8. If the Indemnifier consists of more than one person or entity, their covenants and obligations are joint and several and binding upon each of them, and the release of one or more such Indemnifier does not release any other Indemnifier or the Tenant.
9. The grammatical changes required to make the provisions of this Indemnity Agreement apply in the plural sense where the Indemnifier comprises more than one person and to corporations, firms, partnerships, or individuals male or female, will be assumed as though in each case fully expressed, and if the Indemnifier consists of more than one person, the obligations of the Indemnifier shall be deemed to be joint and several obligations of each such person. This Indemnity Agreement shall be construed in accordance with the laws of Alberta.
10. The Indemnifier acknowledges receipt of a copy of the Lease and covenants, represents and warrants that it has full power, capacity and authority to enter into this Indemnity Agreement and to perform its obligations hereunder. No modification of this Indemnity Agreement shall be effective unless it is in writing and is executed by both the Indemnifier and the Landlord.
11. The Indemnifier acknowledges being advised to receive independent legal advice about this Indemnity Agreement prior to executing same, and has received or hereby waives such advice.
12. Whenever any reference is made in this Indemnity Agreement or the obligations of the Tenant under the Lease, such reference shall be deemed to include any and all agreements and instruments executed by the Tenant in connection with the Lease or pursuant to the Lease and which relate to the Leased Premises. Any capitalized word or phrase used in and not defined in this Indemnity Agreement shall have the meaning given to it in the Lease.

IN WITNESS WHEREOF the Landlord and Indemnifier has executed this Indemnity Agreement as of the date first written above.

LANDLORD:
WILLOW HOLDINGS LTD.

INDEMNIFIER:
WALLACE & CAREY INC.

Per: Kathy Motherwell
Name: Katherine Motherwell
Title: Director

Per: Brian M. Birnie
Name: BRIAN M. BIRNIE
Title: SVP FINANCE & CORPORATE DEVELOPMENT

Name:
Title:

Name:
Title:

I/we have the authority to bind the corporation.

I/we have the authority to bind the corporation.

Dated this 19th day of December, 2016

BETWEEN:

FIELD CONSTRUCTION LTD., carrying on business under the trade name and style of **FIELD INVESTMENTS**, all bodies corporate duly incorporated under the laws of the Province of British Columbia, and having an office at 101-403 6th Street, New Westminster, in the Province of British Columbia,

(hereinafter called the "Landlord")

OF THE FIRST PART

AND:

772921 ALBERTA INC.
5445 8 Street NE
Calgary, AB T2K 5R9

(hereinafter called the "Tenant")

OF THE SECOND PART

ARTICLE I - DEMISE

1.01 WITNESSETH that in consideration of the rent, covenants and agreements herein reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord does hereby demise and lease unto the Tenant on the terms and conditions herein contained, those premises located in Unit 5B, 4386 Boban Drive, Nanaimo, British Columbia containing 3,615 square feet and shown outlined in red on the plan attached as Schedule "A" hereto, which premises are hereinafter referred to as the "Demised Premises".

ARTICLE II - DEFINITIONS

2.01 The Parties hereto agree that for the purpose of this Indenture, the words set out in this Article shall have the meaning herein ascribed to them.

2.02 "Area of Premises" shall be the area of the demised premises in square feet, which is hereby agreed to be 3,615 square feet, calculated from the centre of internal wall partitions that separate the Leased Premises from other premises and from the outside of external walls where the Leased Premises are defined by external walls.

2.03 "Building" means that Building and other buildings and attached improvements built upon the Development, from time to time, in which the demised premises are

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2.04 "Common Area" or "Common Areas" or "common area" shall include the common entrances, corridors, passageways, pedestrian malls, truck ways, platforms, walls, parking areas, driveways, walkways, flowerbeds, lawns, ramps and other areas and facilities in the Development provided from time to time for the use or benefit, in whole or in part, of the Landlord, its other tenants and the Tenant, and their respective invitees, licensees, customers, servants and employees.

204A "Contaminants" means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, lead asbestos, asbestos-containing materials, hazardous, corrosive, or toxic substances, special waste, polychlorinated biphenyl ("PCBs"), PCB-containing equipment or materials, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, which is now or hereafter prohibited, controlled, or regulated under Environmental Laws.

2.05 "Cost of Common Area" shall be the total cost of operating and maintaining the Development without duplication, calculated in accordance with generally accepted accounting principles consistently applied and including without restricting the generality of the foregoing, the reasonable costs of operating, lighting, heating, ventilating, air conditioning, removal of snow, supervision, management not to exceed the amount set out in paragraph 4.05, policing, liability insurance, replacement of fluorescent light bulbs and ballasts, maintenance, repairs, relining of parking areas, replacements including awnings, supplies, improvements and any business or real property taxes and insurance in respect of the common areas except for those costs which are Landlord's costs as set out in paragraph 4.14.

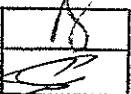
205A "Environmental Laws" means any statutes, laws, regulations, orders, bylaws standards, guidelines, protocols, permits, and other lawful requirements of any governmental authority having jurisdiction over the Demised Premises now or hereafter in force relating in any way to the environment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity.

2.06 "Event of Default" shall have the meaning ascribed to it in Paragraph 9.01.

2.07 "Landlord's Work" shall be the work described in the Offer to Lease made the 15th day of December, 2016 between the Parties hereto attached Schedule "B".

2.08 "Lease Year" shall be a twelve (12) month period commencing on the first day of the month coinciding with or next following the date of commencement set out in Paragraph 3.01 and thereafter from year to year PROVIDED THAT where the Lease Year does not coincide with the date of commencement or termination of this Lease or any renewal hereof, any payments required hereunder shall be apportioned for such shorter period.

2.09 The name of the Development shall be "BRANNEN LAKE BUSINESS PARK" or such other name as the Landlord may from time to time designate to identify the

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Development.

2.10 "Demised Premises" shall have the meaning ascribed to it in Paragraph 1.01.

2.11 "Pro Rata Share" or "Tenant's Pro Rata Share" as applied to any amount shall be that portion of the amount as bears the same ratio to the whole of the amount as the floor area of Demised Premises bears to the total rentable area of the Development, both calculated in the manner set forth in paragraph 2.02.

2.12 "Real Property Taxes" shall mean all taxes, rates, and assessments, whether general or specially levied or assessed for Municipal, school, general or any other purposes by any lawful government authority payable by the Landlord in respect of the Development and improvements thereon and shall include any other taxes payable by the Landlord which are imposed in substitution of the foregoing taxes, the whole as finally determined for each calendar year as a result of assessment, appeal or judicial review, and shall include any reasonable legal fees or appraisers fees incurred by the Landlord in respect of such final determination but shall exclude any name tax or large corporation capital tax of the Landlord.


2.13 "Right of Way Areas" shall have the meaning ascribed thereto in Paragraph 8.01.

2.14 "Development" shall mean those certain lands and demised premises and improvements thereon being that certain parcel or tract of land, situate in the City of Nanaimo and more particularly known and described as:

Lot 19, SEC 5, Plan 38953, Wellington Land District

2.15 "Tenant's Auditor" and "Landlord's Accountant" shall mean a Chartered Accountant or a person or party certified to perform audits in the Province of British Columbia.

2.16 "Tenant's Taxes" shall mean all taxes, licenses, rates, duties and assessments imposed or levied by lawful government authority for any period during the term or any renewal thereof relating to or in respect of personal property and all business or trade fixtures, machinery and equipment, cabinet work, furniture and moveable partitions owned or installed by the Tenant at the expense of the Tenant or being the property of the Tenant, or relating to or in respect of improvements to the demised premises, built, made or installed by the Tenant or at the Tenant's request, whether any such taxes are payable by law by the Tenant, or by the Landlord, and whether such taxes are included by the Taxing authority in the taxes, rates and assessments imposed or levied on or with respect to the Development and included in real property taxes.

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ARTICLE III - TERM

3.01 The term of this Lease shall be for Five (5) YEARS computed from the 1st day of March, 2017 up to and including the 28th day of February, 2022.

ARTICLE IV - RENT AND OTHER PAYMENT BY THE TENANT

4.01

Rent

During the term of the Lease hereof the Tenant shall pay to the Landlord as rent:

(a) Year One (1) to Year Two (2)

The Tenant shall pay to the Landlord in and for first to second Lease years, the minimum rent in an amount of \$ 34,342.50 per year by equal consecutive monthly instalments of \$ 2,861.88 payment in advance on the 1st day of each and every month commencing the 1st day of March, 2017;


(b) Year Three (3)

The Tenant shall pay to the Landlord in and for third Lease year, the minimum rent in an amount of \$ 35,246.25 per year by equal consecutive monthly instalments of \$ 2,937.19 payment in advance on the 1st day of each and every month commencing the 1st day of March, 2019;

(c) Year Four (4) to Year Five (5)

The Tenant shall pay to the Landlord in and for fourth to fifth Lease years, the minimum rent in an amount of \$ 36,150.00 per year by equal consecutive monthly instalments of \$ 3,012.50 payment in advance on the 1st day of each and every month commencing the 1st day of March, 2020;

Provided that in consideration of the said rent, the Landlord covenants to deliver to the Tenant, premises having an area of approximately 3,615 square feet. Should the actual area of the premises be different than this said area, the rent shall be adjusted and retroactive to the date of remeasurement by the factor of (Year One (1) to Year Two (2) \$9.50, Year Three (3) \$9.75 and Year Four (4) to Year Five (5) \$10.00) per square foot per annum difference from the prescribed area;

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4.02 Payment of Rent

All payments of any nature made pursuant to this Lease shall be in lawful money of Canada at such place as the Landlord may in writing designate from time to time, and shall be paid without prior demand therefor and without any set-off, abatement, compensation or deduction of whatsoever nature or for whatsoever reason, and shall be applied in such manner as the Landlord may see fit in respect to the Tenant's obligations to the Landlord hereunder.

4.03 Apportionment for Partial Period

If any rent repayment, adjustment or any other repayment hereunder is required to be made by the Tenant in respect of any period and if this Lease commenced or terminates on other than the beginning or end of such period, the Tenant shall pay a proportionate amount for that portion of the period in which the term of this lease was in effect.

4.04 Additional Rent

Whenever, under the terms of this Lease, any sum of money is required to be paid by the Tenant, in addition to the rent herein reserved, and such additional amount is not designated as "additional rent" or provision is not made in the Article covering such payment for the collection of the said amount as "additional rent", such amount shall nevertheless, if not paid when due, be deemed "additional rent" and collectable as such with the next instalment of rent falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any sum at the time such sum becomes due and payable hereunder, or limit any other remedy of the Landlord.

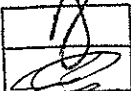
4.05 Cost of Common Areas & Management

The Tenant shall pay to the Landlord as additional rent, the Tenant's pro rata share of the Cost of Common Areas in every calendar year during the term or any renewal thereof as and when required pursuant to Paragraph 4.03. The Landlord may, at its sole discretion, charge an amount up to FIVE (5%) per cent of the net Lease value, which amount is to form part of the Cost of Common Areas on account of service, management and accounting charges.

4.06 Real Property Taxes

The Tenant shall pay to the Landlord as additional rent the Tenant's pro rata share of all real property taxes in every calendar year during the term or any renewal thereof as and when prescribed by the Landlord pursuant to Paragraph 4.07 or within ten (10) days of the date of receipt by the Tenant of the Statement set out in Paragraph 4.08, provided same have not been included in the Tenant's pro rata share of the Cost of Common Areas, such that there is to be no duplication of payment by the Tenant of its pro rata share of Real Property Taxes.

4.07 The Landlord may, at its option, from time to time, estimate the amount which may be payable by the Tenant pursuant to Paragraph 4.06 and the Tenant shall pay to the Landlord with the monthly payments of rent as and when required by the Landlord, a part thereof, so that the

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Landlord will have sufficient funds on hand to pay the estimated amount of taxes when such taxes next become due and payable.

4.08 In respect of any calendar year, the Landlord, after any tax bill is received by it in respect of the real property taxes, shall compute the Tenant's pro rata share thereof and submit to the Tenant a statement in writing showing such amount and in reasonable detail the computation thereof and refund to the Tenant forthwith any overpayment made by the Tenant under paragraph 4.07.

4.09 Taxes on Improvements

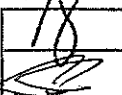
The Tenant shall pay as they become due, or on written demand of the Landlord, any and all Tenant's Taxes which are levied during the term or any renewal thereof, PROVIDED that if the Landlord shall receive any notice of such a levy of taxes it shall forthwith furnish the same to the Tenant, AND PROVIDED FURTHER that the Tenant upon indemnifying the Landlord to the Landlord's reasonable satisfaction, shall have the right at its own expense to appeal any such tax levy.

4.10 Utility Rates

The Tenant shall pay as they become due any and all water, gas, electricity, cablevision, fuel, heat and air conditioning charges together with all other utility charges, in respect of the Demised Premises, and, if supplied by the Landlord, shall pay the same to the Landlord monthly within ten (10) days of receiving a statement therefore, and the Landlord shall have the right to cut off or discontinue without notice any such service wherever and during any time for which accounts for the same or rent are not paid by the Tenant to the Landlord when due PROVIDED THAT nothing herein shall limit any other remedy of the Landlord.

4.11 Insurance

The Landlord shall insure the Development against loss by fire, broad extended coverage perils, malicious damage, including and without limiting the generality, impact by aircraft or vehicles, lightning, riot, smoke, leakage, flood, explosion, windstorm or hail, earthquake, boiler, loss of rental income insurance, plate glass insurance, and public liability insurance in the amount of THREE MILLION (\$3,000,000.00) DOLLARS or such greater amount as the Landlord may require in respect of bodily injury including death to one or more persons and property damage and such other coverage as the Landlord may reasonably desire, as would a prudent owner, and the Tenant's pro rata share of the cost of such insurance shall be paid by the Tenant as and when invoiced for the same by the Landlord as additional rent.

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4.12 Accounts

All accounts submitted by the Landlord for which the Tenant is responsible shall be due and payable ten (10) days after delivery of the same to the Tenant.

4.13 Tenant's Utilities

In addition to the payments to the Landlord required by this Article IV, the Tenant shall pay all rates, charges, costs and expenses as may be assessed or levied by any supplier of utilities directly against the Tenant in respect of utilities that are separately metered.

4.14 Intent of Lease

This Lease shall be absolutely net to the Landlord such that the Tenant shall pay for its own account, and without any variation, set-off or deduction all costs, expenses, rates, taxes and charges in any way relating to the Demised Premises and the business of the Tenant as well as the Tenant's Pro Rata Share of all taxes, insurance premiums and other rates, costs, and expenses and charges, including management fees (only as permitted under paragraph 2.05), relating to the operation of the Development, other than the payment of any interest or principal required to be paid by the Landlord under any mortgage related to the Development, any income taxes payable by the Landlord, the cost of structural repairs, all costs of upgrading requests or orders of any applicable government authority except those which relate solely to the Tenant's use of the Demised Premises, all costs related directly or indirectly to environmental matters except those arising solely due to the negligence of the Tenant, and all expenses of a capital nature in accordance with normal accounting practice, (which exceptions are collectively referred to in this Lease as the "Landlord's Costs").

4.15 Business Transfer Tax

The Tenant shall pay to the federal, provincial or municipal authority imposing the same, all service, business transfer, transaction value, ad valorem, sales or other taxes by whatever name called, if any, assessed upon or as a direct result of the payment of Rent hereunder as often as such taxes become due and whether or not such taxes are applicable on the date of the execution of this Lease or become applicable thereafter. In the event that such taxes are by statute, by-law or regulation imposed upon or payable by the Landlord as recipient of the Rent, the Tenant shall reimburse the Landlord for the full amount of such taxes within thirty (30) days of such taxes becoming due.

ARTICLE V - COVENANTS OF TENANT

5.01 The Tenant covenants and agrees with the Landlord as follows:

- (a) To pay rent as provided herein;
- (b) (i) To pay as they become due all other payments and additional

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rent provided herein;

(ii) To complete all Tenant's Work;

(c) To repair and maintain, subject to the following exceptions only, reasonable wear and tear and damage by insurable hazards, tempest, impact or air-craft, acts of God or the Queen's enemies, riots, insurrections, structural defects in the Building and explosion (unless such damage is caused by the negligence of the Tenant, his or its agents, employees, invitees or licensees) and except for those items which are Landlord's Costs as defined in paragraph 4.14 and items which are the obligation of the Landlord to maintain, repair or replace;

(d) That the Landlord, upon reasonable prior notice and at reasonable times except in the case of emergencies, may enter and view state of repair and that the Tenant will repair according to notice subject to the exceptions aforesaid;

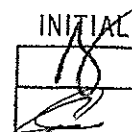
(e) To leave the demised premises in good repair, subject to the exceptions aforesaid;

(f) Not to assign, mortgage or encumber this Lease or sublet or grant a license in respect of or suffer or permit the Demised Premises or any part thereof to be used by others without the prior written consent of the Landlord, such consent not to be unreasonably withheld, in each instance, AND FURTHER PROVIDED that such assignment or subletting or occupying permitted by the Landlord shall in manner release the Tenant from any covenant to be observed or performed by it hereunder and the Tenant shall be liable for the Landlord's reasonable costs incurred in connection with the Tenant's request for consent;

(g) The Tenant will not store or permit to be stored upon the Demised Premises anything of a dangerous, inflammable or explosive nature; described, as to which the Landlord shall be the sole judge acting reasonably;

(h) Not to do or permit to be done in or about the Development anything which may injure the Common Area or like areas in the Development or be a nuisance to any other tenant of the Landlord or other Owner of part of the Development or their tenants in the Development;

(i) To comply with all Statutes, By-laws, rules and regulations of any governmental authority relating in any way to the use and occupation of the Demised Premises except with respect to those matters which are the responsibility of the Landlord under this Lease;

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(j) To not do or omit or permit to be done or omitted upon the Demised Premises anything which shall cause the rate of insurance upon the Building of which the demised premises are part or any part thereof or any other building in the Development to be increased;

(k) To keep the Demised Premises in a clean, tidy, and wholesome condition and upon the expiration of the term or any renewal thereof to leave the demised premises in such condition;

(l) To not at any time use any advertising media which the Landlord or other tenants may reasonably consider objectionable;

(m) In connection with its advertising in relation to the business carried on in the demised premises, to use and promote the name of the Development, in a manner from time to time approved by the Landlord;

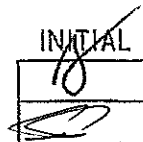
(n) To not use the name of the Development in regard to any business other than the business of the Tenant upon the demised premises;

(o) To not grant any concessions, licenses or permission to any third party to sell or take orders for merchandise or services in the premises without the written approval of the Landlord;

(p) To obey and to cause its agents, servants and employees to obey all reasonable rules and regulations made from time to time by the Landlord for the regulation of all activities and matters in and about the Development and the use of the common areas;

(q) If the Landlord supplies any equipment, installation of machinery in connection with heating or air-conditioning of the demised premises, the Tenant shall bear the Tenant's pro rata share of the expense of maintenance of such equipment and machinery and if so required by the Landlord, shall concur in such maintenance being carried out pursuant to a service contract in the terms and with such persons as directed by the Landlord, PROVIDED that the cost of the same shall not exceed those costs which a reasonable and prudent owner would be willing to incur to carry out the same maintenance. If such heating or air-conditioning equipment or machinery is installed by the Landlord on the demised premises for the exclusive use of the Tenant, the Tenant shall carry out at its own expense such reasonable maintenance program as shall be required by the Landlord;

(r) To carry out all other covenants and agreements by it herein contained.

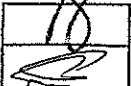
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(s) Not to use or occupy the Demised Premises or any part thereof for any purpose other than the operation of a general warehousing and administration and shall be operated continuously throughout the Term by the Tenant.

(t) To not permit any vehicles, trailers or shipping containers to occupy the common areas for the purpose of storing the Tenant's goods or chattels. To furnish, within five (5) days of demand in writing from the Landlord, to the Landlord the current license number of all motor vehicles owned, used or brought upon the demised premises by the Tenant, its employees, servants or agents or anyone on its behalf and to cause all such vehicles to be parked in the exact location which the Landlord may direct;


5.02 The Tenant covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Demised Premises for the sale, storage, manufacture, disposal, use or any other dealing with any Contaminants, without the prior written consent of the Landlord, which may be unreasonably withheld;
- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Demised Premises;
- (c) to promptly provide to the Landlord a copy of any environmental site assessment, audit, or report relating to the Demised Premises conducted by or for the Tenant. In the event the Tenant or any other person for whom it is in law responsible causes any release of a Contaminant or any other occurrence or condition at the Demised Premises which could contaminate the Demised Premises or subject the Landlord or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws the Tenant shall at the Landlord's request obtain from an independent environmental consultant approved by the Landlord an environmental site assessment of the Demised Premises or an environmental audit of the operations at the Demised Premises, the scope of which shall be satisfactory to the Landlord, and shall include any additional investigations as the environmental consultant may recommend and to properly provide such written authorizations as the Landlord may require from time to time to make enquiries of any governmental authority regarding the Tenant;
- (d) to waive the requirement, if any, for the Landlord to provide a site profile for the Demised Premises under the *Waste Management Act* or any regulation pursuant thereto;
- (e) to maintain all environmental site assessments, audits, and reports relating to

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the Demised Premises in strict confidence (including without limitation any governmental authority) except as required by law, or to the Tenant's professional advisers and lenders on a need-to-know basis, or with the prior written consent of the Landlord, which consent may be unreasonably withheld;

- (f) to promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Demised Premises or any adjacent property which could contaminate the Demised Premises or subject the Landlord or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (g) on the expiry or earlier termination of this Lease, or at any time if requested by the Landlord or required by any governmental authority under Environmental Laws, to remove from the Demised Premises all Contaminants, and to remediate any contamination of the Demised Premises or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the Demised Premises by the Tenant or any person for whom it is in law responsible. The Tenant shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. The Tenant shall provide to the Landlord full information with respect to any remedial work performed under this section and shall comply with the Landlord's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the Landlord to perform the remediation. The Tenant shall, at its own costs, obtain such approvals and certificates from the B.C. Ministry of Water, Land and Air Protection and other applicable governmental authorities in respect of the remediation as required under Environmental Laws or by the Landlord, including without limitation, a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry and the Landlord. All such Contaminants shall remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Demised Premises; and
- (h) to indemnify the Landlord and its directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including any and all environmental or statutory liability for remediation, all legal and consultants' fees and expenses and the cost of remediation of the Demised Premises and any adjacent property) arising from or in connections with:
- (i) any breach of or non-compliance with the provisions of this Article by the Tenant; or

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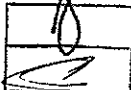
- (ii) any release or alleged release of any Contaminants at or from the Demised Premises related to or as a result of the use and occupation of the Demised Premises or any act or omission of the Tenant or any person for whom it is in law responsible.

The obligations of the Tenant under this Article shall survive the expiry or earlier terminations of this Lease.

ARTICLE VI - GRANT OF RIGHTS BY TENANT

6.01 Without restricting the rights of the Landlord, and obligations of the Tenant provided elsewhere herein, the Tenant hereby grants to the Landlord the following rights with respect to the Demised Premises in addition to all other rights arising out of this Lease or otherwise incidental to the Landlord's title and any interference by or on behalf of the Tenant with any such rights shall be deemed a breach of a covenant on the part of the Tenant herein, namely:

- (a) The right to inspect or to authorise in writing an agent to inspect the Demised Premises at all reasonable times and upon reasonable prior notice except in the case of emergencies;
- (b) The right at any time within One Hundred Eighty (180) days prior to the expiration of the term hereby granted or any renewal thereof to enter upon the Demised Premises at all reasonable times for the purpose of offering the same for rent and exhibiting the same to prospective tenants, and to place and keep upon the windows and doors of the Demised Premises for rent;
- (c) The right to install, maintain, replace, repair and service or cause to be installed, maintained, replaced, repaired and serviced, wires, ducts, pipes, conduits or other installations in, under or through the Demised Premises for or in connection with the supply of any service or utility to the Demised Premises or to other parts of the Development PROVIDED that same does not interfere with or disrupt the Tenant's business;
- (d) The right to make any repairs at the expense of the Tenant for which the Tenant is responsible under Paragraph 5.01 (c) if the Tenant fails to do so within a reasonable time after written notice from the Landlord, and the right at the Landlord's option to remedy any breach or covenant on the part of the Tenant to repair and maintain at the expense of the Tenant for which the Tenant is responsible without in any manner affecting the Tenant's obligations and covenants under this Lease. Nothing in this Article contained shall be deemed or construed to impose upon the Landlord any obligation, responsibility or liability whatsoever for the care, maintenance and repair of the Demised Premises or any part thereof, except as otherwise in this Lease specifically provided.

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- (e) In the event of an emergency, the Landlord shall have the right to enter into the demised premises, without notice to the Tenant, to effect such repairs as may be necessary to protect the demised premises or the Development.

ARTICLE VII - COVENANTS OF THE LANDLORD

7.01 The Landlord covenants with the Tenant as follows:

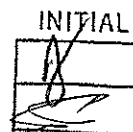
- (a) For quiet enjoyment;
- (b) To provide and maintain in good condition, repair and replace the common areas, structural portions of the Building, roof and Building systems not within and exclusively serving the Demised Premises at the expense of all of the tenants in the Development in accordance with the definition of "Cost of Common Area".

ARTICLE VIII - GRANT OF RIGHT BY LANDLORD

8.01 The Landlord hereby grants to the Tenant an Easement and Right of Way in common with the Landlord and all others having a like right at all times with or without vehicles to enter, go, return, pass and re-pass over that part of the Development more particularly described in Schedule "C" hereto (the "Right of Way Areas") and to park upon and depart from those parts of the Right of Way Areas designated therefore by the Landlord from time to time with the intention that the rights aforesaid shall be appurtenant to the premise demised herein and shall be binding upon the Right of Way Areas, PROVIDED that nothing herein shall restrict the rights of the Landlord to re-designate the use of the Right of Way Areas aforesaid or limit the Landlord's rights pursuant to Paragraph 8.02.

8.02 Notwithstanding the grant of rights in Paragraph 8.01 the Tenant agrees:

- (a) That the Landlord may add to the Building or add other improvements upon or adjacent to the Right of Way Areas from time to time, or vary the same without the consent of the Tenant, PROVIDED always that at all times during the term or any renewal hereof, the Tenant has reasonable ingress to and egress from the demised premises over parts of the Right of Way Areas;
- (b) If, as a result of exercising its rights set out in Sub-Paragraph (a) or (b) aforesaid, the actual areas of Right of Way are varied, the Tenant will, at the cost of the Landlord, execute such documents as reasonably required by the Landlord to release the Tenant's interest in those parts of the Right of Way Areas designated by the Landlord.

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ARTICLE IX - RIGHTS AND REMEDIES OF THE LANDLORD

9.01 Events of Default

The Tenant shall be in default hereof upon the occurrence of any of the following:

(a) If the rents or any other payments hereby reserved or required of the Tenant to be made or any part thereof are in arrears or unpaid for seven (7) days after written notice of non-payment to the Tenant from the Landlord;

(b) Thirty (30) days after notice in writing to the Tenant that it is in default or breach of any other covenant or agreement herein contained, if after such period such default or breach shall continue.

9.02 Interest on Monies Remaining Unpaid


All monies payable to the Landlord by the Tenant pursuant to this Agreement and remaining unpaid, shall bear interest at the rate of twenty-four percent (24%) per annum from the date of default to the date of payment.

9.03 Re-entry

Upon the occurrence of an Event of Default, it shall be lawful for the Landlord at any time thereafter without notice to re-enter the Demised Premises and the same to have again, repossess and enjoy as of its former estate, anything herein contained to the contrary notwithstanding; and no acceptance of rent subsequent to any default or breach and no condoning, excusing or overlooking by the Landlord on previous occasions of any default, breach of event of default similar to that for which re-entry is made shall be taken to operate as a waiver of this condition or in any way to defeat or affect the rights of the Landlord hereunder, unless so expressly stated by the Landlord in writing.

9.04 Bankruptcy

If the term hereof or any renewal thereof shall at any time be seized or taken in execution or attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors or shall become bankrupt or insolvent or shall take the benefit of any bankruptcy or insolvency legislation or in case the Demised Premises shall become vacant or unoccupied for the period of seven (7) days, the then current month's rent together with the rent including additional rent, accruing for the next three (3) months shall immediately become due and payable and the term hereof or any renewal thereof shall at the option of the Landlord become forfeited and void. Neither this Lease nor any interest therein nor any estate hereby created shall pass to or enure to the benefit of any Trustee in bankruptcy or any receiver or any assignee for the benefit of creditors or otherwise by operation of law.

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9.05

Distress

Whensoever the Landlord shall be entitled to levy distress against the goods and chattels of the Tenant it may use such force as it may deem necessary for that purpose and for gaining admittance to the Demised Premises without being liable in any action in respect thereof, or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the Landlord from all actions, proceedings, claims or demands whatsoever for or on account of, or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith. The Tenant hereby waives and renounces the benefit of any present or future statute limiting or eliminating the Landlord's right of distress.

9.06

Non-Waiver

The waiver by the Landlord of any default or breach of any covenants or agreement herein or any Event of Default by the Tenant must be in writing and shall not be construed as, or constitute a waiver of any further or other breach of the same or any other covenant or condition, and the consent or approval of the Landlord to or of any act by the Tenant requiring the Landlord's consent or approval must be in writing and shall not be deemed to waive or render unnecessary the Landlord's consent or approval to any subsequent act similar or otherwise by the Tenant.

9.07


Landlord's Right to Perform

Subject to the other provisions of this Lease, if the Tenant shall fail to perform any of its covenants or agreements herein contained, the Landlord may from time to time use its discretion and without prior notice to the Tenant perform, cause to be performed or enforced any of such covenants or agreements or any part thereof and for such purpose may do such things as may be requisite and may enter upon the Demised Premises, and all expenses incurred and expenditures made by or on behalf of the Landlord including the Landlord's legal fees and disbursements on a solicitor/client basis shall be forthwith paid by the Tenant to the Landlord, and if the Tenant fails to pay the same the Landlord may add the same to the rent and recover the same by all remedies available to the Landlord for the recovery of rent in arrears; PROVIDED that if the Landlord commences or completes either the performance, the causing to be performed or enforced of any of such covenants or agreements or any part thereof, the Landlord shall not be obliged to complete such performance or causing to be performed or be later obliged to act in like fashion.

ARTICLE X - ADDITIONS AND IMPROVEMENTS TO DEMISED PREMISES

10.01 The Tenant covenants and agrees with the Landlord that it will not, without the previous written consent of the Landlord not to be unreasonably withheld:

- (a) Erect, install, or place any signs or advertising on the Demised Premises;
- (b) Install plumbing, fixtures, shades or awnings or exterior lighting, decorations or painting or any exterior erection, installation or

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construction of any kind;

(c) Mark, paint, drill or in any way deface any walls, ceilings, partitions, floors, wood, stone, iron or other work on the Demised Premises;

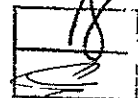
(d) Install or permit to be installed in the Demised Premises any special locks or safes or similar security devises;

(e) Install or permit to be installed in the Demised Premises any apparatus for illumination, air-conditioning, cooling, heating, refrigeration or ventilation.

10.02 The Tenant shall make no alterations, installations, removals, additions or improvements in or about the Demised Premises without the Landlord's prior written consent not to be unreasonably withheld, conditioned or delayed and in the event of such consent, all work shall be done at the Tenant's sole expense and at such times and in such manner as the Landlord may approve, and only by contractors or tradesmen approved in writing by the Landlord acting reasonably.

10.03 The Tenant shall not suffer or permit any Builder's Liens to be filed against the interest of the Landlord in the lands and Demised Premises or the demised premises by reason of work, labour, services or material supplied or claimed to have been supplied to the Tenant, and if any such Builders' Liens shall at any time be filed against the lands and Demised Premises or Demised Premises whatsoever, the Tenant shall cause the same to be discharged or record forthwith upon the Tenant having knowledge of any such filing, and upon failure to do so by the Tenant, then the Landlord, in addition to any right or remedy, may but shall not be obliged to, discharge the same by paying the amount claimed to be due or by procuring a discharge of such liens by deposit in Court and in such event the Landlord shall be entitled, if it so elects, to expedite the prosecution of any action for the enforcement of such lien by the lien claimant and to pay the amount of the Judgment, if any in favour of the lien claimant with interest costs and allowance and all expenses incurred and expenditures made by or on behalf of the Landlord in conjunction therewith, together with all disbursements and costs of such proceedings on a solicitor/client basis, shall be forthwith paid by the Tenant to the Landlord and if the Tenant fails to pay same, the Landlord may add the same to the rent for the recovery of rent in arrears, PROVIDED HOWEVER that the Tenant shall not be required to pay or discharge any such Builder's Lien so long as the Tenant shall in good faith proceed to contest the same by appropriate proceedings, after first having given notice in writing to the Landlord of its intention to so contest the validity of the lien claim, and after, at the option of the Landlord, paying into Court sufficient security to enable the lien to be discharged in respect of the lands and Demised Premises or Demised Premises or after furnishing a surety bond of a company satisfactory to the Landlord in an amount sufficient to pay such contested lien claim with all interest thereon and Court costs and expenses including reasonable solicitor's fees, which may at such time be allowable by law, which might be incurred in connection therewith.

10.04 All articles of personal property and all business and trade fixtures, machinery and equipment, cabinet work, furniture and moveable partitions owned or installed by the Tenant at the expense of the Tenant in the Demised Premises shall remain the property of the Tenant and may be



removed by the Tenant at any time during the term, PROVIDED that the Tenant at its expense shall repair any damage to the Demised Premises or the Building caused by such removal of the original installation.

10.05 The Landlord may elect within thirty (30) days after the termination of this Lease, to require the Tenant to remove all or any part of the business and trade fixtures, machinery and equipment, cabinet work, furniture and moveable and immoveable partitions owned or installed by or on behalf of the Tenant at the expiration of this Lease, in which event such removal shall be done at the Tenant's expense and the Tenant shall, at its expense, repair any damage to the Demised Premises or to the Building caused by such removal.

10.06 If the Tenant does not remove the property set out in Paragraph 10.05, forthwith after written demand by the Landlord, such property shall, if the Landlord elects, be deemed to become the Landlord's property or the Landlord may remove the same at the expense of the Tenant and the cost of such removal will be paid by the Tenant forthwith to the Landlord on written demand, and the Landlord will not be responsible for any loss or damage to such property because of such removal.

ARTICLE XI - LANDLORD'S PROTECTION AGAINST CLAIMS

11.01 The Landlord shall not be liable and the Tenant hereby covenants and agrees to indemnify and save harmless the Landlord of and from all claims and demands of any and every nature whatsoever by the Tenant or any other person located on the Demised Premises arising out of the following:

- (a) Loss of or damage to any property of the Tenant or any other person located on the Demised Premises from time to time in any way occurring;
- (b) Damage or injury, including injury resulting in death to persons or property in any way occurring;
- (c) Latent defects in the Demised Premises caused or created by the Tenant herein;
- (d) Any business carried on in the Demised Premises either by the Tenant, any sub-Tenant or otherwise;

11.02 Landlord Unable to Perform

Whenever and to the extent that the Landlord, having made all reasonable efforts, shall be unable to fulfill or shall be delayed or restricted in the fulfillment of any obligation hereunder in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to fulfill such obligation or

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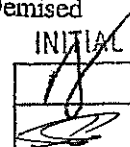

by reason of any strike or lockout or any statute, law or order-in-council or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administrator, comptroller or board of any governmental department or officer or other authority or by reason of any other cause beyond its control, whether of the foregoing character or not, the Landlord shall be relieved from the fulfillment of such obligation and the Tenant shall not be entitled to compensation for any loss, inconvenience, nuisance or discomfort thereby occasioned.

ARTICLE XII - INSURANCE

12.01 Notwithstanding any other provision hereof, the Tenant covenants and agrees that it shall at its sole expense pay for and the Landlord may place and maintain in full force and effect for the benefit of the Landlord and the Tenant during the term and any renewals thereof, insurance with a reputable insurance company or companies as follows:

- (a) Public Liability and Property Damage Insurance covering the Demised Premises and any plate glass thereon, the business of the Tenant and any sub-Tenants, concessionaire or licensees of the Tenant conducted on, or in connection with, the Demised Premises of an amount not less than the inclusive limit of THREE MILLION (\$3,000,000.00) DOLLARS for or in respect of any one accident resulting in injury or death to one or more persons and an amount not less than the inclusive limit of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS in respect of any loss or damage to the property or such further amounts as the Landlord may reasonably require; such policy to show both the Landlord and the Tenant as insured parties and to contain a cross-liability clause;
- (b) Loss of Rental Income Insurance for the benefit of the Landlord by proper policies of insurance covering the risk of loss of rentals in the event of damage or destruction by fire or other hazards covered by policies of insurance normally issued from time to time during the term hereof for buildings of a similar nature in an amount of not more than one (1) year's full rental value; and in the event of such damage or destruction by fire or other hazard;
- (c) All risk insurance for the full replacement value of the Demised Premises and improvements and equipment thereof, including and without limiting the generality, fire, impact by aircraft or vehicles, lightning, riot, smoke, leakage, flood, malicious damage, explosion, windstorm or hail, earthquake and boiler; such policy to contain a waiver of subrogation as against the Tenant and its employees;

12.02 The Tenant shall not do or permit to be done any act or thing which may render void or voidable or conflict with the requirements of any policy or policies of insurance including any regulations of fire insurance underwriters applicable to such policy or policies whereby the Demised

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Premises are insured or which may cause any increase in premium to be paid in respect of any such policy. In the event that any such policy or policies is or are cancelled by reason of any act or omission of the Tenant, the Landlord shall have the right, at its option, to terminate this Lease forthwith by giving notice of termination to the Tenant, PROVIDED that the Landlord shall first have delivered to the Tenant a notice of such act or omission and given the Tenant reasonable time to comply with the deficiencies stated in such notice and the Tenant has not so complied, and in the event that the premium to be paid in respect of any such policy is increased by any act or omission of the Tenant, the Tenant shall pay to the Landlord the amount by which the premium shall be so increased.

ARTICLE XIII - DESTRUCTION OR DAMAGE TO DEMISED PREMISES AND
EXPROPRIATION

13.01 Substantial Destruction

In the event of damage or destruction of the Demised Premises, or of any other portion of the Development, whether or not the Demised Premises be affected thereby, to the extent that, in the reasonable opinion of the Landlord's architect:

- (a) The cost of repair, restoration or reconstruction exceeds Fifty Percent (50%) of the replacement cost (excluding foundation and excavation costs) of such damaged or destroyed portions of the Development; and
- (b) The repair, restoration or reconstruction cannot, with the exercise of reasonable diligence, be accomplished to enable such portions of the Development to re-open for business within twelve (12) months of the date of such damage or destruction,

then the Landlord may, within sixty (60) days after such damage or destruction, and on giving thirty (30) days' written notice to the Tenant, DECLARE this Lease terminated forthwith and in such event, the Term shall be deemed to have expired on the date stated in such notice and the Tenant shall deliver up possession of the Demised Premises accordingly, rent shall be apportioned and shall be payable up to the date of damage, and the Tenant shall be entitled to be repaid by the Landlord any rent paid in advance and unearned or an appropriate portion thereof.

13.02 Architects's Certificate

The certificate of the Landlord's architect certifying that damage or destruction has occurred to the extent set forth in Article 13.02, shall be binding and conclusive upon the Tenant for the purposes thereof.

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13.03 Rebuilding

If this Lease is not terminated pursuant to Article 13.01, and such damage or destruction is insured against by the Landlord, the Landlord shall cause such damage or destruction to be repaired, restored or reconstructed, save as to such items as are the Tenant's work.

13.04 Expropriation


(a) If, during the Term, title is taken to the whole or any part of the Development (whether or not such part includes the Demised Premises) by any competent authority under the power of eminent domain or by expropriation, which taking, in the reasonable opinion of the Landlord, does not leave a sufficient remainder to constitute an economically viable development, the Landlord may, at its option, terminate this Lease on the date of possession is taken by or on behalf of such authority. Upon such termination, the Tenant shall immediately deliver up possession of the Demised Premises, rent shall be payable up to the date of such termination, and the Tenant shall be entitled to be repaid by the Landlord any rent paid in advance and unearned or an appropriate portion thereof; and

(b) In the event of any such taking, the Tenant shall have no claim upon the Landlord for the value of its property or the unexpired portion of the Term, but the Parties hereto shall each be entitled to separately advance their claims for compensation for the loss of their respective interests and to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award for the Tenant, the Landlord will account therefor to the Tenant.

ARTICLE XIV - SALE, FINANCING AND SUBORDINATION

14.01 Sale of Development - The Tenant agrees that the Landlord may assign its interest in this Lease, and in the event of a conveyance, assignment or other divesting by the Landlord of its interest in this Lease, the Tenant shall, from time-to-time upon request by the Landlord, promptly execute, acknowledge and deliver to the Landlord within five (5) days of such request, a statement in writing, addressed to the person, firm or corporation acquiring the said interest and stating that the Tenant shall attorn Tenant and shall pay all future rent to such person, firm or corporation or its nominee, provided that the Tenant has received from the party acquiring the interest of the Landlord an agreement, in form reasonably satisfactory to the Tenant, whereby such party has attorned to the Tenant as Landlord under the Lease.

14.02 Subordination - Upon the request of the Landlord in writing, the Tenant shall forthwith make this Lease subject and subordinate to all mortgages, debentures or trust deeds, which now or hereafter during the term hereof or any renewal thereof, shall be recorded or which the Landlord shall seek to record in a land title office as a "mortgage" against the Development and to all advances made or to be made thereunder, and shall execute promptly from time-to-time any assurances, including a

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registerable form of subordination agreement, that the Landlord may request to confirm this Subordination; PROVIDED that subordination to any such mortgage, debenture or trust deed shall be on terms whereby the Tenant is entitled to remain in possession of the Demised Premises while not in default of any of the provisions of this Lease.

14.03 Assignment of Rents - The Landlord may assign all rents and other payments payable by the Tenant to the Landlord hereunder to any lender, or the trustee for any lender, financing the Development. Upon notice of such assignment being forwarded to the Tenant, the Tenant shall, within five (5) days of receipt of such notice, sign and return to the lender an acknowledgement of the assignment in such reasonable form as the lender may require.

14.04 Attornment - In the event of foreclosure proceedings or the exercise of the power of sale contained in any mortgage, debenture or trust deed made by the Landlord upon the security of the Development, the Tenant shall attorn to the mortgagee, to the debenture-holder or trustee or to the purchaser upon any such foreclosure or sale and recognize such person as the Landlord under this Lease, provided that such person agrees in writing with the Tenant to be bound by the obligations of the Landlord under this Lease.

14.05 Estoppel Letters - The Tenant shall, from time-to-time, within five (5) days after the written request of the Landlord, deliver to the Landlord, or to whomsoever the Landlord shall direct, a statement, executed under corporate seal of the Tenant, setting forth such reasonable information as may be requested by the Landlord pertaining to this Lease.

ARTICLE XV - OBLIGATIONS OF GUARANTORS

See Schedule "D" if applicable

ARTICLE XVI - MISCELLANEOUS PROVISIONS

16.01 No Agency or Partnership

Nothing herein contained shall be construed as creating the relationship of principal and agent or of partners or of joint ventures between the Parties hereto, their only relationship being that of Landlord and Tenant.

16.02 Over-Holding

If the Tenant continues to occupy the Demised Premises with the consent of the Landlord after the expiration of this Lease or any renewal thereof without any further written agreement the Tenant shall be a monthly tenant at a monthly rental equivalent 125% of the rental payable by the Tenant on the last month of occupancy under the term or any renewal thereof this lease.

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16.03 Control of Corporation

If the Tenant is a corporation, other than a corporation the shares of which are listed on any recognized stock exchange, effective control of the corporation shall not be changed directly or indirectly by a sale, encumbrance or other disposition of shares or otherwise howsoever, without first obtaining the written consent of the Landlord; PROVIDED that the Landlord's consent shall not be required for any sale or other disposition of shares by the present shareholders to and between themselves or in the event of any transmission of shares on death or by operation of law and, PROVIDED FURTHER that the Landlord's consent shall not be unreasonably withheld.

16.04 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing enclosed in a sealed envelope addressed, in the case of the notice to the Landlord, to the Landlord at:

Field Investments
101-403 6th Street
New Westminster, B.C. V3L 3B1

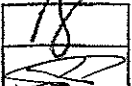
or at such other address as the Landlord may from time to time notify the Tenant as hereinbefore provided, and in the case of the notice to the Tenant at:

772921 Alberta Inc.
5445 8 Street NE
Calgary, AB T2K 5R9

or such other address as the Tenant may from time to time notify the Landlord, and mailed, registered and postage prepaid. The time of giving of such notice shall be conclusively deemed to be the second business day after the date of such mailing. Such notice shall also be sufficiently given if and when the same shall be delivered and in the case of notice to the Landlord to an executive officer of the Landlord, and in the case of notice to the Tenant, to an officer of the Tenant if the Tenant is a corporation or to the registered office of the Landlord or the Tenant as the case may be. Such notice, if delivered, shall be conclusively deemed to have been given and received at the time of such delivery. If in this Lease two (2) or more persons are named as Tenant, such notice shall also be sufficiently given if and when the same shall be delivered personally to any one (1) of such persons.

16.05 Right of First Refusal in Landlord

Notwithstanding and without prejudice to any other provision herein, if the Tenant shall be desirous of subletting or assigning all or a portion of the Demised Premises to anyone other than an affiliated company, the Tenant prior to so doing, shall give a right of first refusal to the Landlord to re-acquire the same on the same terms and conditions and for the same cost as the Tenant is desirous of subletting or assigning the same to any other party, which offer shall be made to the Landlord in writing and open for acceptance by the Landlord for a period of thirty (30) days from

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receipt of such notice, to be accepted in writing, and in lieu of such acceptance, subject to the provisions of Paragraph 5.01, the Tenant may assign or sublet the same on the same terms and conditions as offered to the Landlord within a period of three (3) months of the date of such offer to the Landlord either expiring or being declined on the same terms and conditions and after the period of three (3) months if such assignment or subletting is not completed, the provision hereof required the offer to be made to the Landlord shall again apply.

16.06 Whole of Agreement

The Tenant agrees that the Demised Premises are leased by the Tenant without any representations or warranties other than as contained in this Lease, and that no representative or agent of the Landlord is or shall be authorized or permitted to make any representations with reference hereto or to vary or modify this Lease in any way, except in writing under seal, and that this Lease contains all of the agreements and conditions made between the Parties hereto.

16.07 Time

Time shall be of the essence of this Agreement.

16.08 Waiver or Set-off

Without limiting the generality of anything hereinbefore contained, the Tenant hereby waives and renounces any and all existing and future claims, set-offs and compensation against any rent or other amounts due hereunder and agrees to pay such rent and other amounts regardless of any claim, set-off or compensation which may be asserted by the Tenant or on its behalf.

16.09 Provincial Laws

This Lease shall be construed in accordance with the laws of the Province of British Columbia.

16.10 Effect of Headings

The article headings or sub-headings used throughout this Lease are inserted for convenience of reference only and are not otherwise to be relied upon or considered in the interpretation hereof.

16.11 Interpretation of Words

Wherever the singular or the masculine is used in this Lease, the same shall be deemed to include the plural or the feminine or the body politic or corporate, where the context or the Parties so require.

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16.12 Binding Agreement

This Lease shall be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

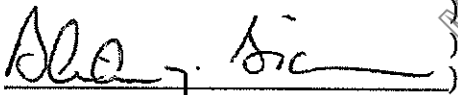
IN WITNESS WHEREOF the Parties hereto have hereunto set their hands, the day and year first above written.

FIELD CONSTRUCTION LTD.)

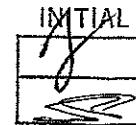


Authorized Signatory

772921 ALBERTA INC.

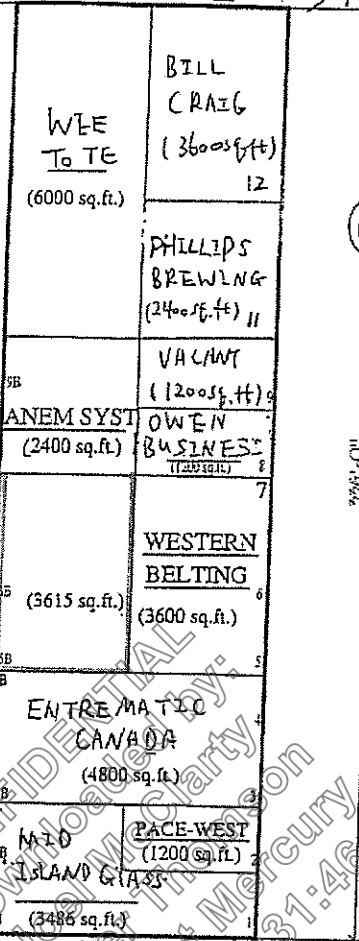


Authorized Signatory

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SCHEDULE "A"



PRIVATE COMPOUND



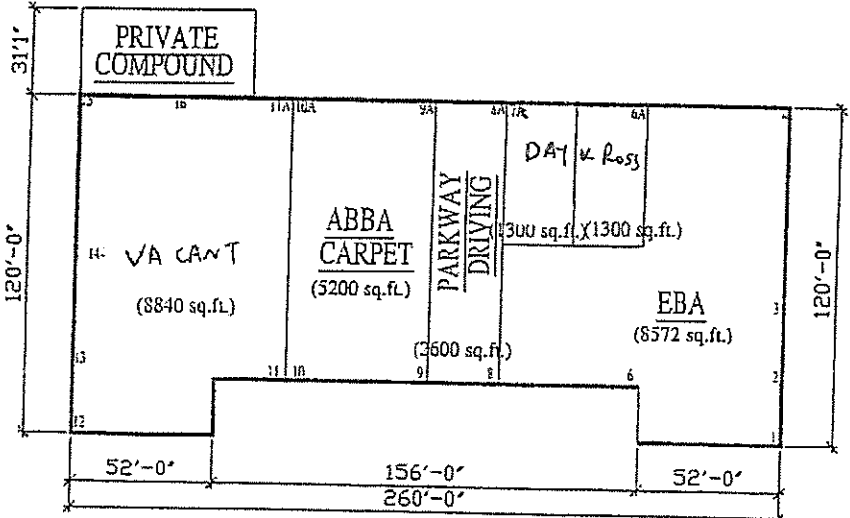
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FIELD INV. PHASE 2
4386 BOBAN DRIVE
(33,486 SQ. FT.)

P/N 5905
03-JULY-07



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FIELD INV. PHASE 1

4376 BOBAN DRIVE
(27,812 SQ. FT.)

P/N 5900
02-AUG-29



SCHEDULE "B"

LANDLORD'S WORK AND TENANT'S WORK

The Tenant shall take the Leased Premises on an "as is" basis, save and except the following work. All work to comply with all city, provincial and federal building codes and bylaws. All Landlord's Work shall be completed prior to the Commencement Date.

LANDLORD'S WORK

The Landlord shall:

- a) Ensure that all existing mechanical and electrical systems, including but not limited to heating units, ~~air conditioning units~~, electrical switches and plugs, toilets and sinks, and all doors are all in good working order.
- b) Upgrade the lighting in the warehouse to T5.
- c) Provide and install dock levellers with bumpers at two dock loading doors. Dock levellers to be edge of dock.
- d) Finish the existing office build out to include paint and floors (UEI).

TENANT'S WORK

The Tenant shall complete any and all work required in order for the Tenant to take occupancy of the Leased Premises and commence operating its business (collectively, the "Tenant's Work"). The Tenant's Work is subject to the Landlord's prior written approval in accordance with the Lease and must comply with any and all city, provincial and federal building codes and bylaws applicable to the Leased Premises and must not damage the facia or structural components of the Building.

- a) The Tenant shall be permitted to install coolers in the Leased Premises if required. Coolers shall not be water cooled.

Handwritten initials and signatures on the right margin, including a large 'A' and a signature.

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OFFER TO LEASE
(the "Offer")

AMONG:

FIELD
~~NOOT~~ INVESTMENTS
(hereinafter referred to as the "Landlord")



OF THE FIRST PART

- and -

772921 ALBERTA INC.
(hereinafter referred to as the "Tenant")

OF THE SECOND PART

This Offer to Lease is made by the Tenant on the terms and conditions herein set forth.

Acceptance of this Offer to Lease by the Landlord will constitute a binding agreement and contract between the parties, subject to the conditions precedent set forth herein.

1. SCHEDULES

The Schedules to this Offer to Lease are incorporated into and form a part of it and consist of:

- A. Schedule "A": Leased Premises outlined;
- B. Schedule "B": Landlord's Work and Tenant's Work;

2. LEASED PREMISES

The Tenant hereby offers to lease from the Landlord those premises at Unit 5B, 4386 Boban Drive, Nanaimo, British Columbia containing Three Thousand Six Hundred Fifteen (3,615) square feet more or less (which shall be verified) on the main floor and having the configuration and location shown outlined in Schedule "A" ("Leased Premises") and within the building municipally described as 4386 Boban Drive, Nanaimo, British Columbia (the "Building").

3. TERM

The Term of the Lease shall be Five (5) years, commencing on the first (1st) day of March, 2017, (the "Commencement Date") and expiring the last day of February, 2022.



The Tenant shall pay to the Landlord Basic Rent as described below, per annum payable in equal monthly instalments plus the applicable GST, in advance, on the first day of each and every month of the term of the Lease;

Year	Square Feet	Rate	Annual Basic Rent	Monthly Basic Rent
1-2	3,615	\$9.50 PSF	\$34,342.50	\$2,861.88
3	3,615	\$9.75 PSF	\$35,246.25	\$2,937.19
4-5	3,615	\$10.00 PSF	\$36,150.00	\$3,012.50

5. ADDITIONAL RENT

The Tenant shall pay to the Landlord Additional Rent in each lease year, by monthly instalments in advance, as reasonably estimated by the Landlord and subject to an annual adjustment, and shall include the Tenant's proportionate share of Property Taxes and Operating Costs including, but are not limited to, repairs and maintenance of the building, general outside maintenance, and maintenance, insurance, real estate taxes and management/administration fees as further defined in the Landlord's standard lease. Such amount charged shall be based on actual costs but are estimated at \$3.62 per square foot which equals One Thousand Ninety Dollars Fifty Three Cents (\$1,090.53) plus the applicable GST monthly for the 2017 operating year.

- PLUS A MANAGEMENT FEE OF 5% OF THE BASE RENT

6. FIXTURING PERIOD

YEAR 12-10.49 PSF WHICH EQUALS \$14460 PER MONTH PLUS GST.

The Tenant shall be permitted non-exclusive access to occupy the Leased Premises on or before January 1, 2017 for the purpose of fixturing, provided all of the Landlord's and Tenant's Conditions Precedent are waived, the Deposit has been provided, the necessary insurance is in place, and the formal lease document has been executed by the Tenant and is in the Landlord's possession. All of the terms and conditions of the Lease shall apply during the Fixturing Period except for the payment of Basic Rent and Additional Rent. The Tenant shall be permitted to operate their business during this period.

7. UTILITIES

The Tenant shall pay the cost of utilities, lights, heat, gas, electricity, water, sewer and power, including those utilities, if any, provided exclusively for and metered, directly to the Tenant in respect of the Leased Premises.

8. USE OF PREMISES

The Leased Premises shall be used and occupied for the purpose of general warehousing and administration and shall be operated continuously throughout the Term by the Tenant.

9. INTENT OF LEASE

The Lease shall be absolutely net to the Landlord such that, without limiting the generality of the foregoing, the Tenant shall pay all expenses relating to the Leased Premises as well as a share of all expenses relating to the operation, repair and maintenance of the Building and the Lands as set out in the Lease.

10. CONSTRUCTION AND COMPLETION OF PREMISES

The Leased Premises shall be constructed in accordance with Schedule "B" attached hereto. The Landlord shall, at its expense, be responsible for the work described as "Landlord's Work" as per Schedule B. The Tenant at its sole cost shall complete any and all work required beyond the Landlord's Work as detailed in Schedule B, to ensure the Leased Premises are complete for purposes of the Tenant being able to occupy the Leased Premises and commence its business activities. All such work shall be designed, approved, performed and completed in strict compliance with the provisions of Schedule "B" and any design criteria provided by the Landlord to the Tenant.

11. DEPOSIT

SEVEN Sixty Eight Twenty (\$8,768.20)
A Deposit of Eight Thousand Two Hundred Fifty Three Dollars Six Cents (\$8,253.06) shall be delivered by the Tenant within five (5) days of mutual acceptance of this Offer to Lease to Cushman & Wakefield Ltd., in trust, and shall be forwarded to the Landlord upon execution of the Lease, to be applied against the first month Basic Rent and Additional Rent, including GST, due under the Lease with the balance to be held as a security deposit, without interest, for the term of the Lease.

12. LANDLORD'S CONDITION PRECEDENT

This Offer to Lease is subject to the following condition which is inserted for the sole benefit of the Landlord:

- a) The Landlord's review and approval of the financial strength of the Tenant on or before December 23, 2016. The Tenant shall submit to the Landlord, within three (3) business days of mutual acceptance of this Offer to Lease, such information as required by the Landlord to determine its corporate financial status.

If the above condition is not waived in writing by the Landlord within the timeframe specified, this Offer to Lease will be deemed null and void and no longer in force or effect.

13. TENANT'S CONDITIONS PRECEDENT

This Offer to Lease is subject to the following conditions which are inserted for the sole benefit of the Tenant:

- a) The Tenant's review and approval of the Landlord's standard form of lease and subject to both parties agreeing to the proposed changes, if any, within five(5) business days of mutual acceptance of this Offer. The Landlord shall provide the word version of the standard form of lease upon mutual acceptance of this Offer to Lease, The Tenant and Landlord agree to negotiate in good faith and act reasonably in respect to modifications to portions of the Lease not specifically provided for in this Offer to Lease provided such modifications do not alter or vary the financial terms or intent of the terms set forth in this Offer to Lease.
- b) The Tenant obtaining executive approvals of this Offer to Lease at their sole and absolute discretion within five (5) business days of mutual acceptance of this Offer.
- c) The Tenant completing a physical inspection and confirming the electrical supply and fire suppressors in the Leased Premises is sufficient for their use, within five (5) business days of mutual acceptance of this Offer.

If the above conditions are not waived in writing by the Tenant within the time frame specified, this Offer to Lease will be deemed null and void and no longer in force or effect.

14. EXECUTION OF LEASE

The Landlord's existing standard form of lease is to be modified in accordance with this Offer to Lease and incorporate any changes mutually agreed to as per 13 a) of this Offer to Lease (the "Lease"). The Tenant agrees to execute the Lease on or before December 23, 2016, failing which, the Landlord at its sole option may consider this Offer to Lease as repudiated without prejudice to any of the Landlord's other rights or remedies.

15. REGISTRATION

Neither this Offer to Lease nor any claim based on it shall be registered in any Land Titles Office.

16. ASSIGNMENT/SUBLETTING

The Tenant shall have the right to assign this Offer to Lease or sublet the Leased Premises if written consent is obtained from the Landlord which the Landlord shall not unreasonably withhold, subject to the terms of the Lease

17. SIGNAGE

The Landlord shall permit the Tenant to install signage identifying the Tenant's name and/or corporate logo on exterior areas of the Building specified by the Landlord and on the inside of windows within the Leased Premises, subject to approval by the Landlord, acting reasonably, and in accordance with the Landlord's signage guidelines and the City of Nanaimo.

18. INSURANCE

The Tenant agrees to provide evidence to the Landlord of insurance required as per the Lease.

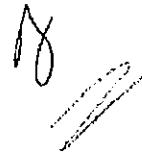
19. NO REPRESENTATION

It is understood and agreed that there are no covenants, representations, agreements, warranties, or conditions in any way relating to the subject matter of this Offer, whether expressed or implied, collateral or otherwise, except those set forth herein.

20. AGENCY

The parties to this agreement acknowledge that Brent Johannesen (the "Agent") of Cushman & Wakefield Ltd. have recommended that they obtain advice from their legal counsel prior to signing this document. The parties further acknowledge that the information provided by the Agent is not legal, accounting, environmental or tax advice and the parties are cautioned not to rely on any such information without seeking specific legal, accounting, environmental or tax advice with respect to their unique circumstances. Further, it is understood that the Agent represents the Tenant in this Offer to Lease and that real estate fees and applicable GST shall be payable by the Landlord. The Tenant represents and warrants that its only dealings with respect to the Leased Premises have been with the Agent.

21. ACCEPTANCE

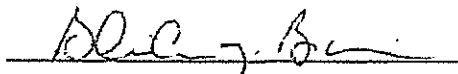


This Offer to Lease shall be irrevocable and open for acceptance by the Landlord until 4:00 PM, M.D.T., on the 14th day of December, 2016, and if not then accepted, may be withdrawn.

~~THIS DOCUMENT IS CONFIDENTIAL~~
Dated this 14
15 day of December, 2016.

772921 ALBERTA INC.

Per:



Authorized Signature

ACCEPTANCE BY THE LANDLORD

The Landlord hereby accepts the above Offer to Lease this 14 day of December, 2016.

~~THIS DOCUMENT IS CONFIDENTIAL~~
NOORT INVESTMENTS

Per:


Authorized Signature

FIELD CONSTRUCTION LTD.

#101 – 403 6th Street, New Westminster, BC V3L 3B1

Phone: (604) 526-3604 FAX: (604) 526-7651

June 29, 2021

772921 Alberta Inc.
5445 8 Street NE
Calgary, AB T2K 5R9

Dear Sir/Madam:

Re: Lease at #5B – 4386 Boban Drive, Nanaimo dated December 19, 2016 between 772921 Alberta Inc., Tenant and Field Construction Ltd., Landlord

We agree to amend and renew the above mentioned lease under the following terms and conditions:

1. Term : FIVE (5) years commencing March 1, 2022
2. Rate : Year 1-2 : \$ 13.00 per sq ft per annum plus triple net and mgmt. fee
Year 3-5 : \$ 13.50 per sq ft per annum plus triple net and mgmt. fee
3. All other terms and conditions of the above mentioned lease shall remain in full force and effect except as to the option of which there are none.

