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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.
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	**BENCH BRIEF OF THE APPLICANTS** **(<u>Extending Stay of Proceedings, Increasing Interim Financing Charge & Authorizing Interim Distribution</u>)**
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I. INTRODUCTION

1. This Brief of Law is submitted on behalf of the Applicants, J.W. Carr Holdings Ltd., Spruce Grove Industrial Park Inc. (“**SGIP**”), 272649 Alberta Ltd. (“**272**”), 279896 Alberta Ltd., Grande Prairie Place Enterprises (1996) Inc. (“**GPPE**”), 1170292 Alberta Ltd., and 627612 Alberta Ltd. (collectively, the “**Carr Group**”) in support of an application for an Order:

   a. extending the stay of proceedings from April 30, 2024 to and including May 31, 2024 (the “**Stay Extension**”);

   b. authorizing and empowering the Applicants to borrow an additional $500,000.00 from the Interim Lender, and increasing the Interim Financing Charge from the principal amount of $2,700,000 to the principal amount of $3,200,000.00;

   c. authorizing the distribution of proceeds of the sales of the Applicants’ property, and establishing holdbacks in respect of disputed claims; and

   d. authorizing the destruction of the Applicants’ books and records on thirty (30) days’ notice to Canada Revenue Agency (“**CRA**”).

2. The Carr Group relies on the facts set out in the Affidavit of Marjorie Carr sworn on January 15, 2024, the Affidavit of Marjorie Carr sworn April 17, 2024 and the Fifteenth Report of the Monitor, to be filed.

3. The Applicants have made significant progress in advancing the objectives of the CCAA Proceedings. The Applicants have realized (in aggregate) approximately $7.3 million over amounts owing on the first charge mortgages on the Applicants’ real property (the “**Carr Group Properties**”). Sales of the Carr Group Properties continue by agreement with certain of the first charge mortgagees, under the Amended Expedited SAVO Protocol established by Orders of this Court granted on January 24, 2024.

4. The Applicants seek an extension of the stay of proceedings for a further month, in order to complete the work required to wind up operations and liquidate the Applicants’ remaining assets. The Applicants also seek authorization to borrow an additional

$500,000.00 from the Interim Lender in order to fund payment of the professional fees required to complete the Outstanding Objectives (as hereinafter defined).

II. FACTS

5. The Applicants comprise seven Alberta corporations which own a portfolio of real estate properties located in Grande Prairie, Edmonton, Fort Saskatchewan, Spruce Grove and Wetaskiwin, Alberta. The Carr Group Properties were originally comprised of commercial income-generating properties, industrial income-generating properties, vacant land and a number of residential income-generating condominiums and duplexes. The Carr Group had a total of 18 secured creditors whose debts were secured by mortgages on the Carr Group Properties.

6. On April 26, 2023, an Amended and Restated Initial Order (the "**ARIO**") was granted in respect of the Applicants and their property, pursuant to the CCAA. Ernst & Young Inc. was appointed as the monitor of the Applicants (the "**Monitor**"). The stay of proceedings established by the ARIO was extended from August 31, 2023 to October 31, 2023 (by Order dated July 26, 2023); from October 31, 2023 to January 31, 2024 (by Order dated October 24, 2023); and from January 31, 2024 to April 30, 2024 (by Order dated January 24, 2024) (the "**January 24 Stay Extension Order**").

7. The objective of the CCAA restructuring being pursued by the Applicants was to develop and implement an expedited, cost-effective process for the orderly sales of the real estate assets of the Applicants in order for the net sale proceeds derived from such sales to:

    a. retire the secured debt owed by the Applicants to their secured creditors (in whole or in part); and

    b. capture the value in the assets of the Applicants past the debts owed to the secured creditors for the benefit of all stakeholders of the Applicants.

    (the "**CCAA Objectives**")

8. A Sales and Investment Solicitation Process ("**SISP**") Order (the "**Initial SISP Order**") was also granted in respect of certain of the Applicants' real property on April 26, 2023,

and an Amended and Restated Sales and Investment Solicitation Process Order was granted on July 26, 2023 (the "**Amended and Restated SISP Order**", collectively hereafter with the Initial SISP Order, the "**SISP Order**").

9. On May 23, 2023, Justice J.T. Neilsen granted four Orders (the "**Expedited SAVO Protocol Orders**") which established a process to sell certain of the Applicants' lower value real property within the SISP by way of desktop Application without notice to creditors. To date, the Applicants have obtained 48 Expedited SAVO Orders and sold 38 properties using this protocol, with all but one of the remaining sales scheduled to close on or before May 31, 2024.

10. In addition to granting the stay of proceedings, the ARIO authorized the Applicants to borrow up to $2,700,000.00 (the "**DIP Financing**") pursuant to a credit facility with MGB Investments Ltd. (the "**Interim Lender**"). The credit facility was secured by an Interim Lender's Charge on all of the Applicants' property, subject to the priorities established by paragraph 43 of the ARIO. The effect of paragraph 43 was to have the Administration Charge and the Interim Lender's Charge rank below the First Charge Mortgages on the Applicants' real property.

11. The DIP Financing enabled the Applicants to make significant progress toward the sale of their real property (including the sale of all of their commercial buildings), which comprised the majority of the Applicants' assets. The Applicants drew down the entirety of the DIP Financing, in the amount of $2,700,000.00, which was advanced and utilized primarily to pay outstanding professional fees up to October 31, 2023. The Applicants are currently indebted to the Interim Lender in the principal amount of $2,700,000.00 plus fees, costs, and interest (the "**DIP Indebtedness**").

12. Because the Applicants could no longer fund the costs of ongoing sales of the Carr Group Properties, which have to date been borne by the financing provided by the Interim Lender, as of January 15, 2024, the Applicants confirmed that they would not be taking further steps to sell the Carr Group Properties unless the cost of doing so was borne by the First Charge Mortgagees.

13. To that end, the January 24 Stay Extension Order exempted from the CCAA stay of proceedings all creditors holding first charge mortgages (the "**First Charge Mortgagees**") on properties not subject to an existing Purchase & Sale Agreement. The purpose of this "carve out" was to enable those secured creditors who wish to take steps to enforce their security to do so without interfering with the CCAA Proceedings.

14. The Applicants also sought changes to the existing Expedited SAVO Protocol Orders, in order to allow the sales process to continue at the sole discretion of the First Charge Mortgagees, provided those creditors were prepared to bear the costs associated with continuing to sell the properties under this process (the "**Amended Expedited SAVO Protocol**"). In addition to the January 24 Stay Extension Order, four Orders amending the Expedited SAVO Protocol (the "**Amended Expedited SAVO Protocol Orders**") were granted on January 24, 2024.

15. Since the January 24 Stay Extension Order and the Amended Expedited SAVO Protocol Orders were granted, the Applicants have continued to make progress toward liquidating the Carr Group Properties, including by negotiating agreements with First Charge Mortgagees to allow the sales of Expedited SAVO Properties to continue under the Amended Expedited SAVO Protocol, at the expense of the First Charge Mortgagees.

16. The Applicants largely ceased operations following the sale of the sole remaining commercial building operated by the Applicants, the Ovintiv Building, which was sold pursuant to the Sale and Vesting Order obtained January 24, 2024. The Applicants continue to employ two employees and continue to incur professional fees for the limited purpose of completing the following ongoing work required to conclude the CCAA Proceedings:

    a. work required to transition operations of the GPPE commercial buildings to the purchaser of those properties, to wind up operations and to pay all outstanding post-filing creditors of GPPE (the "**GPPE Wind-Up**");

    b. working with the Monitor and its counsel to review and verify claims by the Lienholders;

    c. compiling all outstanding financial information and reporting to the Monitor in respect of the proceeds of the sale of the Expedited SAVO Properties and the GPPE Wind-Up, in order to enable the distribution of all surplus proceeds to the affected creditors, in accordance with the priority scheme established by the ARIO; and

d. establishing a process for recovery and disposition of any remaining assets held by the Applicants, including such assets which are not expected to mature until after the conclusion of the stay.

(collectively, the "**Outstanding Objectives**").

III. ISSUES

17. This Application raises the following issues for determination by this Court:

a. Is it appropriate to extend the stay of proceedings from April 30, 2024 to May 31, 2024?

b. Is the increase to the Interim Lender's Charge appropriate?

c. Are the distributions proposed by the Applicants appropriate?

IV. LAW AND ARGUMENT

A. <u>An Extension of the Stay of Proceedings from April 30, 2024 to May 31, 2024 is Appropriate</u>

18. Section 11.02 of the CCAA[1] permits the Court to grant an extension to a stay of proceedings if the applicant satisfies the Court that an extension of the stay of proceedings is appropriate and that the Applicant is acting with good faith and due diligence.

19. The principles for extensions of stays of proceedings under section 11.02 of the CCAA were summarized as follows by Justice Hillier in *Re Canada North Group Inc.*:[2]

> [33] The purpose of the CCAA is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets. Appropriateness of an

[1] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 11.02 ("**CCAA**"), **TAB A.**
[2] *Re Canada North Group Inc*, 2017 ABQB 508, 51 CBR (6th) 282, **TAB B**.

> extension under the CCAA is assessed by inquiring into whether the order sought advances the policy objectives underlying the CCAA. A stay can be lifted if the reorganization is doomed to failure, but where the order sought realistically advances those objectives, a CCAA court has the discretion to grant it: *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60 (S.C.C.) at paras 15, 70, 71, [2010] 3 S.C.R. 379 (S.C.C.).
>
> [34] In applying for an extension, the applicant must provide evidence of at least "a kernel of a plan" which will advance the CCAA objectives: *North American Tungsten Corp., Re*, 2015 BCSC 1376, 2015 CarswellBC 2232 (B.C. S.C.) at para 26, citing *Azure Dynamics Corp., Re*, 2012 BCSC 781, 91 C.B.R. (5th) 310 (B.C. S.C. [In Chambers]).
>
> [35] Pursuant to s. 11.02(3), the applicant is required to demonstrate that it has acted, and continues to act, in good faith. Honesty is at the core of "good faith": *San Francisco Gifts Ltd., Re*, 2005 ABQB 91 (Alta. Q.B.) at para 16, (2005), 10 C.B.R. (5th) 275 (Alta. Q.B.).

20. The initial objective of the CCAA Proceedings was to develop and implement an expedited, cost-effective process for the orderly sale of the Applicants' Real Property in order to:

    a. retire the secured debt owed by the Carr Group to its secured creditors (in whole or in part); and

    b. capture the surplus equity in the assets of the Carr Group past the secured debt in order to fund a Plan of Arrangement whereby the Carr Group may be able to pay distributions to its unsecured creditors.

21. The Carr Group has advanced these objectives to a relatively mature stage.

22. The Carr Group seeks an extension to the stay in part to permit the Applicants to conclude the outstanding sales for which the Applicants have received PSAs, and to conclude the CCAA proceedings in an orderly and cost-effective manner.

23. As noted by the Supreme Court in *Callidus*,[3] the relative weight that the different

[3] *9354-9186 Quebec inc. c. Callidus Capital Corp*., 2020 SCC 10 ("*Callidus*") at para 46, **TAB C**.

objectives of the CCAA take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval. When a reorganization of the pre-filing debtor company is not a possibility, a liquidation that preserves going-concern value and the ongoing business operations of the pre-filing company may become the predominant remedial focus.

24. The Carr Group has been acting in good faith and with due diligence. In addition to diligently advancing the SISP, the Carr Group has also made extensive efforts to maximize value to the estate and to improve the potential outcome for secured and unsecured creditors.

25. The Carr Group submits that it has implemented a cost-effective plan to maximize recovery for its stakeholders and that it is acting in good faith and with due diligence. Accordingly, an extension of the stay of proceedings from April 30, 2024 to May 31, 2024 is appropriate.

B. An Increase in the Interim Lender's Charge is Appropriate

26. The Applicants seek to borrow an additional $500,000 from the Interim Lender, in order to fund payment of the professional fees required to conclude the CCAA Proceedings. The Applicants also seek a corresponding increase in principal amount of the Interim Lender's Charge from $2,700,000 to $3,200,000.

27. Pursuant to section 11.2 of the CCAA[4], the Court has the authority to approve interim financing and to grant a priority charge respecting the interim financing:

> **11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.
>
> **(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[4] CCAA, *supra* note 1, s. 11.2.

> **(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

28. In considering whether to make an Order under section 11.2 of the CCAA, the Court is to consider, among other things:[5]

    a. the period during which the company is expected to be subject to proceedings under this Act;

    b. how the company's business and financial affairs are to be managed during the proceedings;

    c. whether the company's management has the confidence of its major creditors;

    d. whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

    e. the nature and value of the company's property;

    f. whether any creditor would be materially prejudiced as a result of the security or charge; and

    g. the monitor's report referred to in paragraph 23(1)(b), if any.

29. The Supreme Court has expressly stated that interim financing is not limited to providing debtor companies with immediate operating capital.[6] Interim financing at its core enables the preservation and realization of the value of a debtor's assets.

30. In this case, the proposed increase in the Interim Lender's Charge is required in order to finance payment of the costs of concluding liquidation of the assets of the Applicants. Concluding that liquidation process will ensure that the Applicants' remaining assets are liquidated in an orderly and cost-effective manner and that the resulting sale proceeds are distributed in accordance with the priority regime established by the ARIO, which is consistent with the remedial objectives of the CCAA.[7]

[5] *Ibid.*
[6] *Callidus, supra* note 3, at para 85.
[7] *Ibid.*

31. The following factors support an increase in the Interim Financing and the Interim Lender's Charge:

a. First, with respect to the period during which the company is expected to be subject to proceedings under this Act, it is anticipated that the CCAA proceedings will be concluded by May 31, 2024;

b. Second, the Carr Group's business and financial affairs will continue to be managed by existing management (under oversight of the Monitor). Management has implemented cost-effective liquidation of the Applicants' assets over the past year and is positioned to conclude that process promptly and in a cost-effective manner;

c. Third, the remaining primary secured creditors of the Carr Group are prepared to support the increase to the Interim Lender's Charge. Notably, the secured creditor that will be most significantly impacted by the increase in the Interim Lender's Charge is Michael G. Broadfoot, who is also the directing mind of the Interim Lender. Further, the proposed increase in the Interim Lender's Charge will not prejudice the remaining First Charge Mortgagees, as their First Charge Mortgage security ranks in priority to the Interim Lender's Charge;

d. Fourth, while the proposed Interim Financing will not enhance the prospects of a viable compromise or arrangement being made, it will preserve and enhance the value of the remaining assets and will thereby advance the objectives of the CCAA;

e. Fifth, the evidence indicates that secured creditors will be experience minimal prejudice as a result of the increase to the Interim Lender's Charge. Notably, the proposed increase to the Interim Lender's Charge pertains to a court-ordered priority charge which ranks subordinate to the First Charge Mortgages. Accordingly, the net impact to First Charge Mortgagees is minimal; and

f. Finally, the Monitor supports the proposed increase to the Interim Lender's Charge.

32. For the foregoing reasons, the Applicants respectfully submit that the proposed increase to the Interim Lender's Charge Increase is necessary and appropriate.

C. <u>The Distributions Proposed by the Applicants are appropriate</u>

i. Approving the Distribution of the Lien Holdback is appropriate

33. On August 24, 2023, this Court granted an Order (the "**Tundra SAVO**")[8] approving the sale and vesting the title of the property legally described as:

PLAN 8020127
BLOCK 17
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.05 HECTARES (2.59 ACRES) MORE OR LESS

(the "**Tundra Building**").

34. Pursuant to the Tundra SAVO, the first charge mortgage registered by Canadian Western Bank ("**CWB**") on title to the Tundra Building was recognized directed to be paid in full.

35. On November 20, 2023, this Court granted an Order (the "**Broadfoot Distribution Order**") authorizing the distribution of the Tundra Proceeds, as defined in that Order, to the second charge secured creditor, Michael G. Broadfoot, less a holdback amount of $244,238 (the "**Lien Holdback**") for certain liens registered on title to the Tundra Building (the "**Liens**").[9]

36. Pursuant to the Broadfoot Distribution Order, this Court recognized the validity of the security interest in the Applicants' assets held by Michael G. Broadfoot (the "**Broadfoot Security**"), which included a second charge mortgage on the Tundra Building.

37. The Monitor has completed its analysis of the validity of the Liens. The Applicants understand that such analysis recognizes the validity of the Liens, but values the Liens at amounts less than the Lien Holdback.

38. Pursuant to the ARIO, the claims made by creditors in respect of the Liens (the "**Lienholders"**) against the Lien Holdback are subordinate to the Interim Lender's Charge. Accordingly, the Applicants propose to pay $244,238.00 (the amount of the Lien

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[8] Sale Approval and Vesting Order (Tundra Building), **TAB D.**
[9] Broadfoot Distribution Order, **TAB E.**

Holdback) to counsel for the Interim Lender, with such amount to be held in trust until counsel is directed to release the Lien Holdback by written agreement of the Lienholders, the Interim Lender and Michael G. Broadfoot or by further Court Order.

39. The Applicants submit that this proposed distribution is cost-effective and appropriate in the circumstances, and does not prejudice the rights of any of the parties, all of whom remain at liberty to bring a further Application in respect of the Lien Holdback.

ii. Approving the Interim Distribution of the R'Ohan Holdback is appropriate

40. On June 29, 2023, this Court granted an approval and vesting Order (the "**R'Ohan SAVO**") relating to the purchase and sale of the R'ohan Shares contemplated by a Share Purchase Agreement dated June 16, 2023.

41. The Broadfoot Distribution Order authorized a distribution of 82% of the proceeds of the R'Ohan Share Sale to Michael G. Broadfoot (pursuant to the Broadfoot Security), less a holdback (the "**R'Ohan Holdback**") established by agreement between CWB and Michael G. Broadfoot.

42. Pursuant to an agreement between CWB and Michael G. Broadfoot, CWB has released any interest in the R'Ohan Holdback. Accordingly, the only interests ranking ahead of the Broadfoot Security against the R'Ohan Holdback are the Administration Charge and the Interim Financing Charge established by the ARIO.

43. To the extent that this Court approves the Additional Advance and the increase in the Interim Financing Charge, the professional fees secured by the Administration Charge will be paid in full, and the Applicants will have sufficient cash flow to cover all professional fees anticipated to be incurred to the conclusion of the stay. Accordingly, the Administration Charge is anticipated to have a zero balance at the conclusion of these proceedings.

44. The Applicants further understand that the Interim Lender is prepared to waive the Interim Financing Charge to facilitate the release of the R'Ohan Holdback to Michael G. Broadfoot.

45. The entirety of the R'Ohan Holdback, if distributed to Michael G. Broadfoot, would be insufficient to retire the Broadfoot Debt.

46. Accordingly, the Applicants propose to distribute $158,794.59, being the balance of the R'Ohan Holdback after deduction for professional fees paid pursuant to the Order granted January 24, 2024 (the "**January 24 Distribution Order**") to Michael G. Broadfoot, in accordance with the Broadfoot Distribution Order. Such proposed distribution is supported by the January 24 Distribution Order and is therefore appropriate.

iii. Establishing the Inverness Holdback and Approving the Distribution of the balance of the Inverness Holdback is appropriate

47. Pursuant to the Expedited Sale Approval and Vesting Orders obtained in respect of the Inverness Condominiums (the "**Inverness SAVO Orders**"), the following units in the Inverness Condominiums have been sold:

a. Unit 403, 12320 – 102 Street, Grande Prairie, AB ("**Unit 403**");[10]

b. Unit 415, 12320 – 102 Street, Grande Prairie, AB ("**Unit 415**");[11]

c. Unit 222, 12330 – 102 Street, Grande Prairie, AB ("**Unit 222**");[12]

d. Unit 306, 12330 – 102 Street, Grande Prairie, AB ("**Unit 306**");[13] and

e. Unit 312, 12330 – 102 Street, Grande Prairie, AB ("**Unit 312**").[14]

48. Pursuant paragraph 10 the Inverness SAVO Orders, the proceeds of such sales were distributed as follows:

a. by paying the reasonable professional fees and disbursements of legal counsel;

b. by paying the amount owing in respect of municipal property taxes and other charges ranking prior to the Mortgage held by the Bank of Montreal ("**BMO**"), if any;

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[10] Sale Approval and Vesting Order (Inverness 403), dated October 13, 2023, **TAB F.**
[11] Sale Approval and Vesting Order (Inverness 415), dated November 28, 2023, **TAB G.**
[12] Sale Approval and Vesting Order (Inverness 222), dated December 19, 2023, **TAB H.**
[13] Sale Approval and Vesting Order (Inverness 306), dated February 22, 2024, **TAB I.**
[14] Sale Approval and Vesting Order (Inverness 312), dated November 3, 2023, **TAB J.**

c. by paying arrears of condominium fees (if any) owing in respect of the Purchased Assets (as defined therein) subject to verification by the Monitor;

d. by paying Goods and Services Tax ("**GST**") payable, if any;

e. by paying the real estate commission and the GST, if any;

f. by paying to BMO any amounts owing pursuant to the First Charge Mortgage (the "**BMO Mortgage**"), subject to 1) verification by the Monitor of the indebtedness owing to BMO; and 2) the Monitor confirming that the First Charge Mortgage is valid and enforceable; and

g. by paying the remainder, if any, to the Monitor, to be held in trust until further Order of this Court.

49. The Monitor has received (or will receive) from counsel for the Applicants, total proceeds of $887,147.03 in respect of sales of the Inverness Condominiums that have closed as of the date of this Application:

a. Unit 403 - $173,050.45;

b. Unit 415 - $161,859.49;

c. Unit 222 - $170,730.66;

d. Unit 306 - $166,728.93; and

e. Unit 312 - $202,168.46.

(the "**Inverness Closed Sale Proceeds**").

50. The Applicants expect to recover an estimated $339,229.64 in additional proceeds (subject to closing adjustments) as a result of pending sales of the remainder of the Inverness Condominiums, comprised of the following:

a. Unit 112, 12330 – 102 Street, Grande Prairie, AB
and Parking Lot Units 519 and 546: $171,987.46

b. Unit 322, 12330 – 102 Street, Grande Prairie, AB and Parking Lot Units 514 and 526: $167,251.18

(the "**Inverness Pending Sale Proceeds**").

51. The Inverness Closed Sale Proceeds and the Inverness Pending Sale Proceeds are hereinafter referred to collectively as the "**Inverness Net Proceeds**".

52. As at the date of the 1st Carr Affidavit, the following registrations were listed on title to the Inverness Condominiums, which may reflect a security interest in the Inverness Condominiums subordinate to the BMO Mortgage:

a. 232 133 010 – Writ Creditor (Mara Developments Ltd.); and

b. 232 182 717 – Caveat Re: Trust Agreement (Caveator: Shane Peter Mudryk) (the "**Mudryk Caveat**").

(the "**Subordinate Registrations**").

53. The Monitor reviewed and confirmed the validity of the BMO Mortgage. The Monitor subsequently authorized distributions of the Inverness Net Proceeds against the balance owing on the BMO Mortgage. As a result, the BMO Mortgage was repaid in full. All remaining Inverness Net Proceeds were paid to the Monitor in trust, in accordance with paragraph 10(g) of the Inverness SAVO Orders.

54. The Applicants understand that the Monitor has not reviewed or commented on the validity of the Subordinate Registrations. To date, no interested party has sought a determination by this Court as to the validity of the Subordinate Registrations or entitlement to the remaining Inverness Net Proceeds.

55. In respect of the writ registered by Mara Developments Ltd., writ holders are not secured

creditors, and secured creditors take priority in a court ordered distribution.[15] The Applicants also understand that the validity of the Mudryk Caveat is disputed by the Interim Lender.

56. The Applicants take no position in respect of the validity of the Mudryk Caveat. However, the Applicants note that:

a. the Mudryk Caveat only claims an undivided one-half interest in the Inverness Condominiums; and

b. any registered interests subordinate to the First Charge Mortgage on the Inverness Condominiums would rank subordinate to the Interim Lender's Charge, due to the priority regime established by paragraph 43 of the ARIO.

57. Accordingly, the Applicants seek an Order authorizing them to distribute the remaining Inverness Net Proceeds by paying:

a. 50% of the remaining Inverness Net Proceeds to the Interim Lender; and

b. 50% of the remaining Inverness Net Proceeds (the "**Inverness Holdback**") to counsel for the Interim Lender, with the Inverness Holdback to be held in trust by counsel for the Interim Lender until counsel for the Interim Lender is directed to release the Inverness Holdback by written agreement between Shane Mudryk and the Interim Lender or by further Order of this Court (whichever shall first occur).

58. The Applicants submit that this proposed distribution is cost-effective and appropriate in the circumstances, and does not prejudice the rights of any of the parties, all of whom remain at liberty to bring a further Application in respect of the Inverness Holdback.

[15] The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA"), **TAB K** scheme of distribution applies in liquidating CCAA proceedings; see *Arrangement relatif à Bloom Lake*, 2017 QCCS 4057 at para 205-208, **TAB L**, referencing *Century Services Inc. v. Canada Attorney General)*, 2010 SCC 60 at para 47, **TAB M**. Under the BIA, secured creditors (as defined in section 2) rank first in the distribution of proceeds (s.136). Writ holders are not secured creditors within the meaning of the section 2 of the BIA: see *MNP Ltd v Canada Revenue Agency*, 2022 ABQB 320 at paras 16, 17 and 40, **TAB N.**

iv. Approving the Proposed Distribution of the Subject Proceeds is appropriate

59. As described, the Broadfoot Distribution Order recognized the validity of the Broadfoot Security, which Broadfoot Security includes a second charge mortgage on the following real properties of the Applicants which were sold since the Broadfoot Distribution Order:

a. The Ovintiv Building (as hereinafter defined);

b. The Juniper Apartments (as hereinafter defined); and

c. The Spruce Grove Lots (as hereinafter defined).

60. On January 24, 2024, this Court granted an Order (the "**Ovintiv Building SAVO**")[16] approving the sale and vesting in the Purchaser the title to property legally described as:

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

(the "**Ovintiv Building**")

61. Pursuant to paragraph 10 the Ovintiv Building SAVO, the proceeds of the sale of the Ovintiv Building were directed to be distributed as follows:

a. by paying the reasonable professional fees and disbursements of legal counsel;

b. by paying the amount owing in respect of municipal property taxes and other charges ranking prior to the Mortgage held by the Alberta Treasury Branches ("**ATB**"), if any;

c. by paying the GST payable, if any;

d. by paying the real estate commission and the GST, if any;

[16] Ovintiv Building SAVO, **TAB O.**

e. by paying to ATB any amounts owing pursuant to the First Charge Mortgage (the "**ATB Mortgage**"); and

f. by paying the remainder, if any, to the Monitor, to be held in trust until further Order of this Court.

62. The Monitor has received (or will receive) from counsel for the Applicants, total proceeds of $686,277.09 from the sale of the Ovintiv Building (the "**Ovintiv Sale Proceeds**").

63. The Broadfoot Security includes a second charge mortgage on the Ovintiv Building, the validity of which has been recognized by this Court in the Broadfoot Distribution Order.

64. On November 27, 2023, this Court granted an Order (the "**Juniper SAVO**")[17] approving the sale and vesting in the Purchaser the title to the properties legally described as:

PLAN 1936MC
BLOCK 12
LOT 18
EXCEPTING THEREOUT ALL MINES AND MINERALS

PLAN 1936MC
BLOCK 12
LOT 18
EXCEPTING THEREOUT ALL MINES AND MINERALS

PLAN 1936MC
BLOCK 12
LOT 18
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the "**Juniper Apartments**")

65. The Monitor has received (or will receive) from counsel for the Applicants, total proceeds of $161,985.04 from the sale of the Juniper Apartments, of which $66,544.06 was distributed pursuant to the January 24 Distribution Order, resulting in net remaining proceeds of $95,440.98 available for distribution (the "**Juniper Sale Proceeds**").

[17] Juniper SAVO, **TAB P.**

66. The Broadfoot Security includes a second charge mortgage on the Juniper Apartments, the validity of which has been recognized by this Court in the Broadfoot Distribution Order.

67. On January 11, 2024, this Court granted three Expedited Sale Protocol Orders approving the sale of the remaining SGIP Lots, as defined therein, including an Order approving the sale and vesting in the Purchaser the title of the property legally described as:

> PLAN 1525617
> BLOCK 4
> LOT 7
> EXCEPTING THEREOUT ALL MINES AND MINERALS
> AREA: 2.468 HECTARES (6.1 ACRES) MORE OR LESS
>
> ("**SGIP Lot 7**", collectively, the "**SGIP Lot 7 SAVO**")[18]

68. Pursuant paragraph 10 the SGIP Lot 7 SAVO, the proceeds of the sale were directed to be distributed as follows:

   a. by paying the reasonable professional fees and disbursements of legal counsel;

   b. by paying the amount owing in respect of municipal property taxes and other charges ranking prior to the Mortgage held by HMT Holdings Inc. ("**Harbour**"), if any;

   c. by paying the GST payable, if any;

   d. by paying the real estate commission and the GST, if any;

   e. by paying to Habour any amounts owing pursuant to the First Charge Mortgage (the "**Harbour Mortgage**"); and

   f. by paying the remainder, if any, to the Monitor, to be held in trust until further Order of this Court.

69. The Monitor has received (or will receive) from counsel for the Applicants total proceeds of $619,402.93 from the sale of SGIP Lot 7 (the "**SGIP Sale Proceeds**").

[18] SGIP Lot 7 SAVO, **TAB Q.**

70. The Broadfoot Security includes a second charge mortgage on the SGIP Lots, the validity of which has been recognized by this Court in the Broadfoot Distribution Order.

71. As described above, the Applicants have recovered the total amount of $1,467,665.06 in surplus proceeds in respect of the sales of the Ovintiv Building, the Juniper Apartments, and the SGIP Lots, of which $66,544.06 was distributed in accordance with the January 24 Distribution Order. The amount of $1,401,121.00 remains in trust and available for distribution (the "**Subject Sales Proceeds**").

72. The only interests ranking ahead of the Broadfoot Security against the Subject Sales Proceeds are the Administration Charge and the Interim Lender's Charge.

73. To the extent that this Court approves the Additional Advance and the increase in the Interim Financing Charge, the professional fees secured by the Administration Charge will be paid in full, and the Applicants will have sufficient cash flow to cover all professional fees anticipated to be incurred to the conclusion of the stay. Accordingly. The Administration Charge is expected to have a zero balance at the conclusion of these proceedings.

74. The Applicants further understand that the Interim Lender is prepared to waive the Interim Lender's Charge in order to facilitate the payment of the Subject Sales Proceeds to Michael G. Broadfoot.

75. The entirety of the Subject Sales Proceeds, if distributed to Michael G. Broadfoot, would be insufficient to retire the Broadfoot Debt.

76. Accordingly, the Applicants respectfully submit that an Order authorizing them to distribute the Subject Sales Proceeds to Michael G. Broadfoot, in accordance with the Broadfoot Distribution Order, is necessary and appropriate.

v. Approving the Proposed Additional Distribution of the Proceeds of the Applicants' Property is appropriate

77. The Applicants have also completed the sales of certain other real and personal property, which is not subject to the Broadfoot Security. The Applicants and the Monitor hold in

trust proceeds in the amount of $52,875.06 in respect of these sales (the "**Remaining Net Proceeds**").

78. The Remaining Net Proceeds comprise of the following:

a. Northridge 6 Proceeds:	$28,634.07
b. Proceeds of sales of GPPE personal property (less amounts paid pursuant to Jan 24 Distribution Order):	$24,240.99

79. The Northridge 6 Proceeds were the surplus proceeds paid to the Applicants pursuant to a credit bid (the "**Northridge 6 Credit Bid**") on the remaining Northridge 6 Lots by the First Charge Mortgagee, Liberty Holdings Ltd. ("**Liberty**"). Pursuant to the Expedited Sale Approval and Vesting Order obtained in respect of the Northridge 6 Credit Bid (the "**Northridge 6 SAVO**")[19], the following lots in Northridge 6 have been sold:

a. 10205-126 Ave, Grande Prairie, AB;

b. 10201-126 Ave, Grande Prairie, AB;

c. 10206-126 Ave, Grande Prairie, AB;

d. 10205-127 Ave, Grande Prairie, AB;

e. 10213-127 Ave, Grande Prairie, AB;

f. 10210-127 Ave, Grande Prairie, AB:

g. 10202-127 Ave, Grande Prairie, AB; and

h. 12515-102A Street, Grande Prairie, AB.

80. Pursuant to paragraph 10 the Northridge 6 SAVO, the proceeds of the Northridge 6 Credit Bid were directed to be distributed as follows:

a. by paying the reasonable professional fees and disbursements of legal counsel;

[19] Northridge 6 SAVO, **TAB R.**

b. by paying the amount owing in respect of municipal property taxes and other charges ranking prior to the Mortgage held by Liberty, if any;

c. by paying GST payable, if any;

d. by paying the real estate commission and the GST, if any;

e. by crediting against the amount owing to Liberty pursuant to the First Charge Mortgage (the **"Liberty Mortgage**"), subject to 1) verification by counsel for the Applicants of the amounts owing on the Liberty Mortgage; and 2) the Monitor confirming that the Liberty Mortgage is valid and enforceable; and

f. by paying the remainder, if any, to the Monitor, to be held in trust until further Order of this Court.

81. As at the date of the 1st Carr Affidavit, the following registrations were listed on title to the Northridge 6 Lots, which may reflect a security interest in the Northridge 6 Lots subordinate to the Liberty Mortgage:

a. 222 274 972 – Writ (Creditor - Mikosko Family Trust)

(the "**Subordinate Registration**").

82. In respect of the writ registered by Mikosko Family Trust, as outlined above, writ holders are not secured creditors, and secured creditors take priority in a court ordered distribution.[20]

83. The Monitor has reviewed and confirmed the validity of the Liberty Mortgage, which was repaid in full pursuant to the terms of the Northridge 6 Credit Bid and the Liberty SAVO. Surplus proceeds in the amount of $28,634.07 (the "**Liberty Credit Bid Proceeds**") were paid to the Monitor in trust, in accordance with paragraph 10 (d) of the Liberty SAVO Order.

84. The Applicants have also recovered the total amount of $27,500 from the sale of GPPE's

[20] *Supra* note 15.

personal property, of which $3,259.01 was distributed in accordance with the January 24 Distribution Order. The amount of $24,290.99 remains in trust and available for distribution. As the proceeds were recovered from the sale of personal property and not real property, there is no subject First Charge Mortgage which would take priority over the Administration Charge and the Interim Financing Charge.

85. Accordingly, all of the Remaining Net Proceeds are subject to the Administration Charge and the Interim Financing Charge established by the ARIO. To the extent that this Court approves the Additional Advance and the increase in the Interim Financing Charge, the professional fees secured by the Administration Charge will be paid in full. Accordingly, the Administration Charge is expected to have a zero balance at the conclusion of these proceedings.

86. For the foregoing reasons, the Applicants seek authorization to make an interim distribution and to pay the Remaining Net Proceeds to the Interim Lender, to be applied against the DIP Indebtedness owing to the Interim Lender.

V. REQUESTED RELIEF

87. For all of the foregoing reasons, the Carr Group respectfully requests that this Honourable Court grant the proposed Order (Extending the Stay of Proceedings, Increasing Interim Financing Charge & Authorizing Interim Distribution) in the form of the Draft Order provided to the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of April, 2024.

MLT AIKINS LLP

For:

Jeffrey M. Lee, K.C. and Mandi Deren-Dube, Counsel to the Applicants, J.W. Carr Holdings Ltd., Spruce Grove Industrial Park Inc., 272649 Alberta Ltd., 279896 Alberta Ltd., Grande Prairie Place Enterprises (1996) Inc., 11070292 Alberta Ltd., and 627612 Alberta Ltd.

VI. LIST OF AUTHORITIES

TAB	DESCRIPTION
A.	*Companies' Creditors Arrangement Act*, RSC 1985, c C-36
B.	*Re Canada North Group Inc,* 2017 ABQB 508, 51 CBR (6th) 282
C.	*9354-9186 Quebec inc. c. Callidus Capital Corp.*, 2020 SCC 10
D.	Sale Approval and Vesting Order (Tundra Building)
E.	Broadfoot Distribution Order
F.	Sale Approval and Vesting Order (Inverness 403), dated October 13, 2023
G.	Sale Approval and Vesting Order (Inverness 415), dated November 28, 2023
H.	Sale Approval and Vesting Order (Inverness 222), dated December 19, 2023
I.	Sale Approval and Vesting Order (Inverness 306), dated February 22, 2024
J.	Sale Approval and Vesting Order (Inverness 312), dated November 3, 2023
K.	The *Bankruptcy and Insolvency Act,* RSC 1985, c B-3
L.	*Arrangement relatif à Bloom Lake*, 2017 QCCS 4057
M.	*Century Services Inc. v. Canada Attorney General)*, 2010 SCC 60
N.	*MNP Ltd v Canada Revenue Agency*, 2022 ABQB 320
O.	Ovintiv Building SAVO
P.	Juniper SAVO
Q.	SGIP Lot 7 SAVO
R.	Northridge 6 SAVO