

S1710393

Form 66 (Rules 16-1(2))

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

NO. _____
VANCOUVER REGISTRY

NOV 08 2017

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 *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, 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
ALL CANADIAN INVESTMENT CORPORATION**

PETITION TO THE COURT

This proceeding is brought by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to Petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or

- (d) if the time for Response has been set by order of the court, within that time.

(1)	The address of the registry is:	800 Smithe Street Vancouver, BC, V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioner is:	Christopher J. Ramsay and Katie G. Mak Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1 (Direct Number: 604.643.3176)
	Fax number address for service (if any) of the Petitioner:	604.687.6314
	E-mail address for service (if any) of the Petitioner:	N/A
(3)	The name and office address of the Petitioner's lawyer is:	Christopher J. Ramsay, and Katie G. Mak Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1 (Direct Number: 604.643.3176)

CLAIM OF THE PETITIONER

PART 1: ORDER SOUGHT

1. The Petitioner makes an application for an order substantially in the form attached as **Schedule "A"** hereto (the **"Initial Order"**), for certain relief, including, *inter alia*, the following:
 - (a) A declaration that the Petitioner is a corporation to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **"CCAA"**) applies;
 - (b) a stay of all proceedings and remedies taken or that might be taken in respect of the Petitioner or any of its property, except as otherwise set forth in the Initial Order or otherwise permitted by law;
 - (c) authorizing the Petitioner to carry on business in a manner consistent with the preservation of its property and business and to make certain payments in connection with its business proceedings therein;
 - (d) appointing Boale, Wood & Company Ltd. as monitor in these proceedings;
 - (e) authorizing the Petitioner to file with the Court a plan or plans of compromise and arrangement (the **"CCAA Plan"**); and

- (f) such further and other relief as this Honourable Court may deem necessary.

PART 2: FACTUAL BASIS

CORPORATE AND CAPITAL STRUCTURE

1. The Petitioner is a company duly incorporated under the laws of the province of British Columbia, with a registered and records office of 900-885 West Georgia St., Vancouver, B.C.
2. The Petitioner is a mortgage investment corporation ("**MIC**") which has been in business since 1998. Its business is to provide loans to owners and developers of single and multi-family residential, commercial, office and industrial real estate properties (the "**Borrowers**"), which are secured by registered, unregistered and equitable mortgages on the properties (the "**Mortgage Loans**").
3. In addition, the Petitioner also makes other loans and investments from time to time, which may include equity loans, advance loans and non-mortgage loans to its existing Borrowers for construction, development, redevelopment or renovation (the "**Other Loans**", and together with the Mortgage Loans, hereinafter referred to as the "**Loans**"). Due to the nature of the loans and/or the fact that they may be advanced prior to the Borrower completing the acquisition of properties that would be subject to the Mortgage Loans, the Other Loans may be unsecured.
4. The Petitioner's lending rates range from 6% to 12% for the Loans.
5. As of the date of this Petition, the total value of the Petitioner's portfolio of Loans (the "**Loan Portfolio**") is approximately \$37.8 million.
6. In some instances where a Mortgage Loan has been non-performing, the Petitioner has taken title to the property subject to the Mortgage Loan in satisfaction of the debt owed to the Petitioner.
7. The Petitioner's primary objective as a MIC is to provide its preferred shareholders with dividend payments. The Petitioner has two classes of shareholders: (1) common shares, and (2) preferred shares.
8. To date, the Petitioner has issued a total of four (4) common shares, held by four (4) shareholders, including to its sole director and president, Donald Bergman.
9. To date, the Petitioner has issued a total of 37,277 preferred shares and 15,647 warrants, for an aggregate capital of approximately \$37,277,000.
10. Pursuant to the Petitioner's Articles of Incorporation (the "**Articles**") and Redemption Policy, preferred shares are redeemable by the Petitioner in certain circumstances upon written notice (the "**Equity Redemption Notice**"). The Petitioner cannot redeem any preferred shares if at the time of the redemption the Petitioner is insolvent, if the redemption will render the Petitioner insolvent, or if the Petitioner is not able to generate cash reserves sufficient for the redemption.
11. From 2005 to 2014, shareholders received between 6.25% to 8% annual returns on their Preferred Shares. Dividends to shareholders were decreased to 2.75% in 2015 and to 1.0% in 2016. The Petitioner has not paid any dividends in 2017.

12. The Petitioner ceased raising capital as of January 2016. The Petitioner's most recent offering was made in 2015 pursuant to an Amended & Restated Offering Memorandum dated June 22, 2015 (the "**2015 Offering Memorandum**").

13. The Petitioner is managed by ACIC Financial Development Inc. ("**AFDI**"), which is a company incorporated under the laws of the province of British Columbia. AFDI is not a Petitioner in these CCAA proceedings. Mr. Bergman is the sole director and officer of AFDI. AFDI and the Petitioner are not subsidiaries of one another, although Donald Bergman is a director and officer of each. AFDI holds preferred shares in the Petitioner. The Petitioner does not hold any shares in AFDI.

14. As compensation for its services, AFDI receives an annual fee (the "**Management Fee**") equal to 2% of the Petitioner's assets and 15% of the Petitioner's gross annual revenues. The Management Fee is payable to AFDI on a monthly basis.

15. On occasion, AFDI provides funding by way of unsecured loans to the Petitioner when it faces shortfalls in operating funds. AFDI does not currently have a profit interest in any of the Mortgage Loans, nor does it currently receive compensation from any investment ventures involving the Petitioner. Previously, as set out in the 2015 Offering Memorandum, AFDI had an interest in a real estate joint venture with a Borrower that was financed by the Petitioner. The Petitioner's involvement ended when the loan was paid out on February 9, 2016.

FINANCIAL DIFFICULTIES AND ANTICIPATED RESTRUCTURING

16. In most cases, the Loans provided by the Petitioner do not meet conventional financing criteria for institutional lenders. Accordingly, the Loans are higher risk and therefore carry an interest rate of between 6% to 12%, which is generally higher than the interest rates charged by conventional providers of similar loans.

17. As an equity lender, the Petitioner accrues and capitalizes interest payment from Borrowers until their particular development project has been completed and sold out. The Petitioner's cash flow planning is dependent on the Borrowers completing their projects in a timely manner. The majority of the Borrowers' development activity has been in the Lower Mainland. Although the real estate market in British Columbia has been robust, the high level of development activity in the Lower Mainland has led to excessive delays in construction and development, particularly with respect to obtaining permits from the municipalities. For example, while it would have previously taken one to two years to obtain a permit, it now takes three to four years.

18. Unfortunately, the delays described above have resulted in delays on timely interest payments and payouts of the Loans. This has negatively affected the Petitioner's cash flow and its ability to meet its obligations to its creditors, including to its preferred shareholders.

19. Due to the decrease in cash flow from the Loans, the Petitioner turned to raising additional funds from investors to meet its cash flow requirements. Unfortunately, the Petitioner has been unsuccessful in that regard due to the decline in investor interest in mortgage investment corporations. Due to the strength of the real estate market in the Lower Mainland, more investors are investing in ownership where they might see higher returns than in mortgages.

20. Further, the Petitioner's ability to raise additional capital was also hindered by the sudden resignation of its auditors, BDO Canada LLP ("**BDO**"). On or about March 29, 2016, which was six (6) months after the Petitioner's year end, BDO resigned without advance warning and without

completing the Petitioner's audited financial statement for 2015 or filing the Petitioner's tax return. Due to the timing of BDO's resignation, the Petitioner was unable to retain another auditor in a timely manner. The Petitioner's endeavours to raise further capital had to cease as the Petitioner was unable to provide audited financial statements to complete an offering memorandum.

21. The Petitioner has since retained Sandyke & Company, who have completed review engagement financial statements for 2015 and 2016 and have filed the Petitioner's tax returns. Sandyke & Company have been retained to complete audited financial statements through 2017. This is expected to be completed by the end of 2017.

22. As a result of its inability to raise additional capital, the Petitioner had no choice but to borrow funds from third party financiers in order to advance loans and loan commitment obligations with the Borrowers. Such loans had high interest rates which caused further strain to the Petitioner's cash flow. At least one of these loans is in default, which has resulted in foreclosure proceedings being commenced against the Petitioner. These loans are described in further detail in subsequent sections of this Petition.

23. Historically, the Petitioner borrowed funds through the issuance of debentures (the "Debentures"). A number of these Debentures have now either matured or the holders of the Debentures have made redemption requests (the "Debenture Redemption Notices"). The Debentures are described in further detail in subsequent sections of this Petition.

24. The foregoing has resulted in a decrease in dividend payments to the preferred shareholders in 2015 and 2016. The Petitioner has not been in a position to make any dividend payments to the preferred shareholders in 2017. This has led to over 65% of the preferred shareholders sending Equity Redemption Notices.

25. To date, of the \$37,277,000 capital in preferred shares issued, the total amount of Equity Redemption Notices that have been received is approximately \$24,229,000.

26. In light of the Petitioner's inability to meet the demands from its creditors, the Petitioner requires a stay of proceedings to stabilize its operations and implement an orderly restructuring for the benefit of all of its stakeholders.

27. The Petitioner's purpose for seeking the initial order is to develop a plan of compromise or arrangement to present to its stakeholders as part of these CCAA proceedings that would involve a fair, controlled and orderly wind-down of its business operations.

28. The Petitioner believes that given a reasonable period of time to realize on its Loan Portfolio, the Loan Portfolio will have greater value to stakeholders, as opposed to an immediate "as is" liquidation of the Loan Portfolio.

29. The Petitioner's plan will likely involve a sale or partial sale of the Loan Portfolio and Real Property to pay its stakeholders.

ASSETS

Loan Portfolio

30. The Petitioner's primary asset is the Loan Portfolio. The total amount of outstanding debt owed to the Petitioner in the Loan Portfolio is approximately \$37.8 million.

31. The Mortgage Loans are secured by registered, unregistered and equitable mortgages against the property subject to the Mortgage Loan or on other property belonging to the Borrowers or related parties to the Borrowers. A number of the Mortgage Loans are also secured by general security agreements from the Borrower or parties related to the Borrower and/or unlimited guarantees from principals of the Borrower.

32. The Other Loans are unsecured loans.

Land and Other Investments

33. The Petitioner owns five (5) properties registered in its name (the "**Real Property**"), the details of which are described below.

34. In or about July 2000, the Petitioner had advanced a Mortgage Loan to a Borrower with respect to the development of residential lots in Pender Harbour, B.C. In or about August 2015, the remaining six (6) lots were transferred from the Borrower to the Petitioner as repayment for the outstanding loan of \$2.7 million owed to the Petitioner at that time. On or about April 20, 2017, the Petitioner sold one (1) of the six (6) lots for a purchase price of \$85,000.

35. The Real Property is managed by AFDI.

36. As part of these CCAA proceedings, the Petitioner plans to sell the Real Property to pay its creditors. As all of the Real Property is ideally situated to be used as recreational properties, it is expected that they will sell for higher purchase prices leading up to and in the summer months. The Petitioner believes that allowing for more time to properly market the Real Property will result in increased benefit to all stakeholders.

The Packalen Boulevard Properties

37. Three (3) of the remaining five (5) lots are ocean view and waterfront properties located on Packalen Boulevard, Pender Harbour, B.C., on PIDs 026-192-993, 026-193-001 and 026-193-019 and are hereinafter collectively referred to as the "**Packalen Boulevard Properties**".

38. As of October 13, 2017, the appraised market value of the Packalen Boulevard Properties is \$3.1 million. As per the 2017 B.C. Assessment Notice, the total assessed value of the Packalen Boulevard Properties is \$2,543,000.

39. The Packalen Boulevard Properties are subject to a first mortgage in favour of Fisgard Capital Corporation ("**Fisgard**") and a second mortgage in favour of Van Maren Financial Ltd. ("**Van Maren**"). The details with respect to these mortgages are described in subsequent sections of this Petition.

40. The three (3) lots that comprise the Packalen Boulevard Properties are currently listed for sale, for a total list price of \$3.98 million.

The Garden Bay Properties

41. The remaining two (2) of the five (5) lots owned by the Petitioner are located on or near Lee Road, Garden Bay, Pender Harbour, B.C., on PIDs 027-093-387 and 026-169-436 and are hereinafter collectively referred to as the "**Garden Bay Properties**".

42. As per the 2017 B.C. Assessment Notice, PID 027-093-387 has an assessed value of \$549,000, and PID 026-169-436 has an assessed value of \$66,200, for total assessed value for both lots of \$615,200.

43. The Garden Bay Properties are subject to a mortgage in favour of Van Maren the details of which are described in subsequent sections of this Petition.

44. PID 026-169-436 is currently listed for a price of \$99,000 and PID 027-093-387 is currently listed for a price of \$629,000, for a total list price of \$728,000.

LIABILITIES

45. As of October 31, 2017, the Petitioner has a total of approximately \$29,914,702 in claims against it as follows:

- (a) \$1,785,702 in secured claims;
- (b) approximately \$3.96 million in unsecured claims; and
- (c) \$24,229,000 in equity claims arising from the Equity Redemption Notices received from its preferred shareholders.

Secured Indebtedness

Fisgard Loan

46. As described earlier in this Petition, as a result of the Petitioner's inability to raise additional capital, the Petitioner borrowed funds from Fisgard in order to advance loans and continue with its loan commitment obligations to the Borrowers.

47. Pursuant to a commitment letter dated October 21, 2015, as extended by letter dated December 19, 2016, between the Petitioner, as borrower, and Fisgard as lender, Fisgard agreed to lend to the Petitioner the total sum of \$1,250,000 (the "**Fisgard Loan**"). The Fisgard Loan has an interest rate of 8.5% per annum calculated daily, compounded monthly.

48. The Fisgard Loan is secured by a mortgage registered against the Packalen Boulevard Properties and a general security agreement between the Petitioner and Fisgard.

49. The Fisgard Loan matured on June 15, 2017. As of September 30, 2017, the outstanding indebtedness to Fisgard pursuant to the Fisgard Loan is \$1,285,702.

50. On August 4, 2017, Fisgard commenced foreclosure proceedings seeking to enforce its security against the Petitioner pursuant to the mortgage and the general security agreement. Fisgard has registered a certificate of pending litigation against the Packalen Boulevard Properties and crystalized floating charges against the Garden Bay Properties and six (6) properties on which the Petitioner holds registered mortgages pursuant to the Loan Portfolio.

51. As of the date of filing of this Petition, Fisgard has not yet obtained an Order Nisi.

Van Maren Loans

52. To meet its commitments to the Borrowers, the Petitioner required funds in addition to the Fisgard Loan. Pursuant to a loan agreement dated August 22, 2016, Van Maren agreed to lend to the Petitioner the total sum of \$3,500,000 (the "**First Van Maren Loan**"). The First Van Maren Loan had an interest rate of 3% per month, paid monthly.

53. The First Van Maren Loan was secured by, *inter alia*, second mortgages on the Real Property and a general security agreement in favour of Van Maren from the Petitioner.

54. The Petitioner paid out the First Van Maren Loan on September 20, 2017 using the proceeds of sale from a payout of a Loan from a Borrower. This has resulted in a reduction in the interest burn of the Petitioner but has contributed to further stress to the Petitioner's ability to meet its current obligations to its stakeholders.

55. Pursuant to a further loan agreement with Van Maren dated October 11, 2017, Van Maren advanced \$500,000 to the Petitioner (the "**Second Van Maren Loan**"), which funds were used by the Petitioner to meet its commitment to a Borrower. The funds advanced under the Second Van Maren Loan is secured by, *inter alia*, Van Maren's second mortgages on the Real Property and a general security agreement.

Unsecured Indebtedness

Hancock Loan

56. Pursuant to the terms of a promissory note dated January 30, 2013, the Petitioner is indebted to James Hancock in the principal amount of \$1,000,000 (the "**Hancock Loan**"). The Hancock Loan is unsecured.

57. The Hancock Loan matured on May 1, 2013 and interest on the Hancock Loan is payable at the rate of 6% per annum. As of October 31, 2017, the principal balance of \$1,015,123.29 is outstanding on the Hancock Loan.

AFDI Loan

58. Since 2012, the Petitioner has borrowed funds from AFDI when the Petitioner has faced shortfalls in operating funds, including for the payment of property taxes on the property owned by the Petitioner and with respect to legal fees relating to the Petitioner's shareholder matters. These loans do not accrue interest. As of October 31, 2017, the Petitioner is indebted to AFDI in the total of approximately \$459,265.

ACIC CJ Properties Ltd.

59. Since 2015, the Petitioner has borrowed funds from ACIC CJ Properties Ltd. ("CJ Properties") to meet the Petitioner's operating shortfalls. CJ Properties and the Petitioner are not subsidiaries of one another. Mr. Bergman is the sole shareholder of CJ Properties. These loans do not accrue interest. As of October 31, 2017, the Petitioner is indebted to CJ Properties in the total of \$24,000.

Debentures

60. The Petitioner has issued Series A Debentures and Series B Debentures to borrow funds in order to advance loans and loan commitment obligations to Borrowers. Interest on the debentures are due monthly. As of October 31, 2017, the total debt from the Debentures is \$2,350,000, with a total of approximately \$60,000 outstanding in accrued interest as follows:

- (a) Four (4) outstanding Series A Debentures for a total amount of \$950,000. A Series A Debenture has an 8% per annum yield, with maturity dates ranging from May 2017 to May 2018. There is a total of approximately \$28,666.05 owing in interest on the Series A Debentures. With respect to the Series A Debentures, a total of two (2) Debenture Redemption Notices have been received for a total redemption amount of \$180,000; and
- (b) Nine (9) outstanding Series B Debentures for a total amount of \$1.4 million. A Series B Debenture has a 7% or 8% per annum yield, with maturity dates ranging from November 2015 to November 2017. There is a total of \$37,333.32 owing in interest on the Series B Debentures. With respect to the Series B Debentures, a total of five (5) Debenture Redemption Notices have been received for a total redemption amount of \$785,000.

Other Unsecured Creditors

61. As of October 31, 2017, the Petitioner has a total amount of approximately \$32,272.83 outstanding to other creditors not described above.

Property Taxes

62. There is an outstanding amount of \$11,705.92 owing on account of property taxes in relation to the Packalen Boulevard Properties.

Shareholders

63. As described in previous sections of this Petition, as of October 31, 2017, the Petitioner has issued a total of 37,277 preferred shares and 15,647 warrants, for total capital of approximately \$37,277,000.

64. As of the date of this Petition, there have been three (3) actions commenced in the British Columbia Supreme Court by preferred shareholders against the Petitioner and others, including AFDI, Mr. Bergman and Wayne Blair (an officer of the Petitioner) with respect to their shares and Equity Redemption Notices. To date, the claims against the Petitioner pursuant to these actions are in the total amount of approximately \$1,425,000.

Canada Revenue Agency

65. As of the date of this Petition, there are no known amounts owing to Canada Revenue Agency with respect to GST and source deductions.

APPOINTMENT OF MONITOR AND CHARGES

66. Boale, Wood & Company Ltd. has consented to be appointed monitor in these CCAA proceedings (the "**Monitor**").

67. It is contemplated that the proposed Monitor, counsel to the proposed Monitor and counsel to the Petitioner would be granted a first priority Court-ordered charge on the assets, property and undertaking of the Petitioner in priority to all claims up to the maximum amount of \$250,000 in respect of their respective fees and disbursements, incurred at standard rates and charges (the "**Administration Charge**").

68. The nature of the Petitioner's business and operations requires the expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to complete a successful restructuring.

69. Mr. Bergman is the sole director and president of the Petitioner and Mr. Blair is an officer (secretary). During the CCAA proceeding, both Mr. Bergman and Mr. Blair will continue in the day-to-day operations of the Petitioner's business and will remain on the company's books and records as a director and officers. Both individuals have specialized knowledge and relationships with the stakeholders and Borrowers.

70. Currently, there is no director and officer liability insurance in place. The proposed Initial Order provides for a charge on the assets of the Petitioners ranking behind the Administration Charge but in priority to all other claims as security for the Petitioner's indemnification obligations for the potential obligations and liabilities the director and officers may incur during the pendency of these CCAA proceedings.

71. In consideration of the extent of the Petitioner's business and liabilities, a directors and officer's charge in the amount of \$50,000 is proposed, over all of the Petitioner's assets, property and undertaking (the "**Directors' Charge**").

PART 3: LEGAL BASIS

1. The Petitioner relies upon the CCAA, and the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "**BCA**"), the *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended, and the inherent jurisdiction of this Honourable Court.

2. The Petitioner is seeking protection under the CCAA as it is insolvent and would like to effect an orderly restructuring for the benefit of its stakeholders. It is contemplated that such a restructuring will involve an orderly wind-down of the Petitioner's operations and presentation of a plan of compromise and arrangement to its creditors.

3. The CCAA applies to a "debtor company" where the total of claims against the debtor exceeds \$5,000,000. Pursuant to section 2 of the CCAA, a "debtor company" means, *inter alia*, a company that is insolvent.

4. Whether a company is insolvent for the purposes of this CCAA involves a consideration of the definition of "insolvent person" under the *Bankruptcy and Insolvency Act* (the "BIA"), which defines "insolvent person" as, *inter alia*, a person whose liabilities to creditors provable as claims under the BIA, who is for any reason unable to meet his obligations as they generally become due, or who has ceased paying his current obligations in the ordinary course of business as they generally become due.

5. At this time, the Petitioner is unable to meet its obligations to its creditors. The Petitioner is therefore insolvent and is a debtor company to which the CCAA applies.

6. As of October 31, 2017, the Petitioner has a total of approximately \$29,914,702 in claims against it as follows:

- (a) \$1,785,702 in secured claims;
- (b) approximately \$3.96 million in unsecured claims; and
- (c) \$24,229,000 in equity claims arising from the Equity Redemption Notices received from its preferred shareholders.

7. Pursuant to section 11.02 of the CCAA, this Honourable Court may, on an initial application in respect of a debtor company, grant a stay if the applicant satisfies the Court that circumstances exist that make the order appropriate.

8. The CCAA can be used for an orderly wind-down of a company.

Re Target Canada Co., 2015 ONAC 303 (Ont. S.C.J.)

9. Further, the CCAA has been utilized to restructure mortgage investment corporations where the primary debt has been equity claims, as was the case in the CCAA proceedings of *CMIC Mortgage Investment Corporation*.

See In the Matter of CMIC Mortgage Investment Corporation,
BCSC No. S-151241, Petition filed February 13, 2015 and
Initial Order granted February 13, 2015

10. In accordance with section 6(8) of the CCAA, any plan that the Petitioner may propose will provide that all claims that are not equity claims will be paid in full before the equity claims are to be paid. The Petitioner is not attempting to affect the priority of payment to the Petitioner's other creditors who are not preferred shareholders.

11. The Petitioner's only secured creditors, Fisgard and Van Maren, are fully secured for the amounts owing to them, by their mortgages on the Real Property and their general security agreements. Further, the Petitioner believes that it has sufficient assets to meet its obligations to its unsecured creditors. The only stakeholders that will ultimately be affected by the restructuring will be the preferred shareholders.

12. The order for a stay under the Initial Order is appropriate in the circumstances. The controlled wind-down of the Petitioner's business will allow it to provide more value to its stakeholders, particularly the preferred shareholders, than an immediate "as is" liquidation which will destroy value.

13. Pursuant to section 11 of the CCAA, this Honourable Court may make any order that it considers appropriate in the circumstances with or without notice to any person as this Honourable Court may see fit.

14. Pursuant to section 11.51 of the CCAA, the debtor company may apply, on notice to the secured creditors who are likely to be affected by the security or charge, for an order 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 any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of CCAA proceedings. The court may order that the Directors' Charge rank in priority over the claim of any secured creditor.

15. Pursuant to section 11.52 of the CCAA, on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of the monitor, including the fees of the monitor's legal advisors, and the company's legal counsel. The court may order that the Administration Charge rank in priority over the claim of any secured creditor.

16. The only parties to be potentially affected by the charges sought in the proposed Initial Order are the secured creditors, Fisgard and Van Maren. Given that the total amount of their secured claims is approximately \$1,785,702, which are secured against the Petitioner's assets which have a value that exceeds the amount of the secured claims, it is unlikely that the secured creditors will be affected by the charges. Per the 2017 B.C. Assessment Notices, the total assessed value for the Real Property is approximately \$3,158,200. Fisgard and Van Maren are further secured by the additional security they have taken, including but not limited to, the amounts owing to the Petitioner pursuant to the Loans.

17. Both the Administration Charge and the Directors' Charge are appropriate in the circumstances and will ensure the continued engagement of the advisors, directors and officers needed to achieve the orderly wind-down and restructuring for the benefit of the stakeholders.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Donald Bergman, made November 7, 2017.
2. Such further and other material as counsel may advise and this Honourable Court may allow.

The Petitioner estimate that the hearing of the Petition will take 1 hour.

Date: November 7, 2017.



Signature of Lawyer for Petitioner
Lawyer: Katie G. Mak

This PETITION TO THE COURT is prepared by Katie G. Mak of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3105, Fax #: 604.687.6314, Email: KMak@cwilson.com) (File #: 45211-0001).

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this
Petition

☐ with the following variations and additional terms:

Date: _____
[dd/mmm/yyyy]

Signature of ☐ Judge ☐ Master

Schedule "A"

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 *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, 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
ALL CANADIAN INVESTMENT CORPORATION

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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_____/ Nov/2017

THE APPLICATION of the Petitioner coming on for hearing without notice at Vancouver, British Columbia, on the ____ day of November, 2017 (the "Order Date"); AND ON HEARING Christopher J. Ramsay and Katie G. Mak, counsel for the Petitioner and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Donald Bergman sworn November ___, 2017 and the consent of Boale, Wood & Company Ltd. to act as Monitor; AND UPON BEING ADVISED that the [secured creditors] 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 14 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at [REDACTED] .m. on [REDACTED], the [REDACTED] day of December 2017 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:

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- (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 \$50,000 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.

RESTRUCTURING

10. Subject to such requirements as are imposed by the CCAA, 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 \$100,000 in any one transaction or \$300,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

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

11. 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.

12. 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.

13. 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

14. Until and including December ____, 2017, 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.

15. 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.

16. Nothing in this Order, including paragraphs 14 and 15, 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

17. 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

18. 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

19. 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

20. 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

21. 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.

22. 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 \$50,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

23. 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 21 of this Order.

APPOINTMENT OF MONITOR

24. Boale, Wood & Company Ltd. 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.

25. 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) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (d) 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;
- (e) 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;
- (f) 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
- (g) perform such other duties as are required by this Order or by this Court from time to time.

26. 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.

27. 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.

28. The Monitor shall provide any creditor of the Petitioner 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.

29. 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

30. 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 and counsel to the Petitioner, retainers in the amounts of \$50,000 to each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. 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 who may determine the manner in which such accounts

are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

32. 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 33 and 35 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. The priorities of the Administration Charge and the Directors' Charge, as among them, shall be as follows:

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

Second – Directors' Charge (to the maximum amount of \$50,000).

34. Any security documentation evidencing, or the filing, registration or perfection of, the Administration 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.

35. Each of the Charges 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, save and except those claims contemplated by section 11.8(8) of the CCAA.

36. 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, and the beneficiaries of the Administration Charge and the Directors' Charge.

37. The Administration Charge and the Directors' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") 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; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, 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) the creation of the Charges shall not 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 the creation of the Charges; and
- (c) the payments made by the Petitioner pursuant to this Order 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.

38. 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

39. 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, except for the names, addresses and amount of claims of the Petitioner's preferred shareholders, 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.

40. 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.

41. 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: [INSERT WEBSITE ADDRESS].

42. 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: [INSERT WEBSITE ADDRESS].

43. Notwithstanding paragraphs 40 and 42 of this Order, service of the Petition,, any affidavits filed in support of the Petition and this Order 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

44. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

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

53. 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

Christopher J. Ramsay / Katie G. Mak

BY THE COURT

REGISTRAR

Schedule "A"