Agreed to this 1 day of SEPT, 2021



772921 Alberta Inc. – Tenant



Field Construction Ltd. - Landlord

This is Exhibit "C" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB



LAND TITLE CERTIFICATE

S
LINC SHORT LEGAL TITLE NUMBER
0019 265 678 5235JK;A 051 463 482

LEGAL DESCRIPTION
PLAN 5235JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;1;22;14;SW

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 001 266 272

REGISTERED OWNER(S)				
REGISTRATION	DATE (DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
051 463 482	06/12/2005	TRANSFER OF LAND	\$3,050,000	\$3,050,000

OWNERS

SPRUCE IT UP LAND CORP.
OF 5445-8 ST NE
CALGARY
ALBERTA T2K 5R9

(DATA UPDATED BY: CHANGE OF ADDRESS 181235675)
(DATA UPDATED BY: CHANGE OF NAME 201115405)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
6453GC .	03/12/1949	UTILITY RIGHT OF WAY GRANTEE - CANADIAN WESTERN NATURAL GAS COMPANY LIMITED. AS TO PORTION OR PLAN:GL85
917KA .	28/07/1967	RESTRICTIVE COVENANT
001 332 857	21/11/2000	CAVEAT

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2

051 463 482

REGISTRATION

NUMBER DATE (D/M/Y) PARTICULARS

RE : ROADWAY
CAVEATOR - HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA
AS REPRESENTED BY THE MINISTER OF INFRACTURE
C/O LANDS ADMIN, HIGHWAY & ROADSIDE PLANNING
TECHNICAL STANDARDS BRANCH
2 FLR, TWIN ATRIA BLDG
4999-98 AVE
EDMONTON
ALBERTA T6B2X3
AGENT - JARRETT BEREZANSKI

051 463 483 06/12/2005 MORTGAGE
MORTGAGEE - 772921 ALBERTA INC.
C/O WALLACE & CAREY INC
5445 8 ST NE
CALGARY
ALBERTA T2K5R9
ORIGINAL PRINCIPAL AMOUNT: \$4,000,000

051 463 484 06/12/2005 CAVEAT
RE : ASSIGNMENT OF RENTS AND LEASES
CAVEATOR - 772921 ALBERTA INC.
ATTN: ROBERT T HOUSMAN
C/O GOWLING LAFLEUR HENDERSON LLP
1400,700 2 ST SW
CALGARY
ALBERTA T2P4V5
AGENT - ROBERT T HOUSMAN

101 354 558 07/12/2010 CAVEAT
RE : LEASE INTEREST
CAVEATOR - ROGERS COMMUNICATIONS INC.
C/O DALE R. SPACKMAN
PARLEE MCLAWS
2400 SUNCOR ENERGY CENTRE
150- 6 AVENUE SW
CALGARY
ALBERTA T2P3Y7
AGENT - DALE R SPACKMAN
(DATA UPDATED BY: TRANSFER OF CAVEAT
111306281)

221 026 290 08/02/2022 MORTGAGE
MORTGAGEE - CANADIAN WESTERN BANK.
CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE
300,606-4TH STREET SW
CALGARY
ALBERTA T2P1T1

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

PAGE 3
051 463 482

REGISTRATION

NUMBER DATE (D/M/Y) PARTICULARS

ORIGINAL PRINCIPAL AMOUNT: \$12,000,000

221 026 291 08/02/2022 CAVEAT
RE : ASSIGNMENT OF RENTS AND LEASES
CAVEATOR - CANADIAN WESTERN BANK.
CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE
300,606-4TH STREET SW
CALGARY
ALBERTA T2P1T1
AGENT - MOHAMMED ALI MEMON

221 026 292 08/02/2022 POSTPONEMENT
OF MORT 051463483 CAVE 051463484
TO MORT 221026290 CAVE 221026291

231 275 608 12/09/2023 MORTGAGE
MORTGAGEE - CANADIAN IMPERIAL BANK OF COMMERCE.
199 BAY STREET, 4TH FLOOR
TORONTO
ONTARIO M5L1A2
ORIGINAL PRINCIPAL AMOUNT: \$65,000,000

231 275 609 12/09/2023 POSTPONEMENT
OF MORT 051463483 CAVE 051463484
TO MORT 231275608

TOTAL INSTRUMENTS: 011

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN
ACCURATE REPRODUCTION OF THE CERTIFICATE OF
TITLE REPRESENTED HEREIN THIS 6 DAY OF
NOVEMBER, 2023 AT 12:08 P.M.

ORDER NUMBER: 48804603

CUSTOMER FILE NUMBER: 1000305633LP



END OF CERTIFICATE

(CONTINUED)

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

This is Exhibit "D" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB



LAND TITLE CERTIFICATE

S
LINC SHORT LEGAL TITLE NUMBER
0018 511 544 8031JK;A;5 071 176 466

LEGAL DESCRIPTION
PLAN 8031JK
BLOCK A
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;2;25;32;NW

MUNICIPALITY: ROCKY VIEW COUNTY

REFERENCE NUMBER: 821 079 176

REGISTERED OWNER(S)				
REGISTRATION	DATE (DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
071 176 466	13/04/2007	TRANSFER OF LAND	\$3,500,000	\$3,500,000

OWNERS

RIDGE MEADOWS PROPERTIES LTD.
OF 202, 1812-4 STREET SW
CALGARY
ALBERTA T2S 1W1

(DATA UPDATED BY: CHANGE OF NAME 131332023)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
2381KI .	11/02/1969	AGREEMENT "DEFERRED RESERVE COVENANT"
5121KR .	06/08/1970	UTILITY RIGHT OF WAY GRANTEE - ENMAX POWER CORPORATION. AS TO PORTION OR PLAN:7180JK "PTN WITHIN E. 20' OF THE W 660' OF N 2574' OF BLK A"

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2
071 176 466

REGISTRATION

NUMBER DATE (D/M/Y) PARTICULARS

(DATA UPDATED BY: TRANSFER OF UTILITY RIGHT
OF WAY 951123497)

(DATA UPDATED BY: TRANSFER OF UTILITY RIGHT
OF WAY 001287038)

221 026 290 08/02/2022 MORTGAGE
MORTGAGEE - CANADIAN WESTERN BANK.
CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE
300,606-4TH STREET SW
CALGARY
ALBERTA T2P1T1
ORIGINAL PRINCIPAL AMOUNT: \$12,000,000

221 026 291 08/02/2022 CAVEAT
RE : ASSIGNMENT OF RENTS AND LEASES
CAVEATOR - CANADIAN WESTERN BANK.
CREDIT SUPPORT-PRAIRIES REGIONAL CENTRE
300,606-4TH STREET SW
CALGARY
ALBERTA T2P1T1
AGENT - MOHAMMED ALI MEMON

231 275 608 12/09/2023 MORTGAGE
MORTGAGEE - CANADIAN IMPERIAL BANK OF COMMERCE.
199 BAY STREET, 4TH FLOOR
TORONTO
ONTARIO M5L1A2
ORIGINAL PRINCIPAL AMOUNT: \$65,000,000

TOTAL INSTRUMENTS: 005

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN
ACCURATE REPRODUCTION OF THE CERTIFICATE OF
TITLE REPRESENTED HEREIN THIS 6 DAY OF
NOVEMBER, 2023 AT 12:08 P.M.

ORDER NUMBER: 48804603

CUSTOMER FILE NUMBER: 1000305633LP



END OF CERTIFICATE

(CONTINUED)

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

This is Exhibit "E" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

THIS GENERAL SECURITY AGREEMENT dated as of this 26th day of September, 2017.

BETWEEN:

EACH OF THE UNDERSIGNED GRANTORS
(collectively, the "Grantors", and each a "Grantor")

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as agent
(**"Agent"**)

WHEREAS pursuant to a credit agreement dated as of September 26, 2017, between Carey Management Inc., as borrower (the "**Borrower**"), the Grantors, as guarantors, the Agent, as agent, and the lenders signatory thereto from time to time as lenders (the "**Lenders**") (as the same may be further amended, restated, renewed or otherwise modified from time to time, the "**Credit Agreement**"), the Lenders have agreed to make available to the Borrower certain credit facilities on the terms and conditions set out in the Credit Agreement;

AND WHEREAS in accordance with a guarantee dated as of the date hereof, the Grantors have agreed to guarantee and to be liable for the full and indefeasible payment and performance when due of the Obligations;

AND WHEREAS each of the Grantors has agreed to execute and deliver this security agreement to and in favour of the Agent as security for the payment and performance of the Obligations;

WITNESSES THAT FOR VALUE RECEIVED each of the Grantors covenants and agrees with Agent as follows:

SECTION 1. DEFINITIONS

All terms used herein which are defined in the PPSA (as defined below) or the Credit Agreement shall have the meanings given therein unless otherwise defined in this Agreement. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires. All references to Grantors, Borrower, the Lenders or Agent (as defined in the recitals hereto), or any other person herein, shall include their respective successors and assigns. The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may have been or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. The word "including" when used in this Agreement shall mean "including, without limitation". References herein to sections or schedules are to sections of and schedules to this Agreement unless otherwise indicated in this Agreement. References herein to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 5.3 or is cured in a manner satisfactory to Agent, acting reasonably. For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

- 1.1 "**Accounts**" shall mean all present and future rights of a Grantor to payment for goods sold or leased or for services rendered which are not evidenced by instruments or chattel paper, and whether or not earned by performance.
- 1.2 "**BIA**" means the *Bankruptcy and Insolvency Act* (Canada).
- 1.3 "**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).

- 1.4 "Equipment" shall mean all of the Grantor's now owned and hereafter acquired equipment, machinery, computers and computer hardware and software (whether owned or licensed), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.
- 1.5 "Event of Default" shall have the meaning set forth in Section 4.1 hereof.
- 1.6 "Inventory" shall mean all of the Grantor's now owned and hereafter existing or acquired raw materials, work in process, finished goods and all other inventory of whatsoever kind or nature, wherever located.
- 1.7 "Loan Documents" shall have the meaning given to it in the Credit Agreement.
- 1.8 "Obligations" shall mean all obligations, liabilities and indebtedness of the Grantors' to the Agent, the Lenders or a Lender with respect to the principal of and interest on the Loans and the payment or performance of all other obligations, liabilities and indebtedness of the Grantors to the Agent, the Lenders or a Lender arising under or pursuant to any one or more of the Loan Documents or with respect to the Loans, including (i) all reimbursement and indemnity obligations of the Grantors' to the Agent, the Lenders or a Lender hereunder, (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Grantor under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees, filing fees and any other sums chargeable to a Grantor under the Credit Agreement, under another Loan Document, or under any other agreement or instrument with the Agent or the Lenders, and (iii) all obligations of the Grantors' to the Agent, a Lender or any of their respective Affiliates in respect of any Cash Management Services.
- 1.9 "Person" or "person" shall mean any individual, sole proprietorship, partnership, limited partnership, corporation, limited liability company, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.
- 1.10 "PPSA" shall mean the *Personal Property Security Act* (Alberta) and any other applicable Canadian or provincial personal property security or similar legislation, together with all rules, regulations and interpretations thereunder or related thereto.
- 1.11 "Records" shall mean all of the Grantor's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of a Grantor with respect to the foregoing maintained with or by any other person).

SECTION 2. GRANT OF SECURITY INTEREST

To secure payment and performance of all Obligations, each of the Grantors hereby grants to Agent, for the rateable benefit of the Lenders, a continuing security interest in all personal property and intellectual property rights of the Grantor including, without limitation, all trademarks listed on Schedule A now or hereafter annexed hereto, as well as a continuing security interest, a lien upon, and a right of set-off against, and hereby assigns to Agent, for the rateable benefit of the Lenders, as security, all of the present and after-acquired property of the Grantor, including the following property and interests in property of Grantor, whether now owned or hereafter acquired or existing, and wherever located (collectively, the "Collateral"):

- 2.1 Accounts;
- 2.2 all present and future contract rights, general intangibles (including tax and duty refunds, registered and unregistered patents, trademarks, service marks, copyrights, trade names, industrial designs, applications for the foregoing, trade secrets, goodwill, processes, drawings, blueprints, customer lists, licenses, whether as licensor or licensee, choses in action and other claims and existing and future leasehold interests in equipment, real estate and fixtures), chattel paper, documents, instruments, securities and other investment property, letters of credit, bankers' acceptances and guarantees;
- 2.3 all present and future monies, securities, credit balances, deposits, deposit accounts and other property of the Grantors now or hereafter held or received by or in transit to Agent or the Lenders or their respective affiliates or at any other depository or other institution from or for the account of the Grantors whether for safekeeping, pledge, custody, transmission, collection or otherwise, and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Accounts and other Collateral, including (a) rights and remedies under or relating to guarantees, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (b) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (c) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Accounts or other Collateral, including, returned, repossessed and reclaimed goods, and deposits by and property of account debtors or other persons securing the obligations of account debtors;
- 2.4 Inventory;
- 2.5 Equipment;
- 2.6 Records; and
- 2.7 all products and proceeds of the foregoing, in any form, including, insurance proceeds and any claims against third parties for loss or damage to or destruction of any or all of the foregoing.
- 2.8 Notwithstanding the foregoing, Collateral shall not include (a) the last day of the term of any lease of real property (but upon the enforcement of Agent's rights hereunder, Agent shall stand possessed of such last day in trust to assign the same to any person acquiring such term) or (b) any consumer goods.

SECTION 3. COLLATERAL COVENANTS

3.1 Accounts Covenants

- (a) Agent shall have the right at any time or times, in Agent's name or in the name of a nominee of Agent, to verify the validity, amount or any other matter relating to any Account or other Collateral, by mail, telephone, facsimile transmission or otherwise.
- (b) Following the occurrence of an Event of Default which is continuing, each of the Grantors shall deliver or cause to be delivered to Agent, with appropriate endorsement and assignment, with full recourse to the Grantor, all chattel paper and instruments which the Grantor now owns or may at any time acquire immediately upon the Grantor's receipt thereof, except as Agent may otherwise agree.
- (c) Agent may, at any time or times that an Event of Default exists or has occurred and is continuing, (i) notify any or all account debtors that the Accounts have been assigned to Agent and that Agent has a security interest therein and Agent may direct any or all accounts debtors to make payment of Accounts directly to Agent, (ii) extend the time of

payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Accounts or other obligations included in the Collateral and thereby discharge or release the account debtor or any other party or parties in any way liable for payment thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Accounts or such other obligations, but without any duty to do so, and Agent shall not be liable for its failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Agent may deem necessary or desirable for the protection of its interests. At any time that an Event of Default exists or has occurred and is continuing, at Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to Agent and are payable directly and only to Agent and each of the Grantors shall deliver to Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Agent may require.

- 3.2 Inventory Covenants. With respect to the Inventory: (a) each of the Grantors shall at all times maintain inventory records reasonably satisfactory to Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, the Grantor's cost therefor and daily withdrawals therefrom and additions thereto; (b) each of the Grantors shall not remove any Inventory from the locations set forth or permitted under the Credit Agreement, without the prior written consent of Agent, except for sales of Inventory in the ordinary course of the Grantor's business and except to move Inventory directly from one location set forth or permitted under the Credit Agreement to another such location; (c) each of the Grantors shall produce, use, store and maintain the Inventory, with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable law; (d) each of the Grantors assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory; and (e) each of the Grantors shall keep the Inventory in good and marketable condition.
- 3.3 Equipment Covenants. With respect to the Equipment: (a) each of the Grantors shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (b) each of the Grantors shall use the Equipment with all reasonable care and caution and in accordance with applicable standards of any insurance policies and in conformity with all applicable law; (c) the Equipment is and shall be used in the Grantor's business and not for personal, family, household or farming use; (d) each of the Grantors shall not remove any Equipment from the locations set forth or permitted in the Credit Agreement, except to the extent necessary to have any Equipment repaired or maintained in the ordinary course of the business of the Grantor or to move Equipment directly from one location set forth or permitted in the Credit Agreement to another such location and except for the movement of motor vehicles used by or for the benefit of the Grantor in the ordinary course of business; (e) the Equipment is now and shall remain personal property and each of the Grantors shall not permit any of the Equipment to be or become a part of or affixed to real property unless the Grantor is the owner of such property and has granted Agent a security interest charge thereon or other arrangements preserving and protecting Agent's security interest thereon have been made; and (f) each of the Grantors assumes all responsibility and liability arising from the use of the Equipment.
- 3.4 Power of Attorney. Each of the Grantors hereby irrevocably designates and appoints Agent (and all persons designated by Agent) as the Grantor's true and lawful attorney-in-fact, and authorizes Agent, in the Grantor's or Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing (i) demand payment on Accounts or other proceeds of Inventory or other Collateral, (ii) enforce payment of Accounts by legal proceedings or otherwise, (iii) exercise all of the Grantor's rights and remedies to collect any Account or other Collateral, (iv) sell or assign any Account upon such terms for such amount and at such time or times as Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Account, (vii) prepare, file and sign the Grantor's name on any proof of claim in bankruptcy or other similar document against an account debtor, (viii) notify the post office authorities to change

the address for delivery of the Grantor's mail to an address designated by Agent, and open and dispose of all mail addressed to the Grantor, and (ix) do all acts and things which are necessary, in Agent's determination, to fulfil the Grantor's obligations under this Agreement and the other Loan Documents and (b) at any time to (i) take control in any manner of any item of payment or proceeds thereof, (ii) have access to any lock-box or postal box into which the Grantor's mail is deposited, (iii) endorse the Grantor's name upon any items of payment or proceeds thereof and deposit the same in Agent's account for application to the Obligations, (iv) endorse the Grantor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto or any other Collateral, (v) sign the Grantor's name on any verification of Accounts and notices thereof to account debtors and (vi) execute in the Grantor's name and file any PPSA or other financing statements or amendments thereto. Each of the Grantors hereby releases Agent and its officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of Agent's own gross negligence or wilful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

- 3.5 **Right to Cure.** Agent may, at its option, (a) cure any default by any Grantor under any agreement with a third party or pay or bond on appeal any judgment entered against any Grantor, (b) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral and (c) pay any amount, incur any expense or perform any act which, in Agent's judgment, acting in good faith, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Agent and the Lenders with respect thereto. Agent may add any amounts so expended to the Obligations and charge Borrower's account therefor, such amounts to be repayable by the Borrowers on demand. Agent shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of any Grantor. Any payment made or other action taken by Agent under this Section 3.5 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.
- 3.6 **Access to Premises.** From time to time as requested by Agent, at the cost and expense of the Borrower, (a) Agent or its designee shall have complete access to any of the Grantor's premises during normal business hours and after reasonable notice to such Grantor, or at any time and without notice to such Grantor if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of any Grantor's books and records, including, the Records, and (b) each of the Grantors shall promptly furnish to Agent such copies of such books and records or extracts therefrom as Agent may reasonably request, and (c) use during normal business hours such of the Grantor's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the collection of Accounts and realization of other Collateral.
- 3.7 **Control.** Subject to the provisions of the Intercreditor Agreement, each of the Grantors shall at all times take all steps necessary to give "control" (as defined in the PPSA) over all Collateral that is a security and other Collateral that is investment property to the Agent on terms and conditions satisfactory to the Agent.

SECTION 4. EVENTS OF DEFAULT AND REMEDIES

4.1 **Events of Default.** The occurrence or existence of any Event of Default under the Credit Agreement is referred to herein individually as an "Event of Default", and collectively as "Events of Default".

4.2 Remedies

- (a) At any time an Event of Default exists or has occurred and is continuing, Agent shall have all rights and remedies provided in this Agreement, the other Loan Documents, the PPSA

and other applicable law, all of which rights and remedies may be exercised without notice to or consent by the Grantor, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Agent hereunder, under any of the other Loan Documents, the PPSA or other applicable law, are cumulative, not exclusive and enforceable, in Agent's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by each of the Grantors of this Agreement or any of the other Loan Documents. Agent may, at any time or times, proceed directly against each of the Grantors to collect the Obligations without prior recourse to the Collateral.

- (b) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Agent may, in its discretion and without limitation, (i) accelerate the payment of all Obligations and demand immediate payment thereof to Agent (provided that, upon the occurrence of any Event of Default described in Sections 7.1(h), (i) or (j) of the Credit Agreement, all Obligations shall automatically become immediately due and payable), (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral and carry on the business of the Grantor, (iii) require each of the Grantors, at the Grantor's expense, to assemble and make available to Agent any part or all of the Collateral at any place and time designated by Agent, (iv) collect, foreclose, receive, appropriate, set-off and realize upon any and all Collateral, (v) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (vi) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Agent or elsewhere) at such prices or terms as Agent may deem reasonable, for cash, upon credit or for future delivery, with Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of the Grantor, which right or equity of redemption is hereby expressly waived and released by the Grantor, (vii) borrow money and use the Collateral directly or indirectly in carrying on the Grantor's business or as security for loans or advances for any such purposes, (viii) grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges, and otherwise deal with the Grantor, debtors of the Grantor, sureties and others as Agent may see fit without prejudice to the liability of the Grantor or Agent's right to hold and realize the security interest created under this Agreement. If any of the Collateral is sold or leased by Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Agent to the Grantor designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and the Grantor waives any other notice. In the event Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, the Grantor waives the posting of any bond which might otherwise be required.
- (c) Agent may apply the cash proceeds of Collateral actually received by Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in such order as Agent may elect, whether or not then due. Each of the Grantors shall remain liable to Agent and the Lenders for the payment of any deficiency with interest at the highest rate provided for in the Credit Agreement and all costs and expenses of collection or enforcement, including reasonable legal costs and expenses.

- (d) Agent may appoint, remove and reappoint any person or persons, including an employee or agent of Agent or of a Lender to be a receiver (the "Receiver") which term shall include a receiver and manager of or agent for, all or any part of the Collateral. Any such Receiver shall, as far as concerns responsibility for his acts, be deemed to be the agent of the Grantor and not of Agent or the Lenders, and neither Agent nor the Lenders shall be in any way responsible for any misconduct, negligence or non-feasance of such Receiver, his employees or agents. Except as otherwise directed by Agent, all money received by such Receiver shall be received in trust for and paid to Agent, for the Lenders. Such Receiver shall have all of the powers and rights of Agent described in this Section 4.2. Agent may, either directly or through its agents or nominees, exercise any or all powers and rights of a Receiver.
- (e) Each of the Grantors shall pay all reasonable costs, charges and expenses incurred by Agent or any Lender or any Receiver or any nominee or agent of Agent or a Lender, whether directly or for services rendered (including, legal costs on a full indemnity basis, auditor's costs, other legal expenses and Receiver remuneration) in enforcing this Agreement and in enforcing or collecting Obligations and all such expenses together with any money owing as a result of any borrowing permitted hereby shall be a charge on the proceeds of realization and shall be secured hereby.

SECTION 5. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW

5.1 Governing Law, Choice of Forum, Service of Process: Jury Trial Waiver.

- (a) The validity, interpretation and enforcement of this Agreement and the other Loan Documents and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- (b) Each of the Grantors irrevocably consents and submits to the non-exclusive jurisdiction of the Courts of the Province of Alberta, in the judicial district of Calgary and any appellate court thereof and waives any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Loan Documents or in any way connected with or related or incidental to the dealings of each Grantor, Agent and the Lenders in respect of this Agreement or any of the other Loan Documents or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agrees that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agent and the Lenders shall have the right to bring any action or proceeding against each Grantor or its property in the courts of any other jurisdiction which Agent or the Lenders deem necessary or appropriate in order to realize on the Collateral or to otherwise enforce their rights against each Grantor or its property).
- (c) To the extent permitted by law, each of the Grantors hereby waives personal service of any and all process upon it and consents that all such service of process may be made by registered mail (return receipt requested) directed to its address set forth on the signature pages hereof and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the Canadian mails, or, at Agent's option, by service upon the Grantor in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, the Grantor shall appear in answer to such process, failing which the Grantor shall be deemed in default and judgment may

be entered by Agent or the Lenders against the Grantor for the amount of the claim and other relief requested.

- (d) EACH OF THE GRANTORS HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE GRANTOR, AGENT AND THE LENDERS IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EACH OF THE GRANTORS HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE GRANTOR, AGENT OR THE LENDERS MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE GRANTOR, AGENT AND THE LENDERS TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.
- (e) Agent and the Lenders shall not have any liability to each Grantor (whether in tort, contract, equity or otherwise) for losses suffered by each such Grantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Agent and/or the Lenders, as applicable, that the losses were the result of acts or omissions constituting gross negligence or wilful misconduct of Agent and/or the Lenders. In any such litigation, Agent and the Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement and the other Loan Documents.
- (f) Each of the Grantors hereby expressly waives all rights of notice and hearing of any kind prior to the exercise of rights by Agent from and after the occurrence of an Event of Default to repossess the Collateral with judicial process or to replevy, attach or levy upon the Collateral or other security for the Obligations. Each of the Grantors waives the posting of any bond otherwise required in favour of Agent or the Lenders in connection with any judicial process or proceeding to obtain possession of, replevy, attach or levy upon the Collateral or other security for the Obligations, to enforce any judgment or other court order entered in favour of Agent or the Lenders, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, the Credit Agreement or any other Loan Document.

5.2 **Waiver of Notices.** Each of the Grantors hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonour with respect to any and all instruments and commercial paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on each such Grantor which Agent may elect to give shall entitle such Grantor to any other or further notice or demand in the same, similar or other circumstances.

5.3 **Amendments and Waivers.** Neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of each of Agent and each of the Lenders, and as to

amendments, as also signed by an authorized officer of each of the Grantors. Agent shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Agent. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent would otherwise have on any future occasion, whether similar in kind or otherwise.

- 5.4 **Waiver of Counterclaims.** Each of the Grantors waives all rights to interpose any claims, deductions, set-offs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.
- 5.5 **Indemnification.** Each of the Grantors shall, save and except for losses, claims, damages, liabilities, costs or expenses arising from the gross negligence or wilful misconduct of the Agent and/or the Lenders, indemnify and hold Agent and the Lenders, and their directors, agents, employees and counsel, harmless from and against any and all losses, claims, damages, liabilities, costs or expenses imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Loan Documents, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 5.5 may be unenforceable because it violates any law or public policy, each of the Grantors shall pay the maximum portion which it is permitted to pay under applicable law to Agent or the Lenders in satisfaction of indemnified matters under this Section 5.5. The foregoing indemnity shall survive the payment of the Obligations, the termination of this Agreement and the termination of the Credit Agreement. All of the foregoing costs and expenses shall be part of the Obligations and secured by the Collateral.

SECTION 6. MISCELLANEOUS

- 6.1 **Notices.** All notices, requests and demands hereunder shall be in writing and shall be made in the manner set forth in Section 9.1 of the Credit Agreement.
- 6.2 **Partial Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.
- 6.3 **Successors.** This Agreement, the other Loan Documents and any other document referred to herein or therein shall be binding upon each of the Grantors and its successors and permitted assigns and, subject to Section 9.4 of the Credit Agreement, shall inure to the benefit of and be enforceable by Agent, the Lenders and their respective successors and assigns, except that the Grantor may not assign its rights under this Agreement, the other Loan Documents and any other document referred to herein or therein without the prior written consent of Agent.
- 6.4 **Entire Agreement.** This Agreement, the other Loan Documents, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In

the event of any inconsistency between the terms of the Credit Agreement and this Agreement, the terms of the Credit Agreement shall govern.

- 6.5 **Attachment.** Each of the Grantors and Agent acknowledge and agree that value has been given for the granting of the Security Interest and that they have not agreed to postpone the time for attachment, except for after-acquired property forming part of the Collateral, the attachment to which will occur forthwith upon each such Grantor acquiring rights thereto.
- 6.6 **Headings.** The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement
- 6.7 **Amalgamation.** In the event that any Grantor amalgamates with any other person or persons, it is the intention of the parties that the security interest will (a) extend to all of the property and assets that (i) any of the amalgamating persons own, or (ii) the amalgamated person thereafter acquires, and (b) secure the payment and performance of all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by any of the amalgamating persons and the amalgamated person to the Agent and the Lenders. The Security Interest will attach to the property and assets of the amalgamating persons not previously subject to this security agreement at the time of amalgamation and to any property or assets thereafter owned or acquired by the amalgamated person when same becomes owned or is acquired. Upon any such amalgamation, the defined term "Grantor" shall include each of the amalgamating persons and the amalgamated person, the defined term Collateral means all of the property, assets, undertaking and interests described in (a) above, and the defined term Obligations means the obligations described in (b) above.
- 6.8 **Further Assurances.** Each of the Grantors shall from time to time, whether before or after the security interest has become enforceable, do all acts and things and execute and deliver all transfers, assignments and agreements as the Agent may reasonably require for (a) protecting the Collateral, (b) perfecting the security interest, (c) obtaining control of the Collateral, (d) exercising all powers, authorities and discretions conferred upon the Agent, and (e) otherwise enabling the Agent and the Lenders to obtain the full benefits of this security agreement and the rights and powers herein granted. Each of the Grantors shall, from time to time after the security interest has become enforceable, do all acts and things and execute and deliver all transfers, assignments and agreements as the Agent may require for facilitating the sale or other disposition of the Collateral in connection with its realization.
- 6.9 **Credit Agreement.** In the event of any inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement, the terms and provisions of the Credit Agreement shall prevail.
- 6.10 **Acknowledgement.** Each of the Grantors acknowledges receipt of a copy of this Agreement.
- 6.11 **Counterparts and Electronic Delivery.** This security agreement may be executed in any number of separate counterparts and all such signed counterparts constitute one and the same agreement. Delivery by facsimile or other electronic means of an originally executed signature page to this security agreement by a party is as effective as personal delivery of such signature page.

IN WITNESS WHEREOF each of the Grantors has executed this Agreement as of the date first written above.


CANADIAN IMPERIAL BANK OF COMMERCE, as Agent

Per: 
Name: **Italo Fortino**
Title: **Authorized Signatory**


Per: 
Name: **Kyle Lane**
Title: **Authorized Signatory**

GRANTORS

CAREY MANAGEMENT INC.

By: 
Name: **David C. Blom**
Title: Secretary


WALLACE & CAREY INC.

By: 
Name: **David C. Blom**
Title: Secretary

LOUDON BROS. LIMITED

By: 
Name: **Patrick Carey**
Title: Secretary

MUIRFIELD LAKES GOLF CLUB LTD.

By: 
Name: **David C. Blom**
Title: Secretary

ELITE FOODS INC.


By: 
Name: **Brian R. Boychuk**
Title: Chief Financial Officer

ELITE INTERNATIONAL FOODS INC.


By: 
Name: **Brian R. Boychuk**
Title: Chief Financial Officer

GRANTORS CONTINUED:

RICAL SALES AND LOGISTICS INC.

By: 
Name: **David C. Blom**
Title: **Secretary**


REGNECK ENTERPRISES LTD.

By: 
Name: **David C. Blom**
Title: **Secretary**

RETLOGISTICS INC.

By: 
Name: **Patrick Carey**
Title: **Vice-President**

RIDGE MEADOWS PROPERTIES LTD.

By: 
Name: **David C. Blom**
Title: **Secretary**

GRANTORS CONTINUED:

1204248 ALBERTA INC.

By: 

Name: **Patrick Carey**

Title: **Vice-President**

772921 ALBERTA INC.

By: 

Name: **David C. Blom**

Title: **Secretary**

**SCHEDULE A
TRADEMARKS**

Owner	Name of Trade-mark	App. Number	Reg. Number
RiCal Sales and Logistics Inc.	RICAL	1812636	N/A
RiCal Sales and Logistics Inc.	RICAL SALES AND LOGISTICS	1812635	N/A

This is Exhibit "F" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

Search ID #: Z16741413

Transmitting Party

WEST-END REGISTRATIONS LICENSING & SEARCHES
LTD. (P158)

10011 170 STREET
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 04937961-EDD3 5
3774

Search ID #: Z16741413

Date of Search: 2023-Nov-06

Time of Search: 11:58:03

Business Debtor Search For:

772921 ALBERTA INC.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID #: Z16741413

Business Debtor Search For:

772921 ALBERTA INC.

Search ID #: Z16741413

Date of Search: 2023-Nov-06

Time of Search: 11:58:03

Registration Number: 17090532361

Registration Date: 2017-Sep-05

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2027-Sep-05 23:59:59

Exact Match on: Debtor No: 3

Amendments to Registration

18041220699	Amendment	2018-Apr-12
20013108999	Amendment	2020-Jan-31
20013109389	Amendment	2020-Jan-31
20060122795	Amendment	2020-Jun-01
20062216769	Amendment	2020-Jun-22

Debtor(s)

Block

1 CAREY MANAGEMENT INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

2 1204248 ALBERTA INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

3 772921 ALBERTA INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Search ID #: Z16741413

Block

4 ELITE FOODS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
18041220699

Block

5 ELITE INTERNATIONAL FOODS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20013109389

Block

6 LOUDON BROS. LIMITED
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

7 MUIRFIELD LAKES GOLF CLUB LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

8 REGNECK ENTERPRISES LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20062216769

Block

9 RETLOGISTICS INC.
243 BAYSIDE POINT SW
AIRDRIE, AB T4B 2X5

Status

Current

Block

10 RICAL SALES AND LOGISTICS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

11 RIDGE MEADOWS PROPERTIES LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

12 WALLACE & CAREY INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Search ID #: Z16741413

Block

13 ELITE INTERNATIONAL FOODS INC.
5445 - 8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20013109389

Block

14 SPRUCE IT UP LAND CORP.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current by
20060122795

Secured Party / Parties

Block

1 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT
SUITE 500, 595 BAY STREET
TORONTO, ON M5G 2C2

Status

Deleted by
20013108999

Block

2 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT
SUITE 500, 595 BAY STREET
TORONTO, ON M5G 2C2
Email: mailbox.x_sec_mail@cibc.com

Status

Current by
20013108999

Collateral: General

Block

Description

1 ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS.

Status

Current

Particulars

Block

Additional Information

1 The amendment to delete the Debtor Elite Foods Inc. (Block 4) ("Foods") and add Elite International Foods Inc. ("International") is made as a result of an amalgamation between Foods and International effective October 29, 2017.

Status

Current By
18041220699

Block

Additional Information

2 The amendment to delete Debtors 1204248 Alberta Inc. (Block 2) ("1204"), Muirfield Lakes Golf Club Ltd. (Block 7) ("Muirfield") and RiCal Sales and Logistics Inc. (Block 10) ("RiCal") is made as a result of an amalgamation between 1204, Muirfield and RiCal to form Spruce It Up Land Corp. effective June 1, 2020.

Status

Current By
20060122795

Search ID #: Z16741413

Business Debtor Search For:

772921 ALBERTA INC.

Search ID #: Z16741413

Date of Search: 2023-Nov-06

Time of Search: 11:58:03

Registration Number: 21102211955

Registration Type: SECURITY AGREEMENT

Registration Date: 2021-Oct-22

Registration Status: Current

Expiry Date: 2026-Oct-22 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)

Block

Status

Current

1 772921 ALBERTA INC.
5445 8TH STREET NE
CALGARY, AB T2K 5R9

Secured Party / Parties

Block

Status

Current

1 CANADIAN WESTERN BANK
SUITE 300, 606 - 4TH STREET SW
CALGARY, AB T2P 1T1
Email: CSPR.CollSec@cwbank.com

Search ID #: Z16741413

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	<p>ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY RELATING TO, LOCATED UPON, OR USED PREDOMINANTLY IN CONNECTION WITH, THE LANDS LOCATED AT AND LEGALLY DESCRIBED AS FOLLOWS:</p> <p>5445 - 8TH STREET NE, CALGARY, ALBERTA</p> <p>PLAN 7911396 BLOCK 1 LOT 3 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS</p> <p>PLAN 7911396 BLOCK 1 LOT 4 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS</p> <p>AND ANY OTHER LEGAL DESCRIPTION BY WHICH THE SAID LANDS MAY BE DESCRIBED WHETHER BY SUBDIVISION, CONDOMINIUMIZATION OR OTHERWISE, OR WHICH IS NOW OR AT ANY TIME MAY BE ANNEXED TO, COMPRISED IN, PERTAINING OR RELATING TO OR USED IN CONNECTION WITH THE SAID LANDS AND ALL ACCESSORIES THERETO AND SUBSTITUTIONS THEREFORE AND THE DEBTOR'S INTEREST IN ANY PRESENT OR HEREAFTER ACQUIRED RENTS, BOOK DEBTS AND SECURITY DEPOSITS RELATING TO THE SAID LANDS, TOGETHER WITH ALL DOCUMENTS, WRITINGS, PAPERS, BOOKS OF ACCOUNT AND RECORDS RELATING TO THE FOREGOING AND ALL RIGHTS AND INTERESTS THEREIN. PROCEEDS: ALL PRESENTLY OWNED AND HEREAFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR RELATING TO THE FOREGOING.</p>	Current

Result Complete

Search ID #: Z16741407

Transmitting Party

WEST-END REGISTRATIONS LICENSING & SEARCHES
LTD. (P158)

10011 170 STREET
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 04937955-EDD3 5
3774

Search ID #: Z16741407

Date of Search: 2023-Nov-06

Time of Search: 11:57:07

Business Debtor Search For:

RIDGE MEADOWS PROPERTIES LTD.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID #: Z16741407

Business Debtor Search For:

RIDGE MEADOWS PROPERTIES LTD.

Search ID #: Z16741407

Date of Search: 2023-Nov-06

Time of Search: 11:57:07

Registration Number: 17090532361

Registration Type: SECURITY AGREEMENT

Registration Date: 2017-Sep-05

Registration Status: Current

Expiry Date: 2027-Sep-05 23:59:59

Exact Match on:

Debtor

No: 11

Amendments to Registration

18041220699	Amendment	2018-Apr-12
20013108999	Amendment	2020-Jan-31
20013109389	Amendment	2020-Jan-31
20060122795	Amendment	2020-Jun-01
20062216769	Amendment	2020-Jun-22

Debtor(s)

Block

1 CAREY MANAGEMENT INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

2 1204248 ALBERTA INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

3 772921 ALBERTA INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Search ID #: Z16741407

Block

4 ELITE FOODS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
18041220699

Block

5 ELITE INTERNATIONAL FOODS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20013109389

Block

6 LOUDON BROS. LIMITED
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

7 MUIRFIELD LAKES GOLF CLUB LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

8 REGNECK ENTERPRISES LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20062216769

Block

9 RETLOGISTICS INC.
243 BAYSIDE POINT SW
AIRDRIE, AB T4B 2X5

Status

Current

Block

10 RICAL SALES AND LOGISTICS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

11 RIDGE MEADOWS PROPERTIES LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

12 WALLACE & CAREY INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Search ID #: Z16741407

Block

13 ELITE INTERNATIONAL FOODS INC.
5445 - 8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20013109389

Block

14 SPRUCE IT UP LAND CORP.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current by
20060122795

Secured Party / Parties

Block

1 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT
SUITE 500, 595 BAY STREET
TORONTO, ON M5G 2C2

Status

Deleted by
20013108999

Block

2 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT
SUITE 500, 595 BAY STREET
TORONTO, ON M5G 2C2
Email: mailbox.x_sec_mail@cibc.com

Status

Current by
20013108999

Collateral: General

Block

Description

1 ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS.

Status

Current

Particulars

Block

Additional Information

1 The amendment to delete the Debtor Elite Foods Inc. (Block 4) ("Foods") and add Elite International Foods Inc. ("International") is made as a result of an amalgamation between Foods and International effective October 29, 2017.

Status

Current By
18041220699

Block

Additional Information

2 The amendment to delete Debtors 1204248 Alberta Inc. (Block 2) ("1204"), Muirfield Lakes Golf Club Ltd. (Block 7) ("Muirfield") and RiCal Sales and Logistics Inc. (Block 10) ("RiCal") is made as a result of an amalgamation between 1204, Muirfield and RiCal to form Spruce It Up Land Corp. effective June 1, 2020.

Status

Current By
20060122795

Search ID #: Z16741407

Business Debtor Search For:

RIDGE MEADOWS PROPERTIES LTD.

Search ID #: Z16741407

Date of Search: 2023-Nov-06

Time of Search: 11:57:07

Registration Number: 21102212365

Registration Type: SECURITY AGREEMENT

Registration Date: 2021-Oct-22

Registration Status: Current

Expiry Date: 2026-Oct-22 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)

Block

Status

1 RIDGE MEADOWS PROPERTIES LTD.
5445 8TH STREET NE
CALGARY, AB T2K 5R9

Current

Secured Party / Parties

Block

Status

1 CANADIAN WESTERN BANK
SUITE 300, 606 - 4TH STREET SW
CALGARY, AB T2P 1T1
Email: CSPR.CollSec@cwbank.com

Current

Search ID #: Z16741407

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	<p>ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY RELATING TO, LOCATED UPON, OR USED PREDOMINANTLY IN CONNECTION WITH, THE LANDS LOCATED AT AND LEGALLY DESCRIBED AS FOLLOWS:</p> <p>255156 RANGE ROAD 25, ROCKY VIEW COUNTY, ALBERTA</p> <p>PLAN 8031JK BLOCK A LOT 5 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS</p> <p>AND ANY OTHER LEGAL DESCRIPTION BY WHICH THE SAID LANDS MAY BE DESCRIBED WHETHER BY SUBDIVISION, CONDOMINIUMIZATION OR OTHERWISE, OR WHICH IS NOW OR AT ANY TIME MAY BE ANNEXED TO, COMPRISED IN, PERTAINING OR RELATING TO OR USED IN CONNECTION WITH THE SAID LANDS AND ALL ACCESSORIES THERETO AND SUBSTITUTIONS THEREFORE AND THE DEBTOR'S INTEREST IN ANY PRESENT OR HEREAFTER ACQUIRED RENTS, BOOK DEBTS AND SECURITY DEPOSITS RELATING TO THE SAID LANDS, TOGETHER WITH ALL DOCUMENTS, WRITINGS, PAPERS, BOOKS OF ACCOUNT AND RECORDS RELATING TO THE FOREGOING AND ALL RIGHTS AND INTERESTS THEREIN. PROCEEDS: ALL PRESENTLY OWNED AND HEREAFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR RELATING TO THE FOREGOING.</p>	Current

Search ID #: Z16741407

Business Debtor Search For:

RIDGE MEADOWS PROPERTIES LTD.

Search ID #: Z16741407

Date of Search: 2023-Nov-06

Time of Search: 11:57:07

Registration Number: 22063011827

Registration Type: SECURITY AGREEMENT

Registration Date: 2022-Jun-30

Registration Status: Current

Expiry Date: 2026-Jun-30 23:59:59

Exact Match on: Debtor No: 1

Amendments to Registration

22100314235	Amendment	2022-Oct-03
23022203289	Amendment	2023-Feb-22

Debtor(s)

Block

Status

1 RIDGE MEADOWS PROPERTIES LTD
5445 8TH STREET NE
CALGARY, AB T2K 5R9

Current

Block

Status

2 RIDGE MEADOWS GOLF COURSE
5445 8TH STREET NE
CALGARY, AB T2K 5R9

Current

Block

Status

3 SPRUCE IT UP GARDEN CENTRE INC
5445 8TH STREET NE
CALGARY, AB T2K 5R9

Current

Secured Party / Parties

Block

Status

1 CWB NATIONAL LEASING INC.
1525 BUFFALO PLACE
WINNIPEG, MB R3T 1L9
Phone #: 204 954 9000 Fax #: 866 814 4752
Email: ppsa.adminstration@cwbnationalleasing.com

Current

Search ID #: Z16741407

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	412234916	2022	Toro Workman MDX	MV - Motor Vehicle	Current
2	412677742	2022	Toro Multi Pro 1750	MV - Motor Vehicle	Current By 22100314235
3	412234940	2022	Toro Workman MDX	MV - Motor Vehicle	Current By 22100314235
4	412801581	2022	Toro ProPass 200 Base Top	MV - Motor Vehicle	Current By 23022203289

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	ALL TORO UTILITY VEHICLES, TORO TURF SPRAYER, TORO TOPDRESSER OF EVERY NATURE OR KIND DESCRIBED IN AGREEMENT NUMBER 3087844, BETWEEN THE SECURED PARTY AND THE DEBTOR, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, SUBSTITUTIONS AND PROCEEDS OF ANY KIND DERIVED DIRECTLY OR INDIRECTLY THEREFROM.	Current

Particulars

<u>Block</u>	<u>Additional Information</u>	<u>Status</u>
1	Purchase Money Security Interest.	Current

Result Complete

Search ID #: Z16741485

Transmitting Party

WEST-END REGISTRATIONS LICENSING & SEARCHES
LTD. (P158)

10011 170 STREET
EDMONTON, AB T5P 4R5

Party Code: 50076967
Phone #: 780 483 8211
Reference #: 04938048-141952

Search ID #: Z16741485

Date of Search: 2023-Nov-06

Time of Search: 12:08:04

Business Debtor Search For:

SPRUCE IT UP LAND CORP.

Both Exact and Inexact Result(s) Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID #: Z16741485

Business Debtor Search For:

SPRUCE IT UP LAND CORP.

Search ID #: Z16741485

Date of Search: 2023-Nov-06

Time of Search: 12:08:04

Registration Number: 17090532361

Registration Date: 2017-Sep-05

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2027-Sep-05 23:59:59

Exact Match on: Debtor No: 14

Amendments to Registration

18041220699	Amendment	2018-Apr-12
20013108999	Amendment	2020-Jan-31
20013109389	Amendment	2020-Jan-31
20060122795	Amendment	2020-Jun-01
20062216769	Amendment	2020-Jun-22

Debtor(s)

Block

1 CAREY MANAGEMENT INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

2 1204248 ALBERTA INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

3 772921 ALBERTA INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Search ID #: Z16741485

Block

4 ELITE FOODS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
18041220699

Block

5 ELITE INTERNATIONAL FOODS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20013109389

Block

6 LOUDON BROS. LIMITED
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

7 MUIRFIELD LAKES GOLF CLUB LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

8 REGNECK ENTERPRISES LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20062216769

Block

9 RETLOGISTICS INC.
243 BAYSIDE POINT SW
AIRDRIE, AB T4B 2X5

Status

Current

Block

10 RICAL SALES AND LOGISTICS INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20060122795

Block

11 RIDGE MEADOWS PROPERTIES LTD.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Block

12 WALLACE & CAREY INC.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current

Search ID #: Z16741485

Block

13 ELITE INTERNATIONAL FOODS INC.
5445 - 8TH STREET NE
CALGARY, AB T2K 5R9

Status

Deleted by
20013109389

Block

14 SPRUCE IT UP LAND CORP.
5445-8TH STREET NE
CALGARY, AB T2K 5R9

Status

Current by
20060122795

Secured Party / Parties

Block

1 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT
SUITE 500, 595 BAY STREET
TORONTO, ON M5G 2C2

Status

Deleted by
20013108999

Block

2 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT
SUITE 500, 595 BAY STREET
TORONTO, ON M5G 2C2
Email: mailbox.x_sec_mail@cibc.com

Status

Current by
20013108999

Collateral: General

Block

Description

1 ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS.

Status

Current

Particulars

Block

Additional Information

1 The amendment to delete the Debtor Elite Foods Inc. (Block 4) ("Foods") and add Elite International Foods Inc. ("International") is made as a result of an amalgamation between Foods and International effective October 29, 2017.

Status

Current By
18041220699

Block

Additional Information

2 The amendment to delete Debtors 1204248 Alberta Inc. (Block 2) ("1204"), Muirfield Lakes Golf Club Ltd. (Block 7) ("Muirfield") and RiCal Sales and Logistics Inc. (Block 10) ("RiCal") is made as a result of an amalgamation between 1204, Muirfield and RiCal to form Spruce It Up Land Corp. effective June 1, 2020.

Status

Current By
20060122795

Search ID #: Z16741485

Business Debtor Search For:

SPRUCE IT UP LAND CORP.

Search ID #: Z16741485

Date of Search: 2023-Nov-06

Time of Search: 12:08:04

Registration Number: 21102212109

Registration Type: SECURITY AGREEMENT

Registration Date: 2021-Oct-22

Registration Status: Current

Expiry Date: 2026-Oct-22 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)

Block

Status

Current

1 SPRUCE IT UP LAND CORP.
5445 8TH STREET NE
CALGARY, AB T2K 5R9

Secured Party / Parties

Block

Status

Current

1 CANADIAN WESTERN BANK
SUITE 300, 606 - 4TH STREET SW
CALGARY, AB T2P 1T1
Email: CSPR.CollSec@cwbank.com

Search ID #: Z16741485

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	<p>ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY RELATING TO, LOCATED UPON, OR USED PREDOMINANTLY IN CONNECTION WITH, THE LANDS LOCATED AT AND LEGALLY DESCRIBED AS FOLLOWS:</p> <p>159 - 210 AVENUE SE, CALGARY, ALBERTA</p> <p>PLAN 5235JK BLOCK A EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS</p> <p>AND ANY OTHER LEGAL DESCRIPTION BY WHICH THE SAID LANDS MAY BE DESCRIBED WHETHER BY SUBDIVISION, CONDOMINIUMIZATION OR OTHERWISE, OR WHICH IS NOW OR AT ANY TIME MAY BE ANNEXED TO, COMPRISED IN, PERTAINING OR RELATING TO OR USED IN CONNECTION WITH THE SAID LANDS AND ALL ACCESSORIES THERETO AND SUBSTITUTIONS THEREFORE AND THE DEBTOR'S INTEREST IN ANY PRESENT OR HEREAFTER ACQUIRED RENTS, BOOK DEBTS AND SECURITY DEPOSITS RELATING TO THE SAID LANDS, TOGETHER WITH ALL DOCUMENTS, WRITINGS, PAPERS, BOOKS OF ACCOUNT AND RECORDS RELATING TO THE FOREGOING AND ALL RIGHTS AND INTERESTS THEREIN. PROCEEDS: ALL PRESENTLY OWNED AND HEREAFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR RELATING TO THE FOREGOING.</p>	Current

Search ID #: Z16741485

Note:

The following is a list of matches closely approximating your Search Criteria,
which is included for your convenience and protection.

Debtor Name / Address

SPRUCE TOP LUMBER SALES LTD.
E-1791 DUBLIN AVE
WINNIPEG, MB R3H 1A9

Reg.#

99021001880

SECURITY AGREEMENT

Result Complete

Business Debtor - "772921 ALBERTA INC."

Search Date and Time: November 6, 2023 at 11:00:02 am Pacific time
Account Name: Not available.

TABLE OF CONTENTS

2 Matches in 2 Registrations in Report

Exact Matches: 2 (*)

Total Search Report Pages: 6

	Base Registration	Base Registration Date	Debtor Name	Page
1	249437K	September 5, 2017	* 772921 ALBERTA INC	2
2	322220N	October 22, 2021	* 772921 ALBERTA INC.	5

Base Registration Number: 249437K

Registration Description:	PPSA SECURITY AGREEMENT
Act:	PERSONAL PROPERTY SECURITY ACT
Base Registration Date and Time:	September 5, 2017 at 2:25:09 pm Pacific time
Current Expiry Date and Time:	September 5, 2027 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
Trust Indenture:	No

CURRENT REGISTRATION INFORMATION

(as of November 6, 2023 at 11:00:02 am Pacific time)

Secured Party Information

**CANADIAN IMPERIAL BANK OF
COMMERCE, AS AGENT**

Address

595 BAY ST, STE 500
TORONTO ON
M5G 2C2 Canada

Debtor Information

772921 ALBERTA INC

Address

5445 - 8TH ST NE
CALGARY AB
T2K 5R9 Canada

WALLACE & CAREY INC

Address

5445 - 8TH ST NE
CALGARY AB
T2K 5R9 Canada

Vehicle Collateral

None

General Collateral

Base Registration General Collateral:

ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS AND, WITHOUT LIMITATION, ALL FIXTURES, CROPS AND LICENCES.

Original Registering Party

MILLER THOMSON LLP

Address

400 - 725 GRANVILLE STREET
VANCOUVER BC
V7Y 1G5 Canada



HISTORY

(Showing most recent first)

DEBTOR RELEASE

Registration Date and Time: June 22, 2020 at 10:36:58 am Pacific time
Registration Number: 290628M

Debtor Information

REGNECK ENTERPRISES LTD

DELETED

Address

5445 - 8TH ST NE
CALGARY AB
T2K 5R9 Canada

Registering Party Information

**NORTON ROSE FULBRIGHT
CANADA LLP (ML/MT)**

Address

222 BAY STREET, SUITE 3000
TORONTO ON
M5K 1E7 Canada

Base Registration Number: 322220N

Registration Description:	PPSA SECURITY AGREEMENT
Act:	PERSONAL PROPERTY SECURITY ACT
Base Registration Date and Time:	October 22, 2021 at 10:36:28 am Pacific time
Current Expiry Date and Time:	October 22, 2026 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
Trust Indenture:	No

CURRENT REGISTRATION INFORMATION

(as of November 6, 2023 at 11:00:02 am Pacific time)

Secured Party Information

CANADIAN WESTERN BANK

Address

300, 606 - 4 TH STREET S.W.
CALGARY AB
T2P 1T1 Canada

Debtor Information

772921 ALBERTA INC.

Address

5445 8TH STREET NE
CALGARY AB
T2K 5R9 Canada

Vehicle Collateral

None

General Collateral

Base Registration General Collateral:

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY RELATING TO, LOCATED UPON, OR USED PREDOMINANTLY IN CONNECTION WITH, THE LANDS (THE \LANDS\ LOCATED AT 1230 INDUSTRIAL ROAD, KELOWNA, BRITISH COLUMBIA, AND LEGALLY DESCRIBED AS LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698 (PARCEL IDENTIFIER: 003-862-682), AND ANY OTHER ,LEGAL DESCRIPTION BY WHICH SUCH LANDS MAY BE DESCRIBED WHETHER BY SUBDIVISION, CONDOMINIUMIZATION OR OTHERWISE, OR WHICH IS NOW OR AT ANY TIME MAY BE ANNEXED TO, COMPRISED IN, PERTAINING OR RELATING TO OR USED IN CONNECTION WITH THE SAID LANDS AND ALL ACCESSORIES THERETO AND SUBSTITUTIONS THEREFORE AND THE DEBTOR'S INTEREST IN ANY PRESENT OR ,HEREAFTER ACQUIRED RENTS, BOOK DEBTS AND SECURITY DEPOSITS RELATING TO THE LANDS, TOGETHER WITH ALL DOCUMENTS, WRITINGS, PAPERS, BOOKS OF ACCOUNT AND RECORDS RELATING TO THE FOREGOING AND ALL RIGHTS AND INTERESTS THEREIN. PROCEEDS: ALL PRESENTLY OWNED AND HEREAFTER ACQUIRED PERSONAL PROPERTY

Original Registering Party

**FASKEN MARTINEAU DUMOULIN
LLP**

Address

350 7TH AVENUE SW, SUITE 3400
CALGARY AB
T2P 3N9 Canada

This is Exhibit "G" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of June 22, 2023.

AMONG:

CAREY MANAGEMENT INC.
(the “**Borrower**”)

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
(the “**Agent**”)

- and -

THE LENDERS FROM TIME TO TIME PARTY TO THE CREDIT AGREEMENT
(the “**Lenders**”)

CONTEXT:

- A.** The Agent and the Lenders have provided certain financing arrangements under a Credit Agreement dated as of September 26, 2017 among the Borrower, the guarantors party thereto, the Agent and the lenders party thereto from time to time (as amended by Amendment No. 1 to Credit Agreement dated May 3, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eight Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023 and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the “**Credit Agreement**”).
- B.** As of the date of this Agreement, the Credit Parties are in default under the Credit Agreement and the other Loan Documents, which default constitutes one or more events of default thereunder as set out in Schedule 3 hereto, and in addition, the Borrower has advised the Agent of the occurrence of potential liquidity shortfalls that would be considered Defaults that with the passage of time would be Events of Default, and that could have a material impact on the ability of the Credit Parties to continue business as a going concern.
- C.** The conditions to the obligation of the Lenders to make Loans as set out in Section 4.2 of the Credit Agreement are not satisfied at this time (the “**Draw Conditions**”). As a result, the Lenders are not obligated at this time to make further advances of Loans under the Credit Agreement.
- D.** Certain of the Credit Parties, being the Borrower, Wallace & Carey Inc. and Loudon Bros Limited (the “**Applicants**”) are applying to the Alberta Court of King’s Bench (the “**CCAA Court**”) for an initial order (as amended, supplemented or otherwise modified from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) (such proceedings being the “**CCAA Proceedings**”) on or about June 22, 2023 and the Credit Parties have requested ongoing support of the Agent and the Lenders during the CCAA Proceedings. The primary purpose

of the CCAA Proceedings is to give effect to a process for Wallace & Carey Inc. and Loudon Bros Limited to pursue potential transactions to restructure certain unsecured debt (a “**Plan**”) or otherwise restructure the business of the Credit Parties.

- E. The Credit Parties require funding to implement the restructuring process and have concluded that the Agent and the Lenders are the most cost effective and timely source of working capital funding that is available and appropriate in the circumstances of the Applicants in the CCAA Proceedings.
- F. The Credit Parties have requested that the Agent and the Lender continue to make available to the Borrower credit facilities under the Credit Agreement to fund working capital requirements during the CCAA Proceedings.
- G. The Credit Parties have further requested that the Agent and the Lenders forbear from exercising the Agent’s and the Lenders’ rights arising as a result of (i) the Existing Defaults (as defined below); and (ii) the commencement and existence of the CCAA Proceedings.
- H. The Borrower, the Agent and the Lenders have agreed, subject to the terms and conditions herein, that the Lenders will continue to make available to the Borrower certain Borrowings under the Credit Agreement during the Forbearance Period (as defined below), subject to the terms and conditions set out herein, for the Borrower’s working capital purposes, notwithstanding the failure of the Borrower to satisfy the Draw Conditions as a result of, among other things, the Existing Defaults and Events of Default that would arise from the CCAA Proceedings.
- I. The Agent and the Lenders are willing to forbear from exercising their rights and remedies and to provide certain Borrowings to the Borrower during the Forbearance Period (as defined below) subject to the terms and conditions set out herein.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Credit Agreement.

1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- (a) “**ABL DIP Fee**” is defined in Section 3.3(a).
- (b) “**ABL DIP Priority Charge**” is defined in Section 7.1(v)(b).
- (c) “**Additional Default**” means: (i) a Credit Party’s default or failure to comply with any of the terms, conditions or covenants under this Agreement, or (ii) a Default by a Credit Party under the Credit Agreement or any other Loan Document prior to or on or after the date of this Agreement (other than an Existing Default).
- (d) “**Agreement**” means this agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.

- (e) **"Alberta Tobacco Tax Payment Plan"** means the payment arrangements between Wallace & Carey Inc. and the Government of Alberta pursuant to which the Credit Parties agreed to make weekly payments of \$2,000,000 (of which \$250,000 is on account of arrears) owing under the *Tobacco Tax Act*, RSA 2000, c T-4.
- (f) **"Applicants"** is defined in "Context" above.
- (g) **"Approved Cash Flow"** means the approved (by the Agent) rolling 13-week cash flow forecast of the Applicants in form and substance satisfactory to the Agent, which forecast shall also include the forecasted inventory, forecasted Borrowings and forecasted Borrowing Base for each week, which is attached as Schedule 6 hereto for the weeks June 23, 2023 to September 23, 2023.
- (h) **"CCAA"** is defined under "Context" above.
- (i) **"CCAA Court"** is defined under "Context" above.
- (j) **"CCAA Proceedings"** is defined under "Context" above.
- (k) **"Claims"** and **"Claim"** are defined in Section 8.3(a).
- (l) **"Communication"** means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- (m) **"Conditions Precedent"** is defined in Section 7.1.
- (n) **"Court Order"** means an order of the CCAA Court.
- (o) **"Credit Agreement"** is defined under "Context" above.
- (p) **"Draw Conditions"** is defined under "Context" above.
- (q) **"Existing Defaults"** means the Defaults or Events of Default under the Credit Agreement set out in Schedule 3 attached hereto, and any Default or Event of Default arising solely as a result of the commencement of the CCAA Proceedings in accordance with the terms hereof.
- (r) **"Existing Indebtedness"** means the outstanding Obligations existing as at the date hereof as more particularly described in Schedule 1.
- (s) **"Existing Security"** is defined in Section 2.4.
- (t) **"Forbearance Period"** is defined in Section 3.1(a).
- (u) **"Initial Order"** is defined under "Context" above.
- (v) **"Loan Documents"** has the meaning given thereto in the Credit Agreement and includes, without limitation, this Agreement.
- (w) **"Mortgaged Properties"** means the real property (including fixtures thereto) listed on Schedule 4 and identified as such thereon as updated from time to time with the consent of the Agent, owned by the Borrower or a Guarantor.
- (x) **"Net Cash Flow"** means the cumulative net cash flow measured and reported weekly on a cumulative basis.

- (y) **"Parties"** means, collectively, the Credit Parties, the Agent and the Lenders; and **"Party"** means any one of them.
- (z) **"Plan"** is defined under "Context" above.
- (aa) **"Pre-Filing Payments Order"** is defined in Section 4.1(d)(iv).
- (bb) **"Releasees"** and **"Releasee"** are defined in Section 8.3(a).
- (cc) **"Saskatchewan Tobacco Tax Payment Plan"** means the payment arrangement evidenced by the letter dated February 15, 2023 from the Government of Saskatchewan to Wallace & Carey Inc. regarding the payment of arrears owing under the *Tobacco Tax Act*, RSA 2000, c T-4.
- (dd) **"Tobacco Tax Payment Plans"** means, collectively, the Alberta Tobacco Tax Payment Plan and the Saskatchewan Tobacco Tax Payment Plan.
- (ee) **"Termination Date"** is defined in Section 5.3.
- (ff) **"Terminating Event"** is defined in Section 5.4.

1.3 Entire Agreement

This Agreement, together with the Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute 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, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.4 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word “dollar” and the “\$” sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

1.6 Schedules and Exhibits

The following is a list of the Schedules and Exhibits attached hereto:

Schedule	Subject Matter
Schedule 1	Existing Indebtedness
Schedule 2	Existing Security
Schedule 3	Existing Defaults
Schedule 4	Mortgaged Properties
Schedule 5	Restructuring Timeline
Schedule 6	Approved Cash Flow

ARTICLE 2 ACKNOWLEDGMENT

2.1 Acknowledgement of Obligations

Each Credit Party confirms, acknowledges and agrees that the Existing Indebtedness as of the date of this Agreement is as set out in Schedule 1 attached hereto.

2.2 Continuing Effect of Amendments

The Parties hereto each acknowledge, confirm and agree that the Credit Agreement and the other Loan Documents remain in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Credit Agreement shall henceforth be read and construed in conjunction with this Agreement.

2.3 Other Confirmations and Acknowledgements

Each Credit Party confirms, acknowledges and agrees that:

- (a) each of the recitals in the “Context” is true and correct;
- (b) the Existing Defaults (other than the Default or Event of Default arising solely from the commencement of the CCAA Proceedings) have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults, exists under the Credit Agreement or any other Loan Document;

- (c) the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver, and the Credit Parties acknowledge, confirm and agree that notwithstanding any provision of the Credit Agreement to the contrary, the Agent and the Lenders shall be under no obligation to continue the Commitments following the Forbearance Period and shall only continue the Commitments during the Forbearance Period subject to the terms and conditions of this Agreement;
- (d) interest and fees will accrue on the Existing Indebtedness under the Credit Agreement and the other Loan Documents in accordance with the terms set out herein;
- (e) KSV Advisory Inc. has been retained by the Applicants, and has been appointed as the financial advisor to the Applicants and the Agent has retained and is entitled to continue to retain PricewaterhouseCoopers Inc., as financial advisor and any other advisors as the Agent may require at the cost of the Credit Parties;
- (f) KSV Advisory Inc. (the "**Monitor**") is the proposed monitor under the Initial Order in the CCAA Proceedings and has consented to act in such capacity;
- (g) each Credit Party consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Agent and the Lenders under the Credit Agreement and the other Loan Documents and Applicable Law in any manner determined by the Agent and the Lenders upon the expiry of the Forbearance Period;
- (h) each Credit Party will grant all access and provide, on reasonable notice during regular business hours, all information and documentation to, and will otherwise cooperate fully with, the Agent and the Lenders and PricewaterhouseCoopers Inc., as the Agent's advisor, and pay all reasonable fees and disbursements of each consultant or advisor appointed by the Agent or the Lenders as the Agent or the Lenders may require; and pay, in accordance with the Approved Cash Flow, as the case may be, all reasonable fees and disbursements of the Monitor and the Monitor's counsel;
- (i) except for obligations in respect of accrued unpaid tobacco sales taxes not to exceed \$10,653,860.42, which are the subject of the Tobacco Tax Payment Plans, as at the date of this Agreement, the Credit Parties have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, tobacco taxes and other excise taxes, GST, HST, employee payroll remittances, employee wages and other obligations which have or may constitute a Priority Payable;
- (j) neither the Borrower, nor any other Credit Party has received, or is aware of any pending issuance of, any notice of garnishment from a Governmental Authority;
- (k) the Agent has and will continue to have valid, enforceable and perfected first ranking Liens, subject to Permitted Liens, over and in respect of the Collateral as continuing and collateral security for the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, and subject to any court-ordered charge(s) approved by the Agent and the Lender and granted by the CCAA Court;
- (l) the Credit Agreement, the other Loan Documents to which each Credit Party is party and this Agreement are in full force and effect and constitute legal, valid and binding obligations of each Credit Party, enforceable against each such Credit Party in accordance with their respective terms;
- (m) the Credit Parties do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Agent and the Lenders and if there are any such claims, then each Credit Party hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;

- (n) the Agent and the Lenders are and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- (o) the Approved Cash Flow existing as at the date hereof covers the period from June 23, 2023 to September 23, 2023;
- (p) this Agreement constitutes a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

2.4 Security

The Credit Parties acknowledge and agree that, in addition to the security created pursuant to the ABL DIP Priority Charge, the Security Documents delivered to, and Liens granted therein to, the Agent (including, without limitation, each Guarantee delivered by each Guarantor) as listed in Schedule 2 attached hereto (collectively, the “**Existing Security**”) shall stand as security for the payment and performance of each and every one of the Credit Parties’ obligations and indebtedness to the Agent and the Lenders.

