

Clerk



COURT FILE NUMBER 24-2806171

COURT COURT OF QUEEN'S BENCH OF ALBERTA

IN THE MATTER OF THE BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC.

JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT **AFFIDAVIT OF BANKRUPTCY TRUSTEE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
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File Number: 1231987

AFFIDAVIT OF VICTOR P. KROEGER
Sworn August 4, 2022

I, Victor P. Kroeger, of the City of Calgary, in the Province of Alberta, Licensed Insolvency Trustee, **SWEAR AND SAY THAT:**

1. I am a Senior Vice President of MNP Ltd. (“**MNP**”). MNP has been appointed the trustee in bankruptcy (the “**Trustee**”) of Eco-Industrial Business Park Inc. (“**Eco**”) in Court No. 24-2806171 (the “**Bankruptcy Proceedings**”). I have held this position with MNP since June 2012. Prior to my role at MNP, I worked in various financial advisory, insolvency, turnaround and restructuring roles with three other accounting firms from 1978 until 2012. I am a Chartered Professional Accountant and hold a Bachelor of Commerce (Hons.) degree from the University of

Manitoba. I also hold a Chartered Insolvency and Restructuring Professional designation, am a Licensed Insolvency Trustee and a Certified Fraud Examiner.

2. Prior to the commencement of the Bankruptcy Proceedings, MNP was appointed as:

- (a) interim monitor of Eco (in such capacity, the “**Interim Monitor**”) in accordance with the Order of the Honourable Associate Chief Justice K.G. Nielsen, granted April 2, 2020 with authority to monitor the business and operations of Eco and other related entities (the “**Interim Monitor Order**”); and
- (b) receiver of all current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Eco and other related entities (in such capacity, the “**Receiver**”) pursuant to the Order of the Honourable Justice N.J. Whitling, granted November 4, 2021 (the “**Receivership Order**”).

Copies of the Interim Monitor Order and the Receivership Order are attached hereto as **Exhibits “A”** and **“B”**, respectively.

3. At all times, I was responsible for, and oversaw, MNP’s mandate as Interim Monitor, Receiver and, more recently, Trustee. As such, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case, I verily believe the same to be true.

4. I make this Affidavit in support of an application by the Trustee for an order declaring that two Assignment and Assumption Agreements, dated December 1, 2019 (the “**Assignment Agreements**”) between Eco and a related company to Eco, Symmetry Asset Management Inc. (“**Symmetry**”) are void as against the Trustee: (a) as a transfer at undervalue pursuant to section

96(1)(b)(ii) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”); (b) in the alternative, as a fraudulent transfer pursuant to the *Fraudulent Preferences Act*, RSA 2000, c F-24 (the “**FPA**”); or (c) in the further alternative, pursuant to the *Fraudulent Conveyances Statute*, 13 Eliz 1, Chapter 5 (UK) (the “**Statute of Elizabeth**”). As discussed below, the Assignment Agreements wrongfully diverted claims seeking damages of \$100 million from Eco’s estate for the self-interested and improper gain of Symmetry, and, in turn, the ultimate shareholder of both Eco and Symmetry – the Dan White Family Trust. Such improper diversion of property from the Eco estate has caused losses and harm to the general body of creditors and the stakeholders of Eco.

5. I am authorized to swear this Affidavit on behalf of the Trustee. The Trustee has been authorized to initiate this Application and swear this Affidavit by the Inspector of Eco’s estate.

6. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

The Parties

7. MNP is a licensed insolvency trustee and was appointed as Trustee of Eco’s bankruptcy estate. MNP’s appointment as Trustee was affirmed by unanimous motion of creditors present and able to vote at the first meeting of creditors on March 9, 2022.

8. I have reviewed the corporate searches attached as **Exhibit “C”** hereto and understand that:

- (a) Eco is a corporation formed under the laws of the Province of Alberta with a registered office in Edmonton, Alberta. Mr. Dan White (“**White**”) is the sole director of Eco and 1468527 Alberta Ltd. (“**146 Co.**”) is the sole shareholder;

- (b) Symmetry is a corporation formed under the laws of the Province of Alberta with a registered office in Edmonton, Alberta. Similar to Eco, White is the sole director of Symmetry and the 146 Co. is the sole shareholder;
- (c) 146 Co. is a corporation formed under the laws of the Province of Alberta with a registered office in Edmonton, Alberta. White is the sole director of the 146 Co. The sole shareholder of 146 Co. is the Dan White Family Trust.

MNP's Difficulties Obtaining Information

9. As discussed further throughout this Affidavit, much of the information the Trustee has about the business, affairs and finances of Eco is from various affidavits sworn by a representative of Romspen Investment Corporation, the manager and administrative agent for Romspen Mortgage Limited Partnership (together, "**Romspen**"), in Alberta Court of Queen's Bench Action No. 2003-06728 (the "**Interim Monitor Action**"). While MNP was appointed as Interim Monitor in the Interim Monitor Action specifically to "monitor the business and operations of the corporate Respondents" (which included Eco) and was granted, among other things, "access to all business records of the corporate Respondents", very little information was ever provided to MNP by White or other representatives of Eco (or the other corporate respondents).

10. The information that was provided to MNP, including the status of all information requests made by MNP, is detailed in three reports delivered by MNP pursuant to the Interim Monitor Order, copies of which are attached hereto without schedules as **Exhibits "D" to "F"** (the "**Interim Monitor Reports**"). I will refer to the information contained in the three Interim Monitor Reports throughout this affidavit.

11. I will also refer throughout this affidavit to the affidavit sworn by Rompsen's representative, Mr. Wesley Roitman, dated July 29, 2022 (the "**Roitman Affidavit**"). A copy of the Roitman Affidavit (without exhibits) is attached hereto as **Exhibit "G"**. The Roitman Affidavit summarizes and compiles much of the information previously filed by Rompsen in the Interim Monitor Action and the receivership proceeding. For simplicity and ease of reference, I refer only to the Roitman Affidavit, notwithstanding that much of the information contained therein is also included in affidavits previously sworn by Mr. Roitman on March 30, 2020, April 17, 2020, June 15, 2020 and June 19, 2021 in the Interim Monitor Action and the receivership proceeding.

12. The difficulties experienced by MNP accessing information as Interim Monitor have continued since its appointment as Receiver and subsequently as Trustee. As discussed further in the First Report of the Receiver, dated January 31, 2022 (the "**First Receiver's Report**"), notwithstanding numerous requests by MNP to White for copies of Eco's (and the other debtor companies') books and records in accordance with the requirements of the Receivership Order, White failed to respond to any of the Receiver's requests. Accordingly, by Order dated March 3, 2022, the Honourable Justice Feth (the "**Feth Order**") ordered the following:

Daniel Alexander White ("**Mr. White**") is hereby Ordered to comply with his disclosure obligations as set out in paragraphs 6 to 7 of the Receivership Order by not later than 14 days after the granting of this Order, including but not limited to: (a) advising the Receiver of the existence of any non-privileged Records (As that term is defined in the Receivership Order) in his possession or control related to the business or affairs of any of the Companies; (b) providing same to the Receiver or permitting the Receiver to make, retain and take away copies thereof; and (c) confirming the existence of any Records of the Companies that are held by a third party;

13. To date, White has not provided any records to the Receiver, nor has he confirmed the existence of any non-privileged records in his possession or control or in the possession or control of any third parties. At the hearing of the Receiver's application on February 8, 2022, White represented to the Court that he did not have any records related to the business or affairs of Eco

(or the other debtor corporations) in his possession of control. While the relief sought by the Receiver for the production of books and records was adjourned to March 3, 2022 at White's request (on the basis that White was in the process of engaging new counsel), neither White nor his counsel appeared at the subsequent hearing and Justice Feth granted the above noted relief in his absence.

14. In light of the foregoing, throughout this affidavit, I refer to the best information that the Trustee has in its possession regarding the Assignment Agreements and the insolvency of Eco as at the date the Assignment Agreements were made. However, in many cases, such information is incomplete or fragmented based on the failure or refusal of White and Eco to provide requested information to MNP since its appointment as Interim Monitor on April 2, 2020, and continuing to this day.

Eco's Business and Insolvency

15. Eco is the registered owner of various properties in Edmonton, Alberta (the "**Eco Lands**"), as well as the licensee of two disposal wells, a disposal facility, and certain physical assets and equipment located on the Eco Lands.

16. From my review of the Roitman Affidavit, and based on my understanding of the business and affairs of Eco and the other related entities subject to the Receivership Order, I understand that:

- (a) on April 27, 2018, Romspen, as lender, and 3443 Zen Garden Limited Partnership ("**Zen Garden**"), as borrower, entered into a loan agreement dated April 27, 2018 (the "**Loan Agreement**");

- (b) pursuant to the Loan Agreement, Romspen agreed to advance a loan in the maximum principal amount of US\$125 million to Zen Garden for the purpose of assisting Zen Garden to develop a corporate campus in Austin, Texas;
- (c) as security for Zen Garden's indebtedness under the Loan Agreement, Eco granted to Romspen (i) a mortgage in the sum of US\$40 million (the "**Eco Mortgage**"), (ii) a guarantee, dated April 17, 2018 (the "**Eco Guarantee**") guaranteeing the repayment by Zen Garden of all amounts advanced by Romspen under the Loan Agreement and the due performance and observance of all covenants, obligations, conditions, stipulations and provisos of Zen Garden and every guarantor or other person contained in all security granted to Romspen in respect of Zen Garden's indebtedness under the Loan Agreement, and (iii) an Assignment of Leases and Rents and a General Security Agreement (together with the Eco Mortgage and Eco Guarantee, the "**Eco Security**");
- (d) the Eco Mortgage provided that a default by Zen Garden under the Loan Agreement constituted a cross-default of Eco under the Eco Mortgage, thereby resulting in the whole of the unpaid principal balance advanced under the Loan Agreement and all accrued interest becoming immediately due and payable and entitling Romspen to exercise all rights and remedies under the Eco Mortgage against Eco;
- (e) the Eco Mortgage also required that Eco "pay when and as same falls due, taxes, rates, liens, charges, encumbrances or claims (hereinafter sometimes referred to as "taxes") which are or may be or become charges or claims against the mortgages premises, on or in respect of this mortgage" and provided that "the Mortgagee may deem this Mortgage to be in default in the event that the Mortgagor does or becomes

subject to any of the following which is deemed to be an Event of Default: ... (ii) the Mortgagor fails to make any other payment required to be made under the Mortgage”; and

- (f) the Eco Guarantee provided that if default occurs under the Loan Agreement or any one or more of the security documents granted in favour of Romspen, Romspen was entitled, in its sole discretion, to proceed against Eco without any demand for payment being made.

Copies of the Eco Security are attached hereto as **Exhibits “H” to “J”**.

17. From my review of the Roitman Affidavit and based on my understanding of the business and affairs of Eco and the other related entities subject to the Receivership Order, I understand that:

- (a) on October 11, 2019, Romspen demanded that Zen Garden and Eco, among others, repay all amounts due and owing under the Loan Agreement and, with respect to Eco, under the Eco Security and the Eco Guarantee, and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA, a copy of which is attached hereto as **Exhibit “K”** (the “**Demands**”);
- (b) at the time the Demands were issued, Zen Garden, Eco and the other guarantors were indebted to Romspen in the amount of US\$87.9 million, together with interest accruing at a rate of approximately US\$29,000 per diem;
- (c) on October 11 and 23, 2019, U.S. counsel for Romspen also issued Declarations of Default and Notice of Acceleration to Eco, among others, with respect to all

amounts due and owing under the Loan Agreement, copies of which are attached hereto as **Exhibit “L”**;

- (d) in November 2019, White executed a Consent Receivership Order in Texas (the **“Standstill Agreement”**);
- (e) on March 22, 2020, Zen Garden was petitioned into involuntary bankruptcy in the United States Bankruptcy Court for the Western District of Texas (the **“U.S. Bankruptcy Court”**). A copy of the Notice of Involuntary Bankruptcy is attached hereto as **Exhibit “M”**;
- (f) on June 19, 2020, the U.S. Bankruptcy Court granted an order (the **“Financing Order”**) which, among other things, determined that Romspen was “the due and lawful owner and holder of an allowed claim under the Loan Documents against the Debtor [Zen Garden] in the amount not less than [US]\$96,495,021.72, as of the Petition Date, plus all other costs, fees and obligations owing, including, without limitation, all costs and expenses of administration, collection and enforcement incurred by Lender prior to the Petition Date”. A copy of the Financing Order is attached hereto as **Exhibit “N”**; and
- (g) as of July 21, 2022, the amount owing by Eco pursuant to the Eco Mortgage and the Eco Guarantee was US\$91.4 million, with interest accruing at the rate of US\$37,133.11 per diem.

18. I understand that Romspen has served the Roitman Affidavit in support of an anticipated application to be heard by the Honourable Mr. Justice Feth on September 21-22, 2022 seeking,

among other things, a declaration regarding the amounts owing by Eco (and the other debtor companies) to Romspen in the receivership proceeding.

19. In addition to the cross-defaults occurring under the Eco Mortgage and Eco Guarantees as a result of Zen Garden's payment defaults under the Loan Agreement, and Romspen's subsequent enforcement efforts against Zen Garden and Eco (among others), in 2019, Eco was also independently in breach of the Eco Mortgage (separate and apart from any default from Zen Garden under the Loan Agreement) for failing to pay outstanding property taxes for 2019 of approximately \$383,387. Copies of the tax statements dated June 14, 2020 and November 24, 2021 in respect of the Eco Lands are attached hereto as **Exhibit "O"**.

20. By November 2020, Eco's unpaid property taxes totalled in excess of \$1.385 million, increasing to more than \$2 million by October 2021. On October 5, 2021, the City of Edmonton issued a Notification of Public Auction to Romspen advising that the Eco Lands were to be sold at public auction on November 25, 2021 unless all unpaid property tax arrears were brought current prior to that date. Copies of the tax statements, dated November 10, 2020 and October 18, 2021 are attached hereto as **Exhibits "P"** and **"Q"**. Copies of the Notifications of Public Auction dated October 5, 2021 are attached hereto as **Exhibit "R"**.

21. Notwithstanding that by October 2019: (a) Eco was indebted to Romspen under the Eco Guarantee in the amount of approximately US\$87.9 million, (b) Romspen had issued a Notice of Intention to enforce the Romspen Mortgage (in Canada) and Declarations of Default and Notice of Acceleration to Eco (in the United States), and (c) Eco was independently in breach of the Eco Mortgage for failing to pay more than \$383,387 in property taxes due and owing for 2019, on or

about December 1, 2019¹, Eco purported to execute two Assignment and Assumption Agreements in favour of Symmetry assigning all right, title and interest in the ADT Action and the Dentons Claim (each as defined and discussed further below) to Symmetry (the “**Assignment Agreements**”). Attached as **Exhibit “S”** are copies of the Assignment Agreements.

22. The Receiver/Trustee became aware of the Assignment Agreements on November 8, 2021 upon being provided with copies of the Assignment Agreements by Eco’s (then) counsel. Eco’s counsel at the time subsequently advised the Receiver/Trustee that “[w]e were not involved in its [the Assignment Agreements] preparation or negotiation and do not have any comment on it.” Attached as **Exhibit “T”** is a copy of the correspondence between counsel for Eco and counsel for the Receiver.

Assignment Agreements

23. Pursuant to the Assignment Agreements, Eco purported to assign all right, title and interest in:

- (a) a litigation against Alberta Diluent Terminal Ltd. (“**ADT**”) in Alberta Court of Queen’s Bench Action No. 1303-16983 (the “**ADT Action**”) to Symmetry. While the Assignment Agreement defines the ADT Action as “Alberta Court File Number 78867”, it appears such number is, in fact, a reference to the file number assigned to the matter by Eco’s (former) counsel. The only action filed by Eco against ADT

¹ The Trustee has no information regarding the date(s) that the Assignment Agreements were executed by Eco and Symmetry, other than the date noted on the front page of each Assignment Agreement - December 1, 2019. The Trustee has no information whether the Assignment Agreements were, in fact, executed on this date or sometime later.

of which the Trustee is aware is Alberta Court of Queen's Bench Action No. 1303-16983; and

- (b) a "lawsuit against Dentons" to Symmetry. Counsel for Eco advised counsel for the Trustee that no such lawsuit exists and that a standstill agreement has, in fact, been put in place with Dentons Canada LLP ("**Dentons**" and the claims subject to the standstill agreement, the "**Dentons Claim**"). A copy of the Standstill Agreement is attached hereto as **Exhibit "U"**.

24. It appears from reviewing the documents that White signed the Assignment Agreements on behalf of both Eco and Symmetry.

25. The Assignment Agreements relate to: (a) claim by Eco against ADT relating to the sale of lands by Eco to ADT in 2008 and 2013 that resulted in a legal dispute between the parties regarding rail access through the lands acquired by ADT to the remaining Eco Lands, and (b) a potential negligence claim against Dentons (who had acted as counsel on behalf of Eco in respect of this sale transaction). Eco has claimed \$100 million against ADT in the ADT Action. A copy of the Amended Statement of Claim in ADT Action is attached hereto as **Exhibit "V"**.

26. Each of the Assignment Agreements state the following:

D. From the filing date of the Court Action, Symmetry has managed the legal action for Eco by supplying services and paying costs including legal fees;

E. Eco has relied on Symmetry for these services but has been unable to pay for those services or costs. As a partial offset Eco is willing to assign the Lawsuit referenced above to Symmetry. Symmetry is willing to accept partial offset from Eco for the Lawsuit referenced above and the assumption thereof.

27. The Trustee's information regarding the purported provision of services by Symmetry to Eco is as follows:

- (a) in its position as Interim Monitor, MNP was advised by Eco management that Symmetry was set up to manage the asset portfolio of each of Eco and various other related companies, including Absolute Environmental Waste Management Inc. (“**AEWM**”);
- (b) as Interim Monitor, MNP requested copies of all asset management agreements between Symmetry, Eco and the other related companies;
- (c) notwithstanding MNP’s various requests, the only document that was provided was an unexecuted copy of an asset management agreement between Symmetry and AEWM (the “**AEWM Asset Management Agreement**”), a copy of which is attached hereto as **Exhibit “W”**;
- (d) MNP reviewed the terms of the unexecuted AEWM Asset Management Agreement and compared those terms against available transaction ledgers in respect to amounts due by AEWM to Symmetry and available income statements for the month of August 2020 through January 2021 and confirmed that:
 - (i) during the above noted period, AEWM transferred \$334,500 to Symmetry;
 - (ii) based on the terms of the AEWM Asset Management Agreement, the amount of fees which should have been transferred by AEWM to Symmetry totalled only \$108,816, resulting in a payment overage of \$225,684 over the 6-month period; and
 - (iii) even if AEWM’s/Symmetry’s calculations in the available transaction ledgers were used to quantify the fees payable to Symmetry, such fees total

only \$158,252.22, resulting in a payment overage of \$176,248 over the 6-month period;

- (e) in order to confirm the foregoing information, MNP requested, among other things, monthly detailed Symmetry reports that included amounts paid by Symmetry on behalf of AEW and Eco, and detailed monthly invoices for Symmetry management fees. Attached as **Exhibit “X”** are copies of correspondence between MNP and a representative of AEW and Eco, dated March 5, March 12, July 6, August 11, and October 6, 2021 regarding such requested information. Also attached as **Exhibit “Y”** is a copy of a reporting letter from MNP to Romspen summarizing much of the foregoing, dated August 12, 2021; and
- (f) notwithstanding repeated requests by MNP, at no time did either AEW, Eco or Symmetry provide MNP with copies of:
 - (i) any monthly reports showing amounts paid by Symmetry on behalf of AEW and Eco;
 - (ii) any monthly invoices relating to the calculation of Symmetry fees;
 - (iii) an executed version of the AEW Asset Management Agreement; or
 - (iv) any agreement whatsoever between Eco and Symmetry pursuant to which Eco agreed to pay fees to Symmetry, and Symmetry agreed to provide management or other services on its behalf; and
- (g) as noted above, no records or other information have been provided by White in compliance with the Receivership Order or the Feth Order compelling White to

produce the foregoing information (and all books and records of Eco and the other related debtor companies).

28. As Trustee, MNP has reviewed Eco's monthly bank statements for the period of March 1, 2018 to April 30, 2020. Although there does not appear to be any legal fees debited directly from Eco's bank account, on March 1, 2019, \$119,549.89 was withdrawn from the account with a note "to Symmetry asset management." The Trustee has no information supporting the transfer of funds or the quantum of legal fees paid by Symmetry, if any, since, as discussed above, representatives of Eco and Symmetry have failed or refused to provide MNP with such information, notwithstanding its repeated requests.

Eco is Assigned into Bankruptcy

29. Upon learning of the Assignment Agreements in November 2021, the Receiver had serious concerns regarding the propriety, validity, and enforceability of the Assignment Agreements. Accordingly, on February 17, 2022, the Receiver filed an assignment in bankruptcy on behalf of Eco pursuant to paragraph 4(q) of the Receivership Order, which assignment became effective by way of a Certificate of Appointment from the Office of the Superintendent of Bankruptcy on February 18, 2022. MNP Ltd. was appointed Trustee of Eco's bankrupt estate.

The Trustee's Claims

Transfers at Undervalue under Section 96 of the BIA

30. In light of the foregoing, and unless or until evidence to the contrary is provided, I verily believe that the Assignment Agreements are transfers at undervalue within the meaning of Section 96 of the BIA.

31. Firstly, the Assignment Agreements purport to transfer the ADT Action and the Dentons Claim to Symmetry. Such claims have a face value of \$100 million. While the Assignment Agreements justify the transfers on the basis that Symmetry has provided management services to Eco and paid legal fees on Eco's behalf, neither White nor any of the representatives of Symmetry (or former representatives of Eco) have provided the Interim Monitor/Receiver/Trustee with any information showing the amounts purportedly paid by Symmetry on behalf of Eco, any monthly invoices relating to the calculation of Symmetry's fees, or even an agreement between Eco and Symmetry. Notwithstanding MNP's repeated requests for such information since March 5, 2021, none has been forthcoming.

32. Further, and in any event, even if Symmetry had paid legal fees on behalf of Eco, such legal fees could not have approximated the claimed value of the ADT Action and the Dentons Claim (\$100 million).

33. Secondly, the Assignment Agreements purport to assign the ADT Action and the Dentons Claim to Symmetry at a time when Eco was clearly insolvent. On October 11, 2019, only approximately 7 weeks' prior to White's execution of the Assignment Agreements, Romspen had accelerated an approximately US\$87.9 million obligation and demanded repayment of such amount from Eco pursuant to the terms of the Eco Guarantee. Notices of Intention to enforce the Eco Mortgage, Eco Guarantee and Eco Security had been served on Eco. Independently, Eco had also ceased paying its obligations to the City of Edmonton in the normal course for property taxes which, by the end of 2019, were overdue in the amount of \$383,387 and which, by 2021, had grown to more than \$2 million. By no later than October 11, 2019, Eco was both unable to meet its obligations as they generally became due and had ceased paying its obligations in the ordinary course.

34. Thirdly, I verily believe that Eco and Symmetry were not dealing at arm's length when the Assignment Agreements were executed, since White was the sole director of both Eco and Symmetry, and signed the Assignment Agreements on behalf of each. Eco and Symmetry both have a common shareholder – 146 Co. – and a common ultimate shareholder – the Dan White Family Trust.

35. Fourthly, the Assignment Agreements were executed within the five year period prior to the date of the initial bankruptcy event, regardless of whether the date of the “application in respect of which a bankruptcy order is made” is used (April 26, 2021 – the date Romspen filed its application for appointment of the Receiver) or the date of the “assignment by or in respect of the person” is used (February 18, 2022 – the date Eco was assigned into bankruptcy), as those event are described under Section 2 of the BIA.

36. Fifthly, I also believe that the Assumption Agreements were intended to defraud, defeat or delay Eco's creditors. The Assignment Agreements were executed by related, non-arms' length parties, at a time when Eco was insolvent and enforcement proceedings were underway by Romspen both in Canada and the United States. I understand from Romspen that the Assignment Agreements were never disclosed to it and that Romspen only learned of the Assignment Agreements following disclosure of their existence by Eco's former counsel to the Receiver in November 2021. The Assignment Agreements were either made for grossly inadequate, or no, consideration.

37. The Trustee is accordingly seeking an Order declaring the Assignment Agreements as void against the Trustee as a transfer at undervalue pursuant to section 96(1)(b)(ii) of the BIA.

FPA and Statute of Elizabeth

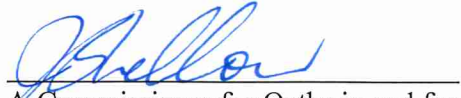
38. In light of the facts and circumstances above, and unless or until evidence to the contrary is provided, I further believe that the Assignment Agreements are void pursuant to the FPA and/or the Statute of Elizabeth since:

- (a) the Assignment Agreements were conveyances of personal property for no (or nominal) consideration at a time when Eco was in insolvent circumstances;
- (b) Eco intended to defraud, delay or hinder its creditors (for the reasons set out above) in conveying all right, title and interest to the ADT Action and the Dentons Claim;
- (c) the Assignment Agreements did defraud, delay or hinder Eco's creditors through the wrongful dissipation of value to a related, non-arms' length party – Symmetry; and
- (d) the Trustee has standing as the Court's officer, and as the representative of creditors, to seek relief under the FPA and the Statute of Elizabeth.

Conclusion

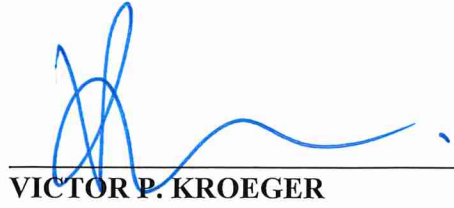
39. In conclusion, by Eco executing the Assignment Agreement, the Trustee is concerned that Eco wrongfully diverted claims seeking damages of \$100 million from Eco's estate for the self-interested and improper gain of Symmetry, and, in turn, the ultimate shareholder of both Eco and Symmetry – the Dan White Family Trust. By pursuing this Application, the Trustee seeks to restore the value dissipated by Eco. I make this Affidavit in support of the Application and for no other improper purpose.

SWORN BEFORE ME at Calgary, Alberta)
this 4th day of August, 2022)



A Commissioner for Oaths in and for the
Province of Alberta

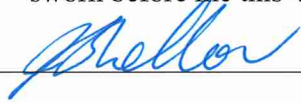
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VICTOR P. KROEGER

Jacqueline Rose Shellon
A Commissioner for Oaths in and
for the Province of Alberta
My Appointment Expires April 26, 2025

This is **Exhibit "A"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

COURT FILE NUMBER 2003-06728

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANT **ROMSPEN MORTGAGE LIMITED PARTNERSHIP
AND ROMSPEN INVESTMENT CORPORATION**

RESPONDENTS **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11
GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO-
INDUSTRIAL BUSINESS PARK INC., ABSOLUTE
ENERGY RESOURCES INC., ABSOLUTE
ENVIRONMENTAL WASTE MANAGEMENT INC.
AND DANIEL ALEXANDER WHITE**

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **BORDEN LADNER GERVAIS LLP
1900, 520 Third Avenue S.W.
Calgary, Alberta T2P 0R3**

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Email: jkruger@blg.com/kbarr@blg.com
File Number: 443063-000012



I hereby certify this to be a true copy of the original.
for Clerk of the Court
Q. Krüger

DATE ON WHICH ORDER WAS PRONOUNCED: April 2, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Associate Chief Justice K.G. Nielsen

LOCATION OF HEARING: Edmonton, Alberta

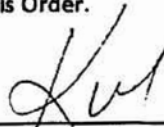
UPON the application of Romspen Mortgage Limited Partnership and Romspen Investment Corporation ("Romspen") in respect of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., Absolute Environmental Waste Management Inc. and Daniel Alexander White (collectively the "Respondents"); AND UPON reading the Affidavit of Wesley Roitman (sworn March 30, 2020), filed; AND UPON reading the Affidavit of Karin Duemler (sworn March 30, 2020), filed; AND UPON reading the Affidavit of Wesley Roitman (sworn April 1, 2020); filed; AND UPON reading the Affidavit of Karin Duemler (sworn April 1, 2020), filed; AND UPON reading the Affidavit of Gerritt Vandepol (sworn April 1, 2020), filed; AND UPON reading the Affidavit of

Chantelle Akerstrom (sworn April 2, 2020), filed; AND UPON reading the materials and proceedings filed in Court File No. 1903-21473 including the Consent Order granted by Mr. Justice J. Gill on October 25, 2019; AND UPON hearing counsel for Romspen, counsel for the Respondents and counsel for the Applicants in Court File No. 1903-21473;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of Romspen's application to appoint a Receiver and Manager or, in the alternative, an Interim Receiver (the "Application") is hereby abridged and service thereof is deemed good and sufficient.
2. For the purposes of the Application, the stay of proceedings contained in the Consent Order granted by Justice J. Gill in Court File No. 1903-21473 on October 25, 2019 is vacated.
3. The Application is adjourned *sine die*.
4. The Respondents are hereby directed to preserve all their assets and to deal with their assets only in the ordinary course of business pending the outcome of the Application.
5. Romspen shall be entitled to appoint an Interim Monitor of its choice to monitor the business operations of the corporate Respondents pursuant to section 47 of the *Bankruptcy & Insolvency Act*. The Interim Monitor shall have the powers set out in paragraph 7 of this Order.
6. The cost of the Interim Monitor shall initially be borne by Romspen however, Romspen shall be at liberty to apply to this Court to have the cost of the Interim Monitor added to the overall indebtedness.
7. Management of the corporate Respondents shall cooperate and provide information to the Interim Monitor. The Interim Monitor shall have full access to all of the corporate Respondents' business operations and assets and shall have the ability to observe the operations of the corporate Respondents. The Interim Monitor will have access to all the business records of the corporate Respondents. The Interim Monitor will be entitled to be physically present at the business premises of the corporate Respondents.

8. Each of Wesley Roitman, Karin Duemler and Gerritt Vandepol shall submit to Questioning on their respective Affidavits at dates and times to be agreed between counsel. Romspen shall not be permitted to Question Adam Zarafshani on his Affidavit sworn in Alberta Court of Queen's Bench Court File No. 1903-21473.
9. The parties hereto may apply to this Court to vary or amend this Order on not less than 3 days' notice.
10. This Order shall remain in place for 30 days unless varied by this Honourable Court upon application by any party pursuant to paragraph 9 of this Order.



Justice of the Court of Queen's Bench of Alberta

MAY 5, 2020

APPROVED AS BEING THE ORDER GRANTED
THIS 4th day of May, 2020

Borden Ladner Gervais LLP



Per: Josef G.A. Krüger, Q.C./Kevin E. Barr
Counsel for Romspen Mortgage
Limited Partnership and Romspen
Investment Corporation

APPROVED AS BEING THE ORDER GRANTED THIS
4th day of May, 2020

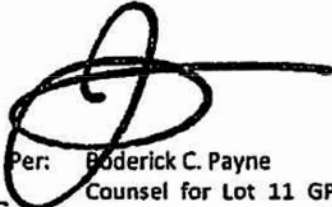
Dentons Canada LLP



Per: Jonathan Hillson
Counsel for Lot 11 GP Ltd., Lot 11 Limited
Partnership, Eco-Industrial Business Park Inc.,
Absolute Environmental Waste Management
Inc. and Daniel Alexander White

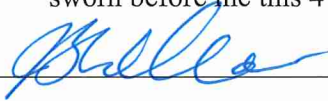
APPROVED AS BEING THE ORDER GRANTED
THIS 4th day of May, 2020

Hustwick Payne

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Per: Boderick C. Payne
Counsel for Lot 11 GP Ltd., Lot 11
FOKs Limited Partnership, Eco-Industrial
Business Park Inc., Absolute
Environmental Waste Management
Inc. and Daniel Alexander White in
Court File No. 1903-21473

This is **Exhibit "B"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

COURT FILE NUMBER

2003-06728

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS
(DEFENDANTS BY
COUNTERCLAIM)

**ROMSPEN MORTGAGE LIMITED
PARTNERSHIP AND ROMSPEN
INVESTMENT CORPORATION**

DEFENDANTS
(PLAINTIFFS BY
COUNTERCLAIM)

**3443 ZEN GARDEN LIMITED
PARTNERSHIP, LOT 11 GP LTD., LOT
11 LIMITED PARTNERSHIP, ECO-
INDUSTRIAL BUSINESS PARK INC.,
ABSOLUTE ENERGY RESOURCES
INC., ABSOLUTE ENVIRONMENTAL
WASTE MANAGEMENT INC. AND
DANIEL ALEXANDER WHITE**

PLAINTIFFS BY
COUNTERCLAIM

**3443 ZEN GARDEN LIMITED
PARTNERSHIP, LOT 11 GP LTD, LOT
11 LIMITED PARTNERSHIP, ECO-
INDUSTRIAL BUSINESS PARK INC.,
ABSOLUTE ENERGY RESOURCES
INC., ABSOLUTE ENVIRONMENTAL
WASTE MANAGEMENT INC. and
DANIEL ALEXANDER WHITE**

DEFENDANTS BY
COUNTERCLAIM

**ROMSPEN MORTGAGE LIMITED
PARTNERSHIP, ROMSPEN
INVESTMENT CORPORATION,
RICHARD WELDON and WESLEY
ROITMAN**

COURT FILE NUMBER

1903-21473

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANTS

**LOT 11 LIMITED PARTNERSHIP by its
general partner LOT 11 GP LTD., ECO-
INDUSTRIAL BUSINESS PARK INC.,
ABSOLUTE ENERGY RESOURCES
INC., ABSOLUTE ENVIRONMENTAL
WASTE MANAGEMENT INC. AND
DANIEL ALEXANDER WHITE.**

RESPONDENT

**ROMSPEN INVESTMENT
CORPORATION**

DOCUMENT

RECEIVERSHIP ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3

Solicitor: Kevin E. Barr / Robyn Gurofsky
Telephone: (403) 232-9786 / (403) 232-9442
Facsimile: (403) 266-1395
Email: kbarr@blg.com / rgurofsky@blg.com

File No. 443063.000012

**DATE ON WHICH
ORDER WAS
PRONOUNCED:**

November 4, 2021

**NAME OF JUSTICE
WHO MADE THIS
ORDER:**

The Honourable Justice N.J. Whitling

**LOCATION OF
HEARING:**

Edmonton, Alberta

UPON the application of Romspen Mortgage Limited Partnership and Romspen Investment Corporation (collectively, “**Romspen**”) in respect of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc. (collectively, the “**Respondent**”); **AND UPON** reading the Affidavit of Wesley Roitman sworn October 19, 2021 and filed October 25, 2021; **AND UPON** reading the prior affidavit evidence filed in this action; **AND UPON** noting the Consent to Act of MNP Ltd.; **AND UPON** hearing counsel for Romspen, counsel for the proposed Receiver and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

STAY OF PROCEEDINGS

2. The stay of proceedings provided for in the Consent Order granted by the Honourable Mr. Justice J. Gill on October 25, 2019 is hereby vacated. The enforcement proceedings taken to date by the Applicants are hereby ratified *nunc pro tunc*.

APPOINTMENT

3. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, 99(a) of the *Business Corporations Act*, R.S.A. 2000, c.B-9, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7, MNP Ltd. is hereby appointed Receiver, without security, of all of the Respondent's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”).

RECEIVER'S POWERS

4. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability to abandon, dispose of or otherwise release any interest in any of the Respondents' real property, or any right in any immovable, and any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority, in respect of such interest in real property or immovable, including pursuant to section 14.06(4) of the BIA, notwithstanding the provisions of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, the *Pipeline Act*, RSA 2000, or any other similar provincial legislation;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Respondent, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- (g) to settle, extend or compromise any indebtedness owing to or by the Respondent;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to no earlier than three months from the date this order is granted, apply for the additional power to:
 - (i) market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (ii) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;

- A. without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000;
- B. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required; and

- (iii) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Respondent and not in its personal capacity;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;

- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have;
- (q) to make an assignment of the Respondent in bankruptcy or to consent to the making of a Bankruptcy Order under the BIA, to the extent the Receiver deems it appropriate to do so; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Respondent, and without interference from any other Person (as defined below). Notwithstanding sections 4(g) and 4(j) above, the Receiver shall not settle or compromise any claim or counterclaim filed by the Respondent or any of them in the within action, Alberta Action No. 2003-08412, Alberta Action No. 2003-07790, Alberta Action No. 2003-08204, Austin County Action No. 1:21-MC-495-RP, United States Bankruptcy Court Chapter 11 Proceedings No. 20-10410-HCM and Travis County Action No. CauseD-1-GN-19-007269 without court order or consent of the Respondent.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. (i) The Respondent, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver

all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

6. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

9. No Proceeding against or in respect of the Respondent or the Property shall be commenced or continued except with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the Respondent or an action, suit or proceeding that is taken in respect of the Respondent by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. “**Regulatory Body**” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OF REMEDIES

10. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Respondent or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership and operating agreement, joint venture agreement or any such similar agreement or agreements to which the Respondent is a party that purport to effect or cause a cessation of operatorship as a result of the occurrence of any default or non-performance by or the insolvency of the Respondent, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings and under no

circumstances shall the Respondent be replaced as operator pursuant to any such agreements without further order of this Court provided, however, that this stay and suspension does not apply in respect of any “eligible financial contract” (as defined in the BIA), and further provided that nothing in this Order shall:

- (a) empower the Respondent to carry on any business that the Respondent is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment.
11. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

12. No Person shall accelerate, suspend, 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 Respondent, except with the leave of this Court

CONTINUATION OF SERVICES

13. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Respondent, 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 Respondent

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Respondent or exercising any other remedy provided under such agreements or arrangements. The Respondent 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 usual prices or charges for all such goods or services received after the date of this Order are paid by the Respondent in accordance with the payment practices of the Respondent, or such other practices as may be agreed upon by the supplier or service provider and each of the Respondent and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

15. Subject to employees’ rights to terminate their employment, all employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 (“**WEPPA**”).

16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply

with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

- 18. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property.

Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

19. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$250,000 as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4), 81.6(2) and 88 of the BIA.
20. The Receiver and its legal counsel shall pass their accounts from time to time.
21. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. The Receiver shall be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property

shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4), 81.6(2) and 88 of the BIA.

23. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
24. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
25. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
26. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

27. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

28. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
30. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.
31. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
32. The Receiver 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 that the Receiver 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.
33. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Respondent's estate with such priority and at such time as this Court may determine.

34. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

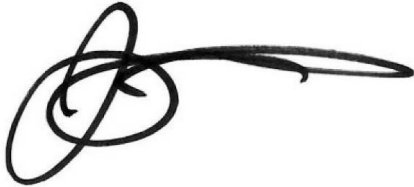
35. The Receiver shall establish and maintain a website in respect of these proceedings at **mnpdebt.ca** (the “**Receiver’s Website**”) and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
36. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver’s Website
- and service on any other person is hereby dispensed with.

37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.


Justice of the Court of Queen's Bench of Alberta

**CONSENTED TO THIS 3rd DAY OF
NOVEMBER BY:**

DENTONS LLP



Per: _____
Jonathan Hillson
Counsel to the Respondents

BORDEN LADNER GERVAIS LLP



Per: _____
Robyn Gurofsky
Counsel to Romspen Mortgage Limited
Partnership and Romspen Investment
Corporation

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the interim receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of [**RESPONDENT'S NAME**] appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the [**day**] day of [**month**], [**year**] (the "**Order**") made in action numbers [**●**], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of [**\$**], being part of the total principal sum of [**\$**] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**] [**monthly not in advance on the ● day of each month**] after the date hereof at a notional rate per annum equal to the rate of [**●**] per cent above the prime commercial lending rate of Bank of [**●**] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [**●**].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

MNP Ltd., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

This is **Exhibit "C"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/06/20
Time of Search: 02:25 PM
Search provided by: OSLER, HOSKIN & HARCOURT LLP
Service Request Number: 37813748
Customer Reference Number: 1209810/3174

Corporate Access Number: 2013521105
Business Number: 835837410
Legal Entity Name: ECO-INDUSTRIAL BUSINESS PARK INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
1352110 ALBERTA LTD.	2008/01/22
WORTHINGTON BUSINESS PARK INC.	2009/04/23

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2007/09/25 YYYY/MM/DD
Date of Last Status Change: 2011/11/22 YYYY/MM/DD

Registered Office:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Records Address:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Email Address: RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DAN
Street/Box Number: 1250 HAYTER ROAD NW

City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: 1468527 ALBERTA LTD.
Corporate Access Number: 2014685271
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ELECTRONIC ATTACHMENT
Share Transfers Restrictions: SEE ELECTRONIC ATTACHMENT
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE ELECTRONIC ATTACHMENT

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
WORTHINGTON BUSINESS PARK	TN14951669

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2020	2020/12/23

Outstanding Returns:

Annual returns are outstanding for the 2021 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2007/09/25	Incorporate Alberta Corporation
2009/04/23	Name Change Alberta Corporation
2011/11/02	Status Changed to Start for Failure to File Annual Returns
2014/02/19	Capture Microfilm/Electronic Attachments
2020/02/19	Update BN
2020/08/13	Change Director / Shareholder
2020/12/23	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2007/09/25
Restrictions on Share Transfers	ELECTRONIC	2007/09/25
Other Rules or Provisions	ELECTRONIC	2007/09/25
Amended Annual Return	10000607116105605	2014/02/19

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/06/08
Time of Search: 01:15 PM
Search provided by: OSLER, HOSKIN & HARCOURT LLP
Service Request Number: 37745204
Customer Reference Number: 1231987/3174

Corporate Access Number: 2014685297
Business Number: 838159267
Legal Entity Name: SYMMETRY ASSET MANAGEMENT INC.

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2009/05/12 YYYY/MM/DD

Registered Office:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Records Address:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Email Address: DWHITE@SYMMETRYINC.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
PAYNE	RODERICK	C.	HUSTWICK PAYNE	600, 9707 - 110 STREET NW	EDMONTON	ALBERTA	T5K2L9	RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DAN
Street/Box Number: 1250 HAYTER ROAD NW
City: EDMONTON

Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: 1468527 ALBERTA LTD.
Corporate Access Number: 2014685271
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SHARE STRUCTURE ATTACHED
Share Transfers Restrictions: SEE SHARE TRANSFER RESTRICTIONS ATTACHED
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE OTHER PROVISIONS ATTACHED

Holding Shares In:

Legal Entity Name
LOT 11 GP LTD.

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/05/25

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2009/05/12	Incorporate Alberta Corporation
2010/01/08	Change Director / Shareholder
2020/02/20	Update BN

2021/05/25	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2022/01/19	Change Address

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2009/05/12
Restrictions on Share Transfers	ELECTRONIC	2009/05/12
Other Rules or Provisions	ELECTRONIC	2009/05/12

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/06/20
Time of Search: 02:23 PM
Search provided by: OSLER, HOSKIN & HARCOURT LLP
Service Request Number: 37813714
Customer Reference Number: 1209810/3174

Corporate Access Number: 2014685271
Business Number: 849746045
Legal Entity Name: 1468527 ALBERTA LTD.

Legal Entity Status: Active
Alberta Corporation Type: Numbered Alberta Corporation
Registration Date: 2009/05/12 YYYY/MM/DD
Date of Last Status Change: 2011/10/12 YYYY/MM/DD

Registered Office:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Records Address:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Email Address: DHWHITE@SYMMETRYINC.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
PAYNE	RODERICK	C.	HUSTWICK PAYNE	600, 9707 - 110 STREET NW	EDMONTON	ALBERTA	T5K2L9	RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DANIEL
Street/Box Number: 1250 HAYTER ROAD

City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Last Name: DAN WHITE FAMILY TRUST
Street: 1250 HAYTER ROAD NW
City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SHARE STRUCTURE ATTACHED
Share Transfers Restrictions: SEE SHARE TRANSFER RESTRICTIONS ATTACHED
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE OTHER PROVISIONS ATTACHED

Holding Shares In:

Legal Entity Name
ECO-INDUSTRIAL BUSINESS PARK INC.
1462760 ALBERTA LTD.
SYMMETRY ASSET MANAGEMENT INC.
ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC.
ABSOLUTE ENERGY RESOURCES INC.
BLUE ROOTS INTERNATIONAL LTD.
PURPLE TREE INTERNATIONAL LTD.

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/09/16

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2009/05/12	Incorporate Alberta Corporation
2009/11/11	Change Director / Shareholder
2011/07/02	Status Changed to Start for Failure to File Annual Returns
2020/02/20	Update BN
2021/09/16	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2022/01/19	Change Address

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2009/05/12
Restrictions on Share Transfers	ELECTRONIC	2009/05/12
Other Rules or Provisions	ELECTRONIC	2009/05/12

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



This is **Exhibit "D"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



**Absolute Environmental Waste
Management et al.
First Report of Interim Monitor**

PREPARED BY: MNP LTD
Suite 1500, 640 – 5th Avenue SW
Calgary, AB T2P 3G4

MNP CONTACT: Victor Kroeger, CIRP, LIT
Senior Vice President

PHONE: 403-298-8479

EMAIL: victor.kroeger@mnp.ca

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SCHEDULES

SCHEDULE A: Initial Information Request

SCHEDULE B: Correspondence with Management

SCHEDULE C: Listing of Financial Transactions

SCHEDULE D: Land Title Searches

SCHEDULE E: AEW Symmetry Agreement

SCHEDULE F: 2018 AEW/Symmetry Intercompany Transaction Ledger

SCHEDULE G: 2019 AEW/Symmetry Intercompany Transaction Ledger

SCHEDULE H – Current Review Period Source Documents

GENERAL RESTRICTIONS AND LIMITATIONS

This report has been prepared for and only for Romspen Mortgage Limited Partnership and Romspen Investment Corporation (collectively as “Romspen”) in accordance with our Engagement Letter dated April 7, 2020 (the “LOE”) and for no other purpose. Rompsen engaged MNP Ltd., as Interim Monitor of the financial and operational affairs of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., (“Eco”) Absolute Energy Resources Inc., (“Absolute Energy”) and Absolute Environmental Waste Management Inc. (“AEWM”) (collectively referred to hereinafter as the “Companies”) The contents of this report may not be reproduced, quoted, referred to or disclosed to others without our prior written consent in each specific instance. We will not assume any responsibility or liability for losses incurred as a result of the use of our report contrary to these provisions.

We make no representations regarding the sufficiency of the procedures we were requested to perform. In completing this report, we relied on representations of management, management prepared assumptions, unaudited financial documents and other information. We did not carry out an audit of the Companies financial reports or of the information management provided to us, nor did we verify any of the information contained in this report and, accordingly, we express no opinion thereon.

Our comments and conclusions are based on information that has been made available to us. We reserve the right to review all calculations and conclusions included or referred to in this report and, if we consider it necessary, to revise our calculations in light of information existing at the date of this report.

We do not provide any assurance as to any matters relating to the Companies ability to pay its debt due to Romspen and Romspen is solely responsible for actions taken by it as a result of the findings described in this report.

BACKGROUND

Pursuant to an Order of the Court of Queen’s Bench of Alberta (the “Court”) granted April 2, 2020 and extended on May 11, 2020, (the “Interim Monitor Order”) Romspen was authorized to engage an Interim Monitor to monitor the operations and financial affairs of the Companies.

Pursuant to a LOE executed on April 7, Romspen engaged MNP Ltd. as Interim Monitor (the “Interim Monitor”) of the Companies.

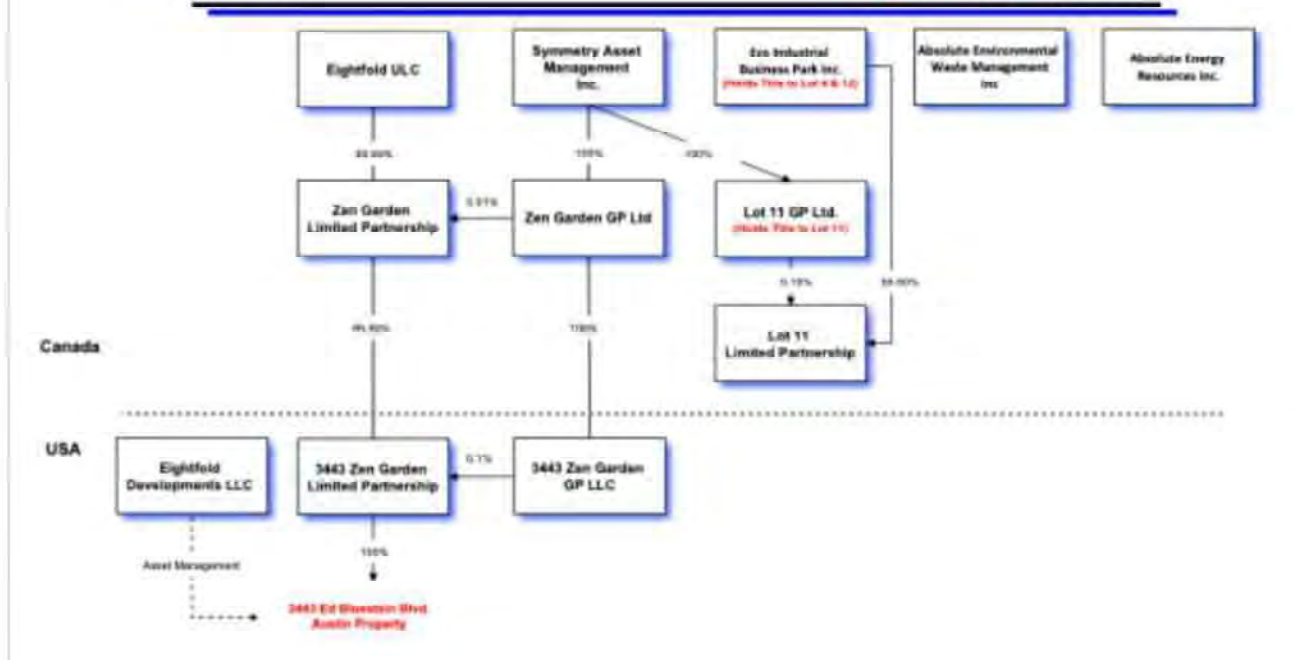
Each of the Companies granted security to Romspen to secure guarantees for loans advanced to the principal debtor, 3443 Zen Garden Limited Partnership (“Zen Gardens”), by way of general security agreements, assignments of rents and leases and/or mortgage security.

The Interim Monitor has been corresponding with Mr. Gary Vandepol, the sole director of Absolute (“Mr. Vandepol” or “Management”) in connection with its mandate under the LOE.

An Organizational Chart provided by Management in respect of the Companies is set out below:

ORGANIZATIONAL CHART
OF CORPORATE ENTITIES RELATED TO AUSTIN PROJECT
 As at February, 2018

CONFIDENTIAL
 MANAGEMENT DISCUSSION PURPOSES ONLY



Based on searches conducted of the Alberta Corporate Registry office on May 5, 2020, the director(s) and shareholder(s) of the Companies are identified as follows:

- a. Absolute Energy – Dan White (Director), 1468527 Alberta Ltd., (100% Shareholder);
- b. AEWM – Gary Vandepol (Director), 1468527 Alberta Ltd. (100% Shareholder);
- c. Eco – Gary Vandepol (Director), 1468527 Alberta Ltd. (100% Shareholder); and,
- d. Lot 11 GP Ltd., - Dan White (Director), Symmetry Asset Management Inc. (“Symmetry”) (100% Shareholder).

We are providing this report to Rompsen pursuant to the terms of the LOE. The purpose of this report is to identify and detail the information requested by the Interim Monitor, report on the status of the information requested and provide any relevant findings from the information supplied to the Interim Monitor to date.

REQUESTS FOR INFORMATION

On April 8, 2020, we prepared and circulated an information request (the “Initial Information Request”) to Management. A copy of the Initial Information Request is attached as **Schedule A**.

Through the course of our review of the information made available to the Interim Monitor we made several additional requests for information. As of May 28, 2020, the status of the various information requests along with copies of correspondence with Management with respect to these information requests is attached as **Schedule B**.

In addition to the information outlined in Schedule A, we prepared a schedule of certain financial transactions we had identified wherein additional support was requested from Management. The particulars of the financial transactions are outlined in **Schedule C**.

ASSET INFORMATION

Based on information provided by Management, the assets of the Companies are identified as follows:

- a. Absolute Energy – does not own any assets. Originally established to acquire options in the Lamont, AB area when oil prices were high, however, nothing materialized;
- b. AEW – Operating company solely handling the well operations on the Eco lands. Does not own any physical assets;
- c. Eco – owner of industrial lots, Lot GP, wells (operated by AEW), associated equipment and vehicles. Based on Land Title searches provided by Management, the Eco lands are legally described as:
 - i. 8323217;;3 (short legal)
 - ii. 4;23;53;17;NE (short legal);
 - iii. 1904EO;OT (short legal); and,
 - iv. 4;23;53;17;SW (short legal)(the “Eco Lands”).
- d. Lot 11 LP and Lot 11 GP – owners of Lot 11, legally described as 4;23;53;17;NW (short legal) (“Lot 11 Lands”).

Current Land Title Certificate searches of the Eco Lands and the Lot 11 Lands are attached as **Schedule D**. Based on the Land Title Certificate searches, we note that Romspen does not have mortgage security registered against title to the lands legally described as 1904EO;OT.

We made a request of Management for a detailed list of equipment and vehicle assets owned by Eco. The requested information has not been provided to us as of this date.

We have requested of Management but have not yet received copies of the insurance policies for each of the Companies.

We have requested of Management but have not yet received confirmation of the status of the property taxes for the Eco Lands and the Lot 11 Lands.

Site Visit

On May 26, 2020 we attended the operating location of AEW located within the Eco-Industrial Business Park in Sherwood Park, Alberta to view the assets and operations. AEW’s business operations are limited to the operation of one waste disposal wellsite located on the Eco Lands.

We met with an employee of AEW, Mr. Matt Matlock (“Mr. Matlock”), who provided a tour of the area. Mr. Matlock explained that work was ongoing to clean up the Eco Lands where old buildings and structures remained erected but were deemed hazardous. Rio Ventures Inc. (“Rio”), a company we are advised is owned by Mr. Vandepol, has been engaged to undertake the clean up efforts at the site.

Based on the information provided by Mr. Matlock, the clean up completed by Rio to date extended solely to the tear down and disposal of the structures but not to the clean up or reclaiming of the lands where there may be environmental issues.

We have asked Management to provide details on the site clean up including the current status, work left to be completed, copies of cost quotes and budgets, confirmation of land reclamation efforts, etc. This information has not yet been provided.

Also according to Mr. Matlock, the former owner of the lands, believed to be Celenase Corporation (“Celenase”), had entered into an agreement with Eco upon selling the lands to Eco pursuant to which Celenase maintained the

responsibility to perform the reclamation services on the land and that it would, within 25 years of the sale, complete these reclamation services. To date, it is not believed that Celenase has undertaken any of the land reclamation and that perhaps they had requested an extension of the time frame from Eco. We have not been provided details as to when Eco purchased the lands.

We requested that Management confirm the above Celenase obligation and to provide us with the relevant documents confirming Celenase's responsibility to undertake the reclamation efforts. We have not received any these documents to date.

Mr. Matlock also advised that in May 2020 the wellsite had undergone its annual inspection required under the regulation of the Alberta Energy Regulator ("AER"). Mr. Matlock and Management both advised that the site passed the inspection, however, we have not been provided with documentation confirming same.

Both Mr. Matlock and Management also advised that AEWM was using third-party engineering companies (including Celenase) to monitor the site and to review and sign off on products being disposed in the well to ensure compliance with the AER's requirements. We have requested but not yet been provided with the contract between Eco and the third-party engineers (provided one exists) nor have we been provided with particulars as to which third party engineers have been engaged.

Mr. Matlock also advised us that there are two (2) third party renters renting a small portion of the Eco Lands to store its assets. We have not yet been provided details on the renters or the rental arrangements.

FINANCIAL REVIEW – HISTORICAL INFORMATION

Based on the information provided, our review of the historical financial transactions focused on the general ledger reports and bank statements of the Companies from April 2108 through April 2020 (the "Historical Review Period").

Management advises that it has never obtained externally prepared financial statements for any of the Companies. In addition, Management was not able to produce any internal financial statements for the Companies for 2019 nor was it able to produce year-to-date financial statements for any of the Companies for 2020.

Without recent financial statements, it is not possible to ascertain the financial performance of the Companies.

We have requested copies of Income Statements, on a monthly basis, for AEWN from April 2018 through May 2020. To date, these have not been received.

Based on the information provided by Management, AEWM and Eco are the only two entities with active bank accounts. As such, our review focused on financial transactions for these two entities. Management supplied the following bank statements for the reviewed period (April 2018 through May 2020):

- a. CIBC bank statements for AEWM;
- b. CIBC bank statements for ECO; and,
- c. TD Bank statements for AEWM;

(collectively referred to as the "Historical Bank Statements")

In accordance with its General Ledger, AEWM also operated a bank account with Scotiabank in 2018 and 2019. However, these bank statements have not yet been provided to us.

As noted previously, in our review of historical activity we identified a number of transactions for which we requested detail and support from Management (Schedule C).

A majority of these transactions are in relation to monies transferred to Symmetry (as noted above, the 100% shareholder of Lot 11 GP Ltd.). According to Management, Symmetry was set up to manage the asset portfolio of each of the Companies under an asset management agreement (the "Symmetry Agreements"). We have requested copies of the

Symmetry Agreements and, to date, have only been provided with an unexecuted copy of the AEW M Symmetry Agreement (the "AEW M Symmetry Agreement") which is attached as **Schedule E**.

In 2018, AEW M transferred an approximate sum of \$1,609,000 to Symmetry in various transfers between April and December. In offering its explanation for the transfers, Management provided us with the attached ledger detailing the 2018 intercompany transactions between AEW M and Symmetry (**Schedule F**). Upon review of the ledger, we note that the majority of the amounts recorded as owed to Symmetry from AEW M relate to Management Fees of \$146,891 and Expertise Fees of \$720,564 charged over the period as stipulated in the Symmetry Agreement.

The remainder of the charges in Schedule F may be in relation to payments made by Symmetry on behalf of AEW M (e.g. accounts payable, payroll, etc.). However, we have not yet been provided with any documentation to support these expenses.

Based on Schedule F, Management advises that AEW M remained indebted to Symmetry in the sum of approximately \$197,000 at the end of 2018.

Similarly, in 2019 the amount transferred to Symmetry totaled \$436,186. Based on the attached **Schedule G**, Symmetry charged \$47,474 in relation to Management Fees and \$241,326 in relation to Expertise Fees to AEW M over the period. As at December 31, 2019, the records indicate that AEW M remains indebted to Symmetry in the sum of \$250,416.

The remainder of the charges in Schedule G may be in relation to payments made by Symmetry on behalf of AEW M (e.g. accounts payable, payroll, etc.). However, we have not yet been provided with any support of these charges.

During the Historical Review Period, Eco paid approximately \$136,000 to Symmetry. We have not yet been provided with any support for these payments.

In our review of the AEW M and Eco bank statements, we also identified other transactions, as outlined in Schedule C, for which we have requested additional detail from Management:

- d. Transfers to Beaverfoot Lodge Ltd. (an entity owned by Mr. Dan White) from AEW M in the amount of approximately \$22,000 -- Management advises that these transfers were made in error, however, no evidence was provided to indicate that the amounts have been repaid to AEW M; and,
- e. Transfers to Rio in the amount of approximately \$4,000 -- Management advises this is for clean up of the Eco lands. No invoices to support the clean up have been provided to date.

Transfers to Beaverfoot totaled approximately \$22,000 over the period and transfers to Rio totaled approximately \$4,000 (based on what could be identified from the descriptions). While these amounts are not significant, we identified these transactions for further review given the common ownership structures.

We did not identify any other significant transactions from the Historical Bank Statements that occurred during the Historical Review Period.

CURRENT FINANCIAL POSITION

On May 23, 2020, Management provided us with the following:

- a. CIBC and TD Bank Statements for AEW M and CIBC Bank Statements for Eco from April 1, 2020 through May 23, 2020;
- b. Copy of the general ledger for AEW M for the same period;
- c. Copy of the AEW M Accounts Payable Statement dated May 23, 2020; and,
- d. Copy of the AEW M Accounts Receivable statement dated May 23, 2020.

(documents referred to collectively as the "Current Review Period")

Copies of the documents reviewed in the Current Review Period is attached as **Schedule H**.

Bank Statements and General Ledger

In review of the AEW M bank statements and general ledger for the Current Review Period we note the following:

- a. Management set up a new (second) account for AEW M with CIBC (the "New CIBC Account") which Management verbally advised was opened to avoid the cashing of certain post-dated cheque payments previously issued to vendors. Management provided us with copies of the statements for the New CIBC Account for April and May 2020;
- b. Based on the general ledger, it appears that the New CIBC Account was opened in or around February 2020. We have requested copies of New CIBC Account statements from the date of its inception to April 2020 but have not yet received same;
- c. Approximately \$94,000 in accounts receivable collections were deposited in April;
- d. Approximately \$28,500 in accounts receivable collections were deposited in May;
- e. AEW M received a \$40,000 loan for emergency funds from the Canadian Government in mid April as part of the Canada Emergency Business Account (CEBA);
- f. Approximately \$41,250 was transferred to Rio in the Current Review Period;
- g. The bank balance for AEW N as of May 23, 2020 was approximately \$8,300 (all accounts); and,
- h. The bank balance for Eco as of May 23, 2020 was approximately \$2,100.

Accounts Receivable

As of May 23, 2020, AEW M's accounts receivable totaled \$312,400. Of this amount, approximately \$215,000 is aged beyond 90 days (after accounting for a credit account). Based on comments from Management, these accounts are deemed to be not collectible and three of the largest accounts totalling approximately \$211,500 are currently in litigation proceedings in small claims court. We have not reviewed documentation to support this.

Based on the above, the current collectible portion of accounts receivable is estimated to be \$109,000. This is reflected in the updated AR Schedule provided by Management and included in Schedule H.

Accounts Payable

As of May 23, 2020, AEW M's accounts payable total approximately \$457,000. Of this amount, Management advises that \$263,700 (owed to Encanex) is in dispute. Management provided a revised accounts payable statement, net of amounts owed to Encanex, totalling approximately \$193,155. We have not been provided or reviewed any information in relation to the disputed accounts payable.

Of the total accounts payable of \$193,155, \$100,000 relates to amounts owed to Rio. According to Management, Rio and/or Mr. Vandepol is to be paid a "Director's Fee" of \$20,000 per month. We have not been provided or reviewed any documentation to support this fee.

We had requested support for any amounts owed to Canada Revenue Agency ("CRA") for GST, payroll source deduction and corporate taxes for each of the Companies. To date, this has not been provided.

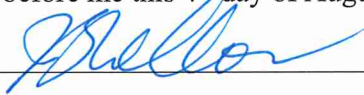
To date, we have been provided with copies of a CRA Statement of Account for GST for Eco and AEW M which shows that there is no outstanding balance on either account. We have not been provided information to verify the status of the payroll source deduction account(s).

CONCLUSION AND RECOMMENDATIONS

1. Given the lack of both the quality and quantity of the financial and other information which has been provided by Management, it is impossible to provide any meaningful report on the current financial position of the Companies. A detailed listing of the information requested and the status of the receipt of the information is included in Schedule B,

-
2. Based on information reviewed to date, Romspen's security appears is limited to the value of the Eco Lands, value of the Eco wellsite, value of the Lot 11 Lands and value of the AEW accounts receivable.
 3. Romspen may want to consider commissioning an appraisal of the Eco Lands and Lot 11 Lands in order to determine the value of its security.
 4. In the event that Romspen does not have the documentation in respect of the requirement for Celenase to clean up the Eco Lands, Romspen should consider seeking an order compelling the Companies to provide the requested information and/or authorization to contact Celenase in respect of the documentation directly.
 5. In the event that Celenase does not have a responsibility to clean up the Eco Lands, Romspen may want to give consideration to obtaining Phase II Environmental Assessments in the circumstance given the use of the lands and potential for significant remediation costs.
 6. Romspen may consider exploring whether there is an opportunity to obtain additional security by way of registration on the Eco Lands legally described as 1904EO;OT.

This is **Exhibit "E"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



**Absolute Environmental Waste
Management et al.**
Second Report of Interim Monitor

PREPARED BY: MNP LTD
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SCHEDULES

SCHEDULE 1: June 15, 2020 Year to Date Income Statement for AEWM

SCHEDULE 2: July 15, 2020 Summary Accounts Receivable Report

SCHEDULE 3: July 15, 2020 Summary Accounts Payable Report

SCHEDULE 4: Celanese Purchase Agreement and Amendments

GENERAL RESTRICTIONS AND LIMITATIONS

This report has been prepared for and only for Romspen Mortgage Limited Partnership and Romspen Investment Corporation (collectively as "Romspen") in accordance with our Engagement Letter dated April 7, 2020 (the "LOE") and for no other purpose. Rompsen engaged MNP Ltd., as Interim Monitor of the financial and operational affairs of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc. ("Eco"), Absolute Energy Resources Inc., ("Absolute Energy") and Absolute Environmental Waste Management Inc. ("AEWM") (collectively referred to hereinafter as the "Companies") The contents of this report may not be reproduced, quoted, referred to or disclosed to others without our prior written consent in each specific instance. We will not assume any responsibility or liability for losses incurred as a result of the use of our report contrary to these provisions.

We make no representations regarding the sufficiency of the procedures we were requested to perform. In completing this report, we relied on representations of management, management prepared assumptions, unaudited financial documents and other information. We did not carry out an audit of the Companies financial reports or of the information management provided to us, nor did we verify any of the information contained in this report and, accordingly, we express no opinion thereon.

Our comments and conclusions are based on information that has been made available to us. We reserve the right to review all calculations and conclusions included or referred to in this report and, if we consider it necessary, to revise our calculations in light of information existing at the date of this report.

We do not provide any assurance as to any matters relating to the Companies' ability to pay the debt due to Romspen and Romspen is solely responsible for actions taken by it as a result of the findings described in this report.

BACKGROUND

This is the Second Report of the Interim Monitor (the "Second Report") and it should be read in conjunction with the First Report of the Interim Monitor provided to Romspen on June 5, 2020 (the "First Report").

Capitalized terms not defined in the Second Report are as defined in the First Report.

The purpose of the Second Report is to update Romspen on the monitoring activities of the Interim Monitor, financial affairs of the Companies and an update on the provision of outstanding information following our First Report.

MONITORING ACTIVITES

The Interim Monitor continues to monitor the financial activities of the Companies on a bi-monthly basis. We previously had been monitoring the accounts and reports weekly, however, Management requested that the frequency be changed to bi-monthly to reduce the administrative burden. Given that there is not a substantial amount of transactions (nor a substantial amount of monies) flowing through the bank accounts, we agreed that a bi-monthly monitoring period would be sufficient.

In the bi-monthly monitoring reporting package, we receive and review the following reports:

- Bank statements for the period for each account(s);
- General Ledger;
- Summary and Detailed Accounts Receivable ("AR") Reports;
- Accounts Payable ("AP") Reports; and,
- Income Statement for the associated period.

CURRENT FINANCIAL POSITION

As noted in the First Report, AEWB is the only active operation which has any material ongoing financial activity. Below is a summary of the financial performance of AEWB for the period of June 1, 2020 through July 15, 2020.

Revenue and Expenses

On June 15, 2020 Management provided an inhouse income statement for AEWB for the 2020 year-to-date. Based on the income statement, revenue year-to date-totalled \$387,777. Expenses over the same period totalled \$510,961 leaving the company in a net loss position of \$123,184. Based on the detail provided in the income statement, \$132,104 was expended in professional fees and legal fees over the period. We have not reviewed any of the data supporting the income statement, but Management advises that the professional fees relate to director fees owed to Rio. A copy of the year-to-date income statement dated June 15, 2020 is attached as Schedule 1.

We also reviewed the income statements for the periods of June 15, 2020 to June 30, 2020 and July 1, 2020 to July 15, 2020 and report the following:

- Revenue over the period totalled \$53,625 and \$68,561 respectively;
- Expenses over the period totalled \$ \$25,405 and \$29,490.79 respectively; and
- Net income over the period totalled \$29,490 and \$43,155.39 respectively.

Accounts Receivable ("AR")

We reviewed the detailed AR reports and bank statements for the period of June 1, 2020 through July 15, 2020 and can confirm the following:

- A total sum of \$111,306 was collected throughout the period; and,
- We reconciled the current AR reports with the prior AR reports for each period and it appears that all amounts recorded as collected have been deposited to the bank account(s) for AEWB.

As of July 15, 2020, there is a sum of \$180,663 of accounts receivable outstanding. Of this amount, \$128,138 (or 71%) is current AR aged less than 30 days. Only \$5,954 (or 3%) is aged over 90 days.

A copy of the July 15, 2020 AR Summary is attached as Schedule 2.

Accounts Payable

As of July 15, 2020, AEWB's AP totalled approximately \$192,663. Of this amount, a sum of \$140,000 relates to amounts owed to Rio. According to Management, Rio and/or Mr. Vandepol has not collected its \$20,000/month Director's Fee in a significant period of time as it would normally be paid at a time when surplus funds are available. We have not noted any payments to Mr. Vandepol or Rio in the financial transactions in June or July to date.

A copy of the July 15, 2020 AP Summary is attached as Schedule 3.

Bank Statements and General Ledger

In our review of the AEWB bank statements, we did not note any transactions that appear to be out of the normal course of business.

Over the period, the following amounts were transferred to Symmetry:

- \$14,000 on June 12, 2020 billed as Management Fee; and,
- \$19,000 on June 18, 2020 billed as Management Fee.

Insurance premiums are being auto-debited from the bank account on a regular basis which suggests insurance premiums are up to date.

GST refunds are also being deposited to the account which suggests ongoing GST filings are taking place. We have requested and received a copy of the most current filed GST return for AEW and confirmation of payment of same.

From our review, there are a limited number of transactions flowing through the Eco bank accounts. The transactions through the Eco accounts primarily consist of:

- Transfers between accounts (AEW, Symmetry and Eco) to pay professional fees and expenses (Rio, accounting and legal);
- Deposit of \$40,000 in relation to the Canadian Emergency Business Loan advance;
- As of July 15, 2020, a balance of approximately \$1,748 remained in the Eco account;
- We have not reviewed any of the underlying invoices relating to professional fees.

STATUS OF INFORMATION REQUESTS

During the course of our review we have made various requests for additional information from Management. The list below outlines the status of our requests and provision of information to date:

1. Employee Listing – provided;
2. Celanese Purchase and Sale Agreement – provided;
3. 2007 Phase I Environmental Assessments for the Eco Lands - provided;
4. Copies of insurance policies –provided;
5. 2018 internal financial statement snapshot - provided;
6. 2019 internal financial statements – in progress;
7. External Financial Statements – unable to provide;
8. Signed Symmetry Management Agreements – unable to provide;
9. Support for site clean up costs - unable to provide;
10. AEW Scotiabank statements – unable to provide;
11. Symmetry Invoices – not provided but in progress by Management; and,
12. Detailed Eco asset list – not provided but in progress by Management.

CELANESE PURCHASE AND SALE AGREEMENT

As described in the First Report, we were advised by an employee of AEW that Celanese Canada Inc. (the "Seller") (previously described in our First Report as Celanese Corporation) had entered into an agreement upon selling the lands to Eco, in which Celanese maintained the responsibility to perform certain reclamation services on the Eco Lands. Management provided a copy of the Celanese Purchase Agreement dated August 21, 2007 and the Amendments to the Celanese Purchase and Sale Agreement (collectively as the "Celanese Agreement") copies of which are attached as Schedule 4.

In accordance with Schedule 4, the original parties to the Celanese Agreement were Celanese Canada Inc. and Worthington Properties Inc. Based on information provided by Management, the Celanese Agreement was closed by a newly formed entity named Worthington Business Park which subsequently changed its name to what is now known as Eco (the "Buyer"). We have not pulled the corporate searches at this time to confirm the name changes.

Counsel to the Interim Monitor has undertaken a preliminary review of the Celanese Agreement to determine what, if any, liability that Celanese currently maintains. It should be noted that the Interim Monitor's counsel reviewed the Celanese Agreement on a "high-level" basis and that Romspen should engage its own counsel to conduct a thorough review in order to determine the effect (or potential effect) of the Celanese Agreement as it relates to the value of Romspen's security.

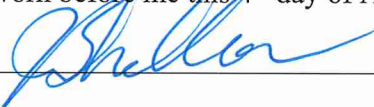
Based on the preliminary review, we highlight the following:

- Exhibit B provides that Celanese will remain liable for the remediation of the purchased lands relating to their environmental condition and to the extent required by environmental law and any governmental entity for a period of 25 years following closing of the transaction. The indemnity provided by Sellers to the Buyer is limited to an aggregate amount of \$10,000,000;
- Exhibit B to the Celanese Agreement provides for continuing liability of the Sellers under two categories of liabilities:
 - o Section 1 of Exhibit B relates to a claim by EPCOR Utilities Inc. ("EPCOR") against the Sellers for alleged migration of 'Hazardous Substances' from the 'Owned Real Property' onto adjacent lands owned by EPCOR; In Section 1(i) Celanese agrees to remain solely responsible for defending the claim and indemnifying the Buyer for any 'Liability' arising from the claim relating to the 'Remediation' of the EPCOR lands; and,
 - o Section 2 of Exhibit B relates to the presence of 'Hazardous Substances' on the Owned Real Property at the time of closing. Celanese agrees to be solely responsible for performing and paying for 'Remediation' of the 'Owned Real Property' to the extent required by applicable 'Environmental Law' or a 'Governmental Entity' and to the extent that the 'Remediation relates to 'Environmental Conditions' that existed prior to closing.
- Pursuant to Section 2 and 7 of Exhibit B, Celanese's liability is limited to the 25th anniversary of closing. It is further limited to the extent additional 'Remediation' is required due to:
 - o the 'Owned Real Property' is rezoned;
 - o the Buyer fails to cooperate with Celanese, fails to implement commercially reasonable standards, or through communications with Governmental Entities seeks imposition of more stringent standards than are currently contemplated
 - o the Buyer damages Celanese's 'Remediation' equipment or systems
 - o after closing there is a release of 'Hazardous Substances' or aggravation of 'Environmental condition due to the Buyer's failure to follow procedures
 - o any disturbance by the Buyer of certain areas marked "Gravel Pit Recovery System", "North Ponds", or "Former Flarestack/Flame Pit"; and,
 - o change or negligence in stormwater management by the Buyer
- Section 10 of Exhibit B provides that indemnification pursuant to Exhibit B is subject to Article 8 of the Celanese Agreement. Article 8 sets out the indemnification process applicable to the entire Celanese Agreement. Section 8(e) sets out the limitations applicable to such indemnification, providing: (i) indemnification shall not be required until the aggregate amount of 'Claims' exceeds an indemnification threshold of \$100,000; and (ii) aggregate liability of is limited to an indemnification cap of \$10,000,000.

CONCLUSION AND RECOMMENDATIONS

1. With the exception of certain outstanding information detailed above, Management continues to provide the bi-monthly information within the required timeframes and has been responding to further requests arising from the monitor's ongoing review in a timely manner;
2. Based on the information provided to date, the Interim Monitor has not identified any financial transactions which it would consider out of the normal course of business; and
3. Romspen should have its counsel review the Celanese Agreement to determine what responsibly, if any, Celanese maintains for the clean up of the Eco Lands.

This is **Exhibit "F"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



**Absolute Environmental Waste
Management et al.**
Third Report of Interim Monitor – October 12, 2021

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SCHEDULES

SCHEDULE 1: March 4, 2021 Financial Update (for period of September 1, 2020 to February 15, 2021)

SCHEDULE 2: March 5, 2021 Letter to Gamage

SCHEDULE 3: August 12, 2021 Letter to Romspen

SCHEDULE 4: October 6, 2021 Email Response from Gamage

SCHEDULE 5: Site Photographs as of October 6, 2021

GENERAL RESTRICTIONS AND LIMITATIONS

This report has been prepared for and only for Romspen Mortgage Limited Partnership and Romspen Investment Corporation (collectively referred to as "**Romspen**") in accordance with our Engagement Letter dated April 7, 2020 and for no other purpose. Romspen engaged MNP Ltd., as Interim Monitor (the "**Interim Monitor**") of the financial and operational affairs of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc. ("**Eco**"), Absolute Energy Resources Inc., ("**Absolute Energy**") and Absolute Environmental Waste Management Inc. ("**AEWM**") (Eco, Absolute Energy and AEWM being collectively referred to hereinafter as the "**Companies**"). The contents of this report may not be reproduced, quoted, referred to or disclosed to others without our prior written consent in each specific instance. We will not assume any responsibility or liability for losses incurred as a result of the use of our report contrary to these provisions.

We make no representations regarding the sufficiency of the procedures we were requested to perform. In completing this report, we relied on representations of management, management prepared assumptions, unaudited financial documents and other information. We did not carry out an audit of the Companies financial reports or of the information management provided to us, nor did we verify any of the information contained in this report and, accordingly, we express no opinion thereon.

Our comments and conclusions are based on information that has been made available to us. We reserve the right to review all calculations and conclusions included or referred to in this report and, if we consider it necessary, to revise our calculations in light of information existing at the date of this report.

We do not provide any assurance as to any matters relating to the Companies' ability to pay the debt due to Romspen and Romspen is solely responsible for actions taken by it as a result of the findings described in this report.

BACKGROUND

This is the Third Report of the Interim Monitor (the "**Third Report**") and it should be read in conjunction with the First Report of the Interim Monitor provided to Romspen on June 5, 2020 (the "**First Report**") and the Second Report of the Interim Monitor provided to Romspen on August 5, 2020 (the "**Second Report**").

Capitalized terms not defined in the Third Report are as defined in the First Report and the Second Report.

The purpose of the Third Report is to update Romspen on the monitoring activities of the Interim Monitor, the status of the financial affairs of the Companies and an update on operations specifically as it relates to AEWM since the Second Report.

MONITORING ACTIVITIES

The Interim Monitor has attempted to continue to monitor the financial activities of the Companies on a monthly basis. The point of contact for the Companies is Mr. David Gamage ("**Gamage**"). Over the course of the past 12 to 15 months the Interim Monitor has had many communications Gamage through email and has sent numerous requests for information which necessary for the Interim Monitor to fulfill its responsibilities in accordance with its mandate. Gamage has not provided the Interim Monitor with the requested information in a timely or consistent manner.

As noted in previous reports, the monthly monitoring reporting package consisted primarily of the following reports which was supplemented by follow up requests for additional information as required and identified upon review of the monitoring information once (and if) received.

- Bank statements for the period for each account(s);
- General Ledger;
- Summary and detailed accounts receivable ("**AR**") reports;

- Accounts payable (“AP”) reports; and,
- Income statement for the associated period.

The Interim Monitor last prepared a financial update based on a review of the Companies’ affairs and provided that update to Romspen on March 4, 2021. A copy of the March 4, 2021 financial update is attached as **Schedule 1** and covers the operations for the period of September 1, 2020 to February 15, 2021.

On March 5, 2021, the Interim Monitor wrote to Gamage to detail the list of requested information that remained outstanding. A copy of the March 5, 2021 letter to Gamage is attached as **Schedule 2**.

On August 12, 2021, the Interim Monitor wrote to Romspen’s counsel to provide a summary of the responses received from Gamage to the March 5, 2021 letter as well as a general update on the status of the financial information. A copy of the August 12, 2021 Letter to Romspen is attached as **Schedule 3**.

Since the August 12, 2021 Letter to Romspen, the Interim Monitor has received partial monitoring information for the period of July 1, 2021 through August 31, 2021. The partial information was received on September 27, 2021, however, the bank statements relating to this period have yet to be provided.

STATUS OF INFORMATION REQUESTS

As noted above, the Interim Monitor has made and continues to make consistent requests for information related to the Companies through Gamage. The list below outlines the financial information that has been previously requested by the Interim Monitor but which has not been provided and remains outstanding as of October 10, 2021:

- Monthly detailed Symmetry reports which include amounts paid by Symmetry on behalf of AEWM and ECO;
- Detailed monthly invoices relating to the calculation of Symmetry Management fees;
- An executed version of the Symmetry Management Agreement;
- Confirmation as to whether AEWM continues to use the older CIBC accounts for either of ECO or AEWM (and copies of the applicable bank statements from March to present day so that the Interim Monitor can verify independently);
- Bank statements for all relevant entities from July 2021 to current;
- Update on AR collections from aged AR and whether there has been any settlement or collections; and,
- CRA statements showing balances for payroll and GST for each of AEWM and ECO.

WELLSITE ISSUES AND CEASING OF OPERATIONS

On September 28, 2021 the Interim Monitor was advised by Romspen that two of the disposal wells (the “**Wells**”), being the main components of the operations of AEWM, had been shut down for maintenance and that operations at the site had ceased. Gamage, on behalf of AEWM, had not informed the Interim Monitor that there were any issues at the site, and without timely receipt of the requested financial information, the Interim Monitor had been unable to determine that there were any issues with the Companies’ operations. The Interim Monitor wrote to Gamage via email on September 29, 2021 requesting the following as it related specifically to the wellsite operations:

- When were the Wells originally shut down;
- Whether it was for regular maintenance or whether there was a broader issue with the Wells;
- Whether engineering or other professional reports available which would show the scope of the maintenance work needed;

- Whether quotes had been obtained to complete the maintenance work and if so, requested that copies be provided;
- Details as to how the maintenance work was being paid for;
- Whether any work had been completed to date and if so, that copies of the invoices for the completed work be provided along with confirmation that the suppliers/trades have been paid for the maintenance work;
- What the anticipated completion date for the maintenance was;
- Confirmation as to when operations would resume;
- What AEWM customers were doing in the interim, and whether they were waiting for the facility to be up and running again and the likelihood they would return to AEWM;
- Whether AEWM was maintaining any level of staff through the shut down;
- If staff was being maintained, whether the staff had been paid and whether payroll remittances were being made;
- Detail on concerns around environmental impacts anticipated from the shut down; and,
- Whether regulatory bodies were involved and, if so, whether regulatory inspections had taken place or regulatory orders been issued.

The Interim Monitor also informed Gamage that it was looking to schedule an inspection of the site and requested a point of contact in relation to same.

On October 6, 2021, the Interim Monitor received a response from Gamage with partial answers with respect to the operational concerns outlined above. A copy of the response from Gamage is attached hereto as **Schedule 4**.

As evidenced by Schedule 4, the responses from Gamage confirmed the shut down of the operations. However, the responses proved to be vague and did not include any of the requested support (e.g., invoices, engineering or maintenance reports, etc.).

As to the question of when operations were expected to resume, Gamage responded “ASAP” (which the Interim Monitor interprets as meaning “as soon as possible”) which provides little to no expectation for an actual timeline as to when, or if, the repairs can be made to allow the Companies’ operations to resume.

It is worth noting that AEWM (as detailed in prior reports and in Schedule 1) has consistently maintained nominal sums of money in its bank accounts as most of the revenue from operations has been and continues to be transferred to a related entity (Symmetry) on a regular basis. Gamage advised that Symmetry is overseeing the repairs/maintenance to the Wells. However, the Interim Monitor has no detail or insight on the financial wherewithal of Symmetry insofar as it relates to Symmetry’s ability to pay for the costs of the maintenance/repairs associated with the Wells.

Further, given that all operations have ceased, AEWM’s revenue will have presumably dropped to zero which likely further impedes its ability to repay Symmetry for the required maintenance and repairs.

On October 6, 2021 representatives from the Interim Monitor’s office physically attended the location of the AEWM operations to conduct an inspection. Upon arrival, the Interim Monitor noted the following:

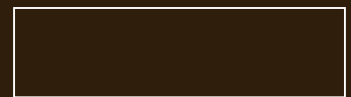
- There was no one on site and it appeared like there had been minimal activity in recent days;
- The site was open and accessible (i.e., no security measures taken or gate closures to protect from public trespassing, etc.); and,

- The majority (if not all) of the buildings on site were dilapidated and uninhabitable (and likely condemned) due to significant damage to the buildings. This observation, however, does not significantly differ from the Interim Monitor's prior inspection of the site in 2020 and so an inference should not be drawn that the damage to the real property is recent.

The Interim Monitor took numerous photographs of the site, a copy of which is attached as **Schedule 5**.

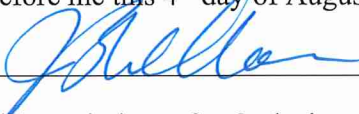
CONCLUSION AND RECOMMENDATIONS

1. The provision of the monitoring information requested by and being provided to the Interim Monitor has been, and continues to be, incomplete and delinquent;
2. Without the timely provision of financial monitoring information, the Interim Monitor is unable to determine if the Companies have the financial resources to pay the costs associated with the repair/maintenance of the Wells in order to resume operations; and
3. Romspen should consider engaging a qualified firm or individual to undertake an independent inspection of the Wells in order to verify the scope of necessary repairs (including costs and timing of same) and the impact of necessary repair work on its security. It is the Interim Monitor's view that such inspection would be appropriate in the circumstances in absence of such information being shared by the Companies.



This is **Exhibit "G"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shelton
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

Clerk's Stamp

COURT FILE NUMBER 2003-06728
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

PLAINTIFFS
(DEFENDANTS BY
COUNTERCLAIM) **ROMSPEN MORTGAGE LIMITED PARTNERSHIP
AND ROMSPEN INVESTMENT CORPORATION**

DEFENDANTS
(PLAINTIFFS BY
COUNTERCLAIM) **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11
GP LTD., LOT 11 LIMITED PARTNERSHIP,
ECO-INDUSTRIAL BUSINESS PARK INC.,
ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE
ENVIRONMENTAL WASTE MANAGEMENT INC.
AND DANIEL ALEXANDER WHITE**

PLAINTIFFS BY
COUNTERCLAIM **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11
GP LTD, LOT 11 LIMITED PARTNERSHIP,
ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE
ENERGY RESOURCES INC, ABSOLUTE
ENVIRONMENTAL WASTE MANAGEMENT INC and
DANIEL ALEXANDER WHITE**

DEFENDANTS BY
COUNTERCLAIM **ROMSPEN MORTGAGE LIMITED PARTNERSHIP,
ROMSPEN INVESTMENT CORPORATION,
RICHARD WELDON and WESLEY ROITMAN**

COURT FILE NUMBER 1903-21473
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

APPLICANTS **LOT 11 LIMITED PARTNERSHIP by its general partner
LOT 11 GP LTD., ECO-INDUSTRIAL BUSINESS PARK
INC., ABSOLUTE ENERGY RESOURCES INC.,
ABSOLUTE ENVIRONMENTAL WASTE
MANAGEMENT INC. AND DANIEL ALEXANDER
WHITE.**

RESPONDENT **ROMSPEN INVESTMENT CORPORATION**

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File Number: 443063-000012

AFFIDAVIT OF WESLEY ROITMAN

Sworn on July 29, 2022

I, **WESLEY ROITMAN**, of the City of Toronto, in the Province Ontario, SWEAR AND SAY THAT:

I. INTRODUCTION

1. I am the Managing General Partner of Romspen Investment Corporation ("**RIC**"), the manager and administrative agent for Romspen Mortgage Limited Partnership ("**RMLP**", and together with RIC, "**Romspen**"). As such, I have personal knowledge of the matters and facts hereinafter sworn to, except where stated to be based on information and belief, and where so stated, I verily believe the same to be true.
2. I make this Affidavit in support of an Application by Romspen for an Order:
 - (a) declaring the amounts owing by each of Lot 11 Limited Partnership, Lot 11 GP Ltd., Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc. (together, the "**Alberta Entities**") to Romspen in the within receivership proceeding; and
 - (b) approving Romspen's ability to make a stalking horse credit bid in the court-appointed receiver's (the "**Receiver**") contemplated sale and investment solicitation process ("**SISP**").
3. In this Affidavit, I set out, in order, the following:

- (a) background to the parties' dispute, including information on the parties' various loan, security and mortgage arrangements, and defaults thereunder,
 - (b) a summary and update on the various related United States and Canadian litigation proceedings to which certain of the parties are involved, including the adjudication of certain United States litigation which has resulted in the debt owing to Romspen being declared to be valid and enforceable, and certain adversary proceedings being withdrawn or dismissed, and
 - (c) the current indebtedness owing to Romspen and its intention to recover through the proposed SISP.
4. Further, in this Affidavit I refer to certain exhibits appended to previous Affidavits I have sworn in these proceedings, being:
- (a) Affidavit sworn on March 30, 2020 (the "**First Prior Affidavit**");
 - (b) Affidavit sworn on April 20, 2020 (the "**Second Prior Affidavit**");
 - (c) Affidavit sworn on November 16, 2020 (the "**Third Prior Affidavit**"); and
 - (d) Affidavit sworn on October 19, 2021 (the "**Fourth Prior Affidavit**").

Some of the referenced exhibits are appended as exhibits hereto for this Honourable Court's ease of reference.

II. BACKGROUND

A. The Parties

5. RIC is engaged in the real estate finance business, providing mortgage loans to commercial borrowers in Canada and the United States. RMLP is an entity through which RIC conducts its business from time to time.
6. The Defendant 3443 Zen Garden Limited Partnership ("**Zen Garden**") is a limited partnership created pursuant to the laws of the State of Texas. As will be further described

below, Zen Garden is the subject of a bankruptcy proceeding in the United States, and a debtor of Romspen.

7. The Defendant Lot 11 GP Ltd. (“**GP**”) is a corporation incorporated pursuant to the laws of Alberta.
8. The Defendant Lot 11 Limited Partnership (“**LP**”) is a limited partnership created pursuant to the laws of Alberta.
9. The Defendant Eco-Industrial Business Park Inc. (“**Eco-Industrial**”) is a corporation incorporated pursuant to the laws of Alberta.
10. The Defendant Absolute Energy Resources Inc. (“**Absolute Energy**”) is a corporation incorporated pursuant to the laws of Alberta.
11. The Defendant Absolute Environmental Waste Management Inc. (“**Absolute Environmental**”) is a corporation incorporated pursuant to the laws of Alberta.
12. The Alberta Entities are the debtors subject to the within receivership, in which MNP Ltd. has been appointed as Receiver.
13. The individual Defendant, Daniel Alexander White (“**White**” and, together with the Alberta Entities, the “**White Group**”), is an individual who Romspen understands is sometimes resident in Alberta. While a named defendant in the within proceedings, the Receiver is not appointed over White nor do White’s personal assets form any of the assets over which the Receiver is appointed.

B. The Loans, Security and Mortgage

i. The Acquisition Loan

14. Between July 30, 2015 and February 1, 2018, Romspen and certain entities owned or controlled by White entered into a series of commercial loan agreements and supplements (the “**Acquisition Loan**”) that pre-date the Zen Garden Loan Agreement (as hereinafter defined) to enable the borrowers to acquire and develop certain lands in Austin, Texas (the “**Austin Lands**”).

15. The history of the Acquisition Loan is set out at paragraphs 9 to 27 of the Third Prior Affidavit and, for the reasons set out in this Affidavit, is no longer relevant to the issues currently before this Honourable Court.

ii. The Zen Garden Loan

16. In early 2018, the borrowers under the Acquisition Loan approached Romspen to discuss an increase to the credit facility available thereunder for the purposes of completing the development of a portion of the Austin Lands. These discussions culminated in loan arrangements involving the Alberta Entities, as described in further detail below.
17. On April 27, 2018, Romspen, as lender, and Zen Garden, as borrower, entered into a Loan Agreement (the “**Zen Garden Loan Agreement**”). Under the terms of the Zen Garden Loan Agreement, Romspen agreed to advance to Zen Garden a loan of up to a maximum principal amount of USD \$125,000,000.00. A true copy of the Zen Garden Loan Agreement is attached as Exhibit “B” to the First Prior Affidavit.
18. As previously noted, one of the purposes of the Zen Garden Loan Agreement was to provide additional construction financing for the Austin Lands. The Zen Garden Loan Agreement also consolidated the amounts then due and owing under the Acquisition Loan, as amended and supplemented from time to time.
19. Pursuant to the Zen Garden Loan Agreement, Zen Garden acknowledged that the amount due and owing under the Acquisition Loan, as of April 17, 2018, was CAD \$35,479,831.72. In addition, the Zen Garden Loan Agreement contained a full release of Romspen as it relates to the Acquisition Loan.

iii. The Alberta Security

20. The Zen Garden Loan Agreement was guaranteed by Eightfold Developments LLC (“**Eightfold**”) and the White Group.
21. In connection with its guarantee, Eightfold granted to Romspen a series of security instruments in the State of Texas (the “**Texas Security**”) and executed a guaranty in favour of Romspen (the “**Texas Guaranty**”).

22. As security for the guarantees given by the White Group, Romspen was granted, among other things:
- (a) a Mortgage from GP acting in its capacity as general partner for LP, and in its own capacity, dated April 17, 2018, in respect of certain lands situated in Alberta, in the sum of USD \$40,000,000.00 (the “**GP Mortgage**”);
 - (b) a General Security Agreement from GP and LP, dated April 17, 2018;
 - (c) a Mortgage from Eco-Industrial, dated April 17, 2018, in respect of certain lands situated in Alberta, in the sum of USD \$40,000,000.00 (together with the GP Mortgage, the “**Alberta Mortgages**”);
 - (d) a General Security Agreement from Eco-Industrial, dated April 17, 2018;
 - (e) a General Security Agreement from Absolute Energy, dated April 17, 2018;
 - (f) a General Security Agreement from Absolute Environmental, dated April 17, 2018;
and
 - (g) a General Security Agreement from White, dated April 17, 2018.
- (collectively, the “**Alberta Security**”). A true copy of the Alberta Security is attached as Exhibits “A” to “G” to the Second Prior Affidavit.
23. As confirmed in the applicable mortgage documentation, the lands secured by the Alberta Mortgages are legally owned by GP and Eco-Industrial, respectively (the “**Alberta Lands**”). Neither White nor the Dan White Family Trust is a legal owner of the Alberta Lands. Attached hereto and marked as Exhibit “A” are true copies of the Certificates of Title for the Alberta Lands, dated July 27, 2022.
24. In addition, true copies of guarantees executed by the White Group (the “**Alberta Guarantees**”) are attached as Exhibits “H” to “L” to the Second Prior Affidavit.

25. From time to time, Romspen advanced sums to Zen Garden pursuant to the terms of the Zen Garden Loan Agreement, the Texas Security, the Alberta Security, the Texas Guaranty and the Alberta Guarantees.

C. Default and Demand

26. Zen Garden defaulted under the terms of the Zen Garden Loan Agreement. By correspondence dated October 11, 2019, Romspen's legal counsel in Texas, Thomas Scannell ("**Scannell**") of Foley & Lardner LLP demanded that Zen Garden and the White Group, among others, repay all amounts due and owing under Zen Garden Loan Agreement (the "**Texas Demand and Notice**"). Attached hereto and marked as Exhibit "**B**" is a true copy of the Texas Demand and Notice.
27. The default under the Zen Garden Loan Agreement also resulted in a default under each of the Alberta Security and the Alberta Guarantees, as well as the Texas Security and the Texas Guaranty.
28. By correspondence dated October 11, 2019, Romspen demanded that, among others, Zen Garden, Eightfold, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White repay all amounts due and owing under the Zen Garden Loan Agreement, the Alberta Security and the Alberta Guarantees, and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") (the "**Alberta Demand and Notice**"). True copies of the Alberta Demand and Notice are attached as Exhibit "C" to the First Prior Affidavit.
29. At the time that the Demand and Notice was issued, the amount owing under the Loan Agreement totalled USD \$87,865,453.79.

III. THE LITIGATION

A. The United States Bankruptcy Proceeding

30. In November 2019, White executed a consent receivership order in Texas in respect of Zen Garden.

31. On March 22, 2020, Zen Garden was petitioned into involuntary bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas (the “**Bankruptcy Court**”) Case No. 20-10410 (the “**U.S. Bankruptcy Proceeding**”) by certain of its other creditors. A true copy of the Notice of Bankruptcy in respect of Zen Garden is attached as Exhibit “F” to the First Prior Affidavit.
32. Romspen and the court-appointed Chapter 11 Trustee and eventual bankruptcy trustee (the “**Texas Trustee**”) reached a settlement in principle, which was documented in the Chapter 11 bankruptcy plan (the “**Plan**”) and filed in the U.S. Bankruptcy Proceeding for the Bankruptcy Court’s approval. A true copy of the Plan is attached as Exhibit “26” to the Third Prior Affidavit. For ease of reference, a true copy of the Plan is attached hereto and marked as Exhibit “C”.
33. The Plan provides for a global resolution of any and all disputed issues between Zen Garden and Romspen. In particular, the Plan settlement found at clause 6.1 includes settlement of prior allegations raised by the Texas Trustee in respect of Romspen’s ability to submit a credit bid in Zen Garden’s bankruptcy (the “**Credit Bid Challenge**”).
34. The agreement between the Texas Trustee and Romspen to resolve the Credit Bid Challenge was approved by the Bankruptcy Court and entered on the docket as a “Stipulation”. A true copy of the Stipulation is attached as Exhibit “28” to the Third Prior Affidavit. For ease of reference, a true copy of the Stipulation is attached hereto and marked as Exhibit “D”.
35. On June 19, 2020, the Bankruptcy Court granted an order that finally and conclusively approved the debtor-in-possession financing advanced by Romspen to the bankrupt estate of Zen Garden (the “**Financing Order**”). Attached hereto and marked as Exhibit “E” is a true copy of the Financing Order, excluding exhibits thereto.
36. I am advised by Scannell, and do verily believe, that the Financing Order expressly confirms the validity and amount of the indebtedness owing to Romspen under the Zen

Garden Loan Agreement. In particular, paragraphs 4 and 18 Financing Order provide as follows:

4. ...

a) Lender [Romspen] is the due and lawful owner and holder of an allowed claim under the Loan Documents against the Debtor [Zen Garden] in the amount not less than \$96,495,021.72, as of the Petition Date, plus all other costs, fees and obligations owing, including, without limitation, all costs and expenses of administration, collection and enforcement incurred by Lender prior to the Petition Date (the “**Pre-Petition Indebtedness**”)...

...

c) Payment of the Pre-Petition Indebtedness is fully matured (by acceleration duly noticed by Lender prior to the Petition Date), absolutely and unconditionally due and payable to Lender, without defense, offset or counterclaim, and the Lender is hereby released from (i) any and all objections to the allowance of, and any defense with respect to, the Pre-Petition Indebtedness, and (ii) any right to contest the priority, perfection or validity the liens, mortgages and/or security interests granted and/or pledged to or in favor of Lender securing such Pre-Petition Indebtedness....

d) Pursuant to section 552(b) of the Bankruptcy Code and the Loan Documents, including, without limitation, the Credit Agreement, the Pre-Petition Indebtedness is secured by a security interest and lien in substantially all of the Debtor’s assets, real property, fixtures, and personal property, whether now owned or hereafter acquired, including, without limitation, all accounts, chattel paper and electronic chattel paper, deposit accounts, documents, equipment, general intangibles, goods, instruments, investment property, intellectual property rights, inventory intellectual property rights, inventory, letter-of-credit rights, letters of credit, together with all substitutions and replacements for and products of any of the foregoing, the proceeds of any and all of the foregoing and all proceeds and products of such collateral security acquired by the Estate after the Petition Date (such collateral security assets are more particularly and specifically described in the Loan Documents, together with all product and proceeds thereof, herein called the “**Pre-Petition Collateral**”)...

...

18. “The acknowledgements and releases in favor of Lender set forth in paragraph 4 of this Final Order shall be binding on the Debtor, the Trustee, the Estate, and all parties in interest having due process notice and an opportunity to participate in this proceeding . . . unless the Trustee or such other party in interest with standing . . . has filed an adversary proceeding or contested matter challenging any of the acknowledgements or admissions in favor of Lender set forth in paragraph 4 of this Final Order no later than July 20, 2020 (the “**Challenge Period**”). If no such adversary proceeding or contested matter is timely commenced as of such date, (i) the Pre-Petition Indebtedness of Lender shall constitute allowed secured claims, not subject to objection or subordination and otherwise unavoidable, (ii) the pre-petition liens of Lender on the Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind or subordination, and otherwise unavoidable, and (iii) the Lender shall be released from and absolved of any and all claims, causes of action, challenges, disputes and liability of any kind or character, whether known or unknown, whether contingent or noncontingent, whether liquidated or unliquidated, in existence as of the effective date of such release arising from, related to or otherwise in connection with the Pre-Petition Indebtedness, the Pre-Petition Collateral, the Loan Documents, the Credit Facility and any and all actions taken by or on behalf of Lender in connection therewith.

37. Ultimately, Romspen’s credit bid was approved by the Bankruptcy Court as the highest and best bid for the Austin Lands, and determined that a sale of the Austin Lands to Romspen was in the best interests of all parties to Zen Garden’s bankruptcy case. On October 7, 2020, the Bankruptcy Court entered an order approving Romspen’s credit bid (the “**Sale Order**”) and granting Romspen title to the Austin Lands free and clear of all liens, claims and encumbrances. A true copy of the Sale Order is attached as Exhibit “29” to the Third Prior Affidavit. For ease of reference, the Sale Order is attached hereto and marked as Exhibit “**F**”.
38. The Plan was subsequently modified and amended (as amended, the “**Amended Plan**”). On January 27, 2021, the Bankruptcy Court issued an order confirming the Amended Plan (the “**Plan Approval Order**”). Attached hereto and marked as Exhibit “**G**” to this Affidavit is a true copy of the Plan Approval Order.

39. I am advised by Scannell, and do verily believe that, the modifications and amendments set out in the Amended Plan generally concern the preservation of the Adversary Proceeding (as hereinafter defined) and other adversary proceedings, including claims asserted by the White Group and the Dan White Family Trust.
40. However, I am further advised by Scannell, and do verily believe, that as set out in section 6.1 of the Amended Plan, the Amended Plan provides Romspen a full release of liability, including a release of claims asserted on behalf of Zen Garden, its creditors, and any other parties who did not opt-out. None of the White Group or the Dan White Family Trust opted out of this release.
41. The effect of the orders issued by the Bankruptcy Court in the U.S. Bankruptcy Proceedings is that:
- (a) the indebtedness owed by Zen Garden to Romspen, guaranteed by the Alberta Entities, in the amount of USD \$96,495,021.72 was deemed valid and enforceable and properly owing by Zen Garden to Romspen;
 - (b) Romspen was permitted to bid the indebtedness in the sales process conducted in the U.S. Bankruptcy Proceedings and its credit bid in the amount of USD \$45,000,000.00 was the successful bid in that process, resulting in the total indebtedness being reduced by the amount of the credit bid; and
 - (c) as a result of the credit bid reducing the total remaining indebtedness, but with interest continuing to accrue, Romspen continues to be owed the amount of USD \$91,415,581.97 as of July 21, 2022 by the Alberta Entities pursuant to their respective guarantees.

B. The United States Litigation Commenced by White

42. During the course of Zen Garden's bankruptcy, White and the Dan White Family Trust filed an "adversary proceeding" bearing the Action No. 20-01047 in the U.S. Bankruptcy Proceeding against Romspen and myself, among others (the "**Adversary Proceeding**"). The substance of the Adversary Proceeding dealt with, generally, spurious allegations

concerning conduct prior to the execution of the Zen Garden Loan Agreement and conduct relating to the loan advances made thereunder.

43. White also separately commenced an action against Romspen, Richard Weldon (a Managing Partner of Romspen) (“**Weldon**”), and me, among others, in the United States District Court for the Western District of Texas (the “**District Court**”) Civil Action No. 21-00517 (the “**District Court Action**”), which contains substantially the same allegations and accusations asserted by the plaintiffs in the Adversary Proceeding.
44. On June 7, 2021, White and the Dan White Family Trust filed with the District Court a “motion to withdraw the reference” (the “**Motion to Withdraw**”). I am advised by Scannell, and do verily believe, that the Motion to Withdraw was a request to have the Adversary Proceeding heard by the District Court instead of the Bankruptcy Court.
45. On June 17, 2021, White and the Dan White Family Trust brought before the Bankruptcy Court an emergency motion for the stay of proceedings pending the District Court’s ruling on the Motion to Withdraw (the “**Emergency Motion**”). During the hearing of the Emergency Motion, the Bankruptcy Court stated as follows:

THE COURT: So but there’s this adversary proceeding as it’s currently filed, the Second Amended Complaint filed by the White parties in this adversary proceeding. I mean, it’s no longer objecting to Romspen’s claim. It’s no longer saying that Romspen’s wasn’t secured. It’s no longer saying any of those things. They dropped all of that.

Attached hereto and marked as Exhibit “**H**” is a true copy of the relevant excerpt from the transcript of hearing of the Emergency Motion in respect of the District Court’s findings.

46. The Bankruptcy Court granted the Emergency Motion. Eventually, the District Court issued its ruling and granted in part the Motion to Withdraw. In compliance with the District Court’s ruling, Romspen filed a motion to dismiss the Adversary Proceeding.
47. On December 3, 2021, the Bankruptcy Court approved a consent order dismissing the Adversary Proceeding (the “**Dismissal Order**”). I am advised by Scannell, and do verily believe, that the Dismissal Order dismissed, with prejudice, the plaintiffs’ claims allegedly

occurring after Zen Garden came into legal existence, or otherwise involving, relating to, and/or arising from Zen Garden in any way. Attached hereto and marked as Exhibit “I” is a true copy of the Dismissal Order.

48. White and the Dan White Family Trust filed multiple amended complaints in the District Court Action. On February 17, 2022, the District Court granted an agreed order (the “**Agreed Order**”), which precluded White from filing any further amended complaints. Attached hereto and marked as Exhibit “J” and Exhibit “K” are true copies of the Agreed Order and White’s most recently filed complaint, being the Plaintiffs’ Third Amended Complaint, respectively.
49. On April 4, 2022, Romspen, Weldon, and I, filed a motion to dismiss the District Court Action (the “**Motion to Dismiss**”). Attached hereto and marked as Exhibit “L” is a true copy of the Motion to Dismiss, excluding exhibits.
50. In response to the Motion to Dismiss, White filed a reply memorandum and two declarations in support of his reply.
51. I am further advised by Scannell, and do verily believe, that the District Court has referred the Motion to Dismiss to a Magistrate Judge to issue a report and recommendation that the District Court may choose to adopt as its ruling. Romspen is currently awaiting the Magistrate Judge’s decision. If the Motion to Dismiss is granted, no further litigation by White against Romspen will be pending in the United States.
52. However and in any event, neither White nor the Dan White Family Trust are parties to the receivership proceedings in Alberta, nor are the properties sought to be marketed for sale by the Receiver owned by either White or the Dan White Family Trust. While White is a guarantor, the Dan White Family Trust is a stranger to any of the loan or security documentation. As a result, in the event the District Court Action is permitted to continue (which I don’t anticipate to be the case given it is entirely without merit and borders on vexatious), any outcome of that litigation has no bearing on the indebtedness owed by the Alberta Entities to Romspen, and Romspen’s entitlement to enforce same in the current receivership proceedings.

C. The Alberta Stay Action

53. As discussed above, the default of the Zen Garden Loan Agreement triggered the default of the Alberta Security and the Alberta Guarantees.
54. At the time of Zen Garden's involuntary bankruptcy, each of GP and Eco-Industrial were independently in breach of their respective mortgages in that they had failed to pay outstanding property taxes totalling approximately CAD \$800,000.00.
55. Upon Romspen issuing the Demand and Notice, each of the Alberta Entities and White brought an application in the Court of Queen's Bench of Alberta File No. 1903-21473 (the "**Stay Action**") to stay Romspen from taking any enforcement steps under the *BIA*.
56. As the parties were in the process of attempting to negotiate a resolution of amounts owing under the Zen Garden Loan Agreement, they agreed to a consent order, which served to stay Romspen from taking enforcement steps (the "**Consent Order**"). On October 25, 2019, the Consent Order was granted and filed in the Stay Action. A true copy of the Consent Order is attached as Exhibit "D" to the First Prior Affidavit.
57. Zen Garden repeatedly breached the terms of the Zen Garden Loan Agreement, the Texas Security and the Texas Guaranty. In addition, each of GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White continued to breach the terms of the Alberta Security and the Alberta Guarantees.

D. The Alberta Receivership Proceeding

58. As a result of the ongoing breach of the Zen Garden Loan Agreement, the Alberta Security and the Alberta Guarantees, on March 31, 2020, Romspen filed its Statement of Claim and an application for the appointment of a receiver and manager over the assets of the White Group (the "**First Receivership Application**") in the Court of Queen's Bench of Alberta File No. 2003-06728 (the "**Alberta Receivership Proceeding**").
59. At the time of the Statement of Claim and the Receivership Application being filed, the total amount due and owing under the Zen Garden Loan Agreement was USD

\$96,760,975.69 with interest continuing to accrue at the rate of USD \$44,384.00 per diem thereafter.

60. The White Group opposed the Receivership Application.
61. The White Group and Zen Garden also filed a Counterclaim against Romspen, Weldon and I (in such capacity, the “**Defendants by Counterclaim**”) in respect of claims that are substantively similar to those asserted in the District Court Action. The Defendants by Counterclaim filed a Statement of Defence to Counterclaim.
62. On April 2, 2020, the First Receivership Application was heard by Associate Chief Justice Nielsen, who adjourned the application *sine die* but ordered, among other things, that Romspen was entitled to appoint an interim monitor (the “**Interim Monitor**”) to monitor the business operations of the Alberta Entities for an initial 30-day period (the “**Interim Monitor Order**”).
63. In connection with the Interim Monitor Order, Romspen retained MNP Ltd. to act as the Interim Monitor.
64. The White Group appealed the Interim Monitor Order. However, the appeal was struck as the White Group failed to take necessary steps to prosecute the appeal.
65. On April 30, 2020, Romspen filed an application for the extension of the Interim Monitor Order.
66. The White Group opposed this application. In fact, prior to the application being heard by Justice Hillier, the White Group filed two affidavits in respect of the application, including a comprehensive affidavit sworn by White on April 29, 2020 (the “**White Affidavit**”).
67. In the White Affidavit, White described the issues relating to breaches of the Zen Garden Loan Agreement and the alleged misconduct of the Defendants by Counterclaim in relation to the Zen Garden Loan Agreement as “never been finally determined by a Court of competent jurisdiction”. In particular, White stated:

35. Although the Austin Development ultimately became the subject matter of a Consent Receivership Order in Texas, a Judgment has never been obtained against Zen Garden or me in Texas.

36. As such, the question of who breached the Second Romspen / Zen Garden Loan Agreement or whether the conduct of Romspen LP, Romspen Investments, Mr. Weldon and Mr. Roitman prompted a breach of the Second Romspen / Zen Garden Loan has never been finally determined by a Court of competent jurisdiction.

37. On April 15, 2020, Zen Garden was petitioned into bankruptcy in the State of Texas and, as a result, there is now a Texas Stay of Enforcement with respect to disputes involving Zen Garden – such as the question of who breached the Second Romspen / Zen Garden Loan Agreement or whether the Romspen LP, Romspen Investments, Mr. Weldon and Mr. Roitman prompted a breach of the Second Romspen / Zen Garden Loan.

However, the alleged questions raised by White in the White Affidavit have been fully and finally resolved by the Bankruptcy Court in the U.S. Bankruptcy Proceeding, or have otherwise been withdrawn by White.

68. On June 19, 2020, Justice Hillier extended the Interim Monitor Order (the “**Extension Order**”).
69. The Interim Monitor Order, as extended by the Extension Order, was further extended on multiple occasions by consent.
70. On April 15, 2021, the White Group filed an application to discharge registrations filed by Romspen with the Alberta Land Titles Registry in respect of the Alberta Mortgages (the “**Discharge Application**”).
71. On April 26, 2021, Romspen filed an application for, among other things:
 - (a) summary judgment in favour of Romspen;
 - (b) summary dismissal of the Counterclaim;
 - (c) a declaration that the White Group were in default under the terms of the Alberta Security and the Alberta Guarantees; and

- (d) the appointment of a receiver and manager over the assets of the White Group (the “**Second Receivership Application**”).
72. Both the Discharge Application and the Second Receivership Application were scheduled to be heard on May 5, 2021. Both of these applications were adjourned *sine die*.
73. I am advised by Kevin Barr (“**Barr**”) of Borden Ladner Gervais LLP, Romspen’s legal counsel in Canada, and do verily believe that during the hearing of the Second Receivership Application, former legal counsel for the Defendants by Counterclaim, among other things, advised the Court that the validity of Romspen’s debt claim was subject to adjudication in the various proceedings commenced in the United States.
74. Notwithstanding the engagement of the Interim Monitor and the direction in the Interim Monitor Order that the White Group “cooperate and provide information to the Interim Monitor”, they have not done so. To the contrary, the White Group flagrantly disregarded the terms of the Interim Monitor Order by, among other things, neglecting, failing, or refusing to provide the Interim Monitor with basic financial information as requested.
75. Furthermore, the Interim Monitor’s investigation revealed the continued erosion of the Alberta Security, including, among others:
- (a) the shut down of the business operations of Absolute Environmental;
 - (b) the apparent overpayment of management fees by the Alberta Entities, or certain of them, to Symmetry, of which White was the sole director and shareholder; and
 - (c) notice of an imminent public auction of the lands secured by the Alberta Security as a result of outstanding property taxes.
76. The particulars of the White Group’s conduct following the engagement of the Interim Monitor are set out in the Third Report of the Interim Monitor dated October 12, 2021 (the “**Third Report**”). A copy of the Third Report is attached as

Exhibit “A” to the Fourth Prior Affidavit. For ease of reference, the Third Report is attached hereto and marked as Exhibit “M”.

77. As a result of the Interim Monitor’s discoveries and the White Group’s neglect, failure or refusal to cooperate with the Interim Monitor, Romspen again filed a receivership application in respect of the White Group (the “**Third Receivership Application**”). The White Group consented to the Third Receivership Application on the basis that certain features of the Court’s template receivership order be limited or removed, as described below.
78. On November 4, 2021, Mr. Justice Whitling heard the Third Receivership Application and granted a receivership order (the “**Receivership Order**”) which, among other things, vacated the stay of proceedings set out in the Consent Order and appointed MNP Ltd. as Receiver of the Alberta Entities.
79. The Receiver’s legal counsel has reviewed Romspen’s security and confirmed that the Alberta Security constitutes a valid and enforceable first-ranking security interest in the Alberta Entities’ property. In particular, the Receiver states in its First Report dated January 31, 2022 (the “**Receiver’s First Report**”):
 38. Osler has reviewed the Romspen security and rendered an opinion that, subject to customary assumptions and qualifications, the Romspen Security constitutes a valid and enforceable first charge in respect of Property.
80. During the course of the Receiver’s administration of the estates to date, White has continued to act in flagrant disregard of the Court’s orders and his obligations as management of the Alberta Entities. In particular, the Receiver was required to seek orders from the Court compelling White to comply with his disclosure obligations and provide the Receiver with requested information. The application to compel was originally scheduled on February 8, 2022. However, White sought and obtained an adjournment to March 3, 2022 on the basis that he was in the process of engaging new counsel. I am advised by Barr and do verily believe that on March 3, 2022, neither White nor his new counsel appeared and in White’s absence, the Court ordered White to comply with his disclosure obligations set out in the Receivership Order.

81. Based on my discussions with the Receiver, I understand that White continues to ignore his court-ordered obligations and has failed to provide the Receiver with its requested information.
82. Most recently, the Receiver brought an application to increase the Receiver's borrowing charge, among other things (the "**Receiver's Application**"). The Receiver's Application was necessary to provide sufficient funding to permit the Receiver to conduct extensive remediation work on certain of the receivership properties in order to make it marketable and saleable, and in order to ensure compliance with certain orders issued by the Alberta Energy Regulator (the "**AER**"). I am advised by Barr, and do verily believe, that the Receiver's Application was heard by Justice Neilson on June 2, 2022, during which the White Group's legal counsel unsuccessfully sought an adjournment of the application, again on the basis of the pending District Court Action.
83. I am not aware of any further steps having been taken by White to advance the Counterclaim.

IV. ROMSPEN'S APPLICATION FOR DECLARATORY RELIEF

84. The Receiver has advised Romspen that it intends to conduct a SISF with respect to the Alberta Entities' assets, notably the lands secured by the Alberta Mortgages.
85. Romspen intends to offer a stalking horse credit bid in the contemplated SISF.
86. Due to the allegations and accusations asserted by White in the Adversary Proceeding, the District Court and the Alberta Receivership Proceeding, Romspen seeks declaratory relief from this Honourable Court confirming that the indebtedness owing under the Alberta Security and the Alberta Guarantees is a just debt properly due and owing to Romspen by the Alberta Entities, and approving Romspen's ability to submit a credit bid.
87. The circumstances have fundamentally changed since Romspen sought prior relief; namely, that Romspen's debt claim under the Zen Garden Loan Agreement has been accepted as valid and enforceable by the Bankruptcy Court and there are no remaining existing or potential legal challenges to Romspen's debt claim.

88. I am advised by Scannell, and do verily believe that, questions concerning the validity of Romspen's debt claim have been fully and finally resolved in the U.S. Bankruptcy Proceeding and the claims brought by White against Romspen to challenge such debt claim are now closed with prejudice and not subject to further challenge. In particular:
- (a) as set out in the Sales Order, Romspen participated in the sales process for the assets marked in the U.S. Bankruptcy Proceeding and its credit bid was approved by the Bankruptcy Court as the highest and best bid;
 - (b) as set out in the Plan Approval Order, Zen Garden (and its creditors and other parties who do not opt-out) granted Romspen a full release of liability. I am advised by Scannell, and do verily believe, that this release encompasses claims relating to the validity of the Zen Garden Loan Agreement and Romspen's conduct in connection with the negotiation and execution thereof and loans thereunder;
 - (c) as confirmed by the Bankruptcy Court during its hearing of the Emergency Motion on June 17, 2021, the validity of the Zen Garden loan is no longer in issue in the U.S. Bankruptcy Proceeding or in the District Court Action;
 - (d) as set out in the Financing Order, Romspen has a valid claim against Zen Garden in the U.S. Bankruptcy Proceeding and Romspen's claim is secured by a security interest and lien against Zen Garden's assets;
 - (e) I am advised by Scannell, and do verily believe, that, as a result of the Agreed Order, the District Court Action is now restricted to issues unrelated to the validity of the Zen Garden loan and do not impact on the obligations properly owing by the Alberta Entities to Romspen, secured by the valid and enforceable Alberta Security; and
 - (f) I am further advised by Scannell that all of the court orders issued by the Bankruptcy Court and the District Court are final, binding, and no longer subject to appeal.

89. Based on the events above described, I believe the time is ripe for this Honourable Court to declare that Romspen has a valid and enforcement claim against the Alberta Entities in respect of the amounts owing pursuant to the Alberta Security and the Alberta Guarantees.
90. Throughout the course of the proceedings in Texas and in Alberta, White has sought to delay the enforcement of Romspen's security by attacking the validity of Romspen's loan and impugning the conduct of Romspen and myself, among others. Given that the validity and enforcement of Romspen's debt claim and security has been confirmed by the Bankruptcy Court, and that the District Court Action now concerns issues unrelated to the validity and enforcement of the Zen Garden Loan Agreement, I believe there is no further reason to delay the enforcement of the Alberta Security and the Alberta Guarantees.
91. The Alberta Entities are now in receivership, which was consented to by White, and based on my discussions with the Receiver, I understand the Receiver does not intend to pursue the Counterclaim. Similarly, the Texas Trustee has fully released Romspen and related parties of any claims and liabilities relating to the Zen Garden Loan Agreement. The only Plaintiff by Counterclaim that purports to have any desire to proceed with the Counterclaim is White personally. The Dan White Family Trust was never a party to litigation in Alberta.
92. In my view, White should not be permitted to further delay Romspen's entitlement to enforce upon the Alberta Security and those Alberta Guarantees pledged by the Alberta Entities. I wish to highlight for the Court:
 - (a) White is not a principal obligor under the Zen Garden Loan Agreement. His personal liability derives from the Guarantee and General Security Agreement he gave to Romspen;
 - (b) the Dan White Family Trust is not a party to the Zen Garden Loan Agreement, and has not given any guarantee or other security in favour of Romspen, whether in Texas or Alberta. Further, the Dan White Family Trust is not a party to the U.S. Bankruptcy Proceeding or the Alberta Receivership Proceeding. Its status as a litigant is now solely limited to the District Court Action;

- (c) as confirmed by the Receiver in the Receiver's First Report at paragraphs 3(b) and (c) and in Schedule "A", Eco-Industrial and GP are the legal owners of the lands subject to the Alberta Mortgages. Neither White nor the Dan White Family Trust is a legal owner of these lands;
 - (d) I am advised by Barr, and do verily believe, that throughout the course of the Alberta Receivership Proceeding, White, through his legal counsel, has represented to the courts that the U.S. Bankruptcy Proceeding and the District Court Action are the main proceedings dealing with issues relating to the validity of the Zen Garden Loan Agreement, and the Court should await the adjudication of those proceedings before moving forward with the Alberta Receivership Proceeding. As the obligations owing to Romspen under the Zen Garden Loan Agreement are no longer in issue in the U.S. Bankruptcy Proceeding or the District Court Action, I am unaware of any further reasons to delay the Alberta Receivership Proceeding; and
 - (e) interest and legal fees are continuing to accrue on the indebtedness owing to Romspen. Additionally, Romspen has advanced CAD \$900,000.00 as of July 29, 2022 to the Receiver (who has the power to borrow up to CAD \$2,000,000.00 granted by the Court) to fund the receivership proceedings, comply with AER orders and ensure the property care, custody and maintenance of the Alberta Entities' assets. Romspen wishes to proceed with realizing on those portions of the Alberta Security that are pledged by the Alberta Entities (not those pledged by White) in order to resolve the matter in a cost-effective manner and to mitigate further losses. White's refusal to comply with his disclosure obligations and to assist the Interim Monitor and the Receiver, and initial opposition to applications he eventually consented to, have resulted in a degradation of value of these assets.
93. As earlier noted, the indebtedness owing to Romspen pursuant to the Zen Garden Loan Agreement and, in turn, the Alberta Security and the Alberta Guarantees as of July 21, 2022, is USD \$91,415,581.97, with interest continuing to accrue at the rate of USD \$37,133.11 per diem thereafter. Attached hereto and marked as Exhibit "N" is Romspen's Statement of Indebtedness, which illustrates that there remains a significant shortfall in

respect of the Zen Garden loan following Romspen's successful credit bid in the U.S. Bankruptcy Proceeding.

V. CONCLUSION


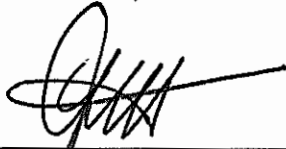
94. I am authorized to swear this Affidavit on behalf of Romspen.

95. As earlier noted at paragraph 2 of this Affidavit, I make this Affidavit in support of an Application by Romspen for an Order:

- (a) declaring the amounts owing by the debtors in the within receivership proceeding; and
- (b) approving Romspen's ability to make a stalking horse credit bid in the Receiver's contemplated SISP,

and for no improper purpose.

SWORN BEFORE ME at the City of Toronto,)
in the Province of Ontario, this 29th day of)
July, 2022.)



A Notary Public in and for the Province of)
Ontario)

WESLEY ROITMAN

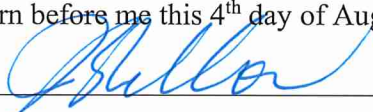
JOEL MICKELSON
Barrister & Solicitor

162 Cumberland Street, Suite 300
Toronto ON M5R 3N5
Direct Line: 416.928.4870



This is **Exhibit "H"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shelton
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

MORTGAGE

Made at the City of Edmonton, in the Province of Alberta, as of the 17 day of April, 2018 in pursuance of "The Land Titles Act".

ECO-INDUSTRIAL BUSINESS PARK INC., as "Mortgagor", being, registered as owner of an estate in fee simple in possession, subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon in those certain pieces of land situate in the Province of Alberta, being composed of the lands and premises more particularly described in Schedule "A" annexed hereto and forming a part hereof, which lands are jointly hereinafter sometimes referred to as the "lands" or the "said lands" or the "mortgaged property" or the "mortgaged premises", all of which terms shall be deemed to include all improvements now or hereafter made thereon.

AND WHEREAS in consideration of **ROMSPEN INVESTMENT CORPORATION**, as trustee, of 162 Cumberland Street, Suite 300, Toronto, ON, M5R 3N8, who and whose successors and assigns are hereinafter included in the expression the "Mortgagee" dealing with 3443 Zen Garden Limited Partnership (hereinafter referred to as the "Borrower"), the Mortgagor has, inter alia, pursuant to a written Guarantee dated the 17 day of April, 2018 (hereinafter called the "Guarantee") guaranteed the payment to the Mortgagee of all present and future debts and liabilities, direct or indirect or otherwise of the Borrower to the Mortgagee, together with interest thereon or on so much thereof shall from time to time remain unpaid;

AND WHEREAS for the same consideration as aforesaid, the Mortgagor has agreed to grant to the Mortgagee this mortgage as additional and collateral security for the observance and performance of its obligations, covenants and agreements to guarantee as set forth in the Guarantee;

AND WHEREAS the Mortgagor has agreed to grant this mortgage in favour of the Mortgagee in the sum of **FORTY MILLION US DOLLARS (US\$40,000,000.00) DOLLARS** of lawful money, as additional and collateral security to the Mortgagee for the obligations of the Mortgagor to the Mortgagee under the Guarantee;

NOW THEREFORE the Mortgagor for good and valuable consideration and for the purposes above mentioned does hereby covenant with the Mortgagee:

1. That the Mortgagor shall pay to the Mortgagee in lawful money of the United States of America, the principal sum lent to the Borrower as aforesaid with interest thereon at the rate hereinafter provided for on the date of demand by the Mortgagee pursuant to the Guarantee.
 - (a) Intentionally Deleted.
 - (b) Intentionally Deleted.
That for the purposes of this mortgage:
 - (c) Intentionally Deleted.
 - (d) "indebtedness" shall be interpreted in its most comprehensive sense, and without limiting its generality, shall include, pursuant to the Guarantee, any and all advances at any time and from time to time made by or on behalf of Romspen Mortgage Limited Partnership or the Mortgagee to or on behalf or on account of or at the direction of the Borrower, and all debts, obligations or liabilities of the Borrower to or in favour of Romspen Mortgage Limited Partnership or the Mortgagee or for which Romspen Mortgage Limited Partnership may become responsible;
 - (e) "Interest Rate" means 12% percent per annum calculated and compounded monthly, not in advance.
 - (f) "Loan Agreement" means the agreement between the Borrower and Romspen Mortgage Limited Partnership dated April 17, 2018, as it may be amended from time to time, under which credit facilities are provided by Romspen Mortgage Limited Partnership to the Borrower;

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- (g) "Moneys" means the indebtedness and all other sums due, owing or payable or which may become due, owing or payable under the Loan Agreement, any of the Security, this Mortgage or otherwise;
- (h) Intentionally Deleted
- (i) "Security" means any documents other than this Mortgage now held or hereafter held by the Mortgagee, as security relating to the Moneys or any other liabilities or obligations of the Mortgagor to the Mortgagee.
- (j) Intentionally Deleted

2. That save as hereinafter described, the Mortgagor will pay when and as same fall due, all taxes, rates, liens, charges, encumbrances or claims (hereinafter sometimes referred to as "taxes") which are or may be or become charges or claims against the mortgaged premises, on or in respect of this mortgage. The Mortgagor shall pay to the Mortgagee on each date on which a payment is due hereunder an additional amount estimated by the Mortgagee required to pay the full amount of taxes when they next become due. The Mortgagor further covenants and agrees to transmit to the Mortgagee the tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by him and to provide evidence of payment within thirty (30) days of the due date for payment.

Should the Mortgagor become in default of its obligation in this Paragraph 2, the Mortgagee shall have the right itself to pay the taxes and the amount so paid, as aforesaid, by the Mortgagee shall be secured hereby and shall (together with interest thereon at the Interest Rate) be a charge on the mortgaged premises, and shall bear interest at the Interest Rate until paid, all such monies to be repayable to the Mortgagee on demand, or if not demanded repayable on the next ensuing instalment (whether principal or interest).

3. That the Mortgagee may, without further authority and from time to time as the Mortgagee may desire, make advances of principal monies to be secured under this mortgage in:
- (a) An amount or amounts, which when added at the date next ensuing upon which taxes become due and payable to those portions of the then paid up monthly instalments under Paragraph 2, will be sufficient to pay and discharge the taxes;
 - (b) An amount or amounts sufficient to defray interest accrued hereunder and unpaid from time to time; and
 - (c) An amount or amounts equal to estimated interest on account of the principal sum hereunder including an initial interest reserve pursuant to the Loan Agreement;

and upon making such advances, will have the right to apply such advances for the purpose described in this Paragraph 3 for which they were advanced. Nothing herein shall obligate the Mortgagee to make the advances in this Paragraph 3 described.

4. That the Mortgagor shall pay to the Mortgagee interest as aforesaid and all interest on becoming overdue shall be forthwith treated, as to payment of interest thereon, as principal and shall bear interest thereon at the aforesaid rate computed with rests and compounded at each interest date as well after as before maturity of this mortgage and all such interest shall be a charge on the mortgaged premises; and in the event of non-payment of any of the monies hereby secured at the time herein set for payment thereof the Mortgagor will, so long as any part thereof remains unpaid, pay interest at the said rate from day to day on the same.
5. That the Mortgagor shall forthwith insure and keep insured during the continuance of this security the mortgaged property together with such other insurance required by the Mortgagee, all as more particularly set out in section 13 of the Schedule of Additional Provisions.

All such insurance shall:

- (aa) be carried in a company or companies to be approved by the Mortgagee;
- (bb) be in a form acceptable to the Mortgagee; and
- (cc) where applicable, grant permission for partial occupancy;
- (dd) provide that the insurer will neither terminate or alter the policy to the prejudice of Mortgagee except by registered letter giving notification of thirty (30) days.

The loss for all such policies shall be solely made payable to the Mortgagee as first loss payee respecting the lands for which this Mortgage is a first charge and a second loss payee respecting the lands for which this Mortgage is a second charge with the Mortgagee's mortgage clause affixed to each policy by the Insurer. The Mortgagor shall pay all premiums and sums of money necessary for such purpose as the same shall become due, and shall not do anything which might cause the policy to be voided, and does hereby assign and deliver to the Mortgagee the policy or policies of insurance and all renewal receipts and renewals thereto appertaining and will deliver evidence of renewal to the Mortgagee at least fifteen (15) days prior to the expiration of any policy.

The Mortgagor shall maintain, at all times, a sufficient amount of insurance to meet the requirements of any "stated amount co-insurance clause" contained in any policy of insurance, so as to prevent it from becoming a co-insurer under the terms of such policy.

In the event of any breach of the foregoing covenants respecting insurance the Mortgagee may, at its option, effect such insurance on behalf of and at the cost of the Mortgagor, and at the option of the Mortgagee, the whole of the monies hereby secured remaining unpaid shall forthwith become due and payable. Forthwith on the happening of any loss or damage as aforesaid (notwithstanding any law, equity or statute to the contrary, and in particular, the Alberta Insurance Act and The Fire Prevention (Metropolis) Act, 1774 (14 Geo. 3 C.78), all rights and benefits of the Mortgagor thereunder being hereby expressly waived) the Mortgagor, at the expense of the Mortgagor, will furnish all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies and any such insurance monies received by the Mortgagee:

- (i) shall, if the Mortgagee is not in default hereunder, be applied in repairing or rebuilding the said premises; and
- (ii) If the Mortgagor is in default hereunder may, at the option of the Mortgagee, be applied in repairing or rebuilding the said premises, or be applied to the payment of the monies hereby secured (whether or not any amount is then due) in such manner as the Mortgagee may determine or be paid to the Mortgagor or any person appearing by the registered title to be the owner of the said lands or partly in one way and partly in another.

This provision shall be in addition to any statutory covenants implied in this mortgage.

That pending application of any insurance monies, the said monies shall be deemed to form part of the lands and shall be subject to the charges created by this mortgage.

The Mortgagor hereby irrevocably appoints the Mortgagee as attorney on its behalf to do all acts and things on behalf of and in the name of the Mortgagor to settle all insurance claims and to receive the proceeds of all monies payable under any insurance policy and to give effectual receipts therefor, and in so doing, the Mortgagee shall have no liability to the Mortgagor for any act so done by the Mortgagee.

6. That all erections, buildings, machinery, plant and improvements whatsoever, including furnaces, boilers, water heaters and all plumbing, air-conditioning, ventilating and heating equipment, elevators, escalators and lifts, carpets, electric light fixtures, storm windows and storm doors, window screens and screen doors, and all apparatus and equipment appurtenant thereto, which are now or which shall hereafter be put upon the mortgaged premises, are or shall thereafter be deemed to be fixtures and a part of the realty and the security for the monies hereby secured, even

though not attached otherwise than by their own weight. The Mortgagor shall not commit any act of waste thereon, and shall at all times during the continuance of this security the same repair, maintain, restore, mend, keep, make good, finish, add to and put in order. In the event of any loss or damage thereto or destruction thereof the Mortgagee may give notice to the Mortgagor to repair, rebuild or reinstate the same within a time to be determined by the Mortgagee and to be stated in such notice. If the Mortgagor fails to so repair, rebuild or reinstate the same within such time, such failure shall constitute a breach of covenant hereunder and thereupon the mortgage monies shall, at the option of the Mortgagee, become immediately due and payable without demand by the Mortgagee upon the Mortgagor. The Mortgagee may repair, rebuild or reinstate the mortgaged premises at the cost of the Mortgagor and charge all sums of money determined by the Mortgagee to be properly paid therefor to the mortgage account, all notwithstanding any law, equity or statute to the contrary, and in particular, The Alberta Insurance Act and The Fire Prevention (Metropolis) Act, 1774 (14 Geo. 3 c.78), all rights and benefits of the Mortgagor thereunder being hereby expressly waived. This provision shall be in addition to any statutory covenants implied in this mortgage.

7. That the Mortgagor further covenants and agrees with the Mortgagee that:

- (a) The Mortgagor has good title to the said lands free from all encumbrances (save as endorsed hereon);
- (b) The Mortgagor has the right to mortgage the lands;
- (c) On default the Mortgagee shall have quiet possession of the lands free from all encumbrances (save as endorsed hereon);
- (d) The Mortgagor shall execute such further assurances of the lands as may be requisite;
- (e) The Mortgagor has done no act to encumber the lands (save as endorsed hereon).

8. That the Mortgagor shall not:

- (a) lease (other than in accordance with the terms of this mortgage), sell, convey, transfer, mortgage or otherwise dispose of the mortgaged property or any part thereof at any time during the currency of this mortgage to a purchaser, transferee or assignee (save for sales of individual lots as specifically permitted by the Loan Agreement);
- (b) alter the use of the within mortgaged premises from that originally contemplated;
- (c) if the Mortgagor is a corporation, allow any change of ownership of the capital stock of the corporation, whether legal or beneficial, from that disclosed to the Mortgagee at the time of acceptance of the Loan Agreement;
- (d) register against the lands and premises a mortgage or other charge other than notified by memorandum underwritten or endorsed herein,

without the written consent of the Mortgagee first had and obtained, which consent the Mortgagee may not unreasonably or arbitrarily withhold.

- 8. (a) That in the event the Mortgagor shall make an approved sale or other voluntary or involuntary disposition of the said lands at any time during the currency of this mortgage, the Mortgagor shall procure the execution and delivery by the purchaser of an agreement with the Mortgagee whereby such permitted purchaser assumes an undertaking to pay the monies owing under this mortgage according to the terms hereof and to be bound by, observe and perform all covenants, agreements, conditions, stipulations and provisions herein contained or implied, and to attain and to become a tenant of the Mortgagee of the said lands under the terms of the attornment clause set out in this mortgage, and in default of the execution and delivery of such agreement by the purchaser, all monies then remaining owing under this mortgage shall in addition to any other remedy available to the Mortgagee hereunder, at the option of the Mortgagee, become immediately due and payable together with one month's additional interest as set out in section 1.

- (b) Notwithstanding the above, the Mortgagor shall be entitled to partial discharges of this Mortgage on the sale of individual lots in accordance with the provisions of the Loan Agreement.
10. That in the event of non-payment of the mortgage monies or any part thereof at the time of falling due of same under the terms of this mortgage, or in the event of non-payment of interest or of any further amounts as provided for in this mortgage, or in the event of default or apprehended default being made in any of the covenants, agreements, provisos or stipulations otherwise expressed or implied herein or in the Loan Agreement or if the Mortgagor shall become bankrupt or insolvent or shall be subject to the provisions of the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act*, the *Winding-up and Restructuring Act* or any other Act for the benefit of creditors or go into liquidation either voluntarily or under an order of a court of competent jurisdiction, or make a general assignment for the benefit of its creditors or otherwise acknowledge its insolvency, or upon the registration of any builders' lien against the said lands, which lien remains undischarged for a period of thirty (30) days after notice of the registration thereof is given to the Mortgagor, or if any buildings or other improvements being erected on the said lands are allowed to remain unfinished, abandoned or left vacant:
- (a) The Mortgagee at its option may, at the expense of the Mortgagor, and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenant, agreement, proviso or stipulation;
 - (b) The Mortgagee may send or employ an inspector to inspect and report upon the value, state and condition of the mortgaged premises and a solicitor to examine the report upon the title to the same;
 - (c) The Mortgagee may enter into possession of the mortgaged premises and whether in or out of possession collect the rents and profits therefrom, and make any demise or lease of the said premises or any part thereof for such terms and periods and at such rents as the Mortgagee shall think proper; and the power of sale hereunder may be exercised before or after and subject to any such demise or lease;
 - (d) The Mortgagee at such time or times as it may deem necessary and without the concurrence of any other person through its servants, agents or contractors may enter upon the said lands and may make such arrangements for repairing or putting in order any buildings or other improvements on the mortgaged premises, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the said lands as it may deem expedient, all costs, charges and expenses incurred by the Mortgagee in so doing, including allowances for the time and service of any agent of the Mortgagee or other person appointed for the above purposes or in connection therewith shall be secured hereby and shall (together with interest thereon at the Interest Rate) be a charge on the mortgaged premises, shall bear interest at the Interest Rate until paid, all such monies to be repayable to the Mortgagee on demand, or if not demanded, then repayable without demand on the next ensuing instalment (whether for interest or principal);
 - (e) The Mortgagee shall have full power, right and license to enter, seize and distrain upon the mortgaged premises, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the premises as much of the mortgage monies as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress as in like cases of distress for rent;
 - (f) The Mortgagee may sell and dispose of the mortgaged premises with or without entering into possession of the same and with or without notice to the Mortgagor or any party interested in the mortgaged premises; and all remedies competent may be resorted to; and all the rights, powers and privileges granted to or conferred upon the Mortgagee under and by virtue of any statute or by this mortgage may be exercised; and any notice may be effectually given by delivering such notice or mailing such notice by single registered mail to the Mortgagor at the address of the Mortgagor shown hereinafter; and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the mortgaged premises hereunder, and the Mortgagee may

sell, transfer and convey any part of the mortgaged premises, on such terms of credit or part cash and part credit secured by contract or agreement for sale or mortgage, or otherwise, as shall appear to the Mortgagee most advantageous and for such prices as can reasonably be obtained therefor; and in the event of a sale on credit or for part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable for or charged with any monies until the same shall be actually received in cash; and sales may be made from time to time on parts of the mortgaged premises to satisfy interest or parts of the principal overdue, leaving the principal or parts thereof to run with interest payable as aforesaid; and the Mortgagee may make any stipulations as to title or evidence or commencement of title or otherwise as the Mortgagee shall deem proper, and may buy in or rescind or vary any contract for sale; and on any sale or resale, the Mortgagee shall not be answerable for any loss occasioned thereby; and for any such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee shall deem advisable or necessary; and in case of any sale held by the Mortgagee under and by virtue of the laws of the Province of Alberta under the power of sale herein contained shall prove abortive, the Mortgagee may take foreclosure proceedings in respect of the said lands in accordance with the provisions of the laws of the Province of Alberta in that regard; and in the event of any deficiency on account of monies secured by this mortgage remaining due to the Mortgagee after realizing all of the said lands by sale or otherwise then the Mortgagor will pay to the Mortgagee on demand the amount of such deficiency with interest at the rate aforesaid;

- (g) The whole of the unpaid balance of the mortgage monies, interest and all other amounts due hereunder or under the Loan Agreement shall, at the option of the Mortgagee, become due and payable;
 - (h) The Mortgagor agrees that the Mortgagee may exercise one or all of the remedies set out in this paragraph 10 without prejudice to its rights to pursue other or additional remedies and that the choice of one remedy shall not constitute an election of remedies.
11. That notwithstanding anything contained herein to the contrary, the improvements now erected, upon or under the said lands (including without limitation any fixed improvements) (hereinafter referred to as the "improvements" or the "said improvements") shall form part of the security for the full amount of the monies secured by this mortgage.
 12. That the giving and taking of this Mortgage shall in no way merge or affect any other security or securities that may have been, or that may hereafter be given in respect of any amounts secured by this Mortgage or any part thereof, or impair or affect any such security or securities or any remedy thereon, and all rights or remedies which the Mortgagee now has or may hereafter have against the Mortgagor or any other person or entity are hereby reserved, and the Mortgagor agrees that the taking of a judgment or judgments under any of the covenants or agreements herein contained or under any such security or securities or the entering into any arrangement (including the granting of time), compromise, release or discharge or the termination of any cause, claim or right whatsoever by the Mortgagee with the Mortgagor or any other person or entity, to the exclusion of the Mortgagor or any other person or entity, whether prejudicial or beneficial to any one or more of them, shall not operate as a merger of such covenants and agreements or affect the rights or remedies of the Mortgagee under the said covenants herein contained or under any other such security or securities, or of the Mortgagee's security herein by way of a charge against the mortgaged premises, or affect the Mortgagee's right to interest at the rate prescribed herein on any amounts owing to the Mortgagee under the covenants contained in this Mortgage, or under any other security or securities, it being understood and agreed that interest at the rate prescribed herein shall run and be included and payable on any judgment or other proceedings taken herein and that any such judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until such judgment shall have been fully paid and satisfied.
 13. That the Mortgagee may at any time release any part of the mortgaged premises, or any of the covenants and agreements herein contained, or any collateral security, either with or without any consideration therefor, and without being accountable for the value thereof, or for any money

except what is actually received, and without thereby releasing or affecting any other of the mortgaged premises or any of the other covenants or agreements herein contained or releasing any surety or other security, and no person shall have any right to require the mortgage monies to be apportioned.

14. The mortgage shall take effect forthwith upon execution of these presents. That should the Mortgagee advance the said principal sum or any part thereof at any future date or dates, the amount of such advances when so made shall be secured hereby and repayable with interest as herein provided.
15. That:
 - (a) The Mortgagee or agent of the Mortgagee may at any time and from time to time enter upon the said lands to inspect the said lands and buildings and other improvements thereon and to inspect the books of the Mortgagor, insofar as they relate to the Lands, make extracts therefrom and generally conduct such examination of the books of account of the Mortgagor, insofar as they relate to the Lands, as the Mortgagee may deem fit;
 - (b) The Mortgagee shall not by virtue of these presents be deemed a mortgagee in possession of the mortgaged premises and shall be liable to account for only such rents as actually come into its hands less proper collection charges in respect thereof and that the Mortgagee shall apply such rents to the principal, interest or other charges due hereunder and if the Mortgagor is not in default under any covenant, proviso or agreement contained herein the Mortgagee shall pay to the Mortgagor the excess of such rents collected over the amounts which will be due to the Mortgagee hereunder (as estimated by the Mortgagee) during the portion of the term to which such rents relate;
 - (c) The Mortgagor within ten (10) days after receipt of a request to do so, shall certify to the Mortgagee or any person designated by the Mortgagee the amount of principal then due hereunder, the date to which interest is paid, that it has no right of a set-off against the monies due hereunder, or, if it has such a right of set-off, the amount thereof and that there have been no amendments hereof or if there have been any such amendments specifying them;
 - (d) All improvements shall be situate wholly within the boundaries of the mortgaged property;
 - (e) Any improvements constructed on the said lands have been constructed in accordance with and in due compliance with the requirements of all regulatory authorities having jurisdiction in that regard and that any improvements to be constructed shall only be constructed in strict accordance with plans and specifications first approved by the Mortgagee and to standards acceptable to the Mortgagee;
 - (f) The Mortgagor shall not use the mortgaged premises or permit them to be used for a purpose other than that disclosed to the Mortgagee in the Loan Agreement without the consent of the Mortgagee;
 - (g) All management fees, and development fees paid by the Mortgagor or to persons associated or affiliated with the Mortgagor, as those terms are used in the Alberta Business Corporations Act, shall be subject to the prior approval of the Mortgagee in its sole and absolute discretion.
16. That all Solicitor's, Inspector's, Consultant's (including the Architect's), Valuator's, Surveyor's and other fees and expenses for drawing and registering this mortgage and for examining the mortgaged premises and the title thereto, and for making or maintaining this mortgage a first charge respecting the lands for which this Mortgage is a first charge and a second charge respecting the lands for which this Mortgage is a second charge on the mortgaged premises (save as endorsed hereon) or incurred as a result of default hereunder or of endeavouring to collect with

or without suit any money payable hereunder, or of taking, recovering or keeping possession of the said lands, and generally in any other proceeding, matter or thing taken or done to protect or realize the security or any other security for this loan, together with all sums which the Mortgagee may and does from time to time advance, expend or incur hereunder as principal, insurance premiums, taxes, rates or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the mortgaged premises, including, without limitation, notwithstanding that the costs thereof may exceed the principal sum secured hereunder, and in inspecting, leasing, managing or improving the mortgaged premises or in maintaining, repairing, restoring or completing the mortgaged premises, including the price or value of any goods of any sort or description supplied to be used on the mortgaged premises, and in exercising or enforcing or attempting to enforce or in pursuance of any right, power, remedy or purpose hereunder or subletting, and legal costs, as between solicitor and client, and also an allowance for the time, work and expenses of the Mortgagee, for any purpose herein provided for and whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise shall be added to and become part of the principal sum secured hereby and shall (together with interest thereon at the Interest Rate) be a charge on the mortgaged premises, shall bear interest at the Interest Rate until paid, all such monies to be repayable to the Mortgagee on demand, or if not demanded, then repayable without demand on the next ensuing instalment (whether for interest or principal).

17. That in the event of the mortgage monies advanced hereunder, or any part thereof, being applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights of, and stand in the position of and be entitled to all the equities of the party so paid off whether such charge or encumbrance has or has not been discharged, and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under this mortgage or of any claim so paid off shall be final and binding upon the Mortgagor.
18. That the Mortgagee shall not be charged with any monies receivable or collectible out of the mortgaged premises or otherwise except those actually received, and all revenue of the said premises received or collected by the Mortgagee from any source other than payment by the Mortgagor may at the option of the Mortgagee be retained in a suspense account or used in maintaining or insuring or improving the mortgaged premises, or in payment of taxes or other charges against the mortgaged premises, or applied on the mortgage account, and the Mortgagee shall not be under any liability to pay interest on any sums in a suspense account.
19. That any discharge of this mortgage shall be prepared by the solicitor of the Mortgagee and the Mortgagee shall have a reasonable time after receipt of payment in full within which to have prepared and to execute such discharge, and a tender of the mortgage monies shall not entitle the Mortgagor to receive such discharge, and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Mortgagee, and all legal and other expenses for the preparation and execution of such discharge shall, if allowed in law, be borne by the Mortgagor.
20. That all payments to be made to the Mortgagee shall be made to Romspen Investment Corporation at 162 Cumberland Street, Suite 300, Toronto, ON, M5R 3N5 or at such other address at which the Mortgagee shall require payment to be made. All payments under this Mortgage shall be made before 1:00 o'clock Toronto time on any day on which the payment is made. In the event the payment is made after 1:00 o'clock on any particular day, it is understood and agreed that the said payment will be deemed to have been made on the next business day following the date on which payment is made. All payments made by mail shall be deemed received on the day and at the time of actual delivery to the Mortgagee at the address at which the Mortgagee shall require payment to be made; provided however that any payments made by mail and actually delivered to the Mortgagee after 1:00 o'clock on any particular day shall be deemed to have been made on the next business day following the date on which payment was actually received.
21. That for better securing the punctual payment of the Moneys, Interest and other costs and charges as set out herein, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the mortgaged premises at a monthly rental equivalent to the monthly instalments secured hereby, the

same to be paid on each day appointed for the payment of instalments, and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or shall take the benefit of any statute relating to the bankrupt or insolvent debtors then such rental shall, if not already payable, be payable immediately thereafter. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor. The Mortgagee may at any time after default hereunder enter upon the mortgaged premises, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit; but neither this clause nor anything done by virtue thereof shall render the Mortgagee a mortgagee in possession or accountable for any monies except those actually received.

22. That if this mortgage is subordinate to that certain prior mortgage or mortgages referred to by the Memorandum of Encumbrances set out in Schedule "C" annexed hereto and forming a part hereof (which prior or other mortgage is in this Paragraph 22 collectively and individually referred to as the "Prior Mortgage"), then with respect to the Prior Mortgage, the Mortgagor covenants that it is not now in default nor will it default in observance or performance of any of the covenants, agreements, provisos and stipulations expressed or implied therein and agrees:
- (a) to request the mortgagee of the Prior Mortgage to forthwith send to the Mortgagee by personal delivery or by post, copies of all notices which the mortgagee of the Prior Mortgage may send to the Mortgagor pertaining to any default under the Prior Mortgage or pertaining to any other matter of which the Mortgagor should be notified, and the Mortgagor shall forthwith deliver or cause to be delivered to the Mortgagee copies of any notices which it may receive from the mortgagee of the Prior Mortgage or otherwise with respect to the Prior Mortgage;
 - (b) to perform and carry out all of the covenants and agreements which the Mortgagor has pursuant to the provisions of the Prior Mortgage, agreed to observe, perform and carry out;
 - (c) that default on the part of the Mortgagor under the provisions of subparagraphs (a) or (b) hereof shall constitute default under this mortgage;
 - (d) that on default on the part of the Mortgagor under the provisions of subparagraphs (a) or (b) hereof or, without limiting the generality of the foregoing, the Mortgagor making default in any of its obligations under the Prior Mortgage, then, notwithstanding anything herein otherwise expressed or implied, the Mortgagee shall have the right, at its option, but shall not be obligated, to pay on account of the Prior Mortgage, any or all of the amount owing with respect thereto, and any such amount so paid by the Mortgagee shall be secured hereby and shall (together with interest thereon at the Interest Rate) be a charge on the mortgaged premises, shall bear interest at the Interest Rate until paid, all such monies to be repayable to the Mortgagee on demand, or if not demanded, then repayable without demand on the date for payment of the next ensuing instalment (whether for interest or principal);
 - (e) for the purposes of tendering any arrears or other sums payable to a holder of a Prior Mortgage, the Mortgagor hereby irrevocably appoints the Mortgagee its agent for such purpose and irrevocably directs the Mortgagee to tender such monies to the holder of the Prior Mortgage in the name of and on behalf of the Mortgagor. In this regard the Mortgagor hereby assigns unto the Mortgagee its equity of redemption, if any, with respect to the said Prior Mortgage together with the statutory right of redemption given to the Mortgagor by the provisions of the Law of Property Act of Alberta. It is the intention of the Mortgagor and the Mortgagee that the Mortgagee shall have the same rights and powers as the Mortgagor under and pursuant to the terms of the Prior Mortgage so that the Mortgagee will be in a position to take whatever steps are necessary to bring the Prior Mortgage into good standing once a default has occurred thereunder. This assignment is not intended to encompass the Mortgagor's entire interest in the said Prior Mortgage, but only to the extent

hereinbefore stipulated. Nothing herein shall create an obligation upon the Mortgagee to cure any default on behalf of the Mortgagor.

23. That the waiver by the Mortgagee of the performance of any covenant, proviso, condition or agreement herein contained or implied, shall not abrogate such covenant, proviso, condition or agreement or be a waiver of any subsequent breach of the same.
24. That no extension of time given or alteration of interest rate or alteration of principal repayments made by the Mortgagee to the Mortgagor or its assigns or any one claiming under it or any other dealing by the Mortgagee with the owner of the said lands shall in any way prejudice or affect the rights of the Mortgagee against the Mortgagor or any other person.
25. That without prejudice to any rights of the Mortgagee against the Mortgagor or any other persons liable for the payment of the monies hereby secured, this mortgage may be renewed by an agreement in writing at, before or after maturity, for any term, with or without a change in the rate of interest notwithstanding that there may be subsequent mortgages or encumbrancers. It shall not be necessary to register any such agreement in order to retain priority of this mortgage provided, however, that the Mortgagee may at any time, at its option, register a caveat under and by virtue of such renewal agreement. Nothing herein shall obligate the Mortgagee to renew or extend this mortgage.
26. That the Mortgagee, without the consent of the Mortgagor, may assign in whole or in part the debt hereunder, this mortgage and any security collateral to this mortgage.
27. That the Mortgagor and each of the corporate parties providing a guarantee as more particularly set out in the Loan Agreement (hereinafter jointly called the "Guarantor") shall deliver or cause to be delivered to the Mortgagee within one hundred and twenty (120) days following the end of each fiscal year throughout the currency of this mortgage, a true and complete copy of all financial statements for the fiscal year then ended of the Mortgagor and Guarantor. Included in the financial statements of the Mortgagor and Guarantor shall be statements of income and operating expenses in respect of the improvements. The Mortgagee will be included in the mailing list of all published reports of the Mortgagor and Guarantor. The Mortgagee shall be allowed whenever it deems necessary on reasonable notice and during business hours to enter upon the offices or premises of the Mortgagor and Guarantor and inspect the books and records thereof in relation to the within property and make abstracts therefrom and generally conduct such examination of books and records as it may deem fit.
28. That the Mortgagor further covenants and agrees with the Mortgagee as follows:
 - (a) The Mortgagor acknowledges that it has been advised by its counsel as to the meaning of Sections 49 and 52 of The Expropriation Act, Revised Statutes of Alberta, 2000, and being fully aware that under the terms of the said Act the Mortgagee may be restricted to recovering the market value of this mortgage at the date of any expropriation, the Mortgagor hereby waives the provisions of Sections 49 and 52 of The Expropriation Act and further waives any provisions which may be enacted and in force from time to time in replacement of or in addition to the provisions of the said Sections 49 and 52 of The Expropriation Act;
 - (b) In the event that the said lands, or any part thereof which are secured by this mortgage are condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects this mortgage security or any collateral security therefor, the full amount of the principal and interest and any other monies secured by this mortgage then outstanding, shall, at the election of the Mortgagee be deemed to become due and payable in full on the day before the said lands were expropriated and interest shall accrue thereon, at the aforesaid rate, until the Mortgagee has been paid in full and the Mortgagor shall be estopped from denying otherwise;

- (c) The Mortgagor will pay or cause to be paid to the Mortgagee, upon the request of the Mortgagee and from any expropriation the whole of the proceeds thereof and if the Mortgagee elects to accelerate the term of the mortgage pursuant to subparagraph (b) above, together with such additional funds as will retire the full amount of the principal and interest and any other monies then outstanding hereunder;
 - (d) That the Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the expropriation of the said lands or any part thereof, will notify the Mortgagee of such proceedings;
 - (e) Any monies awarded by an order of the Surface Rights Board with respect to all or any part of the said lands to the extent of the full amount of the indebtedness upon this mortgage and obligation secured hereby remaining unpaid, are hereby assigned by the Mortgagor and shall be paid forthwith to the Mortgagee, its successors and assigns.
29. That the Mortgagor, being aware of the provisions of the Law of Property Act of Alberta, being Chapter L-7 of The Revised Statutes of Alberta, 2000, as amended, whereby it is provided that in all cases, EXCEPT where a mortgage is given by a corporation, in any action brought upon any mortgage of land, the remedy of the Mortgagee is limited to the land alone, and no action shall lie on the covenant for payment contained in such mortgage, and that any waiver or release given of the rights, benefits or protection under and by virtue of the relevant provisions of the said Law of Property Act is against public policy and void, the said Mortgagor, BEING A CORPORATION does expressly agree with the Mortgagee that in the event of any default in the payment of indebtedness secured hereunder or otherwise howsoever and/or in any other security held by the Mortgagee, then the Mortgagee may proceed against the Mortgagor upon its covenant for payment, in accordance with the terms hereof, and may realize on any and all securities held by it, simultaneously or otherwise, as it in its absolute discretion may decide.
- 30.
- (a) For the purpose of this mortgage:
 - (i) "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material;
 - (ii) "Environmental Laws" means any laws now or hereafter in force with respect to Hazardous Materials.
 - (b) The Mortgagor warrants that to the best its knowledge:
 - (i) the mortgaged premises and the improvements thereon are free of any Hazardous Materials on, under or within;
 - (ii) no underground storage tanks system has ever been constructed, exists, or remains in use in connection with the mortgaged premises;
 - (iii) the mortgaged premises and its existing and prior uses comply and at all times did comply with, and the Mortgagor is not in violation of, and has not violated in connection with the ownership use, maintenance or operation of the mortgaged premises and the improvements thereon and the conduct of business related thereto, and applicable Environmental Laws;
 - (iv) the Mortgagor and the tenants (if any) of the mortgaged premises have operated the mortgaged premises and the improvements thereon and thereunder and have handled, used, stored, treated, shipped and disposed of all Hazardous Materials in strict compliance with all applicable Environmental Laws so that the mortgaged premises and the improvements thereon and thereunder are at all times suitable for the intended uses thereof at the time of entering into this mortgage;

- (v) none of the Mortgagor, its tenants, or any other person, including but not limited to prior owners, occupants and tenants of the mortgaged premises, have received any notice or advice of any enforcement action arising from the existence, release, emanation, discharge, leakages or seepage or escape from, through or under the mortgaged premises any Hazardous Materials in breach of Environmental Laws;
 - (vi) no condition exists, as to any parcel of property contiguous with or in close proximity to the mortgaged premises and which would require disclosure pursuant to the foregoing warranties if such other parcel or parcels of property were included in the mortgaged premises.
- (c) The Mortgagor shall cause to be conducted environmental assessments, audits and other inspections with respect to the mortgaged premises and the business of the Mortgagor and the obligation of the Mortgagee to advance funds hereunder shall be subject to the Mortgagee receiving reports satisfactory to the Mortgagee in its sole discretion and subject to the Mortgagee being satisfied in its sole discretion that there are no environmental matters that are adverse to the value of the mortgaged premises or the business of the Mortgagor.
- (d) The Mortgagor represents, covenants and warrants in favour of the Mortgagee, its successors and assigns, that:
- (i) neither the Mortgagor, nor any other person, will permit any Hazardous Materials to be placed, held, located, or disposed from, in, on, under, above or at the mortgaged premises;
 - (ii) the Mortgagor will operate its business and assets in accordance with all applicable Environmental laws and will not cause or permit any activities on the mortgaged premises which directly or indirectly could result in the mortgaged premises or any adjacent property, air, or water being contaminated with Hazardous Materials;
 - (iii) the Mortgagor will permit the Mortgagee to conduct (at Mortgagor's expense) inspections, appraisals, assessments and audits of all or any of the Mortgagor's records, business and assets at any time and from time to time to ensure compliance with the Mortgagor's covenants herein;
 - (iv) The Mortgagor will provide written notice to the Mortgagee immediately upon the Mortgagor becoming aware that the mortgaged premises or any adjacent property, water or land is being or has been contaminated with Hazardous Materials or if there has been any breach of any applicable Environmental Laws.
- (e) The Mortgagor hereby indemnifies the Mortgagee, its officers, directors, employees, agents and its shareholders and agrees to hold each of them harmless from and against any losses, liabilities, damages, costs, expenses and claims of every nature and kind whatsoever relating to any Hazardous Materials placed, held, located or disposed of in, on, under or from the mortgaged premises including without limitation, the cost of defending and/or counterclaiming or claiming against third parties in respect of any action (all on the basis as between a solicitor and his own client on a full indemnity basis) and any cost, liability or damage arising out of any action against the Mortgagee or a settlement of any action entered into by the Mortgagee (with or without the consent of the Mortgagor) which may be paid or incurred with respect to, or as a direct or indirect result of the presence in, on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the mortgaged premises or into or upon the land, the atmosphere or any water course, body of water, or wetland, of any Hazardous Materials as a result of a breach by the Mortgagor of its covenants herein set out or the breach of any Environmental Laws.

- (f) The provisions hereof shall survive the satisfaction and release of the security for, and payment and satisfaction of, the indebtedness and liability of the Mortgagor to the Mortgagee pursuant to this mortgage and shall also survive realization on the security by way of order absolute for foreclosure.
31. That each and every term, covenant and condition contained in the Loan Agreement and each and every undertaking of the Mortgagor contained in every other instrument, security, document or charge delivered to the Mortgagee pursuant to the terms of the Loan Agreement, shall be deemed to be contained herein to the same extent and effect as if recited herein in full.
 32. In the event of any conflict between any provision(s) contained in this Mortgage and in any one or more of the securities which are collateral to this Mortgage or in the Loan Agreement giving rise to this Mortgage, the Loan Agreement shall prevail.
 33. Default under any prior or subsequent loan of the Mortgagor or any Guarantor to the Mortgagee shall constitute a default under this loan and default under this loan shall constitute default under any prior or subsequent loan of the Mortgagor and any Guarantor to the Mortgagee.
 34. It is specifically acknowledged and agreed that the within Mortgage may provide for a revolving line of credit up to the maximum principal sum of FORTY MILLION US DOLLARS (US\$40,000,000.00) and shall be a continuous charge notwithstanding the balance owing hereunder may be fluctuating and even may, from time to time and at any time, be or have been reduced to a nil balance and notwithstanding monies advanced may be repaid and further advanced as made and shown from time to time and such continuous mortgage and charge shall be security for the principal sum, interest and other charges due and owing hereunder from time to time. The Mortgage (being a mortgage that provides for a revolving line of credit up to a specific principal sum) shall obtain priority in accordance with Section 104 of The Land Titles Act for all advances and obligations.
 36. That when the context makes it possible the word "Mortgagee" wherever it occurs in this mortgage shall include the successors and assigns of the Mortgagee and where applicable the mortgage insurer, its successors and assigns, and the word "Mortgagor" shall include the heirs, executors, administrators, successors and assigns of the Mortgagor respectively and the word "person" shall include any body corporate or politic; and the words in the singular include the plural and words in the masculine gender include females and all covenants herein contained or implied are to be construed as both joint and several; and the heirs, executors, administrators, successors and assigns of any party executing this mortgage are jointly and severally bound by the covenants, provisos and agreements herein contained or implied. Reference to any statute shall include any successor thereto.
 37. That if the rate of interest payable hereunder is a variable rate of interest, reference to the "mortgage rate", "rate", "interest", "prescribed rate", "aforesaid rate" or similar terms, shall in the case of default by the Mortgagor, or in the case that the Mortgagor is liable to the Mortgagee for interest on any amount pursuant to the terms of this Mortgage, such words and phrases shall be deemed to be a reference to the rate of interest applicable to the principal sum secured hereunder on the date that interest commences to accrue hereunder, which rate of interest shall thereafter be varied on the same terms as the rate of interest applicable to the principal sum secured hereunder.
 38. That if any provision of this mortgage or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this mortgage, or the application thereof to other circumstances shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law.
 39. Schedules "A", "B" and "C" are incorporated into and form a part of this Mortgage.
 40. The Mortgagor acknowledges that the Mortgagee is or may act as a Trustee for one or more beneficial owners of or investors in this Mortgage and that the Mortgagor shall be under no

- 41. Without limiting the generality of anything contained in this Mortgage, including Section 33 a default of the Borrower or any affiliate pursuant to any credit facility granted to it by the Mortgagee shall be a deemed default hereunder, and any default hereunder shall be deemed to be a default pursuant to the other security granted by the Borrower or its affiliate;
- 42. That it is distinctly understood and agreed that this mortgage is given and taken as additional and collateral security for the payment of the indebtedness of the Mortgagor to the Mortgagee pursuant to the Guarantee and this mortgage shall not operate as a merger of the Guarantee or of any other collateral security given with respect to the indebtedness of the Mortgagor to the Mortgagee or of any simple contract debt or in any way suspend the payment of, affect or prejudice the rights, remedies or powers, legal or equitable, which the Mortgagee may hold in connection with the Mortgage granted by the Borrower or the Guarantee or in contract debt and is taken without prejudice to any other security which may be taken by the Mortgagee in addition, by way of renewal of, or in substitution for any future bill, note, obligation or security representing the indebtedness hereby secured or any part thereof, or be deemed a payment or satisfaction of the Guarantee or the said indebtedness or any part thereof or merge therein, nor shall the taking of a judgment or other proceedings under the Guarantee or renewal thereof or substitution therefor or judgment on any other security operating as a merger of the covenants or rights herein contained; and in the event of default, the Mortgagee may proceed separately under any of the security it holds or concurrently under all such security.
- 43. That for better securing to the Mortgagee repayment in the manner aforesaid of the Indebtedness and other Moneys, the Mortgagor hereby mortgages to the Mortgagee all its estate and interest in the lands above described.

IN WITNESS WHEREOF the Mortgagor has hereunto affixed its corporate seal duly attested by the hands of its proper signing officers duly authorized in that behalf the day and year first above written.

ECO-INDUSTRIAL BUSINESS PARK INC.

Per: 

Per: _____ c/s

ADDRESS OF MORTGAGOR:

1250 Hayter Road, Edmonton, Alberta T6S 1A2

KV7

- (f) The provisions hereof shall survive the satisfaction and release of the security for, and payment and satisfaction of, the indebtedness and liability of the Mortgagor to the Mortgagee pursuant to this mortgage and shall also survive realization on the security by way of order absolute for foreclosure.
31. That each and every term, covenant and condition contained in the Loan Agreement and each and every undertaking of the Mortgagor contained in every other instrument, security, document or charge delivered to the Mortgagee pursuant to the terms of the Loan Agreement, shall be deemed to be contained herein to the same extent and effect as if recited herein in full.
32. In the event of any conflict between any provision(s) contained in this Mortgage and in any one or more of the securities which are collateral to this Mortgage or in the Loan Agreement giving rise to this Mortgage, the Loan Agreement shall prevail.
33. Default under any prior or subsequent loan of the Mortgagor or any Guarantor to the Mortgagee shall constitute a default under this loan and default under this loan shall constitute default under any prior or subsequent loan of the Mortgagor and any Guarantor to the Mortgagee.
34. It is specifically acknowledged and agreed that the within Mortgage may provide for a revolving line of credit up to the maximum principal sum of ~~ONE HUNDRED TWENTY FIVE MILLION US DOLLARS (US\$125,000,000.00)~~ and shall be a continuous charge notwithstanding the balance owing hereunder may be fluctuating and even may, from time to time and at any time, be or have been reduced to a nil balance and notwithstanding monies advanced may be repaid and further advanced as made and shown from time to time and such continuous mortgage and charge shall be security for the principal sum, interest and other charges due and owing hereunder from time to time. The Mortgage (being a mortgage that provides for a revolving line of credit up to a specific principal sum) shall obtain priority in accordance with Section 104 of The Land Titles Act for all advances and obligations.
36. That when the context makes it possible the word "Mortgagee" wherever it occurs in this mortgage shall include the successors and assigns of the Mortgagee and where applicable the mortgage insurer, its successors and assigns, and the word "Mortgagor" shall include the heirs, executors, administrators, successors and assigns of the Mortgagor respectively and the word "person" shall include any body corporate or politic; and the words in the singular include the plural and words in the masculine gender include females and all covenants herein contained or implied are to be construed as both joint and several; and the heirs, executors, administrators, successors and assigns of any party executing this mortgage are jointly and severally bound by the covenants, provisos and agreements herein contained or implied. Reference to any statute shall include any successor thereto.
37. That if the rate of interest payable hereunder is a variable rate of interest, reference to the "mortgage rate", "rate", "interest", "prescribed rate", "aforesaid rate" or similar terms, shall in the case of default by the Mortgagor, or in the case that the Mortgagor is liable to the Mortgagee for interest on any amount pursuant to the terms of this Mortgage, such words and phrases shall be deemed to be a reference to the rate of interest applicable to the principal sum secured hereunder on the date that interest commences to accrue hereunder, which rate of interest shall thereafter be varied on the same terms as the rate of interest applicable to the principal sum secured hereunder.
38. That if any provision of this mortgage or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this mortgage, or the application thereof to other circumstances shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law.
39. Schedules "A", "B" and "C" are incorporated into and form a part of this Mortgage.
40. The Mortgagor acknowledges that the Mortgagee is or may act as a Trustee for one or more beneficial owners of or investors in this Mortgage and that the Mortgagor shall be under no obligation to disclose the identity of such beneficial owners or investors or other particulars relating to such trust.

SCHEDULE "A"

PLAN 8323217
LOT 3
CONTAINING 16.7 HECTARES(41.32 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 0824009 AREA A - VALVE SITE 0.282 0.70
EXCEPTING THEREOUT ALL MINES AND MINERALS

MERIDIAN 4 RANGE 23 TOWNSHIP 53
SECTION 17
ALL THAT PORTION OF THE SOUTH WEST QUARTER
WHICH LIES NORTH OF THE NORTHERLY LIMIT OF RAILWAY PLAN 6073CL AND EAST
OF THE RIGHT BANK OF THE NORTH SASKATCHEWAN RIVER AS SHOWN ON A PLAN
OF SURVEY OF THE SAID TOWNSHIP SIGNED AT EDMONTON ON 25 APRIL, 1965
CONTAINING 43.80 HECTARES (108.24 ACRES) MORE OR LESS
EXCEPTING THEREOUT:

	HECTARES (ACRES) MORE OR LESS	
A) PLAN 5725RS SUBDIVISION	16.3	40.27
B) PLAN 1329811 SUBDIVISION	3.745	9.25
C) PLAN 1624164 SUBDIVISION	5.36	13.24

EXCEPTING THEREOUT ALL MINES AND MINERALS

PLAN 8323217
LOT 2
CONTAINING 15.3 HECTARES(37.68 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 8920981 - TRANSPORTATION/UTILITY CORRIDOR RIGHT OF WAY 0.057 0.14
B) PLAN 1624164 SUBDIVISION 14.7 36.3
EXCEPTING THEREOUT ALL MINES AND MINERALS

MERIDIAN 4 RANGE 23 TOWNSHIP 53
SECTION 17
QUARTER NORTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 8323217 - SUBDIVISION 16.72 41.32
B) PLAN 8920981 - RIGHT OF WAY 6.74 16.65
TRANSPORTATION/UTILITY CORRIDOR
C) PLAN 0824009 - VALVE SITE 4.40 10.87 AREA "A"
D) PLAN 0940748 - VALVE SITE 2.34 5.78 AREA "B"
E) PLAN 1025092 - VALVE SITE 24.95 61.65 AREA "A"
EXCEPTING THEREOUT ALL MINES AND MINERALS

KSP

SCHEDULE "B"
SCHEDULE OF ADDITIONAL PROVISIONS

1. ADDITIONAL FEES

The following fees or any other fees, charges or costs, provided for herein, if not paid forthwith upon demand for payment being made, shall also constitute an Event of Default and shall be added to and become part of the debt hereby secured and shall bear interest at the rate set forth in this Loan Agreement.

(a) STATEMENT FEE

The Mortgagor shall pay for each mortgage statement requested by or on behalf of the Borrower or Covenantors and prepared and provided by the Mortgagee, a service fee of \$200.00 plus applicable taxes.

(b) LATE PAYMENT FEE

The Mortgagor shall pay a late payment fee of \$250.00 plus applicable taxes for each request made by the Borrower or Covenantors for mortgage payments that are late five (5) days or more.

(c) ENFORCE SECURITY FEE

In the event of an Event of Default, the Mortgagee may issue a Notice of Intention to Enforce Security under Section 244(1) of the Bankruptcy and Insolvency Act, in which event the Mortgagor shall pay a fee to the Lender of \$750.00 plus applicable taxes.

(d) INSURANCE FEE

In the event that a certified copy of all policies of insurance on the mortgaged property have not been delivered to the Mortgagee within 14 days of either the cancellation of any policy of insurance, or any renewal thereof, or the Mortgagee requesting a copy of a policy of insurance, the Mortgagee shall be entitled to a service fee of \$500.00 plus applicable taxes for each written inquiry which the Mortgagee makes to the Borrower, to an insurer or to an insurance broker pertaining to such cancellation or renewal, or resulting from the Borrower's non-performance of the within covenant. In the event that the Mortgagee arranges any insurance coverage with respect to the said mortgaged property, the Mortgagee in addition to the aforementioned service fee, shall be entitled to an additional service fee of \$500.00 plus applicable taxes for arranging any replacement insurance coverage.

(e) DISHONoured CHEQUES FEE

In the event that any of the Borrower's/Mortgagor's cheques are not honoured when presented for payment to the bank or trust company on which they are drawn, the Borrower shall pay to the Mortgagee for each returned cheque a service fee of \$200.00 plus applicable taxes plus all bank charges as a liquidated amount to reimburse the Mortgagee for its administrative costs with respect to the same. In the event that a cheque has not been honoured by the Borrower's/Mortgagor's bankers and is not forthwith replaced by the Borrower/Mortgagor, the Mortgagee shall be entitled to a further service fee of \$100.00 plus applicable taxes for each written request made as a result of the Borrower/Mortgagor not forthwith replacing a dishonoured cheque.

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(f) INSPECTION FEE

In the event that the Mortgagor requests an inspection of the Mortgaged property to be made by the Mortgagee or the Mortgagee conducts an inspection after an Event of Default by the Borrower or a Covenantor, or to preserve the security, then the Mortgagee shall be entitled to an inspection fee of \$1,000.00 plus applicable taxes for each such inspection.

2. DISCHARGE

Every discharge or partial discharge document shall be prepared by the Mortgagee or its solicitor, at a cost of the lesser of \$350.00 for each document or for each separate property. Discharge documents shall be delivered within a reasonable time after payment of the principal sum secured herein, together with accrued interest thereon, together with all outstanding fees and charges. Any payments received after 1:00 p.m. shall be deemed to have been received on the following banking day.

3. CHARGE DUE ON SALE OR FURTHER ENCUMBRANCE

In the event the Borrower sells, transfers or assigns the mortgaged property, or grants any further mortgage or encumbrance thereon without the prior written consent of the Mortgagee (such consent not to be unreasonably withheld), then, at the option of the Mortgagee, all monies hereby secured shall forthwith become due and payable. Where the Borrower is a corporation, the sale, transfer or any dealing with the shares of such corporation resulting in a change of control except pursuant to a testamentary will or the administration of an estate shall be deemed to be a sale or transfer. In the event that the Mortgagee consents to a transfer of the mortgaged property, the transferee will execute an agreement to assume the mortgage prepared by the Mortgagee at the Borrower's expense, which agreement will provide for the continued liability of the Borrower. The Borrower shall pay an assumption fee to be determined by the Mortgagee.

4. EXPROPRIATION

In the event that the mortgaged property or a substantial part thereof is expropriated by any government, government agency or government regulated entity, the Mortgagee shall, at its sole option, have the right to accelerate payment of the amounts secured by this Mortgage or any other security provided by the Borrower or any Covenantor to the Mortgagee or the Lender in connection with any amounts owing by the Borrower to the Lender and all such amounts so secured by this Mortgage shall immediately become due and payable together with all interest and other amounts secured by this Mortgage with interest thereon at the rate of interest provided in the Mortgage, until payment is made in full.

5. MORTGAGE NOT PAID WHEN DUE
INTENTIONALLY DELETED

6. FUTURE RENEWAL OR AMENDMENT

The loan described in the Loan Agreement and any security granted in connection therewith, including this Mortgage, may be renewed or amended by an agreement in writing with or without an increased rate of interest notwithstanding that there may be subsequent encumbrancers at the time of such renewal or amendment. It shall not be necessary to register any such agreement to retain priority for this Mortgage on such altered terms over any instrument registered subsequent to this Mortgage or other security granted by the Borrower or any Covenantor although the Mortgagee may require same. Any such agreement shall be effectual and binding on the Mortgagor and any such subsequent encumbrancer and shall take priority against such subsequent encumbrancer immediately upon execution by the Mortgagor. The Borrower shall pay all

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legal and administrative costs of the Mortgagee incurred in connection with any such agreement. The Mortgagor acknowledges that the provisions of this paragraph shall not confer any right of renewal on the Mortgagor.

7. OBLIGATION TO REPAIR AND RIGHT TO INSPECT

The Mortgagor covenants and agrees to keep the mortgaged property in good condition and repair according to the nature and description thereof, and the Mortgagee and the Mortgagee's agents may, whenever the Mortgagee reasonably deems it necessary, enter on and in the mortgaged property for the purpose of inspecting the same and to make any necessary repairs, including major repairs; provided that the Mortgagee shall first advise the Mortgagor in writing of such repairs to be undertaken five (5) business days prior to any repair being commenced. The costs of such repairs and inspections shall be added to the debt secured by this Mortgage and shall be a part of the additional Mortgage on the mortgaged property in priority to all other claims against the mortgaged property subsequent to this Mortgage, and shall be payable forthwith, and shall bear interest at the Interest Rate set forth in this Mortgage until paid in full.

8. POSSESSION UPON DEFAULT

Upon default in payment of principal or interest under the Mortgage or non-performance of any of the terms and conditions herein, and such default or non-performance not being remedied within thirty (30) days of notice being given, the Mortgagee may enter into and taken possession of the mortgaged property and proceed legally under the applicable laws of Alberta to become the owner of the mortgaged property or to obtain an Order of the Court against the Borrower, the Covenantors or any of them.

9. PAYMENT OF OTHER CHARGES AND PERFORMANCE OF THEIR OBLIGATIONS BY THE LENDER

The Mortgagee may pay the amount owing on any encumbrance, priority or mortgage now or hereafter existing or which may arise or be claimed against the mortgaged property, and claiming priority over the Mortgagee's Mortgage, including any realty taxes, levies, or other rates on the said mortgaged property, and the Mortgagee may further pay all costs, charges and expenses which may be incurred in taking, recovering and keeping possession of the mortgaged property, and all solicitors' judicial and extra judicial fees or commissions for or in respect of the collection of any overdue instalments or any other monies whatsoever payable by the Mortgagor under the Mortgage, such costs to be as between solicitor and its own client, whether any action or other judicial proceeding to enforce such payment has been taken or not; and the amount so paid and the expenses of remedying a default or payment of insurance premiums for fire or other risks or hazards or for realty taxes, or for work on or repairs to the mortgaged property or for utility charges, heating costs, collection costs and any other expenses, costs or any monies paid, any or all of which shall be added to the debt secured by the Mortgage on the mortgaged property and shall bear interest at the rate of interest provided in the Mortgage, which shall be payable forthwith by the Mortgagor to the Mortgagee, and in the event of the Mortgagee paying any amount of money on the security of the mortgaged property, the Mortgagee shall be entitled to all the rights, equities and securities of the persons, entity or entities so paid and the Mortgagee is hereby authorized to retain any assignment or discharge thereof, without registration, for any period even if it is a longer period than six months if the Mortgagee deems it appropriate to do so. Furthermore, the Mortgagee may after any such payment accelerate payment of the amounts secured by the Mortgage and all such amounts secured by this Mortgage shall immediately become due and payable together with all interest and other amounts secured by this Mortgage with interest thereon at the rate of interest provided in the Mortgage, until payment is made in full.

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10. ASSIGNMENT OF RENTS, LEASES, ETC.

- (a) To further secure the indebtedness secured hereunder, the Mortgagor hereby assigns and transfers unto the Mortgagee all rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the mortgaged property or any part thereof (the "tenancies"), which may have been heretofore or may hereafter be made or agreed to, or which may be granted, it being the intention of the parties to establish an absolute transfer and assignment of all such rents, issues and profits under such tenancies and all the avails thereunder unto the Mortgagee. The Mortgagee however, until notice is sent to the tenants, acknowledges that the Mortgagor is entitled to collect the rentals of the mortgaged property.
- (b) The Mortgagor further covenants and agrees to execute and deliver at the request of the Mortgagee all further assurances and assignments with respect to such tenancies as the Mortgagee shall from time to time request, and to do all other acts with respect to such tenancies as requested by the Mortgagee.
- (c) In the event that the Mortgagee collects any payments of rent as a result of the Borrower's or any Covenantor's default, the Mortgagee shall be entitled to receive from such rent a management and servicing fee of five per cent (5%) of gross receipts received by the Mortgagee which the parties acknowledge is a just and equitable fee, and which shall be in addition to any charges or expenses incurred by the Mortgagee including fees and disbursements paid by the Mortgagee to a management company, real estate company or like person or entity retained by the Mortgagee to assist it to recover rents.
- (d) The Mortgagor covenants and agrees that no rent has been or will be paid by any person in possession of any portion of the mortgaged property in advance, and that no portion of the rents to accrue for any portion of the said mortgaged property have been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Mortgagor.
- (e) The Mortgagor will not do or omit to do any act which results in a breach of any tenancy in or upon the mortgaged property without the written consent of the Mortgagee.
- (f) The Mortgagor agrees that all leases, offers to lease, or lettings of the mortgaged property or any part thereof shall be bona fide and shall be at rates and on terms consistent with comparable space in the area of the mortgaged property, and provided further that the Mortgagor shall obtain the written consent of the Mortgagee prior to the execution of any lease, offer to lease, or any letting or tenancy agreement, such consent not to be unreasonably withheld.
- (g) Any entry upon the mortgaged property under the terms of this Mortgage shall not constitute the Mortgagee to be a Mortgagee in Possession in contemplation of law and the Mortgagee shall not become liable to account to the Mortgagor or to credit the Mortgagor with any monies on account of the Mortgage except those which shall come into its hands or into the hands of any agents appointed by it; and neither shall the Mortgagee be liable for failure to collect rents or revenues, it being agreed that the Mortgagee shall be under no obligation to take any action or proceeding or exercise any remedy for the collection or recovery of rents and revenues, or any part thereof, and then only, subject to all appropriate deductions and payments made out of the rents and revenues received from the mortgaged property as herein provided; nor shall the Mortgagee be liable to remedy any environmental contamination of the mortgaged property or to indemnify any party on account of the need to remedy an environmental contamination.
- (h) This assignment is taken only as additional security and neither the taking of this assignment nor any act in pursuance hereof shall make the Mortgagee liable in

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any way, as landlord or otherwise, for the performance or any covenants, obligations or liabilities under any lease, agreement to lease, letting or tenancy agreement.

11. APPOINTMENT OF RECEIVER

- (a) Any time after default hereunder the Mortgagee may in writing from time to time appoint a Receiver of the mortgaged property and may from time to time remove the said Receiver and appoint another in its stead, and any such Receiver appointed hereunder shall have the following powers:
- (i) To take possession of the mortgaged property and to collect revenues from the same and for such purpose to enter onto or into the mortgaged property and for such purpose to do any act and take any proceedings in the name of the Mortgagor or otherwise as it shall deem necessary.
 - (ii) To carry on or concur in carrying on the business of the Mortgagor, and to employ and discharge agents, workers, accountants and others upon such terms and with such salaries, wages or remuneration as it shall think proper, and to repair and keep in repair the mortgaged property and to do any acts it deems appropriate for the carrying on of the business of the Mortgagor and the protection of the said mortgaged property.
 - (iii) To sell or lease or concur in the selling or the leasing of the mortgaged property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Mortgagor or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part or parts of the mortgaged property; and the Receiver may make any stipulations as to matters of title or conveyance or the commencement of title or otherwise, as it shall deem proper; and it may buy or rescind or vary any contract for the sale of any part of the mortgaged property and it may resell the same; and it may sell any of the mortgaged property on such terms as to credit or part cash and part credit or otherwise as shall appear in its sole option to be most advantageous and at such prices as can reasonably be obtained therefor and in the event of a sale on credit neither it nor the Mortgagee shall be accountable for or charged with any monies until actually received by them.
 - (iv) To make any arrangement or compromise which the Receiver may think expedient or otherwise in the interest of the Mortgagee and to consent to any modification or change in or omission from the provisions of this Mortgage and to exchange any part or parts of the mortgaged property for any other property suitable for the purposes of the Mortgagee and upon such terms as may seem expedient and either with or without payment or exchange of money or with or without regard to the equality of the exchange or otherwise.
 - (v) To borrow money to carry on the business of the Mortgagor and to charge the whole or any part of the mortgaged property in such amounts as the Receiver may from time to time deem necessary and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the mortgaged property in priority to this Mortgage.
 - (vi) To execute and prosecute all suits, proceedings and actions which the Receiver in its discretion considers necessary for the protection of the mortgaged property, to defend all suits, proceedings and actions against

the Borrower or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action.

- (vii) To execute and deliver to the purchaser of any part or parts of the mortgaged property, good and sufficient transfers for the same, the Receiver hereby being constituted the irrevocable attorney of the Borrower for the purpose of making such sale and executing such transfer, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Mortgagor, and all other persons claiming the said property or any part or parts thereof by, from, through or under the Mortgagor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided.
- (b) And it is agreed that no purchaser at any sale purporting to be made in pursuance of the aforesaid power shall be bound or concerned to see or inquire into whether any default has been made or continues, or whether any notice has been given, or as to the necessity or expediency of any stipulations subject to which such sale shall have been made, or otherwise as to the propriety of such sale or to the regularity of its proceedings, or the effect of not giving a notice that default has been made or continues, or that any required notice was not given, or that the sale is otherwise unnecessary, or improper or irregular; and notwithstanding any impropriety or irregularity or notice, or failure to give notice or the failure to do any act, shall not effect the effectiveness or propriety of any sale to a purchaser and such sale shall be deemed to be within the power of the Receiver and the Mortgagee and shall be a valid sale and the remedy if any of the Borrower, or of any party claiming by or under it, in respect of any alleged impropriety or irregularity whatsoever in any such sale shall be in damages only against a party other than the purchaser.
- (c) The net profits of the business of the Mortgagor or the sale of the same and the net proceeds of the sale of the mortgaged property or any part thereof shall be applied by the Receiver subject to the claims of any creditors ranking in priority to this Mortgagee's Rights and subject to any order of a court of competent jurisdiction:
- (i) Firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by it of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by it;
 - (ii) Secondly, in payment of all costs, charges and expenses payable under the Mortgage;
 - (iii) Thirdly, in payment to the Mortgagee of all interest and arrears of interest;
 - (iv) Fourthly, in payment of the principal sum owing under the Mortgage;
 - (v) Fifthly, in payment to the Mortgagee of any other fees, expenses and other monies remaining unpaid under the Mortgage; and
 - (vi) Sixthly, any surplus shall be paid to the Mortgagor; provided that in the event that any party claims a security interest against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus to the claimant as the Receiver deems appropriate in the circumstances with the balance, if any then remaining, to the Mortgagor.
- (d) The Lender shall not be liable to the Receiver for its remuneration, costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising unless the same shall be caused by its own gross negligence or willful

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default; and it shall, when so appointed, by notice in writing pursuant hereto, be deemed to be the agent of the Mortgagor and the latter shall be solely responsible for its acts and defaults and for its remuneration.

- (e) Nothing shall obligate the Mortgagee or the Receiver to take possession, control or manage any property which may be or contain a pollutant or contaminant or cause or contribute to a discharge, release or deposit of a substance contrary to any applicable environmental legislation or, the regulations thereunder. Provided further that the Receiver shall not be or deemed to be a successor employer of the Mortgagor or any employer in or upon the mortgaged property under any legislation or agreement.

12. POSTPONEMENT OF CLAIMS BY GUARANTOR

All indebtedness and liability, present and future, of the Borrower to the Covenantor is hereby assigned to the Mortgagee and postponed to the repayment of all the monies secured by the within Mortgage, and all monies received by Covenantor in respect thereof shall be received in trust for the Mortgagee, the whole without limiting or lessening the liabilities of the Covenantors under their guarantees or any other security, and this assignment and postponement is independent of the said guarantees and shall remain in full effect until repayment in full to the Mortgagee of the monies secured by the Mortgage notwithstanding that the liabilities of the Covenantors under the within guarantees may have been discharged or terminated. All Covenantors and the Borrower acknowledge the assignment to the Mortgagee as set forth herein provided that nothing shall impose upon the Mortgagee any obligation to do anything to realize on the assigned debts and claims or to ensure that those debts or claims do not become statute barred by the operation of law relating to limitation of actions or otherwise.

13. INSURANCE

- (a) The Mortgagor covenants and agrees, notwithstanding anything herein contained, that at all times during the term of this Mortgage, the Mortgagor shall maintain the following insurance coverage on all improvements on the mortgaged property and with respect to the mortgaged property in general, and where applicable, the business conducted by the Mortgagor on and in the mortgaged property in accordance with requirements of the Mortgage, including:
 - (i) "All Risk" coverage with "By-laws" coverage in an amount satisfactory to the Mortgagee and including the endorsements for conflict, encumbrance, fire department service charges, environmental risk, immediate repairs, loss of control, debris removal, permission to enter and repair, release and subrogation, re-instatement of loss and unearned premium, waiver of terms and conditions and joint loss agreement;
 - (ii) where the mortgaged property is of a commercial or industrial nature, a comprehensive broad form boiler and machinery coverage on all electrical, mechanical and compression in an amount satisfactory to the Mortgagee;
 - (iii) comprehensive public liability coverage for personal injury, death, property damage or loss in an amount of not less than \$5,000,000 for each occurrence, or such other amount as the Mortgagee may stipulate in writing from time to time, for each occurrence; and
 - (iv) where a business is conducted at the Mortgaged property or there are tenants thereon, the insurance policy shall include business interruption or rental loss coverage on an insurable gross rents basis sufficient to cover 100% of the greater of the fair market value of the rents payable by

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the aforesaid business in a property comparable to the Mortgaged property or the actual gross annual rents payable for the Mortgaged property and, where the rents are on a fully net basis, on the equivalent gross rents for the same period.

- (b) The Mortgagor covenants with the Mortgagee to:
 - (i) pay all insurance premiums for all insurance coverage when such premiums are due and payable;
 - (ii) to maintain authorization with current and any subsequent insurer to provide the Mortgagee with any information concerning the insurance coverage.
- (c) The Mortgagor covenants with the Mortgagee that all insurance policies shall:
 - (i) be endorsed to show the Mortgagee as a loss payee as the Mortgagee's interests may appear and such policies shall provide that any loss shall be payable to the Mortgagee as the Mortgagee's interest may appear;
 - (ii) be with an insurer or insurers acceptable to the Mortgagee, acting reasonably, and each such policy shall be signed by the insurer or insurers, or agents or brokers authorized to sign on behalf of each insurer;
 - (iii) be without co-insurance or have a stated or stipulated amount co-insurance clause for an amount equal to or less than the policy limit;
 - (iv) grant permission of partial occupancy and stipulate that reconstruction shall not be limited to the same site;
 - (v) include a provision that the insurer shall give the Mortgagee a minimum thirty (30) days written notice of any material alteration to or cancellation of the policy and a minimum ten (10) days advice as to the renewal of the policy prior to the renewal;
 - (vi) contain standard approved IBC "standard mortgagee" clauses in favour of the Mortgagee approved by the Mortgagee;
 - (vii) contain By-laws coverage satisfactory to the Mortgagee.;
- (d) Notwithstanding anything contained in the Loan Agreement or this Mortgage, the Mortgagor covenants and agrees with the Mortgagee to obtain and maintain such other form or forms of insurance, including environmental liability coverage, as the Mortgagee may deem prudent, acting reasonably, upon written request therefore made by the Mortgagee.
- (e) The Mortgagor covenants with the Mortgagee to, on written request made therefore, deliver to the Mortgagee, at the Mortgagor's expense, a certificate, opinion or other satisfactory report prepared by a competent appraiser or independent insurance consultant selected by the Mortgagee as to the sufficiency or otherwise of any insurance coverage, and as to the type and amount thereof.
- (f) The Mortgagor agrees that any deviation from the requirements set forth in the Loan Agreement and the Mortgage for insurance coverage must be approved by the Mortgagee in writing, such approval not to be unreasonably withheld.
- (g) The Mortgagor covenants that the Mortgagor shall, forthwith on the written request of the Mortgagee, provide the Mortgagee with a certified copy of every insurance policy aforesaid, and on request, copies of any and all receipts of payment of insurance premiums therefore and the Mortgagor acknowledges and agrees that the Mortgagee shall have a hypothec on the proceeds of all the aforesaid insurance policies for all these amounts.

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- (h) The Mortgagor covenants that, forthwith on the happening of any loss or damage, the Mortgagor shall furnish to the Mortgagee, at the Mortgagor's expense, all necessary information and proofs of loss and do all necessary acts to enable the Mortgagee to obtain payment of the insurance proceeds.
- (i) Any insurance proceeds received may, at the Mortgagee's option, be applied to rebuilding, reinstalling or repairing the mortgaged property or to be paid to the Mortgagor or any other person appearing by the registered title to be the owner of the mortgaged property or be applied or partly paid in one way and partly in another, or it may be applied, in the sole discretion of the Mortgagee, in whole or in part on account of the amounts secured by this Mortgage, whether due or not then due.
- (j) The Mortgagor acknowledges and agrees that in the event that the Mortgagee takes out insurance coverage in respect of the mortgaged property for the aforementioned specified risks, or any other risks the Mortgagee shall not be bound to insure the interest of any other person whatsoever, or to pay any insurance premium on any insurance policy, or be responsible for any loss arising out of any defect in any insurance policy or failure of any insurer to pay for any loss thereunder.

14. REALTY TAXES

- (a) Realty taxes shall mean and include all taxes, rates, levies and assessments of whatever nature or kind, including local improvement rates and any and all interest and penalties thereon.
- (b) At the Mortgagee's request, the Mortgagor in addition to the aforesaid payments of principal and interest, covenants and agrees to pay realty taxes as hereinafter provided: the Mortgagee shall estimate the amount of the realty taxes chargeable against the said mortgaged property payable in each year and the Mortgagor shall pay to the Mortgagee one-twelfth of the estimated annual amount together with the aforesaid payments of principal and interest in each and every month during the term of this Mortgage, commencing with the first payment date aforesaid and the Mortgagee shall apply such payments on account of the realty taxes so long as the Borrower and Covenantors are not in default under the Loan Agreement or any security entered into in connection therewith, but nothing herein contained shall obligate the Mortgagee to apply such payments on account of the realty taxes more often than yearly; provided, however, that if the Borrower shall pay any sum or sums to the Mortgagee to apply on the realty taxes, and if before the same shall have been so applied there shall be default by the Borrower in respect of any payment of principal or interest as contemplated in the Loan Agreement, the Mortgagee may at its option apply such sum or sums in or towards payments of the principal and/or interest in default. In the event that the realty taxes actually charged for any one year, together with any interest and penalties thereon, exceed the estimated amount, the Mortgagor shall pay to the Mortgagee on demand the amount required to make up the deficiency; and if the Mortgagor desires to take advantage of any discounts or to avoid any penalties in connection with the payment of realty taxes, the Mortgagor may pay to the Mortgagee such additional amounts as are required for that purpose; and the Mortgagor shall transmit to the Mortgagee forthwith after receiving them, the assessment notices for the realty taxes upon the mortgaged property.
- (c) In the event that the Mortgagee does not collect realty taxes from the Mortgagor as aforesaid, the Borrower shall upon demand, deliver to the Mortgagee proof in a form satisfactory to the Mortgagee that the realty taxes have been paid in full for the prior calendar year, and if the proof of same is not delivered to the Mortgagee within 14 days of demand for the same having been made, the Mortgagee may in addition to any other rights contained in the Mortgage, charge

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a service fee of \$200.00 to the Mortgagor for each letter of demand mailed or delivered to the Mortgagor by the Mortgagee or on its behalf, for proof of payment of realty taxes, and the same for each enquiry made to the appropriate municipal realty tax department, which amount is a liquidated amount to cover the Mortgagee's administrative charges, and is not a penalty.

- (d) The Mortgagee may, unless payment has otherwise been made, deduct from the loan advances, the amount necessary to pay the current year's realty taxes and an amount which together with the monthly tax payments to be made to and including April of the following calendar year, will be sufficient to pay all the taxes for the following calendar year.
- (e) No monies paid to the Mortgagee pursuant to the provisions of this section shall be held in trust for or bear interest to the credit of the Borrower or any Covenantor.
- (f) In the event that the Mortgagor has not remitted realty tax instalments to the Mortgagee in an amount enabling the Mortgagee to maintain the realty taxes on the Mortgaged property in good standing, the Mortgagor shall at its own expense deliver to the Mortgagee on or before the 31st day of July in each year during the term of the loan contemplated in the Loan Agreement, or any renewal thereof, proof in a form satisfactory to the Mortgagee, such as a certificate of realty tax payment or cancelled cheques, that the realty taxes for the said calendar year have been paid in full. In the event that such proof is not delivered to the Mortgagee as aforementioned the Mortgagee shall be entitled to a service fee of \$200.00 plus applicable taxes for each request to the Mortgagor for such proof that is made by the Mortgagee acting reasonably, and further the failure to provide the aforementioned evidence shall constitute an act of default entitling the Mortgagee to pursue all legal remedies and to exercise any powers conferred by this Mortgage.
- (g) The within realty tax section is in addition to and without prejudice to the other provisions of the within Mortgage in regard to realty taxes.

15. POST-DATED CHEQUES

Intentionally Deleted.

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16. BANKRUPTCY AND INSOLVENCY

- (a) The Mortgagor hereby waives and releases any right that it may have to receive from the Mortgagee notice of intention to enforce security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act (Canada)* or any successor or substitute section or legislation. This waiver and release shall not be deemed or interpreted to be a prior consent to earlier enforcement of a security within the meaning of subsection 244(2.1) of the said Act.
- (b) The Mortgagor hereby acknowledges and agrees that the security held by the Mortgagee is not all or substantially all of the inventory, accounts receivable or other property of the Mortgagor acquired for or used in relation to any business carried on by the Mortgagor. The Mortgagor hereby further acknowledges and agrees that notwithstanding any act of the Mortgagee by way of appointment of any person or persons for the purposes of taking possession of the mortgaged property as agent on behalf of the Mortgagor or otherwise or by taking possession of the mortgaged property itself pursuant to any rights that the Mortgagee may have with respect hereto shall not constitute the Mortgagee or any such person, a receiver within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act (Canada)* or any successor or substitute provision, and that any and all requirements of Part XI of that said Act as it may pertain to obligations of receivers shall not be applicable to the Mortgagee with respect to the transaction pursuant to which this Mortgage has been given or enforcement of this Mortgage or any other security held by the Mortgagee. The Mortgagor hereby acknowledges and agrees that no action shall lie against the Mortgagee as a receiver, manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the *Bankruptcy and Insolvency Act (Canada)* or any successor or substitute Federal or Provincial legislation, whether or not the Mortgagee had reasonable grounds to believe that the Mortgagor was not insolvent.
- (c) And the Mortgagor further acknowledges and agrees that any and all costs as may be incurred from time to time by the Mortgagee in order to effect compliance or avoid any adverse ramifications of the *Bankruptcy and Insolvency Act (Canada)* or any successor or substitute Federal or Provincial legislation shall be entirely for the account of the Mortgagor. The Mortgagee shall be entitled to incur any such costs, including any costs of its personnel in administering any requirements of the *Bankruptcy and Insolvency Act (Canada)* and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Mortgagee for the indebtedness owing to the Mortgagee in the same manner and in the same priority as the principal secured hereunder.

17. RESIDENTIAL RENTAL PROPERTIES

- (a) The Mortgagor represents and warrants that with respect to such of the mortgaged property as may be residential rental property:
 - (i) All rents charged and deposits taken with respect to the property or any part thereof are lawful rents pursuant to the *Residential Tenancies Act (Alberta)* and all required rebates have been paid;
 - (ii) No applications, investigations or proceedings have been commenced or made pursuant to the *Residential Tenancies Act (Alberta)* with respect to the property or any residential rental unit or units on the mortgaged property.

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(iii) There are no outstanding orders or decisions made by the Province of Alberta or any board or commission with respect to the mortgaged property or any residential rental unit or units on the mortgaged property.

(b) The Mortgagor agrees to comply with the terms of the *Residential Tenancies Act (Alberta)* as amended from time to time, and any legislation enacted in substitution thereof. In the event of breach of this covenant or in the event that any of the representations or warranties contained in this provision are false, the same shall constitute an Event of Default.

18. EVENTS OF DEFAULT

(a) The Mortgagor covenants and agrees that notwithstanding any other provision in this Mortgage, the Mortgagee may deem this Mortgage to be in default in the event that the Mortgagor does or becomes subject to any of the following which is deemed to be an Event of Default:

- (i) the Borrower fails to make a payment in accordance with Loan Agreement;
- (ii) the Mortgagor fails to make any other payment required to be made under the Mortgage;
- (iii) permits any other amount which is secured by this Mortgage, or any taxes, public utilities accounts or insurance premiums which are due and payable under this Mortgage, or otherwise due and payable by the Mortgagor and not in dispute, to remain unpaid after the Mortgagee has made written demand for payment thereof;
- (iv) fails to insure the mortgaged property in accordance with the Mortgage;
- (v) fails to observe or perform any covenant or agreement contained in this Mortgage;
- (vi) makes any warranty or representation to the Mortgagee which is untrue in any material respect;
- (vii) permits any lien, encumbrance or other claim capable of ranking in priority to the security created in favour of the Mortgagee to be recorded or registered against the mortgaged property which is not removed or satisfied in full within thirty (30) days of such recording or registration;
- (viii) causes or permits any order to be made or any resolution to be passed or adopted, or any petition to be filed for the winding-up of the Mortgagor;
- (ix) becomes insolvent, commits an act of bankruptcy, or if a petition in bankruptcy is filed against the Mortgagor which is not being disputed in good faith by the Mortgagor, or a proposal made by the Mortgagor under the *Bankruptcy and Insolvency Act (Canada)* is rejected by creditors;
- (x) causes or permits a "stay order" to be issued pursuant to the *Companies Creditors Arrangement Act (Canada)* which prohibits the Mortgagee from enforcing this Mortgage;
- (xi) is the subject of any execution, sequestration or any other judicial process, or any distress or similar process levied on the mortgaged property or against the Mortgagee which is not, in good faith, being disputed by the Mortgagor;
- (xii) fails or refuses to comply with any term, condition or proviso of the Mortgage or any other security required pursuant to it;
- (xiii) has made any material misrepresentation to the Mortgagee in any environmental proviso contained in the Mortgage or if there is any

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- hazardous material, or environmental contamination, which, in the opinion of the Mortgagee, may reduce the market value of the mortgaged property;
- (xiv) commits or permits the commission of an event of default under any other security, priority or collateral security given or granted by it or the Borrower or any Covenantor to the Mortgagee pursuant to the terms and conditions of the Loan Agreement;
 - (xv) where the Mortgagor is a corporation, and there is a change in control of the Mortgagor without the prior written consent of the Mortgagee or the Mortgagor fails to maintain its corporate existence;
 - (xvi) permits the termination or surrender of any lease or tenancy agreement of the mortgaged property or any part thereof which has been assigned to the Mortgagee as collateral security, or permits any reduction in the term or rent of any such lease or tenancy agreement affecting the mortgaged property without the prior written consent of the Mortgagee;
 - (xvii) fails to negotiate with respect to, or renew, extend, modify or amend any lease or tenancy agreement affecting the mortgaged property in good faith, acting as a prudent landlord;
 - (xviii) neglects to keep the mortgaged property substantially in good condition and repair as aforesaid, or commits any act of waste, the determination of which the Mortgagee shall be the sole judge, acting reasonably, or allows any improvements on the mortgaged property to remain unfinished or without any work being done thereon for thirty (30) days;
 - (xix) permits or causes waste to the mortgaged property or otherwise causes or permits, by any act or omission, the value of the mortgaged property to decline;
 - (xx) abandons the mortgaged property or a substantial portion thereof, either physically or constructively, or otherwise leaves the mortgaged property vacant for more than ten (10) days;
 - (xxi) fails to comply with all applicable building, zoning and other municipal by-laws, statutory requirements and regulations (save and except for any such non-compliance which is, in good faith, contested by the Mortgagor with the municipality or other body having jurisdiction until the final disposition thereof against the Mortgagor);
 - (xxii) fails to comply with all applicable laws, regulations and by-laws which apply to the ownership, maintenance, repair, use and occupation of the mortgaged property;
 - (xxiii) commits or permits the commission of criminal activities on, in or under the mortgaged property;
 - (xxiv) fails to comply with any provision of any applicable law, regulation or governmental or quasi-governmental order or decree or the Mortgage;
- (b) On the occurrence of any Event of Default, the Mortgagee may at its sole option accelerate payment of the amounts secured by this Mortgage and all such amounts secured by this Mortgage shall immediately become due and payable together with all interest and other amounts secured by this Mortgage with interest thereon at the rate of interest provided in the Mortgage, until payment is made in full.
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- (c) Every Event of Default entitles the Mortgagee to exercise any and all rights and remedies available to it.
- (d) The Mortgagee may waive any Event of Default in writing at any time after the occurrence of such Event of Default; provided that any such waiver shall apply only to the particular Event of Default waived by the Mortgagee, and shall not operate as a general waiver or a waiver of any other or future Event of Default.

19. LOAN AGREEMENT

For the purpose of this Schedule, the Loan Agreement shall include any commitment to fund or to lend predating the Mortgage, including any document to which this Schedule has been attached.

20. RECOURSE

The Borrower covenants and agrees that on the occurrence of an Event of Default hereunder, the Mortgagee and Lender may, exact payment of all amounts due and exercise the rights granted to the Lender under the Loan Agreement and the Mortgagee under the Mortgage and otherwise pursuant to the laws of Alberta.

21. SECURITY INTEREST IN CHATTELS

- (a) All chattels, equipment, installations, erections, structures and improvements, fixed or otherwise, now or hereafter put upon the said mortgaged property and owned by the Mortgagor, including, but without limiting the generality of the foregoing, all drapes and curtains, lobby furniture, refrigerators, stoves, washers, dryers, heating equipment, air-conditioning and ventilation equipment, blinds, storm windows and doors, window screens, mirrors, shelving, railings, counters, cupboards, built-ins and the like, and all apparatus and equipment appurtenant thereto are and shall in addition to other fixtures be an accession to the freehold and a part of the realty, and shall be a portion of the security for the indebtedness contained in the Loan Agreement and the Mortgage.
- (b) The Mortgagor covenants and agrees to execute and deliver to the Mortgagee, on demand, a security interest in all such chattels, furnishings, equipment, appliances and all other similar personal property owned now or in the future owned by the Mortgagor and situate in or about the mortgaged property. The form and content of such security interest shall be acceptable to the Mortgagee in its discretion. The Mortgagor agrees to pay all legal and other expenses incurred by the Mortgagee in connection with the registration of a financing statements under the *Personal Property Security Act (Alberta)* and replacement or successor legislation and all other documents relating to the security interest and any renewals thereof forthwith upon demand and such fees and expenses, together with interest thereon at the interest rate charged hereunder, paid forthwith by the Mortgagor and treated as Additional Fees as provided in Section 1 herein.

22. SPOUSAL CLAUSE

The Mortgagor covenants that it or the owner from time to time of the said mortgaged property that is not a corporation, will advise and keep advised the Mortgagee as to whether the Mortgagor or owner from time to time is a spouse and, if so, the name of the spouse; and further will advise and keep advised the Mortgagee of any change in spousal status and will forthwith, upon request, furnish the Mortgagee with such evidence in connection with spousal status and the name of the spouse, as the Mortgagee may from time to time require or request.

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23. STRATA LOT PROVISIONS

- (a) The Mortgagor shall deliver to the Mortgagee written notice of every meeting of the owners at least ten (10) business days prior to such meeting, such notice to specify the information required by law and declaration with respect to the giving of such notices.
- (b) The Mortgagor shall deliver to the Mortgagee copies of any or all of the strata corporation's current declaration, by-laws, regulations and rules and copies of all notices, minutes, resolutions, accounts, insurance policies, warranties, plans, list of assets of the strata corporation, all agreements relating to the management, operation, maintenance and repair of the mortgaged property, all financial records of the strata corporation relating to the operation of the strata corporation or the mortgaged property, budgets and other documents relating to the financial statements and to the affairs of the condominium corporation as the Mortgagor may receive from time to time, within ten (10) business days of the date that written notice is given to the Mortgagor requesting same.

24. INTEREST ONLY MONTHLY

Intentionally Deleted.

25. FURTHER ASSURANCES

The Mortgagor shall execute such further assurances of the mortgaged property and execute and deliver such collateral security and do such further acts as the Mortgagee may require to further perfect and secure this Mortgage and, in the event of default, the Mortgagor shall execute and deliver such further assurances and do such further acts, at the Mortgagor's expense, as may be required by the Mortgagee.

26. VALIDITY OF PROVISIONS

If any provision of the Loan Agreement or the Mortgage is held to any extent invalid or unenforceable, such provision shall be deemed to be severed herefrom and the remainder of the Loan Agreement or the Mortgage, as the case may be, other than a provision which is held invalid or unenforceable, will be unaffected.

27. INTERPRETATION

- (a) In the event of any conflict or inconsistency between the terms and conditions of this Schedule and the provisions of the balance of the Mortgage, to the extent permitted at law, the terms and conditions most favourable to the Mortgagee shall take priority and be applicable.
- (b) Any reference in the standard mortgage terms forming part of this Mortgage to the *Condominium Property Act (Alberta)* shall be interpreted as a reference to the *Condominium Property Act (Alberta)* as amended from time to time. If all or a portion of the mortgaged property is now or hereafter part of a strata plan, then to the fullest extent permitted by law, the Mortgagor irrevocably authorizes the Mortgagee to exercise any right that the Mortgagor may have pursuant to the by-laws of the strata corporation formed by the owners of strata lots in such strata plan and any right that the Mortgagor may have pursuant to the *Condominium Property Act (Alberta)* by the Mortgagee shall not be obligated to exercise any such right and if the Mortgagee does not exercise any such right the Mortgagor may do so.
- (c) Without limiting the generality of any other obligation of the Mortgagor to the Mortgagee, the Mortgagor will comply with all of the Mortgagor's obligations relating to the mortgaged property under any applicable law including, without

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limitation, the Mortgagor's obligations under the *Condominium Property Act (Alberta)*.

- (d) The taking of judgment or judgments on any of the covenants herein contained shall not operate as a merger of such covenants or affect the Mortgagee's right to interest at the rates and times herein provided. Any such judgment shall provide that interest thereon shall be computed at the same rates and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.
- (e) This Mortgage shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and each of the parties submits to the jurisdiction of the courts of Edmonton, Alberta with respect to this Mortgage.
- (f) When used herein, "Covenantor" includes all guarantors described in the Loan Agreement.

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SCHEDULE "C"

MEMORANDUM OF PERMITTED PRIOR ENCUMBRANCES

Plan 8323217, Lot 3:

4191HP	Utility Right of Way
5886MA	Caveat re Easement
7650OP	Caveat
752 007 020	Caveat
772 191 417	Caveat
802 171 446	Caveat re Easement
802 171 447	Caveat re Easement
802 171 448	Caveat re Easement
832 311 827	Utility Right of Way
832 311 631	Easement
832 311 632	Caveat re Easement
082 014 748	Restrictive Covenant
082 124 683	Restrictive Covenant
082 124 690	Easement
082 124 692	Caveat re Easement
082 255 334	Caveat re Easement
082 412 290	Caveat re Right of First Refusal
082 416 050	Easement
082 511 093	Caveat re Agreement Charging Land
092 359 572	Certificate of Lis Pendens affecting Caveat 082 511 093
092 359 573	Certificate of Lis Pendens affecting Caveat 082 511 093
092 359 574	Certificate of Lis Pendens affecting Caveat 082 511 093
092 359 575	Certificate of Lis Pendens affecting Caveat 082 511 093
092 385 601	Certificate of Lis Pendens affecting Caveat 082 511 093
102 414 416	Caveat re Easement
112 318 970	Caveat re Right of Way Agreement
132 173 346	Caveat re Right of Way Agreement
132 250 234	Caveat re Easement
132 252 285	Caveat re Easement
162 259 031	Partial Discharge of Easement 082 416 050
162 356 039	Caveat re Easement

SW 17-53-23-W4:

2121MS	Utility Right of Way
5741RI	Caveat re Easement
5117RU	Caveat re Easement
802 161 061	Utility Right of Way
912 164 346	Utility Right of Way
942 024 246	Utility Right of Way

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082 567 270	Caveat re Easement
072 588 848	Utility Right of Way
082 014 748	Restrictive Covenant
082 124 683	Restrictive Covenant
082 124 690	Easement
082 124 692	Caveat re Easement
092 048 599	Easement
092 236 386	Caveat re Right of Way Agreement
132 104 704	Caveat re Easement
132 173 342	Caveat re Right of First Refusal
132 250 234	Caveat re Easement
132 252 285	Caveat re Easement
132 283 372	Caveat re Deferred Reserve
132 283 379	Caveat re Easement and Restrictive Covenant
132 283 380	Caveat re Easement and Restrictive Covenant
162 342 180	Easement
162 356 039	Caveat re Easement

Plan 8323217, Lot 2:

553HT	Utility Right of Way
7756JH	Caveat
3569LT	Easement
6696LW	Caveat re Easement
5886MA	Caveat re Easement
7650OP	Caveat
752 007 020	Caveat
772 191 417	Caveat re Easement
802 171 446	Caveat re Easement
802 171 447	Caveat re Easement
802 171 448	Utility Right of Way
922 173 319	Easement
082 014 748	Restrictive Covenant
082 124 683	Restrictive Covenant
082 124 689	Easement
082 124 690	Easement
082 124 694	Easement
082 239 404	Easement
092 048 599	Easement
122 128 408	Caveat re Easement
132 173 335	Caveat re Right of Way Agreement
162 356 039	Caveat re Easement

NE 17-53-23-W4:

032 286 748	Caveat re Surface Lease
032 419 836	Caveat re Lease Amending Agreement

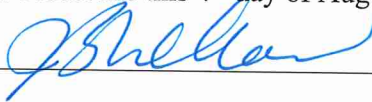
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042 041 133	Caveat re Amending Agreement
052 105 372	Zoning Regulations
072 298 440	Utility Right of Way
072 318 379	Caveat re Lease Interest
082 014 748	Restrictive Covenant
082 124 883	Easement
082 239 404	Easement
082 255 334	Caveat re Easement
082 292 655	Easement
082 416 050	Easement
112 318 970	Caveat re Right of Way Agreement
132 252 285	Caveat re Easement
162 259 031	Partial Discharge of Easement 082416050

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This is **Exhibit "I"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

GENERAL SECURITY AGREEMENT

Dated this 17 day of April, 2018.

The Debtor enters into this Agreement in favour of the Creditor as security for the payment and satisfaction of the Indebtedness, and the Debtor covenants, agrees, represents, warrants, acknowledges and grants in favour of the Creditor, as the case may be, as herein provided.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purpose of this Agreement and any Schedules hereto:

- (1) any expression used herein whose first letter is capitalized shall (unless specifically defined in this Agreement) where defined in the Act have such meaning, notwithstanding that such first letter is not capitalized in the Act;
- (2) the following expressions used herein shall have the following meanings:
 - (a) "Act" - the Personal Property Security Act of Alberta and all regulations thereto, as amended from time to time or any substitution therefor;
 - (b) "Account Debtor" or "Account Debtors" - shall have the meaning given to them in Section 7 hereof;
 - (c) "Collateral" - shall have the meaning given to it in Section 2 hereof and shall include the whole or any part or parts thereof as the Creditor requires;
 - (d) "Court" - a court of competent jurisdiction;
 - (e) "Creditor" - ROMSPEN INVESTMENT CORPORATION, 162 Cumberland Street, Suite 300, Toronto, ON M5R 3N5;
 - (f) "Debtor" - ECO-INDUSTRIAL BUSINESS PARK INC.;
 - (g) "Debts" - all book accounts and book debts and generally all accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, payable, owing or accruing due to or owned by or which may hereafter become due, payable, owing or accruing due to or owned by the Debtor;
 - (h) "Default" or "Event of Default" - the occurrence of any event or condition provided for in Section 11 hereof;
 - (i) "Encumbrance" - a charge approved in writing by Creditor ranking in priority to the Security Interest;
 - (j) "Free and Clear" - Free and Clear of all liens, mortgages, security interests, demands, charges, pledges, encumbrances, equities, and adverse claims whatsoever, except for Encumbrances;
 - (k) "Indebtedness" shall be interpreted in its most comprehensive sense, whether incurred prior to, at the time of or subsequent to the entering into of this Agreement and without limiting its generality, shall include any and all Advances (whether fixed or revolving credits or otherwise) or other value and interest thereon at any time and from time to time made or granted by or on behalf of Creditor to or on behalf or on account of or at the direction of Debtor, and for the payment or satisfaction of all obligations, indebtedness or liabilities and interest thereon of Debtor to or

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in favour of Creditor, or for which Creditor may become responsible, whether direct, indirect, absolute, contingent or otherwise, present or future, extended or renewed, insured or not, voluntary or involuntary, matured or not, liquidated or unliquidated, wheresoever and howsoever incurred and any ultimate balance thereof and whether the same is from time to time reduced and thereafter incurred again, and whether Debtor may be liable individually or jointly with others, and whether as principal or surety or guarantor, and whether recovery upon such Indebtedness may be or hereafter become barred or unenforceable, and whether incurred by or arising from agreement, letters of credit (whether or not drawn upon), guarantee or dealings between Creditor and Debtor or others or by or from any agreement, letters of credit (whether or not drawn upon), guarantee or dealings within or outside the country with any third party or however otherwise incurred, and all interest, commission, costs, including without limitation legal costs of Creditor on a solicitor and his own client basis, charges and expenses of every nature and kind whatsoever (inclusive of those provided for in Section 13.6 hereof) which may be incurred, arise from or relate to the Indebtedness or the Collateral by which Creditor may be or become in any manner whatsoever a creditor of Debtor;

- (i) "Security Interest" - the Security Interest granted under Section 2 hereof.

1.2 Number and Gender

Words importing the singular number shall include the plural and vice versa, words importing any gender shall include all genders, and "person" and words importing persons shall include natural persons, firms, partnerships, corporations, regulatory bodies and entities, legal or otherwise; "Agreement" or "hereof", "hereto", "herein", when used in this Agreement and any attached Schedules refer to this Agreement and to any Schedules attached hereto and not to any particular Sections, paragraphs sub-paragraphs or other portion hereof, and including any and every instrument supplemental hereto; and any reference to a paragraph, subparagraph or section by number of letter of the alphabet means the appropriate paragraph, subparagraph, or Section of this Agreement unless the context otherwise requires; and any reference to a Schedule by number of letter of the alphabet means the appropriate Schedule attached to this Agreement; the use of the term "contract" or "contracts" shall include verbal or written contracts, agreements, deeds, documents, instruments and indentures; the use of the term "law" or laws" shall include all federal, provincial and municipal laws, ordinances, by-laws, rules and regulations; any defined term shall, as the Creditor may require, be interpreted to mean the whole or any portion thereof.

1.3 Headings

Headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

2. SECURITY INTEREST

2.1 Security Interest

Debtor hereby grants to and in favour of Creditor, a security interest ("Security Interest") in all present and after-acquired personal property of the Debtor and all present and after-acquired real property of the corporations comprising the Debtor, including without limitation, goods, chattel paper, documents, accounts, intangibles, securities, monies, books and records and all replacements of, substitutions for and increases, additions and accessories to the foregoing and proceeds thereof, present and future.

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2.2 Exception

The Security Interest shall not extend or apply to, and Collateral shall not include, the last day of the term of any lease or agreement therefor, now held or hereafter acquired by Debtor, but upon the enforcement of the Security Interest the Debtor shall stand possessed of such last day in trust for the Creditor to assign and dispose of the same to or as Creditor or any person acquiring such term shall direct.

2.3 Indebtedness Secured

The Security Interest secures payment and satisfaction of the Indebtedness; provided however, that if the Security Interest in the Collateral is not sufficient to satisfy the Indebtedness of the Debtor in full, the Debtor agrees that the Debtor shall continue to be liable for any indebtedness remaining outstanding and the Bank shall be entitled to pursue full payment and satisfaction thereof.

3. DEBTOR'S REPRESENTATIONS AND WARRANTIES

3.1 Debtor represents and warrants and so long as this Agreement remains in effect shall be deemed to continuously represent and warrant to Creditor that:

- (1) the Collateral is genuine and owned by Debtor, Free and Clear;
- (2) each Debt, Chattel Paper and Instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same ("Account Debtor"), and the amount represented by Debtor to Creditor from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor(s) and no Account Debtor will have any defence, set-off, claim or counterclaim against Debtor which can be asserted against Creditor, whether in any proceedings to enforce Collateral or otherwise;
- (3) the Debtor, if a corporation, has been and is:
 - (a) duly incorporated and organized or continued and organized or amalgamated and organized, as the case may be, and validly exists under the laws of Alberta and has full power and authority, corporate or otherwise, to execute, deliver and perform all of its obligations under this Agreement and to conduct its business and own its properties in all jurisdictions in which the Debtor presently carries on business or presently proposes to carry on business and Debtor has acquired all material licenses and effected all material registrations required in such jurisdictions and such licenses and registrations are in good standing; and
 - (b) all corporate action on the part of the Debtor, its directors or shareholders, necessary for the authorization, execution, delivery and performance of this Agreement has been duly taken, and
 - (c) the officers of Debtor executing this Agreement and any other instrument or agreement required hereunder hold the offices which they purport to hold and are fully authorized to execute the same;
- (4) the information given by Debtor on the execution page hereof is complete and accurate;
- (5) this Agreement when duly executed and delivered by Debtor will be a legal, valid and binding obligation of Debtor, enforceable against it in accordance with its terms, subject only as such enforcement may be limited by bankruptcy, insolvency and any other laws of general application, including the Act, affecting creditors' rights and by rules of equity governing enforceability by specific performance;
- (6) there is no provision contained in the constating documents, bylaws or similar documents of Debtor, if a corporation, and no contracts under which Debtor is obligated, nor to the

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knowledge of Debtor is there any law, or any judgment, decree or order of any Court or agency binding on Debtor which would be contravened by the execution and delivery of this Agreement, or by the performance of any provision, condition, covenant or other term hereof and in all circumstances where consent is required, such consent has been duly obtained;

- (7) there is no unsatisfied judgment, litigation, tax claim, proceeding or dispute pending, or, to the knowledge of Debtor, threatened, against or affecting Debtor or its property, the adverse determination of which might materially and adversely affect Debtor's financial condition or operations or impair Debtor's ability to perform its obligations hereunder or under any other instrument or agreement required hereunder;
- (8) the corporate records and minute book of Debtor contain complete and accurate minutes of all meetings of the directors and shareholders of Debtor held since its incorporation and all such meetings were duly called and held and the share certificate register, register of shareholders, register of transfers and register of directors of Debtor is substantially complete and accurate;
- (9) Debtor has duly filed in a timely manner all tax returns required to be filed by it and has paid all taxes as shown on such returns as being due and payable, including all assessments, re-assessments and other charges, penalties, interest or fines applicable to such returns, and Debtor has made adequate provision for the taxes which are payable during the current fiscal period for which tax returns are not yet required to be filed;

3.2 Debtor agrees to indemnify Creditor against and hold Creditor harmless from any and all claims, losses, damages or costs, including legal costs as between a solicitor and his own client, to which Creditor may be put or suffer by or as a result of any representation or warranty contained in Section 3.1 hereof being incorrect or breached.

4. COVENANTS OF DEBTOR

4.1 So long as this Agreement remains in effect, Debtor covenants and agrees:

- (1) to defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein; to keep the Collateral Free and Clear and not to, except to the extent permitted under Section 5 hereof, sell, exchange, transfer, assign, lease or otherwise dispose of Collateral or any interest therein without the prior written consent of Creditor; and, subject to Section 7 hereof, use monies, available to Debtor;
- (2) to forthwith notify Creditor of:
 - (a) any change in the information contained herein or in the Schedules hereto relating to Debtor (including without limitation any change in the name of Debtor or any trade name or partnership under which Debtor may operate and in the case of a partnership any change therein), its business or Collateral;
 - (b) the details of any material acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or Collateral;
 - (d) any loss of or damage to Collateral;
 - (e) any default by any Account Debtor in payment or other performance of Account Debtor's obligations with respect to Collateral; and
 - (f) the return to or repossession by Debtor of Collateral;
- (3) to keep the Collateral in good order, condition and repair, to provide adequate storage facilities to protect the Collateral, not to permit the value of the Collateral to be impaired and in particular not to use Collateral in violation of the provisions of this Agreement or

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any other agreement relating to Collateral or any policy insuring Collateral or any applicable law;

- (4) to pay all taxes, rates, levies, assessments and other charges of every nature which may be lawfully levied, assessed or imposed against or in respect of Debtor or Collateral as and when the same becomes due and payable;
- (5) to insure and keep insured the Collateral for such periods, in such amounts, on such terms, with such companies and against loss or damage by fire (including so-called extended coverage) and such other risks as Creditor shall direct with loss payable to Creditor as its interests hereunder may appear, and to pay all premiums and other sums required to maintain such insurance;
- (6) to insure itself against public liability in such amounts, on such terms, with such companies as Creditor shall require having regard to the nature of the business carried on from time to time by Debtor;
- (7) to prevent Collateral, (save Inventory sold or leased as permitted hereby), from being or becoming an accession or fixture to other property not covered by this Agreement;
- (8) to carry on and conduct the business of Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for Debtor's business as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral at Creditor's request so as to indicate the Security Interest;
- (9) to deliver to Creditor from time to time promptly upon request:
 - (a) any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to Collateral;
 - (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for Debtor regarding Debtor's business;
 - (d) all policies and certificates of insurance or other evidence satisfactory to Creditor of compliance with the obligations of Debtor to insure hereunder relating to Collateral; and
 - (e) such information concerning Collateral, Debtor and Debtor's business and affairs as Creditor may reasonably request including information respecting real property upon which the Collateral is to be affixed.
- (10) Except with the consent of Creditor, not to:
 - (a) grant, create, assume or permit to exist any security interest, mortgage, pledge, charge, assignment, lien, lease or other security, whether fixed or floating, upon any of the Collateral other than the Security Interest and the Encumbrance;
 - (b) amalgamate or consolidate with any person;
 - (c) incorporate any subsidiary or affiliate corporation, whether wholly or partially owned by Debtor unless security agreements; in a form satisfactory to Creditor, are executed by such subsidiary or affiliate in favour of Creditor;
 - (d) permit any change to be made to the capital structure, management, ownership or business of Debtor which, in the opinion of Creditor, has or is reasonably likely to have a material adverse effect upon the position of Creditor under this Agreement.

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5. **USE AND VERIFICATION OF COLLATERAL**

- 5.1 Subject to compliance with Debtor's covenants contained herein and Section 7 hereof, Debtor may, until Default, possess, operate, collect, use and enjoy and deal with Collateral in the ordinary course of Debtor's business in any manner not inconsistent with the provisions hereof; provided always that Creditor shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner Creditor may consider appropriate and Debtor agrees to furnish all assistance and information and to perform all such acts as Creditor may reasonably request in connection therewith and for such purpose Debtor hereby grants to Creditor or its agents access to all places where Collateral may be located and to all premises occupied by Debtor.

6. **SECURITIES**

- 6.1 If Collateral at any time includes Securities, Debtor authorizes Creditor to transfer the same or any part thereof into its own name or that of its nominee(s) so that Creditor or its nominee(s) may appear of record as the sole owner thereof; provided that, until Default, Creditor shall deliver promptly to Debtor all notices and communications received by it or its nominee(s) as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, shall issue to Debtor or its order a proxy to vote and take all action with respect to such Securities. After Default, Debtor waives all rights to receive any notices or communications received by Creditor or its nominee(s) as such registered owner and agrees that no proxy issued by Creditor to Debtor or its order as aforesaid shall thereafter be effective.

7. **COLLECTION OF DEBTS**

- 7.1 Before or after Default, Creditor may notify all or any Account Debtors (herein collectively referred to as "Account Debtors" and individually as "Account Debtor") obligated to pay a Debt, Chattel Paper or Instrument constituting Collateral of the Security Interest and may also direct such Account Debtors to make all payments on Collateral to Creditor. Debtor acknowledges that any payments on or other proceeds of Collateral received by Debtor from Account Debtors, whether before or after notification of this Security Interest to Account Debtors and whether before or after Default shall be received and held by Debtor in trust for Creditor and shall be turned over to Creditor upon request.

8. **INCOME FROM AND INTEREST ON COLLATERAL**

- 8.1 Until Default, Debtor reserves the right to receive any monies constituting income from or interest on Collateral and if Creditor receives any such monies prior to Default, Creditor shall either credit the same to the account of Debtor or pay the same promptly to Debtor.
- 8.2 After Default, Debtor will not request or receive any monies constituting income from or interest on Collateral and if Debtor receives any such monies without any request by it, Debtor will pay the same promptly to Creditor.

9. **INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS**

- 9.1 Whether or not Default has occurred, Debtor authorizes Creditor:
- (1) to receive any increase in or profits on Collateral (other than money) and to hold the same as part of Collateral. Money so received shall be treated as income for the purposes of Section 8 hereof and dealt with accordingly;
 - (2) to receive any payment or distribution upon redemption or retirement or upon dissolution and liquidation of the issuer of Collateral; to surrender such Collateral in exchange therefor; and to hold any such payment or distribution as part of Collateral.

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9.2 If Debtor receives any such increase in or profits on Collateral (other than money) or payments or distributions, Debtor shall deliver the same promptly to Creditor to be held by Creditor as herein provided.

10. **DISPOSITION OF MONIES**

10.1 Subject to any applicable requirements of the Act, all monies collected or received by Creditor pursuant to or in exercise of any right it possesses with respect to Collateral shall be applied on account of Indebtedness in such manner as Creditor deems best or, at the option of Creditor, may be held unappropriated in a collateral account or released to Debtor, all without prejudice to the liability of Debtor or the rights of Creditor hereunder, and any surplus shall be accounted for as required by law, and in the event of a deficiency Debtor shall remain liable for such deficiency.

11. **EVENTS OF DEFAULT**

11.1 The occurrence of any of the following events or conditions shall constitute Default under this Agreement:

- (1) the nonpayment when due, whether by acceleration or otherwise, of any principal or interest or other monies forming part of Indebtedness or the failure of Debtor to observe or perform any obligation, covenant, term, provision or condition contained in this Agreement or any other agreement, deed, indenture or arrangement between Debtor and Creditor;
- (2) the death of or declaration of incompetence by a Court with respect to Debtor, if an individual;
- (3) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy, the making of an assignment for the benefit of creditors by Debtor; the appointment of a receiver, a receiver-manager or trustee for Debtor or for any assets of Debtor or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;
- (4) the institution by or against Debtor of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims or winding up of affairs of Debtor;
- (5) if any Encumbrance affecting Collateral or any part thereof becomes enforceable against Collateral;
- (6) if Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or a transfer, sale or lease of all or substantially all Collateral without the prior written consent of Creditor and without complying with applicable laws or commits or threatens to commit an act of bankruptcy;
- (7) if Debtor changes its name without the prior written consent of Creditor (such consent not to be unreasonably withheld);
- (8) if any execution, sequestration or other process of any Court becomes enforceable against Debtor or if a distress or analogous process is levied upon the assets of Debtor or any part thereof;
- (9) if any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on behalf of Debtor pursuant to or in connection with this Agreement or otherwise (including, without limitation, the representations and warranties contained herein) or as an inducement to Creditor to extend any credit to or to enter into this or any other agreement with Debtor, proves to have been false in any respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial contingent or unliquidated liability or claim against Debtor; or if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement,

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warranty or audit report, which change has not been disclosed to Creditor at or prior to the time of such execution.

12. ACCELERATION

- 12.1 Creditor, in its sole discretion, may declare all or any part of Indebtedness (which is not by its terms payable on demand) to be immediately due and payable, without demand or notice of any kind, in the event of Default, or, if Creditor in good faith believes that the prospect of payment of all or any part of Indebtedness or performance of Debtor's obligations under this Agreement or any other agreement now or hereafter in effect between Debtor and Creditor is impaired.
- 12.2 The provisions of Section 12.1 are not intended in any way to affect any rights of Creditor with respect to Indebtedness which may now or hereafter be payable on demand.

13. REMEDIES

- 13.1 Creditor may take possession of, collect, demand, sue on, enforce and receive Collateral and give valid and binding receipts and discharges therefor and in respect thereof, and upon Default Creditor may appoint or re-appoint any person(s), whether an officer or officers or an employee or employees of Creditor or not, to be a receiver or receivers (a "Receiver", which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his stead. Any such Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of Debtor and not Creditor, and Creditor shall not be in any way responsible for any misconduct, negligence, or nonfeasance on the part of any such Receiver, his servants, agents or employees.
- 13.2 Creditor shall have in addition to any other rights available to it, the right to provide in the instrument appointing the Receiver, all of the powers which can be given to a Receiver by the Court; provided however that unless otherwise specifically provided for in the instrument appointing a Receiver such Receiver shall have power to take possession of Collateral, to preserve Collateral or its value, to carry on or concur in carrying on all or any part of the business of Debtor and to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of the Collateral and to give valid and binding receipts and discharges therefor and in respect thereof.
- 13.3 To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including Debtor, enter upon, use and occupy all premises owned or occupied by Debtor wherein Collateral may be situate, maintain Collateral upon such premises, borrow money on a secured or unsecured basis and use Collateral directly in carrying on Debtor's business or as security for loans or advances to him or otherwise, as such Receiver shall, in his own discretion, determine. Except as may be otherwise directed by Creditor, all monies received from time to time by such Receiver in carrying out his appointment shall be received in trust for and paid over to Creditor. Every such Receiver may, in the discretion of Creditor, be vested with all or any of the rights and powers of Creditor.
- Any sale, lease or other disposition of Collateral hereunder may take place in such manner, at such time(s) and place(s), for such consideration and upon such terms and conditions as to credit or otherwise and as to upset or reserve bid or price, as Creditor or Receiver, as the case may be, and in particular and without limiting the foregoing any such sale, lease or other disposition of Collateral may take place whether or not Receiver or Creditor, as the case may be, has taken possession of Collateral and may be made by public auction, public tender or private contract with or without notice or advertising or any other formality all of which subject to the Act are waived by Debtor.
- 13.4 Debtor acknowledges that Creditor or any Receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law and Debtor agrees

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upon request from Creditor or any such Receiver to assemble and deliver possession of Collateral at such place or places as reasonably directed.

13.5 Creditor may, either directly or through its agents or nominees, exercise all the powers and rights given to a Receiver by virtue of the above sub-paragraphs and in addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and Creditor and in addition to any other rights Creditor may have at law or in equity, Creditor shall have, both before and after Default, all rights and remedies of a secured party under the Act. Provided always, that Creditor shall:

- (1) not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of Collateral or to institute any proceedings for such purposes; and
- (2) have no obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper, whether part of Collateral or Proceeds and whether or not in Creditor's possession and shall not be liable or accountable for failure to do so.

13.6 Debtor agrees to pay all costs, charges and expenses reasonably incurred by Creditor or any Receiver appointed by it, whether directly or for services rendered (including reasonable solicitors' and auditors' costs and fees as between Creditor and its solicitors and/or auditors and other legal expenses and Receiver remuneration), in operating Debtor's accounts, in preparing or enforcing this Agreement, in taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting Indebtedness and all such costs, charges and expenses together with any monies owing as a result of any borrowing by Creditor or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.

13.7 Upon Default, Creditor may, either directly or through its agent(s) or nominee, exercise any or all of the powers and rights given to a Receiver by virtue of this Section 13.

14. FURTHER ASSURANCES AND ATTORNEY

14.1 Further Assurances

Debtor:

- (1) covenants and agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledge and delivered all such financing statements, further assurances, documents, acts, matters and things with respect to Collateral or any part thereof as Creditor from time to time may reasonably require to give effect to this Agreement and to perfect the Security Interest, and Debtor further covenants and agrees to pay all costs for searches and filings in connection therewith; and
- (2) hereby authorizes Creditor to file such financing statements, financing change statements and other documents and do such acts, matters and things (including completing and adding Schedules hereto identifying Collateral or Encumbrance affecting Collateral or identifying the locations at which Debtor's business is carried on and Collateral and records relating thereto are situate) as Creditor may deem appropriate to perfect and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest.

14.2 Attorney

Debtor hereby constitutes and appoints any person selected by Creditor as its true and lawful attorney irrevocably with full power of substitution to do, make and execute all such statements, assurances, documents, acts, matters or things with the right to use the name of Debtor

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whenever and wherever it may be deemed necessary or expedient to protect Creditor's rights hereunder.

15. ATTACHMENT AND ADDITIONAL SECURITY

15.1 Attachment

Debtor acknowledges that Debtor and Creditor intend for the Security Interest to attach to Debtor's existing properties immediately upon execution of this Agreement (and in Debtor's property acquired subsequent thereto, immediately upon the Debtor acquiring an interest or rights therein) and that value has been given and that Debtor has (or in the case of after-acquired property, will have) rights in Collateral. The parties acknowledge and agree that this Agreement and the Security Interest are intended to be a "security agreement" and "security interest" respectively within the meaning of the Act.

15.2 Additional Security

This Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Creditor and is intended to be a continuing security Agreement.

16. GENERAL

16.1 Additional Rights of Creditor

Without limiting any other rights of Creditor, Creditor shall have the following additional rights:

- (1) Whenever Indebtedness is immediately due and payable or Creditor has the right to declare Indebtedness to be immediately due and payable (whether or not it has been so declared), Creditor may, in its sole discretion, set off against Indebtedness any and all monies then owed to Debtor by Creditor in any capacity, whether due or not due, and Creditor shall be deemed to have exercised such right of set off immediately at the time of making its decision to do so even though any charge therefor is made or entered upon Creditor's records subsequent thereto.
- (2) All moneys collected or received by Creditor in respect of Collateral or on account of Indebtedness may be applied on account of such part(s) of Indebtedness as determined by Creditor and Creditor shall at all times and from time to time have the right to change any appropriation as Creditor may determine.
- (3) Upon Debtor's failure to perform any of its duties hereunder, Creditor may, but shall not be obligated to, perform any or all of such duties, and Debtor shall pay to Creditor, forthwith upon written demand therefor, an amount equal to the expense incurred by Creditor in so doing plus interest thereon from the date such expense is incurred until it is paid at the rate set out in the Loan Agreement dated _____, 2018 between Romspen Mortgage Limited Partnership, as lender, and 3443 Zen Garden Limited Partnership, as borrower, as it may be amended from time to time.
- (4) Creditor may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with Debtor, debtors of Debtor, sureties and others and with Collateral and other security as Creditor may see fit without prejudice to the liability of Debtor or Creditor's right to hold and realize the Security Interest.
- (5) Creditor may demand, collect and sue on Collateral in either Debtor's or Creditor's name, at Creditor's option, and may endorse Debtor's name on any and all cheques, commercial paper, and any other Instruments pertaining to or constituting Collateral.
- (6) No delay or omission by Creditor in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or

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remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

- (7) Creditor may remedy any Default by Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the Default remedied and without waiving any other prior or subsequent Default by Debtor. All rights and remedies of Creditor granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (8) Nothing herein contained shall in any way obligate Creditor to advance any moneys to Debtor or grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Indebtedness.

16.2 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and Creditor or any assignee(s) directly or indirectly of Creditor may, without further notice to Debtor at any time assign this Agreement and the Security Interest created thereunder and Debtor expressly agrees that, with respect to any such assignment, re-assignment or transfer of this Agreement, the assignee or transferee shall have all of Creditor's rights and remedies under this Agreement and Debtor will not assert as a defence, counterclaim, set off, cross-complaint, or otherwise any claim, known or unknown, which Debtor now has or hereafter acquires against Creditor in any action commenced by an assignee or transferee of this Agreement and will pay the Indebtedness to the assignee or transferee at its place of business as the Indebtedness becomes due. If more than one Debtor executes this Agreement, the obligations of such Debtors hereunder shall be joint and several.

16.3 Amendment

Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

16.4 Laws of Alberta to Govern

This Agreement for all purposes shall be construed in accordance with and governed by the laws of Alberta as an agreement made and to be wholly performed therein and the Debtor (and each of them, if more than one) hereby attorns to the jurisdiction of the courts of Alberta.

16.5 Severability

In the event any provisions of this Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court, the remaining terms and provisions of this Agreement shall remain in full force and effect.

16.6 Notice

Whenever either party hereto is required or entitled to notify or direct the other or make a demand or request upon the other, such notice, direction, demand or request shall be in writing and delivered or faxed to the party for whom it is intended at the principal address or fax number, as the case may be, of such party or at such other address or fax number as shall be designated by such party in a written notice to the other party. Each such notice, direction, demand or request shall be deemed to have been received on the date of delivery or faxed transmission, as the case may be.

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16.7 Financing Statement

Debtor hereby waives its right to receive a copy of any financing statement or financing change statement registered by Creditor pursuant to this Agreement or any modification, renewal or extension thereof.

16.8 Copy of Agreement

Debtor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF this Agreement is made this 17 day of April, 2018.

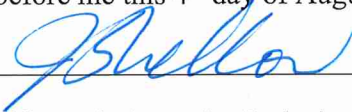
ECO-INDUSTRIAL BUSINESS PARK INC.

Per:  _____

Per: _____

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This is **Exhibit "J"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

GUARANTEE

RECITALS

WHEREAS:

- A. 3443 ZEN GARDEN LIMITED PARTNERSHIP (the "Borrower") has applied to ROMSPEN MORTGAGE LIMITED PARTNERSHIP ("RMLP") for a loan of up to ONE HUNDRED TWENTY FIVE MILLION US DOLLARS (US\$125,000,000.00) (the "Principal Sum") with interest thereon ("Interest") as defined and provided for and on the terms, covenants, conditions and provisos contained in that certain Loan Agreement between RMLP and the Borrower dated the 27 day of April, 2018 as it may be amended from time to time (collectively the "Loan Agreement");
- B. The Loan Agreement and any other documents or securities now held or hereafter held by RMLP or Romspen Investment Corporation (collectively, RMLP and Romspen Investment Corporation are referred to herein as the "Lender"), in respect of the payment of the Principal Sum and Interest thereon and all other monies ("Other Monies") secured, payable, due or owing or which may become secured, due, payable or owing thereunder (said Principal Sum, Interest and Other Monies hereinafter sometimes collectively referred to as "Moneys") are hereinafter sometimes collectively referred to as the "Security", the "Securities" or the "Security Documents";
- C. The Guarantor (as hereinafter defined) has agreed to execute these presents in consideration of the Lender agreeing to loan the Principal Sum to the Borrower.

NOW THEREFORE WITNESSETH that in consideration of the Lender agreeing to advance monies to the Borrower, and in consideration of the sum of \$2.00 paid by the Lender to the undersigned, and other good and valuable consideration, (the receipt and sufficiency whereof is hereby acknowledged by ECO-INDUSTRIAL BUSINESS PARK INC. (the "Guarantor"), the Guarantor covenants, promises and agrees in favour of and with the Lender that:

1. OBLIGATIONS OF GUARANTOR

1.1 Unconditional Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Lender:

- (1) the due and punctual payment of all Moneys when the same become due, owing or payable; and
- (2) the due performance and observance of all covenants, obligations, conditions, stipulations and provisos of the Borrower and every guarantor or other person (other than the Lender) contained in the Security Documents.

1.2 Continuing and Absolute

- (1) The obligations of the Guarantor hereunder shall be continuing, binding and absolute obligations and shall be direct, unconditional, irrevocable and independent of all past, present or future obligations of the Borrower to the Lender and a fresh cause of action shall be deemed to arise in respect of each default hereunder or under the Security Documents or any one or more of them, and a separate action or actions may be brought or enforced against the Guarantor whether action is brought against the Borrower or whether the Borrower be joined in any such action or actions and without the necessity of joining or proceeding against or exhausting any remedy against the Borrower or any other person or one or more Securities or otherwise howsoever held by the Lender in respect of the Moneys or the obligations of the Guarantor hereunder or otherwise howsoever;
- (2) As between the Lender and the Guarantor, the Guarantor is and shall continue to be liable hereunder and under all the covenants (other than the Lender's) contained in the Security Documents notwithstanding the bankruptcy, insolvency or going into liquidation of the Borrower or any other party to the Security Documents, voluntarily or otherwise, and notwithstanding any transaction or dealing whatsoever which may take place between the Lender and the Borrower or any other person or any neglect, unlawful act or default of the

Lender whatsoever which might otherwise operate as a discharge, whether partial or absolute, of the Guarantor and without restricting the generality of the foregoing notwithstanding the releasing in whole or in part of any property or assets mortgaged, charged or assigned, whether by fixed and specific Mortgage, charge or assignment or otherwise, in or under the Security Documents;

- (3) This Guarantee is in addition to and not in substitution for any other guarantee by whomsoever given, at any time held by the Lender and any present or future obligations to the Lender incurred or arising otherwise than under a guarantee of the Guarantor or any other obligant, whether bound with or apart from the Borrower;
- (4) Should the Lender receive from the Guarantor a payment or payments in full or on account of the liability under this Guarantee, the Guarantor shall not be entitled to claim repayment against the Borrower or the Borrower's estate until the Lender's claims against the Borrower have been paid in full; in a case of liquidation, winding up or bankruptcy of the Borrower (whether voluntary or compulsory) or in the event that the Borrower shall make a bulk sale of any of the Borrower's assets within the bulk transfer provisions of any applicable legislation or any composition with creditors or scheme of arrangement, the Lender shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue in respect thereof until its claim has been paid in full and the Guarantor shall continue liable, up to the amount guaranteed, less any payments made by the Guarantor for any balance which may be owing to the Lender by the Borrower; and in the event of the valuation by the Lender of any of the Securities and/or the retention thereof by the Lender, such valuation and/or retention shall not, as between the Lender and the Guarantor, be considered as a purchase of such securities, or as a payment or satisfaction or reduction of the Moneys, or any part thereof.

2. DEFENCES

2.1 Waiver

The Guarantor hereby specifically waives any and all defences to any action brought to enforce this Guarantee or any part thereof at law or in equity, including without limitation the following:

- (1) Extensions and Indulgences: The Lender in its absolute discretion or in the absolute discretion of any authorized officer or agent of the Lender, and without diminishing the liability of the Guarantor, may from time to time grant any indulgences to the Borrower or any other person now or hereafter liable to the Lender in respect of the Moneys or any one or more of the obligations of the Borrower, the Guarantor or any other person contained in the Security Documents and may give up, modify, vary, exchange, renew or abstain from perfecting or taking advantage of any of the Security in whole or in part and may discharge any part or parts or accept any composition or arrangements or realize upon any of the Security in whole or in part when and in such manner as the Lender or any authorized officer or agent of the Lender may think expedient, and in no case whatsoever shall the Lender be responsible for any neglect, unlawful act or omission with respect to the Security or any part thereof.
- (2) No Release for Forbearance Etc.: That the Guarantor shall not be released or exonerated by time being given, or any other forbearance whatsoever whether as to time, performance or otherwise or by any release, discharge, loss or alteration in or dealing with all or any part of the Security or by any failure or delay in giving any notice or making any demand which may be required under this Guarantee or under any one or more of the Security Documents or by modification, amendment, deletion, variation or alteration in or departure from the provisions of any one or more of the Security Documents or by anything done, suffered or permitted by the Lender or any invalidity or unenforceability of, or any limitation on the liability of the Borrower, or on the method or terms of payment under, or any irregularity or other defect in any one or more of the Security Documents or any assignment or other transfer of all or any part of the Security or any interest therein, whether before or after any default under any one or more of the Security Documents or this Guarantee or any defence, equity, set-off or counterclaim which the Borrower or the Guarantor may have or assert or

any other matter or circumstance, whether or not the Guarantor shall have notice or knowledge of or consented to any one or more of the foregoing; and that the Lender shall not be bound either to seek or exhaust its recourse against the Borrower or against the property or assets of the Borrower or under the Security or any other person before being entitled to payment from the Guarantor and the Lender may abstain from taking any securities and may cease or refrain from giving credit or making loans or advances to the Borrower, and may apply all monies at any time received from the Borrower or other persons or from the Securities upon such part of the Moneys as the Lender deems best and change any such application in whole or in part from time to time as the Lender may see fit;

- (3) Statutes: The Guarantor will not, in any action brought against the Guarantor in respect of this Guarantee, plead or invoke any statute of limitation or law of prescription now or hereafter in force; all monies, advances, renewals, credits, accommodations, transactions and/or considerations in fact borrowed or obtained from the Lender shall be deemed to form part of the Moneys notwithstanding any lack or limitations of status or power, incapacity or disability of the Borrower or of the directors, partners or agents thereof, or that the Borrower may not be a legal or suable entity, or any irregularity, defect or informality in the borrowing or obtaining of such monies, advances, renewals, credits, accommodations, transactions and/or considerations, the whole whether known to the Lender or not; and any sum which may not be recoverable from the Guarantor on the footing of a guarantee shall be recoverable from the Guarantor as sole or principal debtor in respect thereof and shall be paid to the Lender;
- (4) Deemed Satisfaction of Debt: The Guarantor agrees that so long as any Moneys remain actually owing to the Lender, the Guarantor shall remain liable to pay such Moneys notwithstanding any deemed full satisfaction of a debt pursuant to any law or statute, including without limitation the Law of Property Act of Alberta or any successor or similar legislation, that might occur upon any Final Order for Foreclosure being taken on any Mortgage or agreement for sale of realty property that may compromise in whole or in part the Security, it being the intention that the Guarantor shall not be entitled to rely upon any such deemed full satisfaction of a debt as a defence in payment of any Moneys payable pursuant to this Guarantee.

3. GENERAL

3.1 No Subrogation

The Guarantor will not at any time claim to be subrogated in any manner to the position of the Lender and will not claim the benefit of the Security, in whole or in part, until payment has been made in full by the Guarantor of all Moneys to the Lender and this Guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to the Lender, and all dividends, compositions, proceeds of any Security valued and payments received by the Lender from the Borrower or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the Guarantor to claim in reduction of the liability under this Guarantee the benefit of any such dividends, compositions, proceeds or payments or any of the Securities or proceeds thereof.

3.2 Not Bound to Exhaust Remedies

The Lender shall not be bound to exhaust its recourse against the Borrower or any other person or any one or more of the Security it may hold before requiring payment from the Guarantor and the Lender may enforce the various remedies available to it and may realize upon the Security held by it or any part thereof in such order as the Lender may determine.

3.3 No Release or Release of Others

The release of any Guarantor, (if more than one) or any other person from his, its or their liability under this Guarantee or pursuant to any other guarantee, deed, document or agreement in favour of the Lender shall not affect the liability of the Guarantor (or any of them, if more than one), not so

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released, which liability shall remain unimpaired and still in full force and effect as if the Guarantor(s) or any other person so released had not been a Guarantor of the Moneys or obligations of the Borrower or any part thereof, under any one or more of the Security Documents.

3.4 Action on Default

If default shall occur under any one or more of the Security Documents, the Lender shall in its sole discretion be at liberty to proceed against the Guarantor without any demand for payment being made by the Lender upon the Guarantor for payment, or payment of all or any portion of the Moneys owing or payable by virtue of this Guarantee or any one of the Security Documents and whether default or notice of default shall have occurred or shall have been given or not as to the Moneys or any portion thereof or under any one or more of the Security Documents and the Guarantor hereby waives any and all rights that it may have to any such notice or demand.

3.5 Not Affected by Change

This Guarantee and the obligations and liabilities of the Guarantor hereunder shall not be affected by the death or loss or diminution of capacity of the Guarantor or by any change in the name of the Borrower or, if applicable, in the membership of the Borrower's firm through the death or retirement of any one or more partners or the introduction of one or more partners, or otherwise howsoever, or by the acquisition of the Borrower's business by any person, or by any change whatsoever in the objects, capital structure or constitution of the Borrower, or by amalgamation, merger or otherwise howsoever.

3.6 Lien

In addition to all liens upon and right of set off against the monies, securities or other property of the Guarantor given to the Lender by law, the Lender shall have a lien upon and a right of set off against all monies, securities and other property of the Guarantor now or hereafter in the possession of the Lender; and every such lien or right of set off may be exercised without demand. No lien or right of set off shall be deemed to have been waived by any act or conduct on the part of the Lender or by any neglect to exercise such right of set off or to enforce such lien or by any delay in so doing, and every right of set off shall continue in full force and effect until such right of set off or lien is specifically waived or released by an instrument in writing executed by the Lender upon final satisfaction of the Moneys.

3.7 No Obligation Re Insurance

Notwithstanding anything set out in any of the Security Documents, the Lender shall not in any way be responsible for either the holding or the supervision of any insurance policies required to be maintained under any covenants to insure contained therein, or the verification of the compliance with respect to any such covenants to insure and that the Lender's permissive power to place insurance on the assets mortgaged to it is in its sole and absolute discretion. The Guarantor acknowledges that the Lender's action or lack of action in such holding, supervision, verification or in its permissive powers shall in no way diminish the Guarantor's liability hereunder.

3.8 Accounts

Any accounts settled or stated by or between the Lender and the Borrower or admitted by or on behalf of the Borrower may be adduced by the Lender and shall in that case be accepted by the Guarantor as conclusive evidence that the balance or amount thereof appearing is due by the Borrower to the Lender and if no account has been so settled, any account stated by the Lender shall be accepted by the Guarantor as conclusive evidence of the amount which at the date of the account so stated is due by the Borrower to the Lender or remains unpaid by the Borrower to the Lender.

3.9 Costs and Expenses

All costs and expenses incurred by the Lender relating to this Guarantee or the enforcement thereof against the Guarantor (or any of them, if more than one) including without limitation legal costs as

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between the Lender and its solicitor, shall be paid by the Guarantor (or any one or more of them, as the case may be, if more than one) and shall be included in any judgment obtained against the Guarantor (or any one or more of them, if more than one) under this Guarantee.

3.10 Judgment

Any judgment obtained against the Guarantor under this Guarantee shall provide for and shall bear Interest (at the rate provided for in the Loan Agreement) thereon, and such Interest shall run and be included and payable on any said judgment, until said judgment shall have been fully satisfied.

3.11 No Contingent Agreements

It is understood, agreed and acknowledged by the Guarantor, that the carrying out by the Guarantor of the covenants and obligations of the Guarantor hereunder is not in any way contingent upon the carrying out by the Borrower or the Lender or any other person of any of their respective obligations or liabilities under any one or more of the Security Documents or in any other instrument contained.

3.12 Operative

This Guarantee shall be operative and binding upon every signatory thereof notwithstanding the non-execution thereof by any other proposed signatory or signatories, and possession of this instrument by the Lender shall be conclusive evidence against the Guarantor that this instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent had been complied with.

3.13 Administrators and Assigns

This Guarantee shall extend to and enure to the benefit of the Lender and if more than one, to each of them and their respective heirs, executors, administrators, legal representatives, assigns and successors, as the case may be, and, if the Security or any of them in whole or in part is assigned by the Lender, to its or their assigns, as the case may be, and reference herein to the undersigned or to the Guarantor is a reference to and shall be construed as including the undersigned, (and if more than one, this Guarantee and the liability hereunder shall be deemed to be both jointly and severally binding on each of the undersigned) and the heirs, executors, administrators, legal representatives, successors and assigns, as the case may be, of the undersigned, to and upon all of whom this Guarantee shall extend and be binding.

3.14 Applicable Law

This Guarantee has been made in Alberta and for all purposes shall be construed in accordance with and governed by the laws of Alberta as an agreement made and entered into therein by parties domiciled and resident therein and to be wholly performed therein and the Guarantor (and each of them, if more than one) hereby attorns to the jurisdiction of the courts of Alberta.

3.15 Words and Phrases

In this Guarantee unless the Lender otherwise requires, words importing the singular number shall include the plural and vice versa; words importing the use of any gender shall include all genders; words such as "hereunder", "hereto", "hereof" and "herein" shall, unless the context clearly indicates the contrary, refer to the whole of this Guarantee and not to any particular paragraph or section hereof and the word "person" shall include a natural person, firm, partnership, corporation or other entity, whether legal or otherwise. The headings, if any, in this Guarantee are inserted for convenience of reference only and shall not unless otherwise required by the Lender affect the interpretation or construction hereof.

3.16 Severability

If any provision of this Guarantee or the application of such provision to any person or circumstance shall be held invalid or unenforceable, the remainder of this Guarantee, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

3.17 **Recitals**

The Recitals are incorporated herein and form a part hereof.

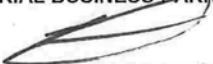
4. **POSTPONEMENT**

All debts and liabilities present and future of the Borrower to each party comprising the Guarantor are hereby assigned to the Lender and postponed to the Moneys and all monies received by any party comprising the Guarantor in respect thereof, shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, the whole without in any way limiting or lessening the liability of the Guarantor hereunder, and this guarantee and postponement shall be deemed independent of this Guarantee and shall remain in full force and effect notwithstanding that the liability of the Guarantor under this Guarantee may be extinct and any reference to "this Guarantee" hereunder shall be deemed to refer to the whole hereof or solely to the guarantee portions hereof or solely to the assignment and postponement referred to in this Section 4, as the Lender may require.

5. **ACKNOWLEDGMENT**

The undersigned acknowledges having received a true copy of this Guarantee this 17th day of April, 2018.

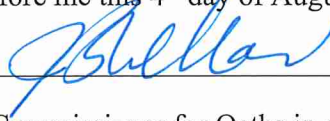
ECO-INDUSTRIAL BUSINESS PARK INC.

Per: 
I/we have the authority to bind the Corporation

Per: _____

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This is **Exhibit "K"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

KEVIN E. BARR
T (403) 232-9786
F (403) 266-1395
kbarr@blg.com
File No. 443063-000011

Borden Ladner Gervais LLP
Centennial Place, East Tower
1900, 520 - 3rd Ave SW
Calgary, AB, Canada T2P 0R3
T 403.232.9500
F 403.266.1395
blg.com



October 11, 2019

DELIVERED VIA COURIER

3443 Zen Garden Limited Partnership
Registered Office
701 S. Taylor, Suite 501
Amarillo, Texas, 79101, USA

Zen Garden GP LLC
Registered Office
701 S. Taylor, Suite 501
Amarillo, Texas, 79101, USA

Eightfold Development I.L.C
Registered Office
701 S. Taylor, Suite 501
Amarillo, Texas, 79101, USA

Panache Development & Construction Inc.
Registered Office
701 S. Taylor, Suite 501
Amarillo, Texas, 79101, USA

3443 Zen Garden Limited Partnership
3443 Ed Bluestein Blvd
Austin, Texas, 78721, USA

Zen Garden GP LLC
PO Box 26539
Austin, Texas, 78755-0539 USA

Eightfold Development LLC
PO Box 26538
Austin, Texas 78755-0538, USA

Panache Development & Construction Inc.
PO Box 26539
Austin, Texas, 78755, USA

Lot 11 Limited Partnership
Registered Office
1250 Hayter Road
Edmonton, AB T6S 1A2

Eco-Industrial Business Park Inc.
Registered Office
600, 9707 – 110 Street NW
Edmonton, AB T5K 2L9

Lot 11 Limited Partnership
260, 2833 Broadmoor Blvd.
Sherwood Park, Alberta T8H 2H3

Eco-Industrial Business Park Inc.
1250 Hayter Road
Edmonton, AB T6S 1A2

Absolute Energy Resources Inc.
Registered Office
600, 9707 – 110 Street NW
Edmonton, AB T5K 2L9

**Absolute Environmental Waste
Management Inc.**
Registered Office.
600, 9707 – 110 Street NW
Edmonton, AB T5K 2L9

Daniel Alexander White
1250 Hayter Road
Edmonton, AB T6S 1A2
Email: dwhite@symmetryinc.com and
d.white.eight@icloud.com

**Absolute Environmental Waste
Management Inc.**
1250 Hayter Road
Edmonton, AB T6S 1A2

Dear Sir/Madam:

**Re: Romspen Investment Corporation (the "Lender") indebtedness owing by
Zen Garden Limited Partnership (the "Borrower")
Guaranteed by: Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute
Energy Resources Inc., Absolute Environmental Waste Management Inc. and Daniel
Alexander White (collectively the "Guarantors")**

Our offices are the solicitors who act on behalf of the Lender in connection with the amounts owed to it pursuant to various loans and advances made to the commencing to the Borrower with a Commitment Letter (including all amendments thereto) including, and as secured by, the following:

1. Commitment Letter;
2. Acknowledgment re Mortgage Custodian;
3. Mortgage from Lot 11 GP Ltd.;
4. Assignment of Leases and Rents from Lot 11 GP;
5. Copy of Caveat re Assignment of Leases and Rents;
6. Specific Assignment of Lease from Lot 11 GP;
7. Acknowledgment of Specific Assignment of Lease;
8. Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
9. Copy of Caveat re Assignment of Tenant's Interest in Lease;
10. General Security Agreement from Lot 11 GP and Lot 11 LP;
11. Assignment of Material Contracts from Lot 11 GP;
12. Assignment of Insurance Interest from Lot 11 GP;
13. Environmental Indemnity for execution by the Borrower and all Guarantors;
14. Direction and Acknowledgment;
15. Hypothecation and Pledge Agreement;
16. Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
17. Irrevocable Proxy from Symmetry;
18. Stock Power of Attorney from Symmetry;
19. Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
20. Irrevocable Proxy from the Unit Holder;
21. Stock Power of Attorney from the Unit Holder;
22. Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
23. Mortgage from Eco;
24. Assignment of Leases and Rents from Eco;
25. Specific Assignment of Leases from Eco;
26. Acknowledgment of Specific Assignment of Lease;

27. Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
28. General Security Agreement from Eco;
29. Assignment of Material Contracts from Eco;
30. Assignment of Insurance Interest from Eco;
31. Hypothecation and Pledge Agreement;
32. Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
33. Irrevocable Proxy from 1468527;
34. Stock Power of Attorney from 1468527;
35. Guarantee from Absolute Energy Resources Inc. ("**AER**");
36. General Security Agreement from AER;
37. Assignment of Purchase Contracts from AER;
38. Hypothecation and Pledge Agreement;
39. Shareholder Subordination from 1468527;
40. Irrevocable Proxy from 1468527;
41. Stock Power of Attorney from 1468527;
42. Guarantee from Absolute Environmental Waste Management Inc. ("**AEWM**");
43. General Security Agreement from AEWM;
44. Hypothecation and Pledge Agreement;
45. Shareholder Subordination from 1468527;
46. Irrevocable Proxy from 1468527;
47. Stock Power of Attorney from 1468527;
48. Guarantee from Daniel Alexander White;
49. General Security Agreement from Daniel Alexander White;
50. Statutory Declaration regarding leases; and
51. Title Insurance Policy.

The Lender takes the position that the Borrower and the Guarantors are in default of their obligations.

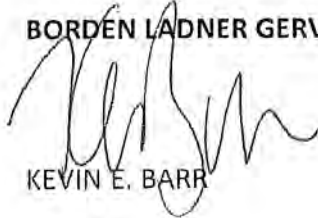
The amount outstanding and owing to the Lender inclusive of interest, as at October 11, 2019, is approximately **\$87,865,453.79 USD** plus costs, disbursements and interest accruing thereupon at the rate of **\$28,706.61 USD** per diem.

Demand is hereby made upon the Borrower and the Guarantors for payment in full of the amounts outstanding together with any accrued interest and other legal fees or charges that may arise. In the event that payment is not made in full by close of business on October 24, 2019, or the Lender determines that its collateral is at risk, the Lender will take such steps as it may consider necessary to protect its position.

Also enclosed for service upon you is a Notice of Intention to Enforce Security provided in accordance with the provisions of the *Bankruptcy and Insolvency Act*. If you consent to the Lender taking earlier enforcement, please return the enclosed consent.

Sincerely,

BORDEN LADNER GERVAIS LLP



KEVIN E. BARR

KEB/dm
Enclosure

Assistant: Demara Mills
Direct: (403) 232-9758
Email: dmills@blg.com

3443 Zen Garden Limited Partnership hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

3443 Zen Garden Limited Partnership

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:
Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Zen Garden GP LLC hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Zen Garden GP LLC

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Eightfold Development LLC hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Eightfold Development LLC

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Panache Development & Construction Inc. hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Panache Development & Construction Inc.

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Lot 11 Limited Partnership hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Lot 11 Limited Partnership

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. (“AEWM”);
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Eco-Industrial Business Park Inc. hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Eco-Industrial Business Park Inc.

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Absolute Energy Resources Inc. hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Absolute Energy Resources Inc.

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:
Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Absolute Environmental Waste Management Inc. hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Absolute Environmental Waste Management Inc.

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. (“**AEWM**”);
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

Daniel Alexander White hereby:

- (a) consents to the immediate enforcement by the Lender as a secured party of the security described in paragraph 2 above pursuant to Section 244(2) of the *Bankruptcy and Insolvency Act* (Canada);
- (b) consents to the secured party's (the Lender's) disposition of any or all collateral subject to the secured party's security immediately or otherwise as the secured party may determine in its sole discretion, without notice as required by the *Personal Property Security Act* (Alberta);
- (c) Consents to the secured party's (the Lender's) immediate appointment of a Receiver, or a Receiver-Manager, in accordance with the provisions of the above noted security.

Daniel Alexander White

Per: _____ c/s
BY ITS AUTHORIZED SIGNATORY

Name:

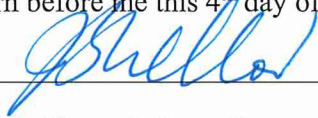
Title:

SCHEDULE "A"

- Commitment Letter;
- Acknowledgment re Mortgage Custodian;
- Mortgage from Lot 11 GP Ltd.;
- Assignment of Leases and Rents from Lot 11 GP;
- Copy of Caveat re Assignment of Leases and Rents;
- Specific Assignment of Lease from Lot 11 GP;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Eco-Industrial Business Park Inc.;
- Copy of Caveat re Assignment of Tenant's Interest in Lease;
- General Security Agreement from Lot 11 GP and Lot 11 LP;
- Assignment of Material Contracts from Lot 11 GP;
- Assignment of Insurance Interest from Lot 11 GP;
- Environmental Indemnity for execution by the Borrower and all Guarantors;
- Direction and Acknowledgment;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from Symmetry Asset Management Inc. ("**Symmetry**")
- Irrevocable Proxy from Symmetry;
- Stock Power of Attorney from Symmetry;
- Hypothecation and Pledge Agreement from the Unit Holder of Lot 11 LP;
- Irrevocable Proxy from the Unit Holder;
- Stock Power of Attorney from the Unit Holder;
- Guarantee from Eco-Industrial Business Park Inc. ("**Eco**")
- Mortgage from Eco;
- Assignment of Leases and Rents from Eco;
- Specific Assignment of Leases from Eco;
- Acknowledgment of Specific Assignment of Lease;
- Assignment of Tenant's Interest in Lease from Absolute Environmental Waste Management Inc.;
- General Security Agreement from Eco;
- Assignment of Material Contracts from Eco;
- Assignment of Insurance Interest from Eco;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527 Alberta Ltd. ("**1468527**");
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Absolute Energy Resources Inc. ("**AER**");
- General Security Agreement from AER;
- Assignment of Purchase Contracts from AER;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;

- Guarantee from Absolute Environmental Waste Management Inc. ("AEWM");
- General Security Agreement from AEWM;
- Hypothecation and Pledge Agreement;
- Shareholder Subordination from 1468527;
- Irrevocable Proxy from 1468527;
- Stock Power of Attorney from 1468527;
- Guarantee from Daniel Alexander White;
- General Security Agreement from Daniel Alexander White;
- Statutory Declaration regarding leases; and
- Title Insurance Policy.

This is **Exhibit "L"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

October 11, 2019

Via Registered Mail, First Class Mail, and Electronic Mail

*3443 Zen Garden Limited Partnership
Attn: Adam Zarafshani
3443 Ed Bluestein Blvd.
Building V, Suite 100
Austin, Texas 78759
VIA HAND DELIVERY*

*Adam Zarafshani
3443 Ed Bluestein Blvd.
Building V, Suite 100
Austin, Texas 78759
VIA HAND DELIVERY*

3443 Zen Garden Limited Partnership
4210 Spicewood Springs Road, Suite 205
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Email: adam@panachehomes.com

3443 Zen Garden Limited Partnership
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Email: dwhite@symmetryinc.com

Dan White
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Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Lot 11 Limited Partnership
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

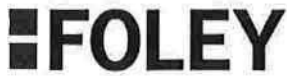
Eco-Industrial Business Park, Inc.
2833 Broadmoor Boulevard
Suite 260
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Email: dwhite@symmetryinc.com

Eightfold Developments, LLC
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Absolute Energy Resources Inc.
2833 Broadmoor Boulevard
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Sherwood Park, Alberta, Canada T8H 2H3
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Absolute Environmental Waste Management
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Email: dwhite@symmetryinc.com

ESD



FOLEY & LARDNER LLP

October 11, 2019

Page 2

Adam Zarafshani
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: adam@panache-usa.com

Adam Zarafshani
4210 Spicewood Springs Road, # 205
Austin, Texas 78759
Email: adam@panachehomes.com

Eightfold Developments, LLC
4210 Spicewood Springs Road, # 205
Austin, Texas 78759
Email: adam@panachehomes.com

3443 Zen Garden GP LLC
4210 Spicewood Springs Road, # 205
Austin, Texas 78759
Email: adam@panachehomes.com

Re: **DECLARATION OF DEFAULT AND NOTICE OF ACCELERATION**: Loan Agreement dated April 27, 2018 (the "Loan Agreement") executed by 3443 Zen Garden Limited Partnership (the "Borrower") and Romspen Mortgage Limited Partnership (the "Lender"), arising from and related to that certain Promissory Note ("Note"), dated April 27, 2018, in the original maximum principal amount of \$125,000,000.00, executed by Borrower and payable to the order of Lender, which Note is secured by, inter alia, the lien of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (together with any other documents granting a security interest to secure the Note, each of which are expressly incorporated herein by reference, collectively, the "Security Instrument"), dated as of April 27, 2018, covering certain real and personal property (as such realty and personalty is specifically described and set forth in the Security Instrument, collectively referred to herein as the "Property") located in Travis County, Texas, which Note has been guaranteed by Adam Zarafshani, Daniel Alexander White, Eightfold Developments, LLC (collectively, the "Guarantors")¹ under those certain guarantee agreements (collectively, the "Guarantees") executed by Guarantors in favor of Lender, and each of the foregoing documents described hereinabove, together with certain other documents executed, delivered and/or completed in connection with the foregoing transaction documents, are collectively referred to herein as the "Loan Documents".

¹ Borrower, Guarantors, each of the parties defined as the "Borrower Parties" under the Loan Agreement, the addressees of this correspondence, and all other parties obligated to Lender under the terms of the Loan Documents are collectively referred to as the "Obligors".

REP



FOLEY & LARDNER LLP

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Dear Obligor,

This firm represents the Lender in connection with the above-referenced matter. Lender is the owner and holder of the Loan Agreement, Note, Security Agreements, Guarantees and all Loan Documents executed in connection therewith. Capitalized terms used herein, but not otherwise defined, shall have the meanings specified in the Loan Documents. All future communications concerning this matter should be directed to the undersigned. If you are represented by legal counsel (other than counsel copied herein), please forward this transmission so that we may communicate directly with your attorney.

This letter shall serve as formal notice that Obligor are in default under the Loan Documents. Specifically, this correspondence officially constitutes a Declaration of Default (as such term is defined in the Loan Agreement). Obligor have defaulted under Section 7.1(a) of the Loan Agreement by failing to timely deliver to Lender one or more monetary obligations lawfully due and owing under the Note, the Loan Agreement and the other Loan Documents. Specifically, pursuant to Section 6.6 of the Loan Agreement, the Interest Reserve Fund was initially set at \$8.5 million. Section 6.6 states: *“For so long as no Declaration of Default has occurred hereunder or under any of the other Loan Documents, Lender shall, on each Scheduled Payment Date, advance from the Interest Reserve Fund to itself the amount of the Monthly Debt Service Payment (as defined in the Note) and other accrued interest then due and payable under the Notes [sic]”*. Lender has advanced the full Interest Reserve Fund to pay interest accrued on the Loan. As of the September 2, 2019, Scheduled Payment Date, the remaining balance of the Interest Reserve Fund was \$56,395. Therefore, Borrower is responsible to make Monthly Debt Service Payments on Scheduled Payment Dates from funds other than Loan proceeds (unless, per 6.6, Lender approves Borrower’s request to make Project savings available for Monthly Debt Service Payments. No request was received, and in any event, there are no Project savings available). Borrower did not make Debt Service Payments on either September 2, 2019, or October 1, 2019, of \$796,240.27 (amount due net of the remaining balance in the Interest Reserve Fund), and \$852,671.70, respectively (herein, the “Payment Default”).

In addition to the Payment Default, Obligor have also failed to satisfy additional terms of the Loan Documents, which breaches have triggered additional Events of Default under the terms of the Loan Documents, including, without limitation:

- **Misapplication of Advance Proceeds:** On August 30, 2019, as part of draw request #14, Lender advanced \$1,993,341.75 (out of a total Advance of \$2,852,510.62) to Borrower for the purposes set out in the Draw Request and supporting materials. Without Lender’s consent, and contrary to the representations in the draw request, \$1,387,100.46 of the Advance funds were disbursed by the Borrower for purposes contrary to: (i) Borrower’s representations in the Draw Request; and (ii) the Lender’s approval thereof. Borrower’s action in this regard has breached the terms of the Loan Documents, specifically including, without limitation, an Event

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of Default under Section 7.1(e) of the Loan Agreement.

- **Waste (Section 3.5 of the Security Instrument):** Under Section 3.5 of the Deed of Trust, Borrower (Grantor) covenanted not to commit or suffer any waste of the Property (a "*diminution of the Property's value resulting from the Borrower's negligent or willful failure to manage ... or otherwise operate the Property in a commercially reasonable manner*"). Borrower's abandonment of site operations constitutes a breach of this covenant.

There may be additional Events of Default existing under the terms of the Loan Documents that are not listed herein. Lender does not waive any other existing Events of Default by not explicitly referencing the same herein.

As a result of your Payment Default, you are hereby notified that the entire outstanding balance due under the Note and terms of the Loan Documents has been accelerated, and all of such indebtedness is now immediately due and payable to Lender.

Please advised that any discussions that may have occurred or may occur in the future between representatives of Obligor and of Lender regarding the Property or the Note evidence nothing more than the continuing good faith attempts of Lender to work out the existing problems in a manner reasonably acceptable to all parties. Obligor may not rely upon any such discussions in any manner or fashion. Unless and until a binding, written agreement has been fully executed by and between all parties, Lender's rights and remedies are and will continue to be fully enforceable under the terms of the Loan Documents.

Notwithstanding any previous action or inaction by or on behalf of Lender to the contrary, if any, you are hereby notified that Lender will hereafter require strict compliance with the terms and conditions of the Note and other Loan Documents.

Please be advised that we shall assume your debt to our client is valid unless, within thirty (30) days of the date of this letter, you dispute the validity of the debt, or any portion thereof, in writing. If you notify us within the thirty-day period that you dispute the validity of the debt, or any portion thereof, we will obtain verification of the debt, and we will mail such verification to you. If our client is not the original creditor regarding your debt, upon your written request within the above described thirty-day period, we will provide you with the name and address of the original creditor. Please note that your right to request a verification of the debt or to request the name and address of the original creditor does not affect our right to collect the full balance of Obligor's financial obligations and/or foreclose on the Property under the Loan Documents.

Pursuant to the Fair Debt Collection Practices Act, you are advised that this office may be deemed to be a debt collector, that the debt collector is attempting to collect a debt, and any



FOLEY & LARDNER LLP

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information obtained will be used for that purpose.

If you are a debtor under the United States Bankruptcy Code or if the debt described herein has been discharged under the United States Bankruptcy Code, notwithstanding anything contained in this letter to the contrary, this letter constitutes neither a demand for payment of the Note nor a notice of personal liability to, nor action against, any recipient hereof who might have received a discharge of the Note obligations in accordance with applicable insolvency laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code, or other similar insolvency laws, or who has paid or settled or is otherwise not obligated by law for the Loan Documents. If any such discharge or stay is currently applicable to any such recipient, then alternatively, this letter is served only to provide notice of the default under the Loan Documents, as described herein above, and out of an abundance of caution to satisfy certain notice provisions under the Loan Documents and the Texas Property Code, to the extent any such provisions thereunder may be applicable.

Lender reserves all rights provided for under the Loan Documents, including but not limited to the right to pursue and/or invoke any and all remedies permitted by applicable law and/or provided in the Loan Documents. Lender further reserves the right to collect all costs and expenses permitted by applicable law, including attorneys' fees, costs of documentary evidence, abstracts, title reports, appraisals, property condition assessments, broker's price opinions, inspection reports, statutory costs and any additional allowance made pursuant to the Loan Documents and applicable law.

This letter is written without prejudice to Lender's other rights and remedies, all of which are expressly reserved.

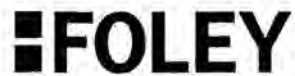
In the event that Obligors wish to discuss these matters, you may contact the undersigned counsel for Lender at 214-999-4289.

Your immediate attention to this matter is recommended.

Sincerely,

Thomas C. Scannell

TCS/aac



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cc: Clifton M. Dugas, II, Foley & Lardner LLP (email only)

Nicholas Legatos, Esquire (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
222 North LaSalle Street Suite 300
Chicago, Illinois 60601
nlegatos@hinshawlaw.com

Steven Carlyle Cronig, Esquire (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
2525 Ponce de Leon Blvd., 4th Floor
Coral Gables, Florida 33134
scc@hinshawlaw.com



October 23, 2019

Via Registered Mail, First Class Mail, and Electronic Mail

3443 Zen Garden Limited Partnership
Attn: Adam Zarafshani
3443 Ed Bluestein Blvd.
Building V, Suite 100
Austin, Texas 78759
VIA HAND DELIVERY

Adam Zarafshani
3443 Ed Bluestein Blvd.
Building V, Suite 100
Austin, Texas 78759
VIA HAND DELIVERY

3443 Zen Garden Limited Partnership
4210 Spicewood Springs Road, Suite 205
Austin, Texas 78759
Email: adam@panachehomes.com

3443 Zen Garden Limited Partnership
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Dan White
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Lot 11 Limited Partnership
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Eco-Industrial Business Park, Inc.
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Eightfold Developments, LLC
2833 Broadmoor Boulevard
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Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

Absolute Energy Resources Inc.
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Suite 260
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Email: dwhite@symmetryinc.com



FOLEY & LARDNER LLP

October 23, 2019

Page 2

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2833 Broadmoor Boulevard
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Email: adam@panachehomes.com

3443 Zen Garden GP LLC
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Austin, Texas 78759
Email: adam@panachehomes.com

Re: **SECOND NOTICE OF DEFAULT:** Loan Agreement dated April 27, 2018 (the "Loan Agreement") executed by 3443 Zen Garden Limited Partnership (the "Borrower") and Romspen Mortgage Limited Partnership (the "Lender"), arising from and related to that certain Promissory Note ("Note"), dated April 27, 2018, in the original maximum principal amount of \$125,000,000.00, executed by Borrower and payable to the order of Lender, which Note is secured by, inter alia, the lien of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (together with any other documents granting a security interest to secure the Note, each of which are expressly incorporated herein by reference, collectively, the "Security Instrument"), dated as of April 27, 2018, covering certain real and personal property (as such realty and personalty is specifically described and set forth in the Security Instrument, collectively referred to herein as the "Property") located in Travis County, Texas, which Note has been guaranteed by Adam Zarafshani, Daniel Alexander White, Eightfold Developments, LLC (collectively, the "Guarantors")¹ under those certain guarantee agreements (collectively, the "Guarantees") executed by Guarantors in favor of Lender, and each of the foregoing documents described hereinabove, together with certain other documents executed, delivered and/or completed in connection with the

¹ Borrower, Guarantors, each of the parties defined as the "Borrower Parties" under the Loan Agreement, the addressees of this correspondence, and all other parties obligated to Lender under the terms of the Loan Documents are collectively referred to as the "Obligors".

1508



FOLEY & LARDNER LLP

October 23, 2019

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foregoing transaction documents, are collectively referred to herein as the "Loan Documents".²

Dear Obligor,

As you are already aware from the *Declaration of Default and Notice of Acceleration* delivered to you on October 11, 2019 ("Original Default Notice"), this firm represents the Lender in connection with the above-referenced matter. As requested in the Original Default Notice, if you are represented by legal counsel (other than counsel copied herein), please forward this transmission so that we may communicate directly with your attorney.

As set forth in the Original Default Notice, you are in default under the terms of the Loan Documents and the Indebtedness has been accelerated to maturity. The Indebtedness is currently due and payable to Lender in full. You remain delinquent in payment of the entire balance of Indebtedness owing to Lender. None of the Events of Default described in the Original Default Notice ("Original Defaults") have been cured. You remain in default for, at a minimum, each of the currently existing Original Defaults.

This letter serves as formal notice that, subsequent to the Original Default Notice, Obligor have triggered a separate Event of Default under the Loan Documents. Specifically, pursuant to Section 7.1(c) of the Loan Agreement, Obligor have failed to keep in full force and effect all insurance policies required to secure the Property ("Insurance Default"). Evidence of the Insurance Default is attached hereto as Exhibit A.

There may be additional Events of Default existing under the terms of the Loan Documents that are not listed herein. Lender does not waive any other existing Events of Default by not explicitly referencing the same herein.

As a result of your Insurance Default, you are hereby notified that Obligor have ten (10) calendar days (including holidays and weekends) from the date of this correspondence to fully cure the existing Insurance Default in accordance with the terms of the Loan Documents. If Obligor fail to fully cure the Insurance Default within ten (10) calendar days (including holidays and weekends) from the date of this correspondence, such failure will constitute the existence of another Event of Default under the terms of the Loan Documents without any further notice, in addition to the already existing Original Defaults. PLEASE BE ADVISED THAT EVEN IF YOU CURE THE INSURANCE DEFAULT WITHIN THE 10-DAY PERIOD DESCRIBED HEREIN, THE LOAN WILL NONETHELESS REMAIN ACCELERATED AND DUE IN FULL TO LENDER AS A RESULT OF THE ORIGINAL

² Capitalized terms used herein, but not otherwise defined, shall have the meanings specified in the Loan Documents.

October 23, 2019

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DEFAULTS, WHICH REMAIN OUTSTANDING AS OF THE DATE OF THIS LETTER.

Please be further advised that any discussions that may have occurred or may occur in the future between representatives of Obligors and of Lender regarding the Property or the Note evidence nothing more than the continuing good faith attempts of Lender to work out the existing problems in a manner reasonably acceptable to all parties. Obligors may not rely upon any such discussions in any manner or fashion. Unless and until a binding, written agreement has been fully executed by and between all parties, Lender's rights and remedies are and will continue to be fully enforceable under the terms of the Loan Documents.

Notwithstanding any previous action or inaction by or on behalf of Lender to the contrary, if any, you are hereby notified that Lender will hereafter require strict compliance with the terms and conditions of the Note and other Loan Documents.

Please be advised that we shall assume your debt to our client is valid unless, within thirty (30) days of the date of this letter, you dispute the validity of the debt, or any portion thereof, in writing. If you notify us within the thirty-day period that you dispute the validity of the debt, or any portion thereof, we will obtain verification of the debt, and we will mail such verification to you. If our client is not the original creditor regarding your debt, upon your written request within the above described thirty-day period, we will provide you with the name and address of the original creditor. Please note that your right to request a verification of the debt or to request the name and address of the original creditor does not affect our right to collect the full balance of Obligors' financial obligations and/or foreclose on the Property under the Loan Documents.

Pursuant to the Fair Debt Collection Practices Act, you are advised that this office may be deemed to be a debt collector, that the debt collector is attempting to collect a debt, and any information obtained will be used for that purpose.

If you are a debtor under the United States Bankruptcy Code or if the debt described herein has been discharged under the United States Bankruptcy Code, notwithstanding anything contained in this letter to the contrary, this letter constitutes neither a demand for payment of the Note nor a notice of personal liability to, nor action against, any recipient hereof who might have received a discharge of the Note obligations in accordance with applicable insolvency laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code, or other similar insolvency laws, or who has paid or settled or is otherwise not obligated by law for the Loan Documents. If any such discharge or stay is currently applicable to any such recipient, then alternatively, this letter is served only to provide notice of the default under the Loan Documents, as described herein above, and out of an abundance of caution to satisfy certain notice provisions under the Loan Documents and the Texas Property Code, to the extent any such provisions thereunder may be applicable.

October 23, 2019

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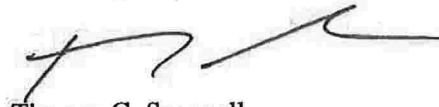
Lender reserves all rights provided for under the Loan Documents, including but not limited to the right to pursue and/or invoke any and all remedies permitted by applicable law and/or provided in the Loan Documents—EXPRESSLY INCLUDING LENDER'S RIGHT TO FORCE PLACE INSURANCE AND/OR ADVANCE FUNDS ON OBLIGORS' BEHALF DIRECTLY TO THE PROVIDER TO KEEP THE CURRENT POLICIES IN PLACE, WITH ANY AND ALL OF SUCH FUNDS ADVANCED BEING ADDED TO THE BALANCE OF THE INDEBTEDNESS DUE AND OWING TO LENDER. Lender further reserves the right to collect all costs and expenses permitted by applicable law, including attorneys' fees, costs of documentary evidence, abstracts, title reports, appraisals, property condition assessments, broker's price opinions, inspection reports, statutory costs and any additional allowance made pursuant to the Loan Documents and applicable law.

This letter is written without prejudice to Lender's other rights and remedies, all of which are expressly reserved.

In the event that Obligors wish to discuss these matters, you may contact the undersigned counsel for Lender at 214-999-4289.

Your immediate attention to this matter is recommended.

Sincerely,



Thomas C. Scannell

TCS/aac

Enclosures





FOLEY & LARDNER LLP

October 23, 2019

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cc: Clifton M. Dugas, II, Foley & Lardner LLP (email only)

Nicholas Legatos, Esquire (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
222 North LaSalle Street Suite 300
Chicago, Illinois 60601
nlegatos@hinshawlaw.com

Adam L. Saper, Esquire (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
151 N. Franklin Street, Suite 2500
Chicago, IL, 60606
asaper@hinshawlaw.com

Daniel K. Ryan (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
151 North Franklin Street, Suite 2500
Chicago, IL 60606
dryan@hinshawlaw.com

Steven Carlyle Cronig, Esquire (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
2525 Ponce de Leon Blvd., 4th Floor
Coral Gables, Florida 33134
scc@hinshawlaw.com

ACCOUNT NUMBER
900 - 8501769
Refer to this number on all correspondence
CUSTOMER ID

NOTICE OF INTENT TO CANCEL INSURANCE COVERAGE

FIRST INSURANCE*
FUNDING
A WINTRUST COMPANY

FIRST Insurance Funding
450 Skokie Blvd, Ste 1000
Northbrook, IL 60062-7917
Phone: (800) 837-2511 Fax: (800) 837-3709
www.firstinsurancefunding.com

NOTICE DATE
10/04/2019
SCHEDULED CANCELLATION DATE
10/19/2019

Agent or Broker
BYRNE, BYRNE AND COMPANY 120 S LASALLE STE 1710 CHICAGO, IL 60603

Insured
3443 ZEN GARDEN LIMITED PARTNERSHIP 3443 ED BLUESTEIN BLVD BUILDING V, SUITE 100 AUSTIN, TX 78721

View your client's account status online

RESIDENTS OF FLORIDA, MARYLAND, NEW YORK, SOUTH CAROLINA & VIRGINIA: PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

On the date of this notice, your insurance premium finance account was past due as indicated below. To avoid cancellation of your insurance coverage, the past due amount must be received in our office prior to the scheduled cancellation date.

If we do not receive the past due amount prior to the scheduled cancellation date, we will exercise our rights under the law and in accordance with the terms of your premium finance agreement. This will result in the cancellation of the insurance policies listed on that agreement, which is identified by the account number on this notice.

Protect your coverage. Very likely, insurance coverage affords critical protection of your assets, and may even be required by law. Contact us immediately if the above does not agree with your records, or if you are unable to immediately remit the amount past due.

You may pay online or by phone. Our contact information is listed at the top of this statement. **Overnight delivery payments ONLY may be sent to the address listed at the top of this statement. All other payments should be sent to the address listed on the Remittance Stub.**

SCHEDULE OF POLICIES

POLICY NUMBER	POLICY EFFECTIVE DATE	INSURANCE COMPANY GENERAL AGENT NAME	COVERAGE TYPE	PREMIUM	TAXES/FEES
TBD	03/26/2019	EVEREST NATIONAL INSURANCE CO RT SPECIALTY, LLC	PRBR	\$ 174,200.00	\$ 13,710.00

34611807

FIFCNOITC0912
Page 1 of 1

FIRST INSURANCE*
FUNDING

A WINTRUST COMPANY

Please make checks payable and mail to:

FIRST Insurance Funding
PO Box 7000
Carol Stream, IL 60197-7000

URGENT
INSURANCE PAYMENT NOTICE

REMITTANCE STUB

Please detach and return this portion with your payment.

NOTICE DATE	10/04/2019
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SCHEDULED CANCELLATION DATE	10/19/2019
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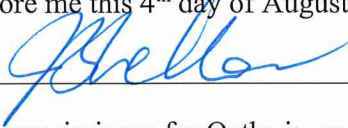
ACCOUNT NUMBER	900 - 8501769
PAYMENT DUE DATE:	09/26/2019
AMOUNT PAST DUE:	\$ 85,808.74
NEXT DUE: --	\$ 0.00
TOTAL	\$ 85,808.74
AMOUNT ENCLOSED:	\$

Insured
3443 Zen Garden Limited Partnership C/O Panache Development & Constr. PO Box 26539 Austin, TX 78755

90000000850176900008580874

RECEIVED

This is **Exhibit "M"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shelton
A Commissioner for Oaths in and
for the Province of Alberta
My Appointment Expires April 26, 2025

United States Bankruptcy Court
Western District of Texas

Notice of Involuntary Bankruptcy Case Filing

An involuntary bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 03/22/2020 at 4:25 PM and filed on 03/22/2020.

3443 Zen Garden, LP
3443 Ed Bluestein Blvd.
Austin, TX 78721
Tax ID / EIN: 32-0501211



The case was filed by the following petitioning creditor(s):

Lyle America, Inc. d/b/a Glass.com of Illinois
910 N. Riverside Drive, Unit 4
Elmhurst, IL 60126

Austin Glass & Mirror, Inc.
6308 Decker Lane
Austin, TX 78724

Kell C. Mercer
Kell C. Mercer, PC
1602 E Cesar Chavez St
Austin, TX 78702
(512) 627-3512

ACM Services LLC
3280 FM 112
Taylor, TX 76574

Kell C. Mercer
Kell C. Mercer, PC
1602 E Cesar Chavez St
Austin, TX 78702
(512) 627-3512

The case was assigned case number 20-10410.

If you would like to view the bankruptcy petition and other documents filed by the petitioning creditor(s) and the debtor, they are available at our *Internet* home page <http://ecf.txwb.uscourts.gov> or at the Clerk's Office, 903 SAN JACINTO, SUITE 322, AUSTIN, TX 78701-0.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Barry D. Knight
Clerk, U.S. Bankruptcy Court

PACER Service Center
Transaction Receipt

KSB

3/22/2020

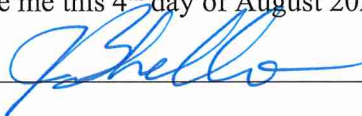
U.S.B.C. Western District of Texas (LIVE)

03/22/2020 16:29:40

PACER Login:	kellcmrcer:4798156:0	Client Code:	
Description:	Notice of Filing	Search Criteria:	20-10410
Billable Pages:	1	Cost:	0.10

ASB

This is **Exhibit "N"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shelton
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: June 19, 2020.

**H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**IN RE: §
3443 ZEN GARDEN, L.P., § CASE NO. 20-10410-HCM
DEBTOR. § Chapter 11**

**FINAL ORDER GRANTING CHAPTER 11 TRUSTEE’S
MOTION TO OBTAIN SECURED CREDIT ON AN INTERIM AND FINAL BASIS**

This matter came before the Court on June 18, 2020, upon the motion (the “**Motion**”), dated May 18, 2020, filed by Gregory S. Milligan, the Chapter 11 Trustee (“**Trustee**”) over the bankruptcy estate (“**Estate**”) of 3443 Zen Garden, L.P. (the “**Debtor**”), the chapter 11 debtor in the above-captioned chapter 11 case (the “**Case**”), pursuant to sections 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), requesting, among other things entry of this final order (this “**Final Order**”):

- i. authorizing the Trustee and the Estate to obtain secured post-petition financing on a super-priority basis;

ii. authorizing the Trustee and the Estate to receive credit and funding from Romspen Mortgage Limited Partnership (“**Lender**”) under and pursuant to the terms of that certain Loan Agreement¹ dated as of April 27, 2018 between the Debtor and Lender (together with this Final Order, the “**Credit Agreement**”) (a copy of which is attached hereto as “**Exhibit B**”), to provide for post-petition credit in conformity with the terms of the Credit Agreement (the “**Credit Facility**”), and to perform such other and further acts as may be required in connection with the Credit Agreement and the Loan Documents (as defined in the Credit Agreement);

iii. granting super-priority administrative expense claims to Lender for all post-petition financing provided by Lender under the Credit Facility, payable from, and having recourse to, all of the pre-petition and post-petition property of the Estate, and all proceeds thereof, subject only to the Carve Out (defined herein), the Trustee and Professional Fee Escrow (defined herein), and the Permitted Liens (defined herein), and granting liens for the post-petition financing to Lender in all Post-Petition Collateral (defined herein) in accordance with the Credit Agreement, the Loan Documents and this Final Order;

iv. a final hearing (the “**Final Hearing**”) on the Motion having been held before the Court on June 18, 2020, to consider entry of this Final Order, appearances being noted on the record, the Trustee and Lender having agreed to the entry of this Final Order, all objections to the Final Order being resolved, overruled or withdrawn, and after due deliberation and consideration and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, THAT:

1. Jurisdiction; Petition Date; Procedural Posture.

a) This Court has jurisdiction to hear the Motion pursuant to 28 U.S.C. §§ 157

¹ The Loan Agreement refers to that certain Promissory Note (the “**Note**”) issued by the Debtor to the Lender and dated April 27, 2018. A copy of the Note is attached hereto as **Exhibit C**.

and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(D), (K), (M), and (O).

b) On March 22, 2020 (the “**Petition Date**”), an involuntary petition under chapter 11 was filed against the Debtor. On April 8, 2020, the Court entered an order for relief under chapter 11 against the Debtor in this Case [Dkt. 11].

c) On April 22, 2020, the Court entered its order granting the appointment of the Trustee as the Chapter 11 Trustee over the Estate [Dkt. 36].

d) There is no committee formed in this Case.

2. Disposition. The Motion is hereby granted on a final basis on the terms set forth herein. Any objections to the Motion or to the final relief sought in the Motion have been resolved, withdrawn or are hereby overruled on a final basis on the merits. This Final Order shall be valid and binding on all parties in interest and fully effective on a final basis upon entry by the Court.

3. Notice. The Final Hearing and earlier interim hearing with respect to the Motion were held pursuant to Bankruptcy Rule 4001(c)(2). Notice was served on the parties listed on the certificate of service filed in respect of the Motion.

4. Stipulations Regarding Pre-Petition Indebtedness. Subject to paragraph 18 below, in connection with the Credit Agreement, the other Loan Documents and this Final Order, the following stipulations regarding the Lender’s pre-petition indebtedness to the Debtor shall be binding on and carry preclusive effect against all parties in interest having due process notice and an opportunity to participate in this proceeding in this Case:

a) Lender is the due and lawful owner and holder of an allowed claim under the Loan Documents against the Debtor in the amount not less than \$96,495,021.72, as of the Petition Date, plus all other costs, fees and obligations owing, including, without limitation, all costs and expenses of administration, collection and enforcement incurred by Lender prior to the

Petition Date (the “**Pre-Petition Indebtedness**”). To the extent permitted under § 506(b) of the Bankruptcy Code, Lender is also entitled to interest accruing at the default rate on and after the Petition Date, together with and in addition to the reasonable fees (including legal fees), costs and charges referred to in § 506(b) and expressly permitted by the terms of the Loan Documents.

b) The Pre-Petition Indebtedness is evidenced by, without limitation: (i) the Credit Agreement; (ii) a Promissory Note in the original principal amount of \$125,000,000.00, dated April 27, 2018; (iii) a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of April 27, 2018, and recorded in the Travis County, Texas real property records on April 27, 2018, at Document Number 2018064160; and (iv) certain other documents relating to the foregoing (collectively, the “**Loan Documents**” – as such defined term herein is intended to, and is hereby deemed to, work in conjunction with, match and be incorporated with, as meaning one in the same, the defined term of “**Loan Documents**” set forth in the Credit Agreement).

c) Payment of the Pre-Petition Indebtedness is fully matured (by acceleration duly noticed by Lender prior to the Petition Date), absolutely and unconditionally due and payable to Lender, without defense, offset or counterclaim, and the Lender is hereby released from (i) any and all objections to the allowance of, and any defense with respect to, the Pre-Petition Indebtedness, and (ii) any right to contest the priority, perfection or validity the liens, mortgages and/or security interests granted and/or pledged to or in favor of Lender securing such Pre-Petition Indebtedness.

d) Pursuant to section 552(b) of the Bankruptcy Code and the Loan Documents, including, without limitation, the Credit Agreement, the Pre-Petition Indebtedness is secured by a security interest and lien in substantially all of the Debtor’s assets, real property, fixtures, and personal

property, whether now owned or hereafter acquired, including, without limitation, all accounts, chattel paper and electronic chattel paper, deposit accounts, documents, equipment, general intangibles, goods, instruments, investment property, intellectual property rights, inventory intellectual property rights, inventory, letter-of-credit rights, letters of credit, together with all substitutions and replacements for and products of any of the foregoing, the proceeds of any and all of the foregoing and all proceeds and products of such collateral security acquired by the Estate after the Petition Date (such collateral security assets are more particularly and specifically described in the Loan Documents, together with all product and proceeds thereof, herein called the “**Pre-Petition Collateral**”).

5. Findings Regarding the Credit Facility Based on the Record at the Final Hearing.

a) It is necessary for the Debtor and the Estate to obtain post-petition financing for a period of time, and in an amount, which would allow the Estate to continue to maintain its real property development, to pay vendors, and to preserve the value of its assets. An immediate need exists for the Debtor and the Estate to obtain further credit from Lender. Without such funds, the Debtor and the Estate will not be able to continue the maintenance of its property and to pay its vendors, which are required to preserve the value of the Estate’s assets.

b) Lender has indicated a willingness to extend post-petition secured credit under the terms and conditions of this Final Order, the Credit Agreement and the Loan Documents. The Estate is unable to obtain financing on terms more favorable than terms offered by Lender under the Credit Agreement and the Loan Documents and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Estate is also unable to obtain secured credit under section 364(c) and (d) of the Bankruptcy Code on terms more favorable than those set forth in the Credit Agreement and Loan Documents.

c) The terms of the credit advanced under this Final Order are fair and

reasonable, were negotiated by the parties at arm's length and in good faith and are the best available to the Debtor and the Estate under present market conditions and the Debtor's and the Estate's financial circumstances. Based on the foregoing, any credit (post-petition) extended under the Credit Agreement, this Final Order and the other Loan Documents by Lender is extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

d) The Debtor and the Estate, in order to satisfy the need for post-petition financing, as determined in the exercise of the Trustee's sound business judgment, desires the Court to enter this Final Order. Entry of this Final Order is necessary to prevent irreparable harm to the Debtor, the Estate, and the Estate's stakeholders, including the harm that would result from the disruption of efforts to maintain the Debtor's assets, will increase the possibilities for a successful sale of the Estate's assets as an ongoing development and for the highest possible preserved value, and is in the best interest of the Estate and its stakeholders. Absent entry of this Final Order, the Estate will be immediately and irreparably harmed. Consummation of the Credit Facility is in the best interest of the Estate.

6. Authorization of the Credit Facility.

a) The Trustee, on behalf of the Debtor and the Estate, is authorized to enter into the Credit Facility and to incur post-petition debt under the Credit Facility pursuant to the terms of the Credit Agreement, the Loan Documents, and this Final Order. To the extent of any conflict between this Final Order or any other Loan Documents, this Final Order shall govern.

b) In accordance with the terms of this Final Order and the Budget, the Credit Facility shall be used to (i) fund the working capital requirements and other financing needs of the Estate during the pendency of the Case, and (ii) pay certain transaction fees and other costs and expenses of the administration of the Case. Use of the post-petition funds provided by Lender

under the Credit Facility shall further be consistent with the Budget (“**Budget**”) attached hereto as “**Exhibit A**”, which may be amended from time to time by delivery of a revised and updated Budget by the Trustee upon reasonable consultation with Lender. Any amended Budget shall be filed of record on or before 5:00 p.m. (prevailing central time) the Monday preceding the Thursday for the Lender’s required funding under that amended Budget and any party with standing shall have until 5:00 p.m. (prevailing central time) that Wednesday to file a written objection to any portion of the Budget with a corresponding motion and uploaded proposed order requesting an expedited hearing on the objection in conformance with Local Rule 9014(e) and Judge Mott’s special procedures regarding expedited hearings,² and such objection shall be resolved, whether by agreement or order of the Court, subject to the Court’s availability, within four (4) days after the filing of the Budget. If any objection to the Budget remains unresolved for any reason longer than four (4) days after the filing of the Budget, the Lender and the Trustee may continue funding pursuant to the terms of the proposed amended budget without any recourse during the pendency of the resolution of the objection. Absent any timely objection, the amended budget shall be effective and become the Budget referred to herein. No later than the Thursday of each week prior to the occurrence of an Event of Default, the Lender shall advance to the Trustee sufficient funds by wire transfer of U.S. Dollars to pay all amounts included in the Budget for the next following week.

c) Except for the Investigation Carve Out (defined below), the post-petition funds provided by the Lender under the Credit Facility shall **not** be used to fund in any way or otherwise pay any fees or expenses incurred at any time in connection with any investigation, filing or prosecution of any action which seeks to invalidate, challenge, dispute, avoid, subordinate or

² Available at <https://www.txwb.uscourts.gov/procedures-judge-h-christopher-mott#motion-expedite>.

otherwise impair the claims or liens of Lender under the Loan Documents or in connection with the Credit Facility, or any liens or priorities created under either the Loan Documents or the Credit Facility, or which seeks to recover on any claims against or transfers made to Lender; provided, however, that the Trustee may investigate the liens, security interests, and claims of Lender under the Loan Documents or the Credit Facility during the Challenge Period.

d) Any and all post-petition fees and expenses paid or required to be paid to the Lender in its role as a post-petition lender under this Final Order in connection with the Credit Agreement as specifically identified in the Budget on a separate line item entitled “Lender’s Fees and Expenses” shall be paid to Lender and constitute “moneys disbursed or turned over in the case” by the Trustee “to parties in interest” for purposes of Bankruptcy Code section 326(a), subject to in all respects complete and full compliance with the limits set forth in the Budget.

e) In furtherance of the foregoing and without further approval of the Court, the Trustee, the Estate and the Debtor, as applicable, are each authorized and directed on a final basis to perform all acts, to make, execute and deliver all instruments and documents (including the execution or recordation of security agreements, mortgages and financing statements) that may be required, necessary (including necessary by reason of request by Lender) for the Estate’s performance under the Credit Agreement, the Loan Documents or this Final Order.

f) Upon the entry of this Final Order, subject to paragraph 18 below, obligations, agreements and covenants of the Debtor under the Credit Agreement and the Loan Documents shall be valid and binding and enforceable against the Debtor and the Estate under the terms of the Credit Agreement, the Loan Documents and this Final Order. Subject to paragraph 18 below, no payment, advance, financial accommodation, transfer or grant of security under the Credit Agreement, the Loan Documents or this Final Order shall be voidable or recoverable under

the Bankruptcy Code or under any applicable law (including section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

g) Any and all funds advanced by Lender on or after the Petition Date under the Credit Facility (including, without limitation, the Post-Petition Indebtedness (defined below)) may be added to and included in the balance of the indebtedness due and owing to Lender (in addition to the Pre-Petition Indebtedness) under the Loan Documents for the purpose of calculating the amount of Lender's credit bid on the sale of any of the Debtor's and/or the Estate's assets.

h) Without further order of the Court, the Trustee is hereby authorized to pay the Estate's insurance premiums, including any and all prepetition amounts, as provided for in the Budget.

7. Credit Facility Advances; Effective Date.

a) Advances made and the letters of credit issued (or renewed) under the Credit Facility from and after the Credit Facility Effective Date (defined herein) until the Credit Facility Termination Date (defined herein) shall be governed by the terms and conditions of the Credit Agreement, the Loan Documents and this Final Order, including, without limitation, the terms and conditions governing the applicable interest rates. The "**Credit Facility Termination Date**" shall mean the earliest of (i) the closing of a sale of all or substantially all of the assets of the Debtor pursuant to section 363 of the Bankruptcy Code, (ii) the date on which the Trustee's plan of reorganization becomes effective, (iii) the conversion or dismissal of this Case, or (iv) the occurrence of an Event of Default (as such term is defined in this Final Order). The "**Post-Petition Indebtedness**" shall be all Indebtedness (as such term is defined in the Credit Agreement) arising subsequent to the Petition Date, including post-petition interest. The "**Credit Facility Effective Date**" shall be the date upon which the Court enters this Final Order. For the sake of clarity, the Post-Petition Indebtedness extended

under the Credit Facility pursuant to the terms of this Final Order, although also governed by the terms of the Credit Agreement and Loan Documents, shall be deemed to be a separate and distinct loan and credit facility apart from the Pre-Petition Indebtedness.

b) Lender shall not be required to extend credit under the Credit Facility unless and until Lender and its legal counsel are reasonably satisfied that: (i) the conditions precedent for such advances set forth in this Final Order have been met; and (ii) no Event of Default under this Final Order has occurred. Any dispute regarding this paragraph 7(b) shall be subject to the determination of the Court.

8. Post-Petition Indebtedness; Liens and Priority.

a) The Post-Petition Indebtedness shall be:

i. allowable under § 503(b)(1) of the Code as an administrative expense with priority pursuant to the provisions of § 364(c)(1) of the Code over all other administrative expenses of the kind specified in § 503(b) or § 507(b) of the Code and all other expenses and claims, subject only to the Carve Out and the Trustee and Professional Fee Escrow. For the sake of clarity, notwithstanding any other provisions contained in this Final Order, whether through a credit bid or cash proceeds from a third party or otherwise, in regards to repayment of the Indebtedness due and owing to Lender under the Loan Documents, Lender shall recoup and be repaid first the entire portion of the Post-Petition Indebtedness in full before any credits, offsets, reductions or payments may be applied against the balance of the Pre-Petition Indebtedness. Only after the entire balance of Post-Petition Indebtedness is satisfied in full (whether through a credit bid, cash proceeds, or otherwise), then and only then, may any valid and applicable credits,

offsets, reductions or payments be applied against the balance of the Pre-Petition Indebtedness; and

ii. secured by (and Lender, is hereby granted) a security interest in and lien on all present and future property of the Estate, including both real and personal property, whether now held or hereafter acquired by the Estate, and including specifically and without limitation (excepting commercial tort claims, avoidance actions and the proceeds thereof under sections 544, 547, 548, 549 and 553 of the Bankruptcy Code, and all other causes of action, except as released in this Final Order (the “**Excluded Collateral**”) (A) all of the Estate’s now owned or hereafter acquired real property, fixtures, accounts, chattel paper and electronic chattel paper, deposit accounts, documents, equipment, general intangibles, goods, instruments, investment property, intellectual property rights, inventory intellectual property rights, inventory, letter-of-credit rights, letters of credit, and any items in any lockbox account; together with (i) all substitutions and replacements for and products of any of the foregoing; (ii) in the case of all goods, all accessions; (iii) all accessories, attachments, parts, and repairs now or hereafter attached or affixed to or used in connection with any goods; (iv) all warehouse receipts, bills of lading and other documents of title now or hereafter covering any of the foregoing; (v) all collateral subject to the lien of any security document in favor of Lender; (vi) any money, or other assets of the Debtor that may or hereafter come into possession, custody or control of Lender; (vii) proceeds of any and all of the foregoing; (viii) all of the foregoing, whether now owned or existing or hereafter acquired or arising or in which the Debtor now has or hereafter acquires any rights; and (ix) all

proceeds and products of such collateral security acquired by the Estate, (B) the Pre-Petition Collateral, (C) all real estate owned by the Estate, and (D) all proceeds, products, rents, issues and profits of all of the foregoing (all herein referred to as the “**Post-Petition Collateral**” and collectively with the Pre-Petition Collateral, the “**Collateral**”), which liens and security interests shall be senior to and have priority over all other liens, claims, mortgages, security interests and expenses of any person, individual, entity, party or party in interest, except with respect to the (i) Carve Out; (ii) the Trustee and Professional Fee Escrow; and (iii) the statutory liens in favor of taxing authorities for ad valorem property taxes (“**Permitted Liens**”); and the rights reserved in paragraph 23 below of the alleged M&M Lien Claimants (as defined in paragraph 23 below) as to alleged pre-petition “removables.” The liens and security interests granted above to secure payment of the Post-Petition Indebtedness shall be valid and enforceable regardless of whether the Court determines that some or all of the security interests and liens held by Lender in the Pre-Petition Collateral are unenforceable for any reason.

9. Perfection of Lender Liens; Termination. Entry of this Final Order automatically perfects the liens granted by paragraph 8 of this Final Order.

10. Use of Collateral; Adequate Protection; Application of Funds.

a) Any cash collateral of Lender used by the Debtor or the Estate since the commencement of the Case shall constitute Post-Petition Indebtedness under the Credit Facility. Notwithstanding the foregoing, the Estate is authorized to use Lender’s cash collateral (other than to the extent advances under the Credit Facility constitute cash collateral).

b) Not later than the fourth Friday of each month, the Estate shall provide to

Lender a reconciliation report showing the dollar-for-dollar variances for each line item and column entry to show the difference between the amounts set forth in the Budget and the actual amount incurred and expended by the Estate (“**Budget Variance**”) during the period beginning on the first day after the end of the period covered by the previous reconciliation report the Estate provided and continuing through the Friday prior to the date of the new reconciliation report. At the same time as the Budget Variance is reported to Lender, the Estate shall also provide Lender with an accounting of all cash proceeds (and cash equivalents) of Collateral for calculation of the Post-Petition Indebtedness in a form acceptable to the Lender and the Trustee. Notwithstanding the Budget’s allocation of specific amounts for each line item and column entry, the Trustee is permitted, in the exercise of his business judgment, to use surplus funds from any line items and column entries to supplement funding as needed for other line items and column entries, provided the Trustee does not exceed the Budget’s overall cumulative funding total for all entries.

11. Events of Default and Milestones. Events of Default include, but are not limited to the Estate’s failure to satisfy the following milestones in the Case (the “**Events of Default**”), which milestones assume that on or before July 1, 2020, the Trustee has employed a broker that has formally initiated the marketing of the Estate’s primary assets (the “**Marketing Effort**”), and may be extended only upon (i) written agreement of the Lender and Trustee or (ii) solely in the event and on the basis, the Trustee and the Trustee’s broker are unable to initiate the Marketing Effort by July 1, 2020, by the Court after notice and hearing:

a) By no later than **July 1, 2020**, the Trustee shall file a proposed chapter 11 plan (“**Chapter 11 Plan**”) and disclosure statement (“**Disclosure Statement**”) with the Bankruptcy Court seeking a final disposition of the Collateral (“**Disposition Transaction**”), which may include, without limitation, the authorization to sell substantially all of the Estate’s assets and

seeking approval of bidding and sale procedures therefor (which Disclosure Statement, Chapter 11 Plan, and accompanying order confirming the Chapter 11 Plan (“**Confirmation Order**”) shall be in form and substance satisfactory to Lender in its reasonable discretion);

b) By no later than **August 17, 2020**, the Bankruptcy Court shall have entered the Confirmation Order confirming the Trustee’s Chapter 11 Plan;

c) In the event any challenges, objections, adversary proceedings, contested matters, claims objections or any other proceedings of any kind that are brought by any party that in any way seek to impact, impede or affect Lender’s credit bid rights (whatever they may or may not be) (together, a “**Credit Bid Challenge**”), then such proceedings must be completely concluded and fully resolved on a final basis, whether by agreement or final and non-appealable order of a court of competent jurisdiction, by not later than **August 30, 2020**. The Lender consents to adjudication of all Credit Bid Challenges through a contested motion practice on such expedited schedule a necessary to effectuate compliance with this provision.

d) By no later than **September 30, 2020**, in the event the terms of the Confirmation Order and Chapter 11 Plan contemplate the sale of the Collateral to a third party, then the Trustee shall have entered into definitive transaction documents with a prospective purchaser in form and substance satisfactory Lender;

e) By no later than **October 12, 2020**, the Disposition Transaction shall have been completely performed and entirely consummated; and

f) Engagement and retention of a broker (the “**Broker**”) in this Case; provided, however, that at all times any potential purchaser in this Case is touring or physically inspecting the Estate’s real property and improvement assets, a representative of either the Trustee or the Broker will accompany the potential purchaser.

12. Lender's Remedies. Upon the occurrence of an Event of Default, unless otherwise waived by Lender in its sole and absolute discretion:

a) Lender may refuse to make advances of funds or extend any further credit;
and

b) Lender may file an affidavit (the "**Affidavit**") with the Bankruptcy Court certifying the occurrence of the Event of Default and seeking relief from the automatic stay to exercise any and all of its rights and remedies under the Credit Agreement and the other Loan Documents and/or under applicable law. Lender shall, contemporaneously with the filing of such Affidavit with the Bankruptcy Court, serve a copy of the Affidavit on counsel for the Debtor, the Trustee, counsel for the Trustee, the U.S. Trustee, counsel for Adam Zarafshani, counsel for the Petitioning Creditors (as listed on the docket) and counsel for Daniel White via e-mail. If any party in interest fails to file a response with the Bankruptcy Court, within five (5) days of the filing of such Affidavit, the Bankruptcy Court may enter an order granting Lender relief from the automatic stay and permitting Lender to enforce its rights and remedies. In the event a timely response is filed, Lender shall be entitled to an expedited hearing on its motion for relief from the stay, such hearing to occur within ten (10) days of the filing of such response, subject to Court availability or agreement of the parties.

13. Allowance for Improvements made by the Estate. Subject to the rights reserved during the Challenge Period, in consideration of the Estate's use of the Collateral in accordance with the Final Order, and in view of the effect of such use, (i) the Collateral shall not be subject to any surcharge under Section 506(c) of the Bankruptcy Code and (ii) the "equities of the case" exception in Section 522 shall not apply with respect to the Collateral.

14. Successors and Assigns. Except as otherwise stated herein, the provisions of this

Final Order shall be binding upon all persons and entities and shall inure to the benefit of Lender, the Debtor, the Trustee and their respective successors and assigns, including, without limitation, any subsequent chapter 7 trustee.

15. Carve Out for United States Trustee Fees and Professional Fees. Subject to the terms and conditions contained in this paragraph 15, all pre-petition and post-petition claims (whether secured or unsecured) of Lender, including Lender's super-priority administrative expense claim, are subject and subordinate only to a carve out (the "**Carve Out**") for:

a) amounts payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a) and any fees payable to the Clerk of the Bankruptcy Court (the "**Statutory Fees**"), subject to in all respects complete and full compliance with the limits set forth in the Budget;

b) amounts allowed and payable pursuant to the Application of Petitioning Creditors for Allowance and Payment of Administrative Claim under Bankruptcy Code section 503(b)(3)(A),(E) and (4) at docket number 83, not to exceed the total aggregate amount of \$15,000 for all such claimants, only pursuant to the terms of the Court's order approving such amounts and subject to in all respects complete and full compliance with the limits set forth in the Budget;

c) amounts payable to the Trustee as compensation and expenses under Bankruptcy Code section 330 (the "**Trustee Fees and Expenses**"), with all Post-Petition Indebtedness and Collateral constituting "moneys disbursed or turned over in the case" by the Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a), subject to in all respects complete and full compliance with the limits set forth in the Budget;

d) the payment pursuant to orders of the Court of allowed unpaid professional fees, costs and expenses (the "**Professional Fees and Expenses**") of attorneys, financial advisors, accountants, appraisers, auctioneers, brokers and other professional persons

retained by the Trustee or the Estate (together, the “**Trustee Professionals**”), or allowed pursuant to Bankruptcy Code section 503(b)(3)(A),(E) and (4), only to the extent that such Professional Fees and Expenses: (i) comply with the Budget in all aspects or are within the cap in section 15(b) above; (ii) except as permitted under the Investigation Carve Out (defined below), were not incurred in the investigation, prosecution or assertion of claims, causes of action, actions or proceedings against Lender in respect of the Pre-Petition Indebtedness or otherwise or challenging or raising any defense to the Pre-Petition Indebtedness or Liens of the Lender, or against the Lender in respect of the Credit Facility or otherwise (the “**Excluded Actions**”); (iii) were incurred or accrued prior to the earlier of (A) the date on which the Chapter 11 Plan becomes effective, or (B) with the exception of an aggregate amount not to exceed \$25,000 for Professional Fees and Expenses of the Trustee Professionals to be used to pay fees earned and expenses incurred subsequent to the occurrence of an Event of Default (the “**Default Carve Out**”), receipt by the Estate of notice of an Event of Default; and (iv) do not exceed any amounts for such professionals contained in the Budget, which amounts are not otherwise payable from funds which are not the Collateral of the Lender or proceeds therefrom such as retainers held by Estate’s professionals; provided however, that in no event shall any retainer or the Carve Out be used to pay any fees or expenses arising after the conversion of this Case to a case under Chapter 7 of the Bankruptcy Code. Nothing herein shall be construed as consent to the allowance of any fees and expenses of a retained professional, or shall affect any party’s rights to object to the allowance and payment of such fees and expense, all such rights being expressly preserved. The Debtor’s former receiver, Mr. Rob Roy Parnell, and his counsel have placed the Trustee and parties in interest on notice of their intent to file applications of allowance and payment of custodian claims, fees, and expenses.

e) Amounts set forth in the Budget for engineers, planners, diagnosticians, hydrologists, landscape architects, and surveyors assisting the Estate with seeking approval of the PDA and a settlement with TxDOT/CTRMA (the “**PDA/TxDOT Specialists**”), for periods prior to the occurrence of an Event of Default shall be advanced by the Lender pursuant to paragraph 6(b) above and paid as such expenses are due. Each PDA/TxDOT Specialist shall be entitled to carry forward or carry back any unused portion of any amount set forth in the Budget for that PDA/TxDOT Specialist to be available for past or future Budget periods in which the PDA/TxDOT Specialist exceeds the amount set forth in the Budget for that PDA/TxDOT Specialist. After giving effect to all carry forwards and carry backs, if a PDA/TxDOT Specialist has incurred fees and expenses greater than what is set forth in the Budget, and there are additional funds available in the budget for other PDA/TxDOT Specialists not otherwise necessary to pay the other claims of the PDA/TxDOT Specialists in full, the Trustee is authorized to pay such additional expenses of PDA/TxDOT Specialists with such unused funds. To the extent funds budgeted to be paid to PDA/TxDOT Specialists are not used for such purposes, such amount of unused funds, after application of any carried forward or carried back budgeted amounts, or budgeted amounts re-purposed in accordance with this paragraph, shall be paid to the Lender, for application to the Post-Petition Indebtedness as determined by the Lender.

f) Amounts set forth in the Budget for Trustee Fees and Expenses and Professional Fees and Expenses, and in paragraph 15(b) above, for periods prior to the occurrence of an Event of Default plus the Default Carve Out shall be advanced by the Lender pursuant to paragraph 6(b) above and set aside weekly and held by the Trustee in a separate segregated account for the Trustee and the Trustee Professionals (the “**Trustee and Professional Fee Escrow**”) for the sole purpose of funding the Trustee’s allowed Trustee Fees and Expenses, the Trustee

Professionals' allowed Professional Fees and Expenses, and any amounts allowed pursuant to paragraph 15(b) above. Each Trustee Professional shall be entitled to carry forward or carry back any unused portion of any amount set forth in the Budget for that Trustee Professional to be available for past or future Budget periods in which the Trustee Professional exceeds the amount set forth in the Budget for that Trustee Professional. The Trustee shall be entitled to carry forward or carry back any unused portion of any amount set forth in the Budget for the Trustee Fees and Expenses to be available for past or future Budget periods in which the Trustee exceeds the amount set forth in the Budget for the Trustee Fees and Expenses. After giving effect to all carry forwards and carry backs, and notwithstanding section 15(d)(iv), if the Trustee or any Trustee Professional is allowed fees and expenses greater than what is set forth in the Budget for that specific party, and there are funds available in the Trustee and Professional Fee Escrow not otherwise necessary to pay all budgeted allowed claims of the Trustee and all other Trustee Professionals in full, the Trustee is authorized to pay such additional allowed Trustee Fees and Expenses and Trustee Professional Fees and Expenses with such unused surplus Trustee and Professional Fee Escrow funds. To the extent funds in the Trustee and Professional Fee Escrow are not used for such purposes, such amount of unused funds, after application of any carried forward or carried back budgeted amounts or budgeted amounts re-purposed in accordance with this paragraph, shall be paid to the Lender, for application to the Post-Petition Indebtedness as determined by the Lender. Any amounts payable to the Trustee, to each Trustee Professional, and amounts allowed pursuant to paragraph 15(b) above, shall be paid upon allowance or authorization by the Court from funds on deposit in the Trustee and Professional Fee Escrow attributable to the Trustee, specific Trustee Professional, or claimant pursuant to paragraph 15(b) above.

g) Any Carve Out paid by the Lender shall constitute additional Post-Petition

Indebtedness owed to the Lender under this Order. Notwithstanding anything herein to the contrary, except as permitted under the Investigation Carve Out, no portion of the Carve Out, Credit Facility proceeds or retainers may be used to investigate, prosecute, object to or contest in any manner, or raise any defenses to the amount, validity, perfection, priority, extent or enforceability of the Pre-Petition Indebtedness or Post-Petition Indebtedness, the Liens securing the Pre-Petition Indebtedness or Post-Petition Indebtedness, or any claims or causes of action against Lender.

16. Stay; Modification. Having been found to be extending credit and making loans to the Debtor in good faith, the Lender shall be entitled to the full protection of § 364(e) with respect to the Credit Facility in the event that this Final Order, or any authorization contained herein is stayed, vacated, reversed or modified on appeal. No subsequent stay, modification, termination, failure to extend the term or vacation of this Final Order shall affect, limit or modify the validity, priority (subject to the reservation of the alleged M&M Lien Claimants in paragraph 23 below), or enforceability of any liability of the Debtor under the Credit Agreement or the other Loan Documents, or any lien or security interest granted to Lender under the such documents. All credit extended under the Credit Agreement and the other Loan Documents is made in reliance on this Final Order, and, except as set forth below, the obligations the Debtor incurs to Lender under the Credit Agreement and the other Loan Documents cannot be subordinated, lose superpriority status, or be deprived of the benefit of the senior liens granted to Lender, by any subsequent order in the Case or a converted chapter 7 case. Subject to the rights reserved during the Challenge Period, the provisions of this Final Order dealing with the liability of the Debtor under the Credit Agreement and the other Loan Documents shall not be modified or superseded by any order confirming a plan of reorganization (including the use of the cram-down provisions of section 1129(b) of the Code)

in the Case.

17. Preservation of Rights Under This Final Order. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) converting the Case to a chapter 7 case, (b) confirming or consummating any plan of reorganization of the Debtor, or (c) dismissing the Case or any subsequent chapter 7 case pursuant to sections 303, 305 or 1112 of the Bankruptcy Code, and the terms and provisions of this Final Order as well as the priorities in payment, liens and security interests granted pursuant to this Final Order, the Credit Agreement and the other Loan Documents shall continue in this or any superseding case under the Bankruptcy Code, and such priorities in payment, liens and security interests shall maintain their priority as provided by this Final Order until all Indebtedness is indefeasibly paid and satisfied.

18. Challenge of Claim or Lien. The acknowledgements and releases in favor of Lender set forth in paragraph 4 of this Final Order shall be binding on the Debtor, the Trustee, the Estate, and all parties in interest having due process notice and an opportunity to participate in this proceeding, including, without limitation, any Committee, unless the Trustee or such other party in interest with standing, including any party granted standing by the Court pursuant to the rationale set forth in *Louisiana World Exposition*, has filed an adversary proceeding or contested matter challenging any of the acknowledgements or admissions in favor of Lender set forth in paragraph 4 of this Final Order no later than July 20, 2020 (the “**Challenge Period**”). If no such adversary proceeding or contested matter is timely commenced as of such date, (i) the Pre-Petition Indebtedness of Lender shall constitute allowed secured claims, not subject to objection or subordination and otherwise unavoidable, (ii) the pre-petition liens of Lender on the Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim,

offset of any kind or subordination, and otherwise unavoidable, and (iii) the Lender shall be released from and absolved of any and all claims, causes of action, challenges, disputes and liability of any kind or character, whether known or unknown, whether contingent or noncontingent, whether liquidated or unliquidated, in existence as of the effective date of such release arising from, related to or otherwise in connection with the Pre-Petition Indebtedness, the Pre-Petition Collateral, the Loan Documents, the Credit Facility and any and all actions taken by or on behalf of Lender in connection therewith. The Trustee and his professionals engaged on behalf of the Estate (as approved by an order of this Court) are hereby permitted a budget of \$50,000.00, payable from the Credit Facility proceeds advanced by Lender and in accordance with the Budget, to conduct the investigation against the Lender concerning the above-referenced subject matters outlined hereinabove (“**Investigation Carve Out**”). If any party initiates a Credit Bid Challenge, then such proceedings must be completely concluded and fully resolved on a final basis, whether by agreement or final and non-appealable order of a court of competent jurisdiction, by not later than August 30, 2020. The Lender consents to adjudication of all Credit Bid Challenges, through a contested motion practice on such expedited schedule a necessary to effectuate compliance with this provision. For the sake of clarity, nothing in this Paragraph or this Final Order shall be construed or deemed to be a release of any non-debtor party’s causes of action, claims or other property rights existing outside of the Bankruptcy Code or this Bankruptcy Case.

19. Right to Credit Bid. To the extent valid, the right of Lender to credit bid the Indebtedness (Pre-Petition Indebtedness and Post-Petition Indebtedness combined) owed to Lender by the Debtor (pursuant to section 363(k) of the Bankruptcy Code), in whole or in part, in connection with any sale or disposition of assets in the Case (including in connection with a plan of reorganization for which confirmation is sought under section 1129(b)(2)(A)(i)) is hereby

expressly reserved and preserved by this Final Order. For the sake of clarity, notwithstanding the Post-Petition Indebtedness and Pre-Petition Indebtedness as separate and distinct loans and debts due and owing to the Lender by the Debtor, because each of such loans are secured by multiple liens (prepetition liens and post-petition liens) in, to, under and against the same overlapping Collateral pledged in favor of the Lender to secure the payment and performance of each of the Post-Petition Indebtedness and the Pre-Petition Indebtedness, respectively, as set forth in this Final Order, the Credit Agreement and the Loan Documents, in the event of any sale, transfer, foreclosure, or any other form of disposition of any Collateral (whether through one or multiple sales or events of other disposition), the Lender shall be entitled to, and it is equitable to permit the Lender to, combine and join together the balance of the Post-Petition Indebtedness and the balance of the Pre-Petition Indebtedness in the calculation of the total debt due and owing to the Lender by the Debtor and secured by the Collateral, including, without limitation, for the purpose of calculating the Lender's credit bid to dispose of, foreclose, extinguish, terminate or otherwise satisfy the one or more of the liens (prepetition liens and post-petition liens) in, to, under and against the same overlapping Collateral pledged in favor of the Lender to secure the payment and performance of each of the Post-Petition Indebtedness and the Pre-Petition Indebtedness.

20. Guarantor Liability Limited. The personal liability of Daniel Alexander White, Lot 11 GP, Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources, Inc., Absolute Environmental Waste Management, Inc. (collectively, the "**White Affiliates**") and Adam Zarafshani and Eightfold Developments, LLC (collectively, the "**Zarafshani Affiliates**"), respectively, in their capacity as guarantors of the obligations under the Loan Documents, shall be limited to the extent that the White Affiliates and the Zarafshani Affiliates shall not be personally liable and their respective assets shall not be liable for the

repayment of any portion of the Post-Petition Indebtedness. Nothing in this Final Order shall modify, affect, impair, alter, amend or otherwise change in any way the rights, remedies, obligations and other terms existing as of the Petition Date between and among, as applicable, Lender, any one or more of the White Affiliates and/or any one or more of the Zarafshani Affiliates concerning the Pre-Petition Indebtedness and all other matters arising under and/or related to the Loan Documents. Unless otherwise explicitly contained in this Final Order, all rights of all parties concerning or in any way connected to the collection, enforcement, remedies, defenses, and all other matters arising from and/or related to the Loan Documents are expressly reserved and preserved.

21. Amendments and Modifications. The Trustee and Lender may enter into any non-material amendments or modifications to the Credit Agreement and the Loan Documents without notice or a hearing or further order of this Court; provided, however, that any such modifications shall be filed with the Court and shall not be adverse to the Debtor or its Estate.

22. Final Order Governs. Except as otherwise specifically provided in this Final Order, in the event of a conflict between the provisions of this Final Order, the Motion and the Loan Documents, the provisions of this Final Order shall govern.

23. M&M Lien Claimants. All rights are expressly reserved for any claimant asserting lien claims pursuant to Chapter 53 of the Texas Property Code and/or the Texas Constitution (an alleged “**M&M Lien Claimant**”) alleged to be superior in priority to the Pre-Petition Indebtedness with respect to the Pre-Petition Collateral consisting of alleged “removables” that objects to the granting by the Court pursuant to Bankruptcy Code section 364(d) to Lender of superior senior liens and security interests in such alleged “removables” constituting Pre-Petition Collateral to secure payment of the Post-Petition Indebtedness (“**Removables Challenge**”). Any and all alleged

M&M Lien Claimants must assert their Removables Challenge in writing and have filed and served such Removables Challenge on counsel of record to the Trustee and counsel of record to the Lender on or before July 1, 2020, and have had such Removables Challenge proceedings completely concluded and fully resolved on a final basis, whether by agreement or final and non-appealable order of a court of competent jurisdiction, by not later than July 30, 2020. The Lender consents to adjudication of all Removables Challenges through a contested motion practice on such expedited schedule a necessary to effectuate timely compliance with this provision. The validity, priority and extent of the alleged M&M Lien Claimants' respective lien rights concerning the Pre-Petition Collateral consisting of alleged "removables" pursuant to Chapter 53 of the Texas Property Code and/or the Texas Constitution (if any such lien rights exist) are preserved to hold the same validity, priority and extent in existence as of the Petition Date..

24. Interim Order Ratified. On May 21, 2020 at Docket Number 73, the Court entered the First Interim Order Granting Chapter 11 Trustee's Motion to Obtain Secured Credit on an Interim and Final Basis (the "**Interim Order**"). The terms of this Final Order supersede the terms of the Interim Order. However, to the extent applicable, any remaining terms of the Interim Order not superseded by the terms of this Final Order are hereby ratified on a final basis under this Final Order. Accordingly, any terms contained in the Interim Order not otherwise superseded by the terms of this Final Order are approved and shall remain binding on all parties on a final basis.

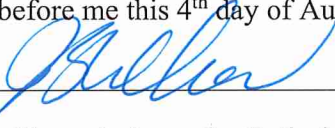
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Submitted by:

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**COUNSEL FOR GREGORY MILLIGAN,
CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.**

This is **Exhibit "O"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



Property Tax Search

Date: June 14, 2020

Account: 10150275

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 630 HAYTER ROAD NW EDMONTON AB

Legal Description: NE 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020 Assessment: 1,071,000 Year Built:

Land Use Description	Tax Class		Taxable Status
900 Undeveloped non-residential land	COMMERCIAL	100 %	900: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$19,249.48	Tax Arrears:	\$38,835.67
Annual Local Improvements:	\$12,896.99	Penalty:	\$2,912.70
Total Prior Year Taxes:	\$32,146.47	Arrears Sub-Total:	\$41,748.37
Tax Year:	2020	Current Taxes:	\$36,691.81
Taxes:	\$23,794.82	Penalty:	\$.00
Annual Local Improvements:**	\$12,896.99	Current Sub-Total:	\$36,691.81
Total Current Year Taxes:	\$36,691.81	Other Charges:	\$100.00
		Penalty:	\$1.25
		Other Charges Sub-Total:	\$101.25
		Total Balance Owing on June 14, 2020	\$78,541.43

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: June 14, 2020

Account: 1340637

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 550 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 3

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: SPECIAL PURPOSE

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020

Assessment: 2,997,500

Year Built: 1981

Land Use Description

Tax Class

Taxable Status

350 Manufacturing plant

COMMERCIAL

100 %

350: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$.00	Tax Arrears:	\$24,680.59
Annual Local Improvements:	\$21,461.38	Penalty:	\$1,851.06
Total Prior Year Taxes:	\$21,461.38	Arrears Sub-Total:	\$26,531.65
Tax Year:	2020	Current Taxes:	\$88,058.02
Taxes:	\$66,596.64	Penalty:	\$.00
Annual Local Improvements:**	\$21,461.38	Current Sub-Total:	\$88,058.02
Total Current Year Taxes:	\$88,058.02	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on June 14, 2020	\$114,589.67

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** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: June 14, 2020

Account: 10274072

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 12225 17 STREET NW EDMONTON AB

Legal Description: NW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020

Assessment: 4,021,000

Year Built:

Land Use Description

Tax Class

Taxable Status

900 Undeveloped non-residential land

COMMERCIAL

100 %

900: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$88,698.44	Tax Arrears:	\$358,794.49
Annual Local Improvements:	\$67,758.46	Penalty:	\$26,909.58
Total Prior Year Taxes:	\$156,456.90	Arrears Sub-Total:	\$385,704.07
Tax Year:	2020	Current Taxes:	\$157,094.61
Taxes:	\$89,336.15	Penalty:	\$.00
Annual Local Improvements:**	\$67,758.46	Current Sub-Total:	\$157,094.61
Total Current Year Taxes:	\$157,094.61	Other Charges:	\$100.00
		Penalty:	\$1.25
		Other Charges Sub-Total:	\$101.25
		Total Balance Owing on June 14, 2020	\$542,899.93

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** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: June 14, 2020

Account: 10274073

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 1050 HAYTER ROAD NW EDMONTON AB T6S 1A2

Legal Description: SW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: INDUSTRIAL

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020

Assessment: 6,270,000

Year Built: 1953

Land Use Description

Tax Class

Taxable Status

251 Small warehouse

COMMERCIAL

100 %

251: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$117,758.40	Tax Arrears:	\$351,492.85
Annual Local Improvements:	\$31,566.87	Penalty:	\$26,361.96
Total Prior Year Taxes:	\$149,325.27	Arrears Sub-Total:	\$377,854.81
Tax Year:	2020	Current Taxes:	\$170,869.95
Taxes:	\$139,303.08	Penalty:	\$.00
Annual Local Improvements:**	\$31,566.87	Current Sub-Total:	\$170,869.95
Total Current Year Taxes:	\$170,869.95	Other Charges:	\$100.00
		Penalty:	\$1.25
		Other Charges Sub-Total:	\$101.25
		Total Balance Owing on June 14, 2020	\$548,826.01

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Property Tax Search

Date: June 14, 2020

Account: 10150274

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 590 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 2

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020 Assessment: 519,500

Year Built:

Land Use Description	Tax Class	Year Built	Taxable Status
900 Undeveloped non-residential land	COMMERCIAL	100 %	900: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$10,378.55	Tax Arrears:	\$13,219.91
Annual Local Improvements:	\$646.49	Penalty:	\$991.50
Total Prior Year Taxes:	\$11,025.04	Arrears Sub-Total:	\$14,211.41
Tax Year:	2020	Current Taxes:	\$12,188.42
Taxes:	\$11,541.93	Penalty:	\$.00
Annual Local Improvements:**	\$646.49	Current Sub-Total:	\$12,188.42
Total Current Year Taxes:	\$12,188.42	Other Charges:	\$100.00
		Penalty:	\$1.25
		Other Charges Sub-Total:	\$101.25
		Total Balance Owing on June 14, 2020	\$26,501.08

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Property Tax Search

Date: November 24, 2021

Account: 10157620

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address:

Legal Description: EPPA 0098 04638 WELL ASMT 10-17-053-23W4

Assessed Parcel Description:

Mortgage Company Billed: No **Monthly Payment Plan:**

Valuation Group: DESIGNATED INDUSTRIAL PROPERTIES

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021 **Assessment:** 244,330 **Year Built:** 2001

Land Use Description	Tax Class	Taxable Status
570 Designated industrial property	DESIGNATED IND PRC 100 %	570: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$6,404.20	Tax Arrears:	\$16,253.11
Annual Local Improvements:	\$0.00	Penalty:	\$2,234.76
Total Prior Year Taxes:	\$6,404.20	Arrears Sub-Total:	\$18,487.87
Tax Year:	2021	Current Taxes:	\$5,918.96
Taxes:	\$5,918.96	Penalty:	\$887.85
Annual Local Improvements:**	\$0.00	Current Sub-Total:	\$6,806.81
Total Current Year Taxes:	\$5,918.96	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on November 24, 2021	\$25,294.68

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QUESTIONS? Visit edmonton.ca/taxes e-mail taxes@edmonton.ca call 311 (780-442-5311)

Edmonton Service Centre, Edmonton Tower, 2nd Floor 10111 - 104 Ave NW, Edmonton AB T5J 0J4



Property Tax Search

Date: November 24, 2021

Account: 1340637

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 550 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 3

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: SPECIAL PURPOSE

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021 Assessment: 2,699,000 Year Built: 1981

Land Use Description	Tax Class	Taxable Status
350 Manufacturing plant	COMMERCIAL	350: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$66,596.64	Tax Arrears:	\$124,629.51
Annual Local Improvements:	\$21,461.38	Penalty:	\$17,136.57
Total Prior Year Taxes:	\$88,058.02	Arrears Sub-Total:	\$141,766.08
Tax Year:	2021	Current Taxes:	\$86,638.99
Taxes:	\$65,177.61	Penalty:	\$12,995.85
Annual Local Improvements:**	\$21,461.38	Current Sub-Total:	\$99,634.84
Total Current Year Taxes:	\$86,638.99	Other Charges:	\$100.00
		Penalty:	\$7.50
		Other Charges Sub-Total:	\$107.50
		Total Balance Owing on November 24, 2021	\$241,508.42

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Property Tax Search

Date: November 24, 2021

Account: 10150275

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 630 HAYTER ROAD NW EDMONTON AB

Legal Description: NE 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021

Assessment: 1,046,000

Year Built:

Land Use Description

Tax Class

Taxable Status

900 Undeveloped non-residential land

COMMERCIAL

100 %

900: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$23,794.82	Tax Arrears:	\$84,157.41
Annual Local Improvements:	\$12,896.99	Penalty:	\$11,571.67
Total Prior Year Taxes:	\$36,691.81	Arrears Sub-Total:	\$95,729.08
Tax Year:	2021	Current Taxes:	\$38,156.62
Taxes:	\$25,259.63	Penalty:	\$5,723.49
Annual Local Improvements:**	\$12,896.99	Current Sub-Total:	\$43,880.11
Total Current Year Taxes:	\$38,156.62	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on November 24, 2021	\$139,609.19

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Edmonton Service Centre, Edmonton Tower, 2nd Floor 10111 - 104 Ave NW, Edmonton AB T5J 0J4



Property Tax Search

Date: November 24, 2021

Account: 10150274

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 590 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 2

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021

Assessment: 536,500

Year Built:

Land Use Description

Tax Class

Taxable Status

900 Undeveloped non-residential land

COMMERCIAL

100 %

900: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$11,541.93	Tax Arrears:	\$28,385.92
Annual Local Improvements:	\$646.49	Penalty:	\$3,903.02
Total Prior Year Taxes:	\$12,188.42	Arrears Sub-Total:	\$32,288.94
Tax Year:	2021	Current Taxes:	\$13,602.31
Taxes:	\$12,955.82	Penalty:	\$2,040.36
Annual Local Improvements:**	\$646.49	Current Sub-Total:	\$15,642.67
Total Current Year Taxes:	\$13,602.31	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on November 24, 2021	\$47,931.61

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Edmonton Service Centre, Edmonton Tower, 2nd Floor 10111 - 104 Ave NW, Edmonton AB T5J 0J4



Property Tax Search

Date: November 24, 2021

Account: 10274072

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 12225 17 STREET NW EDMONTON AB

Legal Description: NW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021

Assessment: 4,015,500

Year Built:

Land Use Description

Tax Class

Taxable Status

900 Undeveloped non-residential land

COMMERCIAL

100 %

900: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$89,336.15	Tax Arrears:	\$576,554.11
Annual Local Improvements:	\$67,758.46	Penalty:	\$79,276.23
Total Prior Year Taxes:	\$157,094.61	Arrears Sub-Total:	\$655,830.34
Tax Year:	2021	Current Taxes:	\$164,727.95
Taxes:	\$96,969.49	Penalty:	\$24,709.20
Annual Local Improvements:**	\$67,758.46	Current Sub-Total:	\$189,437.15
Total Current Year Taxes:	\$164,727.95	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on November 24, 2021	\$845,267.49

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Edmonton Service Centre, Edmonton Tower, 2nd Floor 10111 - 104 Ave NW, Edmonton AB T5J 0J4



Property Tax Search

Date: November 24, 2021

Account: 10274073

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 1050 HAYTER ROAD NW EDMONTON AB T6S 1A2

Legal Description: SW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: INDUSTRIAL

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021

Assessment: 5,608,000

Year Built: 1953

Land Use Description

Tax Class

Taxable Status

251 Small warehouse

COMMERCIAL

100 %

251: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$139,303.08	Tax Arrears:	\$583,492.65
Annual Local Improvements:	\$31,566.87	Penalty:	\$80,230.26
Total Prior Year Taxes:	\$170,869.95	Arrears Sub-Total:	\$663,722.91
Tax Year:	2021	Current Taxes:	\$166,993.32
Taxes:	\$135,426.45	Penalty:	\$25,049.01
Annual Local Improvements:**	\$31,566.87	Current Sub-Total:	\$192,042.33
Total Current Year Taxes:	\$166,993.32	Other Charges:	\$769.26
		Penalty:	\$9.62
		Other Charges Sub-Total:	\$778.88
		Total Balance Owing on November 24, 2021	\$856,544.12

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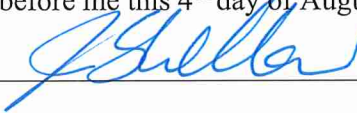
** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).

QUESTIONS? Visit edmonton.ca/taxes e-mail taxes@edmonton.ca call 311 (780-442-5311)

Edmonton Service Centre, Edmonton Tower, 2nd Floor 10111 - 104 Ave NW, Edmonton AB T5J 0J4

This is **Exhibit "P"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shelton
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



Property Tax Search

Date: November 10, 2020

Account: 1340637

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 550 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 3

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: SPECIAL PURPOSE

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020

Assessment: 2,997,500

Year Built: 1981

Land Use Description

Tax Class

Taxable Status

350 Manufacturing plant

COMMERCIAL

100 %

350: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$.00	Tax Arrears:	\$24,680.59
Annual Local Improvements:	\$21,461.38	Penalty:	\$2,776.59
Total Prior Year Taxes:	\$21,461.38	Arrears Sub-Total:	\$27,457.18
Tax Year:	2020	Current Taxes:	\$88,058.02
Taxes:	\$66,596.64	Penalty:	\$8,805.80
Annual Local Improvements:**	\$21,461.38	Current Sub-Total:	\$96,863.82
Total Current Year Taxes:	\$88,058.02	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on November 10, 2020	\$124,321.00

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** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).

Date: November 10, 2020

Account: 10150274

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 590 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 2

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020

Assessment: 519,500

Year Built:

Land Use Description

Tax Class

Taxable Status

900 Undeveloped non-residential land

COMMERCIAL

100 %

900: (100%); FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$10,378.55	Tax Arrears:	\$13,219.91
Annual Local Improvements:	\$646.49	Penalty:	\$1,487.25
Total Prior Year Taxes:	\$11,025.04	Arrears Sub-Total:	\$14,707.16
		Current Taxes:	\$12,188.42
Tax Year:	2020	Penalty:	\$1,218.84
Taxes:	\$11,541.93	Current Sub-Total:	\$13,407.26
Annual Local Improvements:**	\$646.49	Other Charges:	\$100.00
Total Current Year Taxes:	\$12,188.42	Penalty:	\$5.00
		Other Charges Sub-Total:	\$105.00
		Total Balance Owing on November 10, 2020	\$28,219.42

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** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: November 10, 2020

Account: 10274072

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 12225 17 STREET NW EDMONTON AB

Legal Description: NW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020 Assessment: 4,021,000 Year Built:

Land Use Description	Tax Class	Taxable Status
900 Undeveloped non-residential land	COMMERCIAL	100 % 900: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$88,698.44	Tax Arrears:	\$358,794.49
Annual Local Improvements:	\$67,758.46	Penalty:	\$40,364.37
Total Prior Year Taxes:	\$156,456.90	Arrears Sub-Total:	\$399,158.86
		Current Taxes:	\$157,094.61
Tax Year:	2020	Penalty:	\$15,709.46
Taxes:	\$89,336.15	Current Sub-Total:	\$172,804.07
Annual Local Improvements:**	\$67,758.46	Other Charges:	\$100.00
Total Current Year Taxes:	\$157,094.61	Penalty:	\$5.00
		Other Charges Sub-Total:	\$105.00
		Total Balance Owning on November 10, 2020	\$572,067.93

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Property Tax Search

Date: November 10, 2020

Account: 10274073

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 1050 HAYTER ROAD NW EDMONTON AB T6S 1A2

Legal Description: SW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: INDUSTRIAL

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020

Assessment: 6,270,000

Year Built: 1953

Land Use Description

Tax Class

Taxable Status

251 Small warehouse

COMMERCIAL

100 %

251: (100%): FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year: 2019			
Taxes:	\$117,758.40	Tax Arrears:	\$351,492.85
Annual Local Improvements:	\$31,566.87	Penalty:	\$39,542.94
Total Prior Year Taxes:	\$149,325.27	Arrears Sub-Total:	\$391,035.79
Tax Year: 2020			
Taxes:	\$139,303.08	Current Taxes:	\$170,869.95
Annual Local Improvements:**	\$31,566.87	Penalty:	\$17,087.00
Total Current Year Taxes:	\$170,869.95	Current Sub-Total:	\$187,956.95
		Other Charges:	\$100.00
		Penalty:	\$5.00
		Other Charges Sub-Total:	\$105.00
		Total Balance Owing on November 10, 2020	\$579,097.74

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: November 10, 2020

Account: 10150275

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 630 HAYTER ROAD NW EDMONTON AB

Legal Description: NE 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2020 Assessment: 1,071,000 Year Built:

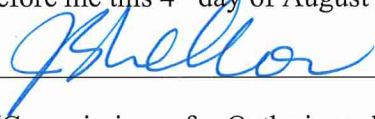
Land Use Description	Tax Class	Taxable Status
900 Undeveloped non-residential land	COMMERCIAL	100 % 900: (100%); FULLY TAXABLE JAN-2020 TO DEC-2020

Property Tax		Account Status	
Prior Year:	2019		
Taxes:	\$19,249.48	Tax Arrears:	\$38,835.67
Annual Local Improvements:	\$12,896.99	Penalty:	\$4,369.05
Total Prior Year Taxes:	\$32,146.47	Arrears Sub-Total:	\$43,204.72
Tax Year:	2020	Current Taxes:	\$36,691.81
Taxes:	\$23,794.82	Penalty:	\$3,669.18
Annual Local Improvements:**	\$12,896.99	Current Sub-Total:	\$40,360.99
Total Current Year Taxes:	\$36,691.81	Other Charges:	\$100.00
		Penalty:	\$5.00
		Other Charges Sub-Total:	\$105.00
		Total Balance Owing on November 10, 2020	\$83,670.71

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).

This is **Exhibit "Q"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



Property Tax Search

Date: October 18, 2021

Account: 1340637

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 550 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 3

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: SPECIAL PURPOSE

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021 Assessment: 2,699,000 Year Built: 1981

Land Use Description	Tax Class	Taxable Status
350 Manufacturing plant	COMMERCIAL	350: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$66,596.64	Tax Arrears:	\$124,629.51
Annual Local Improvements:	\$21,461.38	Penalty:	\$15,578.70
Total Prior Year Taxes:	\$88,058.02	Arrears Sub-Total:	\$140,208.21
Tax Year:	2021	Current Taxes:	\$86,638.99
Taxes:	\$65,177.61	Penalty:	\$8,663.90
Annual Local Improvements:**	\$21,461.38	Current Sub-Total:	\$95,302.89
Total Current Year Taxes:	\$86,638.99	Other Charges:	\$100.00
		Penalty:	\$6.25
		Other Charges Sub-Total:	\$106.25
		Total Balance Owing on October 18, 2021	\$235,617.35

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: October 18, 2021

Account: 10150274

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 590 HAYTER ROAD NW EDMONTON AB

Legal Description: Plan: 8323217 Lot: 2

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021 Assessment: 536,500

Year Built:

Land Use Description	Tax Class		Taxable Status
900 Undeveloped non-residential land	COMMERCIAL	100 %	900: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$11,541.93	Tax Arrears:	\$28,385.92
Annual Local Improvements:	\$646.49	Penalty:	\$3,548.20
Total Prior Year Taxes:	\$12,188.42	Arrears Sub-Total:	\$31,934.12
Tax Year:	2021	Current Taxes:	\$13,602.31
Taxes:	\$12,955.82	Penalty:	\$1,360.24
Annual Local Improvements:**	\$646.49	Current Sub-Total:	\$14,962.55
Total Current Year Taxes:	\$13,602.31	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owing on October 18, 2021	\$46,896.67

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: October 18, 2021

Account: 10150275

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 630 HAYTER ROAD NW EDMONTON AB

Legal Description: NE 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021

Assessment: 1,046,000

Year Built:

Land Use Description

Tax Class

Taxable Status

900 Undeveloped non-residential land

COMMERCIAL

100 %

900: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$23,794.82	Tax Arrears:	\$84,157.41
Annual Local Improvements:	\$12,896.99	Penalty:	\$10,519.70
Total Prior Year Taxes:	\$36,691.81	Arrears Sub-Total:	\$94,677.11
Tax Year:	2021	Current Taxes:	\$38,156.62
Taxes:	\$25,259.63	Penalty:	\$3,815.66
Annual Local Improvements:**	\$12,896.99	Current Sub-Total:	\$41,972.28
Total Current Year Taxes:	\$38,156.62	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owning on October 18, 2021	\$136,649.39

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).

QUESTIONS? Visit edmonton.ca/taxes e-mail taxes@edmonton.ca call 311 (780-442-5311)

Edmonton Service Centre, Edmonton Tower, 2nd Floor 10111 - 104 Ave NW, Edmonton AB T5J 0J4



Property Tax Search

Date: October 18, 2021

Account: 10274073

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 1050 HAYTER ROAD NW EDMONTON AB T6S 1A2

Legal Description: SW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No

Monthly Payment Plan:

Valuation Group: INDUSTRIAL

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021

Assessment: 5,608,000

Year Built: 1953

Land Use Description

Tax Class

Taxable Status

251 Small warehouse

COMMERCIAL

100 %

251: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$139,303.08	Tax Arrears:	\$583,492.65
Annual Local Improvements:	\$31,566.87	Penalty:	\$72,936.60
Total Prior Year Taxes:	\$170,869.95	Arrears Sub-Total:	\$656,429.25
Tax Year:	2021	Current Taxes:	\$166,993.32
Taxes:	\$135,426.45	Penalty:	\$16,699.34
Annual Local Improvements:**	\$31,566.87	Current Sub-Total:	\$183,692.66
Total Current Year Taxes:	\$166,993.32	Other Charges:	\$769.26
		Penalty:	\$.00
		Other Charges Sub-Total:	\$769.26
		Total Balance Owing on October 18, 2021	\$840,891.17

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).



Property Tax Search

Date: October 18, 2021

Account: 10274072

The information displayed below is the most recent information for the tax year indicated at the time of this request.

Property Address: 12225 17 STREET NW EDMONTON AB

Legal Description: NW 17-53-23-4

Assessed Parcel Description:

Mortgage Company Billed: No Monthly Payment Plan:

Valuation Group: LAND

Community Revitalization Levy Area:

Owner Name:

Owners Address:

Remarks:

Assessment Year: 2021 Assessment: 4,015,500 Year Built:

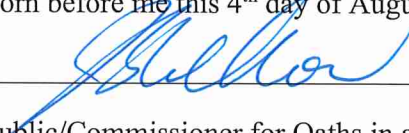
Land Use Description	Tax Class	Taxable Status
900 Undeveloped non-residential land	COMMERCIAL	100 % 900: (100%): FULLY TAXABLE JAN-2021 TO DEC-2021

Property Tax		Account Status	
Prior Year:	2020		
Taxes:	\$89,336.15	Tax Arrears:	\$576,554.11
Annual Local Improvements:	\$67,758.46	Penalty:	\$72,069.30
Total Prior Year Taxes:	\$157,094.61	Arrears Sub-Total:	\$648,623.41
Tax Year:	2021	Current Taxes:	\$164,727.95
Taxes:	\$96,969.49	Penalty:	\$16,472.80
Annual Local Improvements:**	\$67,758.46	Current Sub-Total:	\$181,200.75
Total Current Year Taxes:	\$164,727.95	Other Charges:	\$.00
		Penalty:	\$.00
		Other Charges Sub-Total:	\$.00
		Total Balance Owning on October 18, 2021	\$829,824.16

Disclaimer: The balance on this report is conditional upon all payments clearing the City's and the payer's bank. In the event that any such payment is rejected or is not completed, or additional charges are incurred in the clearing of a payment, the amount of the payment and any additional charges incurred will be added to the account without further notice. The City of Edmonton accepts no liability from the reliance of any party on the contents of this report. Individuals who require certification of the current amount of taxes imposed, or the total amount of taxes owing should request a Tax Certificate from the City of Edmonton. (Errors and Omissions excepted).

** For information on newly constructed or proposed local improvements that may affect the property, contact 311 (780-442-5311 if outside Edmonton).

This is **Exhibit "R"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



October 5, 2021

ROMSPEN INVESTMENT CORPORATION
300 162 CUMBERLAND STREET
TORONTO ON M5R 3N5

REGISTERED OWNERS
ECO-INDUSTRIAL BUSINESS PARK INC

NOTIFICATION OF PUBLIC AUCTION

Account: 10150274
Legal Description: Plan: 8323217 Lot: 2 /
Address: 590 HAYTER ROAD NW EDMONTON AB (the "Property")

As required by s.421 of the *Municipal Government Act*, RSA 2000, c. M-26, this document serves as notice to the registered owner(s) and to all persons having an interest in the Property evidenced by a registered caveat and to each encumbrancee shown on the certificate of title, that:

1. The Property indicates an outstanding balance of **\$46,896.67** as of October 5, 2021, including prior year **tax arrears** of \$31,934.12.
2. The City of Edmonton will offer the Property for sale at the Public Auction on November 25, 2021, to be held at 10:00 a.m. in City Council Chambers, City Hall, unless the **tax arrears** are paid prior to the date of the auction.
3. To avoid additional costs and advertisement of the Property in the local newspapers, full payment must be received by the City of Edmonton by October 13, 2021. Payments must be in the form of a bank draft or money order.
4. If the Property is not sold at the Public Auction, the City of Edmonton may become the owner of the Property.

All properties eligible for the Public Auction and the Terms and Conditions of the tax sale have been advertised in the Alberta Gazette on September 15, 2021. This publication can be viewed online at

http://www.qp.alberta.ca/documents/gazette/2021/pdf/17_Sep15_Part1.pdf

Please note that penalty will accrue on the unpaid tax arrears at the rate of 1.25% on the 1st day of each month. Unpaid current property taxes will incur a penalty of 5% on November 1, 2021. You may contact a property tax collector at 780-975-6530 or 780-913-9108 for additional information on this account.

Taxation Operations
Assessment and Taxation Branch

tir5221



October 5, 2021

ROMSPEN INVESTMENT CORPORATION
300 162 CUMBERLAND STREET
TORONTO ON M5R 3N5

REGISTERED OWNERS
ECO-INDUSTRIAL BUSINESS PARK INC.

NOTIFICATION OF PUBLIC AUCTION

Account: 10150275
Legal Description: NE 17-53-23-4 /
Address: 630 HAYTER ROAD NW EDMONTON AB (the "Property")

As required by s.421 of the *Municipal Government Act*, RSA 2000, c. M-26, this document serves as notice to the registered owner(s) and to all persons having an interest in the Property evidenced by a registered caveat and to each encumbrancee shown on the certificate of title, that:

1. The Property indicates an outstanding balance of **\$136,649.39** as of October 5, 2021, including prior year **tax arrears** of \$94,677.11.
2. The City of Edmonton will offer the Property for sale at the Public Auction on November 25, 2021, to be held at 10:00 a.m. in City Council Chambers, City Hall, unless the **tax arrears** are paid prior to the date of the auction.
3. To avoid additional costs and advertisement of the Property in the local newspapers, full payment must be received by the City of Edmonton by October 13, 2021. Payments must be in the form of a bank draft or money order.
4. If the Property is not sold at the Public Auction, the City of Edmonton may become the owner of the Property.

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Please note that penalty will accrue on the unpaid tax arrears at the rate of 1.25% on the 1st day of each month. Unpaid current property taxes will incur a penalty of 5% on November 1, 2021. You may contact a property tax collector at 780-975-6530 or 780-913-9108 for additional information on this account.

Taxation Operations
Assessment and Taxation Branch

bx5221



October 5, 2021

ROMSPEN INVESTMENT CORPORATION
300 162 CUMBERLAND STREET
TORONTO ON M5R 3N5

REGISTERED OWNERS
LOT 11 GP LTD

NOTIFICATION OF PUBLIC AUCTION

Account: 10274072
Legal Description: NW 17-53-23-4 /
Address: 12225 17 STREET NW EDMONTON AB (the "Property")

As required by s.421 of the *Municipal Government Act*, RSA 2000, c. M-26, this document serves as notice to the registered owner(s) and to all persons having an interest in the Property evidenced by a registered caveat and to each encumbrancee shown on the certificate of title, that:

1. The Property indicates an outstanding balance of **\$829,824.16** as of October 5, 2021, including prior year **tax arrears** of \$648,623.41.
2. The City of Edmonton will offer the Property for sale at the Public Auction on November 25, 2021, to be held at 10:00 a.m. in City Council Chambers, City Hall, unless the **tax arrears** are paid prior to the date of the auction.
3. To avoid additional costs and advertisement of the Property in the local newspapers, full payment must be received by the City of Edmonton by October 13, 2021. Payments must be in the form of a bank draft or money order.
4. If the Property is not sold at the Public Auction, the City of Edmonton may become the owner of the Property.

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http://www.qp.alberta.ca/documents/gazette/2021/pdf/17_Sep15_Part1.pdf

Please note that penalty will accrue on the unpaid tax arrears at the rate of 1.25% on the 1st day of each month. Unpaid current property taxes will incur a penalty of 5% on November 1, 2021. You may contact a property tax collector at 780-975-6530 or 780-913-9108 for additional information on this account.

Taxation Operations
Assessment and Taxation Branch

utr5221



October 5, 2021

ROMSPEN INVESTMENT CORPORATION
300 162 CUMBERLAND STREET
TORONTO ON M5R 3N5

REGISTERED OWNERS
ECO-INDUSTRIAL BUSINESS PARK INC

NOTIFICATION OF PUBLIC AUCTION

Account: 10274073
Legal Description: SW 17-53-23-4 /
Address: 1050 HAYTER ROAD NW EDMONTON AB (the "Property")

As required by s.421 of the *Municipal Government Act*, RSA 2000, c. M-26, this document serves as notice to the registered owner(s) and to all persons having an interest in the Property evidenced by a registered caveat and to each encumbrancee shown on the certificate of title, that:

1. The Property indicates an outstanding balance of **\$840,891.17** as of October 5, 2021, including prior year **tax arrears** of \$656,429.25.
2. The City of Edmonton will offer the Property for sale at the Public Auction on November 25, 2021, to be held at 10:00 a.m. in City Council Chambers, City Hall, unless the **tax arrears** are paid prior to the date of the auction.
3. To avoid additional costs and advertisement of the Property in the local newspapers, full payment must be received by the City of Edmonton by October 13, 2021. Payments must be in the form of a bank draft or money order.
4. If the Property is not sold at the Public Auction, the City of Edmonton may become the owner of the Property.

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http://www.qp.alberta.ca/documents/gazette/2021/pdf/17_Sep15_Part1.pdf

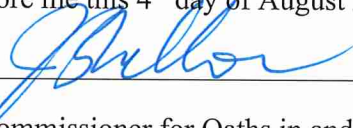
Please note that penalty will accrue on the unpaid tax arrears at the rate of 1.25% on the 1st day of each month. Unpaid current property taxes will incur a penalty of 5% on November 1, 2021. You may contact a property tax collector at 780-975-6530 or 780-913-9108 for additional information on this account.

Taxation Operations
Assessment and Taxation Branch

txr5221

This is **Exhibit "S"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*

My Appointment Expires April 26, 2025

**ECO-INDUSTRIAL BUSINESS PARK LTD. vs ALBERTA DILUENT
ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS AGREEMENT is dated for reference as of the 1 day of DECEMBER, 2019.

BETWEEN:

ECO-INDUSTRIAL BUSINESS PARK LTD.
Hereinafter referred to as ("Eco")
1250 Hayter Road
Edmonton, AB T6S 1A2

(the "Assignor")

AND:

SYMMETRY ASSET MANAGEMENT INC.
Hereinafter referred to as ("Symmetry")
1250 Hayter Road
Edmonton, AB T6S 1A2

(the "Assignee")

WHEREAS:

- A. Symmetry is the asset manager for Eco. As such Symmetry provides ongoing management services to Eco to which Eco pays Symmetry for costs and fees;
- B. Eco owns industrial lands at the North East corner of the City of Edmonton. Those lands a for sale or lease;
- C. Eco sold lands to Alberta Diluent Terminal Ltd., hereinafter referred to ("ADT") in 2008 and 2013. The sale and purchase resulted in a legal dispute between Eco and ADT regarding rail access through the ADT lands to the remaining Eco lands. This legal dispute is identified by the Alberta Court File Number 78867, hereinafter referred to ("**the Lawsuit**");
- D. From the filing date of the Court Action, Symmetry has managed the legal action for Eco by supplying services and paying costs including legal fees;
- E. Eco has relied on Symmetry for these services but has been unable to pay for those services or costs. As a partial offset Eco is willing to assign the Lawsuit referenced above to Symmetry. Symmetry is willing to accept partial offset from Eco for the Lawsuit referenced above and the assumption thereof.

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties) the Assignor and the Assignee covenant and agree as follows:

SW

1. **Assignment**

The Assignor hereby absolutely assigns, transfers and sets over unto the Assignee from and after the signing of this Agreement all of the Vendor's right, title and interest in and to the Lawsuit together with the benefit of all proceeds that may be in the Assignor's favour therein and with full power and authority to enforce performance of all legal actions with respect to the Lawsuit.

2. **Assumption**

As of the signing of this Agreement, the Assignee hereby assumes all the obligations of the Assignor under the Lawsuit (the "Assumed Obligations") and covenants and agrees with the Assignor that from and including the signing date of this Agreement, the Assignee will observe and perform all the Assumed Obligations and will indemnify the Assignor for any claims, costs, damages, expenses, liabilities and generally any demands resulting from or arising out of the failure by the Assignee to observe and perform the Assumed Obligations

3. **Further Assurances**

Each of the parties shall at all times hereafter execute and deliver all such further documents and instruments, and shall do such further acts and things as may be reasonably required to give full effect to this Agreement.

4. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

5. **Enurement**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6. **Counterparts**

This Agreement may be executed in counterparts and, when each party has executed a counterpart, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

ECO INDUSTRIAL BUSINESS PARK LTD.

By:  _____

By: _____

M

SYMMETRY ASSET MANAGEMENT LTD

By:  _____

By: _____

**ECO-INDUSTRIAL BUSINESS PARK LTD. vs ALBERTA DILUENT
ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS AGREEMENT is dated for reference as of the 1 day of DECEMBER 2019.

BETWEEN:

ECO-INDUSTRIAL BUSINESS PARK LTD.
Hereinafter referred to as ("Eco")
1250 Hayter Road
Edmonton, AB T6S 1A2

(the "Assignor")

AND:

SYMMETRY ASSET MANAGEMENT INC.
Hereinafter referred to as ("Symmetry")
1250 Hayter Road
Edmonton, AB T6S 1A2

(the "Assignee")

WHEREAS:

- A. Symmetry is the asset manager for Eco. As such Symmetry provides ongoing management services to Eco to which Eco pays Symmetry for costs and fees;
- B. Eco owns industrial lands at the North East corner of the City of Edmonton. Those lands a for sale or lease;
- C. Eco sold lands to Alberta Diluent Terminal Ltd., hereinafter referred to ("ADT") in 2008 and 2013. Dentons acted on behalf of Eco. The sale and purchase resulted in a legal dispute between Eco and ADT regarding rail access through the ADT lands to the remaining Eco lands. Eco also filed a lawsuit against Dentons for loss of rail revenue due to their error at not identifying ADT's changes to the purchase and sale agreement resulting in the loss of rail access. This legal dispute is identified by the Alberta Court File Number 78869, hereinafter referred to ("**the Lawsuit**");
- D. From the filing date of the Court Action, Symmetry has managed the legal action for Eco by supplying services and paying costs including legal fees;
- E. Eco has relied on Symmetry for these services but has been unable to pay for those services or costs. As a partial offset Eco is willing to assign the Lawsuit referenced above to Symmetry. Symmetry is willing to accept partial offset from Eco for the Lawsuit referenced above and the assumption thereof.

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration (the receipt and

DW

sufficiency of which is hereby acknowledged by each of the parties) the Assignor and the Assignee covenant and agree as follows:

1. **Assignment**

The Assignor hereby absolutely assigns, transfers and sets over unto the Assignee from and after the signing of this Agreement all of the Vendor's right, title and interest in and to the Lawsuit together with the benefit of all proceeds that may be in the Assignor's favour therein and with full power and authority to enforce performance of all legal actions with respect to the Lawsuit.

2. **Assumption**

As of the signing of this Agreement, the Assignee hereby assumes all the obligations of the Assignor under the Lawsuit (the "Assumed Obligations") and covenants and agrees with the Assignor that from and including the signing date of this Agreement, the Assignee will observe and perform all the Assumed Obligations and will indemnify the Assignor for any claims, costs, damages, expenses, liabilities and generally any demands resulting from or arising out of the failure by the Assignee to observe and perform the Assumed Obligations

3. **Further Assurances**

Each of the parties shall at all times hereafter execute and deliver all such further documents and instruments, and shall do such further acts and things as may be reasonably required to give full effect to this Agreement.

4. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

5. **Enurement**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.


DW

6. **Counterparts**

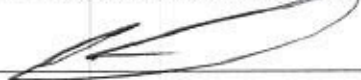
This Agreement may be executed in counterparts and, when each party has executed a counterpart, each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

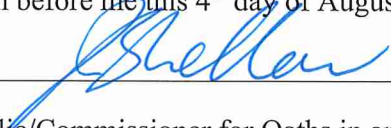
ECO-INDUSTRIAL BUSINESS PARK LTD.

By: 
By: _____

SYMMETRY ASSET MANAGEMENT INC.

By: 
By: _____

This is **Exhibit "T"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shelton
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 20²⁵

From: Roderick Payne <rodp@hplegal.ca>
Sent: Thursday, November 11, 2021 10:28 AM
To: Van de Mosselaer, Randal
Cc: Victor Kroeger; Karen Aylward
Subject: RE: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)
Attachments: Amended Statement of Claim - Eco v. ADT.pdf

Randal,

I will include the Receiver in these emails going forward if that is ok with you.

Please see attached a copy of the Amended Statement of Claim in the *Eco v. ADT* matter (Action No: 1303 16983).

Please confirm on the Receiver's position on the Assumption and Assignment Agreement between Symmetry and Eco. We were not involved in its preparation or negotiation and do not have any comment on it.

With respect to the Dentons claim, there is no active claim, just the standstill agreement. The thinking was to prosecute the ADT claim first and then turn to Dentons afterwards if the ADT claim was unsuccessful.

We can forward you a copy of the Standstill Agreement between Eco and Dentons but my assistant Diana will have to dig it out (she is on stat holiday today).

Regards,

Roderick (Rod) C. Payne



HUSTWICK PAYNE
barristers & solicitors
600 Ledgeview
9707 - 110 Street
Edmonton, AB T5K 2L9
Canada
Bus: 780.482.6555
Fax: 780.482.6613

From: Van de Mosselaer, Randal [mailto:rvandemosselaer@osler.com]
Sent: November-11-21 10:06 AM
To: Roderick Payne
Cc: Victor Kroeger; Karen Aylward
Subject: RE: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)

Thanks Rod.

We will be digesting your memo from yesterday (thanks for that by the way) and getting back to you asap.

In the meantime, would you be able to send me the pleadings on the \$100,000,000 ADT Diluent and Dentons claims referenced in your email below on an urgent basis?

Thanks.

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2
403.260.7000 main
403.260.7024 facsimile

osler.com

From: Roderick Payne <rodpc@hplegal.ca>

Sent: Tuesday, November 09, 2021 2:25 PM

To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>

Subject: RE: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)

Randal,

Please see responses below.

As we are significantly behind in AR and, more importantly, in a real or apparent conflict situation I suspect we will be obliged to withdraw as counsel on all Absolute, Eco and Lot 11 matters.

Regards,

Roderick (Rod) C. Payne



HUSTWICK PAYNE
barristers & solicitors
600 Ledgeview
9707 - 110 Street
Edmonton, AB T5K 2L9
Canada
Bus: 780.482.6555
Fax: 780.482.6613

From: Van de Mosselaer, Randal [<mailto:rvandemosselaer@osler.com>]

Sent: November-08-21 3:48 PM

To: Roderick Payne

Cc: Victor Kroeger; Karen Aylward

Subject: FW: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)

Rod,

Thanks for your email.

A few other questions for you arising from the information in your email:

- Can you please clarify for me whether the “Lawsuit” (to use the defined term in both attached documents) described in the attached documents are both being held under a Standstill Agreement, or whether only one of the Lawsuits is covered by a Standstill? Only one of the lawsuits is under standstill, being a possible claim against Dentons. The other claim is against ADT Diluent re a rail line dispute and is active litigation.
- Please also let me know asap the amount being claimed in each of these Lawsuits. The ADT claim above has a face value of \$100,000,000.00. The standstill claim against Dentons arises out of the same transaction.
- With respect to the scheduled November 19th cross-examination, please advise if that is in Action No. 2003 07790 or some other action. Action #1803 04625 – Encanex Environmental Oil & Gas v. Absolute et al.
- Finally, please let us know if you have any outstanding AR or WIP on any of the matters for which you are acting from Eco/Absolute/Lot 11, and whether you have any funds in trust on any of those matters (apart from the \$13,050 described in your email below). Outstanding receivables – Absolute Environmental Waste Management (\$37,058.18); Eco Industrial Park (\$88,292.24); Lot 11 GP Ltd. (\$459.69). The WIP is as follows: Absolute Environmental (\$585.50); Eco Industrial (\$1,113.01); Lot 11 GP Ltd. (\$48.50). There are no monies in Trust other than what I have previously disclosed.

Thanks Rod. I look forward to receiving your list of litigation and corporate files.

Regards,



Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2
403.260.7000 main
403.260.7024 facsimile

osler.com

From: Roderick Payne <rod@hplegal.ca>
Sent: Monday, November 08, 2021 9:35 AM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Subject: RE: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)

Hi Randal,

I confirm that we act for Eco, Absolute and Lot 11 both as litigation counsel and corporate counsel on various matters.

There is nothing overly pressing on any of the litigation matters, except for a cross examination on Affidavit scheduled in relation to an Absolute file where Absolute, Symmetry Asset Management and one of Dan White's numbered companies are Defendants and Absolute is a Plaintiff via counterclaim; presently scheduled for November 19th.

As per para 5 of the Receivership Order, I confirm Hustwick Payne has \$13,050.00 in trust on a matter relating to a dispute with Kramer's Technical. The amount is however held under Trust condition or Court Order (I cannot remember which as it has been there for years) and cannot be distributed yet, but will confirm on its terms.

As per para 6 of the Order I attach copies of an assignment contract between Symmetry Asset Management and Eco relating to one outstanding action and another held under a standstill agreement.

We will assemble a summary of litigation and corporate files for circulation to you.

I would also like to speak with you by telephone about matters at your convenience.

Regards,

Roderick (Rod) C. Payne



HUSTWICK PAYNE
barristers & solicitors
600 Ledgeview
9707 - 110 Street
Edmonton, AB T5K 2L9
Canada
Bus: 780.482.6555
Fax: 780.482.6613

From: Van de Mosselaer, Randal [<mailto:rvandemosselaer@osler.com>]
Sent: November-05-21 1:08 PM
To: Hillson, Jonathan
Cc: Gibson, Krista; Bruce Duke; Roderick Payne; Pratt, Elena; Victor Kroeger; Karen Aylward; Gurofsky, Robyn; Barr, Kevin
Subject: RE: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)

Thanks Jonathan. Provided you can confirm by return that there is nothing in either Alberta Court of Queen's Bench Action 2003 08412 or Alberta Court of Queen's Bench Action 2003 08204 which requires urgent attention, then I have no concerns with a slight delay in providing the materials to us. Please advise.

As far as your position below re: "privileged communications" is concerned, we will revert once I have had an opportunity to discuss this with the Receiver and we have considered your position.

Thank you for copying Mr. Payne and Mr. Duke into this email chain. I have attached a copy of the signed Receivership Order to this email for their information.

By copy of this email to Mssrs. Payne and Duke:

- I can confirm that we act for the Court-appointed Receiver of the Respondents ("Respondents") named in the attached Order,
- As such, the Receiver has the powers set out in paragraph 4 of this Order, including the power set out in paragraph 4(j) (but subject to the concluding language of paragraph 4),
- I would accordingly ask that Mssrs. Payne and Duke provide us with:
 - copies of the relevant pleadings/court documents in respect of those actions in which they are acting for any of the Respondents,
 - a summary of the nature of these actions and the involvement of any of the Respondents in those actions, and
 - their advice with respect to whether there are any pressing or urgent steps required of any of the Respondents represented by them in these actions.

Perhaps once we have received these initial materials we could set up a call to discuss matters further.

Regards,



Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2
403.260.7000 main
403.260.7024 facsimile

osler.com

From: Hillson, Jonathan <jon.hillson@dentons.com>

Sent: Friday, November 05, 2021 11:09 AM

To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>

Cc: Gibson, Krista <kgibson@osler.com>; Bruce Duke <brucedukeesq@gmail.com>; Roderick C. Payne (rodpc@hplegal.ca) <rodpc@hplegal.ca>; Pratt, Elena <EPratt@osler.com>

Subject: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al - Request for Records (Dentons file: 580694-1)

Thank you for the email.

To answer your question, I act for:

- Absolute Environmental Waste Management Inc in relation to Alberta Court of Queen's Bench Action 2003 08412; and
- Eco-Industrial Business Park Inc in relation to Alberta Court of Queen's Bench Action 2003 08204.

I do not act for any party in relation to Alberta Court of Queen's Bench Action 2003 07790. I believe that Roderick Payne of Hustwick Payne acts for Absolute Environmental Waste Management Inc in relation to that matter. I do not act for any party in relation to any of the US Actions. The US actions involve many parties most of whom are not subject to the Receivership Order but I believe that Absolute Environmental Waste Management Inc, Absolute Energy Resources Inc, Lot 11 GP Ltd, Lot 11 Limited Partnership and Eco-Industrial Business Park are represented by Mr Bruce Duke of the Duke Law Group. I am copying Mr Payne and Mr Duke on this email so that you will have their contact information.

I can provide you with the pleadings for the actions where I am counsel of record as well as the producible documents. I can also provide you with the producible portions of our communications file but this will take some time. As Ms Gurofsky may have mentioned to you, I start a two-month Arbitration on Monday, November 8, 2021 so I would appreciate your patience. Otherwise, we will not be providing records or granting access to privileged communications as these documents are not producible pursuant to Section 6 of the Order. Therefore, I assume that the reference to "all file materials" excludes these documents.

I will also do my best to provide you with a status report to the various actions where I am counsel of record.

Please call me if you have any questions

 Jonathan Hillson

Partner

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

D +1 780 423 7194
jon.hillson@dentons.com
Bio | Website

Dentons Canada LLP
2500 Stantec Tower, 10220 - 103 Avenue NW Edmonton, AB T5J 0K4 Canada

Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>

Sent: November 4, 2021 3:54 PM

To: Hillson, Jonathan <jon.hillson@dentons.com>

Cc: Gurofsky, Robyn <RGurofsky@blg.com>; Barr, Kevin <KBarr@blg.com>; Willms, Bradon <BWillms@blg.com>; Victor Kroeger <Victor.Kroeger@mnp.ca>; Karen Aylward <Karen.Aylward@mnp.ca>; Gibson, Krista <kgibson@osler.com>; Pratt, Elena <EPratt@osler.com>

Subject: FW: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al [BLG-DOCUMENTS.FID6659357]

[WARNING: EXTERNAL SENDER]

Hello Jon,

Pursuant to the attached Order, we write in respect of those actions set out at in the final paragraph of paragraph 4 (immediately before paragraph 5), namely: (a) Alberta Action No. 2003-08412, (b) Alberta Action No. 2003-07790, (c) Alberta Action No. 2003-08204 (collectively, the "Alberta Actions") and (d) Austin County Action No. 1:21-MC-495-RP, (e) United States Bankruptcy Court Chapter 11 Proceedings No. 20-10410-HCM and (f) Travis County Action No. Cause D-1-GN-19-007269 (collectively, the "US Actions"). (The Alberta Actions and the US Actions being referred to collectively as the "Actions".)

We would be grateful if you could, as soon as possible, provide us with the following:

1. Your advice with respect to whether your office is acting for any of the Respondents in any of the Actions;
2. If your office is not acting for the Respondents in any of the Actions, your advice with respect to who is acting for any of the Respondents in the Actions;
3. In particular, your advice as to the name and contact information for the lawyer(s) acting for any of the Respondents in the US Actions;
4. Copies of all pleadings, other court filings, and all file materials (including emails) which your office has in respect of the Actions;
5. With respect to any of the Alberta Actions on which your office is acting for any of the Respondents, your advice with respect to the current status of the action, the last step taken in the action, the next step which is to be taken in the action, and any pressing or urgent matters which require immediate attention in any of the Actions.

It might be most efficient if we could schedule a telephone call during which you could walk us through some of the foregoing and help bring us up to speed. Please let me know what timing would work for you.

I have copied by associate Krista Gibson on this email as she will be assisting with collecting and getting up to speed on all of this information. I have also copied by assistant Elena Pratt as she will coordinate the electronic transfer of file materials.

Thanks Jon. We look forward to hearing from you.

Regards,

The logo for the law firm Osler, consisting of the word "OSLER" in a bold, serif font.

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2
403.260.7000 main

403.260.7024 facsimile



From: CommercialCoordinator QBEdmonton <CommercialCoordinator.QBEdmonton@albertacourts.ca>
Sent: Thursday, November 04, 2021 2:25 PM
To: Dufault Brent <Brent.Dufault@albertacourts.ca>; RGurofsky@blg.com
Cc: SKim@blg.com; Jonathan Hillson <jon.hillson@dentons.com>; dstachnik@millerthomson.com; Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Subject: Re: Romspen Mortgage Limited Partnership et al v 3443 Zen Garden Limited Partnership et al [BLG-DOCUMENTS.FID6659357]

Good afternoon,
please find attached the order duly executed by the Honourable Mr. Justice N.J. Whitling.

Regards,

Brent Dufault

Commercial Duty Coordinator

Court of Queen's Bench - Alberta

Calgary Courts Centre

N24-47 601 - 5 Street SW

Calgary, AB T2P 5P7

Edmonton Email: CommercialCoordinator.QBEdmonton@albertacourts.ca

Calgary Email: CommercialCoordinator.QBCalgary@albertacourts.ca

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>>> "Gurofsky, Robyn" <RGurofsky@blg.com> Nov/04/2021 10:26 AM >>>

Brent,

In connection with the application before Justice Whitling this afternoon at 2:00 p.m., please find attached a consent order we intend to present to His Lordship, duly executed by Mr. Hillson as counsel to the receivership debtors and me as counsel to Romspen.

Kindly forward this to Justice Whitling in advance of the hearing. We will attend before him to speak to the consent order at 2:00 p.m. unless you tell us otherwise.

If you have any questions, please let me know.

Regards,



Robyn Gurofsky

Partner

T 403.232.9774 | RGurofsky@blg.com

Centennial Place, East Tower, 1900, 520 – 3rd Ave. SW, Calgary, AB, Canada T2P 0R3

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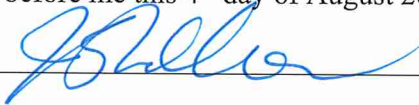
Borden Ladner Gervais LLP

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This is **Exhibit "U"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

DAVIS LLP
LEGAL ADVISORS SINCE 1892

FROM THE OFFICE OF Donald J. Wilson
DIRECT LINE 780.429.6817
DIRECT FAX 780.702.4366
E-MAIL dwillson@davis.ca

FILE NUMBER: 84703-00016

December 23, 2014

DELIVERED BY EMAIL

Bradley G. Nemetz, Q.C.
Bennett Jones LLP
4500 Bankers Hall East
855 2nd Street SW
Calgary, AB, T2P 4K7

Attention: Bradley G. Nemetz, Q.C.

Dear Brad:

**Re: Standstill Agreement between
Eco Industrial Business Park Inc., Mark Heck and Dentons Canada LLP**

We are solicitors for Eco Industrial Business Park Inc. ("Eco").

Eco has previously put Dentons Canada LLP ("**Dentons Canada**") on notice that Eco may pursue a claim against Dentons Canada, and more specifically, Mark Heck ("**Heck**"), formerly of Dentons Canada, and certain other lawyers with Dentons Canada, for, among other things, professional negligence relating to legal advice provided by Dentons Canada and Heck to Eco.

Eco hereby offers to enter into a standstill agreement (the "**Standstill Agreement**") with Heck and Dentons Canada, its partners and their respective directors, officers, employees, partners agents, Insurers, counsel, predecessors, successors, and assigns, with regard to the matters at Issue In Court of Queen's Bench of Alberta Action No. 1303 16983 (the "**Action**") and any and all claims that Eco may have against Heck or Dentons Canada, including, but not restricted to, the alleged negligent advice provided to Eco by Heck or Dentons Canada with respect of the following:

1. Amended and Restated Agreement of Purchase and Sale between Eco and Alberta Diluent Terminal Ltd. ("**ADT**"), dated February 8, 2013, and
2. Rail Line and Right of Way Agreement between Eco and ADT, dated May 31, 2014.

The terms and conditions of the Standstill Agreement are as follows:

1. Eco, Heck and Dentons Canada (each individually, a "**Party**", and collectively, the "**Parties**") wish to suspend the operation of any limitation period.

2. The Standstill Agreement shall become effective on and have an effective date of December 20, 2014 (the "Effective Date").
 3. The running of time with respect to any limitation period applicable to the Action and any and all claims arising out of facts related to the Action that may exist between Eco and Heck or Dentons Canada is hereby suspended from the Effective Date until 90 days after the termination of the Standstill Agreement by a Party in the manner specified herein.
 4. Where the running of time is postponed by the Standstill Agreement, the effect shall be that the days during which time is postponed shall not be taken into account in computing the date of which any step must be taken or the date on which a limitation period expires. Without limiting the generality of the foregoing, the passage of time while the Standstill Agreement is in effect shall not be included in the calculation of time under Rule 4.33 and 15.4 of the *Alberta Rules of Court* AR 124/2010 and the *Limitations Act*, RSA 2000, c L-12 (the "Limitation Period").
 5. A Party may, with 30 days written notice to counsel for the other Party, terminate the Standstill Agreement. Notice may be delivered by facsimile or e-mail to:
 - (a) Eco Industrial Business Park Inc.

c/o Davls LLP
Barristers and Solicitors
1201 Scotia Tower 2
Edmonton, AB, T5J 4E5
Attention: Donald J. Wilson
E-mail: dwilson@davls.ca
Fax: 780.428.1066;
 - (b) Mark Heck and Dentons Canada LLP

c/o Bennett Jones LLP
4500 Bankers Hall East
855 2nd Avenue SW
Calgary, AB, T2P 4K7
E-mail: nemetzb@bennettjones.com
Fax: 403.265.7219;
- and shall be deemed to have been received on the date that such notice is sent.
6. Upon termination of the Standstill Agreement and within a period of 90 days, a Party shall be at liberty to take steps in respect of the Action or commence a separate action. Such separate action shall, if filed within 90 days of termination of the Standstill Agreement shall be agreed by both parties to have been filed within the time prescribed by the *Limitation Act*.
 7. The Standstill Agreement is intended to alter legal relations as provided herein and be relied and acted upon by the Parties.
 8. The Parties agree that the Standstill Agreement is an agreement within the meaning of sections 7 and 9 of the *Limitations Act* and section 4.32 and 15.2 of the *Alberta Rules of Court*.


9. The Standstill Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.
10. The Standstill Agreement may be consented to in counterpart and endorsed by way of facsimile or e-mail signature and such consent shall be valid for all purposes.

Please indicate your consent to the terms of the above Standstill Agreement below and return a signed copy of this letter to my attention at your earliest convenience

STANDSTILL AGREEMENT CONSENTED TO BY:

ECO INDUSTRIAL BUSINESS PARK INC.

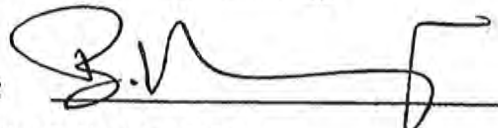
Consented to on

Per: 

Donald J. Wilson
Counsel for Eco Industrial Business Park Inc.

MARK HECK and DENTONS CANADA LLP

Consented to on

Per: 

Bradley G. Nemetz, Q.C.
Counsel for MARK HECK and DENTONS CANADA LLP

DAVIS LLP

Page 4 of 4

I trust the foregoing is in order, but please let me know if you have any questions or concerns.

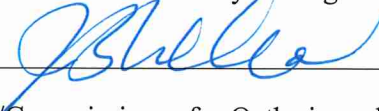
Sincerely,
DAVIS LLP
Per:

A handwritten signature in black ink, appearing to read "D. Wilson", written over the "Per:" line.

Donald J. Wilson

This is **Exhibit "V"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

AMENDED THIS 12 DAY OF Dec A.D. 2018
PURSUANT TO RULE UNDER ORDER-CONSENT DATE
Nov DAY OF 20 A.D. 2018



COURT FILE NUMBER 1303 16983

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) ECO-INDUSTRIAL BUSINESS PARK INC.

DEFENDANT(S) ALBERTA DILUENT TERMINAL LTD.

DOCUMENT AMENDED STATEMENT OF CLAIM

Clerk's Stamp
#
#
#

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

HUSTWICK PAYNE
Attention: Roderick C. Payne
#600 Ledgeview Business Centre
9707 - 110 Street
Edmonton, AB T5K 2L9
Ph. No.: 780.482-6555
Fax No.: 780.482.6613
File No.: 78867 RCP

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

The Parties

1. The Plaintiff, Eco-Industrial Business Park Inc. (hereafter referred to as "Eco"), formerly Worthington Business Park Inc., is a body corporate carrying on business pursuant to the laws of the Province of Alberta.

2. The Defendant, Alberta Diluent Terminal Ltd. (hereinafter referred to as "ADT"), is a body corporate carrying on business pursuant to the laws of the Province of Alberta.

The 2008 Access Agreement

3. In 2007, Eco purchased a large industrial park consisting of real property municipally described as 1250 Hayter Road, Edmonton, Alberta (the "Eco Lands").
4. Pursuant to an agreement for purchase and sale, dated March 11, 2008 (the "2008 Purchase and Sale Agreement"), Eco agreed to sell, transfer, and assign to ADT certain portions of the Eco Lands, including a subdivision of property legally defined as Plan 832 3217, Lot 2, containing 15.3 hectares more or less ("Lot 2").
5. In conjunction with the 2008 Purchase and Sale Agreement, Eco and ADT entered into a variety of collateral agreements, including a Rail Line and Right of Way Agreement, dated March 14, 2008 (the "2008 Access Agreement").
6. Under the terms of the 2008 Access Agreement, ADT agreed to and did grant to Eco:
 - (a) a right of way upon and over, and
 - (b) the non-exclusive right to usethe railway lines located on Lot 2 (the "Lot 2 Main Lines") for the purpose of allowing Eco to move railcars and associated vehicles from the Canadian National Railway rail yard located south and east of Lot 2 (the "CN Rail Yard") to trackage on the Eco Lands.
7. The Lot 2 Main Lines cross the main tract of Lot 2 (the "Main Tract") and connect to trackage on the Eco Lands.

The 2013 Access Agreement

8. Between 2012 and 2013, Eco was involved in a series of transactions in and around the Eco Lands.
9. Pursuant to an agreement for purchase and sale, dated February 8, 2013 (the "2013 Purchase and Sale Agreement"), Eco agreed to sell, transfer, and assign to ADT certain further portions of the Eco Lands, including the post subdivision remainder of Lot 2.
10. As late as December 21, 2012, the closing agenda of the 2013 Purchase and Sale Agreement referred to a series of collateral agreements to the 2013 Purchase and Sale Agreement. Schedule F on the agenda referred to a collateral agreement Amending the 2008 Access Agreement.
11. On May 31, 2013, as part of a variety of collateral agreements, Eco and ADT entered into a new Rail Line and Right of Way Agreement (the "2013 Access Agreement").
12. It was an express term of the 2013 Access Agreement that it terminate the 2008 Access Agreement.
13. Under the 2013 Access Agreement, ADT agreed to grant to Eco:

- (a) a right of way upon and over, and
- (b) the non-exclusive right to use

the railway lines located within a narrow strip of land extending east from the Main Tract of Lot 2 (the "Lot 2 Panhandle Rail Lines") for the purpose of moving railcars and associated vehicles from the CN Rail Yard to trackage on the Eco Lands.

- 14. The Lot 2 Panhandle Rail Lines terminate on the Main Tract and do not connect to trackage on the Eco Lands.
- 15. Prior to the execution of the 2013 Purchase and Sale Agreement, Eco advised ADT and maintains that at all material times, it intended that the 2013 Access Agreement would provide Eco with full access to and non-exclusive use of the Lot 2 Main Lines in order to connect to trackage on the Eco Lands.
- 16. In or about October of 2016, after closing of the 2013 Purchase and Sale Agreement and consistent with earlier planning, Lot 2 was further subdivided. The majority of Lot 2 was incorporated into a subdivision plan which was registered at the Land Titles Office as Registration No. 162 342 137 on the 5th day of December, 2016 (the "Subdivision Plan").
- 17. Pursuant to the Subdivision Plan, the 2013 Access Agreement and Eco's claim to an interest in land now relates to the railway line lying within the subdivided land legally described as:

PLAN 1624164

BLOCK 1

LOT 4

CONTAINING 32.5 HECTARES (80.31 ACRES) MORE OR LESS

EXCEPTING THEREOUT ALL MINES AND MINERALS

The Terminal

- 18. In July 2013, Eco began constructing a crude-by-rail terminal (the "Terminal") on Eco Lands. Preliminary steps for constructing the Terminal occurred in late 2012.
- 19. Once completed, the Terminal will support and transport up to 60,000 barrels of oil per day on rail cars and associated vehicles from the CN Rail Yard located south and east of Lot 2 to trackage on the Eco Lands.
- 20. Eco has reached tentative arrangements with a number of parties, including producers and refiners, and planned to have the Terminal open and operational by December 2013.
- 21. At all material times, Eco required access to and non-exclusive use of the Lot 2 Main Lines to open and operate the Terminal.

22. In October 2013, ADT, for the first time, advised Eco of its position that the 2013 Access Agreement does not provide Eco with access to and non-exclusive use of the Lot 2 Main Lines in order to connect to trackage on the Eco Lands.
23. As a result of ADT's advice and actions, Eco cannot open and operate the Terminal.
24. As a result of ADT's advice and actions Eco lost any chance of finalizing arrangements with third parties including producers and refiners and, as of the date of issuance of this amended claim, has been unable to open and operate the Terminal.

No Consensus Ad Idem

25. The parties to the 2013 Purchase and Sale Agreement did not reach *consensus ad idem* as to the terms of the 2013 Access Agreement, specifically with respect to access to and non-exclusive use of the Lot 2 Main Lines. In contrast to ADT, at all material times, Eco contemplated an agreement that would allow Eco to cross the Main Tract for the purpose of moving rail cars and associated vehicles from the CN Rail Yard located south and east of Lot 2, across the Lot 2 Panhandle and the Main Tract, to trackage on the Eco Lands.
26. As a result of a lack of consensus by the parties, the 2013 Access Agreement is not a legally binding contract and the terms of the 2008 Access Agreement continue to govern the parties and continue to provide Eco with access to and non-exclusive use of the Lot 2 Main Lines.

Breach of Contract

27. In the alternative, ADT has breached the terms and conditions of the 2013 Access Agreement.
28. The 2013 Access Agreement specifically grants Eco access to non-exclusive use of the Lot 2 Panhandle Rail Lines for the explicit purpose of moving railcars and associated vehicles from the CN Rail Yard to trackage on the Eco Lands.
29. Notwithstanding the expressly stated purpose of the 2013 Access Agreement, ADT has withheld access to and use of the Lot 2 Main Lines on the Main Tract. As a result, Eco is unable to cross the Main Tract and connect to trackage on the Eco Lands.
30. As a result, Eco is unable, in direct contradiction of the expressly stated purpose of the 2013 Access Agreement, to move railcars and associated vehicles from the CN Rail Yard to trackage on the Eco Lands.
31. Any interpretation of the 2013 Access Agreement which does not allow Eco to cross the Main Track and connect to trackage on Eco Lands results in a commercially unreasonable outcome. At no time did Eco contemplate an agreement whereby it would be unable to connect the Eco Lands to the CN Rail Yard across the Main Track.

Implied Easement

32. In the further alternative, Eco was granted, acquired or is otherwise entitled to an implied easement, consistent with necessity and/or the intentions of the parties, that Eco would have access to and non-exclusive use of the Lot 2 Main Lines in order cross the Main Tract and connect to trackage on the Eco Lands.
33. The Plaintiff pleads and relies upon the *Land Titles Act* R.S.A 2000 c. L-4, s. 65(1).

Right of Way

34. In the further alternative, Eco States it has a right of way over the Lot 2 Main Lines pursuant to:
- i) previous right of way agreements that still exist including, but not limited to:
 - a) the 2008 Access Agreement;
 - b) oral right of way agreement(s) made between Eco and ADT from and after April 2012 to October 2013; or
 - c) the *Land Titles Act* Easement made between Her Majesty, in Right of the Province of Alberta, as represented by the Minister of Transportation and Utilities and Celanese Canada Inc. on June 3, 1992;
 - ii) the express wording of the 2013 Access Agreement; or
 - iii) by operation of the common law, the law of equity or statutory law, including, but not limited to:
 - a) section 61 of the *Land Titles Act* R.S.A. 2000 c. L-4;
 - b) a common law right of way of necessity as:
 - i) there is either no alternative way of accessing the Eco Lands from the CN Rail Yard, or;
 - ii) the right of way over the Lot Main Line is necessary for the reasonable use of Eco;
 - c) a common law right of way that arises as a consequence of apparent accommodation by ADT; or
 - d) an equitable right of way created by proprietary estoppel

Unilateral Mistake

35. In the further alternative, the 2013 Access Agreement contains a mistake.

36. During course of negotiations, the parties expressly agreed that Eco would have access to and non-exclusive use of the Lot 2 Main Lines as contemplated under the 2008 Access Agreement.
37. Eco made known to ADT the intended purpose of the 2013 Access Agreement.
38. Eco also made known to ADT that it was building the Terminal and required access to the CN Rail Yard.
39. Notwithstanding the parties' prior agreement, the term "Lot 2 Panhandle Rail Lines" was used in lieu of the term "Lot 2 Main Lines" in the 2013 Access Agreement.
40. Eco executed the 2013 Access Agreement in the belief that the 2013 Access Agreement provided Eco with access to and non-exclusive use of the Lot 2 Main Lines, not just the Lot 2 Panhandle Rail Lines.
41. At all material times, ADT knew or ought to have known that the 2013 Access Agreement did not comply with the explicitly agreed to purpose of the 2013 Access Agreement and did not provide Eco with access to and non-exclusive use of the Lot 2 main Lines.
42. Notwithstanding being specifically advised that Eco intended to build the Terminal and required access to and non-exclusive use of the Lot 2 Main Lines, ADT took no steps to correct a clear mistake.
43. In all of the circumstances, it would be inequitable to enforce the 2013 Access Agreement and Eco seeks rectification of the same.

Proprietary Estoppel

44. In the further alternative, ADT is proprietary estopped from denying Eco access to and non-exclusive use of the Lot 2 Main Lines.
45. At all material times, ADT encouraged Eco's belief that the 2013 Access Agreement serviced the Eco Lands and granted Eco access to and non-exclusive use of the Lot 2 RAILS Lines as contemplated by the 2008 Access Agreement.
46. In reliance on the aforesaid belief and with ADT having knowledge of Eco's belief, Eco entered into the 2013 Access Agreement to Eco's detriment.
47. Contrary to Eco's belief, ADT has denied Eco access to and non-exclusive use of the Lot 2 Main Lines.

Damages

48. As a result of the conduct of the Defendants as set out herein, Eco has and continues to suffer significant financial losses and damages, which include, but are not limited to the following:
 - (a) Loss of income;
 - (i) Eco will not be able to commence, expand or continue in the crude-by-rail business;

- (ii) Eco will not be able to enter any logistics business that relies on railway access
- (iii) Eco has and continues to lose leasing revenue as it is unable to lease the land to parties who require rail
- (b) Loss of business reputation;
- (c) Loss of competitive market position; and
- (d) Loss of value for resale of the Eco Lands

Remedy sought:

- 49. A Declaration that the 2008 Access Agreement shall continue to govern the parties in full force and effect;
- 50. An order directing specific performance of the obligations contained in the 2008 Access Agreement; or
- 51. An Order rescinding the 2013 Access Agreement; or
- 52. A Declaration that Eco is entitled to a right of way and the right to use the Lot 2 Main Lines; or
- 53. A permanent Mandatory Injunction enjoining ADT from preventing Eco from access to and non-exclusive use of the Lot 2 main Lines for the purpose of moving railcars and associated vehicles from the CN Rail Yard to trackage on Eco Lands;
- 54. Judgement against ADT for \$100,000,000.00, or such other amount as shall be proven at trial;
- 55. In the alternative, an Order that the 2013 Access Agreement be rectified so to embody the expressly stated purpose of the agreement made between the parties or their true intentions at the time of exercising the same by substituting the term "Lot 2 Main Lines" for the term "Lot 2 Panhandle Rail Lines", and to have the 2013 Access Agreement treated as being so rectified;
- 56. Judgement for costs of this action on a solicitor and client basis; and
- 57. Such further and other relief as to this Honourable Court may seem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

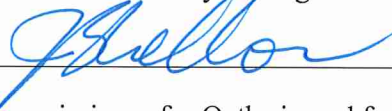
You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit “W”** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

THIS CONSULTING AGREEMENT made this 1st day of January, 2011.

BETWEEN:

SYMMETRY ASSET MANAGEMENT INC.
an Alberta corporation (hereinafter referred to as the —Consultant“),

-and

ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC.
an Alberta corporation (hereinafter referred to as the —Corporation“)

WHEREAS the Consultant and Corporation wish to enter into an agreement under which the Corporation shall retain the services of the Consultant to provide administrative, operational, financial and strategic advice and services and other matters as agreed to from time to time relating to the business intended to be carried on by the Corporation.

NOW THEREFORE the parties in consideration of the premises herein and other good and valuable consideration (the receipt of which is hereby acknowledged) agree as follows:

1. CONSULTING

The Consultant agrees that, for the term and upon payment of the consulting fees as hereinafter set out, the Consultant will provide to the Corporation:

- (1) administrative services required by the Corporation in furtherance of its business which shall include, but are not limited to, internal bookkeeping, reception, telephone answering, human resources, tax compliance, filing, word processing, computer maintenance and other administrative responsibilities as agreed to from time to time;
- (2) advice or services relating to the operational activities of the Corporation which shall include, but are not limited to, acquisition of real property, representation to municipal authorities, development, subdivision, construction, leasing, sales and all other aspects of a real property development activities not mentioned above;
- (3) financial advice and services in terms of accounting, budgeting, capital asset

financing, operational financing, negotiating financing, financial reporting including a detailed review and discussion of internal and external financial reports;

(4) marketing property for sale or lease including negotiations with prospective tenants or purchasers, advertising, contract review, coordination of customers and tenants; and

(5) strategic advice including recommendations of real property acquisition, development, financing, sales and marketing etc.

1.2 The Consultant agrees to provide those persons, employees or agents who are capable of providing the services as set out and as required by the Corporation.

2. TERM

2.1 The term of this agreement shall commence on the 1st day of September, 2009, and terminate on one (1) month written notice by either party.

3. CONSULTING FEE

3.1 The Corporation agrees to pay to the Consultant a Consulting Fee the amount of which shall be as agreed to from time to time, but shall consist of three components;

(1) a property management fee calculated as 6% of the annual gross revenues of the Corporation as reported in its annual financial statements;

(2) a sales commission fee calculated as 5% of the gross selling price of any property sold by the Corporation as reported in its annual financial statements; and

(3) in consideration of the unique skills, entrepreneurial skills, connections, experience and special know-how of the Consultant, a fee equal to 30.5% of the gross profit (if any) of the Corporation as reported in the as reported in its annual financial statements of the Corporation annually.

3.2 The Consultant acknowledges and agrees that the Consulting Fee paid shall cover all reasonable costs incurred by the Consultant in providing his services hereunder. In the event that any extraordinary travel costs or other extraordinary costs are to be incurred in providing the consulting or other services, the Consultant shall notify the Corporation and obtain prior written or verbal approval to incur such costs, which costs shall be reimbursed by the Corporation.

3.3 The Consultant agrees to verify all expenses requiring reimbursement from the Corporation and agrees to submit by invoice to the Corporation, no later than

30 days of the end of the fiscal period of the Corporation, a detailed statement of all such expenses. The Corporation shall pay for all expenses and costs properly submitted within 30 days of receipt of invoices from the Consultant.

3.4 The Consultant agrees that upon 30 days prior notice, the Corporation may inspect the records and accounts of the Consultant and the Consultant agrees that it shall keep proper records including proper invoices and receipts for expenses incurred in the provision of services hereunder.

3.5 The Corporation shall forthwith provide the Consultant with draft financial statements and related corporate income tax returns within 5 business days of such items being available following the Corporations fiscal year-end. The Consultant shall prepare an account for consulting fees within 60 days of the Corporation providing its externally prepared annual financial statements and related corporate income tax returns.

3.6 The Corporation agrees that the goods and services tax shall be collected by the Consultant and remitted to the Canada Revenue Agency by the Consultant if and when required. All expenses reimbursed to the Consultant which contain the payment of goods and services tax shall identify the amount of such goods and services tax paid together with registered number of the person to whom such goods and services taxes were paid in order that the Corporation can recover such costs as input tax credits. In the event that that information is not available, the Corporation shall not be required to reimburse the Consultant for any goods and services taxes paid.

4. TERMINATION

4.1 This Agreement may be terminated upon the happening of any of the following events:

(1) either party being adjudged bankrupt;

(2) either party being guilty of any default or misconduct or breach or nonobservance of any of the stipulations contained herein;

(3) if the Consultant unreasonably refuses or fails to provide any consulting services as may be reasonably required by the Corporation; and

(4) if the Consultant or his employees are guilty of conduct detrimental to the business of the Corporation.

5. GENERAL

5.1 The Consultant shall not be liable for any interruption of service to be provided hereunder due to acts of God or any other cause beyond the control of the

Consultant, and shall not be required to supply any service to the Corporation while interruption of service due to any such cause shall continue.

5.2 This Agreement may not be assigned by the Corporation without the prior written consent of the Consultant.

5.3 Any notice required or contemplated hereunder shall be sufficiently given if delivered to either party at the address set out above and any notice so mailed by registered mail shall be conclusively deemed to have been given and received on the date it is so delivered or seven (7) days following the date of mailing. Any party may change its address at any time by notice in writing to the other party.

5.4 This Agreement constitutes the entire contract between the Consultant and the Corporation and no agreement, understanding, representation or warranty, either express or implied, other as contained herein and whether given heretofore or given hereafter, shall in any way change, vary, alter, add to or modify the terms hereof.

5.5 The Corporation agrees that any waiver of default or defaults by the Consultant hereunder shall not constitute a waiver of any subsequent default or defaults or be construed as a representation that the Consultant has waived any subsequent default or defaults.

5.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

5.7 Time shall be of the essence of this Agreement.

5.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, successors and assigns where permitted hereunder.

IN WITNESS WHEREOF the parties hereunto have set their hands and seals or affixed their corporate seals duly attested to by the proper officers in that behalf all as of the day and year first above written.

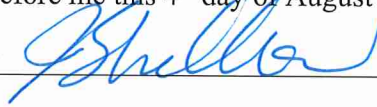
SYMMETRY ASSET MANAGEMENT INC.

Per: _____
Dan White

ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC.

Per: _____
Mohammed Farooq

This is **Exhibit "X"** to the Affidavit of Victor P. Kroeger
sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025



Writer's Direct Line: (780) 969-1400
 Writer's Email: karen.aylward@mnp.ca

March 5, 2021

VIA EMAIL: david@gamages.ca

Absolute Environmental Waste Management Inc

Attention: David Gamage

Dear Mr. Gamage:

RE: Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc. ("Eco"), Absolute Energy Resources Inc., ("Absolute Energy") and Absolute Environmental Waste Management Inc. ("AEWM") (collectively referred to as the "Companies").

We confirm receipt of the financial information you recently provided in respect of the financial affairs of the Companies. Based on our review of the information, we require further clarification and/or information.

We require clarification around the calculation and payment of fees to Symmetry Asset Management Inc. ("**Symmetry**") pursuant to the management agreement between Symmetry and AEWM which was entered into in or around January 2011 (the "**Management Agreement**").

Based on the terms of the Management Agreement, consulting fees payable to Symmetry are to be calculated on the following basis:

- a. A 6% property management fee calculated based on annual gross revenues of AEWM as reported in its annual financial statements;
- b. A sale commission fee of 5% of the gross selling price of any property sold by AEWN as reported in its annual financial statements; and,
- c. A consultant fee equal to 30.5% of the gross profit (if any) of AEWM as reported in its annual financial statements (the "Consultant Fees").

We have not been provided with AEWM's annual financial statements for 2020 but based on the transaction ledger in respect of the amounts due by AEWM to Symmetry (a copy of which is attached as Schedule A), and the income statements for the months of August through January, 2021 (the "**Period**") that you provided, we have re-calculated the amounts owed to Symmetry as follows:

Note 1

	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Total
Gross Monthly Revenue	111,376.30	82,980.08	96,965.22	65,390.50	25,604.43	51,251.25	433,567.78
Expenses	46,969.64	49,661.31	13,864.07	19,985.01	9,096.82	22,506.09	162,082.94
Net Income	64,406.66	33,318.77	83,101.15	45,405.49	16,507.61	28,745.16	271,484.84

Calculated Amounts Due (Monitor's Calculations):

Symmetry Consultant Fee (30.5%) (Note 2)	19,644.03	10,162.22	25,345.85	13,848.67	5,034.82	8,767.27	82,802.88
Management Fee (Note 3)	6,682.58	4,978.80	5,817.91	3,923.43	1,536.27	3,075.08	26,014.07
Subtotal	26,326.61	15,141.03	31,163.76	17,772.10	6,571.09	11,842.35	108,816.94



Note 1 – the income statement for the Dec 16 - Dec 31, 2020 period has not yet provided so amounts only represent partial month.

Note 2 - Calculated as 30.5% of the Net Income.

Note 3 - Calculated as 6% of the Gross Revenue.

Based the information we have been provided, we calculated the fees owed to Symmetry over the Period to be \$108,816.

AEWM and/or Symmetry, via the Symmetry transaction ledger provided, has calculated the amounts owed to Symmetry over the same Period as follows:

Company Calculations	Note 5		Note 5		Note 6		
Symmetry Consultant Fee (30.5%) (Note 4)	33,969.77	25,308.92	29,574.39	19,944.10	7,809.35	15,631.63	132,238.16
Management Fee (Note 4)	6,682.58	4,978.80	5,817.91	3,923.43	1,536.27	3,075.08	26,014.06
Subtotal	40,652.35	30,287.72	35,392.30	23,867.53	9,345.62	18,706.71	158,252.22

Note 4 - Based on Symmetry Ledger document provided by Company.

Note 5 - Symmetry Ledger not provided for this period but calculated using Company's method.

Note 6 – AEWM and/or Symmetry has not claimed commissions related to the sale of property over the Period.

Based on the information provided it appears that AEWM and/or Symmetry is calculating the Consultant Fee based on gross revenue rather than gross profit as stipulated in the Management Agreement.

In addition to the above, we note that during the Period, a sum of \$334,500 has been transferred from AEWM to Symmetry. This is far in excess of the calculated fees owing under either scenario outlined above.

Please provide your further comments and detail on the following:

- Clarification as to why fees are being calculated based on gross revenue rather than on annual gross profit as stipulated in the Management Agreement;
- Confirmation that the Income Statements which were provided to us for AEWN are correct as they show very little expense transaction detail;
- Support for the amount that Symmetry claims it is owed by AEWN. We have, on numerous occasions, made requests for copies of all invoices supporting the debt which Symmetry claims to be owed by AEWM. As of the date of this letter we have not been provided with those invoices. The Management Agreement requires Symmetry to provide the invoice detail to AEWM as support for the amounts outstanding. Accordingly, we must insist upon being provided with copies of all such invoices, or an explanation as to why such invoices have not been provided and why amounts have been paid by AEWN to Symmetry in the absence of such invoices having been provided.

In addition to the issues described with respect to the calculation of the Symmetry fees, there remains certain information requests which we have previously made of the Companies which, as of the date of this letter, remain outstanding. These outstanding information requests are summarized as follows:

- Confirmation as to whether the Companies have provided us with a fulsome asset listing in respect of the Companies' assets;
- Details and explanations as to why the accounts payable listing for AEWM continues to grow, with a majority of accounts aged beyond 90 days, while at the same time revenues are declining;

- Copies of bank statements for TD and Scotiabank. We understand that you may not have direct access to these accounts but as the Companies' representative it is your responsibility to retrieve these records from the appropriate party and provide to us;
- A list of tenants currently renting land at the Eco Lands together with details and records related to the leases;
- Details as to how aged accounts receivable are to be handled. Specifically, with respect to First Call Energy, Oil City Energy and Sunshine Oilsands, have further collection efforts been undertaken or is there any intention to write the aged accounts receivable off as bad debt?
- Confirmation as to the list of current employees and whether each of these individuals is an employee or a contractor; and,
- Recent statements of account for Canada Revenue Agency for those Companies that are CRA registrants (including GST, payroll and corporate tax accounts).

Lastly, please provide confirmation that the T4's for 2020 have been prepared and provided to the employees of AEW. As confirmation, please provide us with copies of the T4's and the associated T4 Summary.

Given the quantum of funds that have been transferred to Symmetry and the length of time that the information above has been outstanding, we require a response to the contents of this letter by no later than 12:00 PM on Wednesday, March 10, 2021.

Yours truly,

MNP Ltd.

In its capacity as Interim Monitor of the affairs of

Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc.

And not in its personal capacity



Per: Karen Aylward, CIRP, LIT
Vice President



Karen Aylward

From: David Gamage <dgamage@symmetryinc.com>
Sent: March 12, 2021 6:06 PM
To: Karen Aylward; Victor Kroeger
Cc: Dentons Canada LLP
Subject: Response to your letter of March 5, 2021
Attachments: MANAGEMENT FEE AGREEMENT. January 1, 2011.pdf; SUMMARY.pdf; PastedGraphic-1.tiff

CAUTION: This email originated from outside of the MNP network. Be cautious of any embedded links and/or attachments.
MISE EN GARDE: Ce courriel ne provient pas du réseau de MNP. Méfiez-vous des liens ou pièces jointes qu'il pourrait contenir.

Karen,

Thank you for your letter of March 5, 2021. I will follow your letter to answer the questions the best I can. I am quite frustrated pushing to get this information accumulated and presented. Symmetry's admin staff (all three) are down with the flue. I guess there is one bright side to self isolating for most of a year now.

Clarification as to why fees are being calculated based on the gross revenue rather than on annual gross profits as stipulated in the Management Agreement.

- I have said the company would be able to produce a signed copy of the agreement. To date we have not been able to find it. Dan is convinced that either Adam or Karin removed the document as part of the part of the documents stolen from the company and supplied illegally to Romspen when Adam was trying to burry the company. Dan is willing to attest to the correct document if necessary. I have attached a copy of that agreement dated September 1, 2011.
-
-

Confirmation that the income statements which were provided to us for AEWM are correct as they show very little expense transaction details.

- The statements provided to date are interim monthly statements for the transactions paid directly by Absolute. There are many more expenses paid by Symmetry as asset manager for Absolute. Those expenses are being sorted now between Symmetry, Absolute and Eco. We will be providing detailed monthly invoices from Symmetry to the two companies in the next few days.
- An Accountant will never say the financial statements are correct. Rather they will be a reasonable representation of the companies financial position.

Support for the amount that Symmetry claims it is owed by AEWM. We have, on numerous occasions, made requests for copies of all invoices supporting the debt which Symmetry claims to be owned by AEWM. As of the date of this letter we have not been provided with those invoices. The Management Agreement requires Symmetry to provide the invoice details to AEWM as support for the amounts outstanding. Accordingly, we must insist upon being provided with copies of all such invoices, or an explanation as to why such invoices hav not been provided and why amounts have been paid by AEWM to Symmetry in the absence of such invoices having been provided.

- Please see the answer provided above. Detailed invoices from Symmetry to Absolute and Eco will be provided and booked in the next few days.
- As written in previous emails, historically the relationship between the two companies have been far more casual, fees were charged more according to a tax minimization plan rather than an arms length asset management arrangement. In light of the current situation, you are correct, the invoices must be created and charged on a more arms length type of arrangement.
- Dan has urged me to attach the Romspen management agreements applied to the Austin Project back in the day as a comparison to show how reasonable the Symmetry agreement is. That would only inflammatory and unnecessary at this time.
- Back up to the Symmetry draws was to have been provided by now. I can assure you the skeletal management team is doing its best in the circumstances. When Dan interested management to Adam this was a thriving business with millions in annual revenue. Adam proceeded to get rid of the companies core team including well management, business development, accounting and engineering for the company and thereby proceeded to crucify a business that took years to build all within a matter of months. Dan has had to adapt the business to withstand the current downturn and again set to work building the business back again. At the same time the companies have to deal with a monitor installed by Romspen. Dan is strongly of the opinion that Adam with his right hand Karin Dumler set about to bring the company to its knees in concert with Romspen in a global plan to take all of Dan's assets. Dan is a fighter, and although a little chaotic at points, the business will be rebuilt, debts settled and stability reinstated to Dan's benefit.

Confirmation as to whether the Companies have provided a fulsome asset listing in respect of the Companies assets.

- Firstly I can confirm the assets of land and building along with the wells are the property of Eco Industrial. Some of the well makeovers were historically booked in Absolute as a tenant improvement but on the direction of Adam Zarahshani those assets were moved to Eco as the well owner. For clarity the wells themselves were never owned by Absolute, always Eco. Symmetry owns its administrative equipment required for asset management.
- I have asked James, the well operator to please supply me with more pictures of the well heads, tanks and shakes. I did expect to have them for this submission. These are fixed in place fixtures. The expensive well casing is of course not photographical in that it is underground going to the formation some 1600 meters down.
- I have supplied you with the cities tax drawings delineating the various parcels of land owned by Eco at the park. Some of these parcels have buildings on them, however, I do not consider them to be assets, rather liabilities. I now understand Dan has finally plans to remove those buildings so the land can be properly presented for lease or sale.
- I have supplied you with pictures of the few movable assets of Eco including the safety truck, a generator with light stand etc. Those pictures are supplemented with pictures of the cereal numbers or in the case of the truck, the vin number.

Details and explanations as to why the accounts payable listing for AEWM continues to grow, with the majority of the accounts aged beyond 90 days, while at the same time the revenues are declining.

- Firstly the accounts payable are declining. There were some aged AP going back to Adam and Gary's tenure. Many of these costs were not warranted and needed to be negotiated. Symmetry has been working with the suppliers to correct and pay the billings and thereby correct the AP listing. That list will be supplied next week.
- Revenues for Absolute are cyclical. Revenues will traditionally fall of the winter when the ground is frozen. Remember, AEWM business is to dispose of contaminated water, mostly from the oil patch. That water is frozen over the cold months therefore reducing revenues. Once the thaw happens in Northern Alberta the revenues pick up again.

Copies of bank statements for TD and Scotiabank. We understand that you may not have direct access to these accounts but as the companies representative it is your responsibility to retrieve these records from the appropriate party and provide to us.

- The tone of this question is combative and not appreciated. I am acting as support for the companies to help through these challenging times, Dentons are the representative. I have checked by bag of tricks and unfortunately I do not possess a magic wand. When Dan appointed Adam and Gary to run these companies he handed over signing authority to the accounts to these gentlemen. Since, he has personally attended the banks asking for access and copies of the requested bank accounts. The banks have told him that he is not a signatory and therefore is not entitled to the statements.
- Amerdeep and Leticia continue to look for these documents. To properly understand the grief the employees are going through trying to retrieve this information, firstly, Symmetry did religiously keep all records from operations of the various companies going back to 1998. Then, Adam Zarafshani had a crew come into the building where all records were kept, and clean out the buildings. Not just old files, but everything. Files, filing cabinets, flooring, ceilings, lights and light switches, everything. When questioned about it, he said his workers had not properly understood his instructions and obviously gone too far. Subsequent to that, Adams assistant Karin Dumler has been caught removing documents from the company. Even more surprising is that she then supplied those stolen documents to Romspen. That whole story stinks. Then Dan brought in Gary Vanderpol, an old friend to help straighten things out. Gary continued with the "clean up". This time he sold off a sizeable amount of scrap at the Park. Scrap has a value. Unfortunately the value did not go to the companies. Because we do not have records of these transactions, only patches of dirt where the scarp used to be, we can not say if others profited from the scrap removal or if they did, how much.
- If you have a magic wand, may I borrow it. Otherwise, we are doing our best. I am aware of responsibilities and fiduciary duties and continue to conduct myself accordingly.

A list of tenants currently renting land at the Eco Lands together with details and records related to the leases.

- Documents to follow next week with the staff is back.

Details of how aged accounts receivable are to be handled. Specifically, with respect to First Call Energy, Oil City Energy and Sunshine Oilsands, have further collectors efforts been undertaken or is there any intention to write the aged accounts receivable off as bad debts.

- All of the above files are currently with James Diebert at Hustwick Payne and collection efforts are underway. James's last email was:
 - *Good morning Leticia*

Sorry for the late response – I have been out of the office.

There are no updates on any of the matters. Courts are just reopening today so hopefully there is some movement soon on the Court's getting us our upcoming dates on all of the matters

- This message is from a couple weeks ago. I will follow up to see where the files are.

Confirmation as to the list of current employees and whether each of these individuals is an employee or contractor.

- James Irving - employee
- Pat Troywalchuck - employee

Recent statements of accounts for Canada Revenue Agency for those Companies that are CRA registrants (including GST, payroll, and corporate tax accounts.)

- T4 summary
 -
 -
 - This is still being analyzed but it is filed. There were payments that Gary reported as make but Amardeep can not identify them yet. All filings during the current administration were made in full and on time.
 - GST report to follow next week when the administration staff are back.

Lastly, please provide confirmation that the T4's for 2020 have been prepared and provided to the employees of AEWM. As confirmation, please provide us with copies of the T4's and the associated T4 Summary.

- I can confirm the T4's have been completed and supplied to the employees. The T4 Summary is attached to the previous questions information. I will check with the corporate lawyers but I do not believe I can produce copies of the T4s to you. They are confidential information and protected by PIPEDA.

Sincerely,

David Gamage, CPA, CGA
C. 780-901-1518 E. dgamage@symmetryinc.com

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Please note that errors can occur in electronically transmitted materials. We do not accept liability for any such errors. If verification is required please ask for a hard copy.

Karen Aylward

From: Karen Aylward
Sent: July 6, 2021 1:54 PM
To: David Gamage
Cc: Victor Kroeger
Subject: RE: Absolute et al - Monitoring info

Hello David,

I am circling back again regarding the overdue financial information. I would appreciate the courtesy of a reply to my email. At a minimum, please confirm whether the contact for Absolute has changed and if I should be reaching out to someone else.

Thanks.

Karen Aylward, CIRP, LIT
VICE PRESIDENT

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From: Karen Aylward
Sent: June 15, 2021 10:56 AM
To: David Gamage <dgamage@symmetryinc.com>
Cc: Victor Kroeger <Victor.Kroeger@mnp.ca>
Subject: RE: Absolute et al - Monitoring info

Hello David,

Can you please confirm whether or not you are still the point of contact for us to receive financial information on this matter? If not, can you point me to whom I should be contacting and, if so, please confirm when I should expect receipt of the requested information.

Thank you.

Karen Aylward, CIRP, LIT
VICE PRESIDENT

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From: Karen Aylward
Sent: June 10, 2021 11:10 AM
To: David Gamage <[dgame@symmetryinc.com](mailto:damage@symmetryinc.com)>
Cc: Victor Kroeger <Victor.Kroeger@mnp.ca>
Subject: RE: Absolute et al - Monitoring info

Hi David,

I am following up on this again. Can you please forward all the outstanding monitoring information to my office.

Thanks,

Karen Aylward, CIRP, LIT
VICE PRESIDENT

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From: Karen Aylward
Sent: June 1, 2021 2:33 PM
To: David Gamage <[dgame@symmetryinc.com](mailto:damage@symmetryinc.com)>
Subject: Absolute et al - Monitoring info

Hi David,

Could you please send me the financial reports from April 15 through May 31 ASAP?

Thanks,

Karen Aylward, CIRP, LIT
VICE PRESIDENT

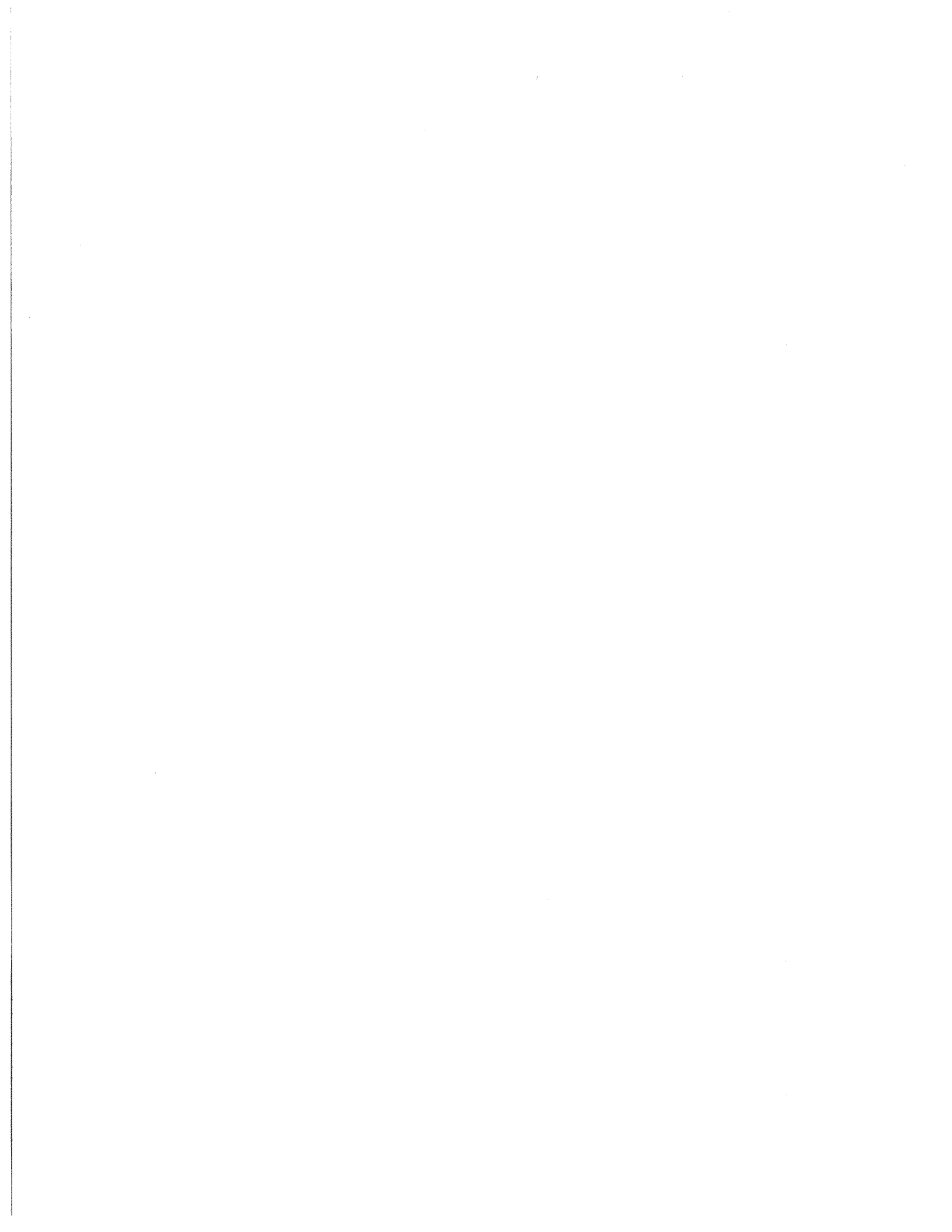
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Karen Aylward

From: Karen Aylward
Sent: August 11, 2021 2:25 PM
To: David Gamage
Cc: Victor Kroeger
Subject: RE: Absolute et al - Monitoring info

Hi David,

I wanted to follow up on the July information as well as a few other items that remain outstanding from prior correspondence:

1. Monthly detailed Symmetry reports which include amounts paid by Symmetry on behalf of AEWM and ECO;
2. Detailed monthly invoices for Symmetry Management fees;
3. updated AP listing (per your recent comments);
4. Update on AR collections from aged AR – has there been any settlement or collections?
5. CRA statements showing balances for payroll and GST for each of AEWM and ECO.

Could you also confirm whether you are no longer using the older CIBC accounts for either of ECO or AEWM? It would be best if you could forward the applicable bank statements from March through now so we can verify that independently.

Thanks,

Karen Aylward, CIRP, LIT
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From: Karen Aylward
Sent: August 5, 2021 12:55 PM
To: David Gamage <dgamage@symmetryinc.com>
Subject: RE: Absolute et al - Monitoring info

Hi David,

I am going through this data - could you also please send me July's information so I can review that as well?

You also advised that there was some clean up needed on the AP – has this been done and if so, could you send the updated list?

Thanks,

Karen Aylward, CIRP, LIT
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From: David Gamage <dgamage@symmetryinc.com>
Sent: July 6, 2021 7:22 PM
To: Karen Aylward <Karen.Aylward@mnp.ca>
Subject: Re: Absolute et al - Monitoring info

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Karen Aylward

From: David Gamage <dgamage@symmetryinc.com>
Sent: October 6, 2021 11:16 AM
To: Karen Aylward
Subject: Re: Absolute et al - Additional Information Required

CAUTION: This email originated from outside of the MNP network. Be cautious of any embedded links and/or attachments.
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Please see below.

On Oct 6, 2021, at 9:49 AM, Karen Aylward <Karen.Aylward@mnp.ca> wrote:

Hello David,

I have not received a reply to my email below. Could you tell me when the requested information will be provided?

Also, I am going to be attending the site today. Is there anything I should be aware of in advance of that visit? Is there a person on site I can speak with?

I don't think there will be anyone there today. I will ask Dan when someone from Symmetry will be there.

Thanks.

Karen Aylward, CIRP, LIT <image006.jpg>
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For relevant and up-to-date information, visit our **[COVID-19 Business Advice Centre](#)** on our website. You will find timely updates on Government regulations, tax information, advice for employers and our continued response to this evolving circumstance.

From: Karen Aylward
Sent: September 29, 2021 9:13 AM
To: David Gamage <damage@symmetryinc.com>
Cc: Victor Kroeger <Victor.Kroeger@mnp.ca>
Subject: Absolute et al - Additional Information Required

Hi David,

In light of your email from September 27, I wanted to send a follow up email for additional information on the shut down that you've referenced.

- When did the wells originally shut down?

The beginning of July.

-
- Is this for regular maintenance or is there a broader issue with the wells?

This issue has happened every few years. The formation which the liquid is disposed of closes off slowing the wells ability to accept disposal fluid

-
- Do you have engineering or other reports to provide to us that show the scope of the maintenance work?

The first frak was done, but another is required, with a stronger acid.

-
- Have you obtained quotes to complete the maintenance work and if so, please provide copies;

Waiting for the next quotes to come in.

-
- How is the maintenance work being paid for?

The well has no income at this point. Payments will have to be made by others until the wells are cash flowing again.

-
- Has any of the work been completed and if so, can you please provide copies of the invoices for the completed work and confirmation that the suppliers/trades have been paid for the maintenance work?

As stated, the first frak as been done, another more aggressive one needs to be done. We are waiting for quotes for the next stage. The first frak has not been paid for yet.

-
- Is there an anticipated completion date for the maintenance and if so, when?

ASAP

-
- When will operations resume?

ASAP

-
- What are past customers doing in the interim? Are they waiting for the facility to be up and running again? Will they return to Absolute?

They are going elsewhere at this point. Customers have historically returned. Absolute has class 1A wells and they are close to many sources of disposal needs

-
- Is Absolute maintaining any level of staff through the shut down?

No, all Absolute staff are off site at this point. The maintenance will be managed by Symmetry

-
- If so, has the staff been paid and are payroll remittances being maintained?

See above

-
- Are there concerns or environmental impacts anticipated from the shut down?

No. The formation is just running too slow for financial viability at this point. The formation is more than a kilometre underground and is still under vacuum.

-
- Are regulatory bodies involve and if so, have any regulatory inspections taken place or regulatory orders been issued?

The regulators have been informed as is required. There have not been any inspections or orders that I am aware of.

-

We would like to also visit the site for an inspection since it has been about a year since our previous visit. Who should I contact at the site to schedule this?

Additionally, we also still require answers to our prior requests, being: To follow.

1. Monthly detailed Symmetry reports which include amounts paid by Symmetry on behalf of AEWM and ECO;
2. Detailed monthly invoices for Symmetry Management fees;
3. Confirmation as to whether absolute continues to use the older CIBC accounts for either of ECO or AEWM (and copies of the applicable bank statements from March through now so we can verify that independently).
4. Bank statements for all relevant entities from July 2021 to current;
4. Update on AR collections from aged AR and whether there has been any settlement or collections; and,
5. CRA statements showing balances for payroll and GST for each of AEWM and ECO.

I look forward to a reply by October 5, 2021.

Karen Aylward, CIRP, <image006.jpg>
LIT

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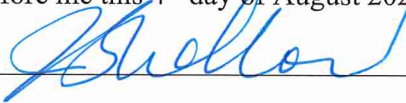
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This is **Exhibit "Y"** to the Affidavit of Victor P. Kroeger

sworn before me this 4th day of August 2022.



Notary Public/Commissioner for Oaths in and for Alberta

Jacqueline Rose Shellon
*A Commissioner for Oaths in and
for the Province of Alberta*
My Appointment Expires April 26, 2025

August 12, 2021

VIA EMAIL: kbarr@blg.com

Romspen Mortgage Limited Partnership and Romspen
Mortgage Investment Corporation
c/o BLG
Centennial Place, East Tower
1900, 520 – 3rd Avenue SW
Calgary, AB T2P 0R3

Attention: Kevin Barr

Dear Mr. Barr:

RE: Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc. ("Eco"), Absolute Energy Resources Inc., ("Absolute Energy") and Absolute Environmental Waste Management Inc. ("AEWM") (collectively referred to as the "Companies").

In our capacity as Interim Monitor of the Companies, we are detailing herein the status of our information requests to the Companies since our last report to you of March 4, 2021. Our requests for information have been directed to Mr. David Gamage ("**Mr. Gamage**") who we have been advised has been designated as the point of contact for the Companies.

On March 5, 2021, the Monitor delivered a written request to Mr. Gamage with respect to additional documentation and clarity required in relation to the Companies financial affairs (the "**March 5, 2021 Letter**"). A copy of the March 5, 2021 Letter is attached as *Schedule A*.

Mr. Gamage provided partial responses the March 5, 2021 Letter, including the following:

1. An unexecuted copy of the Symmetry Asset Management Inc. management agreement ("**Symmetry**") (the "**Symmetry Agreement**");
2. A copy of the 2020 tax year end T4 Summary;
3. Copies of tenant leases with Eco; and,
4. Various written responses surrounding matters related to asset identification, accounts payable status, accounts receivable status, T4 filing status, etc.

A copy of the response from Mr. Gamage in relation to the March 5, 2021 email is attached as *Schedule B*.

As of this date, the following information requested in the March 5, 2021 Letter remains outstanding:

1. Documentation from the Companies books and records which supports the calculation of the Management Fees owed by the Companies to Symmetry;

2. Detailed monthly invoices (with support) generated by Symmetry setting out the various expenses paid on behalf of the Companies;
3. Updated information with respect to aged accounts receivable collections including those matters where third parties have been engaged to take further collection steps; and,
4. Statements from Canada Revenue Agency detailing the current status of the accounts of the Companies for each of Goods and Services Taxes ("**GST**") and Payroll Source Deductions.

In addition to the information set out in the March 5, 2021 Letter, the Companies, vis-à-vis Mr. Gamage, have been delinquent in the provision of the required monthly monitoring information. The Interim Monitor made attempts via email to contact Mr. Gamage on June 1, June 10, June 15, and July 6, 2021 requesting copies of the information and confirmation that Mr. Gamage remained the point of contact of the Companies. The outstanding monitoring information related to the period of April 16, 2021 through June 30, 2021 and consisted of the following:

1. General Ledgers for Eco and AEWM;
2. Bank Statements for Eco and AEWM;
3. Monthly Income Statements for Eco and AEWM; and,
4. Accounts payable and Accounts Receivable reports for Eco and AEWM.

The Interim Monitor's email requests are attached as *Schedule C*.

On July 6, 2021 Mr. Gamage responded to the Interim Monitor's request and provided a majority of the financial information noted directly above which was further supplemented by the provision of the remaining information on July 7, 2021.

The following information also remains outstanding as of the date of this letter:

1. Monthly monitoring information covering the period of July 1 through July 30th.

Requests related to the above were made on August 7 and August 11, 2021 as noted in emails attached as *Schedule D* from the Interim Monitor to Mr. Gamage.

Should you require any further detail, please contact the undersigned.

MNP Ltd.

In its capacity as Interim Monitor of the affairs of

Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc.

And not in its personal capacity

Per:  Karen Aylward, CIRP, LIT
Vice President