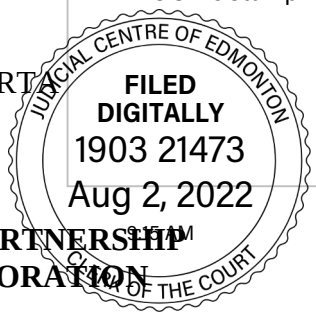
Form 49
[Rule 13.19]

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	**BORDEN LADNER GERVAIS LLP** 1900, 520 Third Avenue S.W. Calgary, Alberta T2P 0R3 Kevin E. Barr / Robyn Gurofsky / Tiffany Bennett Telephone: 403.232.9786 / 9774 / 9199 Facsimile: 403.266.1395 Email: kbarr@blg.com / rgurofsky@blg.com / tibennett@blg.com 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 SISP 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 SISP.

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

ONTARIO NOTARY PUBLIC JOEL SHOLEM MICKELSON

This is EXHIBIT "A" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0034 406 983	4;23;53;17;NW	132 335 490

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 23 TOWNSHIP 53
SECTION 17
ALL THAT PORTION OF THE NORTH WEST QUARTER
WHICH LIES 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, 1955 CONTAINING 45.84 HCTARES (113.26 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF EDMONTON

REFERENCE NUMBER: 102 271 675

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
132 335 490	18/10/2013	TRANSFER OF LAND	$196	$196

OWNERS

LOT 11 GP LTD.
OF 1250 HAYTER ROAD
EDMONTON
ALBERTA T6S 1A2

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
5065KI	13/07/1956	UTILITY RIGHT OF WAY GRANTEE - ATCO GAS AND PIPELINES LTD. 10035-105 ST EDMONTON ALBERTA T5J2V6 (DATA UPDATED BY: TRANSFER OF UTILITY RIGHT

(CONTINUED)

OF WAY 012028183)

5741RI 11/09/1969 CAVEAT
RE : EASEMENT
CAVEATOR - THE CITY OF EDMONTON.

942 024 246 26/01/1994 UTILITY RIGHT OF WAY
GRANTEE - THE CITY OF EDMONTON.
AS TO PORTION OR PLAN:9322418

062 567 270 08/12/2006 CAVEAT
RE : EASEMENT , ETC.

072 178 344 29/03/2007 DISCHARGE OF UTILITY RIGHT OF WAY 5065KI
PARTIAL
EXCEPT PLAN/PORTION: 573KS

072 588 848 01/10/2007 UTILITY RIGHT OF WAY
GRANTEE - AIR LIQUIDE CANADA INC.

082 014 748 09/01/2008 RESTRICTIVE COVENANT

082 124 683 20/03/2008 RESTRICTIVE COVENANT

082 124 690 20/03/2008 EASEMENT
SEE INSTRUMENT FOR DOMINANT AND SERVIENT
TENEMENTS

082 124 692 20/03/2008 CAVEAT
RE : EASEMENT

082 412 290 18/09/2008 CAVEAT
RE : RIGHT OF FIRST REFUSAL
CAVEATOR - TERVITA CORPORATION.
BURNET DUCKWORTH & PALMER
2400, 525-8 AVE SW
CALGARY
ALBERTA T2P1G1
AGENT - JOHN A WILSON
(DATA UPDATED BY: CHANGE OF NAME 122224067)

092 048 599 17/02/2009 EASEMENT

092 236 386 14/07/2009 CAVEAT
RE : RIGHT OF WAY AGREEMENT
CAVEATOR - TELUS COMMUNICATIONS INC.
RIGHTS OF WAY DEPARTMENT, SULLIVAN STATION
1ST FLOOR, 15079-64 AVE
SURREY
BRITISH COLUMBIA V3S1X9

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		AGENT - PROGRESS LAND SERVICES LTD.
112 318 970	07/10/2011	CAVEAT RE : RIGHT OF WAY AGREEMENT , ETC. CAVEATOR - KRAMER'S TECHNICAL SERVICES INC. 3200, 10180-101 STREET EDMONTON ALBERTA T5J3W8 AGENT - JEREMY TAITINGER
132 252 285	14/08/2013	CAVEAT RE : EASEMENT , ETC.
132 283 373	09/09/2013	CAVEAT RE : DEFERRED RESERVE CAVEATOR - THE CITY OF EDMONTON. C/O OF THE CITY OF EDMONTON SUBDIVISION AUTHORITY CITY HALL, OFFICE OF THE CITY CLERK 1 SIR WINSTON SQUARE EDMONTON ALBERTA T5J2R7 AGENT - BLAIR MCDOWELL.
132 283 380	09/09/2013	CAVEAT RE : EASEMENT AND RESTRICTIVE COVENANT
132 335 491	18/10/2013	MORTGAGE MORTGAGEE - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 ORIGINAL PRINCIPAL AMOUNT: $40,000,000
132 335 492	18/10/2013	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 AGENT - JOHN S LITTLE
182 106 169	08/05/2018	MORTGAGE MORTGAGEE - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 ORIGINAL PRINCIPAL AMOUNT: $40,000,000 (U.S. FUNDS)
182 106 170	08/05/2018	CAVEAT

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
182 186 692	08/08/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
182 186 693	08/08/2018	CAVEAT RE : ASSIGNMENT OF INTEREST CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
202 080 481	15/04/2020	TAX NOTIFICATION BY - THE CITY OF EDMONTON. 2ND FLOOR, EDMONTON SERVICE CENTRE 10111 104 AVE NW EDMONTON, ALBERTA T5J0J4

TOTAL INSTRUMENTS: 024

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 27 DAY OF JULY, 2022 AT 09:19 A.M.

ORDER NUMBER: 45041021

CUSTOMER FILE NUMBER: 443063.12

END OF CERTIFICATE

(CONTINUED)

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0033 530 355	8323217;;3	082 453 027

LEGAL DESCRIPTION

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

ATS REFERENCE: 4;23;53;17;NE
ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF EDMONTON

REFERENCE NUMBER: 082 212 417 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
082 453 027	15/10/2008	PLAN CORRECTION		

OWNERS

ECO-INDUSTRIAL BUSINESS PARK INC.
OF 408,10048-101A AVENUE NW
EDMONTON
ALBERTA T5J 0C8
(DATA UPDATED BY: CHANGE OF NAME 112319267)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
4191HP	17/08/1950	UTILITY RIGHT OF WAY GRANTEE - THE IMPERIAL PIPE LINE COMPANY, LIMITED. GRANTEE - PEMBINA PIPELINE CORPORATION. PO BOX 22128 BANKERS HALL CALGARY ALBERTA T2P4J5

(CONTINUED)

AS TO PORTION OR PLAN:2047HW
"DATA UPDATED BY: TRANSFER OF UTRW NO. 5981SS & 772018503"
(DATA UPDATED BY: CHANGE OF ADDRESS 122221971)
(DATA UPDATED BY: CHANGE OF NAME 152371272)

5886MA 07/03/1961 CAVEAT
RE : EASEMENT
CAVEATOR - CANADIAN INDUSTRIAL GAS LIMITED.
BOX 2595 STN M
CALGARY
ALBERTA T2P4V4
"DISCHARGED EXCEPT AS TO PLAN 7182KS #892150525 22 06 1988"
(DATA UPDATED BY: CHANGE OF ADDRESS 982235122)

7650OP 20/06/1966 CAVEAT
CAVEATOR - ATCO GAS AND PIPELINES LTD.
ATTENTION: LAND DEPARTMENT
10035-105 STREET
EDMONTON
ALBERTA T5J2V6
"DISCHARGED EXCEPT AS TO PLAN 7182KS #892150524 22 06 1988"
(DATA UPDATED BY: TRANSFER OF CAVEAT 962185395)
(DATA UPDATED BY: TRANSFER OF CAVEAT 982094722)
(DATA UPDATED BY: TRANSFER OF CAVEAT 012015771)

752 007 020 28/01/1975 CAVEAT
CAVEATOR - 1352110 ALBERTA LTD.
ATTN: DAVID EIGENSEHER
2900, 10180-101 ST. NW
EDMONTON
ALBERTA T5J3V5
"URW 4191HP, DISCHARGED BY 892102416 03 05 1989 EXCEPT AS TO PLAN 2047HW"
(DATA UPDATED BY: CHANGE OF NAME 892271575)
(DATA UPDATED BY: TRANSFER OF CAVEAT 082014755)

772 191 417 30/09/1977 CAVEAT
CAVEATOR - 1352110 ALBERTA LTD.
ATTN: DAVID EIGENSEHER
2900, 10180-101 ST. NW
EDMONTON
ALBERTA T5J3V5

(CONTINUED)

"DISCHARGED BY 892102417 03 05 1989 EX. AS TO PLAN 2047HW"
(DATA UPDATED BY: CHANGE OF NAME 892271575)
(DATA UPDATED BY: TRANSFER OF CAVEAT 082014766)

802 171 446 01/08/1980 CAVEAT
RE : EASEMENT
CAVEATOR - 1352110 ALBERTA LTD.
ATTN: DAVID EIGENSEHER
2900, 10180-101 ST. NW
EDMONTON
ALBERTA T5J3V5
"DISCHARGED BY 892102418 03 05 1989 EX. AS TO PLAN 2047HW"
(DATA UPDATED BY: TRANSFER OF CAVEAT 082014767)

802 171 447 01/08/1980 CAVEAT
RE : EASEMENT
CAVEATOR - 1352110 ALBERTA LTD.
ATTN: DAVID EIGENSEHER
2900, 10180-101 ST. NW
EDMONTON
ALBERTA T5J3V5
"DISCHARGED BY 892102419 03 05 1989 EX. AS TO PLAN 2047HW"
(DATA UPDATED BY: TRANSFER OF CAVEAT 082014768)

802 171 448 01/08/1980 CAVEAT
RE : EASEMENT
CAVEATOR - 1352110 ALBERTA LTD.
ATTN: DAVID EIGENSEHER
2900, 10180-101 ST. NW
EDMONTON
ALBERTA T5J3V5
"DISCHARGED BY 892102420 03 05 1989 EX. AS TO PLAN 7182KS"
(DATA UPDATED BY: TRANSFER OF CAVEAT 082014769)

832 311 627 23/12/1983 UTILITY RIGHT OF WAY
GRANTEE - ATCO GAS AND PIPELINES LTD.
10035-105 ST
EDMONTON
ALBERTA T5J2V6
AS TO PORTION OR PLAN:8321238
(DATA UPDATED BY: TRANSFER OF UTILITY RIGHT

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		OF WAY 012021719)
832 311 631	23/12/1983	EASEMENT "EXTENDED BY"
832 311 632	23/12/1983	CAVEAT RE : EASEMENT CAVEATOR - THE CITY OF EDMONTON. CITY SOLICITOR, #1 SIR WINSTON CHURCHILL SQUARE, EDMONTON ALBERTA
082 014 748	09/01/2008	RESTRICTIVE COVENANT
082 124 683	20/03/2008	RESTRICTIVE COVENANT
082 124 690	20/03/2008	EASEMENT SEE INSTRUMENT FOR DOMINANT AND SERVIENT TENEMENTS
082 124 692	20/03/2008	CAVEAT RE : EASEMENT
082 412 290	18/09/2008	CAVEAT RE : RIGHT OF FIRST REFUSAL CAVEATOR - TERVITA CORPORATION. BURNET DUCKWORTH & PALMER 2400, 525-8 AVE SW CALGARY ALBERTA T2P1G1 AGENT - JOHN A WILSON (DATA UPDATED BY: CHANGE OF NAME 122224067)
082 416 050	22/09/2008	EASEMENT RAILWAY LINE EASEMENT - SEE INSTRUMENT
082 511 093	24/11/2008	CAVEAT RE : AGREEMENT CHARGING LAND CAVEATOR - PARAGON CAPITAL CORPORATION LTD. 1200, 1015-4 ST SW CALGARY ALBERTA T2R1J4
092 359 572	06/10/2009	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 082511093
092 359 573	06/10/2009	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 082511093

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
092 359 574	06/10/2009	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 082511093
092 359 575	06/10/2009	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 082511093
092 365 601	09/10/2009	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 082511093
102 414 416	25/11/2010	CAVEAT RE : EASEMENT
112 318 970	07/10/2011	CAVEAT RE : RIGHT OF WAY AGREEMENT , ETC. CAVEATOR - KRAMER'S TECHNICAL SERVICES INC. 3200, 10180-101 STREET EDMONTON ALBERTA T5J3W8 AGENT - JEREMY TAITINGER
132 173 346	13/06/2013	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - ALBERTA DILUENT TERMINAL LTD. SUITE 600 SUN LIFE PLAZA WEST TOWER 144-4 AVENUE SW CALGARY ALBERTA T2P3N4 AGENT - DARREN B BECKER
132 250 234	14/08/2013	CAVEAT RE : EASEMENT , ETC.
132 252 285	14/08/2013	CAVEAT RE : EASEMENT , ETC.
162 259 031	19/09/2016	DISCHARGE OF EASEMENT 082416050 PARTIAL EXCEPT PLAN/PORTION: 1622732
162 356 039	21/12/2016	CAVEAT RE : EASEMENT , ETC. AMENDING AGREEMENT
182 106 171	08/05/2018	MORTGAGE MORTGAGEE - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 ORIGINAL PRINCIPAL AMOUNT: $40,000,000 (U.S. FUNDS)

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
182 106 172	08/05/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
212 086 466	13/04/2021	TAX NOTIFICATION BY - THE CITY OF EDMONTON. 2ND FLOOR, EDMONTON SERVICE CENTRE 10111 104 AVE NW EDMONTON, ALBERTA T5J0J4

TOTAL INSTRUMENTS: 033

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 27 DAY OF JULY, 2022 AT 09:19 A.M.