ARTICLE 3 FORBEARANCE, FEES AND INTEREST, AND COMMITMENTS

3.1 Forbearance

- (a) In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Agent and the Lenders agree to forbear from exercising their rights and remedies under the Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the “**Forbearance Period**”) commencing on the date of this Agreement and ending on the Termination Date.
- (b) On the last day of the Forbearance Period, the agreement of the Agent and the Lenders to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the Agent and the Lenders to immediately exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Credit Parties), including without limitation:
 - (i) to immediately terminate the Commitments and cease to permit any further Borrowings, upon which no further credit will be available thereunder;
 - (ii) to demand immediate payment of all of the Obligations and enforce all of the Agent’s rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and
 - (iii) to appoint a receiver, interim receiver or receiver and manager of any of the Credit Parties pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

3.2 No Other Waivers; Reservation of Rights

The Agent and the Lenders have not waived, and are not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Agent and the Lenders have not agreed to forbear with respect to

any of their rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Agent and the Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 Fees and Interest

- (a) In consideration of the agreements set out in this Agreement, the Borrower agrees to pay to the Agent, a fee for the benefit of the Revolving Lenders in the amount of \$1,000,000 which shall be fully earned upon execution of this Agreement and payable in four equal instalments of \$250,000 on July 21, 2023, August 21, 2023, September 21, 2023, and October 21, 2023 (the “**ABL DIP Fee**”); provided, however, that the ABL DIP Fee, excluding a \$100,000 portion of that fee which is non-refundable, shall be refunded to the Borrower upon: (i) implementation of a Plan in form and substance acceptable to the Agent and in connection therewith a refinancing of all of the Obligations on or prior to November 30, 2023; or (ii) the indefeasible repayment in full of the Obligations, including the BCAP Loan, on or prior to November 30, 2023.
- (b) Subject to subsection 3.3(a), the ABL DIP Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Credit Agreement to the extent that payment has not been received by the Agent as at the date hereof) and may be charged by the Agent to any account of the Borrower maintained by the Lenders. The ABL DIP Fee will be fully earned by the Agent despite any failure by any Credit Party to comply with any other term of this Agreement.
- (c) Notwithstanding Section 2.3(d) hereof or any other provision of this Agreement, or any provision of the Credit Agreement or any other Loan Document:
 - (i) The Revolving Loans comprising each Canadian Prime Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus 3.75%.
 - (ii) The Revolving Loans comprising each Base Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Base Rate plus 3.75%.
 - (iii) The BCAP Loan shall bear interest at a rate equal to 2% plus the rate otherwise applicable to the BCAP Loan.

- 3.4 **Revolving Commitments:** The Credit Parties, the Agent and the Lender hereby agree that the Revolving Commitment shall be reduced to \$55,000,000.

ARTICLE 4 OBLIGATIONS OF THE CREDIT PARTIES DURING FORBEARANCE PERIOD

4.1 Covenants of the Credit Parties

During the Forbearance Period, each Credit Party covenants and agrees as follows:

- (a) **Loan Document Obligations:** each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents including, without limitation, terms requiring prompt payment to the Agent and the Lenders of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are

otherwise specifically amended by this Agreement, or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Agent;

(b) **Asset Sales and Payments:** notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document:

- (i) unless otherwise agreed to by the Agent in writing on or after the date hereof, the Credit Parties will not transfer, lease, sell or otherwise dispose of all or any part of their property, assets or undertaking (excluding dispositions of inventory in the ordinary course of business) other than the transfer, lease, sale or other disposition of property, assets or undertaking not exceeding \$25,000 for any single transaction or \$50,000 in the aggregate;
- (ii) notwithstanding Section 6.6 and 6.15 of the Credit Agreement, each Credit Party agrees that no Restricted Payment (including any Restricted Payment otherwise permitted by Section 6.6 of the Credit Agreement) or Capital Expenditure shall be incurred or paid, in each case unless such payment is expressly identified and included in the Approved Cash Flow or has been approved by the Agent in writing on or after the date hereof;
- (iii) unless otherwise agreed to by the Agent in writing on or after the date hereof, the Credit Parties shall not pay any key employee any bonus, incentive or retention payments, whether such payment was an obligation arising from a contract executed prior to the date of this Agreement or otherwise; and
- (iv) notwithstanding Section 6.8 of the Credit Agreement, no payment of interest, principal or any other obligations owing under the Shareholder Subordinated Indebtedness or the Elite Unsecured Debt shall be made during the Forbearance Period without the prior written consent of the Agent given on or after the date hereof.

(c) **Information Sharing:** The Credit Parties will forthwith provide to the Agent:

- (i) a copy of all reports and information respecting the business, financial condition or prospects of the Credit Parties within two business days following request by the Agent, or such other time period as agreed to by the Agent acting reasonably;
- (ii) the following reporting information certified by the respective Chief Financial Officer or Chief Executive Officer (unless otherwise specified) of the applicable Credit Party and in form and substance satisfactory to the Agent:
 - a. the reporting information required under the Credit Agreement (and, in particular, Section 5.1 thereof);
 - b. promptly after a Credit Party learns of the receipt or occurrence thereof, a certificate of such Credit Party, signed by a senior officer of such Credit Party specifying:
 - (i) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against such Credit Party which would reasonably be expected to have a Material Adverse Effect;
 - (ii) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority or licensor pertaining to all or any part of the properties or Intellectual

Property Rights of such Credit Party which would reasonably be expected to have a Material Adverse Effect;

- (iii) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default;
 - (iv) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of such Credit Party with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto;
 - (v) the receipt of any notice from, or the taking of any other action by, a party to a Material Contract or material indebtedness with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such party and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto;
 - (vi) the receipt of, or notice of the pending issuance of, any notice of garnishment against a Credit Party outlining the dollar amount subject to the garnishment and, if issued, attaching a copy of the order;
 - (vii) any returns, credit memos, damage or destruction of Inventory, in excess of \$250,000 in aggregate during the Forbearance Period, together with a detailed statement describing the Inventory returned, damaged or destroyed or the credit memo and the cause of such return, damage or destruction or credit memo and what action the Credit Parties are taking or propose to take with respect thereto;
 - (viii) any notices received from customers advising of termination of their purchase agreements, material reductions in orders relative to prior periods, or liabilities or set offs such customers are seeking to impose on any Credit Party in an aggregate amount in excess of \$250,000 during the Forbearance Period;
 - (ix) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;
- (iii) promptly:
- a. after receipt by a Credit Party, a copy of any notice received by such Credit Party in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of such Credit Party, and
 - b. any written restructuring, liquidation or sale proposal that is received by a Credit Party or their respective advisors;
- (iv) promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Agent from time to time.

(d) **CCAA Proceedings:**

- (i) All motions, applications, affidavits, Court Orders and other pleadings and related documents filed or submitted to the CCAA Court by any Credit Party shall be consistent with the terms hereof and all Court Orders shall not be inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the Agent or the Lenders unless otherwise agreed to by the Agent and the Lenders;
- (ii) Drafts of any motions, applications, affidavits, Court Orders and other pleadings and related documents to be filed or sought by any Credit Party, shall be provided to the Agent not less than three business days prior to service and filing, to be confirmed in advance to be satisfactory to the Agent and the Lenders, acting reasonably, subject to any amendments that are required by the Court that are acceptable to the Agent and the Lenders, acting reasonably;
- (iii) The Applicants agree to comply with the timeline set forth in Schedule 5 hereto with respect to negotiation of the Plan, with such amendments as may be agreed to by the Agent and the Lenders;
- (iv) The Applicants shall seek and obtain, as part of the Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lenders, authorizing and directing the Applicants to pay, in accordance with the Credit Agreement, as amended hereby, any and all amounts owing by the Applicants to the Agent and the Lenders on account of the Credit Parties' pre-filing outstanding Borrowings under the Credit Agreement from time to time, whether such Borrowings arose prior to or after the date of the Initial Order, provided that no advances of funds made by the Agent or the Lenders to the Credit Parties under the Credit Agreement (as amended) made on or after the granting of the Initial Order shall be used to pay pre-filing outstanding Borrowings under the Credit Agreement (as amended) (the "**Pre-filing Payments Order**");
- (v) The Credit Parties will enforce, collect and receive at their expense all amounts owing on their Accounts in the ordinary course of their business and any proceeds they receive shall be subject to the terms of the Credit Agreement and this Section 4.1(d);
- (vi) that, on the date of the Initial Order and at all times thereafter: (a) each of the Credit Parties' deposit accounts that receive proceeds of Inventory or other property subject to a Lien in favour of the Agent are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) each of the Credit Parties shall have delivered to the Agent evidence satisfactory to the Agent that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Agent copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent, acting reasonably, with all such other Persons as required by the Agent in its sole discretion; and
- (vii) The Applicants will seek and obtain, as part of the Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lenders, authorizing and directing the Applicants to enter into and perform under the above described Blocked Accounts arrangements (the "**Blocked Accounts Order**")

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Agent hereunder and under the Credit Agreement in order for the Agent to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a

claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Agent and the Lenders to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

- (viii) The Credit Parties will not disclaim any contract that is material to the Credit Parties' business except on prior notice to and with the written consent of the Agent;
- (e) **Security:** The Credit Parties will from time to time execute and deliver additional Guarantees and such supplements, amendments or additions as may be requested by the Agent to any of the existing Liens held by the Agent (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.
- (f) **No Non-arm's Length Payments:** Without derogation to any negative covenants contained in the Credit Agreement, no Credit Party shall make any payments of interest, principal, bonuses, management fees, incentives, payments or salary or other distributions of cash or assets to any Person with which it does not deal with at arm's length except for (i) payments of salaries in the ordinary course of business and consistent with historical salaries; (ii) incentive payments to employees paid in accordance with the terms of the Credit Parties' teammate incentive program; and (iii) the payment of management fees and interest among the Credit Parties in the ordinary course of business consistent with past practice; in each case as identified and included in the Approved Cash Flow.
- (g) **Approved Cash Flow:** The Credit Parties agree that:
 - (i) the cash flow forecast attached hereto as Schedule 6 is the Approved Cash Flow for the period June 23, 2023 to September 23, 2023;
 - (ii) by 12:00 p.m. (Toronto time) on the third Business Day of each week, the Credit Parties shall provide the Agent with an updated Borrowing Base calculation and a variance report that shows the actual cash receipts and actual cash disbursements against the Approved Cash Flow on both a trailing weekly period basis and cumulative basis over the entirety of the Approved Cash Flow period to date, as well as an explanation of variances for individual line items in excess of the greater of 5% or \$100,000 from the Approved Cash Flow;
 - (iii) on each month anniversary of the date of this Agreement (or the first Business Day thereafter) the Credit Parties shall provide the Agent with a one-month roll-forward of the Approved Cash Flow, which shall reflect the Borrower's good faith projections and be in form and detail consistent with the initial Approved Cash Flow;
 - (iv) the Credit Parties shall deliver to the Agent promptly such additional information as the Agent may from time to time reasonably request respecting any such Approved Cash Flow; and
 - (v) the Credit Parties and the Monitor shall hold a weekly conference call with the Agent, at a time to be agreed by the Credit Parties, the Monitor and the Agent, to provide updates on the past and anticipated future performance of the business relative to the Approved Cash Flow.

For greater certainty, the requirement to deliver, and any approval of, an Approved Cash Flow having a duration extending beyond the current Termination Date does not constitute an agreement by the Lenders to extend the Termination Date.

The Credit Parties will not make any payments outside the ordinary course of their business.

On each second monthly anniversary date following the date of this Agreement (or the first Business Day thereafter) the Credit Parties shall deliver to the Agent an updated 13 week cash flow forecast that is proposed to be an updated Approved Cash Flow for the purposes of this Agreement (the "**Updated Cash Flow**"). Upon approval by the Agent of such Updated Cash Flow, such Updated Cash Flow shall be deemed the Approved Cash Flow for the applicable future forecasted periods under this Agreement.

- (h) **Real Property Mortgages:** the Credit Parties shall grant and shall cause the Agent to receive on or before the date that is 30 days following the date of this Agreement: (i) a perfected second priority Lien (subject only to the First Lien Term Loan Lender) on the Mortgaged Properties, including the filing and recording of mortgages, (ii) lender title insurance policies or commitments to title insure, in the customary form and with customary endorsements and qualifications for similar policies, insuring each Mortgaged Property, and (iii) the consent of the First Lien Term Loan Lender to the Agent's Liens over the Mortgaged Properties, in form and substance satisfactory to the Agent;
- (i) **Blocked Accounts:** Each Credit Party agrees as follows:
 - (i) that it will enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of the Credit Agreement and this Section 4.1(i);
 - (ii) that, on the date of this Agreement and at all times thereafter: (a) each of the Credit Parties' deposit accounts that receive proceeds of property subject to a Lien in favour of the Agent or otherwise are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) each of the Credit Parties shall have delivered to the Agent evidence satisfactory to the Agent that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Agent copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent, acting reasonably, with all such other Persons as required by the Agent in its sole discretion; and

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Agent hereunder and under the Credit Agreement in order for the Agent to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Agent to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

- (j) **Rent Payments:** Subject to any pre-filing amounts that are subject to a stay of proceedings in favour of the Applicants, the Credit Parties must maintain as current all payments under any lease or any mortgage of any premises out of which any Credit Party operates, or contracts for storage or bailment, and will otherwise not permit any default or event of default under any such lease,

mortgage or contract for storage or bailment, or forthwith obtain a waiver in writing from the relevant landlord, storer or bailee.

- (k) **Minimum Excess Availability:** The Borrower shall maintain Excess Availability of not less than \$1,500,000 at all times during the Forbearance Period, which shall be calculated after applying the Availability Block of \$2,500,000.
- (l) **Further Assurances:** Each Credit Party will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Agent may require to ensure that the Agent has and continues to have full and complete Guarantees from each Credit Party and a first ranking Lien, subject to Permitted Liens, against such assets, properties and undertaking of the Credit Parties as the Agent requires (including all amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Agent).

4.2 Covenants in the Credit Agreement and the other Loan Documents

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Credit Parties in the Credit Agreement and the other Loan Documents.

ARTICLE 5 AMENDMENTS TO LENDING ARRANGEMENTS

5.1 Amendments to Credit Agreement

- (a) The Borrower agrees to provide the Agent with information detailing the proposed use of proceeds for Borrowings after the date of this Agreement, which information shall accompany each Borrowing Request and be in form satisfactory to Agent.
- (b) Except to the extent otherwise set forth in this Agreement, the credit facilities shall continue in accordance with their terms and conditions as set forth in the Credit Agreement.

5.2 Purpose

- (a) The proceeds of Borrowings by the Borrower shall, subject to the provisions of this Agreement, be used to fund the operations of the Applicants in the ordinary course and for such other purposes as may be agreed to by the Agent in writing; all in accordance with the Approved Cash Flow.

5.3 Termination Date

- (a) All amounts owing to the Agent and the Lenders by the Borrower in connection with the Credit Agreement and otherwise in connection with this Agreement and all other Loan Documents shall be paid by the Credit Parties to the Agent in full on the Termination Date. The “**Termination Date**” shall be the date which is the earliest of:
 - (i) notice by the Agent to the Borrower of a Default or an Event of Default (other than an Existing Default);
 - (ii) December 18, 2023, or such other date as may be agreed to by the Agent; and
 - (iii) the occurrence or existence of any Terminating Event.

5.4 Terminating Events

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Agent, the occurrence of any of the following events will constitute a “**Terminating Event**” under this Agreement (and, for purposes of greater certainty, a Default or an Event of Default under the Credit Agreement and the other Loan Documents):

- (a) if any Additional Default occurs;
- (b) if the Initial Order is not obtained in form and substance acceptable to the Agent on or prior to June 22, 2023, and amended and restated in form and substance acceptable to the Agent on or prior to June 30, 2023;
- (c) if any of the Credit Parties fail to comply with any Order granted by the CCAA Court;
- (d) if any Credit Party fails to achieve any of the steps set out in Schedule 5 by the dates set out therein;
- (e) if any cash flow projection provided to the Agent pursuant to Section 4.1(g) is not acceptable to the Agent, acting reasonably;
- (f) if, in any given week during the Forbearance Period: (i) the actual cumulative Receipts (as so described in the Approved Cash Flow) are more than 5% below the forecasted cumulative Receipts amount (as shown on the Approved Cash Flow) for the given week, or (ii) the actual weekly Receipts are more than 15% below forecasted weekly Receipts amount (as shown in the Approved Cash Flow) for a given week;
- (g) if (a) a Credit Party creates, incurs, assumes or permits to exist any Lien on any of its property, undertaking or assets now owned or hereafter acquired, or (b) the CCAA Court makes any order declaring that all or part of a Credit Party’s property is subject to a Lien in favour of any party other than the Agent and such court ordered charge purports to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent under its Liens in the Security Documents (including liens securing the obligations in connection with the BCAP Loan) or the ABL DIP Priority Charge, other than (i) Permitted Liens and (ii) any court-ordered charge(s) approved by the Agent and granted by the CCAA Court in the CCAA Proceedings; or (iii) in each case solely in respect of the Mortgaged Properties, the Liens granted to the First Lien Term Loan Lender on the Mortgaged Properties.
- (h) if BDC provides notice of any dispute regarding the legality, validity, binding nature, enforcement or enforceability of its participation under the BDC BCAP Program in connection with Borrower;
- (i) the value of Eligible Inventory (valued in Canadian Dollars at Standard Cost) at any time exceeds \$75,000,000 in the week ended June 24, 2023, or \$60,000,000 thereafter;
- (j) if, on or after the date of this Agreement:
 - (i) the CCAA Proceedings are terminated without the prior or concurrent consent of the Agent,
 - (ii) any Order of the CCAA Court is sought by a Credit Party or granted by the CCAA Court that is not in form and substance acceptable to the Agent and the Lenders acting reasonably,
 - (iii) the Monitor reports to the CCAA Court that there has been a material adverse change in respect of an Applicant and/or the CCAA Proceedings;

- (k) if any representation, warranty or other statement made or deemed to be made by a Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lenders as contemplated by this Agreement is untrue in any material respect;
- (l) if any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement;
- (m) if any notice of garnishment is received by any Credit Party from any Governmental Authority;
- (n) the occurrence of any event listed in Section 4.1(c)(ii)(b);
- (o) if any representation, warranty or other statement made or deemed to be made by any Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lenders as contemplated by this Agreement is untrue in any material respect or, in the case of any representation stated to be made as at a particular earlier date, was untrue in any material respect when made;
- (p) if there occurs any: (a) closure of all or any material part of any of the business or operations of any of the Credit Parties or any suspension of all or a material part of the business or operations of any of the Credit Parties and/or (b) disposition or sale of all or any material part of the business or operations of the Credit Parties;
- (q) if any action, claim or proceeding is formally commenced, filed or lodged against any of the Credit Parties which is not stayed by the CCAA Proceedings and the same gives rise to, or could reasonably be expected to give rise to, indebtedness, liabilities or obligations of \$2,500,000 and such action, claim or proceeding continues undismissed or unstayed for a period of 10 calendar days after the institution thereof;
- (r) if any creditor or encumbrancer of any Credit Party takes possession of any of the Credit Parties' property or assets, or if distress or execution, foreclosure or power of sale, or any similar process is levied or enforced against such property or assets;
- (s) if any of the Credit Parties contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Agent or the Lenders under or relating to this Agreement, the Credit Agreement or any of the other Loan Documents;
- (t) if the Agent determines that a Material Adverse Change in the financial or business condition, or prospects of, any Credit Party has occurred or that a Material Adverse Change in the value of the Collateral relative to the Obligations has occurred;
- (u) if any Order is granted in the CCAA Proceedings that is not in form and substance acceptable to the Agent, acting reasonably;
- (v) if the stay imposed under the CCAA Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Agent consents thereto;
- (w) if any step is taken or event occurs that would materially prejudice or jeopardize the Agent's or the Lenders' rights under this Agreement, the Credit Agreement, or the other Loan Documents or the Collateral secured by the Loan Documents; or
- (x) if, other than the CCAA Proceedings, any action is taken by or against or consented to by a Credit Party to institute proceedings to be liquidated, adjudicated a bankrupt or insolvent or consent to the institution of liquidation, bankruptcy, insolvency or similar proceedings against a Credit Party or file

a petition (or similar action or proceeding) or consent seeking reorganization, arrangement, or relief from creditors, or take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws unless, in the case of any action taken against a Credit Party in connection with any of the foregoing, such petition, application or proceeding is contested by the Credit Parties and is dismissed or stayed within 5 Business Days after the institution thereof (and in the case of a stay, such stay is continuing).

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Credit Party or any other action whatsoever by the Agent and the Agent and the Lenders shall be entitled to exercise any and all rights and remedies under the Credit Agreement and the other Loan Documents without further notice to the Credit Parties and any such notice, including pursuant to the BIA, is hereby irrevocably waived by the Credit Parties.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Each of the Credit Parties represents, warrants and covenants with and to the Agent and the Lenders as follows:

6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations and warranties made by or on behalf of the Credit Parties to the Agent in the Credit Agreement or any of the other Loan Documents was true and correct when made, and in all material respects is, true and correct on the date of this Agreement, with the same full force and effect as if each of those representations and warranties had been made by the applicable Credit Parties on the date of, and within, this Agreement.

6.2 Full Effect of Documents

This Agreement, the Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.

6.3 No Conflict

The execution and delivery and performance of this Agreement by each Credit Party will not violate any requirement of Applicable Law or any Material Contract of each Credit Party, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

6.4 Lender May Pursue Rights and Remedies

Nothing in this Agreement will prejudice the Agent's and the Lenders' rights to pursue any of their rights or remedies including, without limitation, enforcing their rights under any of this Agreement, the Credit Agreement or any of the other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period.

ARTICLE 7 CONDITIONS PRECEDENT TO THIS AGREEMENT

7.1 Conditions Precedent

(a) The forbearance and other accommodations contemplated hereunder shall only be granted by the Agent if the following conditions precedent (the "**Conditions Precedent**") have been satisfied or

complied with in a manner satisfactory to the Agent on or before 5:00 p.m. (Calgary Time) on June 22, 2023 or such other time or date as specified below:

- (i) the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
- (ii) the payment of all fees, disbursements and taxes owing to the Agent's and the Lenders' legal counsel and to PricewaterhouseCoopers Inc. (as advisor to the Agent and the Lenders) at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount payable under (y) shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof;
- (iii) the Agent shall have confirmed to the Credit Parties that the Approved Cash Flow prepared by the Borrower to be filed with its CCAA materials is satisfactory to the Agent;
- (iv) the Agent shall have received, drafts of the Initial Order and drafts of all supporting affidavits and reports to be filed in the CCAA Proceedings and the Approved Cash Flow and such materials shall be in form and substance satisfactory to the Agent and the Lenders, acting reasonably
- (v) the Initial Order shall have been granted in form and substance satisfactory to the Agent and the Lenders and shall, *inter alia*,:
 - a. provide that the Agent shall at all times be treated as an "unaffected creditor" in the CCAA Proceedings and in any Plan filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any Applicant thereafter including, without limitation, proceedings under the CCAA or the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any stay of proceedings ordered by the CCAA Court in the CCAA Proceedings shall not apply to the Agent and the Lenders;
 - b. provide that the aggregate of any Borrowings under the Credit Agreement (as amended by this Agreement) made on or after the time of the granting of the Initial Order shall be secured by a CCAA Court ordered security and charge in favour of the Agent (the "**ABL DIP Priority Charge**") which security and charge shall rank in priority to every other claim, Lien and security interest against the Credit Parties' property, assets and undertaking, other than the Administration Charge (as defined in the Initial Order) and the First Lien Term Loan Lender's mortgage on the Mortgaged Properties, which may have priority over the ABL DIP Priority Charge and the Agent's Liens, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Agent;
 - c. provide that except as may be expressly consented to by the Agent, at no time on or after the date of the Initial Order shall all or part of an Applicant's property be the subject of a court ordered security or charge in favour of any party where such security or charge is purported to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent or the Lenders in respect of the Liens under the Security Documents (including liens securing obligations in connection with the BCAP Loan), other than the Administration Charge (to a maximum of \$750,000); the ABL DIP Priority Charge; and a directors and officers charge (to a maximum of \$4,000,000) which shall rank subordinate to the ABL DIP Priority Charge but in priority to the Agent's and the Lenders' Liens under the other Security Documents;

- d. include the Pre-filing Payments Order; and
- e. include the Blocked Accounts Order.
- (vi) the Agent shall have received satisfactory evidence that the First Lien Term Loan Lender has agreed to waive any default or event of default of the Credit Parties existing thereunder arising from the CCAA Proceedings or otherwise, which waiver shall be in addition to the stays of proceedings in the Initial Order;
- (vii) the Agent shall have received all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion;
- (viii) other than the Existing Defaults, no event shall have occurred and be continuing, or will result from the consummation of the transactions contemplated by this Agreement that would constitute a Default or an Event of Default; and
- (ix) as of the date set out above in this Section 7.1, Excess Availability shall be not less than \$1,500,000, which shall be calculated after applying the Availability Block of \$2,500,000.

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing. If the Conditions Precedent are not complied with to the satisfaction of the Agent as provided for above, and the Agent will not waive satisfaction thereof at its sole discretion, then the Agent shall have no obligation to grant the forbearance and other accommodations contemplated herein.

ARTICLE 8 GENERAL

8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

8.2 Costs and Expenses

The Credit Parties hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Agent, on demand by the Agent at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Agent, all counsel to the Agent, any financial advisor retained by the Agent, all other consultants to and agents of the Agent and all other expenses incurred by the Agent in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation: (a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Agent (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Credit Party; in each of the foregoing events whether under the laws of Canada, Ontario, Alberta or other applicable jurisdiction, or

any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Credit Party specifically authorizes the Agent to debit from any of its accounts with the Agent the amount of any such existing and future fees and disbursements, and other expenses and the Agent agrees to use commercially reasonable efforts to notify such Credit Party of such anticipated debit and the amount thereof at least two (2) Business Days in advance.

8.3 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent, the Lenders, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a “**Claim**” and collectively, “**Claims**”) known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (i) this Agreement, the Credit Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement or any of the other Loan Documents, and (ii) any and all proposed refinancings of any Credit Party by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between any of the Lenders and any Credit Party;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 8.3(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3(a).

8.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or any closing will affect the representations and warranties or the right of the Agent to rely upon them.

8.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

8.6 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Agent and the Lenders that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and
- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

8.7 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that province, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.8 Mutual Waiver of Jury Trial

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Agent and any Credit Party, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

8.9 Time of Essence

Time is of the essence in all respects of this Agreement.

8.10 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

8.11 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

8.12 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

8.13 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement, there being no novation or merger of the Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Credit Agreement (as amended by this Agreement) and the other Loan Documents.

8.14 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.15 Assignment and Enurement

No Credit Party will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Agent. The Agent may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Credit Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

8.16 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

8.17 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

8.18 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

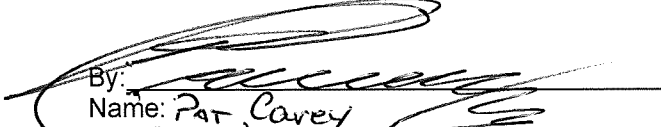
8.19 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

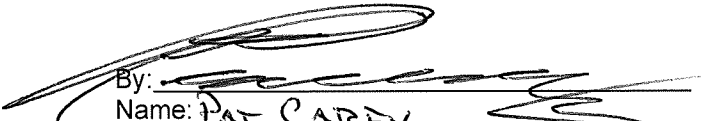
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Each of the Parties has executed and delivered this Agreement effective as of the date first written above.

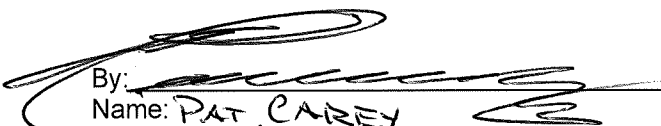
CAREY MANAGEMENT INC.,
as the Borrower

By: 
Name: PAT CAREY
Title: Director

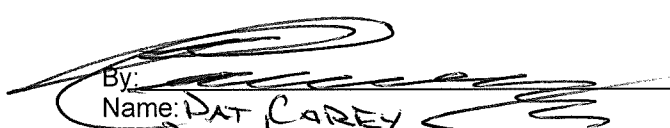
WALLACE & CAREY INC.,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director


LOUDON BROS. LIMITED,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

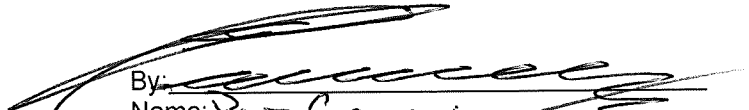
SPRUCE IT UP LAND CORP.,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

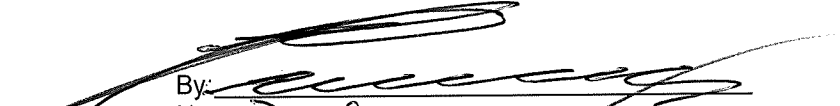
772921 ALBERTA INC.,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

RIDGE MEADOWS PROPERTIES LTD.,
as a Guarantor

By: 
Name: Pat Carey
Title: Director

RETLOGISTICS INC.,
as a Guarantor

By: 
Name: Pat CAREY
Title: Director

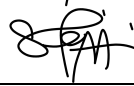
**CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent and as Lender**

Per



Name: Anthony Tsuen
Title: Authorized Signatory

Per



Name: Steven Filippi
Title: Authorized Signatory

SCHEDULE 1
EXISTING INDEBTEDNESS UNDER THE CREDIT AGREEMENT

- CAD Revolving Loan Balance: C\$41,823,454.43
- USD Revolving Loan Balance: US\$404.75
- CAD Standby Letters Of Credit: C\$857,500.00
- CAD BCAP Loan: C\$4,861,111.12

**SCHEDULE 2
EXISTING SECURITY**

1. General Security Agreement dated as of September 26, 2017 among Carey Management Inc., Wallace & Carey Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Elite Foods Inc., Elite International Foods Inc., Rical Sales and Logistics Inc., Regneck Enterprises Ltd., Retlogistics Inc., Ridge Meadows Properties Ltd., 1204248 Alberta Inc. and 772921 Alberta Inc., collectively as Grantors, and Canadian Imperial Bank of Commerce, as Agent.
2. Guarantee Agreement entered into as of September 26, 2017 by and among Wallace & Carey Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Elite Foods Inc., Elite International Foods Inc., Rical Sales and Logistics Inc., Regneck Enterprises Ltd., Retlogistics Inc., Ridge Meadows Properties Ltd., 1204248 Alberta Inc. and 772921 Alberta Inc., as Guarantors, in favour of Canadian Imperial Bank of Commerce, as Agent.
3. Notice of Intention to Give Security Under Section 427 of the Bank Act (Canada) to Canadian Imperial Bank of Commerce, dated September 7, 2017, from Carey Management Inc.
4. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts or Security Under Section 427 of the Bank Act (Canada), dated September 26, 2017, from Carey Management Inc. to Canadian Imperial Bank of Commerce.
5. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated September 26, 2017, from Carey Management Inc. to Canadian Imperial Bank of Commerce.
6. Special Security In Respect of Specified Property or Classes of Property Described in Section 427 of the Bank Act (Canada), dated September 26, 2017, from Carey Management Inc. to Canadian Imperial Bank of Commerce.
7. Securities Pledge Agreement between Carey Management Inc. and Canadian Imperial Bank of Commerce, dated September 26, 2017, with respect to the securities listed thereto in Schedule A.
8. Securities Pledge Agreement between Wallace & Carey Inc. and Canadian Imperial Bank of Commerce, dated September 26, 2017, with respect to the securities listed thereto in Schedule A.
9. Securities Pledge Agreement between Elite Foods Inc. and Canadian Imperial Bank of Commerce, dated September 26, 2017, with respect to the securities listed thereto in Schedule A.
10. Blocked Accounts Agreement dated September 26, 2017, between Carey Management Inc., 1204248 Alberta Inc., Elite Foods Inc., Elite International Foods Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Regneck Enterprises Ltd., RETLogistics Inc., Rical Sales and Logistics Inc., Ridge Meadows Properties Ltd. and Wallace & Carey Inc., collectively as Customers, Canadian Imperial Bank of Commerce, as account bank, and Canadian Imperial Bank of Commerce, as Agent for the lenders.
11. Assumption and Confirmation of Security dated October 29, 2017 between Elite Foods International Inc., as amalco, and Canadian Imperial Bank of Commerce, as Agent.
12. Confirmation of Security agreement executed on June 1, 2020 between Spruce It Up Land Corp., as amalco, and Canadian Imperial Bank of Commerce, as Agent.

**SCHEDULE 3
EXISTING DEFAULTS**

1. under Section 7.1(d) of the Credit Agreement resulting from the failure of the Borrower to maintain during the Minimum EBITDA Period for the Fiscal Months of April 2022 through to and including October 2022 the minimum EBITDA required under Section 5.13 of the Credit Agreement.
2. a failure to deliver an annual budget of the Borrower and other Credit Parties, on a consolidated basis, approved by the Board of Directors of the Borrower, for the Fiscal Year commencing November 1, 2022 in accordance with the terms of and within the time required by Section 5.1(q) of the Credit Agreement.
3. a failure to deliver the Borrower's and its Subsidiaries' audited combined balance sheet and related statements of income, retained earnings and changes in financial position for the end of and for the Fiscal Year ended October 31, 2022 in accordance with the terms of and within the time required by Section 5.1(a) of the Credit Agreement.
4. a failure to deliver the Borrower's and its Subsidiaries' unaudited combined balance sheet and related statements of income, retained earnings and changes in financial position as of the fiscal periods ending July 9, 2022, August 6, 2022, September 3, 2022, October 1, 2022, October 28, 2022, November 26, 2022, December 24, 2022, January 21, 2023, February 18, 2023, March 18, 2023, April 15, 2023 and May 13, 2023 in accordance with the terms of and within the time required by Section 5.1(b) of the Credit Agreement.
5. a failure to maintain a Fixed Charge Coverage Ratio at the level required pursuant to Section 5.12 of the Credit Agreement from and after May 6, 2022.
6. an Event of Default under Section 7.1(r) of the Credit Agreement as a result of the occurrence of an event or condition that enables or permits the holder or holders of the Indebtedness under the First Lien Term Loan Facility, or any trustee or agent on their behalf, to cause such Indebtedness to become due. Specifically, the Credit Parties have failed to maintain the Fixed Charge Coverage Ratio required under the First Lien Term Loan Facility for the year ended October 31, 2022.

**SCHEDULE 4
MORTGAGED PROPERTIES**

1. PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS
Standing in the name of 772921 Alberta Inc.
2. PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS
Standing in the name of 772921 Alberta Inc.
3. PLAN 8031JK
BLOCK A
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS
Standing in the name of Ridge Meadows Properties Ltd.
4. PLAN 5235JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS
Standing in the name of Spruce It Up Land Corp.
5. PIN: 003-862-682
LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698
Standing in the name of 772921 Alberta Ltd.

**SCHEDULE 5
RESTRUCTURING TIMELINE**

Date	Milestone
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver to the Agent a term sheet summarizing the material commercial terms of the proposed Plan for which support will be solicited from the unsecured creditors of Wallace & Carey Inc. and Loudon Bros Limited, which term sheet shall be in form and substance acceptable to the Agent (the " Plan Term Sheet ").
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver a pro forma business model and financial forecast for the restructured business of the Applicants following implementation of the proposed Plan consistent with the Plan Term Sheet, which shall be in form and substance acceptable to the Agent.
Within 60 days following the date of the hearing of the application for the Initial Order	The Applicants shall provide confirmation in form and substance acceptable to the Agent that the required majorities of creditors of the Applicants support and will vote in favour of the Plan on the terms set out in the Plan Term Sheet.
Within 90 days following the date of the hearing of application for the Initial Order	The Applicants shall submit a motion to the CCAA Court filing the Plan and seeking a Plan Filing and Meeting Order and a Claims Procedure Order, in each case acceptable to the Agent.
Within 120 days following the date of the hearing of the application for the Initial Order	The Plan shall have been voted upon and approved by the requisite majorities of creditors as required pursuant to the CCAA.
November 30, 2023	Implementation of the Plan.

**SCHEDULE 6
APPROVED CASH FLOW**

SEE ATTACHED

Wallace & Carey Inc., Loudon Bros Limited and Carey Management Inc.
Projected Weekly Cash Flow Statement (Consolidated)
 June 18, 2023 to September 30, 2023
 (Unaudited; \$CAD Thousands)

Note	Week ending																Total
	24-Jun-23	01-Jul-23	08-Jul-23	15-Jul-23	22-Jul-23	29-Jul-23	05-Aug-23	12-Aug-23	19-Aug-23	26-Aug-23	02-Sep-23	09-Sep-23	16-Sep-23	23-Sep-23	30-Sep-23		
RECEIPTS																	
Collection of accounts receivable		27,329	1,438	-	-	-	-	-	-	-	-	-	-	-	-	28,767	
Collection of sales and taxes	2	-	31,372	31,372	31,372	32,338	32,338	32,338	32,338	29,435	29,435	29,435	29,435	27,415	27,415	27,415	423,453
Other Receipts	3	-	425	425	425	438	438	438	438	399	399	399	399	372	372	372	5,739
Total receipts		27,329	33,236	31,797	31,797	32,776	32,776	32,776	32,776	29,834	29,834	29,834	29,834	27,787	27,787	27,787	457,959
DISBURSEMENTS																	
Inventory vendor payments	4	(10,078)	(23,402)	(23,627)	(22,075)	(22,075)	(23,619)	(23,638)	(23,276)	(23,276)	(23,276)	(18,755)	(18,771)	(19,157)	(19,157)	(20,315)	(314,498)
Sales tax remittances	5	(18,941)	(2,850)	(2,000)	(2,000)	(17,440)	(5,832)	(2,000)	(2,000)	(2,000)	(21,324)	(3,017)	(2,000)	(2,000)	(21,889)	(3,047)	(108,339)
GST collected /(paid)		(48)	33	(62)	(1,294)	73	(24)	(20)	(15)	(125)	(130)	145	141	310	28	(36)	(1,025)
Operating disbursements	6	(605)	(2,130)	(655)	(1,628)	(618)	(1,628)	(1,189)	(1,513)	(577)	(1,513)	(1,217)	(1,433)	(548)	(1,433)	(548)	(17,235)
Total operating disbursements		(29,672)	(28,349)	(26,343)	(26,998)	(40,060)	(31,102)	(26,848)	(26,804)	(25,978)	(46,243)	(22,845)	(22,063)	(21,396)	(42,450)	(23,946)	(441,097)
Other disbursements																	
Interest and principal payments - CIBC revolving facility		-	(351)	-	-	-	-	(289)	-	-	-	(230)	-	-	-	-	(870)
Interest and principal payments - CIBC BCAP loan		-	-	-	-	-	-	(226)	-	-	-	-	-	-	-	-	(226)
Interest and principal payments - CWB demand loan		-	(124)	-	-	-	-	(123)	-	-	-	(123)	-	-	-	-	(370)
Forbearance fee	7	-	-	-	-	(250)	-	-	-	-	(250)	-	-	-	(250)	-	(750)
Restructuring costs	8	-	-	(500)	-	-	(500)	-	(400)	-	-	-	(400)	-	-	-	(1,800)
Total other disbursements		-	(474)	(500)	-	(250)	(500)	(638)	(400)	-	(250)	(354)	(400)	-	(250)	-	(4,017)
Total disbursements		(29,672)	(28,823)	(26,843)	(26,998)	(40,310)	(31,602)	(27,486)	(27,204)	(25,978)	(46,493)	(23,198)	(22,463)	(21,396)	(42,700)	(23,946)	(445,113)
Net cash flow		(2,343)	4,412	4,954	4,800	(7,535)	1,174	5,290	5,572	3,856	(16,659)	6,636	7,371	6,391	(14,913)	3,841	12,846
Opening CIBC Revolving Facility																	
Net cash flow		38,541	40,883	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	38,541
Ending CIBC Revolving Facility		2,343	(4,412)	(4,954)	(4,800)	7,535	(1,174)	(5,290)	(5,572)	(3,856)	16,659	(6,636)	(7,371)	(6,391)	14,913	(3,841)	(12,846)
Pre-Filing CIBC Revolving Facility																	
Opening CIBC Revolving Facility		40,883	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	25,695	25,695
Post-filing receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending CIBC Revolving Facility		(27,329)	(11,212)	-	-	-	-	-	-	-	-	-	-	-	-	-	(38,541)
Post-Filing CIBC Revolving Facility																	
Opening CIBC Revolving Facility		11,212	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Post-filing receipts		-	29,672	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	-
Post-filing disbursements		-	(22,024)	(31,797)	(31,797)	(32,776)	(32,776)	(32,776)	(32,776)	(29,834)	(29,834)	(29,834)	(29,834)	(27,787)	(27,787)	(27,787)	(419,419)
Ending CIBC Revolving Facility		29,672	28,823	26,843	26,998	40,310	31,602	27,486	27,204	25,978	46,493	23,198	22,463	21,396	42,700	23,946	445,113
Ending CIBC Revolving Facility																	
		29,672	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	25,695	25,695

AMENDMENT TO FORBEARANCE AGREEMENT AND CREDIT AGREEMENT

THIS AGREEMENT is dated as of July 18, 2023 (this “**Agreement**”).

AMONG:

CAREY MANAGEMENT INC.
(the “**Borrower**”)

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
(the “**Agent**”)

- and -

THE LENDERS FROM TIME TO TIME PARTY TO THE CREDIT AGREEMENT
(the “**Lenders**” and, together with the Borrower, the Guarantors and the Agent, the
“**Parties**”)

CONTEXT:

- A.** The Agent and the Lenders have provided certain financing arrangements under a Credit Agreement dated as of September 26, 2017 among the Borrower, the guarantors party thereto, the Agent and the lenders party thereto from time to time (as amended by Amendment No. 1 to Credit Agreement dated May 3, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eight Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023 and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the “**Credit Agreement**”).
- B.** As of the date of this Agreement, the Credit Parties are in default under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement).
- C.** Certain of the Credit Parties, being the Borrower, Wallace & Carey Inc. and Loudon Bros Limited (the “**Applicants**”) have obtained an Amended and Restated Initial Order from the Court of King’s Bench (the “**CCAA Court**”) (as amended, supplemented or otherwise modified from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) (such proceedings being the “**CCAA Proceedings**”) and the Credit Parties have requested ongoing support of the Agent and the Lenders during the CCAA Proceedings.
- D.** The Agent and the Lenders agreed to continue to provide the facilities set out in the Credit Agreement subject to the terms and conditions of a Forbearance Agreement entered into on June 22, 2023 (the “**Forbearance Agreement**”), and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023.

- E. The Borrower has requested that the Lenders provide certain Loans for which the conditions set out in Section 4.2 of the Credit Agreement and the Forbearance Agreement are not satisfied (the “**Draw Conditions**”). Among other things, the Borrower has advised that it requires Loans to fund the purchase of Inventory that has not yet been delivered and, as a result, would not be Eligible Inventory and would not be included in the Borrowing Base. The Lenders and the Agent have agreed to amend the Credit Agreement to provide for the inclusion of Undelivered Inventory (as defined below) in the Borrowing Base on the terms set out herein to permit Loans to be made to fund the purchase price of the Undelivered Inventory (as defined below).

THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Credit Agreement or the Forbearance Agreement.

1.2 Entire Agreement

This Agreement, together with the Credit Agreement, the Forbearance Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute 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, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Credit Agreement, the Forbearance Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.3 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.4 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word “dollar” and the “\$” sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

ARTICLE 2 AMENDMENTS, COVENANTS AND WAIVER

2.1 Amendments to Credit Agreement

With effect on the Amendment Effective Date (as defined below), the Credit Agreement is amended as follows:

- (a) Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding the following defined terms in alphabetical order with the existing definitions:

“Eligible Undelivered Inventory” means all Undelivered Inventory of such Credit Party valued in Canadian Dollars on a lower of Standard Cost or market basis in accordance with GAAP, with detailed calculations of lower of cost or market to occur on at least a monthly basis, which meets such standards of eligibility as the Agent shall establish from time to time in its Permitted Discretion; provided that, in any event, no Undelivered Inventory shall be deemed Eligible Undelivered Inventory unless each of the following statements is accurate and complete (and by including such Undelivered Inventory in any computation of the applicable Borrowing Base, the Borrower shall be deemed to represent and warrant to the Agent, each Issuing Bank and the Lenders, to the best of its knowledge, the accuracy and completeness of such statements and the compliance of such Inventory with each such other eligibility standard established by the Agent):

(1) such Undelivered Inventory meets all of the criteria for “Eligible Inventory” except for clause (2) thereof as it is not in the possession of the Credit Party or a bailee that has delivered an Acceptable Bailee Letter;

(2) the Agent has received a no-offset and acknowledgement of title transfer letter, in form and substance satisfactory to the Agent, from the supplier of such Undelivered Inventory;

(3) no more than 10 days has passed since the time that such Undelivered Inventory has been paid in full; and

(4) such Undelivered Inventory is not Undelivered Inventory which the Agent, in the exercise of Permitted Discretion, determines to be not acceptable for any other reason.

“Undelivered Inventory” means all Inventory of the Credit Parties which has been fully paid for by such Credit Party, an invoice for such Inventory has been issued to such Credit Party, title has transferred to such Credit Party and such Inventory is located in Canada, but the Inventory has not been delivered into the possession of such Credit Party as it remains in the possession of a supplier or any other person shipping such Inventory to such Credit Party.

- (b) The definition of “Borrowing Base” in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by (A) renumbering the existing clauses (iii) and (iv) to clauses (iv) and (v), and (B) adding a new clause (iii) as follows:

- “(iii) plus, the lesser of (A) 70% of the lower of cost or fair market value of all Eligible Undelivered Inventory, and (B) 75% of the appraised net orderly liquidation value of all Eligible Undelivered Inventory, provided that, the aggregate amount of Eligible Undelivered Inventory used to calculate the Borrowing Base shall not exceed \$15,000,000 (reduced to \$13,000,000 as of August 18, 2023).”
- (c) The definition of “Priority Payables” in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding the words “Eligible Undelivered Inventory” immediately after the words “Eligible Accounts” where they appear in such definition.
- (d) Section 5.1 (Financial Statements and Other Information) of the Credit Agreement is hereby amended by adding the following provisions to the end of clause (f):
- “(xii) a calculation and report as to the Undelivered Inventory which does not meet the definition of Eligible Undelivered Inventory;
- (xiii) a separate listing of Eligible Undelivered Inventory containing the supplier name, the date of payment in full, and the date of shipment;
- (xiv) copies of the purchase orders and payment receipt confirmations from each applicable supplier in respect of Eligible Undelivered Inventory; and
- (xv) any additional information and reports pertaining to Eligible Undelivered Inventory as the Agent may request in its Permitted Discretion.”
- (e) Section 5.1 (Financial Statements and Other Information) of the Credit Agreement is hereby amended by adding the following provisions to the end of clause (g):
- “(x) a calculation and report as to the Undelivered Inventory which does not meet the definition of Eligible Undelivered Inventory;
- (xi) a separate listing of Eligible Undelivered Inventory containing the supplier name, the date of payment in full, and the date of shipment;
- (xii) copies of the purchase orders and payment receipt confirmations from each applicable supplier in respect of Eligible Undelivered Inventory; and
- (xiii) any additional information and reports pertaining to Eligible Undelivered Inventory as the Agent may request in its Permitted Discretion.”
- (f) Section 7.2 (Remedies) of the Credit Agreement is hereby amended by adding the words “and/or Eligible Undelivered Inventory” immediately after the words “Eligible Inventory” where they appear in clause (a) of such section.

2.2 **SISP and Milestones**

- (a) With effect from the Amendment Effective Date, Section 4.1(d)(iii) of the Forbearance Agreement is hereby deleted and the following is hereby inserted in its place:

The Applicants agree to comply with the timeline set forth in Schedule 5 hereto with respect to (i) a Plan on terms acceptable to the Agent and the Lenders; and (ii) identification and selection of a financial advisor to advise on a process to solicit interest in and opportunities for a sale of, or investment in, or refinancing of the Credit Parties’ business and assets (a “**SISP**”) that may be implemented as an alternative to or in parallel with the negotiation of a Plan. The Applicants acknowledge that the Agent’s and the Lenders’ acceptance of

continued accommodations set out herein in connection with any of the steps set out in Schedule 5 may be conditional upon the concurrent pursuit of a SISP or alternative pursuit of a SISP (including if any milestone in Schedule 5 is not satisfied).

- (b) With effect from the Amendment Effective Date, Schedule 5 to the Forbearance Agreement is hereby deleted and replaced with Exhibit "A" attached hereto.

ARTICLE 3 FEES

3.1 Amendment Fee

- (a) In consideration of the amendments set out in this Agreement, the Borrower agrees to pay to the Agent a fee for the benefit of the Revolving Lenders in the amount of \$25,000, which shall be fully earned and payable upon execution of this Agreement (the "**Amendment Fee**"), which fee shall be in addition to the ABL DIP Fee, which shall remain payable in accordance with the terms of the Forbearance Agreement.
- (b) The Amendment Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement, the Forbearance Agreement and the other Loan Documents (including fees contemplated in the Credit Agreement to the extent that payment has not been received by the Agent as at the date hereof) and may be charged by the Agent to any account of the Borrower maintained by the Lenders. The Amendment Fee will be fully earned by the Agent despite any failure by any Credit Party to comply with any other term of this Agreement.

ARTICLE 4 ACKNOWLEDGEMENTS AND CONFIRMATIONS

- 4.1 Without limiting the confirmations, acknowledgments and agreements contained in the Forbearance Agreement, each Credit Party confirms, acknowledges and agrees that:
 - (a) the Credit Agreement and the other Loan Documents remain in full force and effect as at the date hereof, except as specifically amended by the Forbearance Agreement and this Agreement. The Credit Agreement shall henceforth be read and construed in conjunction with the Forbearance Agreement and this Agreement;
 - (b) the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
 - (c) except for obligations in respect of accrued unpaid tobacco sales taxes not to exceed \$10,653,860.42, which are the subject of the Tobacco Tax Payment Plans, as at the date of this Agreement, the Credit Parties have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, tobacco taxes and other excise taxes, GST, HST, employee payroll remittances, employee wages and other obligations which have or may constitute a Priority Payable;
 - (d) neither the Borrower, nor any other Credit Party has received, or is aware of any pending issuance of, any notice of garnishment from a Governmental Authority;

**ARTICLE 5
CONDITIONS PRECEDENT TO THIS AGREEMENT**

5.1 Conditions Precedent

- (a) The amendments contemplated hereunder shall be effective upon the date (the "**Amendment Effective Date**") of satisfaction of the following conditions precedent (the "**Conditions Precedent**"), which must occur on or before 5:00 p.m. (Calgary Time) on July 19, 2023:
- (i) the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
 - (ii) the payment of all fees, disbursements and taxes owing to the Agent's and the Lenders' legal counsel and to PricewaterhouseCoopers Inc. (as advisor to the Agent and the Lenders) at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount payable shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof;
 - (iii) the Agent shall have received all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion;
 - (iv) other than the Existing Defaults and any Events of Default solely as a consequence of the commencement of the CCAA Proceedings, no event shall have occurred and be continuing, or will result from the consummation of the transactions contemplated by this Agreement that would constitute a Default or an Event of Default;
 - (v) the Amendment Fee shall have been paid by the Borrower it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, the Amendment fee shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof, and
 - (vi) as of the date set out above in this Section 5.1, Excess Availability shall be not less than \$1,500,000, which shall be calculated after applying the Availability Block of \$2,500,000.

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing.

**ARTICLE 6
GENERAL**

6.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Credit Agreement, the Forbearance Agreement or the other Loan Documents are intended or implied, and in all other respects the Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Credit Agreement, the Forbearance Agreement, and the other Loan Documents, the terms of this Agreement will govern.

6.2 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent, the Lenders, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a “**Claim**” and collectively, “**Claims**”) known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (i) this Agreement, the Credit Agreement, the Forbearance Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement, the Forbearance Agreement or any of the other Loan Documents, and (ii) any and all proposed refinancings of any Credit Party by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between any of the Lenders and any Credit Party;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 6.2(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 6.2(a).

6.3 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or any closing will affect the representations and warranties or the right of the Agent to rely upon them.

6.4 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

6.5 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Agent and the Lenders that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and

- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

6.6 Time of Essence

Time is of the essence in all respects of this Agreement.

6.7 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

6.8 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

6.9 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

6.10 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement, there being no novation or merger of the Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Credit Agreement (as amended by the Forbearance Agreement and this Agreement) and the other Loan Documents.

6.11 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or

(b) the legality, validity or enforceability of that provision in any other jurisdiction.

6.12 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

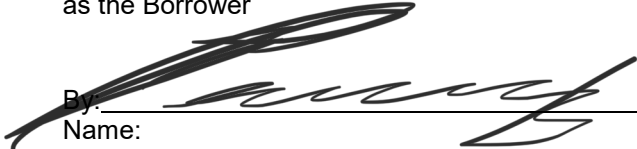
6.13 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

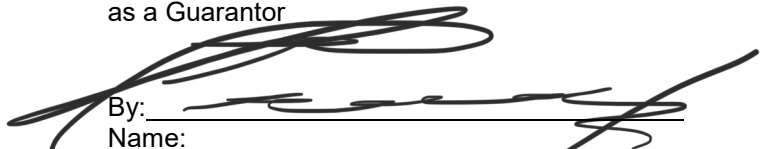
THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Each of the Parties has executed and delivered this Agreement effective as of the date first written above.

CAREY MANAGEMENT INC.,
as the Borrower

By: 
Name: _____
Title: _____


WALLACE & CAREY INC.,
as a Guarantor

By: 
Name: _____
Title: _____

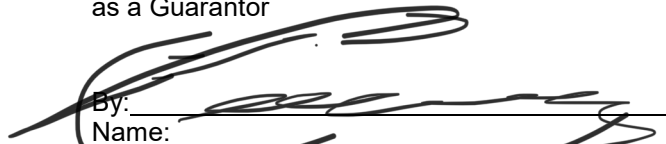
LOUDON BROS. LIMITED,
as a Guarantor

By: 
Name: _____
Title: _____


SPRUCE IT UP LAND CORP.,
as a Guarantor

By: 
Name: _____
Title: _____

772921 ALBERTA INC.,
as a Guarantor

By: 
Name: _____
Title: _____

RIDGE MEADOWS PROPERTIES LTD.,
as a Guarantor

By: 
Name: _____
Title: _____

RETLOGISTICS INC.,
as a Guarantor

By: 
Name: _____
Title: _____


**CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent and as Lender**

Per



Name: Anthony Tsuen
Title: Authorized Signatory

Per



Name: Steven Filippi
Title: Authorized Signatory

EXHIBIT A

**SCHEDULE 5
RESTRUCTURING TIMELINE**

Date	Milestone
Within 40 days following the date of the hearing of the application for the Initial Order	The Credit Parties shall have identified and selected a financial advisor acceptable to the Agent and the Lenders, to advise on a process to solicit interest in and opportunities for a sale of, or investment in, or refinancing of the Credit Parties' business and assets to be implemented as an alternative to or in parallel with the negotiation of a Plan.
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver to the Agent a term sheet summarizing the material commercial terms of the proposed Plan for which support will be solicited from the unsecured creditors of Wallace & Carey Inc. and Loudon Bros Limited, which term sheet shall be in form and substance acceptable to the Agent (the " Plan Term Sheet ").
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver a pro forma business model and financial forecast for the restructured business of the Applicants following implementation of the proposed Plan consistent with the Plan Term Sheet, which shall be in form and substance acceptable to the Agent (the " Business Model ").
Within 60 days following the date of the hearing of the application for the Initial Order	If the Plan Term Sheet and the Business Model milestones above are satisfied, then the Applicants shall provide confirmation in form and substance acceptable to the Agent that the required majorities of creditors of the Applicants support and will vote in favour of the Plan on the terms set out in the Plan Term Sheet.
Within 90 days following the date of the hearing of the application for the Initial Order	If the above milestones are satisfied, the Applicants, with the consent of the Agent, shall submit a motion to the CCAA Court for the filing of a Plan acceptable to the Agent and seeking a Plan Filing and Meeting Order and a Claims Procedure Order acceptable to the Agent.
Within 120 days following the date of the hearing of the application for the Initial Order	If a Plan has been filed as set out above, such Plan shall have been voted upon and approved by the requisite majorities of creditors required pursuant to the CCAA.

November 30, 2023	The Plan shall have been implemented.
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SECOND AMENDMENT TO FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of August 10, 2023 (this “**Agreement**”).

AMONG:

CAREY MANAGEMENT INC.
(the “**Borrower**”)

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
(the “**Agent**”)

- and -

THE LENDERS FROM TIME TO TIME PARTY TO THE CREDIT AGREEMENT
(the “**Lenders**” and, together with the Borrower, the Guarantors and the Agent, the
“**Parties**”)

CONTEXT:

- A.** The Agent and the Lenders have provided certain financing arrangements under a Credit Agreement dated as of September 26, 2017 among the Borrower, the guarantors party thereto, the Agent and the lenders party thereto from time to time (as amended by Amendment No. 1 to Credit Agreement dated May 3, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eight Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023, Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023, and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the “**Credit Agreement**”).
- B.** As of the date of this Agreement, the Credit Parties are in default under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement).
- C.** Certain of the Credit Parties, being the Borrower, Wallace & Carey Inc. and Loudon Bros Limited have obtained an Amended and Restated Initial Order from the Court of King’s Bench of Alberta (the “**CCAA Court**”) (as amended, supplemented or otherwise modified from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) (such proceedings being the “**CCAA Proceedings**”) and the Credit Parties have requested ongoing support of the Agent and the Lenders during the CCAA Proceedings.
- D.** The Agent and the Lenders agreed to continue to provide the facilities set out in the Credit Agreement subject to the terms and conditions of a Forbearance Agreement entered into on June 22, 2023, and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023, as amended by an Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023 (the “**Forbearance Agreement**”).

- E. Pursuant to Section 4.1(h) of the Forbearance Agreement, the Credit Parties were required to grant and cause the Agent to receive on or before the date that is 30 days following the date of the Forbearance Agreement, among other things, a perfected second priority Lien (subject only to the Liens registered in favour of the First Lien Term Loan Lender) on the Mortgaged Properties, including the filing and recording of mortgages. The obligations in Section 4.1(h) of the Forbearance Agreement were not completed on or before the date that was 30 days following the date of the Forbearance Agreement, but such obligations have now been completed.
- F. Pursuant to Section 5.1 of the Forbearance Agreement, certain Terminating Events have occurred including those as described in the notice sent by the Agent to the Credit Parties dated August 2, 2023 and listed on Exhibit "A" hereto (the "**Existing Terminating Events**").

THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Credit Agreement or the Forbearance Agreement.

1.2 Entire Agreement

This Agreement, together with the Credit Agreement, the Forbearance Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute 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, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Credit Agreement, the Forbearance Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.3 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.4 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.

- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word “dollar” and the “\$” sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

ARTICLE 2 FORBEARANCE AND AMENDMENTS

2.1 Amendments to Credit Agreement

With effect on the Amendment Effective Date (as defined below), the Credit Agreement is amended as follows:

- (a) The definition of “Borrowing Base” in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by:
 - (i) deleting clause (iii) in its entirety and replacing it with the following:

“(iii) plus, the lesser of (A) 70% of the lower of cost or fair market value of all Eligible Undelivered Inventory, and (B) 90% of the appraised net orderly liquidation value of all Eligible Undelivered Inventory, provided that, the aggregate amount of Eligible Undelivered Inventory used to calculate the Borrowing Base shall not exceed \$15,000,000 (reduced to \$13,000,000 as of August 18, 2023).”
 - (ii) (A) renumbering the existing clauses (iv) and (v) to clauses (v) and (vi), and (B) adding a new clause (iv) as follows:

“(iv) plus, upon satisfaction of the 7-Eleven Cash Conditions, 100% of the amount of Eligible Cash; provided that, the aggregate amount of Eligible Cash included in the Borrowing Base shall not exceed \$9,000,000.”
- (b) Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding the following defined terms in alphabetical order with the existing definitions:

“**7-Eleven**” means 7-Eleven Canada, Inc.

“**7-Eleven Cash Collateral Agreement**” means the Cash Collateral Agreement among 7-Eleven and the Agent providing for the deposit of cash collateral with the Agent as security for the 7-Eleven Guarantee, in form and substance satisfactory to the Agent.

"7-Eleven Cash Conditions" means the date the Agent has confirmed, in its sole discretion, satisfaction of the following conditions: (i) the Agent has received duly authorized, executed and delivered copies of the 7-Eleven Cash Collateral Agreement and the 7-Eleven Guarantee, (ii) the deposit of the Eligible Cash in the Eligible Cash Account, and (iii) the Agent has received a duly authorized, executed and delivered Cash Collateral Letter of Agreement between 7-Eleven, the Agent and Wallace & Carey Inc., in form and substance acceptable to the Agent.

"7-Eleven Guarantee" means the Limited Recourse Guarantee provided by 7-Eleven to the Agent whereby 7-Eleven guarantees payment to the Agent of the Obligations, in form and substance satisfactory to the Agent.

"Eligible Cash" means unrestricted cash of 7-Eleven deposited with or held by Canadian Imperial Bank of Commerce in an Eligible Cash Account pursuant to the 7-Eleven Cash Collateral Agreement, as security for the 7-Eleven Guarantee.

"Eligible Cash Account" means the Canadian Dollar Deposit Account designated by the Agent to hold the Eligible Cash.

- (c) The definition of "Eligible Inventory" in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding a new clause (16), and renumbering the existing clause (16) to clause (17), as follows:

"(16) Such Inventory is not Exclusive Inventory, as defined in the Acknowledgement of Prepayment in Full for Exclusive Products dated August 10, 2023 between the Agent, Wallace & Carey Inc. and 7-Eleven Canada Inc."

- (d) The definition of "Priority Payables" in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding the words "Eligible Cash" immediately after the words "Eligible Undelivered Inventory" where they appear in such definition.
- (e) Section 7.2 (Remedies) of the Credit Agreement is hereby amended by adding the words "Eligible Cash" immediately after the words "Eligible Inventory" where they appear in clause (a) of such section.

2.2 Milestones

- (a) Notwithstanding Recital D to the Forbearance Agreement, the primary purpose of the CCAA Proceedings is to give effect to a process for Wallace & Carey Inc. and Loudon Bros. Limited to pursue transactions as set out in Schedule 5 to the Forbearance Agreement, as amended.
- (b) With effect from the Amendment Effective Date, Section 4.1(d)(iii) is hereby deleted and the following is hereby inserted in its place:

The Applicants agree to comply with the timeline set forth in Schedule 5 hereto with respect to a sale and investment solicitation process and cash flow reporting, with such amendments as may be agreed to by the Agent and the Lenders;

- (c) With effect from the Amendment Effective Date, Schedule 5 to the Forbearance Agreement is hereby deleted in its entirety and replaced with the Exhibit "B" attached hereto.

2.3 Existing Defaults

- (a) Schedule 3 to the Forbearance Agreement shall be amended to include the Existing Terminating Events as additional Existing Defaults and such Existing Terminating Events shall be deemed to be Existing Defaults under the Forbearance Agreement.

2.4 Real Property Mortgages

- (a) With effect from the Amendment Effective Date, Section 4.1(h) of the Forbearance Agreement is hereby deleted and the following is hereby inserted in its place:

Real Property Mortgages: the Credit Parties shall grant and shall cause the Agent to receive on or before August 4, 2023 (or any such later date as may be confirmed by the Agent in writing): (i) a perfected second priority Lien (subject only to the First Lien Term Loan Lender) on the Mortgaged Properties, including the filing and recording of mortgages, (ii) lender title insurance policies or commitments to title insure, in the customary form and with customary endorsements and qualifications for similar policies, insuring each Mortgaged Property, and (iii) the consent of the First Lien Term Loan Lender to the Agent's Liens over the Mortgaged Properties, in form and substance satisfactory to the Agent.

