

NOV 25 2016



S1610905

NO.

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT,

R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025
CANADA INC. AND TELIPHONE DATA CENTRES INC.

PETITION TO THE COURT

THIS IS THE PETITION OF:

8640025 Canada Inc. (dba Telephone Navigata-Westel Communication Inc.) and
Telephone Data Centres Inc.
c/o Lunny Atmore LLP
900 – 900 West Hastings Street,
Vancouver, British Columbia

Let all persons whose interests may be affected by the order sought TAKE NOTICE that
the petitioner applies to court for the relief set out in this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings. YOU MUST GIVE
NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this

court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner may continue this application without further notice.

TIME FOR APPEARANCE

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere. [or, where the time for appearance has been set by order of the court, within that time.]

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

- (a) deliver to the petitioner
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is: 800 Smithe Street Vancouver, B.C. V6Z 2E1
(2) The ADDRESS FOR DELIVERY is: Lunny Atmore LLP Barristers & Solicitors 900 – 900 West Hastings Street Vancouver, B.C. V6C 1E5 Fax number for delivery (if any): (604) 684-0916
(3) The name and office address of the petitioner's solicitor is: Attention: Ritchie Clark Lunny Atmore LLP Barristers & Solicitors 900 – 900 West Hastings Street Vancouver, B.C. V6C 1E5

PART I: ORDERS SOUGHT

The Petitioners apply for an order that:

1. See **Schedule "A"** and;
2. Such further Orders in connection herewith as are necessary to implement the Petitioner's reorganization.

PART II: FACTUAL BASIS

The Petitioners will rely on:

1. At the hearing of this petition will be read the Affidavit of Sandeep Panesar sworn November 24, 2016, a copy of which is served herewith and such further and other material as counsel may advise and this Honourable Court may allow.
2. The Petitioners hereto rely on the facts as set out in the Affidavit #1 of Sandeep Panesar.

A. Background

1. 8640025 Canada Inc. ("864") is a non-dominant facilities-based telecommunications

carrier and telecommunications service provider. 864 was incorporated under the laws of Quebec on December 31, 2007 and under the name 9191-4200 Quebec Inc. On December 19, 2012, 864 changed its name to Teliphone Navigata-Westel Communication Inc. and on September 19, 2013, continued as a federal company. On March 25, 2013, 864 registered as an extraprovincial company in British Columbia. On February 16, 2016, 864 changed its name to 86400025 Canada Inc.

2. While its registered and records office as well as its head office are located in Vancouver, British Columbia, 864 services carriers, businesses, governments and residential customers across the country using its pan-Canadian infrastructure. 864 provides voice, data, Internet broadband, IT support, Cloud computing, data and collocation centres and IPTV service across Canada. 864 also provides cable television services in parts of British Columbia.

3. 864 is a Competitive Local Exchange Carrier ("CLEC") accredited by the Canadian Radio-television and Telecommunications Commission ("CRTC"). CLECs are telephone companies which compete with one or more Incumbent Local Exchange Carriers ("ILECs"). ILECs are telephone companies that operated as monopolies before the CRTC permitted the entrance of new telephone companies, CLECs, into local markets in 1998. When an ILEC offers local voice services outside of the territory of its former monopoly, it operates as a CLEC.

4. 864 owns and operates, among other things, the following infrastructure:

- a. six metropolitan data centres in Vancouver, Toronto and Calgary;
- b. four regional data centres in British Columbia in Kamloops, Kelowna, Terrace, and Prince George;
- c. 131 Points of Presence, which are telecommunication rooms in buildings, equipment racks in co-located facilities, and equipment shelters at wireless towers;
- d. voice switches in major Canadian cities, including:
 - i. a Metaswitch platform distributed switching system with a redundant switching pair in Vancouver that controls gateways in Vancouver, Calgary

and Toronto;

- ii. a Vancouver gateway which currently provides services to markets across British Columbia;
 - iii. a Calgary gateway which serves markets across Alberta; and
 - iv. a Toronto Gateway which serves Ontario and Quebec;
- e. a trans-Canada fibre optic network, including fibre in the ground in Vancouver and Toronto as well as municipal, provincial, and national connections, and connectivity to the following locations in British Columbia: Saltspirng Island, 100 Mile House, Prince George, Tumbler Ridge, Terrace, Nanaimo, Stewart, Smithers, Kelowna;
- f. 38 antenna towers and other equipment for a trans-Canada wireless backhaul network;
- g. multiple central office facilities providing voice, data, broadband Internet, IT support, cloud computing, co-location and IPTV services to carrier, business, government and residential customers; and
- h. a voice and IPTV infrastructure to provide services in 47 countries.

B. Corporate Structure

5. From December 2012 to December 31, 2013, all of the issued and outstanding shares of 864 were owned by Telephone Corp. On January 1, 2014, Telephone Corp sold all of the issued and outstanding shares of 864 to Investel Capital Corporation ("ICC"). ICC remains the sole owner of all 864 issued and outstanding shares.

6. 864 wholly owns the Canada company Telephone Data Centres Inc. ("**Telephone**") and has no other subsidiaries. On December 30, 2014, Telephone continued as a federal company from its previous jurisdiction, British Columbia.

7. Telephone's only business is to own data centre assets which are managed by 864.

8. Telephone has no revenue of its own. It is rolled-up with 864 and as such, financial statements for the two entities are integrated.

C. Cause of Difficulties and Need to Restructure

9. The principle contributing factor of 864's financial difficulties and need to restructure, is its deteriorating relationship with TELUS Communications Company ("TELUS"). TELUS is an ILEC for the provinces of British Columbia and Alberta and operates as a CLEC in the rest of Canada. It is also a mobile network operator and wireless carrier.

10. TELUS wishes to quash 864's plans to enter into the Canadian mobile network market, eliminating any potential source of competition in this particular market. TELUS has interfered with 864's activities efforts in this respect by, inter alia, filing an application for an order in bankruptcy, filing an application to lift a stay of proceedings and by threatening to cease providing certain critical services to 864. 864 applied to enjoin TELUS from disconnecting its services, but was unsuccessful. As a result of the unsuccessful application for injunctive relief, 864 filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*. This application has not yet been heard.

D. Stakeholders

Employees

11. Through agreements with two staffing agencies, 864 employs 78 people in various roles and divisions, situated across Canada. There are 46 employees in British Columbia, 2 in Alberta, 6 in Ontario, 5 in Saskatchewan and 19 in Quebec.

Unsecured Creditors

12. The unsecured creditors of 864 consist of:

- a. Bell Aliant;
- b. Bell Mobility; and
- c. Ministry of Finance, Government of Canada.

13. These debts are subordinate to the secured creditors of 864, and a restructuring is far more likely to allow these parties to see a return on their debt, as opposed to an uncontrolled liquidation or independent foreclosures.

Secured Creditors

14. The secured creditors have more than adequate security in regards to their debts, and they are unlikely to suffer a shortfall should 864 be permitted an opportunity to restructure.

Investors

15. 864's only investor is its parent company ICC. In the event this Honourable Court does not grant the orders sought herein, ICC will likely lose on its investments into 864.

Landlords

16. 864's business operations depend on certain lease arrangements, one of which is the subject of a dispute with landlords in Calgary, Alberta. A restricting will permit 864 to resolve these disputes and continue to operate within these leased premises.

Critical Suppliers

17. TELUS and SBA Canada ULC ("SBA") are critical suppliers whose services are necessary for 864 to remain an ongoing concern. Approximately 66% of 864's revenue depends on services which it can obtain exclusively from TELUS. These services include:

- a. Feature Group C Trunking – this service allows a TELUS residential subscriber in a city in British Columbia or Alberta to reach a toll free number provided by 864 to a business in British Columbia or Alberta;
- b. Feature Group D Trunking – this service allows a TELUS local line subscriber in a city in British Columbia or Alberta to use 864 as a long distance provider;
- c. SS7 Trunking – this service allows 864 central office equipment to share signalling information used to set up calls on or between any switches in the British Columbia or Alberta voice network;

- d. Bill & Keep Trunking – this service is required to operate as a CLEC in each serving area. It allows 864's subscribers to make and receive calls to and from subscribers on the TELUS network in British Columbia and Alberta;
- e. 911 Trunking – this service provides 911 service to 864's subscribers;
- f. Business Lines – these are multi-line multi-number services usually purchased by businesses. Business lines are forborne (non-regulated) services in major urban centres and are regulated elsewhere. However, even when these services are forborne and are provided by CLECs, availability of such lines for resale is very limited;
- g. Unbundled Copper Loops – these are copper wire connections without a dial tone and are used by 864 to deliver business lines and other voice and data access services;
- h. "Last mile" fibre access where TELUS is the only option, which is most of British Columbia and Alberta outside of major urban areas. Approximately 70% of commercial buildings in British Columbia and Alberta are served by TELUS only;
- i. Approximately 2% of 864's revenues derive from digital subscriber lines provided by TELUS.

18. For its part, SBA permits 864 to situate its microwave antennae on SBA transmission towers. Without access to these transmission towers, 864's microwave network will fail, leaving end-users without service.

E. Plan of Arrangement

19. Prior to seeking to restructure through CCAA, management of 864 was working on a proposal to creditors, including collecting and preparing information that would be required for such proposal. TELUS's continued attempts at hampering this proposal, including applying to lift a stay of proceedings granted under the BIA, have made it impossible for 864 to finalize a proposal to creditors thus far. It is anticipated that a plan of arrangement under the CCAA will

incorporate a number of the steps proposed previously by 864.

20. While the terms and structure will need to be finalized with the assistance of Boale, Wood & Company Ltd. as Monitor should this Honourable Court grant the orders sought herein, a proposed restructuring will likely involve:

- a. securing financing through ICC following ICC's sale of patents included in its significant patent portfolio. This portfolio includes a collection of certain types of patents, called iFrame patents, which are independently appraised at over USD \$100,000,000;
- b. securing financing through other investors who are interested in ICC's patent portfolio. These investors include Winnick & Company, Platinum Equity, and Gores Group;
- c. entering into the Canadian wireless marketplace by March 2017 following ICC's acquisition of a spectrum license.

21. Boale of Wood & Company Ltd. has consented to be appointed as Monitor in these proceedings.

PART III: LEGAL BASIS

22. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36;

23. *Supreme Court Civil Rules*, BC Reg 241/2010, as amended, and in particular Rules 2-1(2), 4-4, 8-1, 8-2, 16-1, 22-1 and 22-4 thereof; and

24. the inherent and equitable jurisdiction of this Honourable Court.

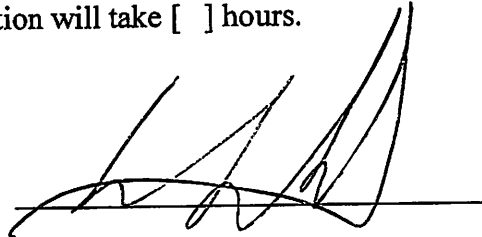
PART IV: MATERIAL TO BE RELIED ON

25. Affidavit # 1 of Sandeep Panesar sworn November [], 2016; and

26. such further and other material as counsel may advise and this Honourable Court may allow.

The petitioners estimate that the hearing of the petition will take [] hours.

Dated: November 25, 2016

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Counsel for the Petitioner

SCHEDULE "A"

NO. _____
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AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025
CANADA INC. AND TELEPHONE DATA CENTRES INC.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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THE APPLICATION of the Petitioners, coming on for hearing at Vancouver, British Columbia, on the _____ day of _____, 2016, (the "Order Date"); AND ON HEARING H.C. Ritchie Clark, Q.C., counsel for the Petitioners and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Sandeep Panesar, sworn November 24, 2016, and the consent of John McEown of Boale Wood Inc. to act as Monitor; AND UPON BEING ADVISED that secured creditors (and others) who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the

British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioner is a company to which the CCAA applies.

SUBSEQUENT HEARING DATE

2. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 9:45 a.m. on , the day of November, 2016, or such other date as this Court may order.

PLAN OF ARRANGEMENT

3. The Petitioner 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 (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), and continue to carry on its business (the "Business") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall 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 it, with liberty to retain such further Assistants as it deems

reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "Wages"); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioner which are related to the Petitioner's restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (ii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

6. Except as otherwise provided ~~herein, the~~ Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are 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, provided that any capital expenditure exceeding \$25,000 shall be approved by the Monitor;

- (b) all obligations incurred by the Petitioner after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 5(b) which may be incurred after the Order Date.

7. The Petitioner is authorized to 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 which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

8. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioner shall 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 between the Petitioner and the landlord from time to time ("Rent"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

9. Except as specifically permitted herein, the Petitioner is 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 Petitioner to any of its creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

FINANCIAL ARRANGEMENTS

10. Notwithstanding any other provision in this Order:

- (a) the Petitioner is hereby authorized and empowered to borrow, repay and reborrow from the Bank of Nova Scotia (the "Lender") such amounts from time to time as the Petitioner considers necessary, and the Lender shall be entitled, but neither obligated nor required, to revolve its operating loan facility (the "Lender Loan Facility") and collect interest, fees and costs on the Lender Loan Facility, subject to such amendments as are agreed between the Lender and the Petitioner;
- (b) the Lender Loan Facility shall be secured by the same charge (the "Lender Charge") as secured the Lender Loan Facility as at the Order Date; and
- (c) the Petitioner is authorized to deal with the Lender in respect of the Lender Loan Facility on such terms as may be negotiated and agreed upon between the Petitioner and the Lender.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioner shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$150,000 in any one transaction or \$300,000 in the aggregate; and
- (b) pursue all avenues of refinancing for its Business or Property, in whole or parts;

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

12. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's 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 and, if the landlord disputes the Petitioner's 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 who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "Relevant Enactment"), the Petitioner, in the course of these proceedings, is permitted to,

and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "Third Parties"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including December____, 2016, or such later date as this Court may order (the "Stay Period"), no action, suit or proceeding in any court or tribunal (each, a "Proceeding") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. 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") against or in respect of the Petitioner or the Monitor, or

affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs 15 and 16, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall 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 Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, 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 Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services

received after the Order Date are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner 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 Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

22. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. John McEown of Boale Wood and Company is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner 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.

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

- (a) monitor the Petitioner's receipts and disbursements;
- (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;
- (c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the DIP Lender (as hereinafter defined) and its counsel on a monthly basis of financial and other information as agreed to between the Petitioner and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than a monthly basis, or as otherwise agreed to by the DIP Lender;
- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (f) assist the Petitioner, to the extent required by the Petitioner, 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 Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its 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; and

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

27. 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 maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

28. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, 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 of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, 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 Environmental Legislation, unless it is actually in possession.

29. The Monitor shall provide any creditor of the Petitioner and the DIP Lender with information provided by the Petitioner 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 Petitioner 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 Petitioner may agree.

30. 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 rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amount[s] of \$50,000 [respectively] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court and may be heard on a summary basis.

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

DIP FINANCING

34. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from _____ (the "DIP Lender") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$2,000,000 unless permitted by further Order of this Court.

35. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioner and the DIP Lender dated as of December ____, 2016 (the "Commitment Letter"), filed.

36. The Petitioner is 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 DIP Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP 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.

37. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. Notwithstanding any other provision of this Order:

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

- (b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 10 days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the DIP Lender to the Petitioner against the obligations of the Petitioner to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP 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 Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

39. The DIP Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. The priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000);

Second – DIP Lender's Charge;

Third - Directors' Charge (to the maximum amount of \$100,000).

41. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the DIP Lender's Charge and the Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

42. Each of the Administration Charge, the DIP Lender's Charge and the Directors' Charge (all as constituted and defined herein) shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person.

43. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Director's Charge.

44. The Administration Charge, the Director's Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the charges entitled to the benefit of the Chargees (collectively, the "Chargees") and/or the DIP Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the 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; or (d) 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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) 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 Petitioner entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter or the Definitive Documents, 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.

45. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

46. The Monitor shall (i) without delay, publish in the Vancouver Sun a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (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 Petitioner of more than \$1000, 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.

47. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the

Petitioner's creditors or other interested parties at their respective addresses as last shown on the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

48. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.boalewood.ca .

49. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.boalewood.ca.

50. Notwithstanding paragraphs 47 and 49 of this Order, service of the Petition, the Notice of Hearing of Petition, the First Affidavit of Sandeep Panesarsworn the 24th day of November, 2016, this Order and any other pleadings in this proceeding (collectively, the “**Materials**”), shall be made on the federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

51. The Petitioner 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.

52. 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 Petitioner, the Business or the Property.

53. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any Federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner 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 Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

54. Each of the Petitioner 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 the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

55. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

56. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

57. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

58. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and 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.

59. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

60. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of

☐ Party ☒ Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)