COURT FILE NUMBER	2303 06543
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.
APPLICANTS	J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.
DOCUMENT	**REPLY BRIEF OF THE APPLICANTS (IN REPLY TO CLAIM OF CENTRAL PARK CONDOMINIUM CORPORATION)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2200, 10235 – 101 Street, Edmonton, AB T5G 3G1 Telephone: 306.975.7136 / 780.969.3518 Fax No.: 306.975.7145 / 780.969.3549 Attention: Jeffrey M. Lee, K.C / Mandi A. Deren-Dube File No.: 0159371.00008

TABLE OF CONTENTS

I. INTRODUCTION

1. The Applicants, J.W. Carr Holdings, Spruce Grove Industrial Park Inc., 272649 Alberta Ltd., 279896 Alberta Ltd., Grande Prairie Place Enterprises (1996) Inc., 1170292 Alberta Ltd. and 627612 Alberta Ltd. (collectively, the "**Carr Group**" or the "**Applicants**") file this Reply Brief in response to the Bench Brief of The Owners: Condominium Plan No. 872 8944 ("**Central Park Condo Corp**") dated April 14, 2023 and delivered on April 15, 2023.

II. FACTS

2. The Applicants rely upon the facts set out in the Affidavit of Marjorie Carr sworn on April 10, 2023 (the "**April 10 Carr Affidavit**"), the Pre-filing Report of the Monitor dated April 10, 2023 (the "**Pre-filing Report**") and the Supplemental Affidavit of Marjorie Carr.

III. ISSUES

3. This Reply Brief will address the following issues:

   (a) To what extent is the right of Central Park Condo Corp to pursue an *in rem* claim against the condominium units in dispute (either as to quantum or at all)?

   (b) To what extent is the priority of the claim of Central Park Condo Corp in dispute?

   (c) To what extent is the right of Central Park Condo Corp to receive payment of its claim upon the sale of the condominium units in dispute?

   (d) To what extent is the right of Central Park Condo Corp to receive payment of post-filing monthly condominium contributions in dispute?

   (e) To what extent should the ability of Central Park Condo Corp to compel a sale of the condominium units be subject to the Stay of Proceedings?

   (f) To what extent should the Stay of Proceedings in the CCAA Initial Order apply to prevent Central Park Condo Corp from attaching rents payable to the Applicants?

IV. ARGUMENT

A. The Right of Central Park Condo Corp to Pursue an *In Rem* Claim Against the Condominium Units is Not in Dispute

4. When Central Park Condo Corp registered a caveat against title to condominium units pursuant to section 39.2(6) and 39.2(7) of the *Condominium Property Act*, it obtained an *in rem* claim against the condominium units in question. The right of Central Park Condo Corp to pursue that *in rem* claim against the condominium units is not disputed by the Applicants in these proceedings.

5. Similarly, the amounts being claimed by Central Park Condo Corp pursuant to its claim are not in dispute in these proceedings. To the contrary, as reflected in the Supplemental Affidavit of Marjorie Carr, a Consent Redemption Order quantifying these amounts has been agreed upon.

B. The Priority of the Claim of Central Park Condo Corp is Not in Dispute

6. The *Condominium Property Act* allows a caveat registered by a condominium corporation to remain registered against the Certificate of Title of the unit even subsequent to a foreclosure, until the amount owing is paid. For practical purposes, this has the effect of creating a priority for the condominium corporation ranking ahead of even first charge mortgages. This priority position of the condominium corporation is not disputed by the Applicants and is not in issue in these proceedings.

C. The Right of Central Park Condo Corp to Receive Payment of its Claim Upon the Sale of Condominium Units is Not in Dispute

7. In these proceedings, the Applicants do not dispute the entitlement of Central Park Condo Corp to be paid the entirety of its claim upon sale of the condominium units in question, pursuant to its statutory priority position. Further, nothing in the CCAA Initial Order sought by the Applicants purports to affect that priority in any way. To the contrary, Central Park Condo Corp will continue to maintain all of its *in rem* rights in the units in question for the duration of the CCAA proceedings. This includes the right to maintain a caveat on title until arrears are paid in full and the right to receive ongoing payments of condominium contributions after the date of the Initial Order (to the extent cash flow permits).

D. The Right of Central Park Condo Corp to Receive Payment of Post Filing Monthly Condominium Contributions is Not in Dispute

8. The cash flow forecast filed on behalf of the Applicants contemplates the payment of monthly condominium contributions to Central Park Condo Corp from and after the date of the Initial Order. The entitlement of Central Park Condo Corp to receive payment of monthly condominium contributions from the Applicants is not in dispute.

9. Paragraph 7(c) of the Alberta Template CCAA Order contemplates ongoing payment of current "levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors that are attributable to or in respect of the carrying on of the Business by the Applicants … which accrue from and after the date of this Order".

10. From the perspective of the Applicants, this language in paragraph 7(c) of the Alberta Template CCAA Initial Order is adequate to reflect the ongoing obligation of the Applicants to pay post-filing condominium contributions on an ongoing basis from and after the date of the CCAA Initial Order.

11. However, if it will provide additional comfort to Central Park Condo Corp to do so, the Applicants are prepared to agree to a modification of the Initial Order to reflect this understanding in clear terms. A proposed form of modified CCAA Initial Order (redlined against the Order previously served on the Service List on April 10) is attached to this Reply Brief.

E. The Ability of Central Park Condo Corp to Compel a Sale of the Condominium Units Should be Stayed by the CCAA Initial Order

12. The stay of proceedings provided for in the proposed CCAA Initial Order prohibits secured creditors of all description (including those with statutory priority claims) from enforcing their respective rights and gaining an advantage over competing creditors.

13. In the respectful submission of the Applicants, it is necessary for this stay of proceedings to apply to all creditors in these proceedings, secured and unsecured. Further, and in particular, it is necessary for the stay of proceedings to apply to Central Park Condo Corp.

14. It is notable that the Consent Redemption Order obtained by Central Park Condo Corp from the Applicants is a six month Consent Redemption Order which would contemplate

the sale of the condominium units in October of 2023. In comparison, the proposed SISP Order sought by the Applicants will provide for an expedited SISP process designed to yield completed sales on or before August 31, 2023. This outcome clearly benefits Central Park Condo Corp.

F. The Stay of Proceedings in the CCAA Initial Order Must Apply to Prevent Central Park Condo Corp from Attaching Rents During the CCAA Proceedings

15. The purpose of a CCAA stay of proceedings is to provide for stability and cash flow relief and to maintain the status quo in order to permit debtor companies to reorganize their business and financial affairs. In order to achieve this, the CCAA provides that the stay of proceedings is to apply broadly against the enforcement rights of all secured and unsecured creditors.

16. Central Park Condo Corp is in no way exempted from or outside of the purview of the general CCAA stay of proceedings.

17. In the early foundational authority of *Meridian Developments Inc v. Toronto Dominion Bank*,[1] Wachowich J. (as he then was) described the purpose of the CCAA stay of proceedings as follows (at para's 21 to 23):

> 21 The legislation is intended to have wide scope and allows a judge to make orders which will effectively maintain the status quo for a period while the insolvent company attempts to gain the approval of its creditors for a proposed arrangement which will enable the company to remain in operation for what is, hopefully, the future benefit of both the company and its creditors.
>
> 22 This aim is facilitated by s. 11 of the Act which enables the court to:
>
> > ... restrain further proceedings in any action, suit or proceeding against the company upon such terms as the court sees fit, and the court may also make an order that no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the court and subject to such terms as the court imposes.
>
> It was pursuant to this section that on 21st March I granted the order that restrained "further proceedings in any action, suit, or

[1] *Meridian Developments Inc. v. Toronto Dominion Bank*, 1984 CarswellAlta 259, [1984] 5 W.W.R. 215, (Q.B.) at paras. 21 to 23.

> proceeding" against Nu-West and enjoined creditors and others from proceeding with or commencing any "suit, action, or proceeding".
>
> 23 This order is in accord with the general aim of the *Companies' Creditors Arrangement Act*. The intention was to prevent any manoeuvres for positioning among creditors during the interim period which would give the aggressive creditor an advantage to the prejudice of others who were less aggressive and would further undermine the financial position of the company making it less likely that the eventual arrangement would succeed. [Emphasis added]

18. Central Park Condo Corp has identified no legal basis upon which it can claim to be exempted from the CCAA stay of proceedings which prohibits enforcement proceedings by all creditors and claimants of every description (secured, unsecured, preferred or statutory).

19. For all of these reasons, the Applicants submit that the stay of proceedings contemplated in the Initial Order must, of necessity, apply to prohibit Central Park Condo Corp from attaching rents to improve its position or taking other enforcement measures (at the expense of other creditors) during the CCAA proceedings.

V. REQUESTED RELIEF

20. For all of these reasons, the Applicants respectfully submit that the position asserted by Central Park Condo Corp in these proceedings be disposed of by means of the issuance of a modified CCAA Initial Order in the form attached to this Reply Brief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of April, 2023.

MLT AIKINS LLP

Per: __________________________________

Jeffrey M. Lee, K.C. / Mandi Deren-Dube
Counsel for the Applicants, J.W. Carr Holdings Ltd., Spruce Grove Industrial Park Inc., 272649 Alberta Ltd., 279896 Alberta Ltd., Grande Prairie Place Enterprises (1996) Inc., 1170292 Alberta Ltd. and 627612 Alberta Ltd.

VI. INDEX OF AUTHORITIES

TAB	JURISPRUDENCE
1.	*Meridian Developments Inc. v. Toronto Dominion Bank*, 1984 CarswellAlta 259, [1984] 5 W.W.R. 215 (Q.B.)

APPENDIX "A" – PROPOSED MODIFIED FORM OF CCAA INITIAL ORDER

Clerk's Stamp:

COURT FILE NUMBER	
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF	EDMONTON
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended
	AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.
APPLICANTS:	J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.
DOCUMENT	<u>**CCAA INITIAL ORDER**</u>
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**MLT AIKINS LLP** Suite 2200, 10135 – 101st Street NW Edmonton, AB T5J 3G1 Solicitor: Jeffrey M. Lee, K.C. Telephone: (306) 975-7136 Facsimile: (306) 975-7145 Email: jmlee@mltaikins.com File Number: 159371.8
DATE ON WHICH ORDER WAS PRONOUNCED:	April 19, 2023
NAME OF JUDGE WHO MADE THIS ORDER:	The Honourable Justice J.J. Gill
LOCATION OF HEARING:	Edmonton, Alberta

UPON the application of **J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.** (collectively, the "**Applicants**"); **AND UPON** having read the Originating Application dated April 10, 2023; the Affidavit of Marjorie Carr sworn on April 10, 2023 (the "**Carr Affidavit**"); the Service List dated April 10, 2023 (the "**Service List**") and the Affidavit of Service, filed; **AND UPON** reading the consent of Ernst & Young Inc. to act as Monitor; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application; **AND UPON** hearing counsel for the Applicants; **AND UPON** reading the Pre-Filling Report of the Proposed Monitor, Ernst & Young Inc. dated April 10, 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 deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act* of Canada (the "**CCAA**") applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

   (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

   (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property;

   (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and

   (d) be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Marjorie Carr sworn on April 10, 2023 or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

(i) employment insurance,

(ii) Canada Pension Plan,

(iii) Quebec Pension Plan, and

(iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

(c) any amount payable to: (i) the Crown in Right of Canada or of any Province thereof or any political subdivision thereof; or (ii) unless otherwise agreed in writing by the holders of First Charge Encumbrances in respect of related First Charge Real Property (each as hereinafter defined) and by the holders of a Condominium Priority Charge (as hereinafter defined) (if applicable) any other taxation authority or condominium corporation in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind or condominium contributions which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants (such municipal realty, municipal business or other taxes, assessments or levies of any nature or kind and condominium contributions hereinafter collectively described as "**~~Municipal~~ Property ~~Taxes~~Levies**") which accrue from and after the date of this Order. For greater clarity, the Applicants shall be entitled but not required to pay arrears of ~~Municipal Propery Taxes~~Property Levies accrued prior to the date of this Order, to the extent that cash flow of the Applicants permits; and

(d) unless otherwise agreed in writing by the holders of First Charge Encumbrances in respect of related First Charge Real Property (each as hereinafter defined), principal and interest payments ("**Cash Flowing P & I Payments**") which become due from and after the date of this Order on those secured debt obligations of the Applicants secured by First Charge Encumbrances on real estate properties and related personal property owned by the Applicants which generate cash flow sufficient to pay such Cash Flowing P & I Payments ("**Cash Flowing Secured Debt Obligations**"), as such Cash Flowing Secured Debt Obligations are more particularly described in:

i. **Schedule "A"** hereto (in regard to Cash Flowing Secured Debt Obligations owed by the Applicants to The Bank of Nova Scotia and Servus Credit Union);

ii. **Schedule "B"** hereto (in regard to Cash Flowing Secured Debt Obligations owed by the Applicants to Bank of Montreal);

iii. **Schedule "C"** hereto (in regard to Cash Flowing Secured Debt Obligations owed by the Applicants to Roynat Inc.);

iv. **Schedule "D"** hereto (in regard to Cash Flowing Secured Debt Obligations owed by the Applicants to Canadian Western Bank);

v. **Schedule "E"** hereto (in regard to Cash Flowing Secured Debt Obligations owed by the Applicants to ATB Financial); and

vi. **Schedule "F"** hereto (in regard to Cash Flowing Secured Debt Obligations owed by the Applicants to Servus Credit Union).

For greater clarity, the holders of First Charge Encumbrances described in this paragraph shall receive payment of such Cash Flowing P & I Payments as the cash flow generated by the real estate properties and related personal property to the extent of the obligations secured by such First Charge Encumbrances described in this paragraph will allow (regardeless of whether or not such cash flow in any given month is adequate to make such Cash Flowing P & I Payments in full).

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and

(c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 33 hereof), have the right to:

(a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

(b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Subject to paragraph 14A hereof, until and including April 29, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. Subject to paragraph 14A hereof, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

(c) prevent the filing of any registration to preserve or perfect a security interest;

(d) prevent the registration of a claim for lien; or

(e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.

14A. **[NTD: Names of Secured Lenders Who Enter Into Forbearance Agreements With The Applicants Co-Extensive With the SISP]** , in respect of obligations secured by First Charge Encumbrances, shall not be bound by or subject to paragraphs 13 or 14 of this Order.

15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the Interim Lender where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

SECURITY INTERESTS

20. For purposes of this Order, the following terms shall have the following respective meanings:

(a) "**Condominium Priority Charge**" shall mean the statutory priority charge of any condominium corporation in respect of outstanding contributions and in accordance with section 39.2 of the *Condominium Property Act*, RSA 2000, c, C-22;

(b) ~~(a)~~ "**Encumbrances**" shall mean all security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise in favour of any Person;

(c) ~~(b)~~ "**First Charge Ancillary Security**" means any valid consensual Encumbrance (other than a First Charge Mortgage) of the Applicants which has been granted and registered on or prior to the Qualifying First Charge Date in favour of the holder of a First Charge Mortgage against First Charge

Real Property in respect of (i) chattels and other tangible personal property specifically related to such First Charge Real Property and (ii) rents, leases, grants, distributions and other amounts directly in respect of such First Charge Real Property;

(d) ~~(c)~~ **"First Charge Encumbrances"** means, collectively, the First Charge Mortgages and the First Charge Ancillary Security;

(e) ~~(d)~~ **"First Charge Mortgages"** shall mean all valid fixed mortgages of specific real property of the Applicants which have been granted and registered against title to such real property prior to the Qualifying First Charge Date as first priority fixed charge mortgages;

(f) ~~(e)~~ "**First Charge Real Property**" means specific real property against which First Charge Mortgages have been registered;

(g) ~~(f)~~ "**Non-First Charge Encumbrances"** shall mean all Encumbrances other than First Charge Mortgages; and

(h) ~~(g)~~ "**Qualifying First Charge Date**" means March 10, 2023.

21. [Intentionally Deleted]

22. [Intentionally Deleted]

APPOINTMENT OF MONITOR

23. **ERNST & YOUNG INC.** is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lender and the holders of First Charge Encumbrances and their respective counsel of financial and other information as agreed to between the Applicants, the Interim Lender and such holders of First Charge Encumbrances which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender and such holders of First Charge Encumbrances;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the Interim Lender and the holders of First Charge Encumbrances, which information shall be reviewed with the Monitor and delivered to the Interim Lender, the holders of First Charge Encumbrances and their respective counsel on a periodic basis, as agreed to by the Interim Lender and such holders of First Charge Encumbrances;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform their duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants, including the Interim Lender and holders of First Charge Mortgages, with information provided by the Applicants in response to reasonable requests for

information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in such amounts as may be respectviely agreed to by the Applicants (on the one hand) and the Monitor, counsel to the Monitor and counsel to the Applicants (on the other hand), to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the payment of their respective professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of Five Hundred Thousand ($500,000) Dollars, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 39 hereof.

INTERIM FINANCING

31. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from MGB INVESTMENTS LTD. (the "**Interim Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed Two Hundred and Fifty Thousand ($250,000) Dollars unless permitted by further order of this Court.

32. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the Interim Lender dated as of March 27, 2023 (the "**Commitment Letter**"), filed.

33. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender's Charge shall not secure any obligation existing before this the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraph 39 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon seven days notice to all parties on the Service List, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lender to the Applicants against the obligations of the Applicants to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. The Interim Lender (with respect to any advances made under the Definitive Documents) and the holders of First Charge Encumbrances (to the extent of the obligations secured thereby) (unless otherwise agreed to in writing by the holders of First Charge Encumbrances) shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**").

VALIDITY AND PRIORITY OF CHARGES

37. [Intentionally Deleted]

38. The filing, registration or perfection of the Administration Charge or the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. Each of the Administration Charge and the Interim Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all Encumbrances, save and except for First Charge Encumbrances to the extent of the obligations secured thereby. As among the Administration Charge, the Interim Lender's Charge, the First Charge Encumbrances and the Non-First Charge Encumbrances, their respective priorities shall be as follows:

(a) <u>First</u> – The First Charge Encumbrances, in each case to the extent of the obligations secured thereby;

(b) <u>Second</u> – The Administration Charge (to the maximum amount of $500,000);

(c) <u>Third</u> – The Interim Lender's Charge; and

(d) <u>Fourth</u> – The Non-First Charge Encumbrances.

40. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the Interim Lender's Charge or the First Charge Encumbrances, unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender, the beneficiaries of the Administration Charge and the holders of such First Charge Encumbrances, or further order of this Court.

41. The Administration Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Commitment Letter or the

Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which they are a party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Commitment Letter, or the execution, delivery or performance of the Definitive Documents; and

(iii) the payments made by the Applicants pursuant to this Order, including pursuant to the Commitment Letter, the Definitive Documents or the First Charge Encumbrances, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

42. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge and the Interim Lender's Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

43. The Monitor shall (i) without delay, publish in the *Edmonton Journal* and the *Grande Prairie Daily Herald-Tribune* newspapers a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

44. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: www.ey.com/ca/jwcarr.

GENERAL

45. 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 hereunder.

46. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor’s reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

47. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

48. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, 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 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 and the Monitor and their respective agents in carrying out the terms of this Order.

49. Each of the Applicants and the Monitor be at liberty and is 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 and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. 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.

51. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

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Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

CASH FLOWING SECURED DEBT OBLIGATIONS OWED BY THE APPLICANTS TO THE BANK OF NOVA SCOTIA AND SERVUS CREDIT UNION

1. Secured debt owed by Grande Prairie Place Enterprises (1996) Inc. to The Bank of Nova Scotia and/or Servus Credit Union which is secured by First Charge Mortgages more particulaly described below (the "**BNS/Servus First Charge Mortgages**") registered against title to the following cash flowing Properties located in Grande Prairie, Alberta:

   a) Nordic Court (10014 – 99th Street, Grande Prairie, Alberta);
   b) 214 Place North (9909 – 102 Street, Grande Prairie, Alberta);
   c) 214 Place South (Second Tower) (10130 – 99 Avenue, Grande Prairie, Alberta);
   d) O'Brien Place (10131-10135 – 101 Avenue, Grande Prairie, Alberta); and
   e) Professional Building (9907 – 101 Street, Grande Prairie, Alberta).

2. For greater clarity, the BNS/Servus First Charge Encumbrances comprise a Collateral Mortgage between The Bank of Nova Scotia and Grande Prairie Place Enterprises (1996) Inc. in the amount of $30,000,000 dated June 16, 2017 and Caveat re: Assignment of Rents and Leases between the Bank and Grande Prairie Place Enterprises (1996) Inc. dated June 16, 2017, for the properties legally described as follows:

PLAN 8315 A.K.
BLOCK THIRTY FOUR (34)
LOTS SEVENTEEN (17) AND EIGHTEEN (18)
GRANDE PRAIRIE
EXCEPTING THEREOUT:
PART OUT OF LOT SEVENTEEN (17), AS SHOWN ON ROAD PLAN 8220183.
EXCEPTING THEREOUT ALL MINES AND MINERALS
PLAN 8315AK
BLOCK 34
LOTS 19, 20 AND 21
EXCEPTING THEREOUT ALL MINES AND MINERALS
PLAN 7517BP
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
PLAN 7517BP
BLOCK 1
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
PLAN 7517BP
BLOCK 1
LOTS 6 AND 7
EXCEPTING THEREOUT ALL MINES AND MINERALS
PLAN 7517BP
BLOCK 1
LOTS 16 AND 17
EXCEPTING THEREOUT ALL MINES AND MINERALS
PLAN 8315AK
BLOCK THIRTY FOUR (34)
LOTS TWENTY TWO (22), TWENTY THREE (23) AND TWENTY FOUR (24)

EXCEPTING THEREOUT:
A PORTION OF SAID LOT TWENTY FOUR (24) FOR ROAD AS SHOWN ON ROAD PLAN 1888RS EXCEPTING THEREOUT ALL MINES AND MINERALS

PLAN 8315AK
BLOCK THIRTY FIVE (35)
LOTS SEVENTEEN (17) EIGHTEEN (18) AND NINETEEN (19) EXCEPTING THEREOUT: ALL THAT PORTION TAKEN OUT OF LOT SEVENTEEN (17) FOR ROAD, AS SHOWN ON ROAD PLAN 1888RS
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 8315AK
BLOCK 35
LOT 20
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 8315AK
BLOCK 35
LOTS 21 AND 22
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 8315AK
BLOCK 35
LOTS 23 AND 24
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 1476BV
BLOCK ONE (1)
LOTS NINETEEN (19) AND TWENTY (20)
EXCEPTING THEREOUT - THE MOST NORTHERLY SIX (6) FEET IN UNIFORM WIDTH THROUGHOUT OF THE SAID LOTS
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 1476BV
BLOCK 1
LOTS 23 TO 28 INCLUSIVE
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 1476BV
BLOCK ONE (1)
LOTS TWENTY NINE (29) AND THIRTY (30) EXCEPTING THEREOUT:
THE WESTERLY TWENTY FIVE (25) FEET THROUGHOUT OF SAID LOT THIRTY (30)
EXCEPTING THEREOUT ALL MINES AND MINERALS PLAN 1410AC
BLOCK FIVE (5)
LOT SIXTEEN (16) AND THE WEST HALF OF LOT FIFTEEN (15)
EXCEPTING THEREOUT : 0.004 HECTARES MORE OR LESS TAKEN FROM LOT FIFTEEN (15) AND 0.004 HECTARES MORE OR LESS TAKEN FROM LOT SIXTEEN (16) BOTH UNDER ROAD PLAN 7722557
EXCEPTING THEREOUT ALL MINES AND MINERALPLAN 1410AC BLOCK FIVE (5)
LOTS SEVENTEEN (17) AND EIGHTEEN (18)
EXCEPTING THEREOUT : 0.008 HECTARES MORE OR LESS TAKEN OUT OF LOT SEVENTEEN (17) UNDER ROAD PLAN 7722557
EXCEPTING THEREOUT ALL MINES AND MINERALS

SCHEDULE "B"

CASH FLOWING SECURED DEBT OBLIGATIONS OWED BY THE APPLICANTS TO BANK OF MONTREAL

1. Secured debt owed by Grande Prairie Place Enterprises (1996) Inc. to Bank of Montreal which is secured by a First Charge Mortgage in favour of Bank of Montreal in the amount of $2,880,000 registered on June 5, 2012 (as amended by an Amending Agreement in the amount of $3,771,674 registered on July 23, 2013) against title to the following condominium units in the Inverness Estates condominium project in Grande Prairie, Alberta comprising cash flowing Properties legally described as follows (all within Condominium Plan 0628168:

    a) Unit 275 (**Title no.:** 122 174 562 +2)
    b) Unit 287 (**Title no.:** 122 174 562 +3)
    c) Unit 345 (*Parking unit*) (**Title no.:** 122 174 562 +4)
    d) Unit 351 (*Parking unit*) (**Title no.:** 122 174 562 +5)
    e) Unit 388 (**Title no.:** 122 174 562 +10)
    f) Unit 390 (**Title no.:** 122 174 562 +12)
    g) Unit 391 (**Title no.:** 122 174 562 +13)
    h) Unit 395 (**Title no.:** 122 174 562 +14)
    i) Unit 411 (**Title no.:** 122 174 562 +16)
    j) Unit 412 (**Title no.:** 122 174 562 +17)
    k) Unit 413 (**Title no.:** 122 174 562 +18)
    l) Unit 423 (**Title no.:** 122 174 562 +19)
    m) Unit 430 (**Title no.:** 122 174 562 +20)
    n) Unit 436 (**Title no.:** 122 174 562 +22)
    o) Unit 446 (**Title no.:** 122 174 562 +23)
    p) Unit 457 (**Title no.:** 122 174 562 +24)
    q) Unit 459 (**Title no.:** 122 174 562 +24)
    r) Unit 471 (*Parking unit*) (**Title no.:** 122 174 562 +26)
    s) Unit 483 (*Parking unit*) (**Title no.:** 122 174 562 +28)
    t) Unit 494 (*Parking unit*) (**Title no.:** 122 174 562 +30)
    u) Unit 499 (*Parking unit*) (**Title no.:** 122 174 562 +31)
    v) Unit 511 (*Parking unit*) (**Title no.:** 122 174 562 +33)
    w) Unit 514 (*Parking unit*) (**Title no.:** 122 174 562 +34)
    x) Unit 519 (*Parking unit*) (**Title no.:** 122 174 562 +35)
    y) Unit 526 (*Parking unit*) (**Title no.:** 122 174 562 +36)

z) Unit 528 (*Parking unit*) (**Title no.:** 122 174 562 +37)

aa) Unit 544 (*Parking unit*) (**Title no.:** 122 174 562 +38)

bb) Unit 546 (*Parking unit*) (**Title no.:** 122 174 562 +39)

cc) Unit 553 (*Parking unit*) (**Title no.:** 122 174 562 +40)

dd) Unit 565 (*Parking unit*) (**Title no.:** 122 174 562 +41)

ee) Unit 577 (*Parking unit*) (**Title no.:** 122 174 562 +46)

ff) Unit 584 (*Parking unit*) (**Title no.:** 122 174 562 +47)

gg) Unit 594 (*Parking unit*) (**Title no.:** 122 174 562 +49)

hh) Unit 606 (*Parking unit*) **Title no.:** 122 174 562 +50)

SCHEDULE "C"

CASH FLOWING SECURED DEBT OBLIGATIONS OWED BY THE APPLICANTS TO ROYNAT INC.

1. Secured debt owed by 272649 Alberta Ltd. to Roynat Inc. which is secured by the following First Charge Mortgages registered against title to that cash flowing Property described as the Clarient Building and located at 9602 – 118 Street in Grande Prairie, Alberta:

    a) Mortgage dated November 8, 2019, in the principal amount of $2,774,400 over Plan 1523374, Block 7, Lot 3 (Grande Prairie, Alberta)

    b) Mortgage dated March 26, 2020 in the principal amount of $13,179,250 over, *inter alia,* Plan 1523374, Block 7, Lot 3 (Grande Prairie, Alberta); and

    c) Mortgage dated April 23, 2021 in the principal amount of $250,000 over Plan 1523374, Block 7, Lot 3 (Grande Prairie, Alerta).

SCHEDULE "D"

CASH FLOWING SECURED DEBT OBLIGATIONS OWED BY THE APPLICANTS TO CANADIAN WESTERN BANK

1. Secured debt owed by 272649 Alberta Ltd. to Canadian Western Bank which is secured by the following First Charge Mortgages registered against title to the following cash flowing Properties located in Grande Prairie, Alberta:

    a) Memorandum of Mortgage in the principal amount of $2,200,000 dated April 7, 2016 and registered against title to the Iron Nation Building located at 9502 – 117th Street West in the Centre West Business Park, Grande Prairie, Alberta and legally described as Plan 0625015, Block 3, Lot 3: and

    b) Mortgage in the principal amount of $1,750,000 dated December 6, 2017 and registered against title to the Tundra Process Solutions Ltd. Office and Shop Building located at 11517 – 89th Avenue in the Richmond Industrial Park, Grande Prairie, Alberta and legally described as Plan 8020127, Block 17, Lot 1.

2. Secured debt owed by J.W. Carr Holdings Ltd. to Canadian Western Bank which is secured by that First Charge Mortgage in the principal amount of $3,684,200 dated February 6, 2008 which is registered against title to the following condominium units in the Central Park condominium project in Edmonton, Alberta comprising cash flowing Properties legally described as follows (all within Condominium Plan 8722944): Units 6, 7, 9, 10, 13, 18, 19, 22, 23, 24, 25, 29, 30, 45, 63, 66, 69, 72, 73, 79, 85, 97, and 99.

SCHEDULE "E"

CASH FLOWING SECURED DEBT OBLIGATIONS OWED BY THE APPLICANTS TO ATB FINANCIAL

1. Secured debt owed by 272649 Alberta Ltd. to ATB Financial which is secured by the following First Charge Mortgages registered against title to that cash flowing Property described as the Ovintiv Building (formerly known as the Encana Building) and located at 12002 – 97 Avenue in Grande Prairie, Alberta:

    a) Collateral Mortgage in the amount of $7,500,000.00 dated April 30, 2013 over lands legally described as follows:

        PLAN 1124406
        BLOCK 2
        LOT 7
        EXPECTING THEREOUT ALL MINES AND MINERALS AREA: 0.785 HECTARES (1.94 ACRES) MORE OR LESS

    b) Collateral Mortgage from Debtor in the amount of $4,297,000.00 dated August 27, 2018 over lands legally described as follows:

        PLAN 1124406
        BLOCK 2
        LOT 7
        EXPECTING THEREOUT ALL MINES AND MINERALS AREA: 0.785 HECTARES (1.94 ACRES) MORE OR LESS

SCHEDULE "F"

CASH FLOWING SECURED DEBT OBLIGATIONS OWED BY THE APPLICANTS TO SERVUS CREDIT UNION

1. Secured debt owed by 672612 Alberta Ltd. to Servus Credit Union which is secured by that First Charge Mortgage in the principal amount of $2,360,000 dated January 15, 2014 which is registered against title to the following condominium units in the Rosedale condominium project in Edmonton, Alberta comprising cash flowing Properties legally described as follows:

   CONDOMINIUM PLAN 8321571
   UNIT 2
   AND 112 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571
   UNIT 17
   AND 118 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571
   UNIT 20
   AND 84 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571
   UNIT 33
   AND 119 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571
   UNIT 35
   AND 86 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571
   UNIT 43
   AND 86 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571
   UNIT 50
   AND 114 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
   EXCEPTING THEREOUT ALL MINES AND MINERALS

   CONDOMINIUM PLAN 8321571

UNIT 58
AND 114 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALSCONDOMINIUM PLAN 8321571
UNIT 59
AND 86 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 8321571
UNIT 64
AND 86 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 8321571
UNIT 70
AND 116 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 8321571
UNIT 81
AND 121 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 8321571
UNIT 88
AND 87 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 8321571
UNIT 94
AND 117 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 8321571
UNIT 96
AND 89 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

2. Secured debt owed by 672612 Alberta Ltd. to Servus Credit Union which is secured by that First Charge Mortgage in the principal amount of $640,000 which is registered against title to the apartment buildings located at 9919 and 9939 – 96 Avenue in Grande Prairie, Alberta comprising cash flowing Properties legally described as follows:

Plan 1936MC
Block 12
Lots 18 – 20

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Embedded Excel	0
Format changes	0
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Most Negative Treatment: Distinguished
Most Recent Distinguished: Woodward's Ltd., Re | 1993 CarswellBC 530, 37 A.C.W.S. (3d) 1040, 17 C.B.R. (3d) 236, 79 B.C.L.R. (2d) 257, [1993] B.C.W.L.D. 363, [1993] B.C.J. No. 42 | (B.C. S.C., Jan 11, 1993)

1984 CarswellAlta 259
Alberta Court of Queen's Bench

Meridian Developments Inc. v. Toronto Dominion Bank

1984 CarswellAlta 259, [1984] 5 W.W.R. 215, [1984] A.W.L.D. 609, [1984] A.W.L.D. 611, 11 D.L.R. (4th) 576, 32 Alta. L.R. (2d) 150, 52 C.B.R. (N.S.) 109, 53 A.R. 39

MERIDIAN DEVELOPMENTS INC. v. TORONTO DOMINION BANK; MERIDIAN DVELOPMENTS INC. v. NU-WEST GROUP LTD.

Wachowich J.

Judgment: May 11, 1984
Docket: Edmonton Nos. 8401-10190, 8301-09096

Counsel: *A.Z. Breitman* and *J.G. Shea*, for Meridian Dev. Ltd.
J.L. MacPherson, Q.C., and *K.J. Martens*, for Toronto Dominion Bank.
P.M. Owen, Q.C., and *C. Bodner*, for Nu-West Group Ltd.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.d Effect of arrangement
XIX.3.d.ii Stay
Bills of exchange and negotiable instruments
V Letters of credit
Headnote
Banking and Banks --- Letters of credit
Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings
Proposals — Procedure under Companies' Creditors Arrangement Act — Company posting letter of credit to secure payment of judgment — Court subsequently restraining further steps in any proceeding against company — "Proceeding" not limited to one involving court or court official — Payment of letter of credit being "proceeding", but not "proceeding against company" because company having no property in letter of credit — Letter being independent contract between bank and person negotiating draft.
The defendant N. Ltd. guaranteed payments due from its subsidiary to the plaintiff under an agreement for sale. When N. Ltd. failed to comply with the terms of the guarantee, the plaintiff obtained default judgment against it and commenced execution proceedings. N. Ltd. then applied for a declaration providing that the land must be sold before execution could be made against it. The application was dismissed, but execution was stayed pending the outcome of an appeal from the dismissal. The stay was granted on the condition that N. Ltd. post an irrevocable letter of credit in favour of the plaintiff in the amount of the balance owing under the guarantee. Subsequently, N. Ltd. obtained an order pursuant to the Companies' Creditors Arrangement Act which restrained "further proceedings in any action, suit or proceeding against ... [N. Ltd.] until July 31, 1984". After N. Ltd. lost the appeal respecting execution, the plaintiff presented the letter of credit to the respondent bank for payment. The bank

refused to honour the letter and the plaintiff applied for advice and directions concerning their right to present the letter of credit for payment.

Held:

Letter of credit to be honoured by bank.

The restraining order was made in accordance with the general object of the Companies' Creditors Arrangement Act. It was intended to prevent manoeuvers for positioning among the creditors since these manoeuvers would give the aggressive creditor an advantage to the prejudice of less aggressive creditors and would further undermine the financial position of the company, making it less likely that the eventual arrangement would succeed. The order was designed to catch all creditors. Therefore the plaintiff could only succeed in its application by establishing that payment of the letter of credit was not a proceeding against N. Ld. To narrow the interpretation of "proceeding" to one which necessarily involves either a court or court official is too restrictive; there are situations where this interpretation could defeat the Act's purpose. Moreover, payment of the letter of credit in this case was contingent on the decision of the Court of Appeal; therefore a court was involved. However, the money to be paid was not the property of N. Ltd.; accordingly, payment of the letter of credit could not be termed a proceeding against N. Ltd. Security in the form of an irrevocable letter of credit is not the property of the party arranging the letter of credit. That party has contracted with his bank to require the bank to pay out a specific amount of money to a third party on the occurrence of certain events. In return, he has promised to repay the bank for the funds so expended. The customer of the bank never has "ownership" of any funds represented by the letter of credit. An irrevocable letter of credit is an independent contract between the bank and the person cashing the draft and the bank is bound to honour it. Thus, the respondent bank was obliged to honour its contract with the plaintiff.

Table of Authorities

Cases considered:

Artistic Colour Printing Co., Re (1880), 14 Ch. D. 502 — *considered*

Aspen Planners Ltd. v. Commerce Masonry & Forming Ltd. (1979), 7 B.L.R. 102 (Ont. H.C.) — *considered*

A.G. Can. v. A.G. Que., [1934] S.C.R. 659, 16 C.B.R. 1, [1934] 4 D.L.R. 75 — *applied*

Can. Credit Men's Trust Assoc. v. Edmonton, 5 C.B.R. 589, 21 Alta. L.R. 160, [1925] 1 W.W.R. 747, [1925] 2 D.L.R. 525 (C.A.) — *considered*

East Girard Savings Assn. v. Citizens Nat. Bank and Trust Co. of Bagtown (1979), 593 F. (2d) 598 (U.S.C.A.) — *applied*

Gray v. Wentworth Canning Co., 58 Man. R. 459, 31 C.B.R. 182, [1950] 2 W.W.R. 1285 (K.B.) — *considered*

Hansard Spruce Mills Ltd., Re, [1954] 1 D.L.R. 326 (B.C.S.C.) — *referred to*

Keyworth, Re; Ex parte Banner (1874), 9 Ch. App. 379 (L.J.) — *referred to*

Lee v. Armstrong, 13 Alta. L.R. 160, [1917] 3 W.W.R. 889, 37 D.L.R. 738 (C.A.) — *considered*

Owen (Edward) Enrg. Ltd. v. Barclay's Bank Int. Ltd., [1978] 1 All E.R. 976, [1978] 1 Lloyd's Rep. 166 (C.A.) — *considered*

Page v. First Nat. Bank of Maryland, U.S. Dist. Ct., Dist. of Columbia, 30th March 1982 (not yet reported) — *applied*

Perkins Beach Lead Mining Co., Re (1877), 7 Ch. D. 371 — *considered*

Regina Steam Laundry Ltd. v. Sask. Govt. Ins. Office, [1971] 1 W.W.R. 96, 15 D.L.R. (3d) 121 (Sask. C.A.) — *referred to*

Wynden Can. Inc. v. Gaz Metro. Inc. (1982), 44 C.B.R. (N.S.) 285 (Que. S.C. — *applied*

Statutes considered:

Alberta Business Corporations Act, 1981 (Alta.), c. B-15.

Companies Act, 1862 (25 & 26 Vict.), c. 89, s. 85.

Companies' Creditors Arrangment Act, R.S.C. 1970, c. C-25, s. 11.

Law of Property Act, R.S.A. 1980, c. L-8, ss. 40(2), (3).

Authorities considered:

Black's Law Dictionary, 5th ed. (1979), "proceeding".

3 Hals. (4th) 100, 102, paras. 132, 133.

Words and Phrases Legally Defined, 2nd ed. (1969), vol. 4, p. 182, "proceedings".

Words and phrases considered:

PROCEEDING

To narrow the interpretation of "proceeding" [in s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1970, c. C-25] could lessen the ability of a court to restrain a creditor from acting to prejudice an eventual arrangement in the interim when other creditors are being consulted. As I indicated earlier, it is necessary to give this section a wide interpretation in order to ensure its effectiveness. I hesitate . . . to restrict the term "proceedings" to those necessarily involving a court or court official because there are situations in which to do so would allow nonjudicial proceedings to go against the creditor which would effectively prejudice other creditors and make effective arrangement impossible. The restriction could thus defeat the purpose of the Act. I must consider, for instance, the fact that it may still be possible to make distress without requiring a sheriff or his bailiff, as for example, on a chattel mortgage. It might well be necessary to find that such a distress constitutes a "proceeding" in terms of s. 11 in some future situations. As a result, in the absence of a clear indication from Parliament of an intention to restrict "proceedings" to "proceedings which involve either a court or court official", I cannot find that the term should be so restricted. Had Parliament intended to so restrict the term, it would have been easy to qualify it by saying for instance "proceedings before a court or tribunal".

Application for advice and directions concerning obligation of bank to honour letter of credit.

***Wachowich J.*:**

1 The applicant Meridian Developments Inc. (hereinafter called "Meridian") is an Alberta corporation which has recently been continued under the Alberta Business Corporations Act, 1981 (Alta.), c. B-15. Previously it was known as Meridian Developments Ltd. and it was in that name that Meridian sold land by agreement for sale to 233995 Alberta Ltd. on 16th March 1981. Nu-West Group Ltd. (hereinafter called "Nu-West") is the beneficial owner of all of the shares of 233995 Alberta Ltd. and on 16th March 1981 executed under seal an unconditional guarantee in favour of Meridian Developments Ltd. whereby Nu-West unconditionally guaranteed to Meridian the amounts due from 233995 Alberta Ltd. at the times and in the manner set forth in the agreement for sale.

2 It was a term of the guarantee that if default occurred under the agreement, Nu-West would forthwith on demand pay all of the purchase moneys owed.

3 By cl. 5 of this guarantee it was agreed that Meridian would not be bound to exhaust other resources or to act on other securities before proceeding against Nu-West.

4 On 15th March 1983, 233995 Alberta Ltd. defaulted on the agreement for sale. On 18th March 1983 demand was made to Nu-West as was required under the terms of the guarantee.

5 Nu-West failed to pay the amount owing on demand and, thereafter, Meridian issued a statement of claim on 31st March 1983. Nu-West did not defend this action and, as a result, Meridian obtained default judgment on 3rd May 1983 in the amount of $928,989.33 plus costs. A writ of execution was duly filed on 11th May 1983 and Meridian instructed the sheriff to seize sufficient assets of Nu-West to satisfy the judgment. Seizure of a number of pieces of furniture and office machines was effected on 16th May 1983.

6 Nu-West then made application by notice of motion for a declaration that Meridian was not at liberty to make execution against Nu-West until it had sold the land in question because of the provisions of s. 40(2) and (3) of the Law of Property Act, R.S.A. 1980, c. L-8. This application was dismissed by order of Kirby J. on 24th May 1983. Part of the debt was then paid but execution on the balance of $463,329.33 was stayed pending Nu-West's appeal of Kirby J.'s order. The stay of execution granted was subject to the following conditions:

7 1. That Nu-West post an irrevocable letter of credit issued by the Toronto-Dominion Bank in favour of Meridian Developments Ltd. in the amount of the unpaid balance of $463,239.33 with interest at 11 $^{1}/_{2}$ per cent per annum calculated thereon from 4th May 1983 to the date of payment.

8 2. That Meridian's solicitors were to hold the letter on the trust conditions imposed in correspondence from solicitors for the defendant to the solicitors for the plaintiff dated 6th June 1983.

9 3. That the defendant would promptly prosecute the appeal of the order.

10 The appeal was subsequently launched on 20th June 1983 and heard on 12th October 1983. The appeal was dismissed with written reasons on 29th March 1984 [31 Alta. L.R. (2d) 1, [1984] 4 W.W.R. 97 (C.A.)].

11 The irrevocable letter of credit was held in trust by solicitors for Meridian throughout the period between Kirby J.'s first order and the dismissal of the appeal. During this period several new orders were made by consent each of which had the effect of continuing the terms and conditions of the original order. The amount of the letter of credit was increased during this period in order to account for the interest on the principal which accrued during the period. The order that was in effect when the decision of the Court of Appeal was released was made by Hetherington J. on 30th January 1984.

12 The letter of credit would have probably been honoured on presentation after 29th March were it not for the ex parte order obtained from myself by Nu-West under the Companies' Creditors Arrangement Act, R.S.C. 1970, c. C-25, as amended. This order was made as a result of Nu-West's insolvency and provided, inter alia, in cl. 2 that:

> further proceedings in any action, suit or proceeding against the Petitioner be restrained until July 31, 1984

and in clause 3 that:

> until July 31, 1984 no suit, action, or other proceeding be proceeded with or commenced against the Petitioner, except with leave of this Court.

As a result of the bank's knowledge of this order, it has not honoured the letter of credit and has, instead, brought interpleader proceedings.

13 Meridian has brought action against the bank alleging breach of contract in their failure to honour the letter of credit.

14 Application for advice and directions was also made by Meridian to entitle them to present the letter of credit for payment and to determine that my order of 21st March 1984 does not enjoin and restrain Meridian from presenting the letter of credit or the bank from honouring it.

15 From this the following issues come before me in this application:

16 1. Is payment of the letter of credit a "proceeding" within the meaning of cl. 2 or 3 of the 21st March order?

17 2. If so, is it a proceeding "against the Petitioner" [Nu-West] so as to be restrained by cl. 2 or 3 of that order?

18 3. If it is found to be a "proceeding", should the court in any case give leave to Meridian in the circumstances to obtain payment of the letter of credit?

19 These are difficult issues to resolve as counsel agree that the law in the area is unclear and the cases cannot all be reconciled. Further, there are good policy arguments to be made for both sides.

20 In order to resolve the issues raised in this application I must consider the scope and intent of my 21st March ex parte order under the Companies' Creditors Arrangement Act. This Act, though little used, is one of a number of federal statutes dealing with insolvency. In common with the various other statutes, it envisages the protection of creditors and the orderly administration

of the debtor's affairs or assets: *Wynden Can. Inc. v. Gaz Metro Inc.* (1982), 44 C.B.R. (N.S.) 285 (C.S. Que.). In the words of Duff C.J.C. who spoke for the court in *A.G. Can. v. A.G. Que.*, [1934] S.C.R. 659, 16 C.B.R. 1 at 2, [1934] 4 D.L.R. 75:

> ... the aim of the Act is to deal with the existing condition of insolvency in itself to enable arrangements to be made in view of the insolvent condition of the company under judicial authority which, otherwise, might not be valid prior to the initiation of proceedings in bankruptcy. *Ex facie* it would appear that such a scheme in principle does not radically depart from the normal character of bankruptcy legislation.

21 The legislation is intended to have wide scope and allows a judge to make orders which will effectively maintain the status quo for a period while the insolvent company attempts to gain the approval of its creditors for a proposed arrangement which will enable the company to remain in operation for what is, hopefully, the future benefit of both the company and its creditors.

22 This aim is facilitated by s. 11 of the Act which enables the court to:

> ... restrain further proceedings in any action, suit or proceeding against the company upon such terms as the court sees fit, and the court may also make an order that no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the court and subject to such terms as the court imposes.

It was pursuant to this section that on 21st March I granted the order that restrained "further proceedings in any action, suit, or proceeding" against Nu-West and enjoined creditors and others from proceeding with or commencing any "suit, action, or proceeding".

23 This order is in accord with the general aim of the Companies' Creditors Arrangement Act. The intention was to prevent any manoeuvres for positioning among creditors during the interim period which would give the aggressive creditor an advantage to the prejudice of others who were less aggressive and would further undermine the financial position of the company making it less likely that the eventual arrangement would succeed.

24 The order was obviously intended to cast a wide net and catch all creditors. Therefore Meridian can only succeed if it can establish that the payment of the letter of credit is not a "proceeding" against Nu-West as contemplated by the order.

25 As both counsel have frankly admitted, there are no cases directly on point. One of the few cases which does deal with the meaning of the word "proceeding" in the Companies' Creditors Arrangements Act is *Gray v. Wentworth Canning Co.*, 58 Man. R. 459, 31 C.B.R. 182, [1950] 2 W.W.R. 1285, a decision of the Manitoba Court of King's Bench. In that case Kelly J. determined that the relevant statute section gave the court complete discretion to determine the kinds of proceedings it would restrain. Although because of the wording in the particular order there at issue, Kelly J. determined that it was meant to catch only proceedings, suits, or actions which had not yet been instituted, it is clear from his judgment that he sees the section as allowing orders of much wider range. He points out, in fact, that it is because the draftsman of the order did not see fit to follow the exact words of what was then s. 10 of the Companies' Creditors Arrangement Act, 1932-33 (Can.), c. 36, that the order as given must be seen as restraining only those proceedings commenced after the order was given.

26 A similar provision to s. 11 may be found in the English Companies Act, 1862 (25 & 26 Vict.), c. 89, s. 85, which allowed a court at any time after the presentation of a winding-up petition to:

> ... restrain further Proceedings in any Action, Suit, or Proceeding against the Company, upon such Terms as the Court sees fit; the Court may also make an order that no Suit, Action or other Proceeding shall be proceeded with or commenced against the Company except with the Leave of the Court and subject to such Terms as the Court imposes.

27 Several cases which have interpreted this provision are useful in determining the scope of the term "proceeding". Jessel M.R. in *Re Artistic Colour Printing Co.* (1880), 14 Ch. D. 502, determined that an order made under this section could restrain the sheriff from selling goods already in his possession after seizure on the judgment of a judgment creditor. At p. 505 he concluded: "The word 'proceeding' in both sections of course includes execution under a judgment in an action." *Re Perkins Beach Lead Mining Co.* (1877), 7 Ch. D. 371, is to the same effect.

28 Counsel for Meridian admits that "proceeding" may have a very general meaning but submits that we must confine ourselves here to proceedings which necessarily involve a court or a court official. There is certainly authority for this proposition. Black's Law Dictionary, 5th ed. (1979), defines the term in the following manner:

> *Proceeding.* In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.
>
> An act which is done by the authority or direction of the court, agency, or tribunal, express or implied; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. All the steps or measures adopted in the prosecution or defense of an action. *Statter v. U.S.* (1933), 66 F. (2d) 819 (Alaska C.C.A.) . The word may be used synonymously with "action" or "suit" to describe the entire course of an action at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace all matters that occur in its progress judicially.
>
> Term "proceeding" may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding. *Rooney v. Vermont Invt. Corp.* (1973), 10 Cal. (3d) 351, 110 Cal. Rptr. 353, 515 P. (2d) 297 (Cal. S.C.). A "proceeding" includes action and special proceedings before judicial tribunals as well as proceedings pending before quasi-judicial officers and boards. *State ex rel. Johnson v. Independent Sch. Dist. No. 810, Wabasha County* (1961), 260 Minn. 237, 109 N.W. (2d) 596 (Minn. S.C.).

29 Words and Phrases Legally Defined, 2nd ed. (1969), vol. 4, p. 182, similarly restricts the definition to actions before a court or other judicial body:

> **Proceedings**
>
> The term "proceeding" is frequently used to note a step in an action, and obviously it has that meaning in such phrases as "proceeding in any cause or matter". When used alone, however, it is in certain statutes to be construed as synonymous with, or including "action" (1 Hals. (3rd) 4-5, paras. 5, 6).
>
> "By s. 89 of the Judicature Act of 1873 (36 & 37 Vict.), c. 66 [repealed; see now Supreme Court of Judicature (Consolidation) Act, 1925, (15 & 16 Geo. 5), c. 49, s. 202] ... it is said that every inferior court 'shall, as regards all causes of action within its jurisdiction for the time being, have power to grant and shall grant in any proceeding before such Court, such relief, redress, or remedy' in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice ... It can do so 'in any proceeding'. Now what is the meaning there of 'in any proceeding'? ... Now, although if s. 89 stood by itself, there might be some difficulty in determining what is the meaning of the word 'proceeding', yet it seems to me to be clear what is its meaning in s. 90 [repealed; see now Supreme Court of Judicature (Consolidation) Act, 1925, s. 203], and that 'proceeding' in that section is a general word meant to cover every step in an action, and is equivalent to the word 'action'." *Pryor v. City Offices Co.* (1883), 10 Q.B.D. 504 (C.A.), *per* Brett, M.R., at pp. 507, 508.
>
> "Anything that precedes the final judgment or order is, in my opinion, a 'proceeding' in the action." *Blake v. Summersby*, [1889] W.M. 39, *per* Kay, J. at p. 39.

30 Although this last mentioned definition indicated *Blake v. Summersby* restricts the proceedings to steps in an action preceding judgment, there is ample authority, cited by both counsel, to indicate that the term must be taken to include execution steps taken after judgment. As I indicated earlier, counsel for Meridian would restrict "execution proceedings" to those involving a court or court official. Those cases cited by Nu-West which indicate that an order restraining proceedings restrains a sheriff from conducting a sale following seizure, I am satisfied are in accord with this view inasmuch as the sheriff is an officer of the court. Further, counsel for Meridian cites *Can. Credit Men's Trust Assn. v. Edmonton*, 5 C.B.R. 589, 21 Alta. L.R. 160, [1925] 1 W.W.R. 747, [1925] 2 D.L.R. 525, where the Alberta Appellate Division found that a distress was not a "process

against property" within the meaning of s. 11 of the Bankruptcy Act, 1919 (Can.), c. 36. He also cites another Alberta Appellate Division decision, that of *Lee v. Armstrong*, 13 Alta. L.R. 160, [1917] 3 W.W.R. 889, 37 D.L.R. 738, where the court found that the noting on the title by the registrar of a writ of execution was not a "proceeding" within the meaning of the phrase "no proceedings shall be had or taken in respect of any execution already issued on any personal judgment ... until sale of the land mortgaged" as found in the Land Titles Act, 1906 (Alta.), c. 24, s. 62(2) [am. 1917, c. 3, s. 40(2)].

31 Meridian argues further on the basis of the ejusdem generis rule that the interpretation of "other proceeding" in s. 11 of the Companies' Creditors Arrangement Act is limited to proceedings which would fall within the genus indicated by the words "suit" and "action". This, too, indicates that the term as used in the Act ought to be restricted to proceedings which necessarily involve either a court or court official.

32 These arguments are persuasive. Nonetheless, I am mindful of the wide scope of action which Parliament intended for this section of the Act. To narrow the interpretation of "proceeding" could lessen the ability of a court to restrain a creditor from acting to prejudice an eventual arrangement in the interim when other creditors are being consulted. As I indicated earlier, it is necessary to give this section a wide interpretation in order to ensure its effectiveness. I hesitate therefore to restrict the term "proceedings" to those necessarily involving a court or court official because there are situations in which to do so would allow non-judicial proceedings to go against the creditor which would effectively prejudice other creditors and make effective arrangement impossible. The restriction could thus defeat the purpose of the Act. I must consider, for instance, the fact that it may still be possible to make distress without requiring a sheriff or his bailiff, as for example, on a chattel mortgage. It might well be necessary to find that such a distress constitutes a "proceeding" in terms of s. 11 in some future situations. As a result, in the absence of a clear indication from Parliament of an intention to restrict "proceedings" to "proceedings which involve either a court or court official", I cannot find that the term should be so restricted. Had Parliament intended to so restrict the term, it would have been easy to qualify it by saying for instance "proceedings before a court or tribunal".

33 Nor is there anything within the provisions of the order given on 21st March to indicate any intention to so limit the meaning of the word. I conclude, therefore, that payment of a letter of credit drawn on the account of an insolvent company could well come within the meaning of the word "proceeding" in the order.

34 Here, we are dealing with a payment which remains contingent at the date of the order. It awaited the judgment of the Court of Appeal on 21st March and thus, did involve a court or court official. Even if, therefore, I were to accept that payment of a letter of credit is not a proceeding under the Act, it seems clear that a payment which awaits a decision of the court is a proceeding as contemplated by the Act.

35 It must be noted, however, that by the terms of the 21st March 1984 order it is only "further proceedings in any action, suit, or proceeding against the Petitioner" that are restrained. Unless the payment of the letter of credit is a "proceeding against the Petitioner" (Nu-West) it was not restrained by this order. I agree with counsel for Meridian that the payment of the letter of credit cannot be termed a proceeding against Nu-West unless the money to be paid is Nu-West's property.

36 The ownership of the funds represented by the letter of credit is dependent upon the judicial nature of the commercial instrument in question. The nature of a letter of credit has been extensively considered. 3 Hals. (4th) states at p. 100, para. 132 that letters of credit:

> ... create binding contract to accept or pay bills on the specified conditions, enforeable against the banker by any person to whom the letter has been shown by the grantee, and who has acted on the faith of it.

In para. 133 at p. 102 the authors continue:

> The contract thus created between the seller and the banker is separate from, although ancillary to, the original contract between the buyer and the seller, by reason of the banker's undertaking to the seller, which is absolute.

37 The nature of a letter of credit has been explored in both English and Canadian cases. In *Aspen Planners Ltd. v. Commerce Masonry & Forming Ltd.* (1979), 7 B.L.R. 102 at 107 (Ont. H.C.) Henry J. quotes with approval from the English Court of

Appeal [who are quoting from *Malas (Hamzch) v. Sons & British Imex Indust.*, [1958] 2 Q.B. 127, [1958] 1 All E.R. 262 at 263, [1958] 2 W.L.R. 100, [1957] 2 Lloyd's Rep. 549 (C.A.)] in *Edward Owen Enrg. Ltd. v. Barclay's Bank Int.*, [1978] 1 All E.R. 976 at 981, [1978] 1 Lloyd's Rep. 166 (C.A.):

> " '.. it seems to be plain that the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes on the banker an absolute obligation to pay, irrespective of any dispute which there may be between the parties on the question whether the goods are up to the contract or not. An elaborate commercial system has been built up on the footing that bankers' confirmed credits are of that character, and, in my judgment it would be wrong for this court in the present case to interfere with that established practice.' "

38 *Aspen Planners Ltd.*, supra, deals with a situation in which the plaintiffs arranged irrevocable letters of credit to a contractor to ensure payment of a building contract. They later alleged that the contractor had defaulted on the contract and sought to obtain an injunction restraining payment under the letter of credit. The Ontario court refused, citing the irrevocable nature of the bank's obligation to pay the contractor.

39 This case, as do the English cases cited by counsel, exemplifies the more traditional use of the letter to guarantee payment in commercial transactions where goods and services are bought and sold.

40 Here, however, a more novel use has been made of the letter of credit as a security device and to determine whether this use affects the nature of the document we must turn to the American cases where the use of letters of credit, particularly in the way one was used here, is much more prevalent.

41 The nature of a letter of credit was explored in numerous cases relied upon by counsel for Meridian. *East Girard Savings Assn. v. Citizens Nat. Bank and Trust Co. of Bagtown* (1979), 593 F. (2d) 598, a decision of the U.S. Court of Appeals, Fifth Circuit, sets out the nature of the letter of credit at p. 601:

> ... a letter of credit typically involves three separate contracts. First, the issuing bank enters into a contract with its customer to issue the letter of credit. Second, there is a contract between the issuing bank and the party receiving the letter of credit. Third, the customer who procured the letter of credit signs a contract with the person receiving it, usually involving the sale of goods or the provision of some service. *Barclays Bank D.C.O. v. Mercantile Nat. Bank* (1973), 481 F. (2d) 1224, 1239 n.21, cert. dismissed 414 U.S. 1139, 94 S.Ct. 888, 39 L.Ed. (2d) 96; Verkuil, "Bank Solvency and Guaranty Letters of Credit," 25 Stan. L. Rev. 716 at 719.
>
> In recent years, letters of credit have been used for a variety of commercial transactions, Harfield, *The Increasing Domestic Use of the Letter* (1972), 4 U.C.C.L.J. 251. The guaranty letter of credit is one of these recent innovations. The guaranty letter of credit is designed to ensure that one or more parties to a contract will perform their duties under it. In a typical guaranty situation, the future owner of a building requires that the building contractor give him a completion bond providing for the payment of a certain sum of money if the building is not completed on schedule.

At p. 602 the court continues:

> Regardless of which form of letter of credit is used, upon compliance with the conditions contained in the letter, the recipient is entitled to full payment. This entitlement is independent of collateral obligations which may exist under the other underlying contracts. *Pringle-Assoc. Mtge. Corp. v. Southern Nat. Bank of Hattiesburg, Miss.*, 571F. (2d) 871 (Miss. C.A.); *Barclays Bank*, supra, at 1238-39; Vernons Texas Codes, Annotated, 2 Tex. Bus. & Com. Code (1968), p. 534, s. 5.114(a).

At p. 603 the court concludes:

> If the letter of credit is to retain its utility as a commercial instrument, the rights and duties of the issuer, the beneficiary, and the procurer must remain clear. Parties to commercial transactions must be able to rely on the fact that as soon as the conditions contained in a particular letter are satisfied, payment is due.

42 This case, and others cited by counsel for Meridian, clearly indicate that the nature of a letter of credit has not been changed by its use in a greater variety of commercial transactions, notably as a guarantee. It exists as an independent contract between the bank and the person cashing or negotiating the draft and, if it is irrevocable, the bank is bound to honour it.

43 Because of the independent contractual nature of a letter of credit, the analogy which Nu-West attempts to make between money held in court following seizure and a letter of credit cannot be maintained. Money paid into court may well remain the property of the defendants as the Saskatchewan Court of Appeal determined in *Regina Steam Laundry Ltd. v. Sask. Govt. Ins. Office*, [1971] 1 W.W.R. 96, 15 D.L.R. (3d) 121 , although I note that there is also authority to the contrary: *Re Keyworth; Ex parte Banner* (1874), 9 Ch. App. 379 (L.S.); *Re Hansard Spruce Mills Ltd.*, [1954] 1 D.L.R. 326 (B.C.S.C.). Security in the form of an irrevocable letter of credit is not the property of the party arranging the letter of credit. Indeed, I would go so far as to say that it has never been his money. He has contracted with his bank to require the bank to pay out a specific amount of money to a third party on the occurrence of certain events. In return he has promised to repay the bank for the funds so expended. The customer of the bank has, in my view, never had "ownership" of any funds represented by the letter of credit. He can lay claim only to the debt that has been thereby created.

44 Thus, it is my view that even if the payment out of a letter of credit could be termed a "proceeding", as this term is used in s. 11 of the Companies' Creditors Arrangement Act, it cannot be termed "a proceeding against the Petitioner" so as to be caught by the order of 21st March.

45 I am fortified in my view by a recent unreported American case cited by Meridian which seems right on point. The case is *Page v. First Nat. Bank of Maryland*, U.S. Dist. Ct., Dist. of Columbia, 30th March 1982 (not yet reported).

46 The facts are very similar to those found here. Westinghouse Credit Corporation ("W.C.C.") was the beneficiary of a letter of credit drawn on the First National Bank of Maryland ("bank"). The bank was enjoined from payment out on this letter after Page and Associates, a limited partnership and Virginia Page ("Page") its sole general partner, filed voluntary petitions in bankruptcy. W.C.C. was a substantial creditor of Page, holding among its forms of security the letter of credit issued on the bank. W.C.C. presented its letter of credit for payment four days after the petition was filed. Page sought an injunction the next day which was granted on the ground that to pay the letter would be a transfer in violation of the Bankruptcy Code, 11 U.S.C., s. 362(3) or (4). These subsections provide:

> [A] petition [under Title 11] operates as a stay, applicable to all entities, of ...
>
> (3) any act to obtain possession of property of the estate or of property from the estate;
>
> (4) any act to create, perfect or enforce any lien against property of the estate.

W.C.C. appealed the decision to grant the injunction and this appeal was allowed. The court found that cashing the letter of credit was not the type of act contemplated by the provisions of the statute since neither the letter of credit nor its proceeds are the "property of the estate" under the Bankruptcy Code.

47 At p. 4 of the decision the court stated:

> In issuing the letter of credit the bank entered into an independent contractual obligation to pay W.C.C. out of its own assets. Although cashing the letter will immediately give rise to a claim by the bank against the debtors pursuant to the latter's indemnification obligations, that claim will not divest the debtors of any property since any attempt to enforce that claim would be subject to an automatic stay pursuant to 11 U.S.C., para. 362(4).

48 In my view the Toronto-Dominion Bank is in the same position. It is obliged to honour its contract with Meridian even though the cashing of the letter of credit will increase Nu-West's debt to the bank and even though the bank has no method of enforcing its claim against Nu-West because of the 21st March order.

49 It makes no difference that the letter of credit was held in trust by Meridian's solicitors and that the condition precedent for presentation had not been met on 21st March. If the moneys secured were not Nu-West property on 21st March, the order did not affect them. The letter of credit became negotiable when the condition precedent was fulfilled on 29th March with the rendering of the Court of Appeal's decision in Meridian's favour. The bank should be directed to honour it on presentation on the terms and conditions specified in the letter and it is so ordered.

Directions given.