2.5 Reporting

- (a) With effect from the Amendment Effective Date, Section 4.1(c) of the Forbearance Agreement is hereby amended to include the following as new subsection 4.1(c)(iv), new subsection 4.1(c)(v), new subsection 4.1(c)(vi), new subsection 4.1(c)(vii), and new 4.1(c)(viii) prior to the existing subsection 4.1(c)(iv), and the existing subsection 4.1(c)(iv) shall become subsection 4.1(c)(ix):

(iv) written notice forthwith upon any entry into, termination of, default under, or amendment to any Material Contract;

(v) together with the reporting required pursuant to Section 4.1(g)(ii):

(x) written confirmation of the Delivery Service Fill Rates described in Section B. v. and Section B. vi. of the Amendment to Service Agreement between 7-Eleven Canada, Inc. and Wallace & Carey Inc. dated July 31, 2023 (the "**7-Eleven Amendment**") for the then most recent Weekly Measurement Period (as defined in the 7-Eleven Amendment);

(y) a listing of all inventory, with accompanying cost values, that is held on consignment by the Credit Parties;

(z) a listing of inventory held in possession of the Credit Parties which is subject to a prepayment arrangement between the applicable Credit Party and the purchaser of such inventory and for which payment has already been received by the applicable Credit Party from the purchaser;

(vi) with each Borrowing Request, the then current Daily File Rate / Sales Report for the top five customers of the Credit Parties in customary form;

(vii) written notice forthwith upon the occurrence of any Termination Event (as defined in the 7-Eleven Amendment);

(viii) either directly or through the Agent's advisors as the Agent may elect, access to the Credit Parties' premises during business hours to conduct field examinations, inventory test counts and other collateral examinations as the Agent deems appropriate;

2.6 CCAA Proceedings

- (a) With effect from the Amendment Effective Date, Section 4.1(d) of the Forbearance Agreement is hereby amended to include the following new subsection 4.1(d)(ix):

(ix) In addition to any other approvals or review requirements in the Credit Agreement and the Forbearance Agreement, the Monitor's review and confirmation shall be required for any:

- (a) Borrowing Requests;
- (b) Inventory purchase orders in excess of \$1,000,000; and
- (c) Amendments to Material Contracts.

2.7 **Approved Cash Flow**

- (a) With effect from the Amendment Effective Date, Section 4.1(g)(ii) of the Forbearance Agreement is hereby deleted and the following is hereby inserted in its place:

(y) On the third Business Day of each week at no later than 12:00 p.m. (Calgary Time), the Credit Parties shall provide the Agent with an updated Borrowing Base calculation and (z) on the fourth Business day of each week at no later than 12:00 p.m. (Calgary Time), the Credit Parties shall provide the Agent with a variance report that shows the actual cash receipts and actual cash disbursements against the Approved Cash Flow on both a trailing weekly period basis and cumulative basis over the entirety of the Approved Cash Flow period to date, as well as an explanation of variances for individual line items in excess of the greater of 5% or \$100,000 from the Approved Cash Flow. For greater certainty, the Credit Parties shall provide the Agent with only one Borrowing Base calculation per week at the time specified above unless otherwise requested by the Agent;

2.8 **Fees and Interest**

- (a) With effect from the Amendment Effective Date, Section 3.3(a) of the Forbearance Agreement is hereby deleted and the following is hereby inserted in its place:

In consideration of the agreements set out in this Agreement, the Borrower agrees to pay to the Agent, a fee for the benefit of the Revolving Lenders in the amount of \$1,000,000 which shall be fully earned upon execution of this Agreement and payable in three instalments of \$250,000 on July 21, 2023, \$375,000 on August 21, 2023, and \$375,000 on September 21, 2023 (the "ABL DIP Fee"); provided, however, that the ABL DIP Fee, excluding a \$100,000 portion of that fee which is non-refundable, shall be refunded to the Borrower upon: (i) implementation of a Plan in form and substance acceptable to the Agent and in connection therewith a refinancing of all of the Obligations on or prior to November 30, 2023; or (ii) the indefeasible repayment in full of the Obligations, including the BCAP Loan, on or prior to November 30, 2023.

2.9 **Anti Cash Hoarding**

- (a) With effect from the Amendment Effective Date, a new Section 3.5 shall be inserted in the Forbearance Agreement immediately following Section 3.4 as follows:

3.5 **Anti-Cash Hoarding:** The Borrower shall not, and shall not permit any other Credit Party to, use the proceeds of any Borrowing to accumulate or maintain cash or cash equivalents in one or more accounts (including, for certainty, any depository, investment or securities account) maintained by the Borrower, any Credit Party or any of their Subsidiaries in an amount, in the aggregate, greater than \$3,000,000. For certainty, the Agent and the Lenders may refuse to make any requested Loan which the Lenders determine would result in a contravention of this Section 3.5.

2.10 **Minimum Excess Availability**

- (a) With effect from the Amendment Effective Date, Section 4.1(k) of the Forbearance Agreement is hereby deleted in its entirety.

**ARTICLE 3
ACKNOWLEDGEMENTS, CONFIRMATIONS AND COVENANTS**

3.1 Without limiting the confirmations, acknowledgments and agreements contained in the Forbearance Agreement, each Credit Party confirms, acknowledges and agrees that:

- (a) the Credit Agreement and the other Loan Documents remain in full force and effect as at the date hereof, except as specifically amended by the Forbearance Agreement and this Agreement. The Credit Agreement shall henceforth be read and construed in conjunction with the Forbearance Agreement and this Agreement;
- (b) the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
- (c) except for obligations in respect of accrued unpaid tobacco sales taxes not to exceed \$9,844,957, as at the date of this Agreement, the Credit Parties have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, tobacco taxes and other excise taxes, GST, HST, employee payroll remittances, employee wages and other obligations which have or may constitute a Priority Payable; and
- (d) neither the Borrower, nor any other Credit Party has received, or is aware of any pending issuance of, any notice of garnishment from a Governmental Authority.

3.2 The Parties agree that during the period from the date of this Agreement up to and including the week ending August 27, 2023, the Terminating Event in Section 5.4(f) of the Forbearance Agreement shall not be effective.

**ARTICLE 4
CONDITIONS PRECEDENT TO THIS AGREEMENT**

4.1 **Conditions Precedent**

- (a) The amendments contemplated hereunder shall be effective upon the date (the "**Amendment Effective Date**") of satisfaction of the following conditions precedent (the "**Conditions Precedent**"), which must occur on or before 5:00 p.m. (Calgary Time) on August 11, 2023:
- (i) the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
- (ii) the payment of all fees, disbursements and taxes owing to the Agent's and the Lenders' legal counsel and to PricewaterhouseCoopers Inc. (as advisor to the Agent and the Lenders) at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount payable shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof;
- (iii) the Agent shall have received all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further

assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion; and

- (iv) other than the Existing Defaults and any Events of Default solely as a consequence of the commencement of the CCAA Proceedings, no event shall have occurred and be continuing, or will result from the consummation of the transactions contemplated by this Agreement that would constitute a Default or an Event of Default.

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing.

ARTICLE 5 GENERAL

5.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Credit Agreement, the Forbearance Agreement or the other Loan Documents are intended or implied, and in all other respects the Credit Agreement, the Forbearance Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Credit Agreement, the Forbearance Agreement, and the other Loan Documents, the terms of this Agreement will govern.

5.2 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent, the Lenders, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the "**Releasees**" and individually as a "**Releasee**"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a "**Claim**" and collectively, "**Claims**") known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (i) this Agreement, the Credit Agreement, the Forbearance Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement, the Forbearance Agreement or any of the other Loan Documents, and (ii) any and all proposed refinancings of any Credit Party by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between any of the Lenders and any Credit Party;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 5.2(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 5.2(a).

5.3 **Survival of Representations and Warranties**

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or any closing will affect the representations and warranties or the right of the Agent to rely upon them.

5.4 **Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

5.5 **Reviewed by Legal Counsel**

Each Credit Party represents and warrants to the Agent and the Lenders that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with such lawyers and other persons as such Credit Party may wish; and
- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

5.6 **Time of Essence**

Time is of the essence in all respects of this Agreement.

5.7 **Notices**

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

5.8 **Further Assurances**

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

5.9 **Confirmation of Documents and Terms**

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all

Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

5.10 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement, there being no novation or merger of the Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Credit Agreement (as amended by the Forbearance Agreement and this Agreement) and the other Loan Documents.

5.11 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

5.12 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.


5.13 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

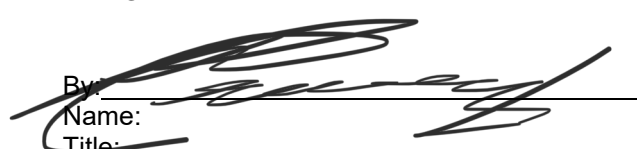
THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Each of the Parties has executed and delivered this Agreement effective as of the date first written above.


CAREY MANAGEMENT INC.,
as the Borrower

By: 
Name: _____
Title: _____

WALLACE & CAREY INC.,
as a Guarantor

By: 
Name: _____
Title: _____

LOUDON BROS. LIMITED,
as a Guarantor

By: 
Name: _____
Title: _____

SPRUCE IT UP LAND CORP.,
as a Guarantor

By: 
Name: _____
Title: _____


772921 ALBERTA INC.,
as a Guarantor

By: 
Name: _____
Title: _____

RIDGE MEADOWS PROPERTIES LTD.,
as a Guarantor

By: 
Name: _____
Title: _____

RETLOGISTICS INC.,
as a Guarantor

By: 
Name: _____
Title: _____

CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent and as Lender

Per 
Name: Geoff Golding
Title: Authorized Signatory


Per 
Name: Anthony Tsuen
Title: Authorized Signatory

Exhibit "A"

Existing Terminating Events

1. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the week ended July 23, 2023 the actual cumulative Receipts (as so described in the Approved Cash Flow) were more than 5% below the forecasted cumulative Receipts amount (as shown in the Approved Cash Flow).
2. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the week ended July 23, 2023 the actual weekly Receipts were more than 15% below forecasted weekly Receipts amounts (as shown in the Approved Cash Flow).
3. Pursuant to Section 5.1(a) due to the Additional Default arising from the failure to deliver the Borrower's and its Subsidiaries' unaudited combined balance sheet and related statements of income, retained earnings and changes in financial position as of the fiscal period ending June 10, 2023 in accordance with the terms of and within the time required by Section 5.1(b) of the Credit Agreement.
4. Pursuant to Section 5.1(l) as a result of the failure of the Applicants to deliver a Plan Term Sheet in form and substance acceptable to the Agent, as required pursuant to Section 4.1(d)(iii).

Exhibit "B"

Schedule 5

Milestones

Milestone	Deadline Date*
1. Entry into an engagement letter with a financial advisor to the Credit Parties to advise in connection with a sale and investment solicitation process, in form and substance acceptable to the Agent.	August 14, 2023
2. Agreement between the Credit Parties, the Monitor and the Agent regarding the timeline for milestones in a sale and investment solicitation process.	August 16, 2023
3. An Order is granted by the Court in the CCAA Proceedings approving a sale and investment solicitation process in form and substance acceptable to the Agent.	August 25, 2023
4. An Updated Cash Flow (as defined in the Forbearance Agreement) covering a 13 week period commencing from the date of the Second Amendment to this Agreement, shall be delivered to the Agent. For the avoidance of doubt the Updated Cash Flow shall only be deemed as the Approved Cash Flow (as defined in the Forbearance Agreement) upon the approval by the Agent.	August 25, 2023

***The foregoing deadline dates may be extended by written agreement (including by email) of the Parties, with the consent of the Monitor.**

August 2, 2023

BY FACSIMILE & EMAIL

**Carey Management Inc.
5445 – 8th Street NE
Calgary, AB T2K 5R9**

**Attention: Patrick Carey, Brian Birnie, Eric Rolheiser
Facsimile: (403)295-0007**

Dear Sirs:

Re: Credit Agreement among Carey Management Inc. (the Borrower), the guarantors party thereto from time to time (the Guarantors), Canadian Imperial Bank of Commerce, as agent (the Agent) and the lenders from time to time party thereto (the Lenders)

Reference is made to the credit agreement dated as of September 27, 2017 among the Borrower, the Guarantors, the Agent and the Lenders (as amended by Amendment No. 1 to Credit Agreement dated May 2, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eighth Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023, Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023, and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the **Credit Agreement**).

Reference is also made to the Forbearance Agreement entered into on June 22, 2023, and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023, as amended by an Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023 (the "**Forbearance Agreement**")

Capitalized terms used in this letter and not otherwise defined herein shall have the meaning specified in the Credit Agreement and the Forbearance Agreement.

Please be advised that certain Terminating Events have occurred and continue to exist under the Forbearance Agreement (including those listed on Schedule "A" hereto) (collectively, the "**Existing Terminating Events**").

Pursuant to the Forbearance Agreement, upon the occurrence of a Terminating Event, the Forbearance Period automatically terminated without the requirement for any notice to any Credit Party or any other action whatsoever by the Agent and the Agent and the Lenders shall be entitled to exercise any and all rights and remedies under the Credit Agreement and the other Loan Documents without further notice to the Credit Parties.

This letter shall serve to advise you that (i) the Lenders and the Agent have not waived, and are not in a position to waive, the Existing Terminating Events (or the Existing Defaults); (ii) as the conditions of Section 4.2 of the Credit Agreement and the conditions of the Forbearance Agreement with respect to Borrowings cannot be satisfied due to the Existing Defaults and the Terminating Events, the Lenders are not obligated to make any Loan or to permit the issuance of any Letter of Credit or to permit the Borrower to obtain any F/X Contract, and any decision by the Lenders or the Agent to provide, or continue to provide, a Borrowing to the Borrower is entirely at the discretion of the Lenders and the Agent which decision may be revoked at any time and nothing herein shall be construed to obligate the Lenders or the Agent to make any Borrowings available, and (iii) any provisions of Borrowing (if any) to the Borrower or any delay or any

failure to exercise any rights, remedies, powers and privileges by the Lenders or the Agent under the Credit Agreement, the Forbearance Agreement or the other Loan Documents with respect to the Existing Terminating Events, Existing Defaults or any other Default or Event of Default (whether now existing or hereafter occurring) shall not be, and shall not be construed as, a waiver thereof. Further, all of the provisions of the Credit Agreement and the other Loan Documents remain in full force and effect.

This letter is written under reserve of, and without prejudice to, all of the rights, remedies and recourses of Lenders and the Agent under the Loan Documents and the Lenders and the Agent reserve their rights to fully invoke any and all of their rights, remedies, powers or privileges under the Credit Agreement, the Forbearance Agreement and the Loan Documents or Applicable Law (including, without limitation the right to take such steps and do such things, at any time, as they may consider necessary to protect or preserve their positions, all without further notice to the Borrower or any other Credit Party or Person) in respect of the Existing Terminating Event, Existing Default or any other Default or Event of Default that may now or hereafter exist.

The Agent and the Lender request that the parties and their advisors immediately commence discussions to review next steps in view of this matter.

Yours very truly,

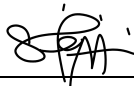
CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender

Per:



Name: Anthony Tsuen
Title: Authorized Signatory

Per:



Name: Steven Filippi
Title: Authorized Signatory

Copy to:

Miller Thomson LLP

3000, 700 – 9th Avenue S.W.

Calgary, AB T2P 3V4

Attention: Michael Morcom, Brian Wells,
James Reid and Larry Ellis

Facsimile: (403) 262-0007

Schedule "A"

Without limiting any other Terminating Events, Defaults or Events of Default that may exist, the following Terminating Events have occurred:

1. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the week ended July 23, 2023 the actual cumulative Receipts (as so described in the Approved Cash Flow) were more than 5% below the forecasted cumulative Receipts amount (as shown in the Approved Cash Flow).
2. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the week ended July 23, 2023 the actual weekly Receipts were more than 15% below forecasted weekly Receipts amounts (as shown in the Approved Cash Flow).
3. Pursuant to Section 5.1(a) due to the Additional Default arising from the failure to deliver the Borrower's and its Subsidiaries' unaudited combined balance sheet and related statements of income, retained earnings and changes in financial position as of the fiscal period ending July 10, 2023 in accordance with the terms of and within the time required by Section 5.1(b) of the Credit Agreement.
4. Pursuant to Section 5.1(l) as a result of the failure of the Applicants to deliver a Plan Term Sheet in form and substance acceptable to the Agent, as required pursuant to Section 4.1(d)(iii).
5. Pursuant to Section 5.1(l) as a result of the failure of the Applicants to have identified and selected a financial advisor in form and substance acceptable to the Agent, as required pursuant to Section 4.1(d)(iii).

September 18, 2023

BY FACSIMILE & EMAIL

**Carey Management Inc.
5445 – 8th Street NE
Calgary, AB T2K 5R9**

**Attention: Patrick Carey, Brian Birnie, Eric Rolheiser
Facsimile: (403) 295-0007**

Dear Sirs:

Re: Credit Agreement among Carey Management Inc. (the Borrower), the guarantors party thereto from time to time (the Guarantors), Canadian Imperial Bank of Commerce, as agent (the Agent) and the lenders from time to time party thereto (the Lenders)

Reference is made to the credit agreement dated as of September 26, 2017 among the Borrower, the Guarantors, the Agent and the Lenders (as amended by Amendment No. 1 to Credit Agreement dated May 2, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eighth Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023, Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023, and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the **Credit Agreement**).

Reference is also made to the Forbearance Agreement entered into on June 22, 2023, and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023, as amended by an Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023 and a Second Amendment to Forbearance Agreement dated August 10, 2023 (the **"Forbearance Agreement"**).

Capitalized terms used in this letter and not otherwise defined herein shall have the meaning specified in the Credit Agreement and the Forbearance Agreement.

Please be advised that certain Terminating Events have occurred and continue to exist under the Forbearance Agreement (including those listed on Schedule "A" hereto) (collectively, the **"Existing Terminating Events"**).

Pursuant to the Forbearance Agreement, upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without the requirement for any notice to any Credit Party or any other action whatsoever by the Agent and the Agent and the Lenders shall be entitled to exercise any and all rights and remedies under the Credit Agreement and the other Loan Documents without further notice to the Credit Parties.

This letter shall serve to advise you that:

1. The Lenders and the Agent have not waived the Existing Terminating Events (or the Existing Defaults);
2. As the conditions of Section 4.2 of the Credit Agreement and the conditions of the Forbearance Agreement with respect to Borrowings cannot be satisfied due to the Existing Defaults and the Terminating Events, the Lenders are not obligated to make any Loan or to permit the issuance of

any Letter of Credit or to permit the Borrower to obtain any F/X Contract or Swap Agreement, and any decision by the Lenders or the Agent to provide, or continue to provide, a Borrowing to the Borrower is entirely at the discretion of the Lenders and the Agent which decision may be revoked at any time and nothing herein shall be construed to obligate the Lenders or the Agent to make any Borrowings available.

3. Without limiting the foregoing and without limiting any other Availability Reserves that have been or may be established, the Agent has determined in its Permitted Discretion to establish an additional Availability Reserve in the amount of \$2,500,000, and
4. Any provisions of Borrowing (if any) to the Borrower or any delay or any failure to exercise any rights, remedies, powers and privileges by the Lenders or the Agent under the Credit Agreement, the Forbearance Agreement or the other Loan Documents with respect to the Existing Terminating Events, Existing Defaults or any other Default or Event of Default (whether now existing or hereafter occurring) shall not be, and shall not be construed as, a waiver thereof. Further, all of the provisions of the Credit Agreement and the other Loan Documents remain in full force and effect.

The Agent hereby confirms that notwithstanding the Existing Terminating Events, Revolving Loans shall continue to be made under the terms of the Credit Agreement and the Forbearance Agreement until further written notice (the "Notice") is delivered by the Agent to the Borrower (with a copy to the Monitor) and at least two business days following the delivery of the Notice have passed. For certainty, the Notice may be delivered by the Agent in its sole discretion. Revolving Loans made available until delivery of such Notice shall be made solely for the purposes set out in Borrowing Requests approved by the Agent and in accordance with a cash flow forecast acceptable to the Agent. During the two business day period following delivery of the Notice any Revolving Loans shall not exceed amounts required for critical ordinary course post-filing operating expenditures that are due and payable and approved by the Monitor.

This letter is written under reserve of, and without prejudice to, all of the rights, remedies and recourses of Lenders and the Agent under the Loan Documents and the Lenders and the Agent reserve their rights to fully invoke any and all of their rights, remedies, powers or privileges under the Credit Agreement, the Forbearance Agreement and the Loan Documents or Applicable Law (including, without limitation the right to take such steps and do such things, at any time, as they may consider necessary to protect or preserve their positions, all without further notice to the Borrower or any other Credit Party or Person) in respect of the Existing Terminating Event, Existing Default or any other Default or Event of Default that may now or hereafter exist.

[Signature Page Follows]

Yours very truly,

CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender

Per: 
Name: Geoff Golding
Title: Authorized Signatory

Per: 
Name: Steven Filippi
Title: Authorized Signatory

Copy to:

Miller Thomson LLP

3000, 700 – 9th Avenue S.W.

Calgary, AB T2P 3V4

Attention: Michael Morcom, Brian Wells,
James Reid and Larry Ellis

Facsimile: (403) 262-0007

Copy to:

**KSV Restructuring Inc., as Monitor of
Carey Management Inc. et al.**

220 Bay Street, 13th Floor, PO Box 20

Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman

Schedule "A"

Without limiting any other Terminating Events, Defaults or Events of Default that may exist, the following Terminating Events have occurred:

1. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the weeks ended August 26, 2023, September 2, 2023 and September 9, 2023, the actual cumulative Receipts (as so described in the Approved Cash Flow) were more than 5% below the forecasted cumulative Receipts amount (as shown in the Approved Cash Flow).
2. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the weeks ended August 26, 2023, September 2, 2023 and September 9, 2023, the actual weekly Receipts were more than 15% below forecasted weekly Receipts amounts (as shown in the Approved Cash Flow).
3. Pursuant to Section 5.4(a) of the Forbearance Agreement, due to the Additional Default arising from the failure to deliver the Borrower's and its Subsidiaries' unaudited combined balance sheet and related statements of income, retained earnings and changes in financial position as of July 8, 2023 and August 5, 2023 in accordance with the terms of and within the time required by Section 5.1(b) of the Credit Agreement.
4. Pursuant to Section 5.4(a) of the Forbearance Agreement, due to the Additional Default arising on or about August 22, 2023, August 30, 2023, and September 6, 2023 from the Credit Parties' withdrawal of funds from the Blocked Accounts in the amounts of \$747,000, \$1,500,000 and \$1,000,000, respectively, in violation of the provisions of the Credit Agreement and the Blocked Account Agreements.

September 25, 2023

BY FACSIMILE & EMAIL

**Carey Management Inc.
5445 – 8th Street NE
Calgary, AB T2K 5R9**

**Attention: Patrick Carey, Brian Birnie, Eric Rolheiser
Facsimile: (403) 295-0007**

Dear Sirs:

Re: Credit Agreement among Carey Management Inc. (the Borrower), the guarantors party thereto from time to time (the Guarantors), Canadian Imperial Bank of Commerce, as agent (the Agent) and the lenders from time to time party thereto (the Lenders)

Reference is made to the credit agreement dated as of September 26, 2017 among the Borrower, the Guarantors, the Agent and the Lenders (as amended by Amendment No. 1 to Credit Agreement dated May 2, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eighth Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023, Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023, and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the **Credit Agreement**).

Reference is also made to the Forbearance Agreement entered into on June 22, 2023, and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023, as amended by an Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023 and a Second Amendment to Forbearance Agreement dated August 10, 2023 (the **"Forbearance Agreement"**).

Capitalized terms used in this letter and not otherwise defined herein shall have the meaning specified in the Credit Agreement and the Forbearance Agreement.

This notice is provided in addition to, and not in replacement of the notice delivered on September 18, 2023 (the **"September 18 Notice"**). All terms of the September 18 Notice remain effective at this time.

We write to advise that in addition to the Existing Terminating Events (as described in the September 18 Notice), an additional Terminating Event has occurred as a result of the Borrower making payments of tobacco taxes on September 20, 2023 that were not in accordance with an agreed cash flow forecast acceptable to the Agent and that placed the Borrower's accounts in an unauthorized overdraft position, in breach of the Credit Agreement and the other Loan Documents, which unauthorized overdraft has not been repaid (the **"Additional Terminating Event"**).

This letter shall serve to advise you that the Lenders and the Agent have not waived the Additional Terminating Event. In addition, as set out in the September 18 Notice, Revolving Loans may be made solely in the discretion of the Agent and the Lenders at this time as no cash flow forecast acceptable to the Agent has been received and confirmed by the Agent in accordance with the terms of the September 18 Notice.

This letter is written under reserve of, and without prejudice to, all of the rights, remedies and recourses of the Lenders and the Agent under the Loan Documents and the Lenders and the Agent reserve

their rights to fully invoke any and all of their rights, remedies, powers or privileges under the Credit Agreement, the Forbearance Agreement and the Loan Documents or Applicable Law (including, without limitation the right to take such steps and do such things, at any time, as they may consider necessary to protect or preserve their positions, all without further notice to the Borrower or any other Credit Party or Person) in respect of the Additional Terminating Event and the matters set out in the September 18 Notice.

Yours very truly,

CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender

Per:  _____

Name: Geoff Golding
Title: Authorized Signatory

Per:  _____

Name: Anthony Tsuen
Title: Authorized Signatory

Copy to:

Miller Thomson LLP

3000, 700 – 9th Avenue S.W.

Calgary, AB T2P 3V4

Attention: Michael Morcom, Brian Wells,
James Reid and Larry Ellis

Facsimile: (403) 262-0007

Copy to:

**KSV Restructuring Inc., as Monitor of
Carey Management Inc. et al.**

220 Bay Street, 13th Floor, PO Box 20

Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman

This is Exhibit "H" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB



COURT FILE NUMBER

2301 - 08305

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

COM

APPLICANTS

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, 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

AFFIDAVIT NO. 1 OF BRIAN M. BIRNIE

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
3000, 700 – 9th Avenue SW
Calgary, AB, T2P 3V4

Attention: James Reid / Larry Ellis

Phone: 403-298-2418 / 416-595-8639

E-mail: jwreid@millerthomson.com /
lellis@millerthomson.com

File No.: 0221652.0006

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AFFIDAVIT NO 1. OF BRIAN M. BIRNIE

Sworn on June, 21 2023

I Brian M. Birnie, of the City of Nanaimo, in the Province of British Columbia, **MAKE OATH AND SAY THAT:**

1. I am the Senior Vice President of Finance & Corporate Development at Wallace & Carey Inc., ("**Wallace & Carey**"), Loudon Bros Limited ("**Loudon Bros**"), and Carey Management Inc. ("**CMI**", together with Wallace & Carey, and Loudon Bros, the "**Applicants**" or the "**Companies**"). I am also the Chief Financial Officer of Wallace & Carey. Wallace & Carey and Loudon Bros are collectively referred to as the "**Logistics Companies**".
2. The Logistics Companies are full service wholesale distribution and logistics companies that service and supply more than 7,000 customers across Canada. These companies sell and distribute a broad range of products, including groceries, confectionaries, sundries, health and beauty products, frozen foods, tobacco products, cinema confectioneries, and automotive products.
3. CMI is the parent company and sole shareholder of Wallace & Carey. CMI provides management services to the Logistics Companies.
4. In my roles, I am responsible for overseeing the financial operations of the Companies and their liquidity management.
5. 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.
6. Unless otherwise stated, monetary figures in this Affidavit are expressed in Canadian dollars.

I. NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

7. This Affidavit is sworn in support of an originating application for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCA**"), granting, among other things, the following relief:
 - (a) deeming service of the application for the Initial Order to be good and sufficient;

- (b) declaring the Applicants to be companies to which the CCAA applies;
- (c) authorizing the Applicants to remain in possession and control of their respective current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and to continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property;
- (d) entitling the Applicants to pay provincial and territorial tobacco tax obligations in the normal course, including with respect to the Tobacco Tax Payment Plans (defined below), subject to the consent of the Monitor (defined below);
- (e) staying, for an initial period of not more than ten (10) days, all proceedings, rights, and remedies against or in respect of the Applicants, the Property, the Business, and the Monitor, except as otherwise set forth in the Initial Order or permitted by law;
- (f) staying all proceedings and remedies taken or that might be taken in respect of claims against the directors or officers of the Applicants that relate to liability of such Persons in their capacity as directors or officers of the Applicants, except as set forth in the Initial Order or otherwise permitted by law;
- (g) preventing any Person (as defined in the Initial Order) from accelerating the performance of any rights in respect of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Honourable Court;
- (h) restraining any Person from interfering with the supply of goods or services to the Applicants;
- (i) approving the Applicants’ continued use of their Cash Management System (defined below), or any similar alternative cash management system;
- (j) appointing KSV Restructuring Inc. (“**KSV**”) as monitor of the Applicants in these CCAA proceedings (in such capacity, the “**Monitor**”) with the rights and duties set out in the CCAA and the Initial Order;

- (k) authorizing the Applicants to pay all reasonable fees and disbursements of their counsel, the Monitor, and Monitor's counsel, including for periods prior to the date of this Order; and
- (l) granting the following charges on the Property of the Applicants:
 - (i) an Administration Charge (defined below) not exceeding an aggregate amount of \$250,000 as security for the professional fees and disbursements of the Monitor, counsel for the Monitor, and counsel for the Applicants, both before and after the granting of the Initial Order;
 - (ii) a Lender Priority Charge (defined below) not exceeding an aggregate amount of \$55 million as security for any advances made from the Applicants' continued use of the Cash Management System, from and after the commencement of these CCAA proceedings;
 - (iii) a D&O Charge (defined below) not exceeding an aggregate amount of \$3.33 million as security for the Applicants' indemnification obligations of their officers and directors against liabilities that they may incur as directors and/or officers of the Applicants after the commencement of these CCAA proceedings except to the extent any obligation was incurred as a result of any director's or officer's gross negligence or wilful misconduct; and
 - (iv) a Tobacco Tax Charge (defined below) not exceeding an aggregate amount of \$18 million as security for all amounts owing by the Logistics Companies in respect of the Tobacco Taxes (defined below).

II. OVERVIEW OF THE APPLICANTS AND THE NEED FOR CCAA PROTECTION

- 8. Wallace & Carey is a family owned business that was founded in 1921. Servicing more than 7,000 customers across the country, Wallace & Carey has grown to become one of Canada's largest independent wholesale distribution and logistics companies.
- 9. The Logistics Companies provide innovative, efficient, and cost-effective services that streamline customers' ordering, invoicing, payment, reporting and product offerings. Product specialities range from groceries and health and beauty products, to automotive and tobacco products. The Logistics Companies coordinate thousands of deliveries per day, delivering millions of items each year.

10. Wallace & Carey has owned and operated Loudon Bros since 2011. Loudon Bros is 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.
11. The Business is facing unprecedented challenges due to the COVID-19 global pandemic and its attendant supply chain disruptions and lockdowns, and subsequent inflationary pressures and interest rate increases. These financial stressors have been exacerbated by significant declines in the sale of tobacco, a key product supplied by the Business. The Logistics Companies are consequently facing a liquidity crisis that has put the viability of the Business and the continued employment of their 650 employees at risk.
12. By way of background, the Logistics Companies provided an "essential service" during the course of the COVID-19 pandemic. They did so by continuously supplying groceries and other high demand consumer products to convenience stores and gas stations across Canada. Such customers were highly dependant on the Logistics Companies for the uninterrupted and just-in-time delivery of much of their inventory.
13. To manage supply chain disruptions during the pandemic, the Logistics Companies carried much higher levels of inventory than they did historically. This strategy eventually proved unprofitable as the Logistics Companies' customers were subjected to unpredictable, varied and extended lock-down measures that continuously put receivables at risk and made it impossible for the Logistics Companies to effectively manage inventory and cash flow. In the result, the Logistics Companies' additional investment in inventory proved a substantial and unsustainable cost burden to the Business.
14. Although revenues are now approaching pre-pandemic levels, the Logistics Companies remain burdened by approximately \$86.5 million in unsecured trade debt which it has continued to carry since the pandemic. The Logistics Companies are in arrears with many of their creditors, which creditors are variously reducing and cutting off credit, or insisting on cash on delivery as a condition of continued supply. A growing number of suppliers are also putting the Logistics Companies' shipments on hold and demanding pay downs of the Logistics Companies' obligations to them as a condition of doing business.

15. The Applicants are facing a critical liquidity crisis and cannot meet their obligations to creditors generally as they become due.
16. The Logistics Companies cannot continue to operate in the normal course without renegotiating certain critical vendor and customer contracts, and restructuring their unsecured debt obligations through a plan of arrangement or compromise.
17. For the reasons set out herein, I verily believe that the Applicants are insolvent and are companies to which the CCAA applies.
18. The Applicants, with the anticipated support of their senior secured lenders, are seeking protection under the CCAA to, among other things, negotiate and put forward a plan of compromise and arrangement for consideration by affected creditors.
19. I believe that a successful restructuring can save the Applicants' businesses for the benefit of their numerous stakeholders, including lenders, employees, suppliers, customers, and consumers.

III. THE APPLICANTS AND THE CAREY GROUP

Wallace & Carey

20. The Applicant, Wallace & Carey, is a privately held, Canadian family-owned business, incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9.
21. Wallace & Carey's head office and management team are situated in Calgary, Alberta.
22. Wallace & Carey is extra-provincially registered to conduct business across Canada. Attached as Exhibit "A" is a copy of an Alberta Corporate search on Wallace & Carey. Attached as Exhibit "B" is a NUANS search report on Wallace & Carey.
23. The officers of Wallace & Carey are as follows:

Name	Title
Eric Rolheiser	President and CEO
Brian Birnie	SVP Finance & Corporate Development and CFO
Jackie Bellerose	SVP of People Services

24. Patrick Carey is the sole director of Wallace & Carey. He is a resident of Calgary.
25. Wallace & Carey owns and stores more than 7,500 inventory items in nine modern distribution centres across the country. The maintenance of a substantial and diverse inventory of products allows Wallace & Carey customers to reduce their own inventory investment while maintaining a varied product offering. The Applicants' customers benefit from being able to purchase an extensive range of products from the Applicants on an as-needed basis.
26. Wallace & Carey operates from leased warehouses in the following cities: Calgary, Edmonton, Vancouver, Regina, Saskatoon, Winnipeg, Kelowna, Nanaimo, and Oakville. Attached as Exhibit "C" is a chart providing a description of each of the Applicants' warehouses and the geographic area that they service.

Loudon Bros

27. Loudon Bros is a wholly owned subsidiary of Wallace & Carey. It is incorporated pursuant to the *Business Corporations Act*, RSO 1990, c B. 16. Attached as Exhibit "D" is a copy of an Ontario Corporate Profile Report in respect of Loudon Bros.
28. Patrick Carey is the sole officer and director of Loudon Bros.
29. Loudon Bros operates as the Northwestern Ontario branch of Wallace & Carey. It employs 33 people and services approximately 500 customers in the convenience, food service and theatre industries in Thunder Bay and surrounding areas. The operation also provides third party logistics, delivering products for vendors such as Lactalis Canada and Labatt Brewing Company.
30. Loudon Bros owns the warehouse premises at 830A Athabasca Street in Thunder Bay from which it operates. The building is a 23,000 square foot, full service wholesale distribution centre. An Ontario Land Registry Office Parcel Register search on the property is attached as Exhibit "E".
31. The business, assets, and financial results of Loudon Bros are consolidated with Wallace & Carey for the purposes of the Companies' annual audited financial statements.

CMI and the Carey Group

32. Wallace & Carey is a wholly-owned subsidiary of CMI.
33. CMI is a company wholly-owned by Wallace & Carey's sole director Patrick Carey.
34. Mr. Carey is the Chairman of the Board at CMI. Daniel Elrod is the Chief Executive Officer of CMI. CMI is incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9. Attached as Exhibit "F" is a copy of an Alberta Corporate search on CMI.
35. In addition to the Logistics Companies, CMI has ownership interests in nine other entities, none of which are subject to these proceedings (collectively with the Applicants, the "**Carey Group**"). The particulars of these ownership interests are as follows:
 - (a) CMI owns a 26.74% interest in a Calgary based logistics and distribution company, Curve Distribution Services Inc.;
 - (b) CMI owns a 50% interest in Carey Third Party Logistics Inc., a Quebec based logistics broker. The company is currently dormant and has no assets or employees;
 - (c) CMI owns a 100% interest in Wallace & Carey (BC) Ltd. and Wallace & Carey (Ontario) Ltd. These companies have no assets, employees, or operations;
 - (d) CMI owns a 100% interest in Ridge Meadows Properties Inc. Ridge Meadows Properties Inc. is the owner of a residential property in Rocky View County, Alberta;
 - (e) CMI owns a 100% interest in 772921 Alberta Inc. 772921 Alberta Inc. owns the warehouses in Kelowna and Calgary that are leased to Wallace & Carey. This entity is also the head lessor for the Company's Nanaimo and Winnipeg warehouses;
 - (f) CMI owns an 84.57% interest in Spruce It Up Land Corp. Spruce It Up Land Corp. owns land in Calgary, Alberta that it leases to Spruce It Up Garden Centre Inc. Spruce It Up Garden Centre Inc. is a local Calgary garden centre that is 22.5% owned by CMI; and

(g) CMI owns a 100% interest in RET Logistics Inc. RET Logistics Inc. is a Calgary based logistics company servicing Western Canada with 12 trucks and tractor trailers. Approximately 50% of RET Logistics Inc.'s business is servicing Wallace & Carey warehouses.

36. A corporate organization chart of the Carey Group is attached as Exhibit "G".
37. In addition to holding the shares of the Carey Group entities, CMI provides management services to the Carey Group entities, including the Logistics Companies. The management services provided include governance and strategic direction oversight, as well as general executive management.

Employees

38. The Logistics Companies employ approximately 600 full-time, and 50 part-time employees. Employees are referred to as "teammates". Of these full and part-time teammates, approximately 305 are employed in Alberta, 170 in British Columbia, 125 in Ontario, 31 in Manitoba, and 20 in Saskatchewan.
39. In addition, the Logistics Companies employ numerous short-term, seasonal teammates from April to September to manage their peak "100 days of summer" period, in which extra staff are required. On average the Logistics Companies will employ between 120 and 150 seasonal teammates during this period.
40. Teammate roles and job responsibilities include delivery drivers, sales and procurement specialists, information technology professionals, accounting and finance professionals, and warehouse staff.
41. For all positions, the Logistics Companies pay competitive industry wages and provide employer-paid benefits, including medical, dental, and life insurance. The Logistics Companies provide holiday and vacation time, support team awards, celebrate tenure and personal and professional achievements, and provide opportunities for educational assistance and career advancement.
42. More than 25% of the Logistics Companies' current work force has been with the Logistics Companies for over 10-years. Many of the Logistics Companies' teammates have worked with these Applicants for their entire career.

43. In 2022, the Logistics Companies' payroll totalled \$35,169,455. Salaries were paid to 1,206 teammates including full-time, part-time, temporary, and seasonal staff.

Community Contributions

44. Despite their recent financial challenges, the Applicants have worked to uphold their traditional core corporate values of family, integrity, kindness, and relationships. To this end, the Logistics Companies have consistently sought to give back to the community through financial or volunteer support for a variety of social outreach and support organizations.
45. Most recently, Wallace & Carey has supported the hiring of Ukrainian refugees looking to restart their lives in Canada.
46. Wallace & Carey has also been a long time supporter of charities such as Calgary's Women in Need Society, Kids Help Phone, Habitat for Humanity, and The Canadian Legacy Project.

Cash Management System

47. As further described below, Canadian Imperial Bank of Commerce ("**CIBC**") provides CMI with a revolving asset-based loan facility (the "**Loan Facility**"). The Loan Facility is guaranteed by the Logistics Companies as well as certain other Carey Group entities.
48. CMI manages a centralized cash management system (the "**Cash Management System**") wherein the Logistics Companies draw funds from the Loan Facility. The Logistics Companies' accounts receivable collections are paid into blocked accounts and applied in reduction of the Loan Facility. The Applicants are able to re-borrow under the Loan Facility based upon on their eligible accounts receivable and inventory, net of certain reserves.
49. Specifically, Wallace & Carey has one Canadian dollar disbursement account, and one US dollar disbursement account with CIBC for which it draws funds against the Loan Facility to pay its Canadian and US vendors, respectively, and to fund operations.
50. Wallace & Carey has one primary blocked account for which its accounts receivable is deposited by its customers. This blocked account is swept daily into a CMI blocked

account with CIBC. The CMI blocked account is also swept daily and applied in reduction of the Loan Facility.

51. Loudon Bros only has one CIBC blocked account. This Loudon Bros account draws on the Loan Facility to pay vendors and fund its operations, and its accounts receivable is swept daily into the CMI blocked account to be swept and applied in reduction of the Loan Facility.

The Applicants' Recent Financial Challenges

52. As indicated above, the COVID-19 global pandemic has presented a series of ongoing and existential challenges to the viability of the Business.
53. Perhaps most fundamentally, the "open again, shut down again" nature of pandemic lockdowns made it impossible for the Logistics Companies to accurately predict, and therefore effectively manage, inventory and cash flow. Sales fluctuated dramatically and declined materially during this period as the Logistics Companies' customers were subject to varying and sometimes extensive lockdown requirements.
54. As a consequence of the pandemic environment, the Logistics Companies incurred significant losses and liquidity pressures in fiscal years 2021 and 2022. The Logistics Companies were simply not able to keep their suppliers current due to the uncertainty of payments and collections from their own customers, as well as the higher costs that were being incurred by the Logistics Companies during this period.
55. In recent months, as the pandemic has waned, and Business has returned to a "new normal". The Applicants have sought to find ways to manage and reduce the substantial indebtedness that accumulated to the Logistics Companies' trade creditors throughout 2021 and 2022, which they continue to carry. Unfortunately, these efforts have proved unsuccessful. Important suppliers and creditors are not prepared to wait to be paid.
56. Just this month, in June 2023, more than 60 suppliers advised the Logistics Companies that they are past their credit limits. These suppliers are placing the Logistics Companies on credit hold until they can reduce the obligations owing, or are requiring cash-on-delivery for new orders.
57. Additionally, as a supply and logistics business, the Logistics Companies have been particularly affected by ongoing operational cost increases. The Applicants have been

dealing with inflationary pressures, ongoing supply chain challenges, labour shortages, interest rate increases, and the rising costs of fuel, utilities, supplies, and equipment. These operational cost increases have been substantial.

58. Wallace & Carey's most recent audited financial statements (which incorporate the financial results of Loudon Bros) for the 52 weeks ended October 28, 2022 (the "**W&C 2022 Financial Statement**") confirm ongoing and growing losses as follows:

(\$000s)	2022	2021
Sales	1,523,664	1,526,817
Cost of sales	1,491,312	1,497,801
Net loss	12,554	7,175

59. According to the W&C 2022 Financial Statement, as of October 28, 2022, the Logistics Companies current liabilities exceeded the value of their assets by \$33,082,309, including \$31,325,628 owing to CMI. Attached as Exhibit "**H**" is a copy of the W&C 2022 Financial Statement.
60. CMI's most recent audited financial statements (which incorporate the financial results of the Carey Group, including the Logistics Companies) for the 52 weeks ended October 28, 2022 (the "**CMI 2022 Financial Statement**") confirm ongoing and growing losses as follows:

(\$000s)	2022	2021
Sales	1,524,855	1,527,736
Cost of sales	1,491,352	1,497,813
Net loss	13,786	12,365

61. According to the CMI 2022 Financial Statement, the current liabilities of CMI exceed the value of its assets by approximately \$71 million. A copy of the CMI 2022 Financial Statement is attached as Exhibit "**I**".
62. The Logistics Companies have pursued cost-cutting strategies in an effort to mitigate their financial challenges. These steps have included streamlining operations through the reorganization of shipping routes, setting up more efficient pick-up and drop off locations, and sourcing alternative suppliers. In addition, the Logistics Companies have worked to staff operations more efficiently to reduce overtime pay and control the

generally higher costs associated with contract workers and temporary employment agencies.

63. On the revenue side, the Logistics Companies have also continually sought to address inflationary and cost pressures by negotiating new contracts that include price increases with certain of its customers.
64. Although some progress has been made, it has become clear that a broader balance sheet restructuring is required to address the significant trade debt that accumulated and the Applicants have carried in recent years, which now exceeds \$86.5 million.

IV. ASSETS

Assets

65. An unaudited balance sheet summary of the assets and liabilities of the Applicants as at June 19, 2023, is set out in the chart below:

Condensed Balance Sheet			
As of June 19, 2023 (Unaudited) (\$000)			
	Wallace & Carey	Loudon Bros	CMI
Current assets	112,098	5,725	46,485
Long term assets	17,651	473	3,218
Total assets	129,749	6,198	49,703
Total current liabilities	118,446	6,120	51,963
Total long-term liabilities	30,749	0	7,645
Total liabilities	143,862	6,120	59,608
Retained earnings	(17,967)	(120)	(9,905)
Shareholders' equity	(17,966)	78	(200)

66. The Logistics Companies' most significant asset is their inventory, followed by their accounts receivable. The book values of these assets are subject to significant changes on a daily basis.
67. The Logistics Companies also own warehouse equipment, leasehold improvements, and computer and software equipment, which had a book value of \$14,631,781 as of June 12, 2023.
68. Further details in respect of the Applicants' financial position and recent financial performance are detailed in the Pre-Filing Report of KSV, to be filed as proposed Monitor.

Material Contracts

69. Wallace & Carey holds the contracts with the Applicants five largest customers, which operate in the convenience store, gas and movie theatre sectors. Together, they represent approximately \$950 million (or approximately 64%) of the Logistics Companies' total revenue.
70. Wallace & Carey has ongoing supply agreements with their five largest customers, these being 7- Eleven Canada, Cineplex Entertainment, Greenergy Fuels Limited, Landmark Entertainment, and Federated Cooperatives Ltd.
71. Wallace & Carey's contracts with these companies generally have terms of between three and five years.
72. Wallace & Carey's current five-year contract with 7-Eleven Canada is expiring at the end of July, 2023. The parties are in ongoing, late-stage, discussions with respect to a contract renewal.
73. Other important contracts include Wallace & Carey's real property leases for seven of its nine warehouses with non-Carey Group entities. Additionally, Wallace & Carey has leases with the Carey Group entity 772921 Alberta Inc. in each of Calgary and Kelowna.
74. Wallace & Carey leases approximately 98% of its fleet of 120 trucks and trailers. These leases are primarily with Ryder Truck Rental Canada Ltd. and Penske Truck Leasing Canada Inc. The Applicants do not have master lease agreements with any vehicle or trailer lessors. Rather, each unit has its own lease agreement.

75. Wallace & Carey has contracting agreements with several smaller, family-owned distribution and logistics companies (collectively, the “**Alliance Partners**”). The Alliance Partners contract with Wallace & Carey to deliver goods to the Companies’ customers in remote parts of Canada where it is not economic for the Logistics Companies to have their own warehouses and distribution centres.
76. Working together, the Alliance Partners and Wallace & Carey are critical suppliers of goods and products to some of Canada’s most remote communities. This includes customers in Northern BC, Northern Alberta, Northern Ontario, Quebec, the maritime provinces, and certain of the territories, including the retail businesses of the key customers referenced above.
77. Finally, Wallace & Carey has long-term distribution contracts with Rothman, Benson & Hedges Inc., Imperial Tobacco Canada Ltd., and JTI-MacDonald Corp. Under these contracts, Wallace & Carey purchases tobacco products from these companies and then sells those products to Wallace & Carey’s customers.

Real Property

78. Loudon Bros owns the 23,000 square foot warehouse it operates out of at 830 Athabasca Street in Thunder Bay, Ontario. There are no mortgage encumbrances on the Loudon Bros property. Wallace & Carey owns no real property assets.
79. CMI indirectly has interests in real property through its shareholdings in some of the non-Applicant Carey Group entities discussed above.

V. LIABILITIES

80. As at June 19, 2023, the Applicants have collective liabilities of over \$184 million, including, but not limited to:
 - (a) secured obligations in an aggregate principal amount of approximately \$44,440,000 owing to CIBC pursuant to a credit agreement;
 - (b) secured obligations in an aggregate principal amount of approximately \$11,784,000 owing to Canadian Western Bank pursuant to a commitment letter;
 - (c) approximately \$25 million owing for provincial and territorial tobacco taxes;

- (d) approximately \$1,335,000 for GST, PST, and HST; and
- (e) trade accounts payable of approximately \$86.5 million.

CIBC Credit Agreement and CIBC Forbearance Agreement

81. CMI, as borrower, the Logistics Companies and other Carey Group entities, as guarantors, and CIBC, as lender and agent, entered into a credit agreement dated as of September 26, 2017, as amended by nine amending agreements, whereby CIBC made available to CMI a revolving credit facility (as amended, collectively, the “**CIBC Credit Agreement**”). A copy of the conformed CIBC Credit Agreement is attached as Exhibit “**J**”.
82. The Applicants seek Court approval to continue to use the existing Cash Management System discussed above, including the existing bank accounts and arrangements in place with CIBC throughout these CCAA proceedings. This will minimize disruption to the Applicants’ operations, as customers will continue to pay the Logistics Companies using the pre-filing processes with which they are familiar. This will result in the repayment of pre-filing indebtedness owing pursuant to the CIBC Credit Agreement, and the re-advancement of further credit pursuant to the Lender Priority Charge.
83. The Applicants’ obligations under the CIBC Credit Agreement are secured pursuant to, among other things:
- (a) an unlimited guarantee dated September 26, 2017, from the Logistics Companies and certain other Carey Group entities, in favour of CIBC, as agent;
 - (b) a general security agreement dated September 26, 2017, from the Applicants and certain other Carey Group entities, as grantors, and CIBC, as agent; and
 - (c) a blocked accounts agreement dated September 26, 2017, between, among others, the Applicants, as customers, and CIBC, as account bank and as agent for the lenders
- (collectively, the “**CIBC Security**”).
84. The CIBC Security grants CIBC security over all present and after-acquired personal property of the Applicants, among other Carey Group entities. Copies of the CIBC Security are attached as Exhibits “**K**”, “**L**”, and “**M**”.

85. CIBC has registered its security interests against the personal property of the Applicants in the Alberta Personal Property Registry. A copy of the Alberta personal property registry search on Wallace & Carey from April 26, 2023, is attached as Exhibit “N”. A copy of the Alberta personal property registry search on CMI from June 13, 2023, is attached as Exhibit “O”.
86. CIBC has also registered a security interest against Wallace & Carey in the other jurisdictions in which it has warehouses being British Columbia, Saskatchewan, Manitoba, and Ontario. The personal property registry searches in these jurisdictions are attached as Exhibits “P”, “Q”, “R”, and “S”.
87. CIBC has registered security interests against the personal property of Loudon Bros in the Ontario Personal Property Registry. Attached as Exhibit “T” is an Ontario personal property registry enquiry result on Loudon Bros as of May 24, 2023.
88. As of June 19, 2023, the Applicants owe CIBC approximately \$44.4 million in principal, plus interest, costs and expenses pursuant to the CIBC Credit Agreement and CIBC Security. The amounts owing to CIBC under the CIBC Credit Agreement fluctuate on a daily basis as accounts receivable collections are deposited into the blocked accounts of the Applicants and applied toward the credit facility, and as the Applicants re-borrow under this facility.
89. CMI is currently in default under the CIBC Credit Agreement. On June 2, 2023, CIBC issued a reservation of rights letter to CMI in respect of the ongoing defaults. The events of default include, but are not limited to, various financial covenant breaches and reporting covenant breaches. A copy of the CIBC reservation of rights letter setting out the defaults under the CIBC Credit Agreement is attached as Exhibit “U”.
90. CIBC can at anytime demand repayment in full of the amounts owing under the CIBC Credit Agreement, which the Applicants and the rest of the Carey Group guarantors would be unable to pay.
91. CIBC and the applicable Carey Group entities, including the Applicants, are negotiating a forbearance agreement (the “**CIBC Forbearance Agreement**”). The parties anticipate having the CIBC Forbearance Agreement finalized and executed before the hearing for the Initial Order.

92. Pursuant to the CIBC Forbearance Agreement, it is expected that CIBC will agree to, subject to compliance with the terms and conditions of the Forbearance Agreement, allow the Applicants access to the Loan Facility and to continue to use the Cash Management System to meet the Applicants' working capital requirements while the Applicants carry out these CCAA proceedings. It is expected that CIBC will also agree to temporarily forbear from enforcing on its rights against the Applicants and the rest of the Carey Group.
93. The form of CIBC Forbearance Agreement contemplates that any post-filing amounts that are drawn on the Loan Facility by the Applicants will be loaned under the Lender Priority Charge defined and described below.
94. Subject to the Applicants complying with the terms of the proposed CIBC Forbearance Agreement, it is anticipated that CIBC will provide its consent to the Applicants filing for creditor protection under the CCAA.

The CWB Commitment Letter and CWB Waiver Letter

95. CMI is the borrower, and Wallace & Carey (among other Carey Group entities), is a guarantor, under a commitment letter dated September 16, 2021, with Canadian Western Bank ("**CWB**"), as lender (the "**CWB Commitment Letter**"). A copy of the CWB Commitment Letter is attached as Exhibit "**V**".
96. The CWB Commitment Letter provides for two demand credit facilities. The first is a demand, non-revolving loan originally for \$14,450,000. The second is a letter of credit in the maximum amount of \$1 million.
97. One tranche of the non-revolving loan facility with CWB has been cancelled such that the current maximum amount of borrowings under that facility is now \$12,747,500.
98. The loans advanced pursuant to the CWB Commitment Letter are secured by, among other things:
 - (a) a multiple entity cross guarantee from CMI, Wallace & Carey, and certain other Carey Group entities in favour of CWB dated October 25, 2021;
 - (b) a general security agreement dated October 25, 2021, from CMI in favour of CWB;and

- (c) a general security agreement dated October 25, 2021, from Wallace & Carey in favour of CWB

(the “**CWB Security**”).

99. Loudon Bros is not a party to the CWB Commitment Letter and associated CWB Security.
100. The CWB Security grants CWB security over all present and after-acquired personal property of Wallace & Carey. Copies of the CWB Security are attached as Exhibits “**W**” and “**X**”.
101. As shown on the Alberta personal property registry searches attached as Exhibits “**N**” and “**O**”, CWB has registered its security interests in Alberta against the personal property assets of Wallace & Carey and CMI.
102. As of June 19, 2023, CMI and Wallace & Carey owe CWB approximately \$11,784,000 in principal, plus interest, costs and expenses pursuant to the CWB Commitment Letter and CWB Security.
103. CWB can at anytime demand the repayment in full of the amounts owing under the CWB Commitment Letter, which CMI, Wallace & Carey, and the rest of the Carey Group guarantors would be unable to pay.
104. CWB has agreed to provide CMI with a letter, whereby CWB has agreed not to demand payment under the CWB Commitment Letter in relation to the Applicants carrying out these CCAA proceedings (the “**CWB Comfort Letter**”).
105. Subject to CMI and Wallace & Carey complying with the terms set out in the CWB Comfort Letter, CWB has advised the Applicants that it does not oppose the Applicants filing for creditor protection under the CCAA.

Tobacco Tax Obligations

106. A significant portion of the Business relates to the sale of tobacco products in five provinces and three territories in Canada. On average, revenues from tobacco sales account for approximately 15% of the Logistics Companies’ gross profits.

107. The tobacco industry is a highly taxed and regulated in Canada. Each of the provinces and territories that the Logistics Companies operate or supply product to, either directly or through one of the Alliance Partners, have similar tobacco license and tax regimes. The Logistics Companies comply with the regulatory requirements of each jurisdiction in which they operate.
108. In Alberta, for example, in order to be permitted to sell and distribute tobacco products, Wallace & Carey is required to comply with the *Tobacco Tax Act*, RSA 2000, c T-4 (the “**TTA**”) and to maintain the status of licensed wholesaler.
109. Licensed wholesales are appointed as tobacco tax collectors by the Province of Alberta. Tobacco tax collectors are required to collect and remit tobacco tax to the Tax and Revenue Administration (the “**TRA**”). As a licensed wholesaler appointed as a tobacco tax collector, Wallace & Carey is required to file a return and remit the tobacco tax on product sold into Alberta on a monthly basis.
110. The Logistics Companies’ tobacco sales and tax collection responsibilities to other provincial jurisdictions is broadly similar to their TTA responsibilities to Alberta.
111. Accordingly, the Logistics Companies are a significant collector of tobacco taxes for a number of provincial and territorial governments. The annual tobacco tax collections of the Logistics Companies typically exceed \$400 million for any given fiscal year.
112. During the COVID-19 pandemic, Wallace & Carey elected to exercise a limited-time statutory option to defer making tobacco tax remittances to the provincial governments of Alberta and Saskatchewan.
113. In January 2023, Alberta and Saskatchewan advised Wallace & Carey that it could no longer defer its tax remittance payments. The provinces requested that the then outstanding payments be made in full.
114. Following a period of negotiation, Wallace & Carey entered into payment plans to repay the arrears owing to Alberta and Saskatchewan (the “**Tobacco Tax Payment Plans**”).
115. With regard to all other provinces and territories in respect of which the Logistics Companies collect tobacco taxes, the Logistics Companies have remained current in respect of their tobacco tax remittance obligations.

116. It is critical to the Business that the provincial and territorial tobacco licenses remain in good standing and that the Logistics Companies not be required to post security for their outstanding tax obligations. Being required to do so would tie up significant capital and would not be possible without significant impairment of the Companies' ongoing operations.
117. During the course of these CCAA proceedings, the Logistics Companies intend to continue making all required payments under the Tobacco Tax Payment Plans, and to otherwise stay current on all tobacco tax obligations.
118. I am advised by my counsel, James Reid of Miller Thomson LLP, that in some provinces, tobacco tax obligations are deemed to be held in trust for the Crown. Further, I am advised that directors and officers may be held personally liable for any unpaid tobacco tax remittances.
119. Under the Tobacco Tax Payment Plan with the Province of Saskatchewan, Wallace & Carey needs to make a final payment of \$3.5 million on June 21, 2023, to remain current on its amounts owing to that province. The Tobacco Tax Payment Plan with the Province of Alberta requires that Wallace & Carey make weekly payments of \$2 million to remain current, and to pay down its arrears, which total approximately \$7.3 million as of June 20, 2023.

Trade Creditors

120. The Logistics Companies owe approximately \$86.5 million to approximately 730 trade creditors as at June 19, 2023. These trade creditors consist of a broad range of product suppliers, shippers, importers, manufacturers, Alliance Partners, utility providers, retailers, packagers, brokerage firms, technology service providers, and equipment service providers, among many others.

Vehicle Leases

121. The Logistics Companies lease 98% of the vehicle and trailer fleet that they utilize in their day-to-day operations. There are multiple serial numbered goods registrations against the Logistics Companies at the personal property registries in respect of these vehicle leases.

Statutory Remittances and Priority Payables

122. Other than with respect to the deferred tobacco tax remittances owing to the Provinces of Alberta and Saskatchewan discussed above, the Applicants are current on all source deductions, GST, PST, and HST.
123. In addition, the Applicants are current on all employee wages, vacation pay, vehicle lease payments, and rents.

VI CHALLENGES AND CAUSES OF INSOLVENCY***Pandemic and Post Pandemic Challenges***

124. As discussed in detail above, the severity, duration, and unpredictability of rolling COVID-19 related lock-downs significantly impaired the Business of the Logistics Companies.
125. Emerging from, and following the global pandemic, the Logistics Companies have been faced with a materially more expensive and much less hospitable operating environment.
126. Post-pandemic labour shortages required the Logistics Companies to aggressively hire, which resulted in associated cost increases for recruiting, training, overtime, and service disruptions. The Logistics Companies have also relied on employment agencies to provide part time labour.
127. The Logistics Companies have also incurred higher than historical costs of inventory, resulting from supply chain disruptions and increased shipping costs.
128. In the aftermath of the pandemic, the cost increases in the prices of fuel, utilities, supplies, equipment, labour, and services, resulted in an increase of costs for the Logistics Companies of approximately \$8.8 million compared to the 2021 fiscal year.

Vancouver Warehouse Move

129. Wallace & Carey was unexpectedly required to vacate from its Vancouver warehouse facility on December 31, 2021. Wallace & Carey had been leasing the more than 120,904 square foot Vancouver warehouse premises since 2009.

130. Between July 2020, and March 2021, Wallace & Carey had been in extensive and advanced negotiations with the landlord to renew its lease, but to its surprise, in mid-April, 2021, the landlord advised it had entered into a lease agreement with a different tenant.
131. Wallace & Carey thus had to vacate the space on relatively short notice and consequently find an alternative warehouse facility to ensure there was no disruption to the Business.
132. The workload and planning associated with the Vancouver warehouse move, in addition to Vancouver leasing costs more than doubling as a result of the relocation, cost Wallace & Carey in excess of \$10 million. The cost was funded from working capital, which significantly contributed to the Applicants' present liquidity challenges.

Reduced Tobacco Sales

133. As noted above, tobacco sales have historically contributed to approximately 50% of the Applicants' revenues, and over 15% of their gross profit.
134. Due to declines in consumption and secular market shifts, tobacco revenues have steadily and significantly declined in recent years.
135. From 2020 to 2021, tobacco revenues, inclusive of tobacco tax, declined by approximately \$82 million. From 2021 to 2022, tobacco revenues, inclusive of tobacco tax, declined by approximately \$162 million.

Immediate Liquidity Crisis

136. As set out in the W&C 2022 Financial Statement, the Logistics Companies' current liabilities significantly exceed their current assets by approximately \$33 million. Further, the Logistics Companies had a shareholder's deficiency in 2022 of approximately \$25 million, representing a history of net losses.
137. The Logistics Companies' independent auditor advised in the W&C 2022 Financial Statement that there was "significant doubt" about the Logistics Companies' ability to continue as a going concern.
138. Similarly, the CMI 2022 Financial Statement shows that current liabilities of CMI exceed its current assets by approximately \$71 million. The CMI 2022 Financial Statement

shows that CMI had a shareholder deficiency of nearly \$41 million, representing a history of net losses.

139. CMI's independent auditor advised in the CMI 2022 Financial Statement that there was "significant doubt" about CMI's ability to continue as a going concern.
140. The Applicants are in default under the CIBC Credit Agreement. Except for their respective forbearance and waiver to allow the Applicants to commence these proceedings, both CIBC and CWB can demand repayment of the entirety of the obligations owing under their respective loan agreements at anytime. The Applicants and the rest of the Carey Group cannot repay these obligations to their secured lenders.
141. The Logistics Companies' suppliers and other trade creditors are now placing the Logistics Companies on credit hold and/or are demanding cash on delivery until large pay downs of their past due obligations are made. As noted above, in this month alone, more than 60 suppliers advised Wallace & Carey that it is past its credit limit and is being placed on credit hold until it can reduce the obligations owing.
142. Wallace & Carey is a defendant to litigation commenced last spring by Dayhu Investments Ltd., its former Vancouver warehouse landlord in the Supreme Court of British Columbia. The former landlord seeks damages in excess of \$1 million, alleging that Wallace & Carey failed to vacate the premises in time and to restore it as required under the lease. Although Wallace & Carey has defended the claim, believes it to be without merit, and has brought a counterclaim, the costs of continuing this proceeding are expected to be substantial and beyond what Wallace & Carey can now afford. This claim will be stayed as a result of the commencement of these proceedings, and the claim will be addressed as part of the Applicants' restructuring efforts.
143. The Applicants face an immediate liquidity crisis as they can no longer pay their obligations as they come due.
144. The Logistics Companies need an opportunity to prepare and present a plan to address their unsecured debt obligations.
145. If the Court issues the Initial Order granting the Applicants the relief they are seeking under the CCAA, the Applicants believe that they can present a plan of arrangement or compromise that will allow the Business to return to viability.

VII CCAA PROCEEDINGS AND RELIEF SOUGHT

The Applicability of the CCAA

146. The Applicants are companies to which the CCAA applies as they have liabilities in excess of \$5,000,000. The Board of Directors of each of the Applicants has resolved to authorize the within CCAA proceedings.
147. As at June 19, 2023, the Applicants are indebted to CIBC in the amount of approximately \$44,440,000. CMI and Wallace & Carey are indebted to CWB in the amount of approximately \$11,784,000.
148. The obligations of the Applicants to CIBC are secured by security interests in all of the Applicants' present and after-acquired personal property. The obligations of CMI and Wallace & Carey to CWB are also secured by security interests in all of the present and after-acquired personal property of these Applicants.
149. As at June 19, 2023, the Logistics Companies owe tobacco tax amounts to the provinces and territories totalling approximately \$25 million, and they owe an aggregate of approximately \$86.5 million to trade creditors.
150. The Applicants are insolvent and cannot meet their obligations generally as they become due.

Cash Flow Projections

151. The Applicants, with the assistance of KSV, have prepared cash flow statements on a go forward basis, up to and including September 30, 2023 (the "**Cash Flow Projections**"). The Cash Flow Projections will be attached as an appendix to the Pre-Filing Report of KSV.
152. As set out in the Cash Flow Projections, from June 18, 2023, until September 30, 2023, the Applicants' principal use of cash will consist of paying rent, payroll, go forward payments to suppliers and trade creditors, tax payments, and other costs and expenses required in the ordinary course of operating the Business.
153. The Cash Flow Projections reflect that, subject to obtaining the relief sought as part of the originating application for the Initial Order, including the continued use of the Cash

Management System, the Applicants are projected to have sufficient liquidity to fund their ongoing operations during the initial ten (10) day stay period.

Stay of Proceedings

154. Given the challenges faced by the Applicants described herein, the Applicants require a stay of proceedings to maintain the status quo and to give the Applicants the necessary time and breathing space to engage in negotiations with their key stakeholders in order to advance their restructuring efforts.
155. The proposed Initial Order contemplates a stay of proceedings for a period of 10 days against the Applicants and their directors and officers, which I understand is the maximum that can be authorized by a court at the initial application under the CCAA.
156. The Applicants have booked time to return to this Court for a comeback hearing on June 30, 2023, at 2:00 pm (the “**Comeback Hearing**”).
157. At the Comeback Hearing, the Applicants intend to seek an extension of the stay of proceedings to allow the Applicants to negotiate and develop a plan of arrangement or compromise to their trade creditors.

Appointment of Monitor

158. The Applicants seek the appointment of KSV as Monitor of the Applicants in these CCAA proceedings.
159. KSV is familiar with the operations of the Applicants. KSV Advisory Inc., an affiliate of KSV, was previously engaged as a financial advisor to the Applicants to assist them to prepare for these proceedings and to advise on the contemplated restructuring.
160. As a result, KSV has developed critical knowledge about the Applicants, the Business, and the financial challenges facing the Business.
161. KSV has not acted as the Applicants’ auditor and is a licensed insolvency trustee.
162. KSV has consented to act as the Monitor, subject to Court approval. A copy of the Consent to Act as Monitor will be attached to the Pre-Filing Report of KSV.

Administration Charge

163. KSV has consented to act as Monitor in these proceedings to provide supervision, monitoring and to generally assist the Applicants with their restructuring efforts, including the preparation of a CCAA plan of arrangement or compromise.
164. It is intended that the plan of arrangement or compromise will be presented to the Logistics Companies' unsecured creditors, who will have an opportunity to consider a plan in accordance with the terms of the proposed Initial Order and the statutory provisions of the CCAA.
165. The Monitor, counsel to the Monitor, and counsel to the Applicants will be essential to the Applicants' restructuring efforts.
166. Such professionals are prepared to provide or continue to provide professional services to the Applicants if their fees and disbursements are secured by a charge over the Property (the "**Administration Charge**").
167. The Applicants request that the Administration Charge form a first priority charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, claims of secured creditors statutory or otherwise, in favour of any Person (collectively, the "**Encumbrances**").
168. The Applicants believe that an Administration Charge in the amount of \$250,000 until the Comeback Hearing is fair and reasonable given the size and complexity of the Business and will provide the level of appropriate protection for the payment of essential professional services during the initial ten-day stay period. The proposed Monitor and its counsel have received nominal retainers to-date, and their fees to-date exceed the amount of the retainers. Without the benefit of the Administration Charge, the proposed Monitor and its counsel would not be prepared to act in these proceedings.
169. At the Comeback Hearing, the Applicants intend to apply for an increase of the Administration Charge to \$750,000.
170. The Applicants have sought and obtained guidance from the proposed Monitor on the proposed amount of the Administration Charge and the proposed Monitor is supportive.

Lender Priority Charge

171. CIBC has agreed to allow the Applicants to use the Cash Management System to fund the ongoing operations of the Business without the need for the Applicants to obtain any new form of interim financing.
172. The Applicants are seeking approval from the Court to continue to utilize the Cash Management System. As discussed above, the amounts owing under the CIBC Credit Agreement will continue to revolve, with existing CIBC indebtedness repaid, and any amounts re-advanced to the Applicants will be subject to the Lender Priority Charge discussed below.
173. The Applicants are seeking a charge on the Property in favour of CIBC, which charge shall not exceed an aggregate principal amount of \$55 million, as security for any revolving advances made under the CIBC Credit Agreement pursuant to the Cash Management System over the initial ten-day stay period, plus interest, fees and expenses, from and after the commencement of the CCAA proceedings (the “**Lender Priority Charge**”).
174. CIBC has indicated that, absent the approval of the Lender Priority Charge, it is not willing to permit the Applicants continued advances under the CIBC Credit Agreement and access to the Cash Management System for their liquidity needs.
175. The Applicants are requesting that the Lender Priority Charge form a second ranking charge on the Property in priority to all Encumbrances except the Administration Charge.
176. The Applicants have sought and obtained guidance from the proposed Monitor on the proposed amount of the proposed Lender Priority Charge and the proposed Monitor is supportive. I understand that the proposed Monitor has asked its independent counsel to review the CIBC Security and intends to report on that review to the Court.
177. With the exception of the tobacco tax remittance arrears that are to be paid pursuant to the Tobacco Tax Payment Plans, the Applicants are not aware of any deemed trust claims or other priority claims that will be subordinated or prejudiced from the Lender Priority Charge.

D&O Charge

178. The Applicants are seeking a charge on the Property in favour of the Companies' directors and officers, which charge shall not exceed an aggregate amount of \$3.33 million (the "**D&O Charge**").
179. The Applicants have worked with KSV to determine the appropriate amount of D&O Charge based on the potential exposure of the directors and officers for GST/PST/HST, employee wages, and source deductions over the initial ten-day stay period.
180. The D&O Charge is required to ensure that the directors and officers of the Applicants will continue to serve in such capacity and have assurance that they are appropriately indemnified for liabilities which may be incurred by the Applicants during these proceedings and for which they may be personally liable.
181. The directors and officers have significant knowledge of the Business to guide the Applicants through their restructuring efforts that cannot be easily replaced. The continued involvement of the directors and officers is integral to minimize disruption to the Business during these proceedings. Without these individuals, the Applicants' operations may be required to be discontinued, which will impair value to the detriment of the Applicants and their stakeholders, including employees, creditors and customers.
182. The directors and officers do not have the benefit of any insurance policies in respect of their potential liability. The directors and officers have expressed their need for certainty with respect to potential liability if they continue in their current capacities in the context of these CCAA proceedings.
183. At the initial hearing the Applicants are requesting that the D&O Charge form a third ranking charge on the Property in priority to all Encumbrances except the Administration Charge and the Lender Priority Charge.
184. At the Comeback Hearing, the Applicants intend to apply for an increase of the D&O Charge to \$4 million.

Tobacco Tax Charge

185. As discussed above, the Logistics Companies are required to collect, hold, and remit provincial and territorial tobacco taxes on all tobacco products sold. The Applicants

Tobacco Tax Charge

- 185. As discussed above, the Logistics Companies are required to collect, hold, and remit provincial and territorial tobacco taxes on all tobacco products sold. The Applicants currently hold the tobacco taxes collected, which are remitted in arrears, with remittance dates that vary by jurisdiction.
- 186. The peak tobacco tax hold by the Logistics Companies is estimated to be approximately \$26 million. The tobacco tax collection and remittance obligations exposes the directors and officers to significant financial liabilities.
- 187. Over the Stay Period, the tobacco tax hold by the Logistics Companies is estimated to be approximately \$18 million.
- 188. As a result, the Applicants are seeking a charge in favour of the provincial and territorial authorities that are entitled to receive payments or collect monies from the Logistics Companies in respect of the tobacco taxes in the amount of \$18 million over the Property to secure the remittance of any collected but unremitted tobacco taxes.
- 189. At the Comeback Hearing, the Applicants intend to apply for an increase of the Tobacco Tax Charge to \$26 million.

CONCLUSION

- 190. I swear this Affidavit in support of the Initial Order and any subsequent amendment and restatement of the Initial Order at the Comeback Hearing, for the purposes of allowing the Applicants an opportunity to restructure their affairs and develop a plan of arrangement for the benefit of their creditors.

SWORN BEFORE me at the City of
 Calgary, in the Province of Alberta, this 21
 day of June, 2023.

Anna Kosa

 A Commissioner for Oaths in and for the
 Province of Alberta.

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Brian M. Birnie

BRIAN M. BIRNIE

Anna Elizabeth Kosa
Barrister & Solicitor
 Notary Public and Commissioner for Oaths
 in and for the Province of Alberta

This is Exhibit "I" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

MORTGAGE

PURSUANT TO THE *LAND TITLES ACT* (ALBERTA)

SPRUCE IT UP LAND CORP., **772921 ALBERTA INC.**, and **RIDGE MEADOWS PROPERTIES LTD.** (collectively, the "**Mortgagor**") are the registered owners as specified in Schedule A of the estates in fee simple in possession of the lands legally described in Schedule A (which together with the buildings, improvements and fixtures, which are now or may hereafter be erected, placed or installed thereon or thereto are hereinafter collectively referred to as the "**Lands**").

The Mortgagor, among others, as guarantor, **CAREY MANAGEMENT INC.** (the "**Borrower**"), as borrower, and **CANADIAN IMPERIAL BANK OF COMMERCE**, as agent and lender, whose head office is located at 199 Bay Street, 4th Floor, Toronto, ON, M5L 1A2 (the "**Mortgagee**"), are parties to that certain credit agreement dated September 26, 2017, as the same may be amended, restated, renewed or otherwise modified from time to time (the "**Credit Agreement**").

NOW THEREFORE, IN CONSIDERATION of the premises herein, the sum of **SIXTY-FIVE MILLION DOLLARS (\$65,000,000)** (hereinafter the "**loan**" or "**principal amount**"), lent to the Borrower by the Mortgagee, and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Mortgagor covenants with the Mortgagee as follows.

1. **PAYMENTS**

The Mortgagor will pay **ON DEMAND** to the Mortgagee, at its office in Toronto, Ontario, or at such other place as the Mortgagee may designate in writing, in lawful money of Canada, the principal amount of **SIXTY-FIVE MILLION DOLLARS (\$65,000,000)**, or so much thereof as is outstanding at the time of demand, plus interest thereon at the rate of **twenty-five (25%) per annum**, after as before maturity, both before and after default, and both before and after judgment on this mortgage (which interest rate calculated as aforesaid is sometimes hereinafter referred to as the "**Mortgage Rate**") and hereby encumbers, mortgages and charges the Lands.

2. **OVERDUE INTEREST**

The Mortgagor will pay to the Mortgagee interest as aforesaid in the manner aforesaid on the said sum or on so much thereof as shall have been advanced by the Mortgagee or which shall from time to time remain unpaid at the Mortgage Rate, and all interest on becoming overdue shall be forthwith treated (as to payment of interest thereon) as principal and shall bear compound interest at the Mortgage Rate as well after as before maturity of this mortgage, both before and after default, and both before and after judgment under this mortgage until paid, and shall be payable at the times, in the manner, and at the place hereinbefore provided for payment of interest, and all such interest and compound interest shall be a charge on the Lands. In the event of nonpayment of any of the moneys hereby secured at the times herein set for payment thereof the Mortgagor will, so long as any part thereof remains unpaid, including after judgment, pay interest at the Mortgage Rate from day to day on the same.

3. **COLLATERAL GUARANTEE**

These presents are given and taken as general continuing collateral security for the payment by the Mortgagor of any sums required to be paid and the performance of any covenants and obligations of the Mortgagor to be performed from time to time pursuant to certain guarantee(s) (collectively, the "**Guarantee**" as may be amended, restated, renewed or otherwise modified from time to time) delivered by the Mortgagor to the Mortgagee, and the Mortgagor agrees that the Obligations shall include all amounts owing to the Mortgagee from time to time in respect of the Guarantee and all indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee, whether present or future, direct or indirect, absolute or contingent, matured or not, and whether arising within or outside Canada, and whether incurred by or arising from any agreement or dealing between the Mortgagee and the Mortgagor or by or from any agreement or dealing

with any third party by which the Mortgagee may be or become in any manner whatsoever a creditor of the Mortgagor, or however otherwise incurred or arising, and whether the Mortgagor be bound alone or with another or others, and whether as principal, guarantor or surety.

4. RENEWALS

In the event that the Mortgagee shall agree to renew or extend the term of this mortgage, such renewal or extension (and the rate of interest, term, instalment and other stipulations of such renewal or extension) shall be binding upon the Mortgagor, its successors in title and assigns, and all subsequent mortgages, encumbrances and other interests in or of the Lands or any portion thereof (subsequent to this mortgage and together hereinafter called "**Subsequent Encumbrances**"), and shall take full priority over all Subsequent Encumbrances, whether or not the said renewal or extension is filed or recorded by caveat at the applicable Land Titles office and whether or not the rate of interest payable or payment amortization period applicable during the renewal or extension term is greater than or less than the rate or amortization stipulated in this mortgage. The Mortgagor shall, forthwith on request therefor by the Mortgagee, provide to the Mortgagee, at the Mortgagor's expense, all such postponements and other assurances as the Mortgagee may require to ensure the foregoing binding effect and priority. All renewals (if any) shall be done at the Mortgagor's expense (including without limitation payment of Mortgagee's legal expenses on a solicitor-and-his-own-client basis). In the event the Mortgagor herein is a corporation, no such renewal or extension, even if made by a successor in title to the Mortgagor named herein and whether or not the Mortgagor shall consent thereto, shall in any way release or abrogate or render unenforceable the covenants or obligations of the Mortgagor named herein, which shall continue notwithstanding such renewal or extension and shall apply to this mortgage as renewed or extended.

5. TAXES

Subject as hereinafter in this Section provided, the Mortgagor will pay when and as the same fall due all taxes, rates, liens, charges, encumbrances or claims which are or may be or become charges or claims against the Lands or premises thereon or on this mortgage or on the Mortgagee in respect of this mortgage; provided that in respect of municipal taxes, school taxes, local improvements charges and all taxes and levies made or assessed in lieu of real property taxes (hereinafter together referred to as "**taxes**"), the Mortgagor covenants with the Mortgagee as follows.

- (a) The Mortgagee may deduct from time to time, from advances of moneys under the Credit Agreement, if applicable, amounts sufficient to pay the taxes which have become due and payable or will have become due and payable and are unpaid from time to time as advances are made;
- (b) The Mortgagor shall if requested by the Mortgagee, enroll in the taxing authority's tax installment payment plan and agrees to keep the payments thereunder current.
- (c) The Mortgagor shall in each year during the currency hereof at the request of the Mortgagee pay to the Mortgagee in equal monthly instalments on the first day of each month, such amounts as the Mortgagee may estimate as being the annual taxes next becoming due and payable, , and the Mortgagor shall also pay to the Mortgagee before the due date of the current annual taxes such additional sums as may be requisite to enable the Mortgagee to pay out of such monthly instalments and additional payments, the whole amount of the annual taxes on or before the due date thereof. In such event the Mortgagee shall use such funds to pay the taxes owing by the Mortgagor as the same fall due.
- (d) So long as the Mortgagor is not in default under any covenant or agreement contained in this mortgage or the Credit Agreement, the Mortgagee shall apply such payments on the taxes as they become due, but nothing herein contained shall obligate the Mortgagee to apply such payments on account of taxes more often than yearly, nor to pay the same in advance of the due date for payment of the same. Provided however, that if (before any sum or sums so paid to the Mortgagee shall have been so applied) there shall be default

by the Mortgagor in respect of any payment of principal, interest or other amount as herein provided or as provided for in the Credit Agreement, the Mortgagee may, at its option, apply such sum or sums in or towards payment of the principal, interest and/or other amount in default.

- (e) In default of the payment by the Mortgagor of moneys for taxes as aforesaid, then the Mortgagee may pay such taxes. The Mortgagee may also pay any liens, charges and encumbrances which may be charged against the Lands. All moneys expended by the Mortgagee for any of such purposes together with interest thereon at the Mortgage Rate shall be added to the principal moneys hereby secured, and repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge on the Lands.
- (f) If the Lands or any part thereof becomes subject to sale or forfeiture for nonpayment of taxes while any sum remains unpaid under this mortgage, the Mortgagee may acquire title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Mortgagee may pay, either in its own name or in the Mortgagor's name or on the Mortgagor's behalf, any and all sums necessary to be paid to redeem the Lands so sold or forfeited, and to re-vest the Lands in the Mortgagor, and the Mortgagor hereby nominates and appoints the Mortgagee agent of the Mortgagor to pay such moneys on the Mortgagor's behalf and in the Mortgagor's name, and any moneys so expended by the Mortgagee shall be repaid by the Mortgagor forthwith and until repaid shall be a charge on the Lands, or in the alternative the Mortgagee shall have the right to bid on and purchase the Lands at any tax sale of the same and shall thereupon become the absolute owner thereof.
- (g) The Mortgagor shall transmit to the Mortgagee all tax bills and other notices affecting the imposition of taxes forthwith after receipt of same by the Mortgagor, and the Mortgagor authorizes the Mortgagee to obtain any tax or assessment information concerning the Lands directly from the municipal taxing authority having jurisdiction over the Lands.
- (h) The Mortgagor shall provide the Mortgagee upon request confirmation of the status of the tax account and proof of payment of the current levy.

6. INFORMATION

With respect to the Lands, the Mortgagor hereby consents to the release by the taxing authority of all personal information including the name and address of the property owner and, if applicable, the amount of monthly payment if property taxes are paid through the tax instalment payment plan. This authorization is granted in accordance with the *Freedom of Information and Protection of Privacy Act* (Alberta).

7. INSURANCE

- (a) The Mortgagor will at the Mortgagor's expense, forthwith insure or cause to be insured, and during the continuance of this security keep insured in favour of the Mortgagee, each and every building on or which may hereafter be erected or placed on the Lands, and all plate glass, equipment and machinery of the Mortgagor therein, thereon or used in connection therewith, and the contents thereof to the extent that they are the property of the Mortgagor (in this Section 7 severally referred to as the "**Mortgaged Premises**") against such risks or perils as the Mortgagee may require or consider expedient, which may include without limitation, loss or damage by fire, wind-storm, hail, lightning, explosion, riot, earthquake, impact by aircraft or vehicles, smoke damage and, to the extent applicable, against loss or damage caused by the explosion of any steam boiler or other object generating or operated by steam, any closed circulation hot water heating system, any pressure vessel system and any air conditioning system, by the escape of water from any sprinkler system or other piping within or operated upon the Lands. All such insurance shall be with extended coverage and replacement cost endorsements and in such

amounts, all as the Mortgagee may reasonably require, to their full insurable value or sufficient to protect the Mortgagee and the Mortgagor from becoming co-insurers in respect of any loss, in each case with an insurance company or companies acceptable to the Mortgagee. The Mortgagor will not do or suffer anything whereby the said policy or policies may be vitiated, and will pay all premiums and sums of money necessary for such purposes as the same become due. The Mortgagor also covenants that it will during the continuance of this security as required by the Mortgagee maintain general public liability and property damage insurance against claims for personal injury, death or property damage occurring in or about the Mortgaged Premises, such insurance to afford protection in such amounts as the Mortgagee may from time to time reasonably require.

- (b) If any portion of the Lands is now, or at any time during the term hereof rented or leased by the Mortgagor to any tenant or tenants, the Mortgagor shall, at the option of the Mortgagee, keep the Lands insured in a form and wording satisfactory to the Mortgagee (acting reasonably), against loss of rental income in an amount as the Mortgagee may from time to time require.
- (c) The Mortgagor shall put in place and provide the Mortgagee with evidence of such other types of insurance as may be reasonably required from time to time by the Mortgagee or as required under the Credit Agreement for the loan and such insurance shall be in a form and wording satisfactory to the Mortgagee, acting reasonably.
- (d) All such contracts of insurance shall be carried with licensed insurers and shall, except for the general public liability and property damage insurance, show loss payable to the Mortgagee, as the Mortgagee's interest may appear, and shall have attached thereto and forming a part thereof a mortgage clause approved by the Mortgagee, acting reasonably. The Mortgagor will forthwith deliver to the Mortgagee the policy or policies or certificate or certificates of insurance and, prior to their due date when requested by the Mortgagee, evidence proving payment of the premiums and renewal premiums therefor.
- (e) The Mortgagor will forthwith on the happening of any loss or damage (notwithstanding any law, equity or statute to the contrary, and in particular, the *Insurance Act* (Alberta) and *The Fire Prevention (Metropolis) Act 1774* (14 Geo. 3 C.78), all rights and benefits of the Mortgagor thereunder being hereby expressly waived), at its expense furnish all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance moneys. If the Mortgagor shall neglect to keep any of the Lands or the Mortgaged Premises insured as aforesaid, or to deliver such policy or policies, certificate or certificates and evidence proving payment of premiums or renewal premiums when requested by the Mortgagee, or to produce to the Mortgagee at least ten (10) days before the termination of such insurance evidence of the renewal thereof, the Mortgagee shall, without reference to the Mortgagor, be entitled (but shall not be obliged) to insure the Lands, or any part thereof, and for such amount or amounts as the Mortgagee may from time to time deem expedient, and the amount of any premiums paid by the Mortgagee shall bear interest at the Mortgage Rate and until repaid, shall be added to the amount hereby secured and be a charge upon the Lands.
- (f) If any cheque issued by an insurer in complete or partial settlement of an insurance claim pursuant to the coverages above other than the coverage for general public liability insurance is given, sent or delivered to the Mortgagor or the solicitor or agent of the Mortgagor, then the Mortgagor shall cause such cheque to be delivered to the Mortgagee forthwith and if any such cheque is made payable to the Mortgagor alone or jointly to the Mortgagor and another or others, then the Mortgagor shall forthwith endorse and deliver such cheque over to the Mortgagee, and the Mortgagor does hereby constitute the Mortgagee as the Mortgagor's true and lawful attorney to receive and endorse any such cheque for and on behalf of the Mortgagor.

- (g) All moneys received by virtue of such policy or policies of insurance may at the option of the Mortgagee either be applied forthwith in or towards substantially rebuilding, reinstating or repairing the improvements on the Lands or in or towards the payment of principal and interest or other moneys secured by this mortgage (whether or not the same are then due) in such manner as the Mortgagee shall from time to time determine, or may be paid in full or in part to the Mortgagor or its successors-in-title or its assigns, or may be applied or paid partly in one way and partly in another, as the Mortgagee may determine.

8. PAYMENT METHOD

The Mortgagor shall from time to time if requested by the Mortgagee, provide a signed pre-authorized withdrawal form or forms directed to the bank or financial institution at which the Mortgagor regularly keeps a chequing account, in such form and manner so as to enable the Mortgagee to receive payments of the instalments of principal and interest and/or the Mortgagee's estimate of the monthly instalment for property taxes due hereunder, from the Mortgagor's account with such bank or financial institution. In the alternative, the Mortgagee may at its exclusive option and from time to time, require the Mortgagor to (and if so required the Mortgagor shall) provide the Mortgagee with a series of twelve post-dated cheques to cover such monthly payments for any consecutive twelve month period during the term hereof. Any payments received by the Mortgagee which are payable on a non-judicial day on or after receipt thereof, shall be credited to the mortgage account on the next judicial day thereafter.

9. CONSTRUCTION

In the event that this mortgage is a building or construction mortgage, the Mortgagor agrees that:

- (a) the building or buildings being erected or to be erected on the Lands form part of the security for the full amount of the moneys secured by this mortgage;
- (b) all advances under the Credit Agreement, as applicable, are to be made from time to time in the future in accordance with the progress of construction of such building or buildings or upon its or their completion and occupation;
- (c) it will construct the building, buildings, and other improvements on the Lands in accordance with plans and specifications which have been or which may hereafter be approved by the Mortgagee, in accordance with the Mortgagee's construction standards, and will carry on diligently to completion the construction of the said building, buildings, and other improvements, and will complete such construction in compliance with the requirements of all municipal and other governmental authorities, laws, by-laws or regulations and will, when so required by the Mortgagee, supply the Mortgagee with evidence or confirmation from any such municipal or governmental authority of such compliance;
- (d) in the event that any such building, buildings and other improvements now or hereafter in the course of construction remain unfinished and without any work being done for a period of thirty (30) consecutive days, the Mortgagee may enter the Lands and do all work necessary to protect the same from deterioration and to complete the construction in such manner as the Mortgagee may see fit, and any moneys expended by the Mortgagee pursuant to this Section 9(d) shall be a charge on the Lands and bear interest at the Mortgage Rate and shall be deemed to constitute part of the mortgage moneys;
- (e) the Mortgagee shall be entitled, at the expense of the Mortgagor, to inspect all aspects of the construction and make tests of materials, and the Mortgagor will not cover any portion of the construction work requiring inspection by the Mortgagee until the Mortgagee has inspected the same, and the Mortgagor shall forthwith remedy and carry out again any work which does not conform to the Mortgagee's reasonable requirements;

- (f) the Mortgagee shall not be obliged to hold back loan proceeds under the Credit Agreement to provide the lien fund or other protection to the Mortgagor under the *Prompt Payment and Construction Lien Act* (Alberta); provided that if the Mortgagee holds back loan proceeds under the Credit Agreement in a manner similar to the way the said Act provides for an owner to make holdbacks then, notwithstanding such holdbacks by the Mortgagee, such holdbacks shall not constitute the lien fund under the said Act and the Mortgagee shall not be a mortgagee authorized by the owner to disburse money secured by a mortgage as referred to in the said Act.

10. CONDOMINIUM

In the event the Lands, or any portion thereof, are or become a condominium within the *Condominium Property Act* (Alberta), the Mortgagor further covenants with the Mortgagee as follows.

- (a) The Mortgagor will comply with, observe and perform all provisions of the *Condominium Property Act* (Alberta), its regulations and the by-laws, rules and regulations of the condominium corporation from time to time in force, and will ensure that the condominium corporation complies with the insurance provisions in the said Act.
- (b) The Mortgagor shall pay on or before the due dates thereof, each and every assessment, contribution, charge, fine or levy made by or on behalf of the condominium corporation in respect of the unit(s) charged hereunder (hereinafter collectively called "**Assessments**"). If the Mortgagor fails to pay the Assessments, on or before their due date, such failure shall constitute default hereunder and shall entitle the Mortgagee to exercise any and all remedies available to the Mortgagee in the event of default hereunder or under the Credit Agreement. Upon default under this paragraph and notwithstanding any other right or action of the condominium corporation or the Mortgagee, the Mortgagee may pay the Assessments, and any Assessments so paid, together with all costs, charges, expenses and outlays of the Mortgagee thereby incurred shall be added to the monies payable hereunder, and shall bear interest at the rate aforesaid from the date expended until paid and such amounts and interest shall be payable on demand to the Mortgagee and shall be a charge on the Lands.
- (c) The Mortgagor hereby irrevocably authorizes the Mortgagee to apply at any time and from time to time to the condominium corporation for certification of the amount and manner in which any assessment is payable and the extent to which such Assessment has been paid.
- (d) The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the Mortgagor's rights which now exist or may hereafter come into existence to vote at meetings of the condominium corporation, provided that, if the Mortgagee is not present in person or by proxy, or if present does not wish to vote, then the Mortgagor may exercise his voting right without further authority.
- (e) If for any reason whatsoever the Mortgagor has the right to vote at any meeting of the condominium corporation it shall, if directed by the Mortgagee, vote in such manner as the Mortgagee directs with respect to each and every matter to be voted on and the Mortgagor covenants to execute any documents requested by the Mortgagee, including, proxies if required, in order to give effect to the foregoing assignment of voting rights.
- (f) If requested by the Mortgagee, at least five (5) days prior to each and every general meeting of the condominium corporation, the Mortgagor shall deliver to the Mortgagee written notice of each such meeting specifying the place, date, hour and purpose of the meeting and in addition, immediately upon receipt of the same shall deliver to the Mortgagee true copies of the by-laws, rules and regulations of the condominium corporation from time to time in force, all notices, minutes, resolutions, accounts, financial statements and other documents relating to the financial statements and to the affairs of

the condominium corporation as the Mortgagor may from time to time receive notwithstanding the foregoing the Mortgagor shall ensure that the Mortgagee has notice of any meeting which will consider the termination of the condominium corporation or an amendment to the by-laws.

- (g) The Mortgagor does hereby irrevocably assign unto the Mortgagee any lease or rights to occupy any parking space or spaces demised to or reserved or designated for exclusive use by the Mortgagor and any lease or rights to exclusive use of any common property or special privileges in respect thereof granted to the Mortgagor.
- (h) Upon default herein or the occurrence of an Event of Default under Credit Agreement which is continuing and notwithstanding any other right or action of the condominium corporation or the Mortgagee, the Mortgagee may distraint for arrears of any Assessment, paid by it and such distraint shall not result in the Mortgagee being a mortgagee in possession.
- (i) In the event this mortgage is a blanket mortgage against more than one of the condominium units, it may not be discharged in part or in whole during the term of the mortgage. In particular the Mortgagor or its successors may not obtain a discharge of this mortgage against any particular unit by payment of a pro-rata share of the mortgage or by any other means whatsoever. The Mortgagor agrees not to sell or transfer condominium units while the blanket mortgage is registered and any such transaction shall be deemed a breach of covenant unless and until the Mortgagee has consented thereto. This prohibition does not apply if there is a specific partial prepayment clause contained elsewhere herein.

11. RESTRICTION ON TRANSFER

The Mortgagor shall not convey, transfer, mortgage, alienate, or otherwise encumber the Lands or any portion thereof nor allow the Lands or any portion thereof to be encumbered except as expressly permitted under the terms of the Credit Agreement, until all Obligations have been repaid and satisfied and the Credit Agreement has been cancelled; and any such dealing with the Lands shall be deemed a breach of covenant unless and until the Mortgagee has expressly consented thereto.

12. ADVANCES

Neither the execution nor the registration nor the acceptance of this mortgage, nor the advance or creation of any part of the Obligations shall bind the Mortgagee to advance or create any further Obligations.

13. SUBROGATION

In the event that the Obligations or any part thereof, are applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights and stand in the position of and be entitled to all the equities of the party so paid off whether such charge or encumbrance has or has not been discharged; and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under the Credit Agreement or of any claim so paid off, shall be final and binding on the Mortgagor.

14. WASTE AND CROPS

All erections and improvements fixed or otherwise now on or hereafter put upon the Lands, including but without limiting the generality of the foregoing, all fences, heating, plumbing, air conditioning, ventilation, lighting and water heating equipment, built-in cooking and refrigeration equipment, window blinds, storm windows and storm doors, window screens and screen doors, and all apparatus and equipment appurtenant thereto, and if part of the Lands consists of an apartment building all stoves, refrigerators, clothes washers and dryers, garburators and dishwashers, located in the apartment building and owned by the Mortgagor, are and shall, in addition to all other fixtures thereon, be and become and shall be deemed to be fixtures and form part of the realty and of the security and are included in the expression the Lands; and that the

Mortgagor will not commit or permit any act of waste thereon; and that the Mortgagor will at all times during the continuance of this security, repair, maintain, restore, amend, keep, make good, finish, add to and put in order the same; and in the event of any loss or damage thereto or destruction thereof, the Mortgagee may give notice to the Mortgagor to repair, rebuild, replace or reinstate the same within a time to be determined by the Mortgagee and to be stated in such notice; and upon the Mortgagor's failure to repair, rebuild, replace or reinstate within such time, such failure shall constitute a breach of covenant hereunder and an Event of Default under the Credit Agreement and thereupon the Obligations shall, at the option of the Mortgagee, become immediately due and payable without any demand by the Mortgagee upon the Mortgagor in accordance with the terms of the Credit Agreement. All crops growing on the Lands shall be deemed to form part of the realty and of the security and are included in the expression of Lands.

15. ALTERATIONS

The Mortgagor shall not make or permit to be made, any additions or alterations to the Lands without the written consent of the Mortgagee; and the Mortgagor shall not use the Lands nor permit the Lands to be used, without the written consent of the Mortgagee, for a purpose other than that disclosed to the Mortgagee in the application for this mortgage.

16. INSPECTIONS

The Mortgagee or agent of the Mortgagee may, at any time, enter upon the Lands to inspect the Lands.

17. CROSS-DEFAULT

In the event the Mortgagee requires other agreements, documents, mortgages, chattel mortgages, security agreements, assignments of rentals, assignments of leases or any other securities (herein referred to collectively as "**Such Other Securities**") in connection with the Credit Agreement or as a condition precedent to the advance of the loan proceeds or any portion thereof pursuant to the Credit Agreement, then the Mortgagor shall provide the Mortgagee such of Such Other Securities as may be required by the Mortgagee in form and content satisfactory to the Mortgagee. Default under this mortgage shall constitute default under any of Such Other Securities as may have been granted to the Mortgagee, and default under any of Such Other Securities granted to the Mortgagee shall constitute default hereunder, and the Mortgagee may, upon default under any thereof pursue its remedies separately under each of Such Other Securities and this mortgage, or jointly all together, or jointly one with any other or others of Such Other Securities and this mortgage, without any of the rights and remedies of the Mortgagee not so pursued merging therewith or with any action or judgment with respect thereto.

18. SUBSTITUTE MORTGAGE

In the event that this mortgage is granted by the Mortgagor in replacement of or in substitution for another mortgage granted by the Mortgagor to the Mortgagee (the "**earlier mortgage**") with respect to the Lands, then the Mortgagee shall be entitled (notwithstanding that the mortgage account numbers for the earlier mortgage and this mortgage are the same and notwithstanding that the Mortgagee does nothing more than note on its file that this mortgage is in replacement of or substitution for the earlier mortgage) to advance under this mortgage or under the Credit Agreement, by way of internal transfer of mortgage accounts, the amount owing under the earlier mortgage, and upon such internal transfer of mortgage accounts it shall be deemed that the amount thereby transferred as aforesaid, is advanced hereunder.

19. RELEASE OF SECURITY

The Mortgagee may at any time release any part or parts of the Lands or any other security or any surety for payment and satisfaction of all or any part of the Obligations herein secured, or may release the Mortgagor or any other person from any covenant or other liability to pay and satisfy the Obligations or any part thereof, either with or without any consideration therefor, without being accountable for the value of any such consideration or for any moneys except those actually received by the Mortgagee, and without

thereby releasing any other part of the Lands or any other securities or covenants, it being specifically agreed that notwithstanding any such release, the Lands, securities and covenants remaining unreleased shall stand charged with the whole of the moneys hereby secured, and no person shall have the right to require the mortgage moneys to be apportioned.

20. **WAIVER**

No extension of time, waiver, or other indulgence given by the Mortgagee to the Mortgagor, or anyone claiming under the Mortgagor, shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor, any other guarantor, or any other person liable for payment of the moneys hereby secured.

21. **USE OF MONEY**

The Mortgagee shall not be charged with any moneys receivable or collectible out of the Lands or otherwise, except those actually received; and all revenue of the Lands received or collected by the Mortgagee from any source other than payment by the Mortgagor may, at the option of the Mortgagee, be used in maintaining or insuring or improving the Lands, or in payment of taxes or other charges against the Lands, or applied on the mortgage account, and the Mortgagee may (at its option) retain such moneys received or collected, in suspense account and shall not be under any liability to pay interest on any sums in suspense account; and the Mortgagee shall not, by reason of the collection of any moneys receivable or collectible out of the Lands, be deemed to be a mortgagee in possession.

22. **LIABILITY OF MORTGAGOR**

Notwithstanding any sale or other dealings by the Mortgagor with the Lands, or any part thereof, the Mortgagor together with any other party who is or becomes liable under this mortgage, shall continue to be liable under this mortgage until all Obligations have been repaid and satisfied in full and the Credit Agreement has been cancelled notwithstanding the assumption of the mortgage by any party, with or without the consent of the Mortgagee or the Mortgagor, and notwithstanding any amendment, modification, renewal or extension of this mortgage (including, without restriction, any increase or decrease in the interest rate, amortization period, monthly payments or term of this mortgage) which takes place after such sale or an assumption has occurred with or without the consent of the Mortgagor or any other party.

23. **ATTORNMENT**

For better securing the Obligations, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Lands at a monthly rental determined by the Mortgagee, the same to be paid on the first day of each month; and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada), as amended, or shall take the benefit of any statute relating to bankruptcy or insolvent debtors, then such rental shall, if not already payable, be payable immediately thereafter. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor, but neither this Section 23 nor anything done by virtue hereof, shall render the Mortgagee a mortgagee in possession or accountable for any moneys except those actually received. The Mortgagee may at any time after default hereunder or upon the occurrence of an Event of Default under the Credit Agreement which is continuing enter upon the Lands, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit.

24. **RECORDS**

If the Mortgagor derives income from the Lands, the Mortgagor will maintain full and correct books and records showing in detail the earnings and expenses of the Lands, and will permit the Mortgagee and its representatives to examine the said books and records, all in accordance with the Credit Agreement.

25. **ASSIGNMENT OF LEASES AND RENTS**

If the Lands or any portion thereof now or at any time hereafter produce rental revenue or are intended to produce rental revenue, then the Mortgagor hereby assigns, transfers and sets over unto the Mortgagee all leases already in existence, and those to be created in the future, including any guarantees in respect thereof, and all rents due or accruing due or at any time hereafter to become due under all leases or tenancies, present and future, now existing or at any time hereafter made in respect of the Lands or any part thereof, to have and to hold unto the Mortgagee until all moneys owing and all obligations of the Mortgagor in respect of this mortgage have been fully paid and fulfilled, subject to the following terms and conditions:

- (a) whenever the Mortgagor is in default under any of the provisions of this mortgage or upon an Event of Default under the Credit Agreement which is continuing, the Mortgagee shall be entitled to give notice to the tenants of the Lands or any portion thereof to pay the rent to the Mortgagee and the Mortgagee may collect the rents and revenues thereof, and distrain in the name of the Mortgagor for the same;
- (b) the Mortgagee may give good and sufficient receipts and discharges for rents received;
- (c) the Mortgagee may apply the rentals collected by it towards arrears and maturing payments of interest and principal under this mortgage, then towards the payment of taxes, insurance, heating, repairs, renovations and upkeep and other expenses or carrying charges connected with the Lands;
- (d) where any discretionary powers hereunder are vested in the Mortgagee or its agents, the same may be exercised by any officer, investment manager or manager of the Mortgagee, or its appointed agents, as the case may be;
- (e) the Mortgagee shall under no circumstances become a mortgagee in possession, or liable to account to the Mortgagor or credit the Mortgagor with any moneys on account of the mortgage except those which shall come into its hands, and subject to all deductions and payments made out of the rentals received from the Lands as herein provided;
- (f) the Mortgagee may exercise the rights conferred upon it under this Section 25 without the formal appointment of a receiver under other provisions of this mortgage and without the necessity of first commencing legal proceedings with respect to the Mortgagor's default giving rise to the Mortgagee's right to give notice to tenants under this Section 25;
- (g) whenever any and all defaults under this mortgage or an Event of Default under the Credit Agreement have been cured after the exercise by the Mortgagee of its rights under this Section 25, the Mortgagor may resume collection of the rentals until further default or Event of Default, as the case may be, has occurred, whereupon the Mortgagee may re-exercise its rights hereunder or under the Credit Agreement, and thereafter at any time such default or Event of Default occurs;
- (h) the Mortgagor shall not at any time during the existence of this mortgage assign, pledge or hypothecate any lease, leases, or tenancies, now or hereafter existing in respect of the Lands or the rents or revenues due or to become due thereunder, or any part thereof, other than to the Mortgagee; nor shall the Mortgagor grant any general assignment of book debts which would cover such rentals;
- (i) the Mortgagor shall not hereafter collect more than two months rental in advance;
- (j) neither the taking of this assignment nor anything done in pursuance hereof shall make the Mortgagee liable in any way, as landlord or otherwise, for the performance of any covenants, obligations and liabilities under the said leases or tenancies or any of them;

- (k) the exercise of this Section 25 or of any collateral security with respect to rentals shall not entitle the Mortgagor to redeem this mortgage.

26. RECEIVER

It is declared and agreed that at any time and from time to time when there shall be default under the provisions of this mortgage or the occurrence of an Event of Default under the Credit Agreement which is continuing, the Mortgagee may at such time and from time to time and with or without entry into possession of the Lands or any part thereof, appoint a receiver or a manager or a receiver and manager of the Lands or any part thereof and of the rents and profits thereof and with or without security, and may from time to time remove any receiver and appoint another in his stead and that, in making any such appointment or removal, the Mortgagee shall be deemed to be acting as the agent or attorney for the Mortgagor. Such appointment may be made at any time either before or after the Mortgagee shall have entered into or taken possession of the Lands or any part thereof. Upon the appointment of any such receiver or receivers from time to time, the following provisions shall apply:

- (a) the statutory declaration of an officer of the Mortgagee as to default under the provisions of this mortgage or the occurrence of an Event of Default under the Credit Agreement, shall be conclusive evidence thereof;
- (b) every such receiver shall be the irrevocable agent or attorney of the Mortgagor for the collection of all rents falling due in respect of the Lands or any part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (c) every such receiver may, in the discretion of the Mortgagee and by writing under its corporate seal, be vested with all or any of the powers and discretions of the Mortgagee;
- (d) the Mortgagee may from time to time, by such writing fix the remuneration of every such receiver who shall be entitled to deduct the same out of the rents from the Lands or from the proceeds of the judicial sale of the Lands;
- (e) every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Mortgagor and in no event the agent or attorney of the Mortgagee, and the Mortgagee shall not in any way be responsible for any acts or omissions (including negligence, misconduct or misfeasance) on the part of any such receiver;
- (f) the appointment of every such receiver by the Mortgagee shall not incur or create any liability on the part of the Mortgagee to the receiver in any respect, and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Mortgagee a mortgagee in possession in respect of the Lands or any part thereof;
- (g) every such receiver shall from time to time have the power to rent any portion of the Lands which may become vacant, for such term and subject to such provisions as he may deem advisable or expedient, and in so doing every such receiver shall act as the attorney or agent of the Mortgagor and he shall have authority to execute under seal any lease of such portion of the Lands in the name of and on behalf of the Mortgagor, and the Mortgagor undertakes to ratify and confirm whatever any such receiver may do in respect of the Lands;
- (h) every such receiver shall have full power to complete any unfinished construction upon the Lands with the intent that the Lands and the buildings thereon when so completed shall be a complete structure as represented by the Mortgagor to the Mortgagee for the purpose of obtaining the loan pursuant to the Credit Agreement;

- (i) every such receiver shall have full power to manage, operate, amend, repair, alter or extend the Lands or any part thereof in the name of the Mortgagor for the purpose of securing the payment of rental from the Lands or any part thereof;
- (j) no such receiver shall be liable to the Mortgagor to account for moneys or damages other than cash received by him in respect of the Lands or any part thereof, and out of such cash so received every such receiver shall, subject to the approval of the Mortgagee, in the following order, pay:
 - (i) its remuneration aforesaid;
 - (ii) all payments including, without limitation, costs as between solicitor and its own client made or incurred by it in connection with the management, operation, amendment, repair, alteration or extension of the Lands or any part thereof;
 - (iii) interest, principal and other moneys which may from time to time, be or become charged upon the Lands in priority to these presents, and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Lands or any part thereof;
 - (iv) to the Mortgagee, all interest due or falling due under these presents and the balance to be applied upon Obligations due and payable and secured by these presents;
 - (v) into a reserve account in the name of the receiver, an appropriate sum of money as a reserve fund for unusual, emergency or lump sum payments or expenses with respect to the Lands; and
 - (vi) any surplus thereafter remaining in the hands of every such receiver after payments made as aforesaid, to the Mortgagor;
- (k) save as to claims for an accounting under Section 26(j), the Mortgagor hereby releases and discharges the Mortgagee and every such receiver from every claim of every nature which may arise or accrue to the Mortgagor or any person claiming through or under the Mortgagor by reason or as a result of anything done by the Mortgagee or any such receiver under the provisions of this Section 26, unless such claim be the direct and proximate result of dishonesty or gross neglect;
- (l) the power of sale, foreclosure and any other remedies of the Mortgagee may be exercised either before, concurrent with, during, or after the appointment of any receiver hereunder.

27. **INSOLVENCY**

If the Mortgagor shall commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada), become bankrupt or insolvent or shall be subject to the provisions of the *Bankruptcy and Insolvency Act* (Canada), or any other Act for the benefit of creditors or relating to bankrupt or insolvent debtors, or make a general assignment for the benefit of its creditors or otherwise acknowledge its insolvency, the same shall constitute a breach of covenant and default herein.

28. **RIGHTS OF MORTGAGEE**

The Mortgagor further covenants and agrees with the Mortgagee that in the event of default being made in any of the covenants, agreements, provisos or stipulations expressed or implied herein or upon the occurrence of an Event of Default under the Credit Agreement which is continuing:

- (a) the Mortgagee may, at the expense of the Mortgagor and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenants, agreements, provisos or stipulations;
- (b) the Mortgagee may at such time or times as the Mortgagee may deem necessary and without the concurrency of any person, enter upon the Lands and may make such arrangements for completing the construction, repairing or putting in order of any buildings or other improvements on the Lands, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the Lands as the Mortgagee may deem expedient; all reasonable costs, charges and expenses, including allowances for the time and services of any employee of the Mortgagee or other person appointed for the above purposes, shall be forthwith payable to the Mortgagee and shall be a charge upon the Lands and shall bear interest at the Mortgage Rate until paid;
- (c) the Mortgagee may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Lands, and a solicitor to examine and report upon the title to the same;
- (d) the Mortgagee or agent of the Mortgagee may enter into possession of the Lands or any part thereof, and whether in or out of possession collect the rents and profits thereof, and make any demise or lease of the Lands, or any part thereof, for such terms and periods and at such rents as the Mortgagee shall think proper; and the power of sale hereunder may be exercised either before or after and subject to any such demise or lease;
- (e) it shall and may be lawful for and the Mortgagor does hereby grant full power, right and license to the Mortgagee to enter, seize and distrain upon the Lands, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Lands or any part thereof, as much of the mortgage moneys as shall from time to time be or remain in arrears and unpaid, together with costs, charges and expenses attending such levy or distress, as in like cases of distress for rent;
- (f) the Mortgagee shall be entitled forthwith to take such proceedings to obtain repayment of the moneys and interest payable to the Mortgagee hereunder and to realize on its security under this mortgage by foreclosing the same or by whatever other action it may by law be entitled to do;
- (g) the Mortgagee shall be entitled, without notice (except such as may be required by law and which notice may run concurrent with the notice period required pursuant to the *Land Titles Act* (Alberta) in respect of notice of intention to file a certificate in respect of the power of attorney) to sell and dispose of the Lands (by public auction and/or private contract) with or without entering into possession of the same; and all remedies competent may be resorted to; and all the rights, powers and privileges granted to or conferred upon the Mortgagee under and by virtue of any statute or by this mortgage may be exercised; and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Lands hereunder, and the Mortgagee may sell, transfer and convey any part of the Lands on such terms of credit, or part cash and part credit, secured by contract or agreement for sale or mortgage, or otherwise, as shall in the opinion of the Mortgagee be most advantageous, and for such price as can reasonably be obtained therefor; and in the event of a sale on credit, or part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable for or charged with any moneys until the same shall be actually received in cash; and the sales may be made from time to time of any portion or portions of the Lands to satisfy interest or parts of the principal overdue, leaving the principal or parts thereof to run with interest payable as aforesaid; and the Mortgagee may make stipulations as to the title or evidences or commencement of title or otherwise as the Mortgagee shall deem proper; and the Mortgagee may buy in or rescind

or vary any contract for sale of the Lands and any resale thereof; and on any sale or release, the Mortgagee shall not be answerable for loss occasioned thereby; and for any of such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee shall deem advisable or necessary; and in case any sale held by the Mortgagee under and by virtue of the laws of the Province of Alberta under the power of sale herein contained should prove abortive the Mortgagee may take foreclosure proceedings in respect of the Lands in accordance with the provisions of the laws of the Province of Alberta in that behalf; and in the event of any deficiency on account of the moneys secured by this mortgage remaining due to the Mortgagee after realizing all the Lands, then Mortgagor will pay to the Mortgagee on demand the amount of such deficiency with interest at the Mortgage Rate both before and after judgment; and the proceeds of any sale hereunder shall be applied as above provided for or in payment of moneys payable under this mortgage and costs on a solicitor and his own client basis, the balance, if any, to be paid to the Mortgagor; (any notice required to be given may be delivered to either the Lands, the Mortgagor's residence or place of business, or the last known address of the Mortgagor);

- (h) the whole of the Obligations shall, at the option of the Mortgagee, become due and payable;
- (i) the Mortgagee may, except as specifically provided, exercise each of the foregoing powers without notice to the Mortgagor.

29. **ATTORNEY**

As further assurance to the rights and remedies granted by the Mortgagor to the Mortgagee herein, the Mortgagor, as the registered owner of the Lands hereby irrevocably appoints the Mortgagee on its own behalf or any receiver or manager or receiver and manager appointed by the Mortgagee attorney on behalf of the Mortgagor to sell, lease, mortgage, transfer, or convey the Lands or any part thereof in accordance with the provisions of this mortgage and to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due or owing to the Mortgagor in respect of the Lands, and for the enforcement of all contracts, covenants or conditions binding on any lessee or occupier of the Lands or on any other person in respect of it, and for the taking and maintaining possession of the Lands, and for protecting it from waste, damage, or trespass.

30. **JUDGMENT**

The taking of a judgment on any of the covenants or agreements herein contained shall not operate as a merger thereof or affect the Mortgagee's rights to interest at the Mortgage Rate and at the times herein provided. Further, any and all such judgments shall provide for interest thereon to be computed at the Mortgage Rate and in the same manner as herein provided until the judgment shall have been fully paid and satisfied and, without limiting the generality of the foregoing, the Mortgagee shall be entitled to receive interest at the Mortgage Rate on all moneys payable to the Mortgagee under this mortgage, after any judgment has been rendered with respect to this mortgage until such judgment is fully satisfied.

31. **EXPENSES**

All reasonable expenses, fees, charges or payments incurred, expended or paid by the Mortgagee (whether with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise) with respect to the following matters, that is to say:

- (a) all solicitors', inspectors', valuers' and surveyors' fees and expenses for drawing and registering this mortgage and for examining the Lands and the title thereto, and for making or maintaining this mortgage and any collateral security hereto a charge subject only to the prior encumbrances acceptable to the Mortgagee;

- (b) all sums which the Mortgagee may advance for insurance premiums, property taxes, or rates;
- (c) any unpaid amount due to the Mortgagee for application fees or renewal fees;
- (d) all sums which the Mortgagee may expend in payment of prior liens, charges, encumbrances or claims charged or to be charged against the Lands or on this mortgage or against the Mortgagee in respect of this mortgage;
- (e) all sums which the Mortgagee may expend in maintaining, repairing, restoring or completing the construction on the Lands;
- (f) the cost of inspecting, leasing, managing or improving the Lands, including the price or value of any goods of any sort or description supplied for use on the Lands;
- (g) all sums paid to a receiver of the Lands;
- (h) the cost of exercising or enforcing or attempting to exercise or enforce any right, power, remedy or purpose hereunder provided or implied, and including an allowance for the time, work and expenses of the Mortgagee or any agent or employee of the Mortgagee, for any purpose provided for herein; and
- (i) the Mortgagee's solicitors' costs as between solicitor and his own client incurred or paid by the Mortgagee as a result of any default hereunder or under any other security for the loan pursuant to the Credit Agreement, or of endeavouring to collect with or without suit any money payable hereunder, or of taking, recovering or keeping possession of the Lands, and generally in any other proceedings, matter or thing taken or done to protect or realize this security or any other security for the loan pursuant to the Credit Agreement;

together with interest thereon at the Mortgage Rate, are deemed secured hereby and shall be or constitute a charge or charges against the Lands, and all such moneys shall be repayable to the Mortgagee on demand, or if not demanded, then with the next ensuing instalment except as herein otherwise provided, and all such sums together with interest thereon and all other moneys payable by the Mortgagor under this mortgage shall be deemed to constitute part of the mortgage moneys and are included in the principal secured hereby.

32. EXPROPRIATION

The Mortgagor hereby assigns to the Mortgagee, any proceeds which may become due and payable to the Mortgagor by an expropriating authority upon an expropriation of the Lands or the proceeds of any condemnation, eminent domain or like proceeding or the sale in lieu of or in reasonable anticipation thereof of the whole or any part of the Lands. The Mortgagor is aware of the provisions of sections 49 and 52 of the *Expropriation Act* (Alberta), and any amendments thereto, and hereby waives the benefit of such provisions or any legislation similar thereto or in replacement thereof and hereby agrees to pay to the Mortgagee the difference, if any, between all monies secured by the mortgage at the date of the expropriation and the compensation paid to the Mortgagee by the expropriating authority plus interest at the rate provided for herein on such difference. The Mortgagor shall forward to the Mortgagee, copies of any documentation relating to an expropriation or a proposed expropriation of the Lands or any portion thereof, forthwith upon receipt of the said documentation by it and shall execute and deliver any further or additional documentation which the Mortgagee in its sole discretion deems necessary to effect the above assignment or which is requested by the expropriating authority. For the purposes of this Section 32, the "**date of the expropriation**" shall mean the date that the Mortgagor ceases to be the registered owner of Lands, or any portion thereof, and the "**expropriating authority**" shall mean the Crown or any individual or entity empowered to acquire lands by expropriation. Notwithstanding anything to the contrary contained herein, if the Mortgagor or the Mortgagee receives a notice of intention to expropriate in relation to the

Lands, or any portion thereof, at the option of the Mortgagee, the whole of the outstanding balance secured under this mortgage in proportion to the value the expropriated land bears to the Lands at the date of the expropriation, shall immediately become due and payable in like manner and to all intents and purposes as if the time for payment of the said balance had fully come and expired. If any or all of the Lands is expropriated, it is agreed that the proceeds from any such expropriation shall be paid directly to the Mortgagee in priority to the claims of any other party. Service of a copy of this mortgage on the expropriating authority shall be sufficient authority for the expropriating authority to deliver proceeds to the Mortgagee, in accordance with the terms of the assignment contained herein.

33. **PRIOR MORTGAGES**

The Mortgagor hereby covenants to perform and observe and satisfy all the terms, covenants and conditions to be performed and observed by the Mortgagor under the terms of any prior mortgages, agreements for sale or other charges (hereinafter called a "**prior mortgage**") registered against the title to the Lands or any part thereof. It is expressly agreed and understood by the Mortgagor that in the event of default by the Mortgagor under any of the terms of any prior mortgage, then at the option of the Mortgagee the Mortgagor shall be deemed to be in default of the terms of this mortgage. The Mortgagee may at its option make any payment or cure any default under a prior mortgage and any amount or amounts so paid together with all costs, charges, expenses and outlays of the Mortgagee thereby incurred shall be added to the Obligations, shall bear interest at the rate aforesaid from the date expended until paid, shall be payable with interest as aforesaid forthwith by the Mortgagor to the Mortgagee without demand and shall be a charge on the Lands and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have in the event of default in payment of other moneys payable hereunder.

34. **SEVERABILITY**

In the event any Section or part of a Section herein is invalid or unenforceable for any reason, then such Section or part of a Section shall be severable from this mortgage and not affect the validity or enforceability of any other part of this mortgage.

35. **MORTGAGE DISCHARGE**

Any discharge of this Mortgage shall be prepared by the solicitors for the Mortgagee, and the Mortgagee shall have a reasonable time after receipt of payment in full within which to have prepared and to execute such discharge; and tender of the mortgage monies, shall not entitle the Mortgagor to receive such discharge forthwith and interest as aforesaid shall continue to run and accrue from day to day until actual payment and satisfaction of the Obligations in full has been received and confirmed by the Mortgagee. All legal and other expenses for the preparation and execution of the said discharge shall be borne by the Mortgagor if allowable by law.

36. **LAW**

This mortgage is made pursuant to the *Land Titles Act* (Alberta) and any amendments thereto and shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

37. **CHARGE**

For the better securing to the Mortgagee the repayment in the manner aforesaid of the principal sum and interest and other moneys hereby secured and all other Obligations the Mortgagor does hereby mortgage and charge to the Mortgagee for the benefit of the Agent and the Lenders, all of the Mortgagor's estate and interest in the Lands.

38. **INTEREST**

It is the intent of the parties hereto that the interest rate not exceed the maximum interest rate permitted under the laws of Canada and of the Province of Alberta and if the interest rate to the Mortgagee would, but for this provision, exceed the aforesaid maximum interest rate, the interest rate to the Mortgagee shall be limited to the maximum interest rate permitted under the laws of Canada and the Province of Alberta and this mortgage shall automatically be modified without the necessity of any further act or deed to give effect to the restriction on return set forth above.

39. CREDIT AGREEMENT

The Mortgagor agrees that the accepted terms and conditions of the Credit Agreement shall survive funding of the loans pursuant to the Credit Agreement and continue to be in full force and effect after said funding. The Mortgagor agrees to observe and perform its covenants and obligations under the Credit Agreement to the same extent and effect as if such covenants and obligations were set forth herein in full. The provisions of the Credit Agreement are not superseded by nor merged in this mortgage, and the provisions of the Credit Agreement to the extent that they are not inconsistent with the terms of this mortgage are incorporated herein by reference, as applicable, and shall remain in full force and effect until all of the covenants and obligations therein on the part of the Mortgagor to be observed and performed, have been fully satisfied. Default by the Mortgagor of any of the terms or requirements contained in the Credit Agreement shall constitute a default hereunder. In the event there is a conflict between the terms and conditions of this mortgage and the Credit Agreement, then the Credit Agreement shall take precedence. There will be no conflict if the terms and conditions of the Credit Agreement should enlarge or clarify the terms and conditions of this mortgage.

40. HAZARDOUS SUBSTANCES

- (a) The Mortgagor represents, covenants and warrants to and in favour of the Mortgagee that:
 - (i) neither the Mortgagor, nor, to the best knowledge of the Mortgagor, any other person has ever caused or permitted any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands, save and except as disclosed to the Mortgagee in writing;
 - (ii) it shall not allow any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands without the specific and unequivocal prior written consent of the Mortgagee which consent may be arbitrarily or unreasonably withheld;
 - (iii) it shall not allow the Lands to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the disposal and emission of Hazardous Substances;
 - (iv) to the extent that Hazardous Substances are, with the Mortgagee's consent as aforesaid, placed, held, located or disposed of on, under or at the Lands in accordance with the terms hereof, the Mortgagor shall:
 - (A) comply with, or cause to be complied with, all applicable laws and regulations relating to the use, storage and disposal of the Hazardous Substances; and
 - (B) at the request of the Mortgagee, provide evidence to the Mortgagee of compliance with all applicable laws and regulations, such evidence to include inspection reports and such tests as the Mortgagee may reasonably require, all at the expense of the Mortgagor; and

- (v) without restricting the generality of the foregoing, in the event that gasoline or other storage tanks are located under or on the Lands, the Mortgagor shall:
 - (A) maintain and repair such storage tanks in a manner such that they do not leak or interfere with the environment; and
 - (B) at the request of the Mortgagee, assign any warranties or guarantees received from the manufacturer or installer of such storage tanks in favour of the Mortgagee as additional security.
- (b) For the purpose hereof "**Hazardous Substances**" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
 - (i) radioactive materials;
 - (ii) explosives;
 - (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
 - (iv) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (A) endangers the health, safety or welfare of persons or the health of animal life;
 - (B) interferes with normal enjoyment of life or property; or
 - (C) causes damage to plant life or to property;
 - (v) toxic substances including, without restriction, urea formaldehyde foam insulation, asbestos and poly-chlorinated biphenyls; and
 - (vi) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Mortgagor, the Mortgagee or the Lands.
- (c) The Mortgagor hereby indemnifies and saves harmless the Mortgagee, its officers, directors, employees, agents and shareholders and its successors and assigns from and against any and all losses, liabilities, damages, costs (including without limitation legal costs on a solicitor and his own client basis) and expenses of any kind whatsoever including, without limitation:
 - (i) the costs of defending, counter-claiming or claiming against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;
 - (ii) any cost, liability or damage arising out of a settlement of any action entered into by the Mortgagee with or without the consent of the Mortgagor; and
 - (iii) the costs of repair, clean-up or restoration paid by the Mortgagee and any fines levied against the Mortgagee;

which at any time or from time to time may be paid, incurred or asserted against the Mortgagee, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release, of Hazardous Substances from the Lands or any part thereof either onto any lands (including the Lands), into the atmosphere or into any water. This indemnification shall survive the satisfaction, release or enforcement of the mortgage or any collateral security and the full repayment of the mortgage monies.

41. DUE ON SALE

The principal sum secured hereunder, all accrued interest hereunder and all other moneys payable hereunder shall, at the election of the Mortgagee, become due and payable in full if the Lands or any part thereof or interest therein is, without the prior consent in writing of the Mortgagee sold, transferred, conveyed or otherwise similarly disposed of to a party not approved of in writing by the Mortgagee, or if the Mortgagor enters into an agreement to effect any of the foregoing to such an unapproved party whether by registered or unregistered instrument and whether for valuable or nominal consideration (and if the Mortgagor is a corporation, any Change of Control of the corporation shall constitute such a disposition); provided however that nothing herein shall be construed as permitting the Mortgagor to prepay this mortgage in whole or in part; and provided further that the acceptance by the Mortgagor of any instalment payment or other payment under this mortgage from any entity other than the Mortgagor shall not constitute a waiver by the Mortgagee of its rights under this Section 41, nor a consent by the Mortgagee of any such sale or disposal of the Lands as above described; and provided further that if the Mortgagee gives its consent to any such sale or disposition as above described, it may do so upon such conditions as it may in its uncontrolled discretion decide upon including, without limiting the generality of the foregoing, the execution and delivery (by any intended transferee or successor in whole or in part of the Mortgagor's title to the Lands) of an agreement in the Mortgagee's form whereby such transferee or successor assumes all covenants and obligations of the Mortgagor under this mortgage and all other security documents given by the Mortgagor with respect to the loan pursuant to the Credit Agreement. The Mortgagee may require that such purchaser, transferee or assignee pay an assumption fee to the Mortgagee to compensate the Mortgagee for its time and effort hereunder and the non-payment of such assumption fee shall also be considered to be a default under this mortgage. A sale contemplated under a specific partial prepayment clause contained elsewhere herein shall not be subject to the terms hereof.

42. RE-ADVANCES

If applicable, it is the intention of the Mortgagor and Mortgagee that the Mortgagee may wish to make advances and re-advances to the Mortgagor up to an aggregate outstanding balance at any time of the principal sum as set out aforesaid. Accordingly, this mortgage shall be deemed to be a revolving line of credit mortgage within the meaning of, and shall take priority in accordance with section 104 of the *Land Titles Act* (Alberta). This mortgage is and shall be a continuing security to the Mortgagee for the repayment of all present and future amounts owing in respect of the principal sum lent. Any portion of the principal may be advanced or re-advanced by the Mortgagee in one or more sums at any future date or dates and the amount of such advances and re-advances when so made shall be secured by this mortgage and be repayable with interest as aforesaid and this mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, but none of the execution and the registration of this mortgage and the advance in part of any monies by the Mortgagee shall bind the Mortgagee to advance any un-advanced portion thereof. This mortgage shall not be void if the principal sum secured hereby has been repaid in full, if such ability to borrow continues to be available to the Mortgagor. This mortgage shall be void only when the Obligations secured hereby have been repaid and satisfied in full and the Credit Agreement cancelled. Notwithstanding that this mortgage is deemed to be a revolving line of credit mortgage there shall be no right of prepayment except as provided, if at all, elsewhere in this mortgage.

43. BENEFIT OF EASEMENTS

As additional security for all of the indebtedness and other obligations secured hereunder and all other Obligations (as herein defined) and interest thereon and the due performance of the Mortgagor's obligations

hereunder and under any collateral security the Mortgagor hereby assigns, transfers, mortgages, charges and sets over to and in favour of the Mortgagee as and by way of a specific assignment, mortgage and charge all of the right, title and interest of the Mortgagor in and with respect to any all easements, restrictive covenants, rights of way, party wall agreements, encroachment agreements and plus 15 agreements benefiting the Lands or any part thereof (collectively, the "**Agreements**") and all of the benefit, power and advantage of the Mortgagor to be derived therefrom (including without limitation the benefit of any positive covenant) and otherwise to enforce the rights of the Mortgagor under the Agreements in the name of the Mortgagor. Nothing herein contained shall render the Mortgagee liable to any person for the fulfilment or non-fulfilment of the obligations covered in any of the Agreements, including, but not limited to, the payment of any moneys thereunder or in respect thereto and the Mortgagor hereby indemnifies and agrees to save and hold harmless the Mortgagee from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever arising directly or indirectly from or out of any of the Agreements. The Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall not surrender, alter, amend or modify any of the Agreements or any of the terms or conditions thereof except with the prior written consent of the Mortgagee.

44. REPRESENTATION AND WARRANTY

The Mortgagor hereby presents and warrants that at the time of the disbursement of any part of the loan amount pursuant to the Credit Agreement, no default hereunder or Event of Default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default hereunder or an Event of Default under the Credit Agreement, this mortgage or Such Other Securities, and neither the Mortgagor nor any other guarantor (if any) shall be insolvent or be subject to any bankruptcy, arrangement with creditors, proposal, amalgamation, reorganization, liquidation, winding up, dissolution, receivership or material litigation or continuation under laws of any other jurisdiction.

45. SUCCESSORS AND ASSIGNS

When the context makes it possible, the word Mortgagee wherever it occurs in this mortgage, shall include the successors and assigns of the Mortgagee, and the word Mortgagor shall include heirs, executors, administrators, successors and assigns of the Mortgagor, and the word "**person**" shall include any body corporate or politic; and that words in the singular include the plural, and that words in plural include the singular, and words importing the masculine gender include the feminine.

46. JOINT AND SEVERAL

In the event there is more than one Mortgagor hereunder, the terms, conditions and other obligations of each Mortgagor hereunder shall be joint and several. For clarity and without limiting the generality of the foregoing, a covenant or obligation of the Mortgagor hereunder shall apply to each party comprising the Mortgagor of its respective estate and interest in the Lands or any part thereof.

47. GENERAL

The Mortgagor agrees with the Mortgagee as follows:

- (a) to comply with the terms and conditions of the Credit Agreement or mortgage approval and this mortgage at all times;
- (b) to maintain adequate insurance coverage as outlined in the Credit Agreement or mortgage approval as would other prudent owners of similar property, and satisfactory to the Mortgagee and its legal counsel;
- (c) to maintain the Lands in a sound state of repair at all times as would other prudent owners of similar property;

- (d) at the Mortgagee's request, to deliver or cause to be delivered to the Mortgagee promptly such information about the financial condition and operation with respect to the Lands as the Mortgagee may request from time to time;
- (e) that all erections, buildings, fences, machinery, plant and improvements fixed or otherwise now on or hereafter put upon the said lands (including but without limiting the generality of the foregoing all furnaces, boilers, plumbing and heating equipment, light fixtures, elevator equipment, escalators, water heaters, storm windows, storm doors and screens and all apparatus and equipment appurtenant thereto) are and shall, in addition to other fixtures now on or hereafter put upon the said lands, be and become fixtures and form part of the realty and form part of this security and are included in the defined term Lands, and until payment of all monies owing under this Mortgage, the same or any part thereof shall not be removed without the prior written consent of the Mortgagee; and
- (f) the Mortgagee may request from the Alberta Land Titles Office at any time, and from time to time, a search of any realty property, the registered owner of which is the Borrower or the Guarantors.

48. INTEREST

Notwithstanding the stated interest rate per annum in this mortgage or in the case of Obligations payable pursuant to the Credit Agreement, payment to the Mortgagee for the account of the Lenders of the relevant interest, fees and other amounts owing under the Security for any period in respect of the Obligations at the current rate at which the Obligations bear interest for such period pursuant to the Security shall be deemed to be payment in satisfaction of the interest payment for the same period under this mortgage.

49. SHORT COVENANTS

The Mortgagor further covenants and agrees with the Mortgagee that the Mortgagor:


- (a) has a good title to the Lands;
- (b) has the right to mortgage the Lands;
- (c) upon being in default hereunder or upon the occurrence of an Event of Default under the Credit Agreement, the Mortgagee shall have quiet possession of the Lands, free from all encumbrances except for Permitted Liens;
- (d) will execute such further assurances as may be requisite; and
- (e) has done no act to encumber the Lands except for Permitted Liens.

50. CAPITALIZED TERMS

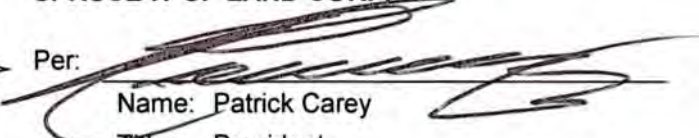
In this mortgage, unless something in the subject matter or context otherwise requires, capitalized terms used herein and not otherwise defined in this mortgage (including the recitals hereto) shall have the meaning as are ascribed to such terms in the Credit Agreement.

[the signature page is next]

IN WITNESS WHEREOF the Mortgagor has duly executed these presents on July 20, 2023.

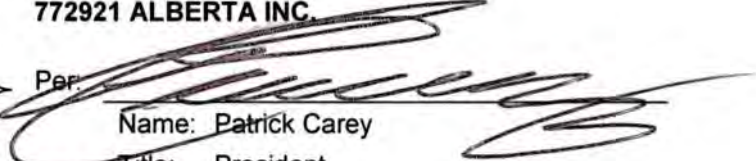



Witness Matthew Cresatti

} **SPRUCE IT UP LAND CORP.**
Per: 
Name: Patrick Carey
Title: President
I have the authority to bind the corporation

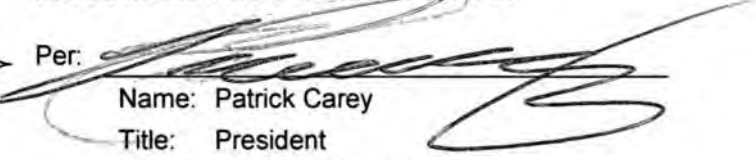


Witness Matthew Cresatti

} **772921 ALBERTA INC.**
Per: 
Name: Patrick Carey
Title: President
I have the authority to bind the corporation



Witness Matthew Cresatti


} **RIDGE MEADOWS PROPERTIES LTD.**
Per: 
Name: Patrick Carey
Title: President
I have the authority to bind the corporation

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, Patrick Carey, of the City of Toronto, Province of Ontario, make oath and say as follows:

- 1. I am an officer or director of Spruce It Up Land Corp. named in the writing or annexed instrument.
- 2. I am authorized by the corporation to execute the instrument with affixing a corporate seal.

SWORN BEFORE ME)
 at City of Toronto, in the Province of)
 Ontario, this 20, day of July, 2023)



 A Commissioner of Oaths in and for Ontario
Gina Rhodes
 Lawyer & Notary Public




AFFIDAVIT OF ATTESTATION

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, Matthew Cressatti
 of the City of Toronto, Province of Ontario
 MAKE OATH AND SAY:

- 1. That I was personally present and did see Patrick Carey, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
- 2. That the same was executed at the City of Toronto, in the Province of Ontario, and that I am the subscribing witness thereto.
- 3. That I know the said Patrick Carey he is in my belief of the full age of eighteen (18) years.

SWORN BEFORE ME at the City of)
 Toronto, in the Province of Ontario,)
 this 20 day of July, 2023)



 A Commissioner for Oaths in and for Ontario
Gina Rhodes
 Lawyer & Notary Public




Matthew Cressatti

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, Patrick Carey, of the City of Toronto, Province of Ontario, make oath and say as follows:

- 3. I am an officer or director of 772921 Alberta Inc. named in the writing or annexed instrument.
- 4. I am authorized by the corporation to execute the instrument with affixing a corporate seal.

SWORN BEFORE ME)
 at City of Toronto, in the Province of Ontario,)
 this 20 day of July, 2023)



 A Commissioner of Oaths in and for Ontario
 Gina Rhodes
 Lawyer & Notary Public




AFFIDAVIT OF ATTESTATION

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

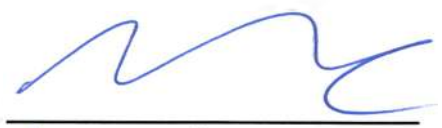
I, Matthew Cressatti
 of the City of Toronto, Province of Ontario
 MAKE OATH AND SAY:

- 4. That I was personally present and did see Patrick Carey, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
- 5. That the same was executed at the City of Toronto, in the Province of Ontario, and that I am the subscribing witness thereto.
- 6. That I know the said Patrick Carey he is in my belief of the full age of eighteen (18) years.

SWORN BEFORE ME at the City of)
 Toronto, in the Province of Ontario,)
 this 20 day of July, 2023)



 A Commissioner for Oaths in and for Ontario
 Gina Rhodes
 Lawyer & Notary Public



 Matthew Cressatti

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, Patrick Carey, of the City of Toronto, Province of Ontario, make oath and say as follows:

- 5. I am an officer or director of Ridge Meadows Properties Ltd. named in the writing or annexed instrument.
- 6. I am authorized by the corporation to execute the instrument with affixing a corporate seal.

SWORN BEFORE ME)
 at City of Toronto, in the Province of Ontario,)
 this 20 day of July, 2023)



 A Commissioner of Oaths in and for Ontario)

Gina Rhodes
 Lawyer & Notary Public




AFFIDAVIT OF ATTESTATION

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, *Matthieu Cressatti*
 of the City of Toronto, Province of Ontario
 MAKE OATH AND SAY:


- 7. That I was personally present and did see Patrick Carey, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
- 8. That the same was executed at the City of Toronto, in the Province of Ontario, and that I am the subscribing witness thereto.
- 9. That I know the said Patrick Carey he is in my belief of the full age of eighteen (18) years.

SWORN BEFORE ME at the City of Toronto,)
 in the Province of Ontario,)
 this 20 day of July, 2023)



 A Commissioner for Oaths in and for Ontario)

Gina Rhodes
 Lawyer & Notary Public



Matthieu Cressatti

SCHEDULE A

1. PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

Standing in the name of 772921 Alberta Inc.

2. PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

Standing in the name of 772921 Alberta Inc.

3. PLAN 8031JK
BLOCK A
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS

Standing in the name of Ridge Meadows Properties Ltd.

4. PLAN 5235JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS

Standing in the name of Spruce It Up Land Corp.



1. Application

NORTON ROSE FULBRIGHT CANADA LLP
Barristers and Solicitors
1800 - 510 West Georgia Street
Vancouver BC V6B 0M3
16046876575

File No.: 1000305633

2. Description of Land

PID/Plan Number	Legal Description
003-862-682	LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698

3. Borrower(s) (Mortgagor(s))

772921 ALBERTA INC.
 5445 8 STREET NE
 CALGARY AB T2K 5R9

4. Lender(s) (Mortgagee(s))

CANADIAN IMPERIAL BANK OF COMMERCE
 A Canadian Chartered Bank Having a Branch Office and
 Postal Address at
 199 BAY STREET, 4TH FLOOR
 TORONTO ON M5L 1A2

5. Payment Provisions

Principal Amount	Interest Rate	Interest Adjustment Date
\$65,000,000	25% per annum	N/A
Interest Calculation Period	Payment Dates	First Payment Date
N/A	On Demand	On Demand
Amount of each periodic payment	Interest Act (Canada) Statement. The equivalent rate of interest calculated half yearly not in advance is	Last Payment Date
N/A	N/A % per annum	N/A
Assignment of Rents which the applicant wants registered?	Place of payment	Balance Due Date
Yes	Postal Address in Item 4	On Demand
If yes, page and paragraph number: Pages 12 to 13, paragraph 25		

6. Mortgage contains floating charge on land?

No

7. Mortgage secures a current or running account?

Yes



8. Interest Mortgaged

Fee Simple

9. Mortgage Terms

Part 2 of this mortgage consists of:

(c) Express Mortgage Terms (annexed to this mortgage as Part 2)

10. Additional or Modified Terms

11. Prior Encumbrances Permitted by Lender

STATUTORY RIGHT OF WAY CA5940341
STATUTORY RIGHT OF WAY CA5940342
MORTGAGE CA9465179
ASSIGNMENT OF RENTS CA9465180

12. Execution(s)

This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Witnessing Officer Signature

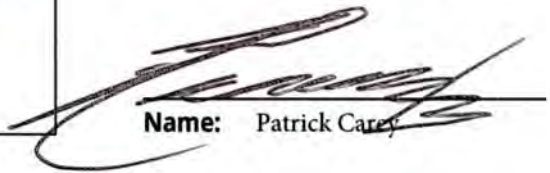
Execution Date

Borrower / Party Signature(s)


 Gina Rhodes - Lawyer & Notary Public
 Miller Thomson LLP
 40 King Street West
 Suite 5800
 Toronto, ON M5H 3S1
 416-597-4321

YYY-MM-DD
 2023-07-20

772921 ALBERTA INC.
 By their Authorized Signatory


 Name: Patrick Carey

Name: _____

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Electronic Signature

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

MORTGAGE TERMS - PART 2

EXPRESS MORTGAGE TERMS

772921 ALBERTA INC. (the "**Mortgagor**") is the registered owner of an estate in fee simple in possession of the lands legally described in Part 1 (which together with the buildings, improvements and fixtures, which are now or may hereafter be erected, placed or installed thereon or thereto, and all benefits, easements, licenses, privileges, rights of way and servitudes appertaining thereto or connected therewith and every other thing referred to in Section 10 of the *Land Transfer Form Act* (British Columbia), as amended, are hereinafter collectively referred to as the "**Lands**").

The Mortgagor, among others, as guarantor, **CAREY MANAGEMENT INC.** (the "**Borrower**"), as borrower, and **CANADIAN IMPERIAL BANK OF COMMERCE**, as agent and lender, whose head office is located at 199 Bay Street, 4th Floor, Toronto, ON, M5L 1A2 (the "**Mortgagee**"), are parties to that certain credit agreement dated September 26, 2017, as the same may be amended, restated, renewed or otherwise modified from time to time (the "**Credit Agreement**").

NOW THEREFORE, IN CONSIDERATION of the premises herein, the sum of **SIXTY-FIVE MILLION DOLLARS (\$65,000,000)** (hereinafter the "**loan**" or "**principal amount**"), lent to the Borrower by the Mortgagee, and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Mortgagor covenants with the Mortgagee as follows.

1. **PAYMENTS**

The Mortgagor will pay **ON DEMAND** to the Mortgagee, at its office in Toronto, Ontario, or at such other place as the Mortgagee may designate in writing, in lawful money of Canada, the principal amount of **SIXTY-FIVE MILLION DOLLARS (\$65,000,000)**, or so much thereof as is outstanding at the time of demand, plus interest thereon at the rate of **twenty-five (25%) per annum**, after as before maturity, both before and after default, and both before and after judgment on this Mortgage (which interest rate calculated as aforesaid is sometimes hereinafter referred to as the "**Mortgage Rate**") and hereby encumbers, mortgages and charges the Lands.

2. **OVERDUE INTEREST**

The Mortgagor will pay to the Mortgagee interest as aforesaid in the manner aforesaid on the said sum or on so much thereof as shall have been advanced by the Mortgagee or which shall from time to time remain unpaid at the Mortgage Rate, and all interest on becoming overdue shall be forthwith treated (as to payment of interest thereon) as principal and shall bear compound interest at the Mortgage Rate as well after as before maturity of this Mortgage, both before and after default, and both before and after judgment under this Mortgage until paid, and shall be payable at the times, in the manner, and at the place hereinbefore provided for payment of interest, and all such interest and compound interest shall be a charge on the Lands. In the event of nonpayment of any of the moneys hereby secured at the times herein set for payment thereof the Mortgagor will, so long as any part thereof remains unpaid, including after judgment, pay interest at the Mortgage Rate from day to day on the same.

3. **COLLATERAL GUARANTEE**

These presents are given and taken as general continuing collateral security for the payment by the Mortgagor of any sums required to be paid and the performance of any covenants and obligations of the Mortgagor to be performed from time to time pursuant to a certain guarantee (as the same may be amended, restated, renewed or otherwise modified from time to time, the "**Guarantee**") delivered by the Mortgagor to the Mortgagee, and the Mortgagor agrees that the Obligations shall include all amounts owing to the Mortgagee from time to time in respect of the Guarantee and all indebtedness, liabilities and obligations of the Mortgagor to the Mortgagee, whether present or future, direct or indirect, absolute or contingent, matured or not, and whether arising within or outside Canada, and whether incurred by or

arising from any agreement or dealing between the Mortgagee and the Mortgagor or by or from any agreement or dealing with any third party by which the Mortgagee may be or become in any manner whatsoever a creditor of the Mortgagor, or however otherwise incurred or arising, and whether the Mortgagor be bound alone or with another or others, and whether as principal, guarantor or surety.

4. RENEWALS

In the event that the Mortgagee shall agree to renew or extend the term of this Mortgage, such renewal or extension (and the rate of interest, term, instalment and other stipulations of such renewal or extension) shall be binding upon the Mortgagor, its successors in title and assigns, and all subsequent mortgages, encumbrances and other interests in or of the Lands or any portion thereof (subsequent to this Mortgage and together hereinafter called "**Subsequent Encumbrances**"), and shall take full priority over all Subsequent Encumbrances, whether or not the said renewal or extension is filed or recorded by caveat at the applicable Land Title office and whether or not the rate of interest payable or payment amortization period applicable during the renewal or extension term is greater than or less than the rate or amortization stipulated in this Mortgage. The Mortgagor shall, forthwith on request therefor by the Mortgagee, provide to the Mortgagee, at the Mortgagor's expense, all such postponements and other assurances as the Mortgagee may require to ensure the foregoing binding effect and priority. All renewals (if any) shall be done at the Mortgagor's expense (including without limitation payment of Mortgagee's legal expenses on a solicitor-and-his-own-client basis). In the event the Mortgagor herein is a corporation, no such renewal or extension, even if made by a successor in title to the Mortgagor named herein and whether or not the Mortgagor shall consent thereto, shall in any way release or abrogate or render unenforceable the covenants or obligations of the Mortgagor named herein, which shall continue notwithstanding such renewal or extension and shall apply to this Mortgage as renewed or extended.

5. TAXES

Subject as hereinafter in this Section provided, the Mortgagor will pay when and as the same fall due all taxes, rates, liens, charges, encumbrances or claims which are or may be or become charges or claims against the Lands or premises thereon or on this Mortgage or on the Mortgagee in respect of this Mortgage; provided that in respect of municipal taxes, school taxes, local improvements charges and all taxes and levies made or assessed in lieu of real property taxes (hereinafter together referred to as "**taxes**"), the Mortgagor covenants with the Mortgagee as follows.

- (a) The Mortgagee may deduct from time to time, from advances of moneys under the Credit Agreement, if applicable, amounts sufficient to pay the taxes which have become due and payable or will have become due and payable and are unpaid from time to time as advances are made;
- (b) The Mortgagor shall if requested by the Mortgagee, enroll in the taxing authority's tax installment payment plan and agrees to keep the payments thereunder current.
- (c) The Mortgagor shall in each year during the currency hereof at the request of the Mortgagee pay to the Mortgagee in equal monthly instalments on the first day of each month, such amounts as the Mortgagee may estimate as being the annual taxes next becoming due and payable, , and the Mortgagor shall also pay to the Mortgagee before the due date of the current annual taxes such additional sums as may be requisite to enable the Mortgagee to pay out of such monthly instalments and additional payments, the whole amount of the annual taxes on or before the due date thereof. In such event the Mortgagee shall use such funds to pay the taxes owing by the Mortgagor as the same fall due.
- (d) So long as the Mortgagor is not in default under any covenant or agreement contained in this Mortgage or the Credit Agreement, the Mortgagee shall apply such payments on the taxes as they become due, but nothing herein contained shall obligate the Mortgagee to apply such payments on account of taxes more often than yearly, nor to pay the same in advance of the due date for payment of the same. Provided however, that if (before any

sum or sums so paid to the Mortgagee shall have been so applied) there shall be default by the Mortgagor in respect of any payment of principal, interest or other amount as herein provided or as provided for in the Credit Agreement, the Mortgagee may, at its option, apply such sum or sums in or towards payment of the principal, interest and/or other amount in default.

- (e) In default of the payment by the Mortgagor of moneys for taxes as aforesaid, then the Mortgagee may pay such taxes. The Mortgagee may also pay any liens, charges and encumbrances which may be charged against the Lands. All moneys expended by the Mortgagee for any of such purposes together with interest thereon at the Mortgage Rate shall be added to the principal moneys hereby secured, and repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge on the Lands.
- (f) If the Lands or any part thereof becomes subject to sale or forfeiture for nonpayment of taxes while any sum remains unpaid under this Mortgage, the Mortgagee may acquire title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Mortgagee may pay, either in its own name or in the Mortgagor's name or on the Mortgagor's behalf, any and all sums necessary to be paid to redeem the Lands so sold or forfeited, and to re-vest the Lands in the Mortgagor, and the Mortgagor hereby nominates and appoints the Mortgagee agent of the Mortgagor to pay such moneys on the Mortgagor's behalf and in the Mortgagor's name, and any moneys so expended by the Mortgagee shall be repaid by the Mortgagor forthwith and until repaid shall be a charge on the Lands, or in the alternative the Mortgagee shall have the right to bid on and purchase the Lands at any tax sale of the same and shall thereupon become the absolute owner thereof.
- (g) The Mortgagor shall transmit to the Mortgagee all tax bills and other notices affecting the imposition of taxes forthwith after receipt of same by the Mortgagor, and the Mortgagor authorizes the Mortgagee to obtain any tax or assessment information concerning the Lands directly from the municipal taxing authority having jurisdiction over the Lands.
- (h) The Mortgagor shall provide the Mortgagee upon request confirmation of the status of the tax account and proof of payment of the current levy.

6. INFORMATION

With respect to the Lands, the Mortgagor hereby consents to the release by the taxing authority of all personal information including the name and address of the property owner and, if applicable, the amount of monthly payment if property taxes are paid through the tax instalment payment plan.

7. INSURANCE

- (a) The Mortgagor will at the Mortgagor's expense, forthwith insure or cause to be insured, and during the continuance of this Mortgage keep insured in favour of the Mortgagee, each and every building on or which may hereafter be erected or placed on the Lands, and all plate glass, equipment and machinery of the Mortgagor therein, thereon or used in connection therewith, and the contents thereof to the extent that they are the property of the Mortgagor (in this Section 7 severally referred to as the "**Mortgaged Premises**") against such risks or perils as the Mortgagee may require or consider expedient, which may include without limitation, loss or damage by fire, wind-storm, hail, lightning, explosion, riot, earthquake, impact by aircraft or vehicles, smoke damage and, to the extent applicable, against loss or damage caused by the explosion of any steam boiler or other object generating or operated by steam, any closed circulation hot water heating system, any pressure vessel system and any air conditioning system, by the escape of water from any sprinkler system or other piping within or operated upon the Lands. All such insurance shall be with extended coverage and replacement cost endorsements and in such

amounts, all as the Mortgagee may reasonably require, to their full insurable value or sufficient to protect the Mortgagee and the Mortgagor from becoming co-insurers in respect of any loss, in each case with an insurance company or companies acceptable to the Mortgagee. The Mortgagor will not do or suffer anything whereby the said policy or policies may be vitiated, and will pay all premiums and sums of money necessary for such purposes as the same become due. The Mortgagor also covenants that it will during the continuance of this Mortgage as required by the Mortgagee maintain general public liability and property damage insurance against claims for personal injury, death or property damage occurring in or about the Mortgaged Premises, such insurance to afford protection in such amounts as the Mortgagee may from time to time reasonably require.

- (b) If any portion of the Lands is now, or at any time during the term hereof rented or leased by the Mortgagor to any tenant or tenants, the Mortgagor shall, at the option of the Mortgagee, keep the Lands insured in a form and wording satisfactory to the Mortgagee (acting reasonably), against loss of rental income in an amount as the Mortgagee may from time to time require.
- (c) The Mortgagor shall put in place and provide the Mortgagee with evidence of such other types of insurance as may be reasonably required from time to time by the Mortgagee or as required under the Credit Agreement for the loan and such insurance shall be in a form and wording satisfactory to the Mortgagee, acting reasonably.
- (d) All such contracts of insurance shall be carried with licensed insurers and shall, except for the general public liability and property damage insurance, show loss payable to the Mortgagee, as the Mortgagee's interest may appear, and shall have attached thereto and forming a part thereof a mortgage clause approved by the Mortgagee, acting reasonably. The Mortgagor will forthwith deliver to the Mortgagee the policy or policies or certificate or certificates of insurance and, prior to their due date when requested by the Mortgagee, evidence proving payment of the premiums and renewal premiums therefor.
- (e) The Mortgagor will forthwith on the happening of any loss or damage (notwithstanding any law, equity or statute to the contrary, and in particular, the *Insurance Act* (British Columbia), as amended, and *The Fire Prevention (Metropolis) Act 1774* (14 Geo. 3 C.78), all rights and benefits of the Mortgagor thereunder being hereby expressly waived), at its expense furnish all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance moneys. If the Mortgagor shall neglect to keep any of the Lands or the Mortgaged Premises insured as aforesaid, or to deliver such policy or policies, certificate or certificates and evidence proving payment of premiums or renewal premiums when requested by the Mortgagee, or to produce to the Mortgagee at least ten (10) days before the termination of such insurance evidence of the renewal thereof, the Mortgagee shall, without reference to the Mortgagor, be entitled (but shall not be obliged) to insure the Lands, or any part thereof, and for such amount or amounts as the Mortgagee may from time to time deem expedient, and the amount of any premiums paid by the Mortgagee shall bear interest at the Mortgage Rate and until repaid, shall be added to the amount hereby secured and be a charge upon the Lands.
- (f) If any cheque issued by an insurer in complete or partial settlement of an insurance claim pursuant to the coverages above other than the coverage for general public liability insurance is given, sent or delivered to the Mortgagor or the solicitor or agent of the Mortgagor, then the Mortgagor shall cause such cheque to be delivered to the Mortgagee forthwith and if any such cheque is made payable to the Mortgagor alone or jointly to the Mortgagor and another or others, then the Mortgagor shall forthwith endorse and deliver such cheque over to the Mortgagee, and the Mortgagor does hereby constitute the Mortgagee as the Mortgagor's true and lawful attorney to receive and endorse any such cheque for and on behalf of the Mortgagor.

- (g) All moneys received by virtue of such policy or policies of insurance may at the option of the Mortgagee either be applied forthwith in or towards substantially rebuilding, reinstating or repairing the improvements on the Lands or in or towards the payment of principal and interest or other moneys secured by this Mortgage (whether or not the same are then due) in such manner as the Mortgagee shall from time to time determine, or may be paid in full or in part to the Mortgagor or its successors-in-title or its assigns, or may be applied or paid partly in one way and partly in another, as the Mortgagee may determine.

8. PAYMENT METHOD

The Mortgagor shall from time to time if requested by the Mortgagee, provide a signed pre-authorized withdrawal form or forms directed to the bank or financial institution at which the Mortgagor regularly keeps a chequing account, in such form and manner so as to enable the Mortgagee to receive payments of the instalments of principal and interest and/or the Mortgagee's estimate of the monthly instalment for property taxes due hereunder, from the Mortgagor's account with such bank or financial institution. In the alternative, the Mortgagee may at its exclusive option and from time to time, require the Mortgagor to (and if so required the Mortgagor shall) provide the Mortgagee with a series of twelve post-dated cheques to cover such monthly payments for any consecutive twelve month period during the term hereof. Any payments received by the Mortgagee which are payable on a non-judicial day on or after receipt thereof, shall be credited to the mortgage account on the next judicial day thereafter.

9. CONSTRUCTION

In the event that this Mortgage is a building or construction mortgage, the Mortgagor agrees that:

- (a) the building or buildings being erected or to be erected on the Lands form part of the security for the full amount of the moneys secured by this Mortgage;
- (b) all advances under the Credit Agreement, as applicable, are to be made from time to time in the future in accordance with the progress of construction of such building or buildings or upon its or their completion and occupation;
- (c) it will construct the building, buildings, and other improvements on the Lands in accordance with plans and specifications which have been or which may hereafter be approved by the Mortgagee, in accordance with the Mortgagee's construction standards, and will carry on diligently to completion the construction of the said building, buildings, and other improvements, and will complete such construction in compliance with the requirements of all municipal and other governmental authorities, laws, by-laws or regulations and will, when so required by the Mortgagee, supply the Mortgagee with evidence or confirmation from any such municipal or governmental authority of such compliance;
- (d) in the event that any such building, buildings and other improvements now or hereafter in the course of construction remain unfinished and without any work being done for a period of thirty (30) consecutive days, the Mortgagee may enter the Lands and do all work necessary to protect the same from deterioration and to complete the construction in such manner as the Mortgagee may see fit, and any moneys expended by the Mortgagee pursuant to this Section 9(d) shall be a charge on the Lands and bear interest at the Mortgage Rate and shall be deemed to constitute part of the mortgage moneys;
- (e) the Mortgagee shall be entitled, at the expense of the Mortgagor, to inspect all aspects of the construction and make tests of materials, and the Mortgagor will not cover any portion of the construction work requiring inspection by the Mortgagee until the Mortgagee has inspected the same, and the Mortgagor shall forthwith remedy and carry out again any work which does not conform to the Mortgagee's reasonable requirements;

- (f) the Mortgagee shall not be obliged to hold back loan proceeds under the Credit Agreement to provide the lien fund or other protection to the Mortgagor under the *Builders' Lien Act* (British Columbia), as amended; provided that if the Mortgagee holds back loan proceeds under the Credit Agreement in a manner similar to the way the said Act provides for an owner to make holdbacks then, notwithstanding such holdbacks by the Mortgagee, such holdbacks shall not constitute the lien fund under the said Act and the Mortgagee shall not be a mortgagee authorized by the owner to disburse money secured by a mortgage as referred to in the said Act.

10. STRATA LOT

In the event the Lands, or any portion thereof, are or become one or more strata lots within the *Strata Property Act* (British Columbia), as amended, the Mortgagor further covenants with the Mortgagee as follows.

- (a) The Mortgagor will comply with, observe and perform all provisions of the *Strata Property Act* (British Columbia), as amended, its regulations and the by-laws, rules and regulations of the strata corporation from time to time in force, and will ensure that the strata corporation complies with the insurance provisions in the said Act.
- (b) The Mortgagor shall pay on or before the due dates thereof, each and every assessment, contribution, charge, fine or levy made by or on behalf of the strata corporation in respect of the strata lot(s) charged hereunder (hereinafter collectively called "**Assessments**"). If the Mortgagor fails to pay the Assessments, on or before their due date, such failure shall constitute default hereunder and shall entitle the Mortgagee to exercise any and all remedies available to the Mortgagee in the event of default hereunder or under the Credit Agreement. Upon default under this paragraph and notwithstanding any other right or action of the strata corporation or the Mortgagee, the Mortgagee may pay the Assessments, and any Assessments so paid, together with all costs, charges, expenses and outlays of the Mortgagee thereby incurred shall be added to the monies payable hereunder, and shall bear interest at the rate aforesaid from the date expended until paid and such amounts and interest shall be payable on demand to the Mortgagee and shall be a charge on the Lands.
- (c) The Mortgagor hereby irrevocably authorizes the Mortgagee to apply at any time and from time to time to the strata corporation for certification of the amount and manner in which any assessment is payable and the extent to which such Assessment has been paid.
- (d) The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the Mortgagor's rights which now exist or may hereafter come into existence to vote at meetings of the strata corporation, provided that, if the Mortgagee is not present in person or by proxy, or if present does not wish to vote, then the Mortgagor may exercise his voting right without further authority.
- (e) If for any reason whatsoever the Mortgagor has the right to vote at any meeting of the strata corporation it shall, if directed by the Mortgagee, vote in such manner as the Mortgagee directs with respect to each and every matter to be voted on and the Mortgagor covenants to execute any documents requested by the Mortgagee, including, proxies if required, in order to give effect to the foregoing assignment of voting rights.
- (f) If requested by the Mortgagee, at least five (5) days prior to each and every general meeting of the strata corporation, the Mortgagor shall deliver to the Mortgagee written notice of each such meeting specifying the place, date, hour and purpose of the meeting and in addition, immediately upon receipt of the same shall deliver to the Mortgagee true copies of the by-laws, rules and regulations of the strata corporation from time to time in force, all notices, minutes, resolutions, accounts, financial statements and other

documents relating to the financial statements and to the affairs of the strata corporation as the Mortgagor may from time to time receive notwithstanding the foregoing the Mortgagor shall ensure that the Mortgagee has notice of any meeting which will consider the termination of the strata corporation or an amendment to the by-laws.

- (g) The Mortgagor does hereby irrevocably assign unto the Mortgagee any lease or rights to occupy any parking space or spaces demised to or reserved or designated for exclusive use by the Mortgagor and any lease or rights to exclusive use of any common property or special privileges in respect thereof granted to the Mortgagor.
- (h) Upon default herein or the occurrence of an Event of Default under Credit Agreement which is continuing and notwithstanding any other right or action of the strata corporation or the Mortgagee, the Mortgagee may distrain for arrears of any Assessment, paid by it and such distraint shall not result in the Mortgagee being a mortgagee in possession.
- (i) In the event this Mortgage is a blanket mortgage against more than one of the strata lots, it may not be discharged in part or in whole during the term of this Mortgage. In particular the Mortgagor or its successors may not obtain a discharge of this Mortgage against any particular strata lot by payment of a pro-rata share of this Mortgage or by any other means whatsoever. The Mortgagor agrees not to sell or transfer strata lots while the blanket mortgage is registered and any such transaction shall be deemed a breach of covenant unless and until the Mortgagee has consented thereto. This prohibition does not apply if there is a specific partial prepayment clause contained elsewhere herein.

11. RESTRICTION ON TRANSFER

The Mortgagor shall not convey, transfer, mortgage, alienate, or otherwise encumber the Lands or any portion thereof nor allow the Lands or any portion thereof to be encumbered except as expressly permitted under the terms of the Credit Agreement, until all Obligations have been repaid and satisfied and the Credit Agreement has been cancelled; and any such dealing with the Lands shall be deemed a breach of covenant unless and until the Mortgagee has expressly consented thereto.

12. ADVANCES

Neither the execution nor the registration nor the acceptance of this Mortgage, nor the advance or creation of any part of the Obligations shall bind the Mortgagee to advance or create any further Obligations.

13. SUBROGATION

In the event that the Obligations or any part thereof, are applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights and stand in the position of and be entitled to all the equities of the party so paid off whether such charge or encumbrance has or has not been discharged; and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under the Credit Agreement or of any claim so paid off, shall be final and binding on the Mortgagor.

14. WASTE AND CROPS

All erections and improvements fixed or otherwise now on or hereafter put upon the Lands, including but without limiting the generality of the foregoing, all fences, heating, plumbing, air conditioning, ventilation, lighting and water heating equipment, built-in cooking and refrigeration equipment, window blinds, storm windows and storm doors, window screens and screen doors, and all apparatus and equipment appurtenant thereto, and if part of the Lands consists of an apartment building all stoves, refrigerators, clothes washers and dryers, garburators and dishwashers, located in the apartment building and owned by the Mortgagor, are and shall, in addition to all other fixtures thereon, be and become and shall be deemed to be fixtures and form part of the realty and of the security and are included in the expression the Lands; and that the

Mortgagor will not commit or permit any act of waste thereon; and that the Mortgagor will at all times during the continuance of this Mortgage, repair, maintain, restore, amend, keep, make good, finish, add to and put in order the same; and in the event of any loss or damage thereto or destruction thereof, the Mortgagee may give notice to the Mortgagor to repair, rebuild, replace or reinstate the same within a time to be determined by the Mortgagee and to be stated in such notice; and upon the Mortgagor's failure to repair, rebuild, replace or reinstate within such time, such failure shall constitute a breach of covenant hereunder and an Event of Default under the Credit Agreement and thereupon the Obligations shall, at the option of the Mortgagee, become immediately due and payable without any demand by the Mortgagee upon the Mortgagor in accordance with the terms of the Credit Agreement. All crops growing on the Lands shall be deemed to form part of the realty and of the security and are included in the expression of Lands.

15. **ALTERATIONS**

The Mortgagor shall not make or permit to be made, any additions or alterations to the Lands without the written consent of the Mortgagee; and the Mortgagor shall not use the Lands nor permit the Lands to be used, without the written consent of the Mortgagee, for a purpose other than that disclosed to the Mortgagee in the application for this Mortgage.

16. **INSPECTIONS**

The Mortgagee or agent of the Mortgagee may, at any time, enter upon the Lands to inspect the Lands.

17. **CROSS-DEFAULT**

In the event the Mortgagee requires other agreements, documents, mortgages, chattel mortgages, security agreements, assignments of rentals, assignments of leases or any other securities (herein referred to collectively as "**Such Other Securities**") in connection with the Credit Agreement or as a condition precedent to the advance of the loan proceeds or any portion thereof pursuant to the Credit Agreement, then the Mortgagor shall provide the Mortgagee Such Other Securities as may be required by the Mortgagee in form and content satisfactory to the Mortgagee. Default under this Mortgage shall constitute default under any of Such Other Securities as may have been granted to the Mortgagee, and default under any of Such Other Securities granted to the Mortgagee shall constitute default hereunder, and the Mortgagee may, upon default under any thereof pursue its remedies separately under each of Such Other Securities and this Mortgage, or jointly all together, or jointly one with any other or others of Such Other Securities and this Mortgage, without any of the rights and remedies of the Mortgagee not so pursued merging therewith or with any action or judgment with respect thereto.

18. **SUBSTITUTE MORTGAGE**

In the event that this Mortgage is granted by the Mortgagor in replacement of or in substitution for another mortgage granted by the Mortgagor to the Mortgagee (the "**earlier mortgage**") with respect to the Lands, then the Mortgagee shall be entitled (notwithstanding that the mortgage account numbers for the earlier mortgage and this Mortgage are the same and notwithstanding that the Mortgagee does nothing more than note on its file that this Mortgage is in replacement of or substitution for the earlier mortgage) to advance under this Mortgage or under the Credit Agreement, by way of internal transfer of mortgage accounts, the amount owing under the earlier mortgage, and upon such internal transfer of mortgage accounts it shall be deemed that the amount thereby transferred as aforesaid, is advanced hereunder.

19. **RELEASE OF SECURITY**

The Mortgagee may at any time release any part or parts of the Lands or any other security or any surety for payment and satisfaction of all or any part of the Obligations are herein secured, or may release the Mortgagor or any other person from any covenant or other liability to pay and satisfy the Obligations or any part thereof, either with or without any consideration therefor, without being accountable for the value of any such consideration or for any moneys except those actually received by the Mortgagee, and without

thereby releasing any other part of the Lands or any other securities or covenants, it being specifically agreed that notwithstanding any such release, the Lands, securities and covenants remaining unreleased shall stand charged with the whole of the Obligations hereby secured, and no person shall have the right to require the mortgage moneys to be apportioned.

20. WAIVER

No extension of time, waiver, or other indulgence given by the Mortgagee to the Mortgagor, or anyone claiming under the Mortgagor, shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor, any other guarantor, or any other person liable for payment of the moneys hereby secured.

21. USE OF MONEY

The Mortgagee shall not be charged with any moneys receivable or collectible out of the Lands or otherwise, except those actually received; and all revenue of the Lands received or collected by the Mortgagee from any source other than payment by the Mortgagor may, at the option of the Mortgagee, be used in maintaining or insuring or improving the Lands, or in payment of taxes or other charges against the Lands, or applied on the mortgage account, and the Mortgagee may (at its option) retain such moneys received or collected, in suspense account and shall not be under any liability to pay interest on any sums in suspense account; and the Mortgagee shall not, by reason of the collection of any moneys receivable or collectible out of the Lands, be deemed to be a mortgagee in possession.

22. LIABILITY OF MORTGAGOR

Notwithstanding any sale or other dealings by the Mortgagor with the Lands, or any part thereof, the Mortgagor together with any other party who is or becomes liable under this Mortgage, shall continue to be liable under this Mortgage until all Obligations have been repaid and satisfied in full and the Credit Agreement has been cancelled notwithstanding the assumption of the mortgage by any party, with or without the consent of the Mortgagee or the Mortgagor, and notwithstanding any amendment, modification, renewal or extension of this Mortgage (including, without restriction, any increase or decrease in the interest rate, amortization period, monthly payments or term of this Mortgage) which takes place after such sale or an assumption has occurred with or without the consent of the Mortgagor or any other party.

23. ATTORNMENT

For better securing the Obligations, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Lands at a monthly rental determined by the Mortgagee, the same to be paid on the first day of each month; and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, as amended, or shall take the benefit of any statute relating to bankruptcy or insolvent debtors, then such rental shall, if not already payable, be payable immediately thereafter. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor, but neither this Section 23 nor anything done by virtue hereof, shall render the Mortgagee a mortgagee in possession or accountable for any moneys except those actually received. The Mortgagee may at any time after default hereunder or upon the occurrence of an Event of Default under the Credit Agreement which is continuing enter upon the Lands, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit.

24. RECORDS

If the Mortgagor derives income from the Lands, the Mortgagor will maintain full and correct books and records showing in detail the earnings and expenses of the Lands, and will permit the Mortgagee and its representatives to examine the said books and records, all in accordance with the Credit Agreement.

25. ASSIGNMENT OF LEASES AND RENTS

The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee all leases already in existence, and those to be created in the future, including any guarantees in respect thereof, and all rents due or accruing due or at any time hereafter to become due under all leases or tenancies, present and future, now existing or at any time hereafter made in respect of the Lands or any part thereof, to have and to hold unto the Mortgagee until all Obligations of the Mortgagor, and all moneys owing and all obligations of the Mortgagor in respect of this Mortgage, have been fully paid and fulfilled, subject to the following terms and conditions:

- (a) whenever the Mortgagor is in default under any of the provisions of this Mortgage or upon an Event of Default under the Credit Agreement which is continuing, the Mortgagee shall be entitled to give notice to the tenants of the Lands or any portion thereof to pay the rent to the Mortgagee and the Mortgagee may collect the rents and revenues thereof, and distrain in the name of the Mortgagor for the same;
- (b) the Mortgagee may give good and sufficient receipts and discharges for rents received;
- (c) the Mortgagee may apply the rentals collected by it towards arrears and maturing payments of interest and principal under this Mortgage, then towards the payment of taxes, insurance, heating, repairs, renovations and upkeep and other expenses or carrying charges connected with the Lands;
- (d) where any discretionary powers hereunder are vested in the Mortgagee or its agents, the same may be exercised by any officer, investment manager or manager of the Mortgagee, or its appointed agents, as the case may be;
- (e) the Mortgagee shall under no circumstances become a mortgagee in possession, or liable to account to the Mortgagor or credit the Mortgagor with any moneys on account of the mortgage except those which shall come into its hands, and subject to all deductions and payments made out of the rentals received from the Lands as herein provided;
- (f) the Mortgagee may exercise the rights conferred upon it under this Section 25 without the formal appointment of a receiver under other provisions of this Mortgage and without the necessity of first commencing legal proceedings with respect to the Mortgagor's default giving rise to the Mortgagee's right to give notice to tenants under this Section 25;
- (g) whenever any and all defaults under this Mortgage or an Event of Default under the Credit Agreement have been cured after the exercise by the Mortgagee of its rights under this Section 25, the Mortgagor may resume collection of the rentals until further default or Event of Default, as the case may be, has occurred, whereupon the Mortgagee may re-exercise its rights hereunder or under the Credit Agreement, and thereafter at any time such default or Event of Default occurs;
- (h) the Mortgagor shall not at any time during the existence of this Mortgage assign, pledge or hypothecate any lease, leases, or tenancies, now or hereafter existing in respect of the Lands or the rents or revenues due or to become due thereunder, or any part thereof, other than to the Mortgagee; nor shall the Mortgagor grant any general assignment of book debts which would cover such rentals;
- (i) the Mortgagor shall not hereafter collect more than two months rental in advance;
- (j) neither the taking of this assignment nor anything done in pursuance hereof shall make the Mortgagee liable in any way, as landlord or otherwise, for the performance of any covenants, obligations and liabilities under the said leases or tenancies or any of them;

- (k) the exercise of this Section 25 or of any collateral security with respect to rentals shall not entitle the Mortgagor to redeem this Mortgage.

26. RECEIVER

It is declared and agreed that at any time and from time to time when there shall be default under the provisions of this Mortgage or the occurrence of an Event of Default under the Credit Agreement which is continuing, the Mortgagee may at such time and from time to time and with or without entry into possession of the Lands or any part thereof, appoint a receiver or a manager or a receiver and manager of the Lands or any part thereof and of the rents and profits thereof and with or without security, and may from time to time remove any receiver and appoint another in his stead and that, in making any such appointment or removal, the Mortgagee shall be deemed to be acting as the agent or attorney for the Mortgagor. Such appointment may be made at any time either before or after the Mortgagee shall have entered into or taken possession of the Lands or any part thereof. Upon the appointment of any such receiver or receivers from time to time, the following provisions shall apply:

- (a) the statutory declaration of an officer of the Mortgagee as to default under the provisions of this Mortgage or the occurrence of an Event of Default under the Credit Agreement, shall be conclusive evidence thereof;
- (b) every such receiver shall be the irrevocable agent or attorney of the Mortgagor for the collection of all rents falling due in respect of the Lands or any part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (c) every such receiver may, in the discretion of the Mortgagee and by writing under its corporate seal, be vested with all or any of the powers and discretions of the Mortgagee;
- (d) the Mortgagee may from time to time, by such writing fix the remuneration of every such receiver who shall be entitled to deduct the same out of the rents from the Lands or from the proceeds of the judicial sale of the Lands;
- (e) every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Mortgagor and in no event the agent or attorney of the Mortgagee, and the Mortgagee shall not in any way be responsible for any acts or omissions (including negligence, misconduct or misfeasance) on the part of any such receiver;
- (f) the appointment of every such receiver by the Mortgagee shall not incur or create any liability on the part of the Mortgagee to the receiver in any respect, and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Mortgagee a mortgagee in possession in respect of the Lands or any part thereof;
- (g) every such receiver shall from time to time have the power to rent any portion of the Lands which may become vacant, for such term and subject to such provisions as he may deem advisable or expedient, and in so doing every such receiver shall act as the attorney or agent of the Mortgagor and he shall have authority to execute under seal any lease of such portion of the Lands in the name of and on behalf of the Mortgagor, and the Mortgagor undertakes to ratify and confirm whatever any such receiver may do in respect of the Lands;
- (h) every such receiver shall have full power to complete any unfinished construction upon the Lands with the intent that the Lands and the buildings thereon when so completed shall be a complete structure as represented by the Mortgagor to the Mortgagee for the purpose of obtaining the loan pursuant to the Credit Agreement;

- (i) every such receiver shall have full power to manage, operate, amend, repair, alter or extend the Lands or any part thereof in the name of the Mortgagor for the purpose of securing the payment of rental from the Lands or any part thereof;
- (j) no such receiver shall be liable to the Mortgagor to account for moneys or damages other than cash received by him in respect of the Lands or any part thereof, and out of such cash so received every such receiver shall, subject to the approval of the Mortgagee, in the following order, pay:
 - (i) its remuneration aforesaid;
 - (ii) all payments including, without limitation, costs as between solicitor and its own client made or incurred by it in connection with the management, operation, amendment, repair, alteration or extension of the Lands or any part thereof;
 - (iii) interest, principal and other moneys which may from time to time, be or become charged upon the Lands in priority to these presents, and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Lands or any part thereof;
 - (iv) to the Mortgagee, all interest due or falling due under these presents and the balance to be applied upon Obligations due and payable and secured by these presents;
 - (v) into a reserve account in the name of the receiver, an appropriate sum of money as a reserve fund for unusual, emergency or lump sum payments or expenses with respect to the Lands; and
 - (vi) any surplus thereafter remaining in the hands of every such receiver after payments made as aforesaid, to the Mortgagor;
- (k) save as to claims for an accounting under Section 26(j), the Mortgagor hereby releases and discharges the Mortgagee and every such receiver from every claim of every nature which may arise or accrue to the Mortgagor or any person claiming through or under the Mortgagor by reason or as a result of anything done by the Mortgagee or any such receiver under the provisions of this Section 26, unless such claim be the direct and proximate result of dishonesty or gross neglect;
- (l) the power of sale, foreclosure and any other remedies of the Mortgagee may be exercised either before, concurrent with, during, or after the appointment of any receiver hereunder.

27. INSOLVENCY

If the Mortgagor shall commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada), as amended, become bankrupt or insolvent or shall be subject to the provisions of the said Act, or any other Act for the benefit of creditors or relating to bankrupt or insolvent debtors, or make a general assignment for the benefit of its creditors or otherwise acknowledge its insolvency, the same shall constitute a breach of covenant and default herein.

28. RIGHTS OF MORTGAGEE

The Mortgagor further covenants and agrees with the Mortgagee that in the event of default being made in any of the covenants, agreements, provisos or stipulations expressed or implied herein or upon the occurrence of an Event of Default under the Credit Agreement which is continuing:

- (a) the Mortgagee may, at the expense of the Mortgagor and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenants, agreements, provisos or stipulations;
- (b) the Mortgagee may at such time or times as the Mortgagee may deem necessary and without the concurrency of any person, enter upon the Lands and may make such arrangements for completing the construction, repairing or putting in order of any buildings or other improvements on the Lands, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the Lands as the Mortgagee may deem expedient; all reasonable costs, charges and expenses, including allowances for the time and services of any employee of the Mortgagee or other person appointed for the above purposes, shall be forthwith payable to the Mortgagee and shall be a charge upon the Lands and shall bear interest at the Mortgage Rate until paid;
- (c) the Mortgagee may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Lands, and a solicitor to examine and report upon the title to the same;
- (d) the Mortgagee or agent of the Mortgagee may enter into possession of the Lands or any part thereof, and whether in or out of possession collect the rents and profits thereof, and make any demise or lease of the Lands, or any part thereof, for such terms and periods and at such rents as the Mortgagee shall think proper; and the power of sale hereunder may be exercised either before or after and subject to any such demise or lease;
- (e) it shall and may be lawful for and the Mortgagor does hereby grant full power, right and license to the Mortgagee to enter, seize and distrain upon the Lands, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Lands or any part thereof, as much of the mortgage moneys as shall from time to time be or remain in arrears and unpaid, together with costs, charges and expenses attending such levy or distress, as in like cases of distress for rent;
- (f) the Mortgagee shall be entitled forthwith to take such proceedings to obtain repayment of the moneys and interest payable to the Mortgagee hereunder and to realize on its security under this Mortgage by foreclosing the same or by whatever other action it may by law be entitled to do;
- (g) the Mortgagee shall be entitled, without notice (except such as may be required by law and which notice may run concurrent with the notice period required pursuant to the *Land Title Act* (British Columbia) in respect of notice of intention to file a certificate in respect of the power of attorney) to sell and dispose of the Lands (by public auction and/or private contract) with or without entering into possession of the same; and all remedies competent may be resorted to; and all the rights, powers and privileges granted to or conferred upon the Mortgagee under and by virtue of any statute or by this Mortgage may be exercised; and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Lands hereunder, and the Mortgagee may sell, transfer and convey any part of the Lands on such terms of credit, or part cash and part credit, secured by contract or agreement for sale or mortgage, or otherwise, as shall in the opinion of the Mortgagee be most advantageous, and for such price as can reasonably be obtained therefor; and in the event of a sale on credit, or part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable for or charged with any moneys until the same shall be actually received in cash; and the sales may be made from time to time of any portion or portions of the Lands to satisfy interest or parts of the principal overdue, leaving the principal or parts thereof to run with interest payable as aforesaid; and the Mortgagee may make stipulations as to the title or evidences or commencement of title or otherwise as the Mortgagee shall deem proper; and the Mortgagee may buy in or rescind

or vary any contract for sale of the Lands and any resale thereof; and on any sale or release, the Mortgagee shall not be answerable for loss occasioned thereby; and for any of such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee shall deem advisable or necessary; and in case any sale held by the Mortgagee under and by virtue of the laws of the Province of British Columbia under the power of sale herein contained should prove abortive the Mortgagee may take foreclosure proceedings in respect of the Lands in accordance with the provisions of the laws of the Province of British Columbia in that behalf; and in the event of any deficiency on account of the moneys secured by this Mortgage remaining due to the Mortgagee after realizing all the Lands, then Mortgagor will pay to the Mortgagee on demand the amount of such deficiency with interest at the Mortgage Rate both before and after judgment; and the proceeds of any sale hereunder shall be applied as above provided for or in payment of moneys payable under this Mortgage and costs on a solicitor and his own client basis, the balance, if any, to be paid to the Mortgagor; (any notice required to be given may be delivered to either the Lands, the Mortgagor's residence or place of business, or the last known address of the Mortgagor);

- (h) the whole of the Obligations shall, at the option of the Mortgagee, become due and payable;
- (i) the Mortgagee may, except as specifically provided, exercise each of the foregoing powers without notice to the Mortgagor.

29. **ATTORNEY**

As further assurance to the rights and remedies granted by the Mortgagor to the Mortgagee herein, the Mortgagor, as the registered owner of the Lands hereby irrevocably appoints the Mortgagee on its own behalf or any receiver or manager or receiver and manager appointed by the Mortgagee attorney on behalf of the Mortgagor to sell, lease, mortgage, transfer, or convey the Lands or any part thereof in accordance with the provisions of this Mortgage and to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due or owing to the Mortgagor in respect of the Lands, and for the enforcement of all contracts, covenants or conditions binding on any lessee or occupier of the Lands or on any other person in respect of it, and for the taking and maintaining possession of the Lands, and for protecting it from waste, damage, or trespass.

30. **JUDGMENT**

The taking of a judgment on any of the covenants or agreements herein contained shall not operate as a merger thereof or affect the Mortgagee's rights to interest at the Mortgage Rate and at the times herein provided. Further, any and all such judgments shall provide for interest thereon to be computed at the Mortgage Rate and in the same manner as herein provided until the judgment shall have been fully paid and satisfied and, without limiting the generality of the foregoing, the Mortgagee shall be entitled to receive interest at the Mortgage Rate on all moneys payable to the Mortgagee under this Mortgage, after any judgment has been rendered with respect to this Mortgage until such judgment is fully satisfied.

31. **EXPENSES**

All reasonable expenses, fees, charges or payments incurred, expended or paid by the Mortgagee (whether with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise) with respect to the following matters, that is to say:

- (a) all solicitors', inspectors', valuers' and surveyors' fees and expenses for drawing and registering this Mortgage and for examining the Lands and the title thereto, and for making or maintaining this Mortgage and any collateral security hereto a charge subject only to the prior encumbrances acceptable to the Mortgagee;

- (b) all sums which the Mortgagee may advance for insurance premiums, property taxes, or rates;
- (c) any unpaid amount due to the Mortgagee for application fees or renewal fees;
- (d) all sums which the Mortgagee may expend in payment of prior liens, charges, encumbrances or claims charged or to be charged against the Lands or on this Mortgage or against the Mortgagee in respect of this Mortgage;
- (e) all sums which the Mortgagee may expend in maintaining, repairing, restoring or completing the construction on the Lands;
- (f) the cost of inspecting, leasing, managing or improving the Lands, including the price or value of any goods of any sort or description supplied for use on the Lands;
- (g) all sums paid to a receiver of the Lands;
- (h) the cost of exercising or enforcing or attempting to exercise or enforce any right, power, remedy or purpose hereunder provided or implied, and including an allowance for the time, work and expenses of the Mortgagee or any agent or employee of the Mortgagee, for any purpose provided for herein; and
- (i) the Mortgagee's solicitors' costs as between solicitor and his own client incurred or paid by the Mortgagee as a result of any default hereunder or under any other security for the loan pursuant to the Credit Agreement, or of endeavouring to collect with or without suit any money payable hereunder, or of taking, recovering or keeping possession of the Lands, and generally in any other proceedings, matter or thing taken or done to protect or realize this security or any other security for the loan pursuant to the Credit Agreement;

together with interest thereon at the Mortgage Rate, are deemed secured hereby and shall be or constitute a charge or charges against the Lands, and all such moneys shall be repayable to the Mortgagee on demand, or if not demanded, then with the next ensuing instalment except as herein otherwise provided, and all such sums together with interest thereon and all other moneys payable by the Mortgagor under this Mortgage shall be deemed to constitute part of the mortgage moneys and are included in the principal secured hereby.

32. EXPROPRIATION

The Mortgagor hereby assigns to the Mortgagee, any proceeds which may become due and payable to the Mortgagor by an expropriating authority upon an expropriation of the Lands or the proceeds of any condemnation, eminent domain or like proceeding or the sale in lieu of or in reasonable anticipation thereof of the whole or any part of the Lands. The Mortgagor hereby waives the benefit of the provisions of the *Expropriation Act* (British Columbia), or any legislation similar thereto or in replacement thereof and hereby agrees to pay to the Mortgagee the difference, if any, between all monies secured by this Mortgage at the date of the expropriation and the compensation paid to the Mortgagee by the expropriating authority plus interest at the rate provided for herein on such difference. The Mortgagor shall forward to the Mortgagee, copies of any documentation relating to an expropriation or a proposed expropriation of the Lands or any portion thereof, forthwith upon receipt of the said documentation by it and shall execute and deliver any further or additional documentation which the Mortgagee in its sole discretion deems necessary to effect the above assignment or which is requested by the expropriating authority. For the purposes of this Section 32, the "**date of the expropriation**" shall mean the date that the Mortgagor ceases to be the registered owner of Lands, or any portion thereof, and the "**expropriating authority**" shall mean the Crown or any individual or entity empowered to acquire lands by expropriation. Notwithstanding anything to the contrary contained herein, if the Mortgagor or the Mortgagee receives a notice of intention to expropriate in relation to the Lands, or any portion thereof, at the option of the Mortgagee, the whole of the outstanding balance

secured under this Mortgage in proportion to the value the expropriated land bears to the Lands at the date of the expropriation, shall immediately become due and payable in like manner and to all intents and purposes as if the time for payment of the said balance had fully come and expired. If any or all of the Lands is expropriated, it is agreed that the proceeds from any such expropriation shall be paid directly to the Mortgagee in priority to the claims of any other party. Service of a copy of this Mortgage on the expropriating authority shall be sufficient authority for the expropriating authority to deliver proceeds to the Mortgagee, in accordance with the terms of the assignment contained herein.

33. **PRIOR MORTGAGES**

The Mortgagor hereby covenants to perform and observe and satisfy all the terms, covenants and conditions to be performed and observed by the Mortgagor under the terms of any prior mortgages, agreements for sale or other charges (hereinafter called a "**prior mortgage**") registered against the title to the Lands or any part thereof. It is expressly agreed and understood by the Mortgagor that in the event of default by the Mortgagor under any of the terms of any prior mortgage, then at the option of the Mortgagee the Mortgagor shall be deemed to be in default of the terms of this Mortgage. The Mortgagee may at its option make any payment or cure any default under a prior mortgage and any amount or amounts so paid together with all costs, charges, expenses and outlays of the Mortgagee thereby incurred shall be added to the Obligations, shall bear interest at the rate aforesaid from the date expended until paid, shall be payable with interest as aforesaid forthwith by the Mortgagor to the Mortgagee without demand and shall be a charge on the Lands and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have in the event of default in payment of other moneys payable hereunder.

34. **SEVERABILITY**

In the event any Section or part of a Section herein is invalid or unenforceable for any reason, then such Section or part of a Section shall be severable from this Mortgage and not affect the validity or enforceability of any other part of this Mortgage.

35. **MORTGAGE DISCHARGE**

Any discharge of this Mortgage shall be prepared by the solicitors for the Mortgagor, and the Mortgagee shall have a reasonable time after receipt of actual payment and satisfaction of the Obligations in full within which to execute such discharge; and tender of the mortgage monies shall not entitle the Mortgagor to receive such discharge forthwith and interest as aforesaid shall continue to run and accrue from day to day until actual payment and satisfaction of the Obligations in full has been received and confirmed by the Mortgagee. All legal and other expenses for the preparation and execution of the said discharge shall be borne by the Mortgagor if allowable by law.

36. **LAW**

This Mortgage is made pursuant to the *Land Title Act* (British Columbia) and any amendments thereto and shall be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

37. **CHARGE**

For the better securing to the Mortgagee the repayment in the manner aforesaid of the principal sum and interest and other moneys hereby secured and all other Obligations the Mortgagor does hereby mortgage and charge to the Mortgagee for the benefit of the Agent and the Lenders, all of the Mortgagor's estate and interest in the Lands.

38. INTEREST

It is the intent of the parties hereto that the interest rate not exceed the maximum interest rate permitted under the laws of Canada and of the Province of British Columbia and if the interest rate to the Mortgagee would, but for this provision, exceed the aforesaid maximum interest rate, the interest rate to the Mortgagee shall be limited to the maximum interest rate permitted under the laws of Canada and the Province of British Columbia and this Mortgage shall automatically be modified without the necessity of any further act or deed to give effect to the restriction on return set forth above.

39. CREDIT AGREEMENT

The Mortgagor agrees that the accepted terms and conditions of the Credit Agreement shall survive funding of the loans pursuant to the Credit Agreement and continue to be in full force and effect after said funding. The Mortgagor agrees to observe and perform its covenants and obligations under the Credit Agreement to the same extent and effect as if such covenants and obligations were set forth herein in full. The provisions of the Credit Agreement are not superseded by nor merged in this Mortgage, and the provisions of the Credit Agreement to the extent that they are not inconsistent with the terms of this Mortgage are incorporated herein by reference, as applicable, and shall remain in full force and effect until all of the covenants and obligations therein on the part of the Mortgagor to be observed and performed, have been fully satisfied. Default by the Mortgagor of any of the terms or requirements contained in the Credit Agreement shall constitute a default hereunder. In the event there is a conflict between the terms and conditions of this Mortgage and the Credit Agreement, then the Credit Agreement shall take precedence. There will be no conflict if the terms and conditions of the Credit Agreement should enlarge or clarify the terms and conditions of this Mortgage.

40. HAZARDOUS SUBSTANCES

- (a) The Mortgagor represents, covenants and warrants to and in favour of the Mortgagee that:
- (i) neither the Mortgagor, nor, to the best knowledge of the Mortgagor, any other person has ever caused or permitted any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands, save and except as disclosed to the Mortgagee in writing;
 - (ii) it shall not allow any Hazardous Substances to be placed, held, located or disposed of on, under or at the Lands without the specific and unequivocal prior written consent of the Mortgagee which consent may be arbitrarily or unreasonably withheld;
 - (iii) it shall not allow the Lands to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the disposal and emission of Hazardous Substances;
 - (iv) to the extent that Hazardous Substances are, with the Mortgagee's consent as aforesaid, placed, held, located or disposed of on, under or at the Lands in accordance with the terms hereof, the Mortgagor shall:
 - (A) comply with, or cause to be complied with, all applicable laws and regulations relating to the use, storage and disposal of the Hazardous Substances; and
 - (B) at the request of the Mortgagee, provide evidence to the Mortgagee of compliance with all applicable laws and regulations, such evidence to include inspection reports and such tests as the Mortgagee may reasonably require, all at the expense of the Mortgagor; and

- (v) without restricting the generality of the foregoing, in the event that gasoline or other storage tanks are located under or on the Lands, the Mortgagor shall:
 - (A) maintain and repair such storage tanks in a manner such that they do not leak or interfere with the environment; and
 - (B) at the request of the Mortgagee, assign any warranties or guarantees received from the manufacturer or installer of such storage tanks in favour of the Mortgagee as additional security.
- (b) For the purpose hereof "**Hazardous Substances**" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
 - (i) radioactive materials;
 - (ii) explosives;
 - (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
 - (iv) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (A) endangers the health, safety or welfare of persons or the health of animal life;
 - (B) interferes with normal enjoyment of life or property; or
 - (C) causes damage to plant life or to property;
 - (v) toxic substances including, without restriction, urea formaldehyde foam insulation, asbestos and poly-chlorinated biphenyls; and
 - (vi) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Mortgagor, the Mortgagee or the Lands.
- (c) The Mortgagor hereby indemnifies and saves harmless the Mortgagee, its officers, directors, employees, agents and shareholders and its successors and assigns from and against any and all losses, liabilities, damages, costs (including without limitation legal costs on a solicitor and his own client basis) and expenses of any kind whatsoever including, without limitation:
 - (i) the costs of defending, counter-claiming or claiming against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;
 - (ii) any cost, liability or damage arising out of a settlement of any action entered into by the Mortgagee with or without the consent of the Mortgagor; and
 - (iii) the costs of repair, clean-up or restoration paid by the Mortgagee and any fines levied against the Mortgagee;

which at any time or from time to time may be paid, incurred or asserted against the Mortgagee, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release, of Hazardous Substances from the Lands or any part thereof either onto any lands (including the Lands), into the atmosphere or into any water. This indemnification shall survive the satisfaction, release or enforcement of the mortgage or any collateral security and the full repayment of the mortgage monies.

41. DUE ON SALE

The principal sum secured hereunder, all accrued interest hereunder and all other moneys payable hereunder shall, at the election of the Mortgagee, become due and payable in full if the Lands or any part thereof or interest therein is, without the prior consent in writing of the Mortgagee sold, transferred, conveyed or otherwise similarly disposed of to a party not approved of in writing by the Mortgagee, or if the Mortgagor enters into an agreement to effect any of the foregoing to such an unapproved party whether by registered or unregistered instrument and whether for valuable or nominal consideration (and if the Mortgagor is a corporation, any Change of Control of the corporation shall constitute such a disposition); provided however that nothing herein shall be construed as permitting the Mortgagor to prepay this Mortgage in whole or in part; and provided further that the acceptance by the Mortgagee of any instalment payment or other payment under this Mortgage from any entity other than the Mortgagor shall not constitute a waiver by the Mortgagee of its rights under this Section 41, nor a consent by the Mortgagee of any such sale or disposal of the Lands as above described; and provided further that if the Mortgagee gives its consent to any such sale or disposition as above described, it may do so upon such conditions as it may in its uncontrolled discretion decide upon including, without limiting the generality of the foregoing, the execution and delivery (by any intended transferee or successor in whole or in part of the Mortgagor's title to the Lands) of an agreement in the Mortgagee's form whereby such transferee or successor assumes all covenants and obligations of the Mortgagor under this Mortgage and all other security documents given by the Mortgagor with respect to the loan pursuant to the Credit Agreement. The Mortgagee may require that such purchaser, transferee or assignee pay an assumption fee to the Mortgagee to compensate the Mortgagee for its time and effort hereunder and the non-payment of such assumption fee shall also be considered to be a default under this Mortgage. A sale contemplated under a specific partial prepayment clause contained elsewhere herein shall not be subject to the terms hereof.

42. RE-ADVANCES

If applicable, it is the intention of the Mortgagor and Mortgagee that the Mortgagee may wish to make advances and re-advances to the Mortgagor up to an aggregate outstanding balance at any time of the principal sum as set out aforesaid. Accordingly, this Mortgage shall be deemed to secure a current or running account within the meaning of, and shall take priority in accordance with the *Property Law Act* (British Columbia). This Mortgage is and shall be a continuing security to the Mortgagee for the repayment of all present and future amounts owing in respect of the principal sum lent. Any portion of the principal may be advanced or re-advanced by the Mortgagee in one or more sums at any future date or dates and the amount of such advances and re-advances when so made shall be secured by this Mortgage and be repayable with interest as aforesaid and this Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, but none of the execution and the registration of this Mortgage and the advance in part of any monies by the Mortgagee shall bind the Mortgagee to advance any un-advanced portion thereof. This Mortgage shall not be void if the principal sum secured hereby has been repaid in full, if such ability to borrow continues to be available to the Mortgagor. This Mortgage shall be void only when the Obligations secured hereby have been repaid and satisfied in full and the Credit Agreement cancelled. Notwithstanding that this Mortgage is deemed to be a revolving line of credit mortgage there shall be no right of prepayment except as provided, if at all, elsewhere in this Mortgage.

43. BENEFIT OF EASEMENTS

As additional security for all of the indebtedness and other obligations secured hereunder and all other Obligations (as herein defined) and interest thereon and the due performance of the Mortgagor's obligations

hereunder and under any collateral security the Mortgagor hereby assigns, transfers, mortgages, charges and sets over to and in favour of the Mortgagee as and by way of a specific assignment, mortgage and charge all of the right, title and interest of the Mortgagor in and with respect to any and all easements, restrictive covenants, rights of way, party wall agreements, encroachment agreements and other similar agreements benefiting the Lands or any part thereof (collectively, the "**Agreements**") and all of the benefit, power and advantage of the Mortgagor to be derived therefrom (including without limitation the benefit of any positive covenant) and otherwise to enforce the rights of the Mortgagor under the Agreements in the name of the Mortgagor. Nothing herein contained shall render the Mortgagee liable to any person for the fulfilment or non-fulfilment of the obligations covered in any of the Agreements, including, but not limited to, the payment of any moneys thereunder or in respect thereto and the Mortgagor hereby indemnifies and agrees to save and hold harmless the Mortgagee from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever arising directly or indirectly from or out of any of the Agreements. The Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall not surrender, alter, amend or modify any of the Agreements or any of the terms or conditions thereof except with the prior written consent of the Mortgagee.

44. REPRESENTATION AND WARRANTY

The Mortgagor hereby presents and warrants that at the time of the disbursement of any part of the loan amount pursuant to the Credit Agreement, no default hereunder or Event of Default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default hereunder or an Event of Default under the Credit Agreement, this Mortgage or Such Other Securities, and neither the Mortgagor nor any other guarantor (if any) shall be insolvent or be subject to any bankruptcy, arrangement with creditors, proposal, amalgamation, reorganization, liquidation, winding up, dissolution, receivership or material litigation or continuation under laws of any other jurisdiction.

45. SUCCESSORS AND ASSIGNS

When the context makes it possible, the word Mortgagee wherever it occurs in this Mortgage, shall include the successors and assigns of the Mortgagee, and the word Mortgagor shall include heirs, executors, administrators, successors and assigns of the Mortgagor, and the word "**person**" shall include any body corporate or politic; and that words in the singular include the plural, and that words in plural include the singular, and words importing the masculine gender include the feminine.

46. JOINT AND SEVERAL

In the event there is more than one Mortgagor hereunder, the terms, conditions and other obligations of each Mortgagor hereunder shall be joint and several. For clarity and without limiting the generality of the foregoing, a covenant or obligation of the Mortgagor hereunder shall apply to each party comprising the Mortgagor of its respective estate and interest in the Lands or any part thereof.

47. GENERAL

The Mortgagor agrees with the Mortgagee as follows:

- (a) to comply with the terms and conditions of the Credit Agreement or mortgage approval and this Mortgage at all times;
- (b) to maintain adequate insurance coverage as outlined in the Credit Agreement or mortgage approval as would other prudent owners of similar property, and satisfactory to the Mortgagee and its legal counsel;
- (c) to maintain the Lands in a sound state of repair at all times as would other prudent owners of similar property;

- (d) at the Mortgagee's request, to deliver or cause to be delivered to the Mortgagee promptly such information about the financial condition and operation with respect to the Lands as the Mortgagee may request from time to time;
- (e) that all erections, buildings, fences, machinery, plant and improvements fixed or otherwise now on or hereafter put upon the said lands (including but without limiting the generality of the foregoing all furnaces, boilers, plumbing and heating equipment, light fixtures, elevator equipment, escalators, water heaters, storm windows, storm doors and screens and all apparatus and equipment appurtenant thereto) are and shall, in addition to other fixtures now on or hereafter put upon the said lands, be and become fixtures and form part of the realty and form part of this security and are included in the defined term Lands, and until payment of all monies owing under this Mortgage, the same or any part thereof shall not be removed without the prior written consent of the Mortgagee; and
- (f) the Mortgagee may request from the British Columbia Land Title Office at any time, and from time to time, a search of any realty property, the registered owner of which is the Borrower or the Guarantors.

48. INTEREST

Notwithstanding the stated interest rate per annum in this Mortgage or in the case of Obligations payable pursuant to the Credit Agreement, payment to the Mortgagee for the account of the Lenders of the relevant interest, fees and other amounts owing under the Security for any period in respect of the Obligations at the current rate at which the Obligations bear interest for such period pursuant to the Security shall be deemed to be payment in satisfaction of the interest payment for the same period under this Mortgage.

1. LAND TRANSFER FORM COVENANTS

The Mortgagor covenants with the Mortgagee as follows:

- (a) **Good Title**

The Mortgagor has a good title in fee simple to the Lands.
- (b) **Power and Authority to Mortgage Lands**

The Mortgagor has full and lawful power and authority and right to convey the Lands to the Mortgagee upon and subject to the terms and conditions set forth herein.
- (c) **Valid and Enforceable against Lands**

This Mortgage is lawfully executed and delivered and will remain a valid and enforceable lien on the Lands subject only to Permitted Liens.
- (d) **Pay Moneys Due**

The Mortgagor will pay the mortgage money and interest and observe the provisos herein; and will also pay any taxes, rates, levies, charges or assessments including, without limitation, utility charges, upon the Lands or in respect thereof, no matter by whom or by what authority imposed, which the Mortgagee has paid or has been rendered liable to pay and shall also pay all other sums as the Mortgagee may be entitled to under this Mortgage.
- (e) **After an Event of Default**

Upon enforcement of this Mortgage upon the occurrence of an Event of Default, the Mortgagee shall have possession of the Lands free from all encumbrances except for Permitted Liens.

(f) **Further Assurances**

The Mortgagor will execute such further assurances of the Lands as may be requisite.

(g) **No Other Encumbrances**

Other than Permitted Liens, the Mortgagor has done nothing to encumber the Lands.

(h) **Releases all Claims**

The Mortgagor releases to the Mortgagee all its claims on the Lands, and provided that until the occurrence of an Event of Default, the Mortgagor shall have quiet possession of the Lands.

49. **Doctrine of Consolidation**

The doctrine of consolidation will apply to this Mortgage notwithstanding Section 31 of the *Property Law Act* (British Columbia), as amended, and any subsequent statutory provision of substantially the same effect.

50. **CAPITALIZED TERMS**

In these Express Mortgage Terms and in Form B to which they are annexed:

- (a) Unless something in the subject matter or context otherwise requires, capitalized terms used herein and not otherwise defined in this Mortgage (including the recitals hereto) shall have the meaning as are ascribed to such terms in the Credit Agreement.
- (b) "**Form B**" means the form identified as "Form B" (Mortgage - Part 1) to which these Express Mortgage Terms are annexed.
- (c) "**Mortgage**" means the mortgage created by Part 1 and Part 2 together.
- (d) "**Part 1**" means all of the terms, conditions and other information contained in Form B and any schedule or attachment to Form B and which does not form a part of Part 2.
- (e) "**Part 2**" means these Express Mortgage Terms.

This is Exhibit "J" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

SUBORDINATION AND POSTPONEMENT AGREEMENT

THIS SUBORDINATION AND POSTPONEMENT AGREEMENT is made as of July 20, 2023, between Canadian Western Bank (the “**CWB**”), Carey Management Inc. (the “**Borrower**”), Spruce It Up Land Corp., Spruce it Up Garden Centre Inc., 772921 Alberta Inc., and Ridge Meadows Properties Ltd. (collectively, the “**Guarantors**”, the Guarantors and the Borrower are collective referred to as, the “**Obligors**”), and Canadian Imperial Bank of Commerce, as agent, for and on behalf of the various lenders party to the CIBC Loan Agreement (“**CIBC**”);

WHEREAS the Obligors have granted and in the future may grant additional CWB Security, to CWB, to secure repayment of the CWB Debt;

AND WHEREAS the Obligors have granted and in the future may grant additional CIBC Security, to secure repayment of the CIBC Debt;

AND WHEREAS CWB and CIBC seek to clarify their priority, rights, and interests, with respect to the Obligors’ Collateral;

AND WHEREAS CIBC agrees to unconditionally and irrevocably subordinate and postpone all CIBC Security, to and in favour of all CWB Security, solely with respect to the Mortgaged Collateral;

AND WHEREAS CWB agrees to unconditionally and irrevocably subordinate and postpone all CWB Security, to and in favour of all CIBC Security, solely with respect to the Personal Property Collateral;

NOW THEREFORE in consideration of the mutual covenants herein contained, and the payment of \$10 by each party to all other parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by each of the parties hereto, the parties make the following covenants, acknowledgments, and agreements:

1. **Defined Terms.** Unless otherwise defined in this Agreement, all terms used in this Agreement which are not defined herein but are defined in the *Personal Property Security Act* (Alberta) (the “**PPSA**”), in effect, in Alberta, on the date of this Agreement, will have the meanings given to those terms in the PPSA. References in this Agreement to any agreement shall be deemed to be a reference to such agreement as amended, supplemented, substituted, or replaced, from time to time. In this Agreement, unless something in the subject matter or context is inconsistent therewith:
 - (a) “**Agreement**” means this Subordination and Postponement Agreement, as amended, modified, supplemented, restated, or replaced, in writing, from time to time.
 - (b) “**Bankruptcy Law**” means, collectively: (a) the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time and any successor act or statute, (b) the *Companies’ Creditors Arrangement Act* (Canada), as amended from time to time and any successor act or statute, and (c) any similar laws or any corporate law in any jurisdiction including, without limitation, any laws relating to assignments for the benefit of creditors, a stay of proceedings, formal or informal moratorium, compositions, extensions generally with creditors, or proceedings seeking

reorganization, restructuring, re-capitalization, arrangement, or other similar relief, any law permitting the appointment of a receiver, interim receiver, receiver manager, or other person having similar powers and any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors.

- (c) **“CCAA”** means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended from time to time.
- (d) **“CCAA Proceedings”** means the proceedings commenced by Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc. under the CCAA, in the Court of Kings’ Bench of Alberta, Judicial Centre of Calgary, under Court File Number 2301-08305.
- (e) **“CIBC”** has the meaning ascribed to such term in the preamble of this Agreement, and its respective successors, assigns and beneficiaries.
- (f) **“CIBC Debt”** means all indebtedness, debts, liabilities, claims, and obligations, of any nature or kind, present or future, direct or indirect, whether revolving or term, matured or unmatured, absolute or contingent, and whether secured or unsecured, whether as primary debtor, surety or guarantor, matured or not, at any time, owing by any or all of the Obligors, jointly or severally, to CIBC or any other lenders party to the CIBC Loan Agreement.
- (g) **“CIBC Debt Repayment Date”** means the date on which the CIBC Debt has been indefeasibly repaid in full, and the CIBC Loan Agreement, the CIBC Security, and all CIBC Loan Documents have been terminated in accordance with the terms and conditions therein.
- (h) **“CIBC Loan Agreement”** means the Credit Agreement dated as of September 26, 2017 among the Borrower, various guarantors party thereto, CIBC, as lender and agent, and various lenders party thereto, from time to time, as amended by Amendment No. 1 to Credit Agreement dated May 3, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eight Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023, the Forbearance Agreement dated as of June 22, 2023, and as further amended, restated, supplemented, revised, replaced or otherwise modified from time to time.
- (i) **“CIBC Loan Documents”** means any agreement, document, or instrument related to the CIBC Loan Agreement, the CIBC Debt, or the CIBC Security.
- (j) **“CIBC Security”** means all liens, charges, pledges, mortgages, covenants, security interests, agreements, instruments, documents, and security agreements, of any nature or kind, now or hereafter, that secure the payment, performance, or discharge of the CIBC Debt, including, but not limited to: (i) the General Security Agreement, dated September 28, 2017, granted by the Borrower, Wallace & Carey Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Elite Foods Inc., Elite

International Foods Inc., Rical Sales and Logistics Inc., Regneck Enterprises Ltd., Retlogistics Inc., Ridge Meadows Properties Ltd., 1204248 Alberta Ltd., and 772921 Alberta Inc., to and in favour of Canadian Imperial Bank of Commerce, as agent; and, (ii) security under Section 427 of the *Bank Act* (Canada), executed by the Borrower in favour of each Lender and (iii) the Mortgage, dated July 20, 2023, granted by Spruce It Up Land Corp., 772921 Alberta Inc., and Ridge Meadows Properties Ltd., to and in favour of Canadian Imperial Bank of Commerce, in the principal amount of \$65,000,000.00; and (vi) the Form B Mortgage, dated July 20, 2023, granted by 772921 Alberta Inc., to and in favour of Canadian Imperial Bank of Commerce, in the principal amount of \$65,000,000.00.

- (k) **“CIBC Standstill Period”** has the meaning set out in Section 5(a) hereto.
- (l) **“Collateral”** means, in respect of any person, all of its present and after-acquired undertakings, properties, and assets, whether real or personal, tangible or intangible, and wherever located, now owned or hereafter acquired, by such person.
- (m) **“CWB Commitment Letter”** means the Commitment Letter, dated September 16, 2021, between Canadian Western Bank, as lender, Carey Management Inc., as borrower, and Wallace & Carey Inc., Spruce It Up Land Corp., Spruce It Up Garden Centre Inc., 772921 Alberta Inc., and Ridge Meadows Properties Ltd., as guarantors, as further amended, restated, supplemented, revised, replaced or otherwise modified from time to time.
- (n) **“CWB Debt”** means all indebtedness, debts, liabilities, claims, and obligations, of any nature or kind, present or future, direct or indirect, matured or unmatured, absolute or contingent, whether revolving or term, and whether secured or unsecured, whether as primary debtor, surety or guarantor, at any time owing by any or all of the Obligors, jointly or severally, to CWB, including, among others, such debts, liabilities, and obligations arising under the CWB Commitment Letter, the CWB Guarantee, or any other CWB Loan Documents. For greater certainty, and without limiting the foregoing, any subsequent increase in the principal amount of the indebtedness under the CWB Commitment Letter that is in excess of the existing aggregate commitments of CWB is and shall be “CWB Debt”.
- (o) **“CWB Debt Repayment Date”** means the date on which the CWB Debt has been indefeasibly repaid in full, and the CWB Commitment Letter, the CWB Security, and all CWB Loan Documents have been terminated, in accordance with the terms and conditions therein.
- (p) **“CWB Guarantee”** means the Multiple Entity Cross Guarantee, dated October 25, 2021, granted by Carey Management Inc., Spruce It Up Garden Centre Inc., Wallace & Carey Inc., 772921 Alberta Inc., Spruce It Up Land Corp., and Ridge Meadows Properties Ltd., to and in favour of Canadian Western Bank.
- (q) **“CWB”** has the meaning ascribed to such term in the preamble of this Agreement.
- (r) **“CWB Loan Documents”** means any agreement, document, or instrument related or entered into in connection with the CWB Commitment Letter, the CWB Guarantee, the CWB Debt, or the CWB Security.

- (s) **“CWB Security”** means all liens, charges, pledges, mortgages, covenants, security interests, agreements, instruments, documents, and security agreements, of any nature or kind, now held or hereafter granted, by any or all of the Obligor, to CWB, that secure the payment, performance, or discharge of the CWB Debt, including, but not limited to: (i) the General Security Agreement, dated October 25, 2021, granted by Spruce It Up Garden Centre Inc., to and in favour of Canadian Western Bank; (ii) the General Security Agreement, dated October 25, 2021, granted by Wallace & Carey Inc., to and in favour of Canadian Western Bank; (iii) the General Security Agreement, dated October 25, 2021, granted by Spruce It Up Land Corp., to and in favour of Canadian Western Bank; (iv) the General Security Agreement, dated October 25, 2021, granted by 772921 Alberta Inc., to and in favour of Canadian Western Bank; (v) the General Security Agreement, dated October 25, 2021, granted by Ridge Meadows Properties Ltd., to and in favour of Canadian Western Bank; (vi) the Land Mortgage, dated October 25, 2021, granted by 772921 Alberta Inc., Spruce It Up Land Corp., and Ridge Meadows Properties Ltd., to and in favour of Canadian Western Bank, in the principal amount of \$12,000,000; (vii) the Form B Mortgage, dated October 25, 2021, granted by 772921 Alberta Inc., to and in favour of Canadian Western Bank, in the principal amount of \$4,600,000; (viii) the General Assignment of Rents and Leases, dated October 25, 2021, granted by 772921 Alberta Inc., Spruce It Up Land Corp., and Ridge Meadows Properties Ltd., to and in favour of Canadian Western Bank.
- (t) **“CWB Standstill Period”** has the meaning set out in Section 5(c) hereto.
- (u) **“DIP Financing”** has the meaning set out in Section 12(a) hereto.
- (v) **“Disposition Commencement Date”** has the meaning set out in Section 13(a) hereto.
- (w) **“Disposition Period”** has the meaning set out in Section 13(a)(i) hereto.
- (x) **“Guarantors”** has the meaning ascribed to such term in the preamble of this Agreement.
- (y) **“Indemnified Party”** has the meaning set out in Section 13(b) hereto.
- (z) **“Insolvency Proceeding”** means, as to any person, any proceeding or action commenced by or against it under any provision of any Bankruptcy Law.
- (aa) **“Mortgaged Collateral”** means, in respect of any of the Obligor, any and all of their present and after-acquired rights, title, estates and interests, in, to, against, or concerning, the lands and real property, legally described as:
 - (i) PLAN 7911396 BLOCK 1 LOT 3 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS;
 - (ii) PLAN 7911396 BLOCK 1 LOT 4 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS;

- (iii) PLAN 8031JK BLOCK A LOT 5 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS;
- (iv) PLAN 5235JK BLOCK A EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS; and,
- (v) PIN: 003-862-682 LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698,

and all buildings, structures, improvements, and fixtures (such as plumbing, electrical, lighting, HVAC systems, warehouse racking / shelving and refrigeration) built upon or made to such real property, lands, or premises, from time to time, and all Collateral, insurance proceeds, rent, income, and proceeds derived from any lease, sale, or disposition thereof.

- (bb) “**Obligors**” has the meaning ascribed to such term in the preamble of this Agreement.
- (cc) “**Personal Property Collateral**” means all of the respective personal property of the Obligors, including, without limitation, all of the Obligors’ cash, cash equivalents, goods, inventory, machinery, equipment, intangibles, chattel paper, documents of title, instruments, investment property and furniture and all Collateral, insurance proceeds, and proceeds thereof, other than the Mortgaged Collateral.
- (dd) “**Receiver**” means interim receiver, receiver, receiver-manager, agent, or other similar official or representative, appointed by CIBC, in respect of the Personal Property Collateral.
- (ee) “**Security**” means, collectively, the CWB Security and the CIBC Security.
- (ff) “**Waiver & Consent Agreement**” means the Mortgagee’s Waiver and Consent, dated October 29, 2021, by and among CWB, 772921 Alberta Inc., Spruce It Up Land Corp., Ridge Meadows Properties Ltd., Carey Management Inc., and CIBC.

2. Interpretation.

- (a) The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder”, and similar expressions refer to this Agreement and not to any particular Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Agreement.
- (b) In this Agreement, words importing the singular number include the plural and vice versa and words importing a gender include both genders. The term “including” means “including without limiting the generality of the foregoing”.

3. Consent.

- (a) CWB consents to the granting and existence of the CIBC Security and agrees and confirms that no default in connection with the CWB Debt or CWB Security exists or will result from the granting of the CIBC Security.
- (b) CIBC consents to the granting and existence of the CWB Security and agrees and confirms that no default in connection with the CIBC Debt or CIBC Security exists or will result from the granting of the CWB Security.

4. Subordination and Postponement.

- (a) CIBC hereby covenants and agrees that, with respect to the Mortgaged Collateral, the CIBC Security and any recovery from the Mortgaged Collateral is hereby unconditionally and irrevocably deferred, postponed and, subordinated, in all respects, to and in favour of CWB, the CWB Security, and to the prior indefeasible repayment, in full, of all of the CWB Debt. CIBC acknowledges and agrees that the subordination and postponement provided for herein is for the benefit of CWB and will be enforceable by CWB.
- (b) CWB hereby covenants and agrees that, with respect to the Personal Property Collateral, the CWB Security and any recovery from the Personal Property Collateral is hereby unconditionally and irrevocably deferred, postponed and, subordinated, in all respects, to and in favour of CIBC, the CIBC Security, and to the prior indefeasible repayment, in full, of all of the CIBC Debt. CWB acknowledges and agrees that the subordination and postponement provided for herein is for the benefit of CIBC and will be enforceable by CIBC.
- (c) Without limiting the generality of the foregoing, the deferments, postponements, and subordinations contained herein will be effective notwithstanding:
 - (i) the dates of any advances secured by the Security;
 - (ii) the time or sequence of giving any notice or the making of any demand in respect of the CWB Debt, the Security, or the CIBC Debt, or the attachment, registration, perfection, or crystallization of the Security;
 - (iii) the granting of any court orders, including any within the CCAA Proceedings or any other Insolvency Proceedings or granted pursuant to any Bankruptcy Laws;
 - (iv) that any of the Security shall be defective, unperfected, or unenforceable, for any reason whatsoever;
 - (v) the method of perfection of the Security;
 - (vi) the provisions of the Security;
 - (vii) any invalidity or unenforceability of, or any limitation on, the liability of the Obligors;

- (viii) any defense, compensation, set off or counterclaim which the Obligors may have or otherwise assert;
- (ix) any Insolvency Proceedings, including, but not limited to, the CCAA Proceedings;
- (x) the taking of any collection, enforcement, or realization proceedings, pursuant to the Security, the CWB Debt, or the CIBC Debt;
- (xi) the date of obtaining any judgment or order of any bankruptcy court or any court administering any Insolvency Proceeding (including, but not limited to the CCAA Proceedings), as to the entitlement or priority of any of CWB or CIBC, to any of the Obligors' Collateral;
- (xii) the giving or failing to give any notice, or the sequence of giving any notice, including the giving or failing to give notice of the acquisition of any additional Security;
- (xiii) the failure to exercise any power or remedy reserved to (i) CWB, under the CWB Commitment Letter, any CWB Security or any other CWB Loan Documents or to insist upon strict compliance with any of the terms thereof; or, (ii) CIBC, under the CIBC Loan Agreement, any CIBC Security or any other CIBC Loan Documents or to insist upon strict compliance with any of the terms thereof;
- (xiv) the date or dates of any default or event of default of any of the Obligors;
- (xv) the rules of priority established under any applicable Law;
- (xvi) any waiver, consent, extension, indulgence, or other action, inaction or omission by CWB or CIBC or in respect of this Agreement, the CWB Loan Documents, the CIBC Loan Documents, the CWB Debt, the CIBC Debt or the Security;
- (xvii) any merger, consolidation, or amalgamation, of any Obligor, into or with, any other person or entity; or
- (xviii) any other fact, matter, or defect whatsoever that, except for this Agreement, would impact on the respective priorities of the CWB Security or the CIBC Security.

5. Standstill

- (a) CIBC shall not, with respect to the Mortgaged Collateral:
 - (i) commence, consent to, or join with any other creditor, in any creditor proceeding or Insolvency Proceeding (including, but not limited to, the CCAA Proceedings) which seek to incorporate or affect any of the Mortgaged Collateral; or,

- (ii) institute or commence any action or proceeding to enforce, collect or receive payment of any CIBC Debt or exercise any rights to enforce payment of any CIBC Debt, including any action of enforcement, realization, foreclosure, collection, seizure, Insolvency Proceeding, or execution, including, for certainty, whether as a secured or unsecured creditor,

until the expiry of a period of 180 days (the "**CIBC Standstill Period**") after the provision of written notice by CIBC to CWB (in accordance with the notice provisions hereof and referring to this Agreement and this Section) of the occurrence of an event of default or a default under the CIBC Security or the CIBC Loan Agreement and that repayment of the entire CIBC Debt has been accelerated.

- (b) Notwithstanding Section 5(a) hereof, CIBC may, take any and all actions, steps, or proceed with any enforcement concerning the CIBC Debt, or under the CIBC Security or any CIBC Loan Documents, as and against the Personal Property Collateral. For clarity the CIBC Standstill Period shall not pertain to, impair, delay, or affect, any rights, interests, enforcement, or remedies of CIBC in or against the Personal Property Collateral.

- (c) CWB shall not, with respect to the Personal Property Collateral:

- (i) commence, consent to, or join with any other creditor in any creditor proceeding or Insolvency Proceeding (excluding the CCAA Proceedings) which seeks to incorporate or affect any of the Personal Property Collateral; or,
- (ii) institute or commence any action or proceeding to enforce, collect or receive payment of any CWB Debt or exercise any rights to enforce payment of any CWB Debt, including any action of enforcement, realization, foreclosure, collection, seizure or execution, including for certainty, whether as a secured or unsecured creditor,

until the expiry of a period of 180 days (the "**CWB Standstill Period**") after the provision of written notice by CWB to CIBC (in accordance with the notice provisions hereof and referring to this Agreement and this Section) of the occurrence of an event of default or a default under the CWB Security or the CWB Loan Agreement and that repayment of the entire CWB Debt has been accelerated.

- (d) Notwithstanding Section 5(c) hereof, CWB may, take any and all actions, steps, or proceed with any enforcement concerning the CWB Debt, or under the CWB Security or any CWB Loan Documents, as and against the Mortgaged Collateral. For clarity the CWB Standstill Period shall not pertain to, impair, delay, or affect, any rights, interests, enforcement, or remedies of CWB in or against the Mortgaged Collateral.

6. Security.

- (a) CIBC hereby:
 - (i) acknowledges and agrees that the CWB Security has priority over the CIBC Security with respect to all rights and interests in, to, or against all Mortgaged Collateral;
 - (ii) postpones and subordinates all mortgages, charges, liens, assignments and security interests, created in or against the Mortgaged Collateral, by the CIBC Security, to the mortgages, charges, liens, assignments and security interests in the Mortgaged Collateral created by the CWB Security; and
 - (iii) agrees to ratify and confirm the subordination and postponement set out herein, from time to time, in favour of CWB, as reasonably required by CWB, following the written request of CWB therefor.
- (b) CWB hereby:
 - (i) acknowledges and agrees that the CIBC Security has priority over the CWB Security with respect to all rights and interests in, to, or against all Personal Property Collateral;
 - (ii) postpones and subordinates all mortgages, charges, liens, assignments and security interests, created in or against the Personal Property Collateral, by the CWB Security, to the mortgages, charges, liens, assignments and security interests in the Personal Property Collateral created by the CIBC Security; and
 - (iii) agrees to ratify and confirm the subordination and postponement set out herein, from time to time, in favour of CIBC, as reasonably required by CIBC, following the written request of CIBC therefor.
- (c) The Obligors hereby acknowledge and agree that they have taken notice of the foregoing subordinations and postponements by CIBC and CWB and expressly consent thereto.
- (d) CWB agrees that the Personal Property Collateral may be stored or utilized at the Mortgaged Collateral premises and shall not be deemed a part of same but shall, at all times, be considered personal property.

7. No Challenge.

- (a) CIBC will not take, cause or support any other person to take, on its or any other lenders under the CIBC Loan Agreement behalf, or support any other person to take, any steps, whatsoever, whereby:
 - (i) the existence, priority, or validity of any of the CWB Security or CWB Debt or the rights or interests of CWB, as set out herein, or under the CWB Commitment Letter, the CWB Security, or any other CWB Loan

Documents, in, to, or against, the Mortgaged Collateral, are or will be contested, delayed, defeated, impaired or diminished, in any method or manner;

- (ii) the Mortgaged Collateral becomes part of or otherwise subject to any Insolvency Proceedings, including, but not limited, the CCAA Proceedings;
- (iii) CWB's priority, rights, title, or interests, in, to, or against the Mortgaged Collateral, are in any way impaired; or,
- (iv) any charge, lien, mortgage, or other security interest is granted or otherwise deemed or determined to rank in priority to or *pari passu* with the CWB Security, as and against the Mortgaged Collateral.

Without limiting the generality of the foregoing, CIBC will not, and will not support any other person to, challenge, object to, compete with, or impede, in any manner, any proceeding commenced by CWB, for the enforcement, by CWB, of the CWB Security or CWB Debt, as and against the Mortgaged Collateral in accordance with applicable law, provided that the proceeds of any such enforcement are distributed in accordance with the priorities set out herein.

- (b) CWB will not take, or cause or support any other person to take, on its or any other lenders under the CWB Commitment Letter behalf, or support any other person to take, any steps, whatsoever, whereby:
 - (i) the existence, priority, or validity of any of the CIBC Security or CIBC Debt or the rights or interests of CIBC, as set out herein, or under the CIBC Security, or any other CIBC Loan Documents, in, to, or against, the Personal Property Collateral are or will be contested, delayed, defeated, impaired or diminished, in any method or manner;
 - (ii) the Personal Property Collateral becomes part of or otherwise subject to any Insolvency Proceedings (excluding the CCAA Proceedings);
 - (iii) CIBC's priority, rights, title, or interests, in, to, or against the Personal Property Collateral, is in any way impaired; or,
 - (iv) any charge, lien, mortgage, or other security interest is granted or otherwise deemed or determined to rank in priority to or *pari passu* with the CIBC Security, as and against the Personal Property Collateral.

Without limiting the generality of the foregoing, CWB will not, and will not support any other person to, challenge, object to, compete with, or impede, in any manner, any proceeding commenced by CIBC, for the enforcement, by CIBC, of the CIBC Security or CIBC Debt, as and against the Personal Property Collateral in

accordance with applicable law, provided that the proceeds of any such enforcement are distributed in accordance with the priorities set out herein.

8. Liquidation, Dissolution, Bankruptcy, etc.

- (a) In the event of distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the Mortgaged Collateral or the proceeds thereof, to creditors in connection with any Insolvency Proceeding, CWB will be entitled to receive payment in full of the CWB Debt before CIBC is entitled to receive any direct or indirect payment or distribution arising from or in connection with the Mortgaged Collateral. In connection with any such Insolvency Proceeding, CWB will be entitled to receive directly, for application in accordance with the provisions of the CWB Loan Documents, any and all payments from the proceeds of the Mortgaged Collateral, of any kind or character, whether in cash or other assets. To the extent any payment of CWB Debt is determined to be a fraudulent preference or otherwise preferential, set aside, or required to be paid to a trustee, Receiver, court-appointed receiver, monitor, creditor, or other similar person, then if such payment is recoverable by or paid over to, such trustee, Receiver, court-appointed receiver, monitor, creditor, or other similar person, the CWB Debt or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred provided that, if CWB acquires an ownership or possessory interest in any of the Mortgaged Collateral pursuant to the exercise of its rights under the CWB Security or any other document executed by any Obligors or under applicable law, CIBC or its agents, representatives, Receiver, or invitees or any Receiver or other similar official appointed by CIBC, in respect of the Personal Property Collateral, may enter upon the applicable Mortgaged Collateral premises, at any time, without any interference by CWB to inspect or remove any or all of the Personal Property Collateral (other than any Mortgaged Collateral forming part thereof), including, without limitation, by public auction or private sale pursuant to the provision of Section 13(b) hereto.
- (b) In the event of distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the Personal Property Collateral or the proceeds thereof, to creditors in connection with any Insolvency Proceeding, CIBC will be entitled to receive payment in full of the CIBC Debt before CWB is entitled to receive any direct or indirect payment or distribution arising from or in connection with the Personal Property Collateral. In connection with any such Insolvency Proceeding, CIBC will be entitled to receive directly, for application in accordance with the provisions of the CIBC Loan Documents, any and all payments from the proceeds of the Personal Property Collateral, of any kind or character, whether in cash or other assets. To the extent any payment of CIBC Debt is determined to be a fraudulent preference or otherwise preferential, set aside, or required to be paid to a trustee, Receiver, court-appointed receiver, monitor, creditor, or other similar person, then if such payment is recoverable by or paid over to, such trustee, Receiver, court-appointed receiver, monitor, creditor, or other similar person, the CIBC Debt or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

- (c) If any of the provisions of this Section 8 are stayed or otherwise rendered ineffective during the currency of any Insolvency Proceedings, such provision shall be deemed to be fully reinstated without any action by or on behalf of CWB or CIBC on the discharge of the relevant Obligor(s), with each such affected provision having retroactive effect to the date that it was rendered ineffective.

9. Payments Received.

- (a) If, prior to the CWB Debt Repayment Date (including as a result of CWB Debt being deemed to be reinstated, as set out in Section 8), CIBC or any person on its behalf receives any payment from or distribution or proceeds derived from any of the Mortgaged Collateral, then CIBC will, and will cause such other person to, receive and hold such payment or distribution, in trust, for the benefit of CWB and promptly pay the same over or deliver to CWB in precisely the form received by CIBC or such other person on its behalf (except for any necessary endorsement or assignment) and such payment or distribution will be paid over to CWB. CWB shall apply such payment or distribution to the repayment of the CWB Debt.
- (b) If, prior to the CIBC Debt Repayment Date (including as a result of CIBC Debt being deemed to be reinstated, as set out in Section 8), CWB or any person on its behalf receives any payment from or distribution or proceeds derived from any of the Personal Property Collateral, then CWB will, and will cause such other person to, receive and hold such payment or distribution, in trust, for the benefit of CIBC and promptly pay the same over or deliver to CIBC in precisely the form received by CWB or such other person on its behalf (except for any necessary endorsement or assignment) and such payment or distribution will be paid over to CIBC. CIBC shall apply such payment or distribution to the repayment of the CIBC Debt.

10. CWB's Rights. CIBC agrees that at all times prior to the CWB Debt Repayment Date, CWB will be entitled to deal with the Mortgaged Collateral in accordance with the terms of the CWB Commitment Letter, the CWB Guarantee, the CWB Security, and the CWB Loan Documents, and nothing herein will (i) prevent, restrict or limit CWB in any manner from exercising all or any part of CWB's rights and remedies against the Mortgaged Collateral, (ii) prejudice or impair the rights of CWB to enforce the subordination provided in this Agreement, or (iii) affect or impair the obligations of CIBC, as provided in this Agreement. Without limiting the generality of the foregoing, CIBC agrees that:

- (a) CWB, without diminishing the obligations of CIBC hereunder, may grant time or other indulgences to the Obligors and any other person or persons now or hereafter liable to CWB in respect of the payment of the CWB Debt, and CWB may give up, modify, vary, exchange, renew or abstain from enforcing the CWB Security, in whole or in part, and may discharge any part or parts of or accept any composition or arrangements or realize upon any Mortgaged Collateral when and in such manner as CWB may think expedient;
- (b) CIBC will not be released or exonerated from its obligations hereunder by extension of time periods or any other forbearance, whatsoever, whether as to time, performance or otherwise or by any release, discharge, loss or alteration in or dealing with all or any part of the CWB Debt, the CWB Commitment Letter, the CWB Security, the CWB Loan Documents, or any part thereof or by any failure or delay in giving any notice required under this Agreement, the CWB Commitment

Letter, other CWB Loan Documents, the CWB Debt or the CWB Security or any part thereof, or by any modification or alteration of the CWB Commitment Letter, the CWB Loan Documents, the CWB Debt, or the CWB Security or any part thereof;

- (c) CWB will be entitled to advance its own money as it sees fit in order to preserve or protect the Mortgaged Collateral or any part thereof or maximize the recovery thereof, and all such sums advanced to the extent reasonably advanced for such purposes, will constitute part of the CWB Debt and will be secured by the CWB Security; and,
- (d) CWB is entitled to amend, supplement, modify, restate or replace the CWB Commitment Letter, any other CWB Loan Documents or any of the CWB Security.

11. CIBC's Rights. CWB agrees that at all times prior to the CIBC Debt Repayment Date, CIBC will be entitled to deal with the Personal Property Collateral in accordance with the terms of the CIBC Loan Agreement, the CIBC Security, and the CIBC Loan Documents and nothing herein will (i) prevent, restrict or limit CIBC in any manner from exercising all or any part of CIBC's rights and remedies against the Personal Property Collateral, (ii) prejudice or impair the rights of CIBC to enforce the subordination provided in this Agreement, or (iii) affect or impair the obligations of CWB, as provided in this Agreement. Without limiting the generality of the foregoing, CWB agrees that:

- (a) CIBC, without diminishing the obligations of CWB hereunder, may grant time or other indulgences to the Obligors and any other person or persons now or hereafter liable to CIBC in respect of the payment of the CIBC Debt, and CIBC may give up, modify, vary, exchange, renew or abstain from enforcing the CIBC Security, in whole or in part, and may discharge any part or parts of or accept any composition or arrangements or realize upon any Personal Property Collateral when and in such manner as CIBC may think expedient;
- (b) CWB will not be released or exonerated from its obligations hereunder by extension of time periods or any other forbearance whatsoever, whether as to time, performance or otherwise or by any release, discharge, loss or alteration in or dealing with all or any part of the CIBC Debt, the CIBC Loan Agreement, the CIBC Security, the CIBC Loan Documents, or any part thereof or by any failure or delay in giving any notice required under this Agreement, the CIBC Loan Agreement, other CIBC Loan Documents, the CIBC Debt or the CIBC Security or any part thereof, or by any modification or alteration of the CIBC Loan Agreement, the CIBC Loan Documents, the CIBC Debt, or the CIBC Security or any part thereof;
- (c) CIBC will be entitled to advance its own money as it sees fit in order to preserve or protect the Personal Property Collateral or any part thereof or maximize the recovery thereof, and all such sums advanced to the extent reasonably advanced for such purposes, will constitute part of the CIBC Debt and will be secured by the CIBC Security; and,
- (d) CIBC is entitled to amend, supplement, modify, restate or replace the CIBC Loan Agreement, any other CIBC Loan Documents or any of the CIBC Security.

12. DIP Financing / Charges.

- (a) In the event of an Insolvency Proceeding affecting the Mortgaged Collateral, whether voluntary or involuntary, CIBC shall not propose, agree to provide, or support any debtor in possession financing (a “**DIP Financing**”) which is secured by a charge, lien, mortgage, or other security interest that ranks in priority to or *pari passu* with the CWB Security, as and against the Mortgaged Collateral, including but in no way limited to, as part of any Insolvency Proceeding or the CCAA Proceedings. In the event that any DIP Financing is granted or otherwise obtained and which affects, attaches to, or is in any way secured against the Mortgaged Collateral and is or has been provided, in whole or in part, by CIBC, CIBC shall agree to seek any orders and relief as may be necessary to ensure that all such DIP Financing is fully subordinated in respect of the Mortgaged Collateral to and in favour of CWB, the CWB Security and CWB Loan Documents, and the indefeasibly repayment of the CWB Debt.
- (b) In the event of an Insolvency Proceeding affecting the Personal Property Collateral, whether voluntary or involuntary, CWB shall not propose, agree to provide, or support any DIP Financing which is secured by a charge, lien, mortgage, or other security interest that ranks in priority to or *pari passu* with the CIBC Security, as and against the Personal Property Collateral, including but in no way limited to, as part of any Insolvency Proceeding or the CCAA Proceedings. In the event that any DIP Financing is granted or otherwise obtained and which affects, attaches to, or is in any way secured against the Personal Property Collateral and is or has been provided, in whole or in part, by CWB, CWB shall agree to seek any orders and relief as may be necessary to ensure that all such DIP Financing is fully subordinated in respect of the Personal Property Collateral to and in favour of CIBC, the CIBC Security and CIBC Loan Documents, and the indefeasibly repayment of the CIBC Debt.

13. Disposition Period with Respect to Personal Property Collateral.

- (a) From and after the earlier of the date (the “**Disposition Commencement Date**”): (a) of the expiry of any demand issued by CWB to an Obligor in connection with the CWB Security or any other document executed by any Obligor; or, (b) CWB acquires an ownership or possessory interest in one or more of the Mortgaged Collateral, pursuant to the exercise of its rights under the CWB Security or any other document executed by any Obligor or under applicable law, CWB will permit, or continue to permit, CIBC and its representatives and invitees and any Receiver to occupy and remain on the Mortgaged Collateral premises, provided, that:
- (i) such occupation (the “**Disposition Period**”) shall not exceed ninety (90) days (not counting any days during which an injunction has been granted which prohibits or prevents CIBC and CWB from enforcing their Security) from the earlier to occur of: (A) the date CIBC receives a written notice from CWB that the Disposition Commencement Date has occurred, or (B) the date CIBC enforces its security interests in the Personal Property Collateral located on the Mortgaged Collateral premises;
- (ii) for the actual period of occupancy by CIBC, CIBC will pay to CWB the basic market rent for the applicable Mortgaged Collateral premises, pro-rated on

a per diem basis, determined on a 30 day month, and shall retain liability and property insurance coverage and provide to CWB evidence thereof; and,

- (iii) such amounts paid by CIBC shall be calculated without inclusion of any adjustments, indemnity payments, debt service, or similar amounts payable under the CWB Loan Documents for default, holdover status, or other similar charges.
- (b) CIBC shall indemnify CWB and CWB's respective shareholders, affiliates, officers, directors, employees and agents (each an "**Indemnified Party**"), on demand against any and all losses, claims, cost recovery actions, damages (which, for greater certainty, shall not include punitive, special, indirect, consequential or punitive damages asserted by the Indemnified Party against CIBC), expenses and liabilities of whatsoever nature or kind and all reasonable out-of-pocket expenses which any such Indemnified Party may sustain or incur to the extent sustained or incurred as a consequence of the action of or failure to take any action by CIBC, any Receiver, or their respective shareholders, affiliates, officers, directors, employees or agents during, and solely in connection with, any period of occupation of the Mortgaged Collateral by CIBC or any Receiver. This indemnity will (i) survive for 2 years from the date of any termination of this Agreement or from the last day of any Disposition Period, and (ii) not apply to (A) any Indemnified Party with respect to obligations directly caused by the gross negligence or wilful misconduct on the part of such Indemnified Party or, for certainty, which are not sustained or incurred as a consequence of the action or inaction of CIBC, any Receiver or their respective shareholders, affiliates, officers, directors, employees or agents in connection with the occupation by CIBC or any Receiver of the Mortgaged Collateral; and, (B) any diminution in value of the Mortgaged Collateral caused by (i) the absence of any Personal Property Collateral removed from the Mortgaged Collateral, (ii) CIBC's occupation of the Mortgaged Collateral, in accordance with the terms and conditions herein, or (iii) ordinary wear or tear of the Mortgaged Collateral.
- (c) During any Disposition Period, (a) CIBC its representatives and invitees and any Receiver may inspect, repossess, remove and otherwise deal with the Personal Property Collateral (other than any Mortgaged Collateral forming part thereof), and CIBC may advertise and conduct public auctions or private sales of the Personal Property Collateral at the Mortgaged Collateral premises, in each case without interference by CWB or liability of CIBC (other than in accordance with the terms and conditions herein) and (b) CIBC shall make the Mortgaged Collateral premises available for inspection by CWB and prospective tenants or purchasers and shall cooperate in CWB's reasonable efforts to lease or sell the Mortgaged Collateral premises. If CIBC conducts a public auction or private sale of the Personal Property Collateral at the Mortgaged Collateral premises, CIBC shall use reasonable efforts to notify CWB first and to hold such auction or sale in a manner which would not unduly disrupt CWB's use, sale, or enforcement efforts, of or against the Mortgaged Collateral.
- (d) CIBC shall promptly repair, at CIBC's expense, any physical damage to the Mortgaged Collateral actually caused by the conduct of CIBC's or any Receiver's: (i) occupation of the Mortgaged Collateral; or (ii) any auction or sale or any removal

of Personal Property Collateral by or through CIBC or any Receiver or other agent, representative, or appointed party under the CIBC Security (ordinary wear and tear excluded in each instance). Neither CIBC nor any lender shall be liable for any diminution in value of the Mortgaged Collateral caused by the absence of any Personal Property Collateral removed, and neither CIBC nor any lender shall have any duty or obligation to remove or dispose of any Personal Property Collateral or any other property left on the Premises by a Obligor other than the removal of any Personal Property Collateral which constitutes waste or garbage (or would do so if left on the Mortgaged Collateral premises and not promptly removed) following any period of occupation of the Mortgaged Collateral by CIBC or any Receiver.

14. Representations and Warranties.

- (a) CWB hereby represents and warrants to CIBC, and acknowledges and agrees that CIBC is relying upon such representations and warranties in connection with CIBC entering into this Agreement, that:
 - (i) it has all necessary power and authority to enter into this Agreement; and,
 - (ii) this Agreement constitutes a valid and legally binding obligation, enforceable against it in accordance with its terms, subject however, to limitations with respect to enforcement imposed by Bankruptcy Law and subject to general equitable principles.

- (b) CIBC hereby represents and warrants to CWB, and acknowledges and agrees that CWB is relying such representations and warranties in connection with CWB entering into this Agreement, that:
 - (i) it has all necessary power and authority to enter into this Agreement;
 - (ii) CIBC is the agent for and on behalf of the various lenders, as set out and contemplated in under the CIBC Loan Agreement, the CIBC Security, and the CIBC Loan Documents, and is authorized to enter into and perform all obligations and covenants contained herein, as agent for and on behalf of such lenders; and,
 - (iii) this Agreement constitutes a valid and legally binding obligation, enforceable against it under the CIBC Loan Agreement, the CIBC Security, and the CIBC Loan Documents, in accordance with its terms, subject however to limitations with respect to enforcement imposed by Bankruptcy Law and subject to general equitable principles.

15. Notices. Any demand, notice or communication to be made or given by any party hereto to any other party shall be in writing and may be given by personal delivery or, except during any period when postal service is interrupted, by prepaid registered mail or by e-mail, addressed as follows:

- (a) To CWB:

Canadian Western Bank
4991 No. 3 Road
Richmond, BC V6X 2C3

Attention: Dean Chan, CPA, CMA
Telephone No.: 604-443-5119
Email: Dean.Chan@cwbank.com

(b) To CIBC:

Canadian Imperial Bank of Commerce
CIBC Square, 81 Bay Street, 10th Floor
Toronto, ON M5J 0E7 Attention: Senior Director, Portfolio Management
Facsimile: (416) 861-9422

with a copy to:

Canadian Imperial Bank of Commerce
CIBC Square, 81 Bay Street, 10th Floor
Toronto, ON M5J 0E7 Attention: Nick Chan
Facsimile: 416.304.4573
Email: nick.chan@cibc.com

(c) To the Obligor:

Carey Management Inc.
5445 – 8th Street NE
Calgary, AB T2K 5R9
Attention: Pat Carey
Facsimile: (403) 295-7350

and if given by registered mail shall be deemed to have been received by the party to whom it was addressed on the date falling four (4) business days following the date upon which it has been deposited in the post office with postage and cost of registration prepaid, and if personally delivered or transmitted by e-mail it shall be deemed to be received on the date of delivery or transmission, as the case may be, except demands, notices or communications delivered or transmitted after 2:00 PM (Mountain Standard Time), which shall be deemed to have been received on the next business day. Any of the parties may change the address designated from time to time, by notice in writing to the other parties hereto.

16. General.

- (a) As long as any of the indebtedness of the Obligor to either CWB or CIBC remains outstanding and until CWB or CIBC, by written agreement, have terminated this Agreement, the Obligor will stand possessed of the Mortgaged Collateral, so charged for CWB and CIBC, in accordance with their respective interests and priorities, as herein set out.
- (b) The Obligor consent to CWB and CIBC advising each other of the particulars of the indebtedness of the Obligor owing to CWB and CIBC and exchanging any other financial information they deem relevant. Neither CWB nor CIBC will have

or incur any liability to the Obligor for providing such information, nor for any direct or indirect consequences resulting from doing so.

- (c) The parties will do all things necessary from time to time to give full effect to this Agreement. No consent of the Obligor will be necessary to any amendment of the terms of this Agreement by CWB and CIBC.
- (d) CWB and CIBC shall allow the other and their respective agents access at all reasonable times to any Collateral of the Obligor, upon which the other Lender has a charge or security interest to view the same and access to make copies of or extracts from any books of account and all records, ledgers, reports, documents, and other writings relating to such property and assets.
- (e) The provisions of this Agreement shall in all respects be a continuing agreement and shall remain in full force and effect until: (i) the final and indefeasible payment in cash and performance in full and satisfaction of the indebtedness and obligations of the Obligor to CWB or to CIBC, and the termination of any obligation of CWB or CIBC to make available any credit facilities to the Obligor; and, (ii) the termination of all corresponding instruments or other documents giving rise to or governing the indebtedness and obligations of the Obligor to such party.
- (f) CIBC hereby authorizes CWB or CWB's solicitors to file any documents, statements, or instruments, to reflect the postponement and subordination contemplated herein.
- (g) Neither CWB nor CIBC shall sell, transfer, assign or otherwise deal with any of their interests in the Mortgaged Collateral, without first obtaining from the proposed transferee, assignee or chargee an agreement whereby the proposed transferee, assignee or chargee agrees to be bound by the provisions hereof.
- (h) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns,
- (i) This Agreement may be executed in counterpart. Each counterpart when executed will be deemed to be an original and all counterparts together will constitute one agreement, to be effective as of the Effective Date.
- (j) Any party may deliver an executed signature page to this Agreement by electronic transmission and such delivery will be as effective as delivery of a manually executed copy of the Agreement by such party.
- (k) This Agreement will be interpreted in accordance with the laws of the Province of Alberta and the courts of Alberta will have non-exclusive jurisdiction over any dispute related to it.
- (l) The parties hereto agree that this Agreement shall replace in all respects the Waiver & Consent Agreement and the Waiver & Consent Agreement shall be terminated and of no further force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first written above.

CANADIAN WESTERN BANK

By: Dean Chan

Name: Dean Chan,
Title: VP SAMU

By: [Signature]

Name: Cameron Kerr
Title: Manager Credit, SAMU

**CANADIAN IMPERIAL BANK OF
COMMERCE, AS AGENT**

By: _____

Name:
Title:

By: _____

Name:
Title:

CAREY MANAGEMENT INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

WALLACE & CAREY INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first written above.


CANADIAN WESTERN BANK

By: _____
Name:
Title:

By: _____
Name:
Title:

**CANADIAN IMPERIAL BANK OF
COMMERCE, AS AGENT**

By:  _____
Name: Steven Filippi
Title: Authorized Signatory

By:  _____
Name: Anthony Tsuen
Title: Authorized Signatory

CAREY MANAGEMENT INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

WALLACE & CAREY INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first written above.

CAREY MANAGEMENT INC.

By: 
Name:
Title:

By: _____
Name:
Title:

WALLACE & CAREY INC.

By: 
Name:
Title:

By: _____
Name:
Title:

SPRUCE IT UP LAND CORP.

By: _____

Name:
Title:

By: _____

Name:
Title:

SPRUCE IT UP GARDEN CENTRE INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

772921 ALBERTA INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

RIDGE MEADOWS PROPERTIES LTD.

By: _____

Name:
Title:

By: _____

Name:
Title:

This is Exhibit "K" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB



COURT FILE NUMBER 2301 - 08305
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, 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 **SISP ORDER**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

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File No.: 0221652.0006

DATE ON WHICH ORDER WAS PRONOUNCED: August 23, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Hollins

LOCATION OF HEARING: Calgary Courts Centre

UPON the application of Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc. (collectively, the "**Applicants**"),

AND UPON having read the Application, Affidavit No. 1 of Eric Rolheiser sworn August 21, 2023 and the Third Report of the Monitor dated August 21, 2023;

AND UPON hearing counsel for the Applicants, counsel for the Monitor, counsel for Canadian Imperial Bank of Commerce, counsel for Canadian Western Bank, counsel for 7-Eleven Canada Inc. (“**7-Eleven**”), and counsel for other interested parties;

AND UPON reviewing the Affidavit of Service of Marica Ceko sworn August 21, 2023;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and this application is properly returnable today.

DEFINED TERMS

2. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the SISP (as defined below) or the Amended and Restated Initial Order of this Court pronounced June 30, 2023.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

3. The sale and investment and solicitation process attached as **Appendix “A”** to this Order (the “**SISP**”) is hereby approved, subject to such amendments and extensions as may be agreed to by the Applicants, in consultation with Alvarez & Marsal Canada Securities ULC (“**A&M**”), the approval of the Monitor, and in accordance with the terms of the SISP.
4. The Applicants and A&M, in consultation with the Monitor and the Canadian Imperial Bank of Commerce (“**CIBC**”), are hereby authorized and directed to proceed with the SISP and to take such steps as they deems necessary or advisable to carry out and perform their obligations under the SISP.
5. The property, assets and undertaking of the wholly owned subsidiary of Carey Management Inc., 772921 Alberta Inc. and RET Logistics Inc. shall be included in, and form part of the Property as defined in the SISP to the extent such assets relate to the business of Wallace & Carey Inc., on the condition and basis that, with respect to any or all of the Mortgaged Collateral (as defined in the Subordination and Postponement Agreement, made as of July 20, 2023, between Canadian Western Bank (the “**CWB**”),

Carey Management Inc., Spruce It Up Land Corp., Spruce it Up Garden Centre Inc., 772921 Alberta Inc., and Ridge Meadows Properties Ltd., and CIBC):

- (a) the Mortgaged Collateral shall not be encumbered by or affected, in any way, by any of the Charges or any other encumbrances granted in the within proceedings in priority to any of CWB's rights, security interests, remedies, or other interests, in, to, or against the Mortgaged Collateral and the costs and expenses of the SISP and these proceedings shall not be allocated to CWB or against the Mortgaged Collateral in priority to CWB's rights or interests;
 - (b) all proceeds derived from the Mortgaged Collateral shall, first, be utilized to repay all amounts due and owing by the Applicants or their subsidiaries to CWB (collectively, the "**CWB Indebtedness**"), before paying or deducting any fees, costs, or expenses associated or incurred in connection with the SISP, the within CCAA proceedings, or under any Charges granted in the within proceedings, with the sole exception of any fees, costs, or expenses which CWB has expressly agreed to;
 - (c) all parties involved in the marketing and sale of the Mortgaged Collateral shall work together co-operatively to keep each other apprised of any offers received for the Mortgaged Collateral; and,
 - (d) a sale of any Mortgaged Collateral in the SISP may only be completed if:
 - (i) the Potential Bidder under such transaction submitted an LOI that sets out an allocation of proceeds to such Mortgaged Collateral (the "**RE Proceeds Allocation**") that either (y) contemplated the repayment in full of the CWB Indebtedness; or (z) was consented to by CWB; and
 - (ii) the Final Agreement includes an allocation of proceeds to such Mortgaged Collateral that is the same as or higher than the RE Proceeds Allocation.
6. The SISP may be amended and the timelines prescribed therein may be extended by the Applicants, in consultation with A&M and with the approval of the Monitor and in accordance with the additional terms and conditions of the SISP.

7. The Applicants, the Monitor, and A&M, and their respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Applicants, the Monitor, and A&M, as applicable, in performing their respective obligations under the SISP, as determined by this Court.
8. The Applicants, the Monitor, and A&M, and their respective counsel, if applicable, be and are hereby authorized but not obligated, to serve or distribute this SISP Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the SISP to any Person or interested party that A&M, the Applicants, and the Monitor consider appropriate.
9. 7-Eleven is hereby granted a right of first refusal to purchase tangible non-inventory Property that has not been realized upon at the time of payment in full of the outstanding indebtedness of CIBC.

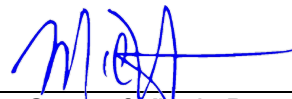
PIPEDA

10. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), A&M, the Applicants and the Monitor are hereby authorized and permitted to disclose and transfer to each potential bidder (collectively, the “**Potential Bidders**”) and to their advisors, if requested by such Potential Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicants’ records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property (“**Sale**”) or investment in the Business (“**Investment**”). Each Potential Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale or Investment, and if it does not complete a Sale or Investment, shall return all such information to A&M, on behalf of the Applicants, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is

related to the Property of Business acquired pursuant to the Sale or invested in pursuant to the Investment in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to A&M and the Applicants, or ensure that all other personal information is destroyed.

GENERAL

11. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order or under the SISP.
12. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, A&M, and the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, A&M, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, A&M, and the Monitor and their respective agents in carrying out the terms of this Order.
13. The Applicants and the Monitor are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
14. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
15. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.



Justice of the Court of King's Bench of Alberta

Appendix "A"

Sale and Investment Solicitation Process

Sale and Investment Solicitation Process

Introduction

1. On June 22, 2023, Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc. (collectively, the “**Applicants**”) were granted an initial order (as amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Court of King’s Bench of Alberta (the “**Court**”). The Initial Order (which was amended and restated on June 30, 2023), among other things:
 - (a) stayed all proceedings against the Applicants, their assets and their respective directors and officers, other than those proceedings, rights and claims that are expressly unaffected under the Initial Order;
 - (b) appointed KSV Restructuring Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”); and
 - (c) authorized the Applicants to continue to utilize their cash management system and draw funds from the revolving asset-based loan facility (the “**Loan Facility**”) established by Canadian Imperial Bank of Commerce (the “**Lender**”), and granted a charge in favour of the Lender to secure the amounts outstanding from time to time under or in connection with the Loan Facility.
2. On August 23, 2023, the Court granted an order (the “**SISP Order**”), among other things:
 - (a) authorizing the Applicants to pursue all avenues of sale of or investment in their assets or business, in whole or in part, subject to the Court’s prior approval of any material sale or refinancing; and
 - (b) approving this sale and investment solicitation process (the “**SISP**”).
3. Also on August 23, 2023, the Court granted an ancillary order, among other things, approving the engagement of Alvarez & Marsal Canada Securities ULC (“**A&M**”) as financial advisor and authorizing the Applicants to conduct the SISP with the assistance of A&M, in coordination with the Monitor and in consultation with the Lender, pursuant to the SISP Order. Throughout this SISP, any reference to a step or action required of the Applicants is deemed to include the Applicants acting in consultation and co-operation with A&M with respect to such step or action.
4. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Applicants’ business and operations (collectively, the “**Business**”), including the assets (collectively, the “**Applicants’ Property**”) of the Applicants (the “**Opportunity**”). Certain property that is necessary to operate the Applicants’ Business as a going concern is owned by wholly owned subsidiaries of the Applicants, the shares of which constitute Applicants’ Property subject to the CCAA Proceedings (“**Non-CCAA Property**”, and together with the Applicants’ Property, the “**Property**”). Information regarding the Non-CCAA Property will be made available to Potential Bidders (as defined herein), and such Non-CCAA Property will, subject to the approval of the Court, be brought within the CCAA Proceedings or other proceedings, if required to facilitate a Transaction (as defined herein).

5. The Opportunity may include one or more transactions involving the restructuring, recapitalization or other form of reorganization of the Business as a going concern or a sale of all, substantially all or one or more components of the Business and Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
6. The Applicants intend to provide all qualified interested parties with an opportunity to participate in the SISP.

Stalking Horse Bid

7. In accordance with the terms of a letter of agreement dated August 10, 2023 between 7-Eleven Canada, Inc. (“**7-Eleven**”), Wallace & Carey Inc., and the Lender, 7-Eleven has the exclusive option, within 30 days of the date of the SISP Order, to determine whether it wishes to submit a Stalking Horse Agreement (a “**Stalking Horse Bid**”). In the event that 7-Eleven exercises its option to submit a Stalking Horse Bid, the Applicants, in consultation with the Monitor, shall expeditiously negotiate the terms of the Stalking Horse Agreement with 7-Eleven, and if concluded on terms acceptable to 7-Eleven, the Applicants, the Lender and the Monitor, shall bring an application before the Court seeking the approval of the Stalking Horse Bid as well as any amendments to the SISP that may be required. Until such time as 7-Eleven confirms that it will not be a Bidder in the SISP, 7-Eleven will not be entitled to any information concerning the SISP, including the identity of the Potential Bidders (as defined below), the number of Potential Bidders, or any other material aspect of the SISP. For greater certainty, this shall not prohibit 7-Eleven from meeting with Potential Bidders in the context of their due diligence.

Opportunity

8. This document describes the SISP, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Applicants, the Property and the Business, how bids involving the Applicants, the Property or the Business will be submitted to and dealt with by the Applicants, in consultation with the Monitor and the Lender, and how Court approval will be sought in respect of a Transaction (or Transactions) involving the Applicants, the Business or the Property.
9. The SISP contemplates a two-stage process that involves the submission by interested parties of binding offers on or before the Bid Deadline (as defined below).
10. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any sale of the Property or investment in the Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by A&M, the Monitor, the Applicants, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants or their subsidiaries, as applicable, in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims,

charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

11. In this SISP: (a) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Calgary, Alberta, and if any deadline date referred to in this SISP falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (b) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

Timeline

12. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Obtain Order granted by the Court in the CCAA proceedings approving the SISP	August 23, 2023
SISP Launch Date	August 30, 2023
Phase I Bid Deadline	October 5, 2023
Phase II Bid Deadline	November 2, 2023
Hearing of the Transaction Approval Motion (as defined below)	As soon as practicable and based on Court availability
Closing of the Transaction(s)	On or before December 4, 2023

13. Subject to any order of the Court providing otherwise, and subject to section 7 above, the dates set out in the SISP may be extended by the Applicants, with the approval of the Monitor and the Lender.

Solicitation of Interest: Notice of the SISP

14. As soon as reasonably practicable, but in any event by no later than August 25, 2023:
- (a) A&M, in consultation with the Applicants and the Monitor, will prepare a list of initial potential bidders, including: (i) parties that have approached the Applicants, Monitor or Lender indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Applicants, in consultation with the Monitor, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP (collectively, “**Known Potential Bidders**”);

- (b) The Monitor will arrange for a notice of the SISP (the “**Notice**”) to be published in *Insolvency Insider*, the Monitor’s website, and any other newspaper or journal as the Applicants, in consultation with the Monitor, considers appropriate, if any; and
 - (c) A&M, in consultation with the Applicants and the Monitor, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicants, 7-Eleven and the Monitor (an “**NDA**”). For greater certainty, the NDA will provide for the opportunity for discussions between potential bidders and 7-Eleven.
15. A&M will send the Teaser Letter and NDA to each initial Known Potential Bidder by no later than August 25, 2023 and thereafter to any other party who requests a copy of the Teaser Letter and NDA or who is identified to A&M, the Applicants or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

16. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide to the Applicants and A&M an executed NDA, which shall inure to the benefit of any purchaser or investor of or in the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for the Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder and information as to their financial wherewithal to close a Transaction.
17. A&M will send a confidential information memorandum and other relevant information (the “**Confidential Information Memorandum**”) to each Potential Bidder and to any other party who requests a copy of same and has executed an NDA, as soon as reasonably practicable after such request or identification, as applicable.
18. Potential Bidders that have signed and delivered an NDA in accordance with this SISP, and provided information as to their financial wherewithal to close a Transaction, shall be provided with such access to due diligence materials and information relating to the Business and the Property as the Applicants deem appropriate. Due diligence materials shall include access to an electronic data room containing information about the Applicants and their Business and Property, and may also include management presentations, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which A&M, in its reasonable business judgment may agree. A&M will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicants nor A&M will be obligated to furnish any information relating to the Business or Property to any person other than to Potential Bidders. Furthermore and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicants, in consultation with the Monitor, determine such information to represent proprietary or

sensitive competitive information. The Applicants, A&M, and the Monitor are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with a Transaction in respect of the Business and Property.

19. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information relating to the Applicants and their Business and Property in connection with their participation in the SISP and resulting Transaction.

Phase I Bid Deadline

20. Potential Bidders who wish to make an offer to purchase or make an investment in the Applicants' Business or Property (each, a "**Phase I Bidder**") shall first submit a non-binding letter of intent ("**LOI**") to A&M and the Applicants at the addresses specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than **5:00 p.m. (Mountain Standard Time) on October 5, 2023** or such later date as may be set out in a Bid process letter circulated by A&M to Potential Bidders, with the approval of the Applicants, the Monitor and the Lender (the "**Phase I Bid Deadline**").
21. Unless otherwise ordered by the Court or agreed by the Applicants with the approval of the Monitor, an LOI will be considered a "**Phase I Qualified Bid**", if it is submitted to A&M and the Applicants on or before the Phase I Bid Deadline and satisfies the following criteria, as determined by the Applicants, with the approval of the Monitor:
 - (a) the LOI constitutes a non-binding offer to:
 - (i) acquire all, substantially all or a portion of the Property or the Business (a "**Sale Proposal**");
 - (ii) make an investment in, restructure, reorganize or refinance the Business (an "**Investment Proposal**");
 - (iii) carry out any combination of a Sale Proposal and an Investment Proposal;
or
 - (iv) form a partnership with the Applicants, or any of them, by way of joint-venture or otherwise (a "**Partnership Proposal**");
 - (b) the LOI discloses the identity of each entity that will be entering into the Transaction, or that is otherwise anticipated to participate in or benefit from such Transaction;
 - (c) the LOI includes a specific indication of the financial capability of the Phase I Bidder to consummate the Transaction, including sources of capital, and a description of the expected structure of the Transaction;
 - (d) for a Sale Proposal, the LOI includes:
 - (i) the Purchase Price, and a description of any non-cash consideration, including details of any liabilities intended to be assumed by the Phase I Bidder and key assumptions supporting the purchase price; and

- (ii) a description of the Property that is anticipated to be subject to the Transaction and any of the Property anticipated to be excluded;
 - (e) for an Investment Proposal, the LOI includes:
 - (i) a description of how the Phase I Bidder anticipates structuring the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration; and
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business of the Applicants in Canadian Dollars;
 - (f) for a Partnership Proposal, the LOI includes:
 - (i) a description of how the Phase I Bidder anticipates structuring the proposed partnership, including the financial support, treatment of the existing liabilities of the Applicants, change in commercial strategy or other means to restructure the business; and
 - (ii) a description of purchasing power, product offerings, or long-term agreements.
22. Following the Phase I Bid Deadline, the Applicants, in consultation with the Monitor and the Lender, will assess each LOI received and seek clarification with respect to any of the terms or conditions of any LOI as required, and/or request and negotiate one or more amendments to any LOI prior to determining whether an LOI constitutes a Phase I Qualified Bid. The Applicants, with the approval of Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant LOI to be a Phase I Qualified Bid.
23. The Applicants, with the approval of the Monitor and the consent of the Lender, shall confirm which LOIs constitute Phase I Qualified Bids (“**Phase I Qualified Bidders**”). A&M shall notify each Phase I Bidder in writing as to whether its LOI constitutes a Phase I Qualified Bid within two (2) Business Days of the Phase I Bid Deadline, or at such later time as the Applicants deem appropriate, with the approval of the Monitor.
24. The Applicants, with the consent of A&M, the Monitor, and the Lender, may aggregate separate LOIs from unaffiliated Phase I Bidders to create one Phase I Qualified Bid.
25. If the Applicants, are not satisfied with the number or terms of the Phase I Qualified Bids, or if no Phase I Qualified Bids are received, the Applicants, with the approval of the Monitor and the Lender, may extend the Phase I Bid Deadline, or may seek Court approval to amend or terminate the SISP.

Phase II Formal Binding Offers

26. Phase I Qualified Bidders who wish to make a formal offer to purchase or make an investment in the Applicants’ Business or Property (each, a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to A&M and the Applicants at the addresses specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **5:00 p.m. (Mountain Standard Time)** on

November 2, 2023 or such later date as may be set out in a Bid process letter circulated by A&M to Phase I Qualified Bidders (the “**Phase II Bid Deadline**”):

- (a) the Bid constitutes a binding offer for:
 - (i) a Sale Proposal;
 - (ii) an Investment Proposal;
 - (iii) any combination of a Sale Proposal and an Investment Proposal; or
 - (iv) a Partnership Proposal
- (b) the Bid (either individually or in combination with other Bids that make up one Bid) is an offer to purchase or make an investment in some or all of the Business or Property and is consistent with any necessary terms and conditions established by the Applicants, and communicated to Bidders;
- (c) the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
- (d) the Bid includes duly authorized and executed Transaction agreements that clearly state the purchase price, investment amount and any other key economic terms expressed in Canadian Dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto;
- (e) the Bid is accompanied by a deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to 10% of the Purchase Price, investment amount or other consideration to be paid in respect of the Bid (whether in cash or assumed liabilities), to be held and dealt with in accordance with this SISP;
- (f) the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Applicants to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed Transaction;
- (g) the Bid is not conditioned on: (i) the outcome of unperformed due diligence by the Bidder; (ii) the outcome of negotiations with 7-Eleven or any other customer of the Business; or (iii) obtaining financing, but may be conditioned upon the Applicants or the Bidder receiving the required approvals or amendments relating to the licences required to operate the Business, if necessary;
- (h) outlines any anticipated regulatory and other approvals required to close the Transaction, the anticipated time frame to receive such approvals and any anticipated impediments to obtaining such approvals;
- (i) the Bid fully discloses the identity of each entity that will be entering into the Transaction, or that is otherwise participating or benefiting from such Transaction;
- (j) for a Sale Proposal, the Bid includes:

- (i) the Purchase Price, and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - (ii) a description of the Property that is expected to be subject to the Transaction and any of the Property expected to be excluded;
 - (iii) a specific indication of the financial capability of the Bidder to consummate the Transaction, including sources of capital, and a description of the expected structure of the Transaction;
 - (iv) a description of the conditions and approvals required to complete the closing of the Transaction;
 - (v) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (vi) an express acknowledgment and agreement from the Bidder to provide a minimum of 270 days of transition services to 7-Eleven at prices consistent with those currently paid by 7-Eleven to Wallace & Carey Inc. under an existing service agreement (which will be provided to Bidders), the terms of which may be adjusted as necessary to maintain cost neutrality to the Bidder, as determined by the Monitor, 7-Eleven- and the Bidder; and
 - (vii) all other terms or conditions of the Sale Proposal;
- (k) for an Investment Proposal, the Bid includes:
- (i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business of the Applicants in Canadian dollars;
 - (iii) the underlying assumptions regarding the pro forma capital structure;
 - (iv) a specific indication of the financial capability of the Bidder to consummate the Transaction, including sources of capital, and a description of the expected structure of the Transaction;
 - (v) a description of the conditions and approvals required to complete the closing of the Transaction;
 - (vi) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (vii) an express acknowledgment and agreement from the Bidder to (or to cause the Applicants to) provide a minimum of 270 days of transition services to 7-Eleven at prices consistent with those currently paid by 7-Eleven to Wallace & Carey Inc. under an existing service agreement (which will be

provided to Bidders), the terms of which may be adjusted as necessary to maintain cost neutrality to the Bidder, as determined by the Monitor, 7-Eleven- and the Bidder; and

- (viii) all other terms or conditions of the Investment Proposal;
- (l) for a Partnership Proposal, the Bid includes:
 - (i) a description of how the Bidder proposes to structure the proposed partnership, including the financial support, change in commercial strategy or other means to restructure the business;
 - (ii) a description of purchasing power, product offerings, or long-term agreements;
 - (iii) a specific indication of the financial capability of the Bidder to consummate the Transaction, including sources of capital, and a description of the expected structure of the Transaction;
 - (iv) a description of the conditions and approvals required to complete the closing of the Transaction;
 - (v) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - (vi) an express acknowledgment and agreement from the Bidder to (or to cause the Applicants to) provide a minimum of 270 days of transition services to 7-Eleven at prices consistent with those currently paid by 7-Eleven to Wallace & Carey Inc. under an existing service agreement (which will be provided to Bidders), the terms of which may be adjusted as necessary to maintain cost neutrality to the Bidder, as determined by the Monitor, 7-Eleven- and the Bidder; and
 - (vii) all other terms or conditions of the Partnership Proposal;
- (m) the Bid includes acknowledgements and representations of the Bidder that the Bidder:
 - (i) has had an opportunity to conduct any and all due diligence regarding the Business, the Property and the Applicants prior to making its offer;
 - (ii) is completing the Transaction on an “as is, where is” basis;
 - (iii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - (iv) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive Transaction agreement(s) signed by the Applicants;
- (n) the Bid is received by the Bid Deadline;

- (o) the Bid contemplates closing the Transaction set out therein on or before December 4, 2023, or a date otherwise agreed to by the Applicants and the Bidder, in consultation with A&M and with the consent the Monitor and the Lender.
27. Following the Bid Deadline, the Applicants in conjunction with the Monitor and the Lender, will assess the Bids received. The Applicants, with the approval of the Monitor and the Lender, will designate the most competitive Bids that comply with the foregoing requirements to be “**Qualified Bids**”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Applicants and the Monitor, in consultation with the Lender. Only Bidders whose Bids have been designed as Qualified Bids are eligible to become the Successful Bidder(s).
 28. The Applicants, with the approval of the Monitor and the Lender, may waive strict compliance with any one or more of the requirements specified above and deem any non-compliant Bid to be a Qualified Bid; provided that doing so shall not constitute a waiver of the requirements specified above, or an obligation on the part of the Applicants and/or the Monitor, to designate any other Bid as a Qualified Bid.
 29. Following the Bid Deadline, the Applicants, in consultation with the Monitor and the Lender, specifically reserve the right to: (i) negotiate with any Bidder with respect to any provision of its Bid or to request or agree to any changes in any such Bid; (ii) choose to take such steps with respect to one or more Bidders, but shall have no obligation to negotiate identical terms with, or extend identical terms to, each Bidder; (iii) reserve their right to request that some, but not all, Bidders submit a revised Bid reflecting improved terms or other amendments; and (iv) be under no obligation to provide each Bidder with the opportunity to improve the terms of any Bid submitted following the Bid Deadline.
 30. A&M shall notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid within two (2) Business Days of the Bid Deadline, or at such later time as the Applicants, in consultation the Monitor, deem appropriate.
 31. If the Applicants with the approval of the Monitor, are not satisfied with the number or terms of the Qualified Bids, the Applicants may, with the approval of the Lender and the Monitor, extend the Bid Deadline or seek Court approval to terminate or amend the SISF.
 32. The Applicants may, with the consent of the Monitor, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

Evaluation of Bids

33. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such Bid; (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction; (iii) the proposed Transaction documents; (iv) factors affecting the speed, certainty and value of the Transaction; (v) the Property included or excluded from the Bid; (vi) any restructuring costs related to such Transaction; and (vii) the likelihood and timing of consummating such Transaction, each as determined by the Applicants, in consultation with the Monitor and the Lender.

Selection of Successful Bid

34. The Applicants, in consultation with the Monitor and the Lender, will review and evaluate each Qualified Bid, considering the requirements and factors set out in paragraph 33 and any other factor that the Applicants may reasonably deem relevant, including:
- (i) the amount of consideration being offered, and, if applicable, the proposed form, composition and allocation of same;
 - (ii) the value of any assumption of liabilities or waiver of liabilities;
 - (iii) the Bidder's ability to provide a minimum of 270 days of transition services to 7-Eleven at prices consistent with those currently paid by 7-Eleven to Wallace & Carey Inc. under an existing service agreement (which will be provided to Bidders), the terms of which may be adjusted as necessary to maintain cost neutrality to the Bidder, as determined by the Monitor, 7-Eleven- and the Bidder;
 - (iv) the likelihood of the Qualified Party's ability to close a Transaction by December 4, 2023, after the Court's approval of the Successful Bid;
 - (v) the net benefit to the Applicants; and
 - (vi) any other factors the Applicants may, consistent with their fiduciary duties, reasonably deem relevant.
35. The Applicants may, but shall have no obligation to, enter into a definitive agreement ("**Final Agreement**") with the Person or Persons who submitted the highest, best or otherwise most favourable Qualified Bid. The Applicants reserve the right, after consultation with the Lender, and the approval of the Monitor, to reject any or all Qualified Bids.
36. In the event that the Applicants enter into a Final Agreement (with the approval of the Monitor and the consent of the Lender) in accordance with the Qualified Bid(s), any Qualified Bid so selected shall be the "**Successful Bid**" and the Bidder making such Bid, the "**Successful Bidder**".
37. The Successful Bidder shall complete and execute the Final Agreement within three Business Days of the Successful Bid being selected as such, unless extended by the

Applicants, in consultation with the Monitor, subject to the milestones set forth in paragraph 12.

Transaction Approval Motion Hearing

38. At the hearing of the motion to approve any Transaction with the Successful Bidder (the “**Transaction Approval Motion**”), the Applicants shall seek, among other things, approval from the Court to consummate the Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Applicants on and as of the date of closing of the Transaction(s) of the Successful Bid.

Confidentiality and Access to Information

39. All discussions regarding a Sale Proposal, Investment Proposal, Partnership Proposal, Bid or other Transaction should be directed through A&M.
40. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, A&M, the Monitor and such other Bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, in consultation with the Monitor and consent of the applicable participants, are seeking to combine separate bids from Potential Bidders or Bidders. For greater certainty, nothing herein shall preclude Potential Bidders from entering into discussions with 7-Eleven with respect to possible future business opportunities and/or transition services at any time during the SISP.

Supervision of the SISP

41. A&M, on behalf of the Applicants, shall conduct the SISP, in consultation with the Monitor and subject to the applicable approval and consent rights of the Monitor and the Lender herein. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants, A&M or the Monitor and any Potential Bidder, any Bidder or any other Person, other than as specifically set forth in a Final Agreement that may be entered into with the Applicants.
42. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction. By submitting a Bid, each Potential Bidder shall be deemed to acknowledge and represent that: (i) it has had an opportunity to conduct any and all due diligence regarding the Applicants, the Property and/or the Business prior to making its Bid; (ii) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Property, Applicants and/or Business in making its Bid; and (iii) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, Applicants or Business, as applicable, or the

completeness of any information provided in connection therewith, except as expressly stated in this SISP or as set forth in the Final Agreement approved by the Court.

43. The Applicants, with the consent of the Monitor and the Lender, shall have the right to modify the SISP if, in their reasonable business judgment, such modification or amendment will enhance the process or better achieve the objectives of the SISP; provided that the Service List in the CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

Deposits

44. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor. The Monitor shall hold Deposits paid by the Successful Bidder in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Applicants, in consultation with the Monitor, elect not to proceed to negotiate and settle the terms and conditions of a Final Agreement with the Person that paid such deposit, the Monitor shall return the deposit without interest to that Person. In the event that the Successful Bidder defaults in the payment or performance of any obligations owed to A&M, the Applicants, or the Monitor pursuant to any Final Agreement, the Deposit paid by the Successful Bidder shall be forfeited to the Applicants as liquidated damages and not as a penalty.

Residual Assets

45. Subject to approval of the Court, 7-Eleven shall be granted a right of first refusal to purchase tangible non-inventory Property that has not been realized upon at the time of payment in full of the outstanding indebtedness of the Lender.

**Schedule “1”
Addresses for Deliveries**

To the Applicants

c/o Wallace & Carey Inc.
5445 – 8 ST. NE Calgary, AB T2K 5R9

Attention: Eric Rolheiser

Email: rolheisere@wacI.com

with a copy to:

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

Attention: James W. Reid / Larry Ellis

Email: jwreid@millerthomson.com
lellis@millerthomson.com

To A&M:

Alvarez & Marsal Canada Securities ULC
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900, P.O. Box 22
Toronto, ON M5J 2J1

Attention: Hugh Rowan-Legg / Joshua Nevsky / Justin Sim

Email: hrowanlegg@alvarezandmarsal.com
jnevsky@alvarezandmarsal.com
jsim@alvarezandmarsal.com

To the Monitor:

KSV Restructuring Inc.
Suite 1165, 324 – 8th Avenue SW
Calgary, Alberta T2P 2Z2

Attention: Bobby Kofman / Jason Knight

Email: bkofman@ksvadvisory.com
jknight@ksvadvisory.com

This is Exhibit "L" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

AGREEMENT OF PURCHASE AND SALE

This Agreement is dated as of November 7, 2023, between:

KSV RESTRUCTURING INC.,
solely in its capacity as Court-appointed receiver of the property, assets and undertakings of 772921
Alberta Inc.,
and not in its personal or corporate capacity

(the "**Vendor**")

-and-

7-ELEVEN CANADA, INC. or its nominee

(the "**Purchaser**")

WHEREAS:

- A. By order pronounced on June 22, 2023 in proceedings commenced under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") in the Court of King's Bench of Alberta (the "**Court**") bearing action no 2301-08305 (the "**CCAA Proceedings**"), the Court granted an order appointing KSV Restructuring Inc. ("**KSV**") as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**") commenced by Wallace & Carey Inc., Loudon Bros Limited and Carey Management Inc. (the "**CCAA Debtors**"), which order was amended and restated by further order of the Court granted on June 30, 2023.
- B. By order pronounced on August 23, 2023, the Court granted an order (the "**SISP Order**") approving the sale and investment and solicitation process (the "**SISP**") to be carried out by the CCAA Debtors, with the assistance of Alvarez & Marsal Canada Securities ULC in coordination with the Monitor and in consultation with Canadian Imperial Bank of Commerce (the "**Lender**").
- C. Pursuant to the SISP Order, the assets, undertakings and property of 772921 Alberta Inc. (the "**Company**"), among others, were included in and formed part of the property being marketed for sale in the SISP, to the extent such property relates to the business of Wallace & Carey Inc.
- D. Pursuant to the SISP, the CCAA Debtors and the Purchaser have entered into an asset purchase agreement dated as of November 7, 2023 (the "**CCAA Transaction**").
- E. The Closing of the transaction contemplated by this Agreement is a condition to closing the transaction contemplated by the CCAA Transaction.
- F. The CCAA Debtors intend to bring an application in the Court on November 17, 2023 seeking, among other things, the approval of the CCAA Transaction and the vesting of all of the assets, undertakings and property described in the CCAA Transaction in and to the Purchaser (the "**CCAA Vesting Order**").
- G. The Lender intends to bring an application in the Court on or about November 17th, 2023 seeking, among other things: (i) the appointment of KSV as receiver and manager of the assets, undertakings and properties of the Company (in such capacity, the "**Receiver**"); (ii) the approval of this Agreement; and (iii) the vesting of the Purchased Assets in and to the Purchaser free and clear of all Encumbrances other than Permitted Encumbrances (as defined below).
- H. KSV has consented to act as Receiver.
- I. Subject to the granting of the Receivership Order, the Vendor wishes to sell to the Purchaser, and the Purchaser wishes to purchase from the Vendor, all of the Company's right title and interest in the Properties and Assumed Leases, subject to the terms and conditions set forth herein and subject to Court Approval (each as defined below).

IN CONSIDERATION of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Article 1
Interpretation**

1.1 Definitions. In this Agreement:

- (a) **"Adjustments Time"** means 12:01 AM (Calgary Time) on November 19, 2023 or such other time as the Parties may agree to in writing.
- (b) **"Agreement"** means this agreement of purchase and sale and any schedules attached hereto which are referred to in this agreement, together with any amendment or supplement thereto;
- (c) **"Applicable Law"** means, in respect of any Person, asset, transaction, event or circumstance: (i) statutes (including regulations enacted thereunder); (ii) judgments, decrees and orders of courts of competent jurisdiction (including the common law); (iii) regulations, orders, ordinances and directives issued by Governmental Authorities; and (iv) the terms and conditions of all permits, licenses, approvals and authorizations, in each case which are applicable to such Person, asset, transaction, event or circumstance;
- (d) **"Assignment and Assumption Agreement"** means an assignment and assumption agreement effecting the assignment to, and assumption by, the Purchaser of the Assumed Leases, in form and substance satisfactory to the Parties, acting reasonably;
- (e) **"Assignment Order"** means an order of the Court, in form and substance satisfactory to the Purchaser and the Vendor, acting reasonably, assigning to the Purchaser the rights and obligations of the Vendor under the Assumed Leases for which a consent, approval or waiver necessary for the assignment of such Assumed Leases has not been obtained;
- (f) **"Assumed Leases"** means the (i) Lease Agreement dated as of September 28, 2017 (as amended by a lease extension and amending agreement dated as of September 30, 2022) entered into between Willow Holdings Ltd., as landlord, and 772921 Alberta Inc., as tenant, with respect to the property municipally known as 5225 8th Street N.E., Calgary, Alberta; and (ii) Lease Agreement dated as of December 19, 2016 (as amended by a lease renewal letter dated as of June 29, 2021) entered into between Field Construction Ltd., as landlord, and 772921 Alberta Inc., as tenant, with respect to the property municipally known Unit 5B, 4386 Boban Drive Nanaimo, British Columbia.
- (g) **"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;
- (h) **"CCAA"** has the meaning ascribed to that term in the Recitals;
- (i) **"CCAA Debtors"** has the meaning ascribed to that term in the Recitals;
- (j) **"CCAA Proceedings"** has the meaning ascribed to that term in the Recitals;
- (k) **"CCAA Transaction"** has the meaning ascribed to that term in the Recitals;
- (l) **"CCAA Vesting Order"** has the meaning ascribed to that term in the Recitals;
- (m) **"Closing"** means the completion of the purchase by the Purchaser, and sale by the Vendor, of the Vendor's right, title and interest in and to the Purchased Assets and the completion of all other transactions contemplated by this Agreement that are to occur

contemporaneously with such purchase and sale, all subject to and in accordance with the terms and conditions of this Agreement;

- (n) **"Closing Date"** means the date on which Closing occurs, being the later of November 20, 2023 or the date that is 2 business days following the date upon which all conditions in Sections 7.1, 7.2 and 7.3 have been satisfied or waived, as applicable, provided, however, that the Closing Date shall not be later than the Outside Date, and provided further, that if the land registry office in which title to the Properties are registered is not open for business on such date, the Closing Date shall be the next day on which such land registry office is open;
- (o) **"Company"** has the meaning ascribed to that term in the Recitals;
- (p) **"Court"** has the meaning ascribed to that term in the Recitals;
- (q) **"Court Approval"** means the issuance by the Court of the Vesting Order and, unless waived by the Purchaser in its sole discretion, the Assignment Order;
- (r) **"Encumbrances"** means any caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise;
- (s) **"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board, court (including the Court) or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government, having jurisdiction over a Party, the Purchased Assets or this Transaction;
- (t) **"GST"** means taxes, interest, penalties and other additions thereto imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and **"GST Legislation"** means such act and regulations collectively;
- (u) **"KSV"** has the meaning ascribed to that term in the Recitals;
- (v) **"Losses and Liabilities"** means any and all assessments, charges, costs, damages, debts, expenses, fines, liabilities, losses, obligations and penalties, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any applicable law, claim by any Governmental Authority or any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority, and those arising under any contract, agreement, arrangement, commitment or undertaking and costs and expenses of any legal proceeding, assessment, judgment, settlement or compromise relating thereto, and all interest, fines and penalties and reasonable legal fees and expenses incurred in connection therewith (on a full indemnity basis);
- (w) **"Monitor"** has the meaning ascribed to that term in the preamble hereto;
- (x) **"Outside Date"** means November 30, 2023 or such other date as the Parties may agree to in writing;
- (y) **"Parties"** means, collectively, the Purchaser and the Vendor, and **"Party"** means any one of them;
- (z) **"Permitted Encumbrances"** means the Encumbrances set forth in Schedule A attached hereto;

- (aa) **"Person"** means any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executory, Governmental Authority, or other entity however designated or instituted;
- (bb) **"Properties"** means those lands and buildings, including all rights and benefits appurtenant thereto described in Schedule B attached hereto;
- (cc) **"Purchase Price"** has the meaning ascribed to that term in Section 3.1;
- (dd) **"Purchased Assets"** means the Properties and the Assumed Leases;
- (ee) **"Purchaser"** has the meaning ascribed to that term in the preamble hereto;
- (ff) **"Receiver's Certificate"** means an executed certificate of the Receiver substantially in the form attached to the Vesting Order confirming that all other conditions to Closing have either been satisfied or waived by the Vendor and the Purchaser.
- (gg) **"Receivership Order"** means an order of the Court (in form and substance satisfactory to the Vendor in its sole discretion) appointing KSV Restructuring Inc. as court-appointed receiver or receiver and manager of the property, assets and undertakings of, among others, the Company, including without limitation the Properties and the Assumed Leases;
- (hh) **"Receivership Proceedings"** means proceedings to be commenced in the Court within which the Receivership Order is granted;
- (ii) **"SISP"** has the meaning ascribed to that term in the Recitals;
- (jj) **"SISP Order"** has the meaning ascribed to that term in the Recitals;
- (kk) **"Terminated Lease Agreements"** means, collectively, (i) that certain lease agreement dated as of November 1, 2022 (as amended, amended and restated, or supplemented from time to time) entered into between 772921 Alberta Inc., as landlord, and Wallace & Carey Inc., as tenant with respect to the lands municipally known as 5445 8th Street N.E., Calgary Alberta, (ii) that certain multi-tenant industrial lease agreement dated as of November 1, 2022 (as amended, amended and restated, or supplemented from time to time) entered into between 772921 Alberta Inc., as landlord, and Wallace & Carey Inc., as tenant with respect to the lands municipally known as 1230 Industrial Road, Kelowna, BC, and (iii) that certain sub-lease agreement dated on or about September 30, 2017 (as amended, amended and restated, or supplemented from time to time) entered into between 772921 Alberta Inc., as sub-landlord, and Wallace & Carey Inc., as sub-tenant with respect to the lands municipally known as 5225 8th Steet N.E., Calgary, Alberta.
- (ll) **"Transaction"** means the transaction for the purchase and sale of the Purchased Assets as contemplated in this Agreement;
- (mm) **"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 and Harmonized Sales Tax;
- (nn) **"Vendor"** has the meaning ascribed to that term in the preamble hereto;
- (oo) **"Vesting Order"** means an order of the Court in the Receivership Proceedings approving the Transaction in accordance with the provisions of this Agreement, and vesting all of the Vendor's right, title and interest in and to the Purchased Assets in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances, such order to be substantially in the form attached hereto as Schedule C together with such modifications

and amendments to such form as may be approved by the Vendor and the Purchaser, acting reasonably;

- 1.2 **Schedules.** The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule A	Permitted Encumbrances
Schedule B	Properties and Purchase Price Allocation
Schedule C	Vesting Order

- 1.3 **Interpretation if Closing Does Not Occur.** If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Properties and/or assumed the Assumed Leases shall be construed as having been contingent upon Closing having occurred.

Article 2 Purchase and Sale

- 2.1 Subject to the terms and conditions of this Agreement, and in consideration of the payment by the Purchaser to the Vendor of the Purchase Price, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase, accept and receive from the Vendor, all of the Vendor's right, title and interest in and to the Purchased Assets, in each case free and clear of all Encumbrances (other than Permitted Encumbrances).
- 2.2 Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk, and legal and beneficial ownership of the Purchased Assets shall transfer from the Vendor to the Purchaser on the Closing Date, and the Purchaser agrees to assume, discharge, perform and fulfil all obligations and liabilities, known or unknown, of the Vendor with respect to the Purchased Assets, from and solely to the extent arising after the Closing Date.
- 2.3 The Properties shall be and remain at the risk of the Vendor and 772921 Alberta Inc. until Closing. From the date of this Agreement up to and including the Closing, the Vendor shall, or shall cause 772921 Alberta Inc. to: (i) maintain and preserve the Properties in a good state of repair, and (ii) maintain insurance for the full replacement cost of the Properties and hold all such insurance policies and the proceeds thereof in trust for the Purchaser as their interests may appear. In the event of substantial damage to the Properties prior to Closing, the Vendor shall notify the Purchaser in writing of such damage with details of the insurance coverage in place, and the Purchaser may, within five (5) Business Days of its receipt of notice of substantial damage elect, by notice in writing to the Vendor, to either: (i) terminate this transaction and Agreement, or (ii) take the insurance proceeds under the insurance policies contemplated in this Section and complete this purchase transaction with no abatement of the Purchase Price for the substantial damage. The Vendor shall agree to any and all reasonable extensions of the Closing Date required to enable the Purchaser to make the election in this Section.

Article 3 Purchase Price & Adjustments

- 3.1 **Purchase Price.** The consideration payable by the Purchaser to the Vendor for the Purchased Assets shall be the sum of CAD\$14,900,000.00 (the "**Purchase Price**"), exclusive of GST. At Closing, the Purchaser shall pay to the Vendor the Purchase Price (as adjusted pursuant to Section 3.2) by electronic wire transfer. The Purchase Price shall, for income tax and all other purposes, be allocated among the Properties as more particularly set out in Schedule B. The portion Purchase Price allocated to the Assumed Leases shall be \$1.00.
- 3.2 **Adjustments.** The Parties shall adjust the Purchase Price on the Closing Date in respect of property taxes, and all other items save and except rent normally adjusted between a vendor and

purchaser for the sale of similar property, insofar as such items are applicable to the Properties, with the intent that Vendor shall be responsible for all expenses and entitled to all revenues derived from the Properties for the period prior to the Adjustments Time and Purchaser shall be responsible for all expenses and shall be entitled to all revenues in respect of the Properties as of and after the Adjustments Time.

Article 4 Taxes

4.1 **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, and be solely responsible for, any and all Transfer Taxes pertaining to the Purchaser's acquisition of the Properties; and
- (b) the Purchaser shall indemnify the Vendor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendor is required to pay or for which the Vendor may become liable as a result of any failure by the Purchaser to self-assess, pay or remit such Transfer Taxes (including GST in accordance with Section 4.2).

4.2 **GST.** Notwithstanding the generality of Section 4.1, the Purchaser shall pay to the Vendor or the Vendor's solicitors by certified cheque, bank draft, solicitor's certified trust cheque or electronic wire transfer on Closing all GST payable in respect of the Transaction in accordance with the GST Legislation. Notwithstanding the foregoing, if the Purchaser is registered under the GST Legislation, then provided that the Purchaser delivers on Closing: (i) an officer's certificate of the Purchaser confirming that the Purchaser is buying the Purchased Assets for its own account and not on behalf of any other Person; and (ii) an undertaking and indemnity under which the Purchaser covenants to remit all exigible GST and to indemnify the Vendor against any damages (including any interest or penalties imposed by a Governmental Authority) by reason of the failure of the Purchaser so to do, the Vendor will not collect GST from the Purchaser and the Purchaser will file returns and remit any GST exigible when and to the extent required by the GST Legislation.

Article 5 Representations and Warranties

5.1 **Vendor's Representations.** The Vendor hereby represents and warrants to the Purchaser that as at the Closing Date, and subject to the Receivership Order, Vesting Order and Assignment Order being granted:

- (a) it has taken all necessary corporate or other acts to authorize the execution and delivery by it of this Agreement; and
- (b) the Vendor is not a non-Canadian Person within the meaning of the *Investment Canada Act* (Canada) nor a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

5.2 **Purchaser's Representations.** The Purchaser hereby represents and warrants to the Vendor that as at the Closing Date:

- (a) it is, as applicable, a corporation duly incorporated or a limited partnership duly formed and validly subsisting under the laws of the jurisdiction of its incorporation or formation and has the requisite power and authority to enter into this Agreement and to complete the Transaction and it has taken all necessary corporate, partnership or other acts to authorize the execution, delivery and performance by it of this Agreement;

- (b) if the Properties are located in areas defined as controlled lands under the *Foreign Ownership of Lands Regulations* (Alberta), that it is not a foreign controlled corporation within the meaning of such term as defined in such regulations;
- (c) neither the execution of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under any indenture, mortgage, deed of trust or any other agreement to which the Purchaser is a party or by which it is bound which breach could materially affect the ability of the Purchaser to perform its obligations hereunder;
- (d) this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws relating to creditors' rights generally and subject to general principles of equity;
- (e) the Purchaser is not a non-Canadian Person within the meaning of the *Investment Canada Act* (Canada) nor a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (f) the Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the Transaction because of any action taken by, or agreement or understanding reached by the Purchaser;
- (g) on the Closing Date, the Purchaser will meet all requirements of Governmental Authorities to purchase and accept a transfer of the Purchased Assets; and
- (h) the Purchaser will have the financial resources necessary to pay, as and when due from the Purchaser, the Purchase Price, the Transfer Taxes, its legal fees and expenses, registration costs and any other amounts payable by the Purchaser pursuant hereto or otherwise contemplated hereby.

5.3 The representations and warranties of the Vendor and the Purchaser contained in this Agreement shall merge on Closing and shall thereafter be of no further force and effect. Effective upon the occurrence of Closing, each of the Vendor and the Purchaser hereby releases and forever discharges the other from any breach of any representations and warranties set forth in this Agreement. For greater certainty, none of the representations and warranties contained in this Article 5 shall survive Closing and, the Purchaser's sole recourse for any material breach of representation or warranty by the Vendor shall be for the Purchaser to not complete the Transaction in accordance with this Agreement.

Article 6 **"As Is, Where Is"**

- 6.1 Notwithstanding any other provisions of this Agreement, the Purchaser hereby acknowledges and agrees:
- (a) the Purchased Assets are being purchased on an "as is, where is" basis as they exist as of the date of this Agreement and, on Closing, the Purchaser will accept the Purchased Assets in the state, condition and location existing as of the date of this Agreement;
 - (b) it has undertaken to its satisfaction such searches, investigations, inspections and other due diligence in connection with entering into this Agreement and based solely thereon, has determined to proceed with the Transaction;
 - (c) all written and oral information provided by the Vendor and its representatives and the Company to the Purchaser in connection with the Purchased Assets has been provided for the convenience of the Purchaser only and neither the Vendor, its representatives nor

the Company have made or are making any representation or warranty, express or implied, statutory or otherwise, as to the accuracy or completeness of any such information;

- (d) any information regarding or describing the Purchased Assets in this Agreement is for identification purposes and the convenience of the Purchaser only and the Vendor is making no representation or warranty, express or implied, statutory or otherwise, as to the accuracy or completeness of any such information;
- (e) the Vendor, its representatives and the Company have made and are making no representations, warranties, statements or promises whatsoever, express or implied, statutory or otherwise, with respect to the Purchased Assets, including without limitation with respect to: (i) warranty or condition of the Vendor and the Company's right, title and interest in or to the Purchased Assets; (ii) warranty or condition of merchantability, marketability, location, condition (including environmental condition), description, fitness for a particular purpose of the Purchased Assets; (iii) compliance or non-compliance with laws, regulations, including environmental rules; and (iv) warranty, condition or existence of any parts or components, latent defects, quality, quantity, encumbrances, liens or charges or any other thing affecting the Purchased Assets, including without limitation any environmental contamination or environmental liabilities affecting the Purchased Assets.

6.2 **Receiver Liability.** The Purchaser hereby expressly acknowledges and agrees that KSV Restructuring Inc. is acting only in its representative capacity as Court-appointed receiver and manager of the Purchased Assets and shall have no personal or corporate liability under or as a result of entering into or carrying out the transaction which is the subject of this Agreement.

Article 7 Conditions

7.1 **Mutual Conditions.** The respective obligations of the Vendor and the Purchaser to complete the purchase and sale of the Purchased Assets are subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) the Court shall have granted the Receivership Order, the Receivership Order shall be in full force and effect, no person entitled by law to do so shall have redeemed the Purchased Assets and no notice of appeal shall have been served in relation to the Receivership Order;
- (b) the Court shall have granted the Vesting Order, the Vesting Order shall be in full force and effect and no notice of appeal shall have been served in relation to the Vesting Order;
- (c) the landlords under the Assumed Leases shall have consented to the Vendor's assignment of such Assumed Leases in form and substance acceptable to the Purchaser in its sole discretion, or where the landlords (or any of them) have refused to provide consent to the assignment of the applicable Assumed Lease(s), the Court shall have granted the Assignment Order, the Assignment Order shall be in full force and effect, and no notice of appeal shall have been served in relation to the Assignment Order;
- (d) the Court shall have granted the CCAA Vesting Order, the CCAA Vesting Order shall be in full force and effect, no person entitled by law to do so shall have redeemed any of the property subject to the CCAA Transaction and no notice of appeal shall have been served in relation to the CCAA Vesting Order;
- (e) the CCAA Transaction shall have closed;

- (f) Wallace & Carey Inc. and Carey Management Inc. and the Purchaser shall have entered into a transition services agreement in relation to the CCAA Transaction;
- (g) no governmental authority shall have enacted, issued or promulgated any final or non-appealable order or Applicable Law which has the effect of: (i) making any of the transactions contemplated by this Agreement or the CCAA Transaction illegal; or (ii) otherwise prohibiting, preventing or restraining the Vendor from the sale of the Purchased Assets; and
- (h) the Closing is not otherwise prohibited by Applicable Law.

The foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and may be asserted by the Vendor or the Purchaser regardless of the circumstances and may be waived only with the agreement of both the Vendor and the Purchaser.

7.2 **Purchaser's Conditions.** The obligation of the Purchaser to complete the purchase of the Purchased Assets is subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) all representations and warranties of the Vendor contained in Section 5.1 of this Agreement shall be true and correct in all material respects as at the Closing Date with the same force and effect as if made at and as of such time;
- (b) the Vendor shall have complied with and performed, in all material respects, all of its covenants and obligations contained in this Agreement;
- (c) any and all real property leasing or subleasing arrangements between 772921 Alberta Inc., as lessor, landlord, sublessor, or sublandlord, and any of the CCAA Debtors (or their affiliates), as lessee, tenant, sublessee, or subtenant, relating to the Purchased Assets, including without limitation the Terminated Lease Agreements, shall have been terminated prior to Closing, and documentation evidencing such terminations satisfactory to the Purchaser, acting reasonably, shall have been provided to the Purchaser; and
- (d) the Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at or before the Closing all the documents contemplated in Section 8.2.

The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Purchaser may have.

7.3 **Vendor's Conditions.** The obligation of the Vendor to complete the sale of the Purchased Assets is subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) all representations and warranties of the Purchaser contained in Section 5.2 of this Agreement shall be true and correct in all material respects as at the Closing Date with the same force and effect as if made at and as of such time;
- (b) the Purchaser shall have complied with and performed in all material respects all of its covenants and obligations contained in this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at or before the Closing all the documents contemplated in Section 8.3;
- (d) the Vendor has not lost its ability to convey the Purchased Assets for any reason whatsoever; and

- (e) the Purchaser shall have paid to the Vendor all amounts required to be paid by it under this Agreement.

The foregoing conditions are for the exclusive benefit of the Vendor and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Vendor may have.

- 7.4 From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 7.

Article 8 Closing

- 8.1 **Closing Date and Place of Closing.** Subject to the conditions set out in this Agreement, the Transaction shall close and be completed on the Closing Date, or at such other time as the Parties may agree in writing.
- 8.2 **Vendor's Closing Deliveries.** The Vendor shall deliver (or cause to be delivered) to the Purchaser's solicitor on or before the Closing Date:
 - (a) a Court certified copy of the Vesting Order;
 - (b) a duly executed copy of the Receiver's Certificate;
 - (c) Assignment and Assumption Agreements for each of the Assumed Leases, duly executed by Vendor;
 - (d) either (a) consents of the landlords under the Assumed Leases to the Vendor's assignment of such Assumed Leases in form and substance acceptable to the Purchaser in its sole discretion, or (b) where the landlords (or any one of them) have refused to provide such consent, a true copy of the Assignment Order, if applicable, as issued and entered by the Court;
 - (e) a statement of adjustments submitted to the Purchaser at least five (5) Business Days prior to Closing setting out the adjustments to the Purchase Price required under Section 3.2;
 - (f) an undertaking to readjust;
 - (g) a statutory declaration of the Vendor certifying that, at Closing, the Vendor is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the *Income Tax Act* (Canada);
 - (h) a letter to the relevant Land Titles Offices from the Receiver's solicitor providing registration instructions and appending a true copy of the Vesting Order;
 - (i) all documents listed in Section 8.3 which contemplate execution by the Vendor; and
 - (j) any other documents, resolutions and certificates as are referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.
- 8.3 **Purchaser's Closing Deliveries.** The Purchaser shall deliver (or cause to be delivered) to the Vendor's solicitor on or before the Closing Date:
 - (a) the Purchase Price in accordance with Section 3.1;
 - (b) payment of all Transfer Taxes payable on Closing to the Vendor (or evidence of self-assessment and payment by the Purchaser thereof to the relevant governmental authorities);

- (c) the certificate of the Purchaser and the GST undertaking and indemnity referred to in Section 4.2;
- (d) Assignment and Assumption Agreements for each of the Assumed Leases, duly executed by Purchaser;
- (e) an undertaking to readjust;
- (f) all documents listed in Section 8.2 which contemplate execution by the Purchaser; and
- (g) any other documents, resolutions and certificates as are referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

Article 9 Indemnity

9.1 **General Indemnity.** If Closing occurs, the Purchaser shall:

- (a) be liable to the Vendor, its affiliates and their respective representatives for; and
- (b) as a separate covenant, indemnify and save harmless the Vendor, its affiliates and their respective representatives from and against,

all Losses and Liabilities suffered, sustained, paid or incurred by the Vendor, its affiliates or their respective representatives related to or in connection with the Purchased Assets from and solely to the extent arising after the Closing Date. The Purchaser's indemnity obligations set forth in this Section 9.1 shall survive the Closing Date indefinitely.

Article 10 Termination

10.1 **Grounds for Termination.** This Agreement may be terminated at any time prior to Closing:

- (a) subject to any Court order granted in the Receivership Proceedings or the CCAA Proceedings, by the mutual written agreement of the Vendor and the Purchaser;
- (b) by either Party if:
 - (i) such Party is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the other Party under this Agreement that would give rise to the failure of any of the conditions specified in Article 7, and such breach, inaccuracy or failure cannot be cured by the other Party by the Closing Date; or
 - (ii) any of the conditions set forth in Article 7 for the benefit of such Party shall not have been fulfilled by the Closing Date, unless such failure shall be due to the failure of such Party to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it before the Closing;
- (c) by Purchaser or Vendor if:
 - (i) there shall be any law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or
 - (ii) Vendor is restrained or enjoined from completing the transaction contemplated herein by any governmental authority (including without limitation the Court).

10.2 **Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article 10, this Agreement shall forthwith become terminated and of no further force and effect

and there shall be no liability on the part of any party hereto except that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

Article 11
General

- 11.1 **Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including fees, charges and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred
- 11.2 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.2):

If to Vendor: KSV Restructuring Inc.
1165, 324 - 8th Avenue SW
Calgary, Alberta T2P 2Z2
Email: bkofman@ksvadvisory.com / jknight@ksvadvisory.com
Attention: Bobby Kofman / Jason Knight

with a copy to: Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5
Email: joliver@cassels.com / jdietrich@cassels.com
Attention: Jeff Oliver / Jane Dietrich

If to Purchaser: 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

Email: edmond.lamek@ca.dlapiper.com /
carole.hunter@dlapiper.com

Attention: Edmond Lamek / Carole Hunter

- 11.3 **Interpretation.** For purposes of this Agreement, (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Schedules mean the Articles and Sections of, and Schedules attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.
- 11.4 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- 11.5 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 11.6 **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Schedules, the statements in the body of this Agreement will control.
- 11.7 **Successors and Assigns.** This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.
- 11.8 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto, their Representatives and their respective successors and permitted assigns and nothing herein, express or implied, is intended to, or shall, confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 11.9 **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any

right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11.10 Governing Law; Forum Selection.

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- (b) Any action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby or thereby may be brought in the courts of the Province of Alberta, and each party irrevocably submits and agrees to attorn to the exclusive jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

11.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

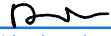
KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver of **772921 ALBERTA INC.**, and not in its personal or corporate capacity.

By _____

Name:

Title:

7-ELEVEN CANADA, INC.

By  _____
By [David Seltzer \(Nov 6, 2023 19:18 CST\)](#)

Name: David Seltzer

Title: Treasurer

**Schedule A
Permitted Encumbrances**

Permitted encumbrances for lands legally described as:

PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

Registration Number	Date	Particulars
761 116 078	20/09/1976	EASEMENT
771 000 659	05/01/1977	EASEMENT
771 147 064	20/10/1977	ZONING REGULATIONS
791 207 758	10/12/1979	UTILITY RIGHT OF WAY
791 207 759	10/12/1979	RESTRICTIVE COVENANT
821 061 067	07/04/1982	EASEMENT

Permitted encumbrances for lands legally described as:

PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

Registration Number	Date	Particulars
761 116 078	20/09/1976	EASEMENT
771 000 659	05/01/1977	EASEMENT
771 147 064	20/10/1977	ZONING REGULATIONS
821 061 067	07/04/1982	EASEMENT

Permitted encumbrances for lands legal described as:

Parcel Identifier: 003-862-682
Legal Description: LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698

Registration Number	Date	Particulars
CA5940341	2017-04-20	STATUTORY RIGHT OF WAY BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
CA5940342	2017-04-20	STATUTORY RIGHT OF WAY TELUS COMMUNICATIONS INC. INCORPORATION NO. BC1101218

**Schedule B
Properties and Purchase Price Allocation**

Properties:

The lands legally described as:

PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

and

PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

and

Parcel Identifier: 003-862-682

Legal Description: LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698

Purchase Price Allocation:

Property	Purchase Price Allocation
PLAN 7911396 BLOCK 1 LOT 3 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS	CAD\$8,800,000.00
PLAN 7911396 BLOCK 1 LOT 4 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS	
Parcel Identifier: 003-862-682 Legal Description: LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698	CAD\$6,100,000.00

**Schedule C
Vesting Order**

See attached.

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

CANADIAN IMPERIAL BANK OF
COMMERCE

DEFENDANT
APPLICANT

772921 ALBERTA INC.,
KSV RESTRUCTURING INC., in its capacity
as court-appointed receiver and manager of
772921 ALBERTA INC.

DOCUMENT

**APPROVAL AND VESTING ORDER
(Sale by Receiver)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5

Attention: Jeff Oliver / Jane Dietrich

Telephone: 403-351-2920

Email: joliver@cassels.com / jdietrich@cassels.com

File No. 54670-4

DATE ON WHICH ORDER WAS PRONOUNCED: _____

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta – Via Webex

NAME OF JUSTICE WHO MADE THIS ORDER: _____

UPON THE APPLICATION by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertakings, property and assets of 772921 Alberta Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 7-Eleven Canada Inc. (the “**Purchaser**”) dated October [●], 2023 and appended to the Pre-Filing Report of the Receiver dated **October [●], 2023** (the “**Report**”), and vesting in the Purchaser (or its nominee) the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”);

AND UPON HAVING READ the Receivership Order dated October [●], 2023 (the “**Receivership Order**”), the Report and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver, the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service, filed;

IT IS HEREBY ORDERED AND DECLARED THAT:**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved and execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser (or its nominee).
3. Upon delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule "A" hereto (the "**Receiver's Closing Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets listed in Schedule "B" hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Receivership Order;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), the *Personal Property Security Act* (British Columbia) or any other personal property registry system;
 - (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta) or the *Builders' Lien Act* (British Columbia); and
 - (d) those Claims listed in Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule "D" (collectively, "**Permitted Encumbrances**"))

and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

4. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances.
5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. Without limiting the generality of paragraphs 4 or 5 above:
 - (a) the Alberta Registrar of Land Titles ("**Alberta Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
 - (i) cancel existing Certificates of Title Number 981 361 399 for those lands and premises municipally described as and legally described as:

PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

(the "**AB Lot 3 Lands**")
 - (ii) issue a new Certificate of Title for the AB Lot 3 Lands in the name of the Purchaser (or its nominee), namely, 7-Eleven Canada Inc.;

- (iii) transfer to the new Certificates of Title the applicable existing instruments listed in Schedule "D" – Part A, to this Order, and to issue and register against the new Certificate of Title such applicable new caveats, utility rights of ways, easements or other instruments as are listed in Schedule "D" – Part A; and
 - (iv) discharge and expunge the Encumbrances listed in Schedule "C" – Part A to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the AB Lot 3 Lands.
- (b) the Alberta Land Titles Registrar for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
- (i) cancel existing Certificates of Title Number 981 361 399 +1 for those lands and premises municipally described as [●] and legally described as:

PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

(the "AB Lot 4 Lands")
 - (ii) issue new Certificates of Title for the Lands in the name of the Purchaser (or its nominee), namely, 7-Eleven Canada Inc.;
 - (iii) transfer to the new Certificate of Title the applicable existing instruments listed in Schedule "D" – Part B, to this Order, and to issue and register against the new Certificate of Title such applicable new caveats, utility rights of ways, easements or other instruments as are listed in Schedule "D" – Part B; and
 - (iii) discharge and expunge the Encumbrances listed in Schedule "C" – Part B to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the Lands.
- (c) upon presentation for registration in the British Columbia Land Titles Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from Cassels

Brock & Blackwell LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

- (i) enter the Purchaser (or its nominee) as the owner of the B.C. Property, as defined and identified in Schedule "B" hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the B.C. Property, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser (or its nominee) in and to the Property is a good, safe holding and marketable title and directs the British Columbia Registrar of Land Titles to register indefeasible title in favour of the Purchaser (or its nominee) as aforesaid; and
 - (ii) having considered the interest of third parties, to discharge, release, delete and expunge from title to the B.C. Property all of the registered Claims as set out in Schedule "C" – Part C hereto, save and except for those Permitted Encumbrances listed in Schedule "D" – Part C.
7. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
 8. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.
 9. For the purposes of determining the nature and priority of Claims, the net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior

to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

10. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however that: (a) the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order; and (b) the Receiver (or its legal counsel, as the case may be) is hereby authorized and directed to distribute the following amounts from the net proceeds from the sale of the Purchased Assets without further order of this Court:
- (a) first, paying the amounts (if any) owing to the City of Calgary and the City of West Kelowna (collectively, the "**Municipalities**"), on account of municipal property taxes, assessments, penalties and interest and any other charges owing to the Municipalities with respect to the applicable Purchased Assets that: (i) rank in priority to the mortgages and caveats registered by Canadian Imperial Bank of Commerce ("**CIBC**") and Canadian Western Bank ("**CWB**") against the Purchased Assets; and (ii) are the responsibility of the Receiver under the Sale Agreement;
 - (b) second, paying to Canada Revenue Agency, the amount of any Transfer Taxes (as defined in the Sale Agreement), if any, payable by the Receiver under the Sale Agreement;
 - (c) [third, paying [●] and applicable goods and services taxes (if any) to Alvarez & Marsal Canada Securities ULC; and]
 - (d) fourth, paying from the net proceeds from the sale of the following lands, the following amounts:
 - (i) from the sale of AB Lot 3 Lands and AB Lot 4 Lands:
 - (A) a distribution to CWB in such amount so as to fully discharge the obligations owing by the Debtor to CWB as secured by the mortgage and caveat registered by CWB against the AB Lot 3 Lands and AB Lot 4 Lands as instrument numbers 221 026 290 and 221 026 291, which distribution is estimated to be in the amount of \$[●];
 - (B) a distribution to CIBC of the remaining net proceeds from the sale of the AB Lot 3 Lands and AB Lot 4 Lands, provided that such distribution shall not exceed the amount of the obligations owing by the Debtor to CIBC and secured by the mortgage registered by CIBC against the AB Lot 3 Lands

and AB Lot 4 Lands as instrument number 231 275 608, which distribution is estimated to be in the amount of \$[●];

- (ii) from the sale of the B.C. Property:
 - (A) a distribution to CWB in such amount so as to fully discharge the obligations owing by the Debtor to CWB as secured by the mortgage and assignment of rents registered by CWB against the B.C. Property as registration numbers CA9465179 and CA9465180, which distribution is estimated to be in the amount of \$[●]; and
 - (B) a distribution to CIBC of the remaining net proceeds from the sale of the B.C. Property, provided that such distribution shall not exceed the amount of the obligations owing by the Debtor to CIBC and secured by the mortgage and assignment of rents registered by CIBC against the B.C. Property as registration numbers CB806751 and CB806752, which distribution is estimated to be in the amount of \$[●].

11. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtor.
12. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
13. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by, through or against the Debtor.
14. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.

15. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the Alberta *Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Debtor was entitled.

MISCELLANEOUS MATTERS

17. Notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA"), in respect of the Debtor, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Debtor; and
 - (d) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
19. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms

of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

20. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

- (i) the persons listed on the service list created in these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
- (iv) the Purchaser or the Purchaser's solicitors; and

(b) Posting a copy of this Order on the Receiver's website at: [●]

and service on any other person is hereby dispensed with.

21. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Schedule "A"
Form of Receiver's Certificate

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

CANADIAN IMPERIAL BANK OF COMMERCE

DEFENDANT
APPLICANT772921 ALBERTA INC.,
KSV RESTRUCTURING INC., in its capacity as
court-appointed receiver and manager of 772921
ALBERTA INC.

DOCUMENT

RECEIVER'S CERTIFICATEADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENTCassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5Attention: Jeff Oliver / Jane Dietrich
Telephone: 403-351-2920
Email: joliver@cassels.com / jdietrich@cassels.com

File No. 54670-4

RECITALS

- A. Pursuant to an Order of the Honourable Justice [●] of the Court of King's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated [●], 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertakings, property and assets of 772921 Alberta Inc. (the "**Debtor**").
- B. Pursuant to an Order of the Court dated [●], 2023, the Court approved the agreement of purchase and sale made as of October [●], 2023 (the "**Sale Agreement**") between the Receiver and 7-Eleven Canada Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section [●] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section [●] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [Time] on [Date].

KSV Restructuring Inc., in its capacity as Receiver of the undertakings, property and assets of 772921 Alberta Inc., and not in its personal capacity.

Per; _____

Name:

Title:

Schedule "B"
Purchased Assets

The lands legally described as:

PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

and

PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

and

Parcel Identifier: 003-862-682
Legal Description: LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698
(the "**B.C. Property**")

**Schedule "C"
Encumbrances**

Schedule "C" – Part A

Encumbrances for lands legally described as:

PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

Registration Number	Date	Particulars
221 026 290	08/02/2022	MORTGAGE MORTGAGEE - CANADIAN WESTERN BANK
221 026 291	08/02/2022	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - CANADIAN WESTERN BANK
231 275 608	12/09/2023	MORTGAGE MORTGAGEE - CANADIAN IMPERIAL BANK OF COMMERCE

Schedule "C" – Part B

Encumbrances for lands legally described as:

PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

Registration Number	Date	Particulars
221 026 290	08/02/2022	MORTGAGE MORTGAGEE - CANADIAN WESTERN BANK
221 026 291	08/02/2022	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - CANADIAN WESTERN BANK
231 275 608	12/09/2023	MORTGAGE MORTGAGEE - CANADIAN IMPERIAL BANK OF COMMERCE

Schedule "C" – Part C

Encumbrances for lands legal described as:

Parcel Identifier: 003-862-682
Legal Description: LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698

Registration Number	Date	Particulars
CA9465179	2021-10-28	MORTGAGE

		CANADIAN WESTERN BANK
CA9465180	2021-10-28	ASSIGNMENT OF RENTS CANADIAN WESTERN BANK
CB806751	2023-08-03	MORTGAGE CANADIAN IMPERIAL BANK OF COMMERCE
CB806752	2023-08-03	ASSIGNMENT OF RENTS CANADIAN IMPERIAL BANK OF COMMERCE

Schedule "D"
Permitted Encumbrances

Schedule "D" – Part A

Permitted encumbrances for lands legally described as:

PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS

Registration Number	Date	Particulars
761 116 078	20/09/1976	EASEMENT
771 000 659	05/01/1977	EASEMENT
771 147 064	20/10/1977	ZONING REGULATIONS
791 207 758	10/12/1979	UTILITY RIGHT OF WAY
791 207 759	10/12/1979	RESTRICTIVE COVENANT
821 061 067	07/04/1982	EASEMENT

Schedule "D" – Part B

Permitted encumbrances for lands legally described as:

PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS

Registration Number	Date	Particulars
761 116 078	20/09/1976	EASEMENT
771 000 659	05/01/1977	EASEMENT
771 147 064	20/10/1977	ZONING REGULATIONS
821 061 067	07/04/1982	EASEMENT

Schedule "D" – Part C

Permitted encumbrances for lands legal described as:

Parcel Identifier: 003-862-682
Legal Description: LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698

Registration Number	Date	Particulars
CA5940341	2017-04-20	STATUTORY RIGHT OF WAY BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
CA5940342	2017-04-20	STATUTORY RIGHT OF WAYTELUS COMMUNICATIONS INC. INCORPORATION NO. BC1101218

This is Exhibit "M" referred to in the Affidavit of Geoffrey Golding sworn by Geoffrey Golding at the City of Toronto, in the Province of Ontario, before me on November 8, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Evan Cobb

Commissioner for Taking Affidavits (or as may be)

EVAN COBB

FORM 86
Notice of Intention to Enforce a Security
(Rule 124)

TO: 772921 ALBERTA INC.; RIDGE MEADOWS PROPERTIES LTD.; AND
SPRUCE IT UP LAND CORP. (the "**Obligors**"), insolvent persons;

Take notice that:

1. Canadian Imperial Bank of Commerce, as agent (the "**Secured Creditor**"), a secured creditor, intends to enforce its security on the Grantors' property described below:

All of the personal property and intellectual property rights of the Obligors now owned or hereafter acquired, subject to any exclusions set out in the Security Agreements (as defined below).

The lands legally described on Schedule "B" hereto.

2. The security that is to be enforced is in the form of, *inter alia*, the agreements referred to in Schedule "A" (the "**Security Agreements**").
3. The total amount of indebtedness secured by the above described security as at November 6, 2023 was the sum of CDN 32,620,322.27, plus additional interest, costs, fees and expenses.
4. The Secured Creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the Obligors consent to an earlier enforcement.

DATED at Toronto, Ontario this 7th day of November, 2023.

**CANADIAN IMPERIAL BANK OF
COMMERCE, AS AGENT**, by its counsel,
Norton Rose Fulbright Canada LLP

Per: 

Name: Evan Cobb
Title: Partner

Schedule "A"

1. General Security Agreement dated as of the 26th day of September 2017
2. Mortgage granted July 20, 2023 by the Obligors pursuant to the Land Titles Act (Alberta)
3. Mortgage granted July 20, 2023 by 772921 Alberta Inc. pursuant to the Land Title Act (British Columbia)

Schedule "B"

1. PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS
Standing in the name of 772921 Alberta Inc.
2. PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS
Standing in the name of 772921 Alberta Inc.
3. PLAN 8031JK
BLOCK A
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS
Standing in the name of Ridge Meadows Properties Ltd.
4. PLAN 5235JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS
Standing in the name of Spruce It Up Land Corp.
5. PIN: 003-862-682
LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698
Standing in the name of 772921 Alberta Ltd.

CONSENT

TO: CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT (the “**Secured Creditor**”)

FROM: 772921 ALBERTA INC.; RIDGE MEADOWS PROPERTIES LTD.; AND SPRUCE IT UP LAND CORP., insolvent persons (the “**Insolvent Persons**”)

The Insolvent Persons acknowledge receipt of a Notice of Intention to Enforce Security dated November 7, 2023 delivered by the Secured Creditor.

For consideration received, the receipt and sufficiency of which are hereby acknowledged, the Insolvent Persons hereby consent to the immediate enforcement by the Secured Creditor of the security held by the Secured Creditor from the Insolvent Persons, and for the same consideration waive any further notice from the Secured Creditor with respect to the enforcement of its security and the exercise of the other remedies of the Secured Creditor against the Insolvent Persons.

DATED this ____ day of November, 2023

772921 ALBERTA INC.

Per: 
Name:
Title:

RIDGE MEADOWS PROPERTIES LTD.

Per: 
Name:
Title:

SPRUCE IT UP LAND CORP.

Per: 
Name:
Title: