COURT FILE NUMBER	2303 06543
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.
DOCUMENT	**APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**MLT AIKINS LLP** Lawyers Suite 2200, 10135 – 101st Street NW Edmonton, AB T5J 3G1 Solicitor: Jeffrey M. Lee, K.C. and Mandi Deren-Dube Telephone: (306) 975-7136/ (780) 969-3518 Facsimile: (306) 975-7145/ (780) 969-3549 Email: jmlee@mltaikins.com mderendube@mltaikins.com File Number: 159371.8

NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	Wednesday, April 26, 2023
Time:	2:00 pm
Where:	Edmonton Law Courts VIA WEBEX
Before:	The Honourable Justice J.T. Neilson

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. Words and phrases contained herein which begin with capital letters but which are not expressly defined herein shall have the respective meanings ascribed thereto in the Initial Order of the Honourable Justice J.J. Gill granted in these proceedings on April 19, 2023 (the "**Initial Order**").

2. 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. (collectively, the "**Applicants**" or the "**Carr Group**") seek the following Orders under the *Companies' Creditors Arrangement Act,* RSC 1985, c C-36 ("**CCAA**"), substantially in the form attached hereto as **Schedule "A**", **Schedule "B"** and **Schedule "C"** hereto, respectively and granting the following relief:

   (a) an Amended and Restated Initial Order under the CCAA substantially in the form attached hereto as **Schedule "A"** hereto (the "**ARIO**"):

      i. abridging, if necessary, the time for service of this Application and materials in support thereof, and declaring service of the same to be good and sufficient;

      i. declaring that the Applicants are companies to which the CCAA applies;

      ii. authorizing the Applicants to carry on business in a manner consistent with the preservation of their business and property;

      iii. authorizing the Applicants to pay the reasonable expenses incurred by them in carrying on their business in the ordinary course, including certain expenses incurred prior to the date of the ARIO;

      iv. staying all proceedings, rights and remedies against or in respect of the Applicants or their business or property, or the Monitor, except as otherwise set forth in the ARIO, from the date of this Order until 11:59 pm (local Edmonton time) on August 31, 2023;

      v. affirming the appointment of Ernst & Young Inc. ("**EYI**") as the monitor (the "**Monitor**") of the Applicants in these proceedings;

vi. authorizing and directing the Applicants to pay the reasonable professional fees and disbursements of the Monitor and its legal counsel, and the reasonable professional fees and disbursements of legal counsel to the Applicants, with the payment of such reasonable professional fees and disbursements to be secured by a court-ordered charge on the assets of the Applicants (the “**Administration Charge**”);

vii. authorizing the Applicants to draw upon the full balance of the Interim Financing of up to $2,700,000 to be provided by MGB Investments Ltd. (the “**Interim Lender**”) to the Applicants in order to finance the Applicants’ operations during these proceedings, with the payment of such interim financing to be secured by a court-ordered charge on the assets of the Applicants (the “**Interim Lender’s Charge**”), in conformity with the Cash Flow Forecast attached to the First Report of the Monitor and as circumstances require; and

viii. approving and granting a limited form of priority to the Administration Charge, the Interim Lender’s Charge and the Selling Agent’s Charge;

(b) a Sales and Investment Solicitation Process Order substantially in the form attached as **Schedule “B”** hereto (the “**SISP Order**”):

i. approving the proposed engagement letters (the “**Engagement Letters**”) between the Applicants and the proposed selling agents in regard to the applicable Properties of the Applicants (the “**Selling Agents**”), copies of which Engagement Letters are appended to the First Report of the Monitor;

ii. approving the Applicants’ entry into the Engagement Letters, and authorising the Selling Agents to act as the exclusive selling agent(s) in regard to the applicable Properties of the Applicants and to market the Properties of the Applicants on behalf of the Applicants in accordance with the terms of the sales and investment solicitation process (the “**SISP**) attached as Appendix “A” to the SISP Order;

iii. approving the fees and expenses payable to the Selling Agents under the Engagement Letters;

iv. providing that the Selling Agents shall incur no liability or obligation as a result of their engagement or the carrying out of their mandate under the Engagement Letters, save and except for gross negligence or willful misconduct on their part;

v. approving the SISP (attached as Appendix “A” to the SISP Order) and authorizing and directing the Applicants, the Monitor and the Selling Agents to implement the SISP and to perform all steps and actions required of them pursuant to the SISP;

(c) Sale Approval and Vesting Orders substantially in the form attached hereto as **Schedule "C"** and **Schedule “D”** (the “**SAVOs**”):

i. abridging, if necessary, the time for service of the SAVO Application and materials in support thereof, and declaring service of same to be good and sufficient;

ii. approving the transaction contemplated by the purchase and sale agreement (the “**First PSA**”) between 272649 Alberta Ltd. (“**272**”) and Royal Eternity Homes Inc. (the “**First Purchaser**”) pertaining to that property more particularly described in the PSA (the “**First Purchased Asset**”). A copy of the PSA is appended to the Second Confidential Affidavit of Marj Carr, sworn April 20, 2023.

iii. approving the transaction contemplated by the Purchase offer (the “**Second PSA”, and together with the First PSA, the “PSA’s**”) between 272649 Alberta Ltd. (“**272**”) and Studio Homes Ltd. (the “**Second Purchaser**”, **and together with the First Purchaser, the “Purchasers”**) pertaining to that property more particularly described in the Purchase Offer (the “**Second Purchased Asset”, and together with the First Purchased Asset, the “Purchased Assets**”), as amended. A copy of the Purchase Offer is appended to the Second Confidential Affidavit of Marjorie Carr, sworn April 20, 2023.

iv. authorizing the Applicants to take all steps reasonably required to carry out the terms of the PSA’s;

v. authorizing the Applicants to take all steps reasonably necessary to enter into and carry out the terms of a purchase agreement substantially on the terms of the Purchase Offer, as amended with the approval of the Monitor;

vi. vesting title to the Purchased Assets in and to the Purchasers (or their nominee); and

(d) An Order sealing the Confidential Affidavit of Marjorie Carr dated April 18, 2023 and the Second Confidential Affidavit of Marjorie Carr dated April 20, 2023, until August 31, 2023, substantially in the form attached hereto as **Schedule "E"** (the "**Sealing Order**");

(e) such further and other relief as this Honourable Court may deem just.

Grounds for making this application:

<u>Background</u>

3. The Applicants comprise seven Alberta corporations, six of which corporations own a portfolio of real estate proprerties comprising commerical and residential buildings, condominiums and development land in Grande Prairie, Edmonton, Spruce Grove, Fort Saskatchewan and Wetaskiwin, Alberta (the "**Properties**").

4. The Applicants have made and continue to make a significant contribution to the municipal tax base and local economy of Grande Prairie, Edmonton, Spruce Grove, Fort Saskatchewan and Wetaskiwin, Alberta.

<u>The Applicants' Insolvency</u>

5. The Applicants meet the statutory requirements to be eligible for relief under the CCAA, as the Applicants are insolvent and owe more than $5,000,000.00 to their creditors.

6. As at April 10, 2023, the Applicants owed liabilities to their creditors in a total approximate amount exceeding $163,000,000.

7. The Applicants are undergoing a severe liquidity crisis, which has been caused or contributed to by:

(a) the significant downturn in the economy of Grande Prairie, Alberta (where the majority of the Properties are located) and the resulting financial distress experienced by Carr Group as a result of operating costs and debt service costs increasing more rapidly than the rental rates which Carr Group is able to charge to its commercial and residential tenants;

(b) the inability of Carr Group to overcome the disruption to its business and financial affairs resulting from the untimely death of J.W. (Jim) Carr, the founder and leader of Carr Group, in October of 2017;

(c) the severe negative impact experienced in the commercial real estate sector as a result of the lingering effects of the COVID-19 global pandemic and the associated disruption to conventional work arrangements among the office, government and retail business enterprises which comprise the tenants of Carr Group;

(d) extended periods of significant vacancy in the Grande Prairie commercial buildings owned by Carr Group (which have only recently begun to experience improvements in their ability to attract tenants);

(e) high municipal property tax rates charged to the Properties by the City of Grande Prairie (relative to the market value of the Properties);

(f) the retirement, departure or other loss of significant employees of Carr Group in recent years;

(g) the negative impact of significant increases to interest rates over the past eighteen months and its impact on debt service costs required to be paid by Carr Group; and

(h) the negative impact upon the cash flow of Carr Group which has resulted from recent initiatives by condominium corporation boards in condominium properties in which Carr Group owns condominium units to attach rents to fund significant special assessments of condominium corporation fees which are disputed by Carr Group (in whole or in part).

8. Carr Group's senior secured creditors, The Bank of Nova Scotia, Servus Credit Union, Romspen Investment Corporation, ATB Financial, Canadian Western Bank, Roynat Inc. and Bank of Montreal have served demands for payment of their secured debt, which demands included Notices of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

The Applicants' Need for CCAA Proceedings, the ARIO and the SISP Order

9. The Applicants require the stability of the proposed CCAA proceedings in order to develop and implement a plan for the sale, restructuring and/or orderly liquidation (the "**Restructuring**") of the Applicants' portfolio comprising the Properties. Further, and in particular, the Applicants require the cash flow relief and stability of the proposed CCAA proceedings in order to ensure:

   (a) that the Applicants are able to develop and implement a SISP that will enable the Applicants to maximize the value of the Properties for the benefit of the Applicants and their stakeholders;

   (b) that all or substantially all of the Properties are included in the SISP, in order to attract significant interest from a pool of high quality potential purchasers from Alberta, Canada and international locations;

   (c) that the SISP is conducted in a co-ordinated, unified and coherent manner, in order to avoid the disruption, market confusion and impairment of value of the Properties that would result from disconnected, *ad hoc* efforts to sell individual Properties through multiple, parallel competing security enforcement proceedings such as receiverships or foreclosure and sale proceedings;

   (d) that the costs of the Restructuring are controlled and spread across all or substantially all of the Properties through a single court-supervised proceeding under the oversight of a single court officer;

   (e) that the secured creditors of the Applicants experience little or no prejudice to their respective security positions and are able to enjoy the benefit of an efficient and cost-effective Restructuring involving no significant court-ordered charges on the Properties ranking in priority to their respective first charge mortgages on the Properties;

(f) that enforcement efforts by unsecured creditors of the Applicants (including judgment creditiors, condominium corporation boards and others) are stayed while the Applicants develop and implement the SISP; and

(g) that the prospects for the Applicants to capture and realize the equity in the Properties past the secured debt on the Properties are maximized, in order to fund a Plan of Arrangement intended to return a dividend for the unsecured creditors of the Applicants.

Interim Financing

10. The Applicants require interim financing of up to $2,700,000 in order to fund ongoing costs associated with their business operations, to provide sufficient liquidity to address contingencies and to fund the payment of professional fees associated with these proposed proceedings under the CCAA and to ensure that their operations are not interrupted during these CCAA proceedings.

11. The Interim Lender has agreed to provide interim financing up to a maximum aggregate amount of $2,700,000 (the **"Interim Financing"**) to fund the Applicants' operations during the Restructuring. The Interim Financing is limited to what is reasonably necessary to fund the Applicants' operations during the Restructuring.

Charges

12. Certain charges are necessary to ensure that the Restructuring is successful, with priority among the charges proposed to be as follows:

(a) First – The Selling Agent's Charge (calculated and configured in the manner described in the SISP Order and the ARIO);

(b) Second – The First Charge Encumbrances (comprising existing fixed mortgages of specific real property of the Applicants which are registered against title to the Properties as first priority fixed charge mortgages and associated security);

(c) Third – The Administration Charge (to the maximum amount of $500,000) to secure the payment of the reasonable professional fees and disbursements of the Monitor, legal counsel to the Monitor and legal counsel to the Applicants;

(d) Fourth – The Interim Lender's Charge (to the maximum amount of up to $2,700,000) in order to secure the repayment of funds advanced to the Applicants pursuant to the Interim Financing; and

(e) Fifth – The Non-First Charge Encumbrances (comprising all encumbrances other than First Charge Encumbrances).

The Need For the SAVO

13. In the ordinary course of its business, 272 lists and sells residential lots in the Northridge and O'Brien subdivisions in Grande Prairie (the "**272 Lots**") to third party builders and homeowners. Two such builders are Royal Eternity Homes Inc. and Studio Homes Ltd.

14. From 2016 to the present date, there have been a total of 80 lots sold by 272 in these subdivisions within a relatively limited range of prices, including a total of 8 lots sold by 272 to Royal Eternity Homes Inc. This history can be used to establish fair market value of the 272 Lots.

15. In the ordinary course of its business, and prior to the CCAA Initial Order being granted by Justice Gill on April 19, 2023, 272 entered into the PSA with Royal Eternity Homes Inc. for the sale of a lot in the Northridge Subdivision (the "**First Purchased Asset**") However, the sale contemplated in the PSA was unable to close due to the existence of certain writs of enforcement (the "**Writs**") on title to the 272 Lots.

16. The Applicants seek this Honourable Court's approval of the First PSA and a Sale Approval and Vesting Order in respect of same, which will allow 272 to close the transaction contemplated in the First PSA notwithstanding the existence of the Writs.

17. The Monitor is of the view that the Purchased Asset has been exposed for sale to the market for a significant amount of time, that the transaction contemplated by the First PSA represents the highest and best realizable value available in the present circumstances and that the proposed transaction contemplated in the First PSA accords with market values for properties of this nature.

18. Stewart Hilltop Farms Ltd. ("**Stewart Hilltop**"), the first mortgagee on title to the First Purchased Asset, has approved the First PSA, and all of the net sale proceeds to be derived from the transaction contemplated in the First PSA will flow to Stewart Hilltop.

19. In the ordinary course of its business, and prior to the CCAA Initial Order being granted by Justice Gill on April 19, 2023, 272 received an offer to purchase (the "**Purchase Offer**") a lot in the O'Brien Lake Subdivision (the "**Second Purchased Asset**") from Studio Homes Ltd. 272 has negotiated a tentative agreement with Studio Homes Ltd., but was unable to formally accept the offer due to the Writs.

20. The Applicants seek this Honourable Court's approval of the Purchase Offer and a Sale Approval and Vesting Order in respect of same, which will allow 272 to accept and close the transaction contemplated in the Purchase Offer notwithstanding the existence of the Writs.

21. The Monitor is of the view that the Second Purchased Asset has been exposed for sale to the market for a significant amount of time, that the transaction contemplated by the Purchase Offer represents the highest and best realizable value available in the present circumstances and that the proposed transaction contemplated in the Purchase Offer accords with market values for properties of this nature.

22. Calgary Capital & Leasing Ltd. ("**Calgary Capital**"), the first mortgagee on title to the Second Purchased Asset, has approved the Purchase Offer, and all of the net sale proceeds to be derived from the transaction contemplated in the Purchase Offer will flow to Calgary Capital.

<u>Conclusion</u>

23. The Applicants' senior secured lenders have been provided with advance notice of this Application for an ARIO, a SISP Order and the two SAVO's and have indicated that they either: (a) expressly support; (b) have not expressed opposition to; or (c) are in dialogue with the Applicants regarding, the granting of the relief sought herein.

24. Ernst & Young Inc. has consented to its appointment as Monitor of the Applicants.

25. The Applicants further rely on the grounds set out in the Affidavit of Marjorie Carr sworn on April 10, 2023, the Supplemental Affidavit of Marjorie Carr sworn on April 18, 2023, the provisions of the CCAA, and the inherrent jurisdiction of this Honourable Court.

26. Such further and other grounds as counsel for the Applicants may advise and this Honourable Court may permit.

Material or evidence to be relied on:

27. This Application;

28. The Affidavit of Marjorie Carr sworn on April 10, 2023;

29. The Supplemental Affidavit of Marjorie Carr sworn on April 18, 2023;

30. Second Confidential Affidavit of Marjorie Carr sworn on April 20, 2023.

31. Draft Amended and Restated Initial Order;

32. Redline Comparison of Draft Amended and Restated Initial Order to the Alberta Template CCAA Initial Order;

33. Draft Sales and Investment Solicitation Process Order;

34. Draft Sale Approval and Vesting Order;

35. Redline Comparison of Draft Sale Approval and Vesting Order to the Alberta Template Sale Approval and Vesting Order;

36. Brief of Law on Behalf of the Applicants;

37. The Pre-filing Report of the Proposed Monitor, Ernst & Young Inc. dated April 10, 2023;

38. The First Report of the Monitor;

39. Such further and other materials as counsel for the Applicants may advise and this Honourable Court may permit.

Applicable rules:

40. Part 6, Division 1 of the Alberta *Rules of Court*, Alta Reg 124/2010.

Applicable Acts and regulations:

41. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36; and

42. Such further and other Acts or regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

43. None.

How the application is proposed to be heard or considered:

44. By hearing conducted through WebEx video conference.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

DRAFT AMENDED & RESTATED INITIAL ORDER

SCHEDULE "B"

DRAFT SISP ORDER

SCHEDULE "C"

DRAFT SALE APPROVAL & VESTING ORDERS