Clerk's Stamp

COURT FILE NUMBER	1901-12274
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS	1963843 ALBERTA LTD., PENHOLD CROSSING PLAZA LTD., ASHWANI AWASTHI, SWARNJIT SINGH KOONER, SUKHBIR NAIN, OM ACAYOT ABHOY, and ANURAG SUMAN
DOCUMENT	**RECEIVER'S SECOND REPORT – 1963843 ALBERTA LTD.** **August 31, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** Ernst & Young Inc. 2200, 215 – 2 Street SW Calgary, Alberta T2P 1M4 Telephone: 403-206-5061 Fax: 403-206-5075 Email: peter.chisholm@ca.ey.com **COUNSEL** Dentons Canada LLP 15th Floor, Bankers Court 850 – 2 Street SW Calgary, Alberta T2P 0R8 Telephone: 403-268-7000 Fax: 403-268-3100 Email: derek.pontin@dentons.com john.regush@dentons.com

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INTRODUCTION AND PURPOSE

1. Ernst & Young Inc. (the "**Receiver**") was appointed as Receiver and Manager of the property, assets and undertakings of 1963843 Alberta Ltd. ("**196**") and Penhold Crossing Plaza Ltd. ("**Penhold Crossing**") pursuant to an Order of this Court (the "**Receivership Order**") dated November 6, 2019 (the "**Receivership Date**").

2. The purpose of this report (the "**Second Report**") is to provide this Honourable Court, and other interested stakeholders, with the information in respect of:

   a) the activities of the Receiver since the date of the First Report on July 17, 2020 ("**First Report**");

   b) the proposed sales process for the assets of 196 and Penhold Crossing ("**Sales Process**"); and

   c) the Receiver's recommendation with respect to same.

TERMS OF REFERENCE

3. Capitalized terms not defined in this Second Report are as defined in the Receivership Order.

4. In preparing this Second Report, the Receiver has relied upon unaudited financial information of 196, 196's books and records, certain financial information prepared by 196 and discussions with 196's Management ("**Management**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied upon in its preparation. Future oriented financial information reported or relied on in order to prepare this report is based on Management's assumptions regarding future events; actual results will vary from forecast, and such variations may be material.

5. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

6. 196 is a tenant of Penhold Crossing, operating an Esso branded gas station and convenience store in Penhold, Alberta (the "**Penhold Convenience Store**"). Within the convenience store is a Tim Hortons which has a sublease in place with 196.

7. There is some common ownership of Penhold Crossing and 196. Further, each of Penhold Crossing and 196 had loan facilities with ATB Financial ("**ATB**"). There is a dispute between certain stakeholders of Penhold Crossing and ATB regarding the validity of a cross-guarantee of 196 provided in favour of ATB (the "**Guarantee Dispute**").

8. Due to the Guarantee Dispute, certain provisions were inserted in the Receivership Order that:

   a) limit the scope of the Receiver's powers pending resolution of the Guarantee Dispute, including limiting the Receiver's ability to accept any offer to purchase the assets of Penhold Crossing;

   b) require the Receiver to allocate time and costs incurred proportionately between the Debtors; and

   c) require the Receiver to provide separate reports for each of the Debtors.

9. A special application to resolve the Guarantee Dispute has been partially heard by the Court, however the balance of the hearing is yet to be concluded and has been delayed due to the impacts of the novel coronavirus ("**COVID-19**") on Court operations. As at the date of the Second Report, the Guarantee Dispute has not been resolved and, while the Receiver understands that a hearing to determine the Guarantee Dispute is scheduled to occur in early September, there is no certainty as to when a decision regarding the Guarantee Dispute will be rendered.

ACTIVITIES OF THE RECEIVER SINCE FIRST REPORT

Receiver's Borrowings

10. On July 23, 2020 The Honourable Madam Justice Campbell granted an Order that, among other things, increased the Receiver's Borrowings Charge to permit additional borrowings in the amount of $75,000.

11. As at the date of the Second Report, the Receiver has requested, and ATB has agreed to fund, an additional $50,000, secured by the Receiver's Borrowings Charge. The Receiver understands ATB is completing the steps necessary to deposit these funds with the Receiver.

12. On receipt of these additional borrowings, the Receiver will cause 196 to pay rental amounts outstanding for the months of July and August to Penhold Crossing and will cause 196 to make ongoing rental payments in the ordinary course. It is anticipated funds received by Penhold

Crossing from 196 will be used to pay outstanding property tax and upcoming insurance payments, as noted in the First Report.

APPROVAL OF LISTING AGREEMENT AND SALES PROCESS

Rationale for Sales Process

13. Approximately ten months have elapsed since the Receivership Date and the Receiver has been operating the Debtors' businesses as a going concern during this period to preserve the value of both Penhold Crossing and 196 while the Guarantee Dispute is resolved. The Receiver anticipates that the operating expenses of Penhold Crossing will continue to be funded through lease payments made by 196.

14. 196 requires additional borrowings to continue its operations (and continue to make lease payments to Penhold Crossing), which is addressed in greater detail in First Report. Additionally, as these proceedings continue, the Receiver and its counsel will continue to accrue fees. In such circumstances, the Receiver is of the view that it would be in the best interest of all stakeholders that the Property of the Debtors is sold to minimize ongoing operating expenses and Receivership costs.

15. Additionally, as addressed in the First Report, prospective purchasers and interested parties have also reached out to the Receiver subsequent to the Receivership Date, inquiring as to when the Property will be listed for sale. Seven (7) parties have come forward unsolicited.

16. One party provided a conditional offer to purchase all assets of the Debtors, however this offer could not be effectively pursued given the restrictions placed on the Receiver by the Receivership Order.

17. Given the unsolicited interest and offer received, and the professional fees and operating costs associated with operating the Debtors' business, the Receiver believes it should run a formal sales process and liquidate the Property.

18. Any sale would require Court approval (unless such sale was below the limits established by the Receivership Order), and funds generated can be held by the Receiver pending resolution of the Guarantee Dispute, or on such other terms as may be appropriate.

19. The Receiver believes that a sales process can be run with 196 honouring the terms of the lease agreement with Penhold Crossing and Penhold Crossing can use the funds from the rent to pay any utilities, insurance and property taxes as they come due.

20. As discussed in the First Report, given the nature of the Property, and particularly as at least one party has expressed interest in buying the assets of both Debtors, the Receiver views that marketing the property of the Debtors concurrently is likely to be accretive to the value of the property of each of the Debtors. In order for such a process to be effective, the Receiver must be able to accept an offer to purchase the assets of Penhold Crossing (subject to Court approval if required by the Receivership Order).

21. As such, the Receiver is of the view that Receivership Order should be amended to remove the restriction on the Receiver accepting an offer to purchase the assets of Penhold Crossing.

Request for Proposals ("RFP")

22. The Receiver is of the view that a sales agent ("**Selling Agent**") should be retained in connection with a formal sales process. The Receiver anticipates that the Selling Agent's role in relation to the Property will be to develop and implement, with the assistance of the Receiver, a sales strategy respecting the Property, including:

    a) developing an effective pre-marketing preparation process;

    b) assisting the Receiver in developing and executing a successful marketing and sales process in determining how to best maximize realizations of the Property, and whether to market the Property *en bloc*, to market the property of Penhold Crossing and 196 separately, or some combination of these strategies;

    c) contacting parties that expressed an interest in the Property, either to the Receiver or prior to the date of the Receivership;

    d) exposing the Property to the market with a carefully managed, transparent and competitive process; and

    e) setting and adhering to an effective timeline for the sales strategy.

23. On or about July 21, 2020, the Receiver sent out a request for proposal ("**RFP**") to 18 commercial real estate brokerages and consulting firms ("**Brokers**") to act as Selling Agent for the Property. The RFP requested that the Brokers outline in their response to the RFP ("**Proposal**") how the Property would be marketed and sold and the timeline thereof. The deadline for Brokers to respond to the RFP was 5:00 P.M. (Mountain time) on July 31, 2020.

24. Eight (8) Brokers provided Proposals to the Receiver. The Receiver reviewed these proposals, and is of the view that all Brokers that provided a Proposal were qualified to undertake such an engagement.

25. Upon review of the Proposals, including consultation with ATB, the Receiver is of the view that Liang Commercial Century 21 Bravo Realty ("**Liang Realty**") should be retained as the Selling Agent to market and sell the Properties in the Sale Process.

26. The selection of Liang Realty to act as Selling Agent was based on, among other factors, Liang Realty's:

   a) credentials in selling commercial real estate with a high degree of complexity, including experience in each of the asset classes included in the portfolio of the Property (i.e. retail strip mall, gas station and convenience store);

   b) reputation within the local commercial real estate industry;

   c) pre-marketing preparation and general understanding of the Property;

   d) recommended marketing approach in selling the Property;

   e) proposed fee and cost structure; and

   f) proposed timeline to market and successfully monetize the Property.

27. In particular, the Receiver understands that Liang Realty was previously engaged to market the Property prior to the Receivership Order, and as such has familiarity with the Property. Liang Realty has advised the Receiver that conditional offers to purchase the Property were provided to Liang Realty prior to the Receiver's appointment.

28. Liang Realty's fee as Selling Agent is equal to 3.00% plus applicable taxes of the selling price of any Property sold.

29. Attached hereto as Appendix "A" is the proposed listing agreement between the Receiver and Liang Realty ("**Listing Agreement**").

30. The Receiver is of the view that the Listing Agreement is commercially reasonable and seeks this Honourable Court's approval of the Listing Agreement and direction for the Receiver to enter into the Listing Agreement.

Sales Process

31. The Receiver, in consultation with Liang Realty, has developed a process to solicit offers to market and sell the Property through a formal, deadline-based sales process (the "**Sales Process**"), which the Receiver proposes to implement should this Honourable Court amend the Receivership Order and approve the Receiver entering into the Listing Agreement.

32. The following is a summary of the key steps to be undertaken in the proposed Sales Process:

a) the Selling Agent, in consultation with the Receiver, will prepare (1) a non-confidential teaser letter (the "**Teaser Letter**") describing the opportunity to acquire the Property and inviting recipients of the Teaser Letter to express their interest pursuant to the Sales Process, (2) a non-disclosure agreement (the "**NDA**") and (3) a confidential information memorandum ("**CIM**"). The Teaser and NDA will be made available by the Selling Agent to prospective purchasers and will be posted on the Receiver's website as soon as practicable following Court approval of the Sales Process;

b) the Selling Agent shall populate an electronic data room with all available due diligence material;

c) as soon as reasonably practical after the approval of the Sales Process, advertisement of the Sales Process will be published in the Calgary Herald and a press release will be issued describing the Sales Process with Canada Newswire. The Receiver will also advertise on social media such as LinkedIn and Insolvency Insider;

d) the Selling Agent shall will release the Teaser Letter and any other electronic or print marketing materials (e.g. a brochure) to its proprietary list of investors and other interested third parties. The Selling Agent will collaborate within the global Liang Realty community as well as with other third party, local brokerages;

e) all potential bidders that have executed a non-disclosure agreement (each, a "**Qualified Bidder**") pursuant to the Sales Process will be provided with:

    i. the CIM;

    ii. access to the Data Room;

    iii. access to any further due diligence materials as deemed appropriate by the Selling Agent and the Receiver; and

    iv. a template form of asset purchase agreement ("**APA**"), prepared by the Receiver, to be submitted by Qualified Bidders as their Final Bid.

f) the deadline for receipt, by the Receiver, of final binding offers to purchase ("**Final Bid**") in the form of the APA will be 12:00 p.m. Mountain time, on November 27, 2020 ("**Final Bid Deadline**"). Qualified Bidders are further required to submit a blackline identifying changes to the APA submitted with their Final Bid;

g) immediately following the Final Bid Deadline, the Receiver, in consultation with the Selling Agent and ATB, will review the Final Bids to assess whether any of the Final Bids constitute a qualified bid as set out in the Sales Process (a "**Qualified Bid**");

h) if a Qualified Bid is received prior to the Final Bid Deadline and deemed by the Receiver, in consultation with the Selling Agent and ATB, to be credible, reasonably certain and a financially viable third party offer for the acquisition of some or all of the Property, the Receiver will have the right to accept the offer prior to the Final Bid Deadline and seek this Court's approval of the offer.

33. The Receiver is of the view that the right to accept binding offers prior to the Final Bid Deadline is fair in the circumstances, as the Property was publicly marketed by Liang Realty for a significant period of time prior to the Receivership Date. Furthermore, the Receiver will be relying upon the expertise of the Selling Agent to assess the reasonability of offers received in the Sales Process and all offers will be subject to this Court's approval.

34. The Sales Process is based upon an established form of sales process used in similar formal insolvency filings that provides a fair and transparent process for participants and is designed to maximize value for stakeholders.

35. The Receiver believes that initiating the Sales Process at this time, and the proposed timelines, are appropriate in the circumstances. In particular, the Receiver is satisfied that the proposed timelines will allow arm's-length market participants sufficient time to assess the opportunity to purchase all or a portion of the Property and submit a binding offer of purchase.

36. The Receiver expects the proposed Selling Agent to formally launch the Sales Process immediately following Court approval and the Receiver will seek Court approval for any purchase and sale agreements entered into to sell all or part of the Property as required by the Receivership Order.

37. The Receiver understands that ATB supports the Sales Process.

List Price

38. The Receiver proposes that the list price for the Property in the Sales Process will initially be $3,990,000. This amount was determined based upon the Selling Agent's experience, understanding of the Penhold market and the interest in the Property previously expressed to the Selling Agent and Receiver. The Receiver may vary the list price as the Sales Process progresses, in consultation with the Selling Agent.

RECOMMENDATION

39. The Receiver respectfully recommends that this Honourable Court:

   a) approve the activities of the Receiver as set out in this Second Report;

   b) amend the Receivership Order to remove the restriction on the Receiver accepting an offer to purchase the assets of Penhold Crossing;

   c) approve the listing agreement and approve the Receiver entering into the Listing Agreement; and

   d) approve the Sales Process.

Respectfully submitted this 31st day of August 2020.

Ernst & Young Inc.
In its capacity as Receiver of
1963843 Alberta Ltd.
and not in its personal or corporate capacity

Per:

Peter Chisholm, CPA, CA, CIRP, Licensed Insolvency Trustee
Senior Vice-President

APPENDIX A

Listing Agreement

AREA Alberta Real Estate Association

For Use in DESIGNATED AGENCY Brokerages

18082020
Agreement Number

COMMERCIAL SELLER BROKERAGE AGREEMENT

This form was developed by the Alberta Real Estate Association for the use of its members and may not be altered electronically by any person. Others who use this document do so at their own risk.

This Seller Brokerage Agreement (the "Agreement") is between

THE SELLER and **THE SELLER'S BROKERAGE (the "Brokerage")**

Name Ernst & Young Inc. in its capacity as Receiver of
Name 1963843 Alberta Ltd. & Penhold Crossing Plaza Ltd.
Address
(postal code)
Phone
Fax
Email

Brokerage Name Century 21 Bravo Realty
Address 3009 23 St NE Calgary, AB
T2E 7A4 (postal code)
Phone 403-250-2882
Tarjinder Dhillon
Broker, Associate Broker or Associate authorized to represent the Brokerage
Member of Calgary (the "Board")

In consideration of the Brokerage listing the Seller's Property, the Seller hereby gives the Brokerage the **exclusive** right to offer the Property for sale for the price of Three Million Nine Hundred Ninety Thousand Dollars ($ 3,990,000.00) **plus GST**, if applicable, and upon the following terms:

1. THE PROPERTY

1.1 The Property is the Land and Buildings known as Penhold Crossing Plaza and Esso gas station business located at: 2 Hawkridge Blvd Penhold, AB
(municipal street address)

1.2 The legal description of the Property is:
Plan 162-3323 Block/Unit 8 Lot 124

If Condominium Property, legal description and details as per Commercial Condominium Property Appendix (attached).

1.3 The Property includes:

(a) All goods attached to the Land and Buildings ("Attached Goods") except those goods listed below:
Buyer to assume all tenancies.

(b) Goods not attached to the Land and Buildings ("Unattached Goods") as listed below:
All chattels associated with 1963843 Alberta ltd. and Penhold Crossing Plaza ltd are included in the sale price.

2. TERM OF THE AGREEMENT

2.1 This Agreement will commence at ______ .m. on the ______ day of ______, 20____ and will expire at 09:00 P .m. on the 31 day of December , 20 20 (the "Expiry Date").

3. POSSESSION DATE

3.1 The proposed Possession Date is Negotiable / ASAP

4. MLS® SERVICES

4.1 All MLS® Listings must:
(a) be for a minimum duration of 60 days;
(b) provide compensation for cooperating brokers for the sale of the property;
(c) not exclude any licensed industry member from acting as a cooperating broker.

4.2 Seller's Information:
(a) The Seller Brokerage Agreement must be completed in full and must include the names of the parties, the term of the agreement, the address and legal description of the property, the price at which the property is being offered, the remuneration being offered to cooperating brokerages, the possession date and other property-dependent information necessary for the marketing of the property. This information will be entered into the MLS® System.
(b) Changes to certain of the above-mentioned information will require the signatures of the Seller.
(c) Should the Seller not wish its name to be entered into the MLS® System, this is permissible upon receipt of a written request from the Seller through its brokerage.
(d) The Seller maintains the right to request that information such as the address and legal description of the property not be displayed on ICX.ca or REALTOR.ca.

4.3 Advertising:
(a) The Seller's name and contact information shall not appear on ICX.ca or REALTOR.ca or in the public remarks section of the MLS® System.
(b) The Brokerage may permit the Seller to reserve the right to sell the property itself. If Seller's Rights Reserved apply to a listing, that fact shall be disclosed to other members of the Board via the MLS® System.

Note: *MLS® Listing means a property listed for sale on the Board's MLS® System. The trademarks MLS®, Multiple Listing Service® and the associated logos are owned by The Canadian Real Estate Association (CREA) and identify the quality of services provided by real estate professionals who are members of CREA.*

5. APPOINTMENT OF DESIGNATED AGENT

5.1 The Brokerage designates

Tarjinder Dhillon

____________________ (the Designated Agent) to serve as sole agent for the Seller.

5.2 If the Designated Agent ceases to be registered with the Brokerage, unless otherwise agreed in writing, the Brokerage will designate another member of the Brokerage to serve as the sole agent for the Seller.

5.3 The Seller agrees that an agency relationship will exist only with the Designated Agent and not with the Brokerage.

5.4 The Seller agrees the Brokerage's responsibilities will be limited to:
(a) treating the interests of the Seller and buyers interested in the property represented by the Brokerage in an even-handed, objective and impartial manner;
(b) ensuring compliance by the Designated Agent with the Brokerage's policies and procedures governing designated agents;
(c) supervising the Designated Agent and support staff to ensure the Designated Agent fulfills its mandate under this Agreement;
(d) holding all monies received by the Brokerage in trust in accordance with the provisions of the *Real Estate Act*; and
(e) providing a true copy of this Agreement to the Seller after all parties have signed.

5.5 The Designated Agent's knowledge will not be attributed to the Brokerage or to its designated agents representing buyers or other sellers.

5.6 The Brokerage will appoint a supervising broker and, if required, an advisor for the purposes of clauses 5.4(b) and (c), but the Brokerage will ensure that all information obtained by these parties will be held in confidence by them. The Brokerage and the Designated Agent undertake that they will not disclose any confidential information concerning the Seller to any other member of the Brokerage or any other person unless authorized by the Seller or required by law.

6. DESIGNATED AGENT'S MANDATE

6.1 Obligations

The Designated Agent will fulfill the following duties:

(a) to use best efforts to market the Property and to promote the interests of the Seller;

(b) to market the Property through the MLS® of the Board in accordance with the requirements of the Board;

(c) to cooperate with brokerages working with buyers;

(d) subject to Section 19, to act solely as the Seller's agent and fulfill the duties of loyalty, confidentiality and full disclosure of all relevant facts affecting the transaction known to the Brokerage. This includes disclosing all conflicts of interest that may arise between the Seller's interests and those of the Brokerage or buyers;

(e) to disclose to all buyers all material latent defects affecting the Property known to the Brokerage;

(f) to assist the Seller in negotiating favourable terms and conditions with a buyer, resulting in a legally binding purchase contract for the Property;

(g) to present, in a timely manner, all offers and counter-offers to the Seller even when the Property is already the subject of a purchase contract;

(h) to comply with the provisions of the *Real Estate Act* and its regulations, and the rules and bylaws of the Real Estate Council of Alberta.

6.2 Other Services

The Seller requests, and the Designated Agent agrees to provide, the following services:

(a) to advertise the Property; ☒ Yes ☐ No

(b) to place a "for sale" sign on the Property; ☒ Yes ☐ No

(c) to show the Property at times acceptable to the Seller and, if any, the tenant(s); ☒ Yes ☐ No

(d) the services listed below:

7. BROKERAGE'S REMUNERATION

7.1 Commission

The Seller will pay the Brokerage as Commission 3% of the sale price plus GST if, during the term of the Agreement:

(a) the Property is sold, exchanged or otherwise disposed of by the Seller or anyone else;

(b) a person contacts the Seller directly or through a brokerage or inspects the Property and the Property is then sold, exchanged or otherwise disposed of by the Seller or anyone else to that person within 90 days after the Expiry Date (the "Hold-Over Period"). This clause will not apply where the Seller has signed another seller brokerage agreement after the Expiry Date and a real estate commission is payable to another brokerage according to the terms of that other seller brokerage agreement as a result of the sale or disposition;

~~(c) the Seller has signed a Purchase Contract with a buyer who is willing and able to complete the sale but the Seller refuses to complete the sale; or~~

TD ~~(d) a buyer is found who is willing and able to complete the sale upon the conditions outlined in this Agreement but the Seller refuses to sign the Purchase Contract.~~

7.2 Payment of Commission

(a) The Seller will pay the Commission to the Brokerage no later than the second Business Day after the sale is completed, unless the Seller and the Brokerage agree otherwise in writing.

(b) Any holdbacks or conditions accepted by the Seller or the Seller's lawyer will not delay payment of the Commission to the Brokerage.

(c) The Brokerage will offer 50% of the total commission of the Commission, plus GST, as compensation to cooperating brokerages.

7.3 Alternate Compensation

The Seller will pay Alternate Compensation to the Brokerage if a Purchase Contract is signed but the buyer defaults and the Deposits are forfeited. This Alternate Compensation will be lesser of the Commission that would have been payable had the sale been completed or 50% of the forfeited Deposits. Alternate Compensation shall be payable upon the forfeiture of the Deposits.

7.4 Deduction of Commission from Deposits and Proceeds of Sale

(a) The Seller authorizes the Brokerage, upon completion of the sale, to deduct the Commission owed to the Brokerage from the Deposits, if any, held by the Brokerage and will pay any balance of Commission owed in accordance with clause 7.1.

(b) The Seller irrevocably and unconditionally instructs any lawyer acting on behalf of the Seller to deduct from the Deposits and Proceeds of Sale, or any monies forfeited by or recovered from the buyer, any Commission or Alternate Compensation that remains owing to the Brokerage after it has exercised its right, if any, under clause 7.4(a) and to pay such Commission or Alternate Compensation, plus GST, to the Brokerage.

7.5 Limitation on Other Remuneration

The Brokerage agrees not to accept any other remuneration, whatever its form (including finder's fees, referral fees and gifts) and from whatever source (including the buyer, a mortgage lender, another brokerage or contractor), directly or indirectly related to its agency under this Agreement unless, before accepting such remuneration, the Brokerage has fully disclosed in writing to the Seller all relevant facts relating to the offer of remuneration, including the maximum amount to be received, and obtained the Seller's written consent to the Brokerage receiving such remuneration.

8. DEPOSITS

8.1 All Deposits will be held in accordance with the terms of the signed Purchase Contract. If the Deposits are held by a real estate brokerage, they must be held in trust according to the *Real Estate Act* (Alberta).

9. SECURITY FOR THE BROKERAGE'S REMUNERATION

~~**9.1** The Seller **encumbers** all of its interest in the Property for the benefit of the Brokerage to secure payment of all money which may be owed by the Seller to the Brokerage under this Agreement. The Seller authorizes the Brokerage to file and maintain a **caveat** against the title to the Property in accordance with the *Land Titles Act* (Alberta) to give notice of this encumbrance.~~

TD

~~**9.2** If the Brokerage successfully enforces any of its rights or remedies under this section, the Seller will pay reasonable lawyer and client legal fees and costs incurred by the Brokerage.~~

~~**9.3** If the Seller owes money under this Agreement and the Brokerage does not wish to enforce this Agreement against the Seller, then upon mutual agreement between the Brokerage and the buyer's brokerage, the Brokerage may assign this Agreement to the buyer's brokerage. If this Agreement is assigned, then the buyer's brokerage may enforce this Agreement against the Seller to collect the portion of the Remuneration or Alternate Compensation, plus GST, to which the buyer's brokerage is entitled, and the buyer's brokerage will have the same rights and security given to the Brokerage according to Section 9 of this Agreement.~~

TD

TD

10. DUTIES OF THE SELLER

~~**10.1** The Seller will:~~

~~(a) make its best efforts to insure the Property and its contents against loss or damage due to perils that are normally insured against for similar properties. The Seller will make best efforts to ensure that such insurance will be effective even when the Property is vacant;~~

~~(b) make reasonable efforts to communicate and cooperate with the Designated Agent in a timely manner;~~

~~(c) provide the Designated Agent with all the information necessary for the listing and marketing of the Property; and,~~

~~(d) immediately advise the Designated Agent of any material change in the physical condition or status of the Property or in the information provided by the Seller.~~

TD

~~**10.2** The Seller will immediately advise the Designated Agent:~~

~~(a) during the term of the Agreement, of all inquiries by interested buyers or their representatives received by the Seller;~~

~~(b) during the term of the Agreement, of all offers to purchase from interested buyers or their representatives and will deliver such offers to the Brokerage;~~

~~(c) during the Hold Over Period, of any offers to purchase the Property accepted by the Seller from a buyer introduced to the Seller during the term of the Agreement; and~~

~~(d) during the Hold Over Period, of any offers or counter offers regarding the Property made by the Seller and accepted by a buyer introduced to the Seller during the term of the Agreement.~~

TD

11. IMPORTANT INFORMATION

11.1 The Seller will provide the following Important Information to the Designated Agent promptly and at the Seller's expense:

(a) a real property report, if applicable, reflecting the current state of improvements on the Property, according to the Alberta Land Surveyors' Manual of Standard Practice, with evidence of municipal compliance or non-conformance. This obligation will not apply to condominium units that do not create a lot nor to any transaction where there are no structures on the land.

(b) if the Property is a resale condominium, the Important Information as described in the Condominium Property Appendix (attached).

(c) all other applicable property information that is reasonably required to develop particulars of sale including, but not limited to, financial information such as annual property operating data (APOD), tenant schedules and leases, service and supply contracts, engineering reports, environmental assessment reports, building plans and specifications.

11.2 In the event that the Seller fails to provide the Important Information, the Designated Agent is authorized to obtain it on the Seller's behalf and at the Seller's expense.

11.3 Sellers are required by common law to disclose defects that are hidden, not visible or discoverable through a reasonable inspection of the Property, ***and*** that render the Property dangerous or potentially dangerous to the occupants or unfit for habitation. Sellers may also be required to disclose government and local authority notices and lack of development permits.

Are you aware of any such defects in the Property? ❑ Yes ❑ No ________ *Seller's Initials*

Have you received any government or local authority notices? ❑ Yes ❑ No ________ *Seller's Initials*

Are you aware of any lack of permits for any development on the property? ❑ Yes ❑ No ________ *Seller's Initials*

12. ADVICE TO THE SELLER

12.1 If the Seller has entered into any long-term contracts that relate to the Property, for example, agreements for gas or utility services or security monitoring, the Seller should verify termination policies and any possible financial penalties with the other contracting party.

12.2 The Seller is advised that the Designated Agent is being retained as a real estate broker, not as a lawyer, tax advisor, lender, appraiser, surveyor, structural engineer, property inspector, or other professional service provider.

13. SELLER'S WARRANTIES

~~13.1 The Seller warrants the following:~~

~~(a) The Seller has the authority to sell the Property and enter into this Agreement;~~

~~(b) The Seller has a right to sell the Unattached Goods listed in clause 1.3(b);~~

TD ~~(c) The goods attached to the Property and the included Unattached Goods listed in clause 1.3 are free and clear of financial encumbrances;~~

~~(d) The Seller has disclosed to the Designated Agent all third party claims and interests in the Property known to the Seller;~~

~~(e) The Property is not currently the subject of any seller brokerage agreement;~~

~~(f) All information provided to the Designated Agent is accurate to the best of the Seller's knowledge.~~

~~13.2 The Seller warrants that, to best of the Seller's knowledge, the following are truthful and accurate:~~

~~(a) The current use of the Land and Buildings complies with the existing municipal land use bylaw;~~

~~(b) The Buildings and other improvements on the Land are not placed partly or wholly on any easement or utility right of way and are entirely on the Land and do not encroach on neighbouring lands, except where an encroachment agreement is registered on title, or in the case of an encroachment into municipal lands or a right of way, the municipality has endorsed encroachment approval directly on the real property report;~~

~~(c) The location of Buildings and other improvements on the Land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the sale being completed, or the Buildings and other improvements on the Land are "non-conforming buildings" as that term is defined in the *Municipal Government Act* (Alberta); and~~

TD ~~(d) The current use of the Land and Buildings and the location of the Buildings and other improvements on the Land comply with any restrictive covenant on title;~~

~~(e) Within the meaning of the *Income Tax Act* (Canada), the Seller is not now, nor will be on Completion Day, a non-resident of Canada nor is the Seller an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada.~~

~~(f) Where applicable, the Seller has complied with the bylaws of the Condominium Corporation.~~

14. SELLER'S CONFIDENTIAL INFORMATION WILL BE PROTECTED

14.1 The Brokerage and the Designated Agent undertake that they will:

(a) not use confidential information received from the Seller, or obtained as a result of providing services under this Agreement, for its own gain or the gain of its employees or to the prejudice of the Seller's interests; and

(b) not disclose any confidential information concerning the Seller to any other brokerage or other person unless authorized by the Seller or required by law.

15. USE AND DISTRIBUTION OF SELLER'S INFORMATION

15.1 The Seller consents to the collection, use and disclosure of personal information by the Brokerage and the Designated Agent for the purpose of this Agreement and such other use as is consistent with listing and marketing the Property including, but not limited to:

(a) listing and advertising the Property using any medium including electronic media, interior and exterior photographs and video;

(b) retaining and disclosing any listing and sales information, including price, which may be used by the Brokerage or the Designated Agent for any purpose relating to its business including conducting comparative analyses and disclosing such information to other persons such as appraisers and other brokerages;

15.2 Subject to Section 4 of this Agreement, the Seller consents to placement of the listing and sales information by the Brokerage into the database(s) of the appropriate listing service(s) of the Board and acknowledges that the database of the Board is the property of the Board.

15.3 The Seller further acknowledges that the Brokerage, the Designated Agent and the Board may:

(a) distribute the information to any persons authorized to use such service which may include other brokers, government departments, appraisers, municipal organizations and others;

(b) market the Property, at its option, in any medium, including electronic media;

(c) compile, retain and publish any statistics including historical listing service data which may be used by the Brokerage and licensed Board members to conduct comparative market analyses; and

(d) make such other use of the information as the Brokerage, the Designated Agent and the Board deem appropriate in connection with the listing, marketing and selling of real estate.

16. INDEMNIFICATION

~~**16.1** The Seller will hold harmless and indemnify the Brokerage and the Designated Agent for any claims that may arise from its reasonable and good faith reliance on representations made, or information provided, by the Seller.~~

17. ADDITIONAL TERMS

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17.1 The Seller agrees that:

(a) the Designated Agent may represent other sellers and, subject to Section 19, buyers;

(b) the Brokerage and the Designated Agent cannot disclose to the Seller confidential information obtained through any other agency relationship to which the Brokerage or the Designated Agent is or has been a party;

(c) the Designated Agent will not be obligated to seek additional offers to purchase while the Property is subject to an unconditional purchase contract;

(d) if the Property is owned by a limited company, a sale of shares representing a controlling interest in the Property will constitute a sale for the purposes of this Agreement.

17.2 This Agreement:

(a) includes, if signed or initialled by the Seller and attached to this Agreement, the following documents:

(b) will constitute the entire agreement between the Seller and Brokerage and there are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.

(c) is for the benefit of and will be binding upon the heirs, administrators, executors, successors and assigns of the parties;

(d) will be governed by the laws of the Province of Alberta and the parties will submit to the jurisdiction of the Courts of the Province of Alberta for the resolution of any disputes that may arise out of this Agreement.

17.3 No amendment to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller and the Brokerage.

17.4 If there is conflict or discrepancy between any provision added to this Agreement and any provision in the standard portion hereof, the added provision will supersede the standard provision to the extent of such conflict or discrepancy.

17.5

18. ENDING THE AGREEMENT

18.1 Without prejudice to the acquired rights of the Seller or the Brokerage, this Agreement will end upon:

(a) a completed sale of the Property;

(b) the expiration of the term of the Agreement as specified in clause 2.1 or on an earlier date if mutually agreed to by the Seller and the Brokerage in writing;

(c) the suspension or cancellation of the Brokerage's licence to trade in real estate;

(d) the Brokerage ceasing to be a member in good standing of a real estate board/association; or

(e) the bankruptcy or insolvency of the Brokerage or if it is in receivership.

18.2 Where one party to this Agreement has materially breached a part of this Agreement, the other party may, at its option, end this Agreement by notice in writing to the party in breach.

18.3 When this Agreement ends, the Brokerage and the Designated Agent will immediately remove the Property as an active listing on any listing service, cease all marketing activities on behalf of the Seller, remove all signs and any lockbox from the Property, and return documents and other materials provided by the Seller.

18.4 Ending this Agreement for whatever reason does not relieve the Brokerage and the Designated Agent of their duty of confidentiality to the Seller and their duty to account for all monies received by the Brokerage.

19. AGENCY DISCLOSURE AND TRANSACTION BROKERAGE

19.1 The Seller has entered into an agency relationship with the Designated Agent. The Designated Agent is obligated to protect and promote the interests of the Seller. Specifically, the Designated Agent owes the Seller the duties of loyalty, obedience, confidentiality, reasonable care and skill, full disclosure and full accounting.

19.2 The Seller and potential buyers may be represented by different designated agents or different brokerages. Each owes its client the full agency duties listed in 19.1. Designated agents or brokerages representing buyers will not have an agency relationship with the Seller.

19.3 If the Designated Agent is the agent of a buyer who wishes to make an offer on the Property, the duties owed to each party are in conflict and would by necessity be limited. Prior to writing the offer the Designated Agent will review with the buyer all relevant facts and implications of dual representation and then seek the buyer's written consent to transaction brokerage on the terms specified in the Transaction Brokerage Agreement. The Designated Agent will obtain the Seller's consent to transaction brokerage prior to presenting the buyer's offer to the Seller.

19.4 Should either the Designated Agent or the Brokerage decide not to enter into transaction brokerage or should either the Seller or the buyer refuse to consent to transaction brokerage, unless otherwise agreed in writing by the parties, the Designated Agent will continue to represent the party, be it the Seller or the buyer, with whom it first entered into an exclusive agency relationship and the Brokerage will offer to designate another member of the Brokerage to represent the other party as sole agent or refer the other party to another brokerage.

20. DEFINITIONS

20.1 For the purposes of this Agreement:

(a) "Business Day" means every day but Saturday, Sunday and statutory holidays;

(b) "purchase" includes an exchange, option, lease or other acquisition of an interest in real estate;

(c) "sale" includes an exchange, option, lease or other disposition of an interest in real estate;

(d) the sale is completed when the purchase price is paid to the Seller or the Seller's lawyer and is releasable.

21. SELLER'S ACKNOWLEDGMENT

21.1 The Seller, having received and read this Agreement, and having been given the opportunity to request further information concerning this Agreement and the representation relationships described in clause 19.1, acknowledges this Agreement accurately sets out the terms agreed to by the Seller and the Brokerage.

22. SIGNATURES

22.1 This Agreement may be signed by the parties and transmitted by fax. This procedure will be as effective as if the parties had signed and delivered an original copy.

This Agreement was signed on ______________________________, 20______.

____
Name of Owner Registered on Title

Authorized Signing Officer	Witness
Print Name of Authorized Signing Officer	Print Name of Witness
Authorized Signing Officer	Witness
Print Name of Authorized Signing Officer	Print Name of Witness
Tarjinder Dhillon	Tarjinder Dhillon
Signature of Designated Agent (authorized to sign on behalf of the Brokerage)	Print Name of Designated Agent

403-870-0001		tarjinders@yahoo.com
Phone	Fax	Email

Note: *All communications are to be directed to the Designated Agent*

Seller: Initial here to show you have received a copy of this Agreement. ________ Date______________________