COURT FILE NUMBER	2303 06543	Clerk's stamp
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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.	
APPLICANT	114 DEVELOPMENT LTD.	
DOCUMENT	**APPLICATION (APPROVAL AND VESTING ORDER AND SEALING ORDER)**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**DLA Piper (Canada) LLP** Barristers and Solicitors Suite 2700, Stantec Tower 10220 - 103rd Avenue Edmonton, AB T5J 0K4 Phone: 780.429.6835 Fax: 780.670.4239 Email: jerritt.pawlyk@dlapiper.com / kevin.hoy@dlapiper.com Attention: Jerritt Pawlyk / Kevin Hoy	

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 Justice .

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

Date:	**August 3, 2023**
Time:	**3:00 PM**
Where:	**Edmonton Courts Centre, Virtual Courtroom 86, via WebEx** **https://albertacourts.webex.com/meet/virtual.courtroom86**
Before Whom:	**The Honourable Justice J. Little, on the Commercial List**

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

Remedy claimed or sought:

1. 114 Development Ltd. ("**114**") seeks, pursuant to sections 11 and 36 of the *Companies' Creditors Arrangement Act,* RSC 1985, c C-36 (the "***CCAA***"), a Sale Approval and Vesting Order (the

"**SAVO**") substantially in the form of the draft Order appended as Schedule "**A**" hereto and a Sealing Order substantially in the form of the draft Order appended as Schedule "**B**" hereto:

a) Deeming service of this Application and its supporting materials good and sufficient;

b) Abridging time for service of this Application, if necessary;

c) Approving a transaction (the "**Transaction**") pursuant to a share purchase agreement (the "**SPA**") dated July 31**,** 2023, between J.W. Carr Holdings Ltd. ("**Carr Holdings**"), 114, and the shareholders of 114 -- specifically, TID Holdings Inc., 2340355 Alberta Ltd., and Profectus Capital Inc. (collectively, the "**Purchasing Shareholders**") -- concerning the sale of 101 Class A shares in 114 (the "**Carr 114 Shares**") from Carr Holdings to the Purchasing Shareholders;

d) Vesting title to the Carr Shares in the names of the Purchasing Shareholders, free and clear of all encumbrances;

e) Authorizing Carr Holdings and Ernst & Young Inc. (the "**Monitor**") to take all necessary steps to conclude the SPA;

f) Sealing the Confidential Exhibits (as defined below) to the Affidavit of Ward Fleming, dated July 31**,** 2023, until the earlier of December 29, 2023, or the further Order of the Court in these proceedings; and

g) Such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

2. Carr Holdings is an applicant debtor in these CCAA proceedings.

3. 114 is a commercial developer of a multi-unit, residential construciton project (the "**114 Project**") located in Edmonton, Alberta. The 114 Project is approximately 70% complete as of July 2023.

4. 114 issued the Carr 114 Shares to Carr Holdings in a transaction completed in March 2021 as consideration for Carr Holdings agreeing to serve as the guarantor of indebtedness incurred by 114 in furtherance of the 114 Project pursuant to a credit facility (the "**114 Project Facility**") extended by 114's senior secured lender.

5. Given significant increases in the prime lending rate, the 114 Project is no longer commercially viable at the interest rates under the 114 Project Facility. A refinancing transaction (the "**Re-Fi**") between 114 and a third-party lender (the "**Re-Fi Lender**") that would retire amounts owing under the 114 Project Facility is Pending is pending. The Re-Fi contemplates advances to 114 to both retire the indebtedness owing under the 114 Project Facility and to complete the 114 Project at an

interest rate that is significantly lower than the interest rate under the 114 Project Facility. The Re-Fi Lender is unwilling to conclude the Re-Fi unless Carr Holdings ceases to be a shareholder in 114.

6. A Unanimous Shareholders Agreement dated April 20, 2021, (the "**114 USA**") concluded amongst the shareholders of 114 (including Carr Holdings) provides both 114 and the Purchasing Shareholders with the right to compel Carr Holdings to sell its shares to 114 or the Purchasing Shareholders at a price determinable by a formula (the "**Share Valuation Formula**"), which values common shares in 114 on the basis of 114's net asset value.

7. 114 has obtained a July 2023 appraisal for the value of the 114 Project on an "as-is" basis. Utilizing the appraised fair market value of the 114 Project in the Share Valuation Formula leads to a nil valuation of the Carr 114 Shares, prior to the application of any discounts or adjustments.

8. The remaining shareholders of 114 (the "**Purchasing Shareholders**") Carr Holdings, and 114 have entered into a Share Purchase Agreement, dated July 31, 2023, (the "**SPA**") contemplating the sale of the Carr 114 Shares to the Purchasing Shareholders on a *pro rata* basis in exchange for the nominal purchase price of $10.00 and an indemnity granted in favour of Carr Holdings by 114 and the Purchasing Shareholders in connection with any liability of Carr Holdings arising from any personal guarantee granted by Carr Holdings to the creditors of 114.

9. The SPA is conditional upon this Honourable Court granting the SAVO.

<u>114's Standing in these proceedings and entitlement seek the SAVO</u>

10. *CCAA* courts are empowered with the broad, discretionary authority to make any orders that it considers appropriate pursuant to *CCAA* section 11. Standing to bring forward an application for an order under *CCAA* section 11 is not limited to an applicant debtor company, but is extended to any person interested in an applicant debtor's *CCAA* proceedings.

11. 114 is an interested person in these proceedings within the meaning of *CCAA* section 11 due, without limitation, to the fact that it is the issuer of securities held by Carr Holdings, it is a contracting party with Carr Holdings through the 114 USA, and it is the primary obligor of indebtedness guaranteed by Carr Holdings. Therefore, 114 submits that it has standing to seek an Order of this Honourable Court pursuant to *CCAA* section 11.

12. Section 36 of the *CCAA* imposes a prohibition on a debtor company disposing of any of its assets outside of the ordinary course of business, absent the Court's approval pursuant to that section. *CCAA* section 36 does not expressly give standing to a third-party to bring forward an application seeking approval for the sale of the assets of an applicant debtor. 114 respectfully submits that

appropriate circumstances exist for the Court to exercise its broad discretionary authority under *CCAA* section 11 to authorize 114 to bring forward an Application under *CCAA* section 36 seeking this Court's approval of the Transaction.

13. 114 submits that there exist appropriate grounds for this Court to authorize the Transaction on consideration of the factors set out in *CCAA* section 36(3) including, without limitation:

a) The process leading to the conclusion of the SPA was fair and reasonable under the circumstances;

b) Carr Holdings had previously agreed under the 114 USA to sell the Carr 114 Shares under the valuation method used to ascribe nominal value to the Carr 114 Shares;

c) The valuation for the Carr 114 Shares was derived from an independently prepared appraisal of 114's only asset;

d) The proposed sale will have no adverse effect on the stakeholders of Carr Holdings; and

e) Key Stakeholders of Carr Holdings and the Monitor were consulted by 114 prior to the conclusion of the SPA.

<u>Sealing Order</u>

14. The Affidavit of Ward Fleming, dated July 31, 2023, contains Confidential Exhibits 1 through 5 (collectively, the "**Confidential Exhibits**"). The Confidential Exhibits contain commercially sensitive information pertaining to the Re-Fi and the liquidation value of 114's assets.

15. Disclosure of the Confidential Exhibits would jeopardize the integrity of any potential sales process in the event that one may be required should 114 fail to complete the Re-Fi or encounter some other circumstance leading to security enforcement against its assets or 114's entry into restructuring proceedings. Disclosure of the Confidential Exhibits thus represents a serious risk to 114 and its stakeholders which cannot be mitigated by any alternative measure aside from maintaining the confidentiality of the contents of the Confidential Exhibits.

16. Ensuring the integrity of a potential future sales process outweighs any potential deleterious effects resulting from a temporary Sealing Order.

Material or evidence to be relied on:

17. The pleadings and proceedings filed in this Action.

18. The Affidiavit of Ward Felming, dated July 31, 2023.

19. Draft Sale Approval and Vesting Order.

20. Redline of Sale Approval and Vesting Order against the Court of King's Bench for Alberta Template Sale Approval and Vesting Order.

21. Draft Sealing Order.

22. Bench Brief, dated July 31, 2023.

23. Such further and other materials or evidence as counsel may advise, and this Honourable Court may permit.

Applicable rules:

24. Rules 1.3, 1.5, 6.11 of the *Alberta Rules of Court,* Alta Reg 124/2010.

25. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

26. *Companies' Creditors Arrrangement Act,* RSC 1985, c C-36.

Any irregularitory complained of or objection relied upon:

27. None.

How the application is proposed to be heard or considerd:

28. Before Justice J. Little, by way of WebEx.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants 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.