ORDER NUMBER: 45041021

CUSTOMER FILE NUMBER: 443063.12

END OF CERTIFICATE

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0037 408 689	4;23;53;17;SW	162 342 137 +3

LEGAL DESCRIPTION

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, 1955
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 1323811	SUBDIVISION	3.745	9.25
C) PLAN 1624164	SUBDIVISION	5.36	13.24

EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF EDMONTON

REFERENCE NUMBER: 162 341 987 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
162 342 137	05/12/2016	SUBDIVISION PLAN		

OWNERS

ECO-INDUSTRIAL BUSINESS PARK INC.
OF 408,10048-101A AVENUE NW
EDMONTON
ALBERTA T5J 0C8

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
2121MS	17/05/1962	UTILITY RIGHT OF WAY GRANTEE - ALTALINK MANAGEMENT LTD. 2611 - 3 AVE SE CALGARY ALBERTA T2A7W7 AS TO PORTION OR PLAN:3987MC "PART AS DESC." (DATA UPDATED BY: TRANSFER OF UTILITY RIGHT OF WAY 022166378) (DATA UPDATED BY: CHANGE OF ADDRESS 092058735)
5741RI	11/09/1969	CAVEAT RE : EASEMENT CAVEATOR - THE CITY OF EDMONTON.
5117RU	20/04/1970	CAVEAT RE : EASEMENT CAVEATOR - THE CITY OF EDMONTON. 9TH FLR. CHANCERY HALL, EDMONTON ALBERTA T5J2C3 "PART AS DESC" (DATA UPDATED BY: TRANSFER OF CAVEAT 912135468)
802 161 061	22/07/1980	UTILITY RIGHT OF WAY GRANTEE - ALTAGAS HOLDINGS INC. BOX 20005, STOCK EXCHANGE R.P.O. CALGARY ALBERTA T2P4J2 AS TO 50% GRANTEE - NOVA CHEMICALS CORPORATION. AS TO 50% AS TO PORTION OR PLAN:8021359 "TAKES PRIORITY DATE OF CAVEAT 792279725" (DATA UPDATED BY: TRANSFER OF UTILITY RIGHT OF WAY 042426969) (DATA UPDATED BY: CHANGE OF NAME 052388401) (DATA UPDATED BY: TRANSFER OF UTILITY RIGHT OF WAY 062034520) (DATA UPDATED BY: CHANGE OF NAME 112131232)
912 164 346	02/07/1991	UTILITY RIGHT OF WAY GRANTEE - ALBERTA ENVIROFUELS INC. P.O. BAG 4800 SHERWOOD PARK ALBERTA T8A2A7 AS TO PORTION OR PLAN:9121980
942 024 246	26/01/1994	UTILITY RIGHT OF WAY

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		GRANTEE - THE CITY OF EDMONTON. AS TO PORTION OR PLAN:9322418
062 567 270	08/12/2006	CAVEAT RE : EASEMENT , ETC.
072 588 848	01/10/2007	UTILITY RIGHT OF WAY GRANTEE - AIR LIQUIDE CANADA INC.
082 014 748	09/01/2008	RESTRICTIVE COVENANT
082 124 683	20/03/2008	RESTRICTIVE COVENANT
082 124 690	20/03/2008	EASEMENT SEE INSTRUMENT FOR DOMINANT AND SERVIENT TENEMENTS
082 124 692	20/03/2008	CAVEAT RE : EASEMENT
092 048 599	17/02/2009	EASEMENT
092 236 386	14/07/2009	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - TELUS COMMUNICATIONS INC. RIGHTS OF WAY DEPARTMENT, SULLIVAN STATION 1ST FLOOR, 15079-64 AVE SURREY BRITISH COLUMBIA V3S1X9 AGENT - PROGRESS LAND SERVICES LTD.
132 104 704	15/04/2013	CAVEAT RE : EASEMENT
132 250 234	14/08/2013	CAVEAT RE : EASEMENT , ETC.
132 252 285	14/08/2013	CAVEAT RE : EASEMENT , ETC.
132 283 372	09/09/2013	CAVEAT RE : DEFERRED RESERVE CAVEATOR - THE CITY OF EDMONTON. THE CITY OF EDMONTON SUBDIVISION AUTHORITY,CITY HALL OFFICE OF THE CITY CLERK #1 SIR WINSTON CHURCHILL SQUARE EDMONTON ALBERTA T5J2R7 AGENT - BLAIR MCDOWELL.

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
132 283 379	09/09/2013	CAVEAT RE : EASEMENT AND RESTRICTIVE COVENANT
132 283 380	09/09/2013	CAVEAT RE : EASEMENT AND RESTRICTIVE COVENANT
162 342 180	05/12/2016	EASEMENT AS TO PORTION OR PLAN:1323812 AS TO AREAS "A,B,C,D" "FOR THE BENEFIT OF LOT 1, BLOCK 1, PLAN 1323811"
162 356 039	21/12/2016	CAVEAT RE : EASEMENT , ETC. AMENDING AGREEMENT
182 106 171	08/05/2018	MORTGAGE MORTGAGEE - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 ORIGINAL PRINCIPAL AMOUNT: $40,000,000 (U.S. FUNDS)
182 106 172	08/05/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
182 186 683	08/08/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
182 186 684	08/08/2018	CAVEAT RE : ASSIGNMENT OF INTEREST CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
202 080 481	15/04/2020	TAX NOTIFICATION BY - THE CITY OF EDMONTON. 2ND FLOOR, EDMONTON SERVICE CENTRE

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		10111 104 AVE NW EDMONTON, ALBERTA T5J0J4
222 124 786	01/06/2022	CAVEAT RE : UTILITY RIGHT OF WAY CAVEATOR - KEYERA ENERGY LTD. 200 144 4 AVE SW CALGARY ALBERTA T2P3N4

TOTAL INSTRUMENTS: 028

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 27 DAY OF JULY, 2022 AT 09:19 A.M.

ORDER NUMBER: 45041021

CUSTOMER FILE NUMBER: 443063.12

END OF CERTIFICATE

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0037 408 663	8323217;;2	162 342 179

LEGAL DESCRIPTION

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

ATS REFERENCE: 4;23;53;17;SE
ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF EDMONTON

REFERENCE NUMBER: 162 342 137 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
162 342 179	05/12/2016	TRANSFER OF LAND	$1	SEE INSTRUMENT

OWNERS

ECO-INDUSTRIAL BUSINESS PARK INC.
OF #260, 2833 BROADMOOR BLVD
SHERWOOD PARK
ALBERTA T8H 2H3

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
553HT	04/10/1950	UTILITY RIGHT OF WAY GRANTEE - THE IMPERIAL PIPE LINE COMPANY, LIMITED. GRANTEE - PEMBINA PIPELINE CORPORATION.

(CONTINUED)

PO BOX 22128 BANKERS HALL
CALGARY
ALBERTA T2P4J5
AS TO PORTION OR PLAN:2047HW
"DATA UPDATED BY: TRANSFER OF UTRW NOS. 5981SS & 772018503"
(DATA UPDATED BY: CHANGE OF ADDRESS 122220948)
(DATA UPDATED BY: CHANGE OF NAME 152371391)

7756JH 23/06/1953 CAVEAT
CAVEATOR - 1352110 ALBERTA LTD.
ATTN: DAVID EIGENSEHER
2900, 10180-101 ST. NW
EDMONTON
ALBERTA T5J3V5
"URW 553HT, DATA UPDATED BY: TRANSFER OF CAVE 832020160"
(DATA UPDATED BY: TRANSFER OF CAVEAT 082014754)

3569LT 21/04/1960 EASEMENT

6696LW 09/11/1960 CAVEAT
RE : EASEMENT
CAVEATOR - FIBERGLAS CANADA LIMITED.

5886MA 07/03/1961 CAVEAT
RE : EASEMENT
CAVEATOR - CANADIAN INDUSTRIAL GAS LIMITED.
BOX 2595 STN M
CALGARY
ALBERTA T2P4V4
"DISCHARGED EXCEPT AS TO PLAN 7182KS #892150525 22 06 1988"
(DATA UPDATED BY: CHANGE OF ADDRESS 982235122)

7650OP 20/06/1966 CAVEAT
CAVEATOR - ATCO GAS AND PIPELINES LTD.
ATTENTION: LAND DEPARTMENT
10035-105 STREET
EDMONTON
ALBERTA T5J2V6
"DISCHARED EXCEPT AS TO PLAN 7182KSS #892150524 22 06 1988"
(DATA UPDATED BY: TRANSFER OF CAVEAT 962185395)
(DATA UPDATED BY: TRANSFER OF CAVEAT 982094722)
(DATA UPDATED BY: TRANSFER OF CAVEAT

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		012015771)
752 007 020	28/01/1975	CAVEAT CAVEATOR - 1352110 ALBERTA LTD. ATTN: DAVID EIGENSEHER 2900, 10180-101 ST. NW EDMONTON ALBERTA T5J3V5 "URW 553HT, DISCHARGED BY 892102416 03 05 1989 EXCEPT AS TO PLAN 2047HW" (DATA UPDATED BY: CHANGE OF NAME 892271575) (DATA UPDATED BY: TRANSFER OF CAVEAT 082014755)
772 191 417	30/09/1977	CAVEAT CAVEATOR - 1352110 ALBERTA LTD. ATTN: DAVID EIGENSEHER 2900, 10180-101 ST. NW EDMONTON ALBERTA T5J3V5 "DISCHARGED BY 892102417 03 05 1989 EX. AS TO PLAN 2047HW" (DATA UPDATED BY: CHANGE OF NAME 892271575) (DATA UPDATED BY: TRANSFER OF CAVEAT 082014766)
802 171 446	01/08/1980	CAVEAT RE : EASEMENT CAVEATOR - 1352110 ALBERTA LTD. ATTN: DAVID EIGENSEHER 2900, 10180-101 ST. NW EDMONTON ALBERTA T5J3V5 "DISCHARGED BY 892102418 03 05 1989 EX. AS TO PLAN 2047HW" (DATA UPDATED BY: TRANSFER OF CAVEAT 082014767)
802 171 447	01/08/1980	CAVEAT RE : EASEMENT CAVEATOR - 1352110 ALBERTA LTD. ATTN: DAVID EIGENSEHER 2900, 10180-101 ST. NW EDMONTON ALBERTA T5J3V5 "DISCHARGED BY 892102419 03 05 1989 EX. AS TO PLAN 2047HW" (DATA UPDATED BY: TRANSFER OF CAVEAT 082014768)

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
802 171 448	01/08/1980	CAVEAT RE : EASEMENT CAVEATOR - 1352110 ALBERTA LTD. ATTN: DAVID EIGENSEHER 2900, 10180-101 ST. NW EDMONTON ALBERTA T5J3V5 "DISCHARGED BY 892102420 03 05 1989 EX. AS TO PLAN 7182KS" (DATA UPDATED BY: TRANSFER OF CAVEAT 082014769)
922 173 319	17/06/1992	EASEMENT FOR THE BENEFIT OF LOT 2 PLAN 832 3217 OVER TRANSPORTATION/UTILITY CORRIDOR RIGHT OF WAY PLAN 8920981
082 014 748	09/01/2008	RESTRICTIVE COVENANT
082 124 683	20/03/2008	RESTRICTIVE COVENANT
082 124 689	20/03/2008	EASEMENT SEE INSTRUMENT FOR DOMINANT AND SERVIENT TENEMENTS
082 124 690	20/03/2008	EASEMENT SEE INSTRUMENT FOR DOMINANT AND SERVIENT TENEMENTS
082 124 694	20/03/2008	EASEMENT SEE INSTRUMENT FOR DOMINANT AND SERVIENT TENEMENTS
082 239 404	16/06/2008	EASEMENT SEE AGREEMENT FOR SERVIENT AND DOMINANT TENEMENTS
092 048 599	17/02/2009	EASEMENT
122 128 408	27/04/2012	CAVEAT RE : EASEMENT
132 173 335	13/06/2013	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - ECO-INDUSTRIAL BUSINESS PARK INC. C/O HUSTWICK PAYNE ATTENTION: RODERICK C PAYNE #600 LEDGEVIEW 9707-110 STREET EDMONTON ALBERTA T5K2L9

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		(DATA UPDATED BY: CHANGE OF ADDRESS 162320610)
		(DATA UPDATED BY: CHANGE OF ADDRESS 172138889)
		(DATA UPDATED BY: 172157943)
162 356 039	21/12/2016	CAVEAT RE : EASEMENT , ETC. AMENDING AGREEMENT
182 106 171	08/05/2018	MORTGAGE MORTGAGEE - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 ORIGINAL PRINCIPAL AMOUNT: $40,000,000 (U.S. FUNDS)
182 106 172	08/05/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
202 080 381	15/04/2020	TAX NOTIFICATION BY - THE CITY OF EDMONTON. 2ND FLOOR, EDMONTON SERVICE CENTRE 10111 104 AVE NW EDMONTON, ALBERTA T5J0J4

TOTAL INSTRUMENTS: 025

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 27 DAY OF JULY, 2022 AT 09:19 A.M.

ORDER NUMBER: 45041021

CUSTOMER FILE NUMBER: 443063.12

END OF CERTIFICATE

(CONTINUED)

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0034 518 119	4;23;53;17;NE	102 360 075 +1

LEGAL DESCRIPTION

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

ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF EDMONTON

REFERENCE NUMBER: 102 004 480 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
102 360 075	12/10/2010	TRANSFER OF PART OF LAND		

OWNERS

ECO-INDUSTRIAL BUSINESS PARK INC.
OF 408, 10048 101 AVENUE N.W.
ALBERTA T5J 0C8

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
032 286 748	08/08/2003	CAVEAT RE : SURFACE LEASE UNDER 20 ACRES

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		CAVEATOR - PEMBINA PIPELINE CORPORATION. PO BOX 22128 BANKERS HALL CALGARY ALBERTA T2P4J5 AGENT - PROGRESS LAND SERVICES LTD. (DATA UPDATED BY: CHANGE OF ADDRESS 122210609) (DATA UPDATED BY: CHANGE OF NAME 152370717)
032 419 836	31/10/2003	CAVEAT RE : LEASE AMENDING AGREEMENT CAVEATOR - PEMBINA PIPELINE CORPORATION. PO BOX 22128 BANKERS HALL CALGARY ALBERTA T2P4J5 AGENT - PROGRESS AND SERVICES LTD. (DATA UPDATED BY: CHANGE OF ADDRESS 122210622) (DATA UPDATED BY: CHANGE OF NAME 152370717)
042 041 133	26/01/2004	CAVEAT RE : AMENDING AGREEMENT CAVEATOR - PEMBINA PIPELINE CORPORATION. PO BOX 22128 BANKERS HALL CALGARY ALBERTA T2P4J5 (DATA UPDATED BY: CHANGE OF ADDRESS 122210622) (DATA UPDATED BY: CHANGE OF NAME 152370717)
052 105 372	22/03/2005	ZONING REGULATIONS BY - HER MAJESTY THE QUEEN IN RIGHT OF CANADA C/O THE MINISTER OF NATIONAL DEFENCE 101 COLONEL BY DRIVE OTTAWA ONTARIO K1A0K2
072 298 440	24/05/2007	UTILITY RIGHT OF WAY GRANTEE - PEMBINA PIPELINE CORPORATION. PO BOX 22128 BANKERS HALL CALGARY ALBERTA T2P4J5 (DATA UPDATED BY: CHANGE OF ADDRESS 122221859) (DATA UPDATED BY: CHANGE OF NAME 152371124)
072 318 379	31/05/2007	CAVEAT RE : LEASE INTEREST CAVEATOR - PEMBINA PIPELINE CORPORATION. PO BOX 22128 BANKERS HALL CALGARY ALBERTA T2P4J5 AGENT - PORGRESS LAND SERVICES LTD.

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		(DATA UPDATED BY: CHANGE OF ADDRESS 122210666)
		(DATA UPDATED BY: CHANGE OF NAME 152371127)
082 014 748	09/01/2008	RESTRICTIVE COVENANT
082 124 683	20/03/2008	RESTRICTIVE COVENANT
082 239 404	16/06/2008	EASEMENT SEE AGREEMENT FOR SERVIENT AND DOMINANT TENEMENTS
082 292 655	18/07/2008	EASEMENT "FOR THE BENEFIT OF PARCEL A PLAN 5929KS"
082 416 050	22/09/2008	EASEMENT RAILWAY LINE EASEMENT - SEE INSTRUMENT
112 318 970	07/10/2011	CAVEAT RE : RIGHT OF WAY AGREEMENT , ETC. CAVEATOR - KRAMER'S TECHNICAL SERVICES INC. 3200, 10180-101 STREET EDMONTON ALBERTA T5J3W8 AGENT - JEREMY TAITINGER
132 252 285	14/08/2013	CAVEAT RE : EASEMENT , ETC.
162 259 031	19/09/2016	DISCHARGE OF EASEMENT 082416050 PARTIAL EXCEPT PLAN/PORTION: 1622732
182 106 171	08/05/2018	MORTGAGE MORTGAGEE - ROMSPEN INVESTMENT CORPORATION. 162 CUMBERLAND STREET,SUITE 300 TORONTO ONTARIO M5R3N5 ORIGINAL PRINCIPAL AMOUNT: $40,000,000 (U.S. FUNDS)
182 106 172	08/05/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR - ROMSPEN INVESTMENT CORPORATION. 2500,10303 JASPER AVE EDMONTON ALBERTA T5J3N6 AGENT - CATHERINE A FARNELL
202 080 381	15/04/2020	TAX NOTIFICATION BY - THE CITY OF EDMONTON.

(CONTINUED)

REGISTRATION
NUMBER DATE (D/M/Y) PARTICULARS

2ND FLOOR, EDMONTON SERVICE CENTRE
10111 104 AVE NW
EDMONTON, ALBERTA
T5J0J4

TOTAL INSTRUMENTS: 017

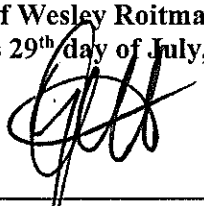
THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 27 DAY OF JULY, 2022 AT 09:19 A.M.

ORDER NUMBER: 45041021

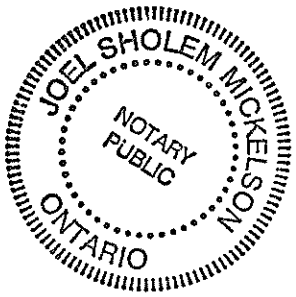
CUSTOMER FILE NUMBER: 443063.12

END OF CERTIFICATE

This is EXHIBIT "B" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022



A Notary Public in and for
the Province of Ontario



FOLEY
FOLEY & LARDNER LLP

ATTORNEYS AT LAW
2021 MCKINNEY AVENUE, SUITE 1600
DALLAS, TX 75201
214.999.3000 TEL
214.999.4667 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
214.999.4289
tscannell@foley.com EMAIL

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

Absolute Energy Resources Inc.
2833 Broadmoor Boulevard
Suite 260
Sherwood Park, Alberta, Canada T8H 2H3
Email: dwhite@symmetryinc.com

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

Adam Zarafshani
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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".

Dear Obligors,

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 Obligors 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). Obligors 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, Obligors 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

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 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.

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

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

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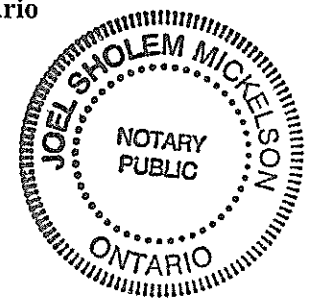
Steven Carlyle Cronig, Esquire (via email, Certified Mail, First Class Mail)
Hinshaw & Culbertson LLP
2525 Ponce de Leon Blvd., 4th Floor
Coral Gables, Florida 33134
scc@hinshawlaw.com

This is EXHIBIT "C" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	**CASE NO. 1:20-10410-HCM**
3443 ZEN GARDEN, L.P.	§	
	§	**Chapter 11**
DEBTOR.	§	

CHAPTER 11 TRUSTEE'S LIQUIDATING PLAN

WICK PHILLIPS GOULD & MARTIN, LLP

/s/ Jason M. Rudd
Jason M. Rudd
State Bar No. 24028786
Scott D. Lawrence
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COUNSEL FOR GREGORY S. MILLIGAN,
CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

Dated: October 19, 2020

SUMMARY OF PLAN

The Chapter 11 Trustee's Plan provides for the settlement of all the Debtor's, the Reorganized Debtor's, the Chapter 11 Trustee's, the bankruptcy Estate's and any of their respective successors' and assigns' potential claims and causes of action against the Debtor's largest creditor, Romspen Mortgage Limited Partnership, in exchange for:

1. $600,000.00 to provide a recovery to non-priority general unsecured creditors with allowed claims (the "***Settlement Carve-Out***") through a creditor trust;
2. Romspen's subordination of its $56 million unsecured deficiency claim to prevent dilution of and to maximize the recovery to general unsecured creditors;
3. Romspen's obligations to obtain the subordination of the Panache deficiency and other General Unsecured Claims to prevent dilution of and to maximize the recovery to Non-Insider general unsecured creditors; and
4. Romspen's agreement to the Chapter 11 Trustee's continued use of cash collateral on hand to fund the Estate's, the Plan's, and the creditor trust's administrative expenses, provided that any excess funds that remain on hand for unused surplus will be returned to Romspen upon the termination of the creditor trust.

The Plan places the Settlement Carve-Out, Romspen's remaining cash collateral and all the Debtor's remaining assets into a creditor trust which will liquidate the assets and distribute the proceeds to holders of allowed claims in the priority governed by the Bankruptcy Code, subject to the voluntary subordinations set forth in the Plan. The creditor trust will distribute the Settlement Carve-Out to holders of allowed non-priority unsecured claims. For the settlement consideration, the Plan provides Romspen and its affiliates a full release of liability, including a release on behalf of the Debtor's creditors, parties in interest and all third parties that do not opt out.

TABLE OF CONTENTS

Gregory S. Milligan, Chapter 11 Trustee for the Bankruptcy Estate of 3443 Zen Garden, L.P., hereby proposes the following Liquidating Chapter 11 Plan pursuant to section 1121(a) of the Bankruptcy Code.

ARTICLE I. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purpose of this Plan, the following terms shall have the respective meanings set forth below:

Action means any claim, action, cause of action, demand, lawsuit, arbitration, notice of violation, proceeding, litigation, citation, or summons, whether civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity.

Administrative Expense Claim means any right to payment constituting a cost or expense of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b) or 507 of the Bankruptcy Code, including, without limitation, (i) any fees or charges assessed against the Estate under 28 U.S.C. § 1930, (ii) Fee Claims, (iii) any "gap period" claims under Bankruptcy Code section 502(f), and (iv) other Administrative Expense Claims as may be ordered and Allowed by the Bankruptcy Court.

Allowed means, with reference to any Claim or Equity Interest, any Claim or Equity Interest (i) for which a proof of claim or proof of interest has been filed and as to which no objection has been interposed on or before the Objection Deadline or such other applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, (ii) which appears in the Debtor's Schedules and is not listed as contingent, liquidated or disputed, (iii) which is allowed by Final Order of the Bankruptcy Court, or (iv) which is expressly allowed under this Plan.

Avoidance Actions means Actions arising under sections 502, 510, 541, 542, 543, 544, 545, 547 through and including 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced to prosecute such Actions, and which may be recovered pursuant to section 550 of the Bankruptcy Code.

Ballot means the ballot provided to holders of Claims to indicate their votes to accept or reject the Plan.

Bankruptcy Code means title 11 of the United States Code, as amended from time to time.

Bankruptcy Court means the United States Bankruptcy Court for the Western District of Texas, Austin Division, or any other court of the United States having jurisdiction over the Chapter 11 Case.

Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended and in effect from time to time.

Bar Date means the last date to file proofs of claim against the Debtor, which was or will be (i) August 10, 2020 for all creditors except Governmental Units and (ii) October 5, 2020 for Governmental Units.

Business Day means any day other than a Saturday, Sunday, or "legal holiday" as defined in Bankruptcy Rule 9006(a).

Cash means legal tender of the United States of America.

Cash Collateral means Cash in the Estate's possession on the Effective Date on which the Lender has a Lien, including amounts the Lender funded under the Postpetition Financing Order.

Causes of Action is defined in Section 11.8 hereof.

Chapter 11 Case means the above-captioned chapter 11 bankruptcy case.

Chapter 11 Trustee means Gregory S. Milligan, Chapter 11 Trustee of the Estate.

Claim means a claim against the Debtor or the Estate within the meaning of section 101(5) of the Bankruptcy Code.

Class means any group of Claims or Equity Interests classified by this Plan pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

Class A Interests is defined in Section 6.2(g) hereof.

Class B Interests is defined in Section 6.2(g) hereof.

Class C Interests is defined in Section 6.2(g) hereof.

Collateral means any property or interest in property of the Estate subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state or federal law.

Compensation Order means that certain Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (ECF No. 135).

Confirmation Date means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

Confirmation Hearing means the hearing conducted by the Bankruptcy Court pursuant to sections 1128(a) and 1129 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

Confirmation Order means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

Credit Agreement means that certain superpriority secured Loan Agreement and Promissory Note dated as of April 27, 2018 by and among the Debtor and the Lender.

Credit Bid Stipulation means that certain Stipulation and Order to Deposit Funds Between Gregory S. Milligan, Chapter 11 Trustee and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 238).

Credit Bid Escrow means the $7,000,000.00 the Lender placed in escrow with the Chapter 11 Trustee pursuant to the Credit Bid Stipulation.

Creditor Trust means that certain trust that will come into existence on the Effective Date of the Plan, which trust shall be formed pursuant to, and governed by, the provisions of the Plan and the Creditor Trust Agreement.

Creditor Trust Agreement means the agreement governing the Creditor Trust dated as of the Effective Date, substantially in the form included in the Plan Supplement.

Creditor Trust Assets means (i) all Causes of Action owned by the Debtor or the Estate, except as the same may be dismissed, settled or released pursuant to the Plan; (ii) all proceeds of any of the Debtor's insurance policies; and (iii) any other property of the Estate not otherwise distributed pursuant to the terms of this Plan. For the sake of clarity, the TxDOT Condemnation Proceeding and PDA Proceeding are transferred to Lender under the Sale Order and are NOT included in the Creditor Trust Assets and as of the Sale Closing Date are exclusively the Lender's property pursuant to the terms of the Sale Order, as confirmed by this Plan.

Creditor Trust Interests means the Class A Interests, Class B Interests, and the Class C Interests, together.

Creditor Trustee means the trustee of the Creditor Trust, Gregory S. Milligan, and any successor Creditor Trustee.

Debtor means 3443 Zen Garden, L.P. in its capacity as chapter 11 debtor.

Disallowed Claim or Equity Interest means any Claim or Equity Interest, or portion thereof that is not an Allowed Claim, an Allowed Equity Interest, or a Disputed Claim or Disputed Equity Interest.

Disclosure Statement means that certain disclosure statement relating to the Plan, including all exhibits and schedules thereto, as the same may be amended, supplemented, or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code.

Disputed Claim means, with respect to a Claim, such Claim (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, or (b) with respect to which the Debtor or any party in interest has

interposed a timely objection (as a contested matter, adversary proceeding, or otherwise) or request for estimation prior to the Objection Deadline in accordance with the Plan or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order as of the Effective Date.

Disputed Equity Interest means, with respect to an Equity Interest, such Equity Interest (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, or (b) for which a proof of interest for payment has been timely filed with the Bankruptcy Court or a written request for payment has been made, to the extent the Chapter 11 Trustee or any party in interest has interposed a timely objection or request for estimation prior to the Objection Deadline in accordance with the Plan, or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order.

Distribution Date means the date, occurring on or as soon as practicable after the Effective Date, on which the Creditor Trustee first makes distributions to holders of Allowed Claims and Allowed Equity Interests as provided in the Plan.

Distribution Record Date means the record date for purposes of receiving distributions under the Plan on account of Allowed Claims and Allowed Equity Interests, which shall be the Confirmation Date.

Effective Date means the first Business Day on which all the conditions precedent to the effectiveness of the Plan specified in Section 10.2 hereof shall have been satisfied or waived as provided in Section 10.3 hereof; *provided, however*, that if a stay, injunction or similar prohibition of the Confirmation Order is in effect, the Effective Date shall be the first Business Day after such stay, injunction or similar prohibition is no longer in effect.

Equity Interest means any "equity security" of the Debtor, as that term is defined in section 101(16) of the Bankruptcy Code.

Estate means the estate of the Debtor as created under section 541 of the Bankruptcy Code.

Exculpated Parties means the Chapter 11 Trustee, the Creditor Trustee, HMP Advisory Holdings, LLC d/b/a Harney Partners, and Wick Phillips Gould & Martin, LLP.

Fee Claim means any Claim by a Professional Person under sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and/or reimbursement of expenses in the Chapter 11 Case.

Final Order means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari*, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for a stay, new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of *certiorari*, stay, new trial, reargument or rehearing thereof has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, *certiorari* shall have been denied or a stay, new trial, reargument or rehearing shall have been

denied or resulted in no modification of such order and (ii) the time to take any further appeal, petition for *certiorari*, or move for a stay, new trial, reargument or rehearing shall have expired; *provided, however*, that no order or judgment shall fail to be a "Final Order" solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rule 9024 has been or may be filed with respect to such order or judgment.

General Unsecured Claim means any Claim against the Debtor that is not an Administrative Expense Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Lender Secured Claim, an M&M Plaintiff Secured Claim, a Panache Secured Claim, a Subordinated Claim, an Other Secured Claim, a Lender Deficiency Claim or an Equity Interest. General Unsecured Claim includes any unsecured claim held by the M&M Plaintiffs or an Other Secured Claim as a result of the operation of section 506(a)(1) of the Bankruptcy Code.

Governmental Unit has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

Insider means any Person who is an "insider" as such term is defined in section 101(31) of the Bankruptcy Code, or who may otherwise be determined to be an "insider" under section 101(31) of the Bankruptcy Code by a court of competent jurisdiction.

Lender means Romspen Mortgage Limited Partnership ("***Romspen***"), in its capacities as prepetition and postpetition lender to the Debtor. Romspen and Lender may be used interchangeably throughout this Plan to refer to Romspen Mortgage Limited Partnership.

Lender's Contribution means the Cash Collateral remaining in the Estate on the Effective Date to be used for the payment of Administrative Expense Claims that are Allowed but unpaid on the Effective Date, with the remaining Cash Collateral transferred to the Creditor Trust to be held separate from other Creditor Trust Assets and used for the specific and separate purpose of funding the Creditor Trust's reasonable and necessary costs and expenses and, upon the dissolution of the Creditor Trust and after payment of all the Creditor Trust's reasonable and necessary costs and expenses, to be returned to the Lender.

Lender's Deficiency Claim means the unsecured claim held by the Lender as a result of the operation of section 506(a)(1) of the Bankruptcy Code in the amount of $56,511,950.72, subject to a final calculation by the Lender satisfactory to the Chapter 11 Trustee.

Lender's Secured Claim means the Secured Claim held by the Lender secured by a Lien on the Property in the Allowed amount of $45,000,000.00, satisfied through the Sale Order.

Lender Settlement is defined in Section 6.1 hereof.

Lien has the meaning set forth in section 101(37) of the Bankruptcy Code.

Local Rules means the Bankruptcy Local Rules of the United States Bankruptcy Court for the Western District of Texas, as the same may be amended or modified from time to time.

M&M Plaintiffs means, together, ACM Services, LLC' Koetter Fire Protection of Austin, LLC, Capital Industries, LLC, Hill Country Electric Supply, LP, Lyle America, Inc. d/b/a Glass.com of Illinois, Summer Legacy, LLC, Texas Air, LLC, Ferguson Enterprises, LLC, and American Builders and Contractors Supply Co., Inc. d/b/a ABC Supply.

M&M Plaintiff Secured Claim means a Secured Claim asserted by an M&M Plaintiff that is Allowed by the Bankruptcy Court pursuant to the M&M Plaintiff Stipulation.

M&M Plaintiff Stipulation means the Stipulation and Order to Deposit Funds in the Registry of the Court Between the M&M Plaintiffs and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 221).

Non-Insider means a Person who is not an Insider.

Objection Deadline means the later of (a) one hundred twenty (120) days after the Effective Date and (b) such later as may be ordered by the Bankruptcy Court prior to the expiration of such one hundred twenty (120) day period, upon motion.

Opt-Out Form means the provision on the ballot or other applicable Bankruptcy Court-approved form providing notice of the Third-Party Releases and ability to opt-out of such Third-Party Releases.

Opt-Out Parties means any holder of a Claim or Interest that timely completes and returns an Opt-Out Form, affirmatively opting out of the Third-Party Releases in Section 11.6 hereof; however, the Debtor and the Estate, cannot be Opt-Out Parties.

Other Secured Claim means a Secured Claim that is not a Lender Secured Claim, an M&M Plaintiff Secured Claim or a Panache Secured Claim.

Panache means Panache Development and Construction, Inc., Adam Zarafshani, and any of their insiders, affiliates, subcontractors, successors or assigns.

Panache Secured Claim means a Secured Claim asserted by, through or related to Panache that is Allowed by the Bankruptcy Court pursuant to the Panache Stipulation.

Panache Stipulation means that certain Stipulation and Order to Deposit Funds in the Registry of the Court Between Adam Zarafshani, Panache Development & Construction, Inc., and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 222).

PDA Proceeding means all the Debtor's and Estate's rights and interests in the Debtor's Planned Development Agreement ("***PDA***") pending before the Austin City Council seeking to maximize the Property's permissible use.

Petition Date means March 22, 2020, the date on which Lyle America, Inc. d/b/a Glass.com of Illinois, Austin Glass & Mirror, Inc, and ACM Services, LLC filed an involuntary petition for relief against the Debtor under chapter 11 of the Bankruptcy Code.

Person means an individual, partnership, corporation, limited liability company, cooperative, trust, unincorporated organization, association, joint venture, government or agency or political subdivision thereof or any other form of legal entity.

Plan means this Liquidating Chapter 11 Plan, as the same may be amended, supplemented or otherwise modified from time to time, including any exhibits and schedules hereto.

Plan Interest Rate means simple interest at the rate of 3% per annum.

Plan Supplement means the compilation of documents and forms of documents, schedules and exhibits to be filed in one or more parts or volumes, no later ten (10) Business Days prior to the Confirmation Hearing, as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and the Bankruptcy Rules, containing the form of Creditor Trust Agreement and any other documents necessary for the execution and implementation of the Plan.

Postpetition Financing Order means that certain Amended Final Order Granting Chapter 11 Trustee's Motion to Obtain Secured Credit on an Interim and Final Basis (ECF No. 144).

Priority Non-Tax Claim means any Claim that is entitled to priority in payment pursuant to sections 507(a)(4), (5), (6) or (7) of the Bankruptcy Code and that is not an Administrative Expense Claim or a Priority Tax Claim.

Priority Tax Claim means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

Professional Person means any Person retained or to be compensated by the Chapter 11 Trustee pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

Property means the real property located at 3443 Ed Bluestein Boulevard, Austin, TX 78721.

Pro Rata means the proportion that the amount of an Allowed Claim or Allowed Equity Interest in a particular Class bears to the aggregate amount of all Allowed Claims or Allowed Equity Interests in such Class.

Released Parties means, collectively, the Lender and its predecessors, successors, assigns, subsidiaries, affiliates, current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors, agents, advisory board members, financial advisors, attorneys, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such entities' respective heirs, executors, estates, servants, and nominees. For the avoidance of doubt, none of the Debtor's past or current officers, agents, employees, directors, insurers, or insiders shall constitute Released Parties or be deemed to be released by any provision of this Plan, Plan Document, or Confirmation Order.

Releasing Parties means the Debtor, the Reorganized Debtor, the Chapter 11 Trustee, the Creditor Trustee, the Creditor Trust and the Estate on behalf of themselves and their respective

successors, assigns, and representatives and any and all other entities that may purport to assert any cause of action derivatively, by or through the foregoing entities, as defined in Section 11.5.

Relief Order Entry Date means April 8, 2020, the date on which the Bankruptcy Court entered its *Consent Order for Entry of Relief* (ECF No. 11).

Reorganized Debtor means the 3443 Zen Garden Limited Partnership entity following the Effective Date of this Plan.

Sale Order means that certain Order Authorizing and Approving the Sale of Certain of Debtor's Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Granting Related Relief entered by the Bankruptcy Court on October 7, 2020 (ECF No. 278).

Sale Closing Date means October 15, 2020, the date the Chapter 11 Trustee closed on the sale of the Property to the Lender pursuant to the Sale Order.

Schedules means, collectively, Schedules A through J and the Statement of Financial Affairs, as filed by the Debtor in the Chapter 11 Case, as the same may have been or may be amended from time to time.

Secured Claim means a Claim, other than the Lender's Secured Claim, secured by a Lien that is valid, perfected and enforceable, and not avoidable, upon property in which a Debtor has an interest, to the extent of the value, as of the Effective Date, of such interest or Lien as determined by a Final Order of the Bankruptcy Court pursuant to section 506 of the Bankruptcy Code, or as otherwise agreed to in writing by the Chapter 11 Trustee and the holder of such Claim.

Settlement Carve-Out means $600,000.00 the Chapter 11 Trustee will pay from the Credit Bid Escrow to the Creditor Trust on the Effective Date.

Subordinated Claim means any Claim that is subject to (a) subordination under section 510 of the Bankruptcy Code or any other statute, (b) contractual subordination, (c) equitable subordination as determined by the Bankruptcy Court in a Final Order, including, without limitation, any Claim (i) for or arising from the rescission of a purchase, sale, issuance, or offer of a Security of the Debtor; (ii) for damages arising from the purchase or sale of such a Security; or (iii) for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim, (d) a Claim that is subordinated by agreement of the holder , or (e) any Claim acquired by a holder of a Claim that is subordinated under this Plan. Subordinated Claim also means any Claim which appears in the Debtor's Schedules as contingent, unliquidated or disputed for with the holder of the Claim failed to timely file a proof of claim.

Third-Party Releases means the releases provided by the Lender Settlement.

Third-Party Releasing Parties means the holders of all Claims and Interests and their successors and assigns, other than the Opt-Out Parties, as defined in Section 11.6 hereof.

Trustee and Professional Fee Escrow means all funds the Lender paid to the Chapter 11 Trustee to fund the payment of the Chapter 11 Trustee's and his Professional Persons' fees and expenses pursuant to the terms of the Postpetition Financing Order.

Trust Claims Reserve is defined in Section 6.2(p)(iii) hereof.

TxDOT Condemnation Proceeding means all the Debtor's and Estate's rights, claims and interests in the Texas Department of Transportation ("***TxDOT***") initiated condemnation proceeding related to the Property and any settlement, disposition or resolution of the same.

Voting Deadline means November [•], 2020, the date set by the Bankruptcy Court by which Ballots for accepting or rejecting the Plan must be received.

1.2 Rules of Interpretation and Construction.

(a) Interpretation. Unless otherwise specified herein, all section, article, and exhibit references in the Plan are to the respective section in, article of, and exhibit to, the Plan, as the same may be amended, waived or modified from time to time. All headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

(b) Construction and Application of Bankruptcy Code Definitions. Unless otherwise defined herein, words and terms defined in section 101 of the Bankruptcy Code shall have the same meanings when used in the Plan. Words or terms used but not defined herein shall have the meanings ascribed to such terms or words, if any, in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

(c) Other Terms. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular article, section, subsection, or clause contained in the Plan.

(d) Time. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II. TREATMENT OF UNCLASSIFIED CLAIMS

2.1 Administrative Expense Claims.

All Administrative Expense Claims against the Estate, other than Fee Claims, shall be treated as follows:

(a) Time for Filing. All holders of Administrative Expense Claims, other than Professional Persons holding Fee Claims, shall file with the Bankruptcy Court a request for payment of such Claims within thirty (30) days after the Effective Date. Any such request must be served on the Chapter 11 Trustee and his counsel, and must, at a minimum, set forth (i) the name of the holder of the Administrative Expense Claim; (ii) the amount of the Administrative Expense Claim; and (iii) the basis for the Administrative Expense Claim. A failure to file any such request in a timely fashion will result in the Administrative Expense Claim in question being discharged and its holder forever barred from asserting such Administrative Expense Claim against the Estate or any other Person.

(b) Allowance. An Administrative Expense Claim for which a request for payment has been properly filed shall become an Allowed Administrative Expense Claim unless an objection is filed by the date that is thirty (30) days after a request for payment of such Administrative Expense Claim is filed. If an objection is timely filed, the Administrative Expense Claim in question shall become an Allowed Administrative Expense Claim only to the extent so Allowed by Final Order of the Bankruptcy Court.

(c) Payment. Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment of such Claim, each holder of an Allowed Administrative Expense Claim shall receive, on account of and in full satisfaction of such Claim, Cash in an amount equal to the Allowed amount of such Administrative Expense Claim on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) ten (10) days after entry of an order by the Bankruptcy Court allowing such Administrative Expense Claim. The Chapter 11 Trustee and the Creditor Trustee, as applicable, shall pay Allowed Administrative Expense Claims from the Lender's Contribution or as otherwise agreed by the holder of the Allowed Fee Claim and the Chapter 11 Trustee or the Creditor Trustee, as applicable.

(d) Lender Exception. Lender is excepted from the obligations of this Section 2.1. The terms of this Section 2.1 shall not apply to Lender. Lender is not obligated to file an application for allowance of an Administrative Expense Claim. Lender is deemed to hold an Allowed Administrative Expense Claim pursuant to the terms of the Postpetition Financing Order. Lender's Allowed Administrative Expense Claim shall be satisfied in full by the Lender's credit bid approved by and pursuant to the terms of the Sale Order.

(e) Gap Period Claims. Since the Chapter 11 Case commenced as an involuntary bankruptcy case under Bankruptcy Code section 303, to the extend the Bankruptcy Court Allows any Claim as a "gap period" claim under Bankruptcy Code section 502(f), the Plan treats these Allowed "gap claims" as Allowed Administrative Expenses Claims under Bankruptcy Code section 507(a)(3) and pays them in full with all other Allowed Administrative Expense Claims from the Lender's Contribution.

2.2 Fee Claims.

Every Professional Person holding a Fee Claim that has not previously been the subject of a final fee application and accompanying Bankruptcy Court order approving the same shall file a final application for payment of fees and reimbursement of expenses no later than the date that is thirty (30) days after the Effective Date. Any such final fee application shall conform to and comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. All final fee applications shall be set for hearing on the same day, as the Bankruptcy Court's calendar permits, after consultation with counsel to the Chapter 11 Trustee. Allowed Fee Claims subject to the Trustee and Professional Fee Escrow shall be paid by the Chapter 11 Trustee from the Trustee and Professional Fee Escrow pursuant to the terms of the Postpetition Financing

Order. To the extent an Allowed Fee Claims is not covered by the Trustee and Professional Fee Escrow, then such Allowed Fee Claims shall be paid by the Chapter 11 Trustee or the Creditor Trustee, as applicable, from the Lender's Contribution or as otherwise agreed by the holder of the Allowed Fee Claim and the Chapter 11 Trustee or the Creditor Trustee.

2.3 Chapter 11 Trustee Fees and Expenses.

The Chapter 11 Trustee shall file a final application for payment of fees and reimbursement of expenses under Bankruptcy Code section 330 no later than the date that is thirty (30) days after the Effective Date. Allowed Chapter 11 Trustee fees and expenses shall be paid by the Chapter 11 Trustee from the Trustee and Professional Fee Escrow pursuant to the terms of the Postpetition Financing Order. To the extent any Allowed Chapter 11 Trustee fees and expenses are not covered by the Trustee and Professional Fee Escrow, then such Allowed fees and expenses shall be paid by the Chapter 11 Trustee from the Lender's Contribution. As previously provided by the Postpetition Financing Order and the Sale Order the satisfaction of the Postpetition Indebtedness in the amount of $4,061,444.30[1] shall constitute "moneys disbursed or turned over in the case" by the Chapter 11 Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a) in determining the Allowed amount of the Chapter 11 Trustee's fees. As previously provided by the M&M Plaintiff Stipulation and the Panache Stipulation any funds distributed by the Court or the Lender on account of the M&M Plaintiff Secured Claims or the Panache Secured Claims shall constitute "moneys disbursed or turned over in the case" by the Chapter 11 Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a) in determining the Allowed amount of the Chapter 11 Trustee's fees. Pursuant to the Sale Order, all disbursements made by the Lender or any other party on account of 2020 ad valorem taxes secured by the Property shall constitute "moneys disbursed or turned over in the case" by the Chapter 11 Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a) in determining the Allowed amount of the Chapter 11 Trustee's fees.

2.4 U.S. Trustee Fees.

All fees payable under section 1930 of title 28 of the United States Code shall be paid on or before the Effective Date. All such fees that arise after the Effective Date but before the closing of the Chapter 11 Case shall be paid by the Creditor Trust from the Lender's Contribution.

2.5 Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim has agreed or agrees to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive on (or as soon as reasonably practicable after) the Effective Date, Cash in an amount equal to the Allowed amount of such Claim. To the extent the holder of an Allowed Priority Tax Claim has a Lien on Estate property, such Lien shall remain in place until such Allowed Priority Tax Claim has been paid in full. Pursuant to the Sale Order, Allowed Priority Tax Claims, including ad valorem taxes for 2020, shall be paid by the Lender, and will retain their Lien on the Property until paid in full.

[1] Subject to a final calculation by Lender.

ARTICLE III. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

All Claims against, and Equity Interests in, the Debtor are classified for all purposes, including voting, confirmation, and distribution, as follows:

Class	Designation	Impairment	Entitled to Vote
Class 1	Priority Non-Tax Claims	No	No (deemed to accept)
Class 2	Lender's Secured Claim	Yes	Yes
Class 3	M&M Plaintiff Secured Claims	Yes	Yes
Class 4	Panache Secured Claims	Yes	Yes
Class 5	Other Secured Claims	No	No (deemed to accept)
Class 6	General Unsecured Claims	Yes	Yes
Class 7	Lender's Deficiency and Unsecured Claims	Yes	Yes
Class 8	Panache Deficiency and Unsecured Claims	Yes	Yes
Class 9	Subordinated Claims	Yes	Yes
Class 10	Equity Interests	Yes	Yes

Administrative Expense Claims and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan, pursuant to section 1123(a)(1) of the Bankruptcy Code. Instead, all such Claims shall be treated separately as unclassified claims on the terms previously set forth in Article II of this Plan.

ARTICLE IV. TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1 Class 1 – Priority Non-Tax Claims.

Except to the extent that a holder of an Allowed Priority Non-Tax Claim against the Estate agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, payment in full in Cash from the Lender's Contribution by the Chapter 11 Trustee or the Creditor Trustee, as applicable, on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) ten (10) days after such Priority Non-Tax Claim becomes Allowed.

4.2 Class 2 – Lender's Secured Claim.

Pursuant to the Sale Order, in full and final satisfaction of the Lender's Secured Claim, the Chapter 11 Trustee transferred title for the Property to the Lender on the Sale Closing Date.

4.3 Class 3 – M&M Plaintiff Secured Claims.

On the Effective Date (or as soon as reasonably practicable thereafter), except to the extent that a holder of an Allowed M&M Plaintiff Secured Claim against the Estate agrees to less favorable treatment, each holder of an Allowed M&M Plaintiff Secured Claim shall receive the recovery and treatment provided for in the M&M Plaintiff Stipulation, with all the Liens associated with the M&M Plaintiff Secured Claims, to the extent Allowed, attaching to the funds deposited in the Court's registry pursuant to the M&M Plaintiff Stipulation. Nothing herein shall prevent Lender, any M&M Plaintiff or any other party from settling, resolving or otherwise agreeing to modified treatment on or after the Effective Date. The Bankruptcy Court shall enter any appropriate order and/or judgment (whether agreed or otherwise) releasing to Lender, any M&M Plaintiff or any other party any portion of the funds deposited in the Court's registry pursuant to the M&M Plaintiff Stipulation.

4.4 Class 4 – Panache Secured Claims.

On the Effective Date (or as soon as reasonably practicable thereafter), except to the extent that a holder of an Allowed Panache Secured Claim against the Estate agrees to less favorable treatment, the holder of an Allowed Panache Secured Claim shall receive the recovery and treatment provided for in the Panache Stipulation, with all the Liens associated with the Panache Secured Claims, to the extent Allowed, attaching to the funds deposited in the Court's registry pursuant to the Panache Stipulation. Nothing herein shall prevent Lender, Panache or any other party from settling, resolving or otherwise agreeing to modified treatment on or after the Effective Date. The Bankruptcy Court shall enter any appropriate order and/or judgment (whether agreed or otherwise) releasing to Lender, Panache or any other party any portion of the funds deposited in the Bankruptcy Court's registry pursuant to the Panache Stipulation.

4.5 Class 5 – Other Secured Claims.

On the Effective Date (or as soon as reasonably practicable thereafter), except to the extent that a holder of an Allowed Other Secured Claim against the Estate agrees to less favorable treatment, each holder of an Allowed Other Secured Claim shall, at the Chapter 11 Trustee's option, receive one of the following treatments: (i) the Collateral securing such Allowed Secured Claim; or (ii) other treatment that renders such Allowed Other Secured Claim unimpaired in accordance with section 1124 of the Bankruptcy Code.

4.6 Class 6 – General Unsecured Claims.

Except to the extent that a holder of an Allowed General Unsecured Claim against the Estate agrees to a different treatment, each holder of an Allowed General Unsecured Claim shall receive a Class A Interest in the Creditor Trust and thereafter receive Cash distributions from the assets of the Creditor Trust, including the Settlement Carve-Out and the Creditor Trust Assets. Distributions to holders of Allowed General Unsecured Claims who receive a Class A Interest shall be on a Pro Rata basis with all other Class A Interest holders, until the Allowed amount of General Unsecured Claims are paid in full with interest at the Plan Interest Rate.

4.7 Class 7 – Lender's Deficiency and Unsecured Claims

On the Effective Date, the Lender shall receive on account of the Lender's Deficiency Claims and any other Allowed General Unsecured Claim held by the Lender, a Class B Interest in the Creditor Trust. Distributions to holders of Class B Interests shall be on a Pro Rata basis, after payment in full with interest at the Plan Interest Rate of all Class A Interests; however, holders of claims in Class 7 shall not receive any portion of the Settlement Carve-Out.

4.8 Class 8 – Panache Deficiency and Unsecured Claims

On the Effective Date, Panache shall receive on account of any Allowed General Unsecured Claim it held, holds or acquires, including any Allowed Claim constituting an unsecured deficiency portion of the Panache Secured Claims and any Allowed Claim from the rejection of any executory contract or unexpired lease, a Class B Interest in the Creditor Trust. Distributions to holders of Class B Interests shall be on a Pro Rata basis, after payment in full with interest at the Plan Interest Rate of all Class A Interests; however, holders of claims in Class 8 shall not receive any portion of the Settlement Carve-Out.

4.9 Class 9 – Subordinated Claims

Subordinated Claims may be Allowed by Order of the Bankruptcy Court or stipulation with the Chapter 11 Trustee or the Creditor Trustee. Further, this Plan provides that any Claim which appears in the Debtor's Schedules as contingent, unliquidated or disputed for which the holder of the Claim failed to timely file a proof of claim by the Bar Date is a Subordinated Claim and entitled to treatment as a Class 9 Claim. On the Effective Date, the holder of any Allowed Subordinated Claims shall receive a Class B Interest in the Creditor Trust. Distributions to holders of Class B Interests shall be on a Pro Rata basis, after payment in full with interest at the Plan Interest Rate of all Class A Interests. Class 9 shall also receive distributions from the Settlement Carve-Out, after payment in full with interest at the Plan Interest Rate of all Class A Interests.

4.10 Class 10 – Equity Interests

Except to the extent that a holder of an Allowed Equity Interest in the Debtor agrees to a different treatment, each holder of an Allowed Equity Interest shall receive a Class C Interest in the Creditor Trust and thereafter receive Cash distributions from the Creditor Trust Assets. Distributions to holders of Allowed Equity Interests who receive a Class C Interest shall be on a Pro Rata basis with all other Class C Interest holders, after payment in full with interest at the Plan Interest Rate of all Class B Interests. On the Effective Date, the holders of Allowed Equity Interest shall be revested with their ownership interests in the Reorganized Debtor, in the same proportion as each held in the Debtor on the day before the Petition Date, without further corporate action or Bankruptcy Court order.

ARTICLE V. IMPAIRMENT; ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES

5.1 Classes Entitled to Vote.

The holders of Claims in Classes 1 and 5 are unimpaired, conclusively deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. The holders of claims in Classes 2, 3, 4, 6, 7, 8, 9 and 10 are impaired and entitled to vote to accept or reject the Plan.

5.2 Class Acceptance Requirement.

A Class of impaired Claims shall have accepted the Plan if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of Claims in such Class who have voted on the Plan have voted to accept the Plan. A Class of impaired Equity Interests shall have accepted the Plan if at least two-thirds (2/3) in amount of Equity Interests in such Class who have voted on the Plan have voted to accept the Plan.

5.3 Cramdown.

To the extent that any Class is impaired under the Plan and such Class fails to accept the Plan in accordance with section 1126(c) or (d) of the Bankruptcy Code, the Chapter 11 Trustee hereby requests that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

5.4 Elimination of Classes.

Any Class that does not contain any Allowed Claims or any Claims temporarily Allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed not included in this Plan for purposes of (i) voting to accept or reject this Plan and (ii) determining whether such Class has accepted or rejected this Plan under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE VI. MEANS OF IMPLEMENTATION

6.1 The Lender Settlement.

This Plan constitutes a settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code between the Releasing Parties and the Third-Party Releasing Parties on the one hand and the Released Parties on the other hand in complete and final resolution of all claims the Releasing Parties and the Third-Party Releasing Parties may have against the Released Parties (the "Lender Settlement"). Alleged claims which are being settled include, without limitation, all claims, objections, avoidance actions and other causes of action with respect to (i) the claims and causes of action alleged in that certain Chapter 11 Trustee's Emergency Motion to Limit Romspen Mortgage Limited Partnership's Credit Bid (ECF No. 209), (ii) the Lender's involvement in the Debtor's management (if any), funding and operations; (iii) the Lender's proposals to provide and provision of prepetition and postpetition financing; (iv) the Lender's involvement with the collateral pledged to secure the Lender's loans to the Debtor; (v) the Debtor, the Chapter 11 Case or any Claim or Interest; (vi) the Lender's Allowed Secured Claim, the Lender's Allowed

Deficiency Claim and Unsecured Claim, and the Lender's Allowed Administrative Expense Claim, and (vii) any and all claims and causes of action in existence as of the Effective Date, whether known or unknown, in existence or not in existence, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, held by the Releasing Parties and the Third-Party Release Parties against the Released Parties. The Lender disputes that any such claims are or would be valid or have any merit and would contest them. The Lender Settlement resolves such claims. The Lender Settlement is not and shall not deemed to be an admission of liability of any kind on such claims, and all of the Lender's rights are expressly reserved and preserved on any of such claims, with the Lender Settlement carrying no preclusive effect of any kind whatsoever in any action or proceeding arising from or related in any way to the scope of the claims resolved and settled by the Lender Settlement. Only holders of Claims entitled to vote that agree, by not opting out, to release the Released Parties shall be bound by the Third-Party Releases under this Plan and the Lender Settlement. The Disclosure Statement shall include notification to all holders of Claims entitled to vote of their option to opt-out of the Lender Settlement by completing an Opt-Out Form and become an Opt-Out Party on no less than twenty-one (21) calendar days' notice. Any holders of Claims entitled to vote that do not opt-out of the Lender Settlement by returning a properly completed Opt-Out Form to the balloting agent designated by the Bankruptcy Court on or before the Voting Deadline shall be bound by the Lender Settlement, including the Third-Party Releases. Any portion of the cash proceeds comprising or included in the Lender's Contribution that remain on-hand and held by the Creditor Trustee on behalf of the Creditor Trust that are excess, surplus funds leftover after satisfaction of the obligations set forth in this Plan will be returned to the Lender upon the termination of the Creditor Trust. The Chapter 11 Trustee shall transfer any portion of the funds comprising the Credit Bid Escrow in excess of the Settlement Carve-Out to Lender on the Effective Date of the Plan. To the extent not already covered by the Sale Order, any and all aspects of the TxDOT Proceeding and the PDA Proceeding are not included in the Causes of Action preserved by the Estate and transferred to the Creditor Trust under this Plan. The Debtor's and Estate's rights and interests in the TxDOT Proceeding and the PDA Proceeding are exclusively owned by the Lender as of the Sale Closing Date pursuant to the terms of the Sale Order and this Plan. Further, the Lender shall be responsible for all direction of the TxDOT Proceeding and the PDA Proceeding as of the Sale Closing Date and for the payment of all fees, costs and expenses related to the TxDOT Proceeding and the PDA Proceeding incurred on or after the Sale Closing Date.

6.2 The Creditor Trust.

(a) Establishment of the Creditor Trust. The Creditor Trust shall be established for the benefit of the holders of Allowed General Unsecured Claims and the Lender's Deficiency Claims. This Section 6.2(a) sets forth the general terms of the Creditor Trust and certain of the rights, duties, and obligations of the Creditor Trustee. In the event of any conflict between the terms of this Section 6.2(a) and the terms of the Creditor Trust Agreement, the terms of the Creditor Trust Agreement shall govern.

(b) Execution of Creditor Trust Agreement. On the Effective Date, the Creditor Trust Agreement shall be executed, and all other necessary steps shall be taken to establish the Creditor Trust and the beneficial interests therein, which shall be for the benefit of the holders of Allowed General Unsecured Claims, the Lender's Unsecured and Deficiency Claims, Panache's Unsecured and Deficiency Claims,

Subordinated Claims, and Equity Interests. The form of the Creditor Trust Agreement and related ancillary documents are subject to Bankruptcy Court approval at the Confirmation Hearing.

(c) Purpose of the Creditor Trust. The Creditor Trust shall be established for the sole purpose of liquidating and distributing its assets to the holders of interests in the Creditor Trust, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or to engage in the conduct of a trade or business. The Creditor Trust, through the Creditor Trustee, shall (i) collect and reduce the assets of the Creditor Trust to Cash, (ii) prosecute, settle and otherwise administer the Causes of Action as more fully set forth in Section 6.9 and Section 11.8 hereof, (iii) make distributions to the beneficiaries of the Creditors Trust in accordance with the Plan and the Creditor Trust Agreement and (iv) take all such actions as are reasonably necessary to accomplish the purpose hereof, as more fully provided in the Creditor Trust Agreement.

(d) Creditor Trust Assets. The Creditor Trust shall receive (1) the Lender's Contribution (to be segregated), (2) the Settlement Carve-Out (to be segregated), and (3) the Creditor Trust Assets. Any Cash or other property received from third parties from the prosecution, settlement, or compromise of any Cause of Action shall constitute Creditor Trust Assets for purposes of distributions under the Creditor Trust. On the Effective Date, the Lender's Contribution, the Settlement Carve-Out and Creditor Trust Assets shall automatically vest in the Creditor Trust, free and clear of all Liens, Claims and encumbrances, except to the extent otherwise provided in the Plan.

(e) Governance of the Creditor Trust. The Creditor Trust shall be governed by the Creditor Trustee in accordance with the Creditor Trust Agreement and consistent with the Plan.

(f) The Creditor Trustee. The Chapter 11 Trustee shall serve as the Creditor Trustee, subject to Bankruptcy Court approval at the Confirmation Hearing. With respect to the Creditor Trust Assets, the Creditor Trustee shall be a representative of the Estate pursuant to section 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code. The Creditor Trustee may prosecute, settle and otherwise administer the Causes of Action on behalf of the Creditor Trust, without the need for Bankruptcy Court approval or any other notice or approval, except as set forth in the Creditor Trust Agreement, and shall also be responsible for objecting to Claims filed against the Estate that purport to qualify as General Unsecured Claims under the terms of the Plan, including, without limitation, pursuant to section 502(d) of the Bankruptcy Code. The Creditor Trustee shall be exempt from giving any bond or other security in any jurisdiction.

(g) Classes of Creditor Trust Interests; Nontransferability. There shall be three (3) classes of beneficial interests in the Creditor Trust: Class A beneficial interests for the Allowed General Unsecured Claims (the "Class A Interests"), Class B beneficial interests for all Lender's Unsecured and Deficiency Claims, Panache

Unsecured and Deficiency Claims, and Subordinated Claims (the "Class B Interests"), and Class C beneficial interests for holders of Equity Interests in the Debtor (the "Class C Interests"). The beneficial interests in the Creditor Trust shall not be transferable (except as otherwise provided in the Creditor Trust Agreement).

(h) Cash. Pending distribution, the Creditor Trustee may invest Creditor Trust Assets only in Cash and Government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended); *provided, however*, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

(i) Costs and Expenses of the Creditor Trustee. The costs and expenses of the Creditor Trust, including the fees and expenses of the Creditor Trustee and his or her retained professionals, shall be paid first out of the Lender's Contribution, then the Creditor Trust Assets, and finally, only to the extent needed, from the Settlement Carve-Out.

(j) Compensation of the Creditor Trustee. The Creditor Trustee shall be entitled to reasonable compensation at the Creditor Trustee's reasonable and ordinary hourly rate paid from the Lender's Contribution and the Creditor Trust Assets, plus a commission on specific distributions as detailed below and provided for in prior Bankruptcy Court orders. Pursuant to the Panache Stipulation and the M&M Plaintiff Stipulation, respectively, the Creditor Trustee shall additionally be entitled to a fee of three percent (3%) of all disbursements made on account of any Allowed Claims held by Panache and the M&M Plaintiffs from the registry of the Court or by the Lender. Pursuant to the Sale Order, the Creditor Trustee shall additionally be entitled to a fee of three percent (3%) of all disbursements made on account of any 2020 ad valorem taxes secured by the Property. For avoidance of doubt, the Creditor Trustee shall be entitled to a fee of three percent (3%) of any payment made by the Lender, Panache or any other party on account of or to reduce or satisfy any Claim against the Estate. Any portion of funds returned to the Lender (but not then distributed to any other holder of a Claim or on account of a Claim against the Estate) from (1) the Lender Contribution, (2) the Credit Bid Escrow, (3) the funds deposited in the Bankruptcy Court's registry pursuant to the M&M Plaintiff Stipulation or (4) the funds deposited in the Bankruptcy Court's registry pursuant to the Panache Stipulation, shall not qualify the Creditor Trustee to an additional fee of three percent (3%) on such funds refunded to the Lender, provided the Lender does not otherwise satisfy Claims against the Estate on account of such refunds.

(k) Distribution of the Settlement Carve-Out. The Creditor Trustee shall distribute the Settlement Carve-Out to the Class A Interests on a Pro Rata basis in accordance with the Creditor Trust Agreement, beginning as soon as practicable after the Effective Date. The Creditor Trustee shall not make any distributions to holders of Disputed Claims unless and until such Claims are Allowed. The Creditor Trustee shall ensure that sufficient funds are reserved, as determined by the Creditor

Trustee in his or her sole discretion, to pay Disputed Claims upon Allowance. Upon payment in full of the Class A Interests with interest at the Plan Rate, the Creditor Trustee shall distribute the remaining Settlement Carve-Out, if any, to Class B Interests help by holders of Claims Allowed in Class 9 on a Pro Rata basis.

(l) Distribution of Creditor Trust Assets. The Creditor Trustee shall distribute Cash to the Creditor Trust beneficiaries in accordance with the Creditor Trust Agreement, beginning on the Effective Date or as soon thereafter as is practicable, from the liquidated Creditor Trust Assets on hand as follows: First to any unpaid portion of the Class A Interests after distribution of the Settlement Carve-Out, on a Pro Rata basis; second to Class B Interests; and third to Class C Interests. The Creditor Trustee shall not make any distributions to holders of Disputed Claims unless and until such Claims are Allowed. The Creditor Trustee shall ensure that sufficient funds are reserved, as determined by the Creditor Trustee in his or her sole discretion, to pay Disputed Claims upon Allowance. The Creditor Trustee shall be permitted to distribute amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Creditor Trust Assets, (ii) are necessary to pay reasonable expenses (including, but not limited to, any taxes imposed on the Creditor Trust or in respect of the Creditor Trust Assets), and (iii) are required to satisfy other liabilities incurred by the Creditor Trust in accordance with this Plan or the Creditor Trust Agreement.

(m) Creditor Trust Certificates. Beneficial interests in the Creditor Trust shall not be represented by certificates, receipts, or in any other form or manner, except as maintained on the books and records of the Creditor Trust by the Creditor Trustee, as set forth in the Creditor Trust Agreement.

(n) Retention of Professionals by the Creditor Trustee. The Creditor Trustee may retain and reasonably compensate counsel and other professionals out of the Creditor Trust Assets to assist in its duties as Creditor Trustee on such terms as the Creditor Trustee deems appropriate without Bankruptcy Court approval. The Creditor Trustee may retain any professional who represented parties in interest, including the Chapter 11 Trustee, in the Chapter 11 Case.

(o) Federal Income Tax Treatment of the Creditor Trust; Creditor Trust Assets Treated as Owned by General Unsecured Creditors. For all federal income tax purposes, all parties (including, without limitation, the Debtor, Chapter 11 Trustee, the Creditor Trustee, and the holders of beneficial interests in the Creditor Trust) shall treat the transfer of the Creditor Trust Assets to the Creditor Trust for the benefit of the beneficiaries thereof, whether Allowed on or after the Effective Date, as (A) a transfer of the Creditor Trust Assets directly to the holders in satisfaction of General Unsecured Claims and Lender's Deficiency Claims (other than to the extent allocable to Disputed General Unsecured Claims), followed by (B) the transfer by such holders to the Creditor Trust of the Creditor Trust Assets in exchange for, beneficial interests in the Creditor Trust. Accordingly, the holders of such General Unsecured Claims and Lender's Deficiency Claims, as applicable,

shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Creditor Trust Assets.

(p) Tax Reporting.

(i) The Creditor Trustee shall file income tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section l.671-4(a) and in accordance with this Section 6.2(p)(i). The Creditor Trustee shall annually send to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated among the beneficial holders of the interests in the Creditor Trust in accordance with each holder's relative beneficial interests in the Creditor Trust.

(ii) As soon as possible after the Effective Date, but in no event later than ninety (90) days after the Effective Date, the Creditor Trustee shall make a good faith valuation of the Creditor Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties (including, without limitation the, Debtor, the Chapter 11 Trustee, the Creditor Trustee, and the holders of beneficial interests in the Creditor Trust, as applicable) for all federal income tax purposes. The Creditor Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Creditor Trust that are required by any governmental unit.

(iii) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Creditor Trustee of a private letter ruling if the Creditor Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Creditor Trustee), the Creditor Trustee shall (i) treat any Creditor Trust Assets allocable to, or retained on account of, Disputed General Unsecured Claims as held by one or more discrete trusts for federal income tax purposes (the "Trust Claims Reserve"), consisting of separate and independent shares to be established in respect of each Disputed General Unsecured Claim, in accordance with the trust provisions of the Tax Code (section 641 *et seq.*), (ii) treat as taxable income or loss of the Trust Claims Reserve, with respect to any given taxable year, the portion of the taxable income or loss of the Creditor Trust that would have been allocated to the Holders of Disputed General Unsecured Claims had such Claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such Claims are unresolved), (iii) treat as a Distribution from the Trust Claims Reserve any increased amounts distributed by the Creditor Trust as a result of any Disputed General Unsecured Claims resolved earlier in the taxable year, to the extent such Distributions relate to taxable income or loss of the Trust Claims Reserve determined in accordance with the provisions hereof, and (iv) to the extent permitted by applicable laws report consistent with the

foregoing for state and local income tax purposes. All Creditor Trust beneficiaries shall report, for tax purposes, consistent with the foregoing.

(iv) The Creditor Trustee shall be responsible for payments, out of the Creditor Trust Assets, of any taxes imposed on the Creditor Trust or the Creditor Trust Assets, including the Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed General Unsecured Claims in the Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed General Unsecured Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed General Unsecured Claims, or (ii) to the extent such Disputed General Unsecured Claims have subsequently been resolved, deducted from any amounts distributable by the Creditor Trustee as a result of the resolutions of such Disputed General Unsecured Claims.

(v) The Creditor Trustee may request an expedited determination of taxes of the Creditor Trust, including the Trust Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Creditor Trust for all taxable periods through the dissolution of the Creditor Trust.

(q) Dissolution. The Creditor Trust and the Creditor Trustee shall be discharged or dissolved, as the case may be, no later than the fifth (5^{th}) anniversary of the Effective Date; *provided, however*, that, on or prior to the date that is ninety (90) days prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Creditor Trust if it is necessary to the liquidation of the Creditor Trust Assets. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained not less than ninety (90) days prior to the expiration of each extended term; *provided, however*, that in no event shall the term of the Creditor Trust extend past the tenth (10th) anniversary of the Effective Date. The Creditor Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a Final Order closing the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code and (ii) the Creditor Trustee has administered all Creditor Trust Assets and performed all other duties required by the Plan, the Confirmation Order, the Creditor Trust Agreement and the Creditor Trust. The Creditor Trustee shall not unduly prolong the duration of the Creditor Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets and to effect the Distribution of the Creditor Trust Assets in accordance with the terms hereof and terminate the Creditor Trust as soon as practicable. Prior to and upon termination of the Creditor Trust, the Creditor Trust Assets will be distributed to the beneficiaries of Creditor Trust, pursuant to the provisions set forth in the Trust Agreement. If at any time the Creditor Trustee determines that the expense of administering the Creditor Trust is likely to exceed the value of the Creditor Trust Assets, the Creditor Trustee shall have the authority to (i) distribute to the beneficiaries of the Creditor Trust any Cash balance remaining in excess of necessary costs to pay outstanding expenses of the Creditor Trust, including any fees

and expenses of the Creditor Trustee and his/her professionals, (ii) donate any Creditor Trust Assets remaining in the Creditor Trust to the Anthony H.N. Schnelling Endowment Fund maintained by the American Bankruptcy Institute, a non-religious charitable organization exempt from federal income tax under section 501(c)(3) of the Tax Code that is unrelated to the Debtor and any insider of the Debtor and (iii) dissolve the Creditor Trust.

(r) Indemnification of Creditor Trustee. The Creditor Trustee or the individuals comprising the Creditor Trustee, as the case may be, and the Creditor Trustee's agents and professionals, shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Creditor Trustee, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Creditor Trustee, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. Any indemnification claim of the Creditor Trustee shall be satisfied exclusively from the Creditor Trust Assets. The Creditor Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

6.3 General Settlement of Claims.

The Plan constitutes and evidences a compromise and settlement pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. In consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.

6.4 Issuance of Creditor Trust Interests.

The issuance and distribution of Creditor Trust Interests pursuant to the terms of the Creditor Trust Agreement is authorized without the need for any further corporate action or without any further action by the holders of any claims. All of the Creditor Trust Interests issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. On the Distribution Date, the Creditor Trustee shall issue the Creditor Trust Interests for distribution pursuant to the provisions hereof and the Creditor Trust Agreement. All Creditor Trust Interests to be issued shall be deemed issued as of the Effective Date regardless of the date on which they are actually distributed.

6.5 Section 1145 Exemption.

Section 1145 of the Bankruptcy Code shall be applicable to the issuance of the Creditor Trust Interests, if any. To the maximum extent permitted by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, if appropriate, the Creditor Trust Interests, issued pursuant to this Plan and their transfer will be exempt from registration under the Securities Act and all rules

and regulations promulgated thereunder, and any and all applicable state and local laws, rules, and regulations.

6.6 Restructuring Transactions.

On or prior to the Effective Date, the Creditor Trust Agreement shall be executed, and on the Effective Date, the Chapter 11 Trustee shall contribute the Creditor Trust Assets to the Creditor Trust free and clear of all Liens, Claims, charges, or other encumbrances. On the Effective Date, the Debtor shall exit chapter 11 as the Reorganized Debtor and the ownership of the Reorganized Debtor shall revest with the holders of Allowed Equity Interests in Class 10.

6.7 Corporate Action.

Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects. All matters provided for in the Plan involving the corporate structure of the Debtor, and any corporate action required by or in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by any Equity Interest holders, directors or officers of the Debtor. The authorizations and approvals contemplated by this Section 6.7 shall be effective notwithstanding any requirements under non-bankruptcy law.

6.8 Vesting of Assets.

Except as otherwise provided in the Plan, on the Effective Date, the Creditor Trust Assets shall be automatically transferred to and vest in the Creditor Trust free and clear of all Liens, Claims, charges, or other encumbrances. On the Effective Date, the ownership and management of the Reorganized Debtor shall revest with the holders of Allowed Equity Interests in Class 10. The Creditor Trustee shall be permitted to abandon any asset to the Reorganized Debtor without further order of the Bankruptcy Court.

6.9 Preservation of Rights of Action; Settlement of Litigation Claims.

Except as otherwise provided herein or in the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Causes of Action shall be transferred to the Creditor Trust as provided by the Plan, and may be initiated, filed, enforced, abandoned, settled, compromised, released, withdrawn or litigated to judgment without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court, except as may otherwise be set forth in the Creditor Trust Agreement. The Creditor Trustee shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. **No Person may rely on the absence of a specific reference in the Plan, or the Disclosure Statement to any Cause of Action against it as any indication that the Chapter 11 Trustee or the Creditor Trustee, as applicable, will not pursue any and all available Causes of Action against it. All rights to prosecute any and all Causes of Action against any Person are expressly preserved, except as otherwise provided in the Plan.** Unless any Causes of Action against a Person are expressly

waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Creditor Trust expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or consummation of the Plan. For the sake of clarity, the TxDOT Proceeding and the PDA Proceeding are not included in the Causes of Action preserved by the Estate and transferred to the Creditor Trust under this Plan. The Debtor's and Estate's rights and interests in the TxDOT Proceeding and the PDA Proceeding are exclusively owned by the Lender as of the Sale Closing Date pursuant to the terms of the Sale Order and this Plan.

6.10 Effectuating Documents; Further Transactions.

On and after the Effective Date, the Chapter 11 Trustee is authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan in the name of and on behalf of the Debtor, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

6.11 Exemption from Certain Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, sales or use tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment: (a) the creation of any mortgage, deed of trust, lien or other security interest under or pursuant to this Plan; (b) the release or assignment of liens; (c) the transfer of any assets of the Estate to the Creditor Trust; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, in connection with or pursuant to this Plan, including any restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any of the foregoing.

6.12 Management and Winddown of the Reorganized Debtor.

As provided by the treatment of Class 10 Allowed Equity Interests, the Debtor's existing equity owners will own, manage and control the Reorganized Debtor as of the Effective Date and may proceed to operate, winddown or dissolve the Reorganized Debtor subject to their business judgment. The Chapter 11 Trustee and the Creditor Trustee shall have no obligation to manage, winddown or dissolve the Reorganized Debtor.

6.13 Cooperation with the Creditor Trustee.

All holders of Claims and Equity Interests, the Reorganized Debtor, the Lender, Panache, the White Parties, and any owner or assignee of the Property shall fully cooperate with the Creditor Trustee in the administration of the Creditor Trust, including the prosecution of the Causes of

Action and objections to any Claims. The Bankruptcy Court retains jurisdiction to order appropriate relief under this Plan provision.

ARTICLE VII. DISTRIBUTIONS

7.1 Date of Distributions.

Unless otherwise provided in this Plan, any distributions or deliveries to be made under this Plan shall be made on the Effective Date or as soon as practicable thereafter in accordance with the Creditor Trust Agreement. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act shall be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

7.2 Sources of Cash for Plan Distributions.

All distributions made by the Creditor Trustee to beneficiaries of the Creditor Trust shall be obtained from the Settlement Carve-Out (only to Allowed Class 6 Claims and then Class 9 Claims) and Creditor Trust Assets. All payments made by the Creditor Trustee to fund the Creditor Trust's fees and expenses shall be obtained first, from the Lender's Contribution, second, from the Creditor Trust Assets, and third, only to the extent needed, from the Settlement Carve-Out. No portion of the Lender's Contribution shall be used to fund the payment of Allowed General Unsecured Claims.

7.3 Creditor Trustee.

All distributions under the Plan shall be made by the Creditor Trustee. The Creditor Trustee shall not be required to post any bond, surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court. The Creditor Trustee shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, (c) employ professionals to represent it with respect to its responsibilities and (d) exercise such other powers as may be vested in the Creditor Trustee by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Creditor Trustee to be necessary and proper to implement the provisions hereof.

7.4 Record Date for Distributions.

At the close of business on the Distribution Record Date, the transfer ledgers or registers for Claims against and Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. Neither the Chapter 11 Trustee nor the Creditor Trustee shall have any obligation to recognize any transfer of any of the foregoing occurring after the Distribution Record Date, and shall be entitled instead to recognize for all purposes hereunder, including to effect distributions hereunder, only those record holders stated on the transfer ledgers or registers maintained by the Chapter 11 Trustee as of the close of business on the Distribution Record Date.

7.5 Recipients of Distributions.

All distributions to holders of Allowed Claims and Allowed Equity Interests under the Plan shall be made to the holder of the Claim or Equity Interest as of the Distribution Record Date. Changes as to the holder of a Claim or Equity Interest after the Distribution Record Date shall only be valid and recognized for distribution if notice of such change is filed with the Bankruptcy Court, in accordance with Bankruptcy Rule 3001 (if applicable) and served upon the Chapter 11 Trustee and his counsel and, if applicable, the Creditor Trustee.

7.6 Delivery of Distributions; Unclaimed Property.

Subject to Bankruptcy Rule 9010, all distributions under the Plan shall be made at the address of each holder of an Allowed Claim or Allowed Equity Interest as set forth in the books and records of the Debtor, Chapter 11 Trustee or the Creditor Trustee, as applicable, unless the applicable trustee has been notified in writing of a change of address. If any distribution to the holder of an Allowed Claim or Allowed Equity Interest is returned as undeliverable, no further distributions to such holder shall be made unless and until the Chapter 11 Trustee or Creditor Trustee, as applicable, is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date of the distribution in question. After such 90th day, and notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary (i) all unclaimed property or interest in property in respect of the distribution in question shall revert to the Creditor Trust, and thereafter be distributed Pro Rata to the holders of Allowed Claims and Allowed Equity Interests in accordance with the terms of this Plan, and (ii) the Claim or Equity Interest of any holder with respect to such unclaimed property or interest in property shall be discharged and forever barred. If, at the time the Creditor Trust terminates there is unclaimed property remaining in the Creditor Trust, such property shall be donated to the Anthony H.N. Schnelling Endowment Fund maintained by the American Bankruptcy Institute, to assist in the provision of resources for research and education.

7.7 Means of Payment.

All distributions made pursuant to the Plan shall be in Cash.

7.8 Setoffs and Recoupment.

The Chapter 11 Trustee or the Creditor Trust, as applicable, may, but shall not be required to, setoff against or recoup from any Claim or Equity Interest any rights to payment that the Estate may have against the holder of such Claim or Equity Interest. Neither the failure of the Chapter 11 Trustee nor the Creditor Trust, as applicable, to setoff or recoup, nor the Allowance of any Claim or Equity Interest shall constitute a waiver or release by the Estate or the Creditor Trust of any right to payment, or right of setoff or recoupment.

7.9 Distributions After Effective Date.

Distributions made pursuant to this Plan after the Effective Date to holders of Disputed Claims and Disputed Equity Interests that are not Allowed as of the Effective Date, shall be deemed

to have been made on the Effective Date. After the initial distribution, the Creditor Trustee shall make additional interim distributions to holders of Allowed Claims and Allowed Equity Interests at such time as the Creditor Trustee may deem appropriate, in accordance with the terms of this Plan.

7.10 Withholding and Reporting Requirements.

In connection with this Plan and all instruments issued under this Plan, any party issuing any instrument or making any such distribution under this Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim or Allowed Equity Interest that is entitled to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any applicable tax obligations, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under this Plan to any holder of any Allowed Claim or Allowed Equity Interest has the right, but not the obligation, to not issue such instrument or make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

7.11 No Postpetition Interest.

Unless otherwise specifically provided for in this Plan or in the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Equity Interests, and no holder of a Claim or Equity Interest shall be entitled to interest accruing on or after the Petition Date. Notwithstanding the foregoing, the Lender's Allowed Administrative Expense Claim accruing and arising under and pursuant to the Postpetition Financing Order shall be permitted to accrue postpetition interest pursuant to the terms of the Postpetition Financing Order.

7.12 Time Bar to Payments.

Checks issued by the Creditor Trustee under this Plan shall be null and void if not negotiated within ninety (90) days after the date of issuance. Requests for reissuance of any check shall be made in writing directly to the Creditor Trustee by the person to whom such check was originally issued. Any request for re-issuance of a voided check must be made on or before the end of the 90-day period referenced in this Section 7.12. After such 90-day period, if no request for re-issuance of a voided check was timely made, such amounts shall constitute unclaimed property and be treated in accordance with Section 7.6 of this Plan, and all Claims or Equity Interests in respect of such void checks shall be discharged and forever barred.

7.13 De Minimis Distributions.

Neither the Chapter 11 Trustee nor the Creditor Trustee shall have any obligation to make a distribution that is less than Ten Dollars ($10) in Cash. If an interim distribution to the holder of an Allowed Claim or Equity interest is less than $10, such distribution shall be held for future distributions. If the final distribution to any holder of an Allowed Claim or Equity Interest is less

than $10, such amount shall become and constitute unclaimed property and be treated in accordance with Section 7.6 of the Plan.

ARTICLE VIII. PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

8.1 Objections to Claims.

Except insofar as a Claim or Equity Interest is Allowed under the Plan or pursuant to Final Order of the Bankruptcy Court, the Creditor Trustee, the Chapter 11 Trustee or any other party in interest with standing, shall be entitled to object to Claims and Equity Interests, including objections seeking reclassification or subordination of Claims. Any objections to Claims and Equity Interests shall be served and filed by the Objection Deadline. Any Claim or Equity Interest as to which an objection is timely filed shall be a Disputed Claim or Disputed Equity Interest, respectively. Notwithstanding the foregoing, included within the Lender Settlement, the Releasing Parties and Third Party Releasing Parties waive and release any and all objections to any Claims held by or in favor of the Lender, including, without limitation, Lender's Allowed Administrative Expense Claim pursuant to the Postpetition Financing Order, Lender's Allowed Secured Claim and Lender's Allowed Deficiency Claim.

8.2 Post-Sale Closing Date Reporting on Payments on Account of Claims.

Beginning on November 10, 2020, on or before the tenth (10^{th}) calendar day of each month, the Lender, Panache, and any of their successors or assigns, including any assignee or subsequent owner of the Property, shall provide the Chapter 11 Trustee and the Creditor Trustee and his or her counsel, respectively, by email, a detailed accounting of all payments, settlements or other transfers of value of any kind to any holder of a Claim against the Estate. The receipt of any payment, settlement, or transfer of value on account of any Claim against the Estate shall be the basis for the reduction or disallowance of the Claim against the Estate. The Creditor Trustee may waive this reporting requirement if, in his business judgment, the reports are no longer necessary to administer the Creditor Trust. The Lender, Panache, and any of their successors or assigns, including any assignee or subsequent owner of the Property, are obligated to make reports under this Section 8.2 until the Creditor Trust is dissolved.

8.3 No Distributions Pending Allowance.

If a timely objection is made with respect to any Claim or Equity Interest, no payment or distribution under the Plan shall be made on account of such Claim or Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes Allowed.

8.4 Distributions After Allowance.

To the extent that a Disputed Claim or Disputed Equity Interest ultimately becomes an Allowed Claim or Allowed Equity Interest, distributions (if any) shall be made to the holder of such Allowed Claim or Allowed Equity Interest, in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Equity Interest becomes a Final Order, the Creditor

Trustee shall provide to the holder of such Claim or Equity Interest the distribution (if any) to which such holder is entitled under this Plan as of the Effective Date, without any interest.

8.5 Disallowance of Late Filed Claims.

Unless otherwise provided in a Final Order of the Bankruptcy Court, any Claim for which a proof of claim is filed after the applicable Bar Date shall be deemed disallowed. The holder of a Claim that is disallowed pursuant to this Section 8.5 shall not receive any distribution on account of such Claim, and neither the Chapter 11 Trustee nor the Distribution Agent shall need to take any affirmative action for such Claim to be deemed disallowed.

ARTICLE IX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 Rejection of Contracts and Leases.

Except as otherwise provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, as of the Effective Date, Debtor shall be deemed to have rejected each executory contract and unexpired lease to which it is a party, unless such contract or lease (i) was previously assumed, assumed and assigned or rejected by the Chapter 11 Trustee, (ii) previously expired or terminated pursuant to its own terms, or (iii) is the subject of a motion to assume, assume and assign, or reject filed by the Chapter 11 Trustee on or before the Confirmation Date. The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.

9.2 Inclusiveness.

Unless otherwise specified, each executory contract and unexpired lease shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease.

9.3 Claims Based on Rejection of Executory Contracts or Unexpired Leases.

All Claims arising out of the rejection of executory contracts and unexpired leases (if any) must be served upon the Chapter 11 Trustee and his counsel within thirty (30) days after the earlier of (i) the date of entry of an order of the Bankruptcy Court approving such rejection or (ii) the Effective Date. Any Claims not filed within such time shall be forever barred from assertion against the Debtor, the Estate, its property and the Creditor Trust.

9.4 No Effect on Insurance

The rejection of executory contracts shall not apply to, and shall have no effect upon, any insurance policy which the Debtor owns or pursuant to which the Debtor is an insured party, beneficiary, claimant or in which the Debtor has any interest, including any directors and officers' insurance policies (together, the "Insurance Policies"). All Insurance Policies to which the Debtor or the Estate is a party as of the Effective Date shall be deemed to be and treated as executory

contracts and shall be assumed by the Debtor, assigned to the Creditor Trust and shall continue in full force and effect thereafter in accordance with their respective terms. All Insurance Policies shall vest in the Creditor Trust as of the Effective Date, including the right to (a) control any Insurance Policy that provides or may provide coverage for the Causes of Action or may become available to provide such coverage; (b) pursue and receive the benefits and proceeds of the Insurance Policies; (c) pursue and receive recovery from or as a result of any Causes of Action, including consequential, contractual, extracontractual and/or statutory damages, or other proceeds, distributions, awards or benefits; and (d) pursue and receive any other recovery related to the Causes of Action, including negotiations relating thereto and settlements thereof. Nothing in this paragraph nor the Plan limits, excuses or in any way affects or impairs any coverage to which the Debtor's or the Estate's current and/or former officers and directors are entitled to with respect to any and all insurance or other applicable Insurance Policies of the Debtor.

ARTICLE X. CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN

10.1 Conditions to Confirmation of Plan.

Confirmation of the Plan shall not occur, and the Confirmation Order shall not be entered, until an order, finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered.

10.2 Conditions to Effective Date of Plan.

The Effective Date of the Plan shall not occur until each of the following conditions precedent have been satisfied or waived:

(a) The clerk of the Bankruptcy Court shall have entered the Confirmation Order in the Chapter 11 Case and there shall not be a stay or injunction (or similar prohibition) in effect with respect thereto;

(b) The Chapter 11 Trustee shall have received the Lender's Contribution and the Settlement Carve-Out;

(c) The Creditor Trust Agreement shall have been fully executed;

(d) The Creditor Trustee shall have been appointed, accepted the appointment, and performed any other appropriate duties prior to accepting the Creditor Trust Assets; and

(e) All other actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan shall have been executed and delivered by the parties thereto, and, in each case, all conditions to their effectiveness shall have been satisfied or waived as provided therein.

Within five (5) Business Days of the Effective Date, the Chapter 11 Trustee shall file a notice of the occurrence of the Effective Date.

10.3 Waiver of Conditions Precedent.

Any of the foregoing conditions (with the exception of the conditions set forth in Sections 0 and 10.2(a) may be waived by the Chapter 11 Trustee without notice to or order of the Bankruptcy Court. The Chapter 11 Trustee may assert a failure to satisfy or waiver of any condition regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Chapter 11 Trustee to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right will be deemed an on-going right that may be asserted at any time.

10.4 Effect of Failure of Conditions.

If the foregoing conditions have not been satisfied or waived in the manner provided in Sections 10.1, 10.2 and 10.3 hereof, then (i) the Confirmation Order shall be of no further force or effect; (ii) no distributions under the Plan shall be made; (iii) the Estate and all holders of Claims against and Equity Interests in the Debtor shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; (iv) all of the Estate's obligations with respect to Claims and Equity Interests shall remain unaffected by the Plan; (v) nothing contained in this Plan shall be deemed to constitute a waiver or release of any Claims by or against the Estate or any other Person or to prejudice in any manner the rights of the Estate or any Person in any further proceedings involving the Debtor or the Estate; and (vi) this Plan shall be deemed withdrawn. Upon such occurrence, the Chapter 11 Trustee shall file a written notification with the Bankruptcy Court and serve it on the parties appearing on the service list maintained in the Chapter 11 Case.

10.5 Reservation of Rights.

The Plan shall have no force or effect unless and until the Effective Date occurs. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Chapter 11 Trustee with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of the Estate or any other party with respect to any Claims or Equity Interests or any other matter.

ARTICLE XI. EFFECT OF CONSUMMATION

11.1 Vesting of Assets.

Upon the Confirmation Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Creditor Trust Assets shall vest in the Creditor Trust, free and clear of all Claims, Liens, encumbrances, charges and other interests, except as otherwise provided in this Plan.

11.2 Discharge of Claims and Interests in the Debtor.

Upon the Effective Date and in consideration of the distributions to be made under this Plan, except as otherwise provided in this Plan or in the Confirmation Order, each holder (as well as any trustee or agent on behalf of such holder) of a Claim or Interest, where such Claim or Interest has been fully paid or otherwise satisfied in accordance with this Plan, and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtor, to the fullest extent permitted under § 1141 of the Bankruptcy Code, of and from any and all Claims, Interests,

rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in this Plan, all such holders of Claims and Interests, and their affiliates shall be forever precluded and enjoined, pursuant to §§ 105, 525, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor.

11.3 Injunction against Interference with Plan.

Upon the entry of the Confirmation Order, all holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees, agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date.

11.4 Exculpation.

Neither the Exculpated Parties nor any of their respective present or former members, managers, officers, directors, employees, equity holders, partners, affiliates, funds, advisors, attorneys or agents, or any of their predecessors, successors or assigns, shall have or incur any liability to any holder of a Claim or an Equity Interest, or any other party-in-interest, or any of their respective agents, employees, equity holders, partners, members, affiliates, funds, advisors, attorneys or agents, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the administration of the Chapter 11 Case, the negotiation and pursuit of approval of the Disclosure Statement, the preparation of the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the funding of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, and shall be deemed to have acted in good faith in connection therewith and entitled to the protections of section 1125(e) of the Bankruptcy Code. Notwithstanding anything to the contrary contained in this Plan, this Section 11.4 shall not exculpate any party from any liability based upon gross negligence or willful misconduct.

11.5 Debtor and Estate Releases

As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce this Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Allowed Claims, and the implementation of this Plan, and except as otherwise provided in this Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the Debtor, the Reorganized Debtor, the Chapter 11 Trustee, the Creditor Trustee, the Creditor Trust and the Estate on behalf of themselves and their respective successors, assigns, and representatives and any and all other entities that may purport to assert any cause of action derivatively, by or through the foregoing entities (together, the ***"Releasing Parties"***), from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the Releasing Parties, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Releasing Parties would have been legally entitled to assert in their own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the Lender

Settlement, the subject matter of, or the loans or other transactions or events giving rise to, any Claim or Interest (including without limitation any collateral pledged to the Lender in connection with any such transactions or loans), the business or contractual arrangements between the Debtor and any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the restructuring transactions, the negotiation, formulation, or preparation of the Disclosure Statement and this Plan and related agreements, instruments, and other documents, the solicitation of votes with respect to this Plan, or any other act or omission, transaction, agreement, event, or other occurrence, other than claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, and willful misconduct.

11.6 Releases by Holders of Claims and Interests

As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce this Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Claims and Interests, and the implementation of this Plan, and except as otherwise provided in this Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the holders of all Claims and Interests and the successors and assigns (other than the Opt-Out Parties, the "*Third-Party Releasing Parties*") from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the holder of the Claim or Interest, or the Debtor or Estate, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such holders or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the purchase, sale, or recission of the purchase or sale of any security of or investment or interest in the Debtor, the Lender Settlement, the subject matter or, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan (including without limitation any collateral pledged to the Lender in connection with any such transactions or loans with the Debtor), the business or contractual arrangements between any holder of a Claim or Interest, and the Debtor or any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Disclosure Statement, this Plan, related agreements, instruments, and other documents, the solicitation of votes with respect to this Plan, or any other act or omission (the "Third-Party Releases"),

other than the claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, or willful misconduct.

With regard to holders of Claims or Interests that are Unimpaired under this Plan and holders of Claims or Interests whose vote to accept or reject this Plan was solicited or who were deemed to reject the Plan but who did not return a ballot or Opt-Out Form (and thus did not opt-out of this release), if such holder of Claims or Interests wishes to pursue a claim or cause of action against any Released Party, such holder must first petition the Bankruptcy Court for a determination of whether this release applies to such holder. If the Bankruptcy Court determines that such holder's claim is not released by this provision, such holder must bring any claim or cause of action in the United States Bankruptcy Court for the Western District of Texas or must obtain leave of this Bankruptcy Court to bring such claim or cause of action before a court of another jurisdiction.

11.7 Injunction and Stay.

(a) Except as otherwise expressly provided in this Plan, all Persons or entities who have held, hold, or may hold Claims or causes of action against the Debtor or any Released Party or Equity Interests in the Debtor are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim, cause of action or Equity Interest against the Estate, the Creditor Trust or other entity released, discharged or exculpated hereunder, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against any Estate or the Creditor Trust with respect to any such Claim or Equity Interest, (iii) creating, perfecting or enforcing any encumbrance of any kind against any Estate, the Creditor Trust, or against the property or interests in property of any Estate or the Creditor Trust, as applicable with respect to any such Claim or Equity Interest, (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any Estate or the Creditor Trust, or against the property or interests in property of any Estate or the Creditor Trust with respect to any such Claim or Equity Interest, or (v) pursuing any Claim or causes of action released under the Plan.

(b) Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

(c) The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of

action, losses, or liabilities released pursuant to this Plan, including, without limitation, the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities released or exculpated in this Plan.

11.8 Preservation of Claims.

(a) Except as otherwise provided herein, as of the Confirmation Date, pursuant to sections 1123(b)(3)(B) of the Bankruptcy Code, any action, cause of action, claim, liability, obligation, right, suit, debt, sum of money, damage, judgment, Claim, and demand whatsoever, whether known or unknown, at law, in equity, or otherwise, including causes of action under Chapter 5 of the Bankruptcy Code, but not including any causes of action against the Exculpated Parties, and specifically excluding the TxDOT Proceeding and PDA Proceeding exclusively owned by the Lender pursuant to the Sale Order and this Plan (collectively, "***Causes of Action***") owned by or otherwise accruing to the Debtor or the Estate shall constitute assets of, and shall immediately be transferred to and vest in, the Creditor Trust. Thereafter, the Creditor Trustee, as a representative of the Debtor and the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, shall have sole and full authority to commence and prosecute Causes of Action for the benefit of the holders of Allowed General Unsecured Claims. For the avoidance of doubt, the Causes of Action include, but are not limited to, (a) all of the Debtor's commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of Texas) arising on or before the Effective Date, including without limitation, all causes of action against (i) present and former directors and officers of the Debtor, and (ii) direct and indirect equity holders of the Debtor, and the proceeds of all of the foregoing; (b) all Actions or Claims (i) against the Debtor's contract counterparties (other than counterparties to Assigned Contracts) and the proceeds thereof, (ii) against any of the Debtor's agents, employees, or contractors, , and any of their affiliates, professionals, owners, managers, members, officers, directors, employees, agents, insurers, successors or assigns, (iii) against any insurance carrier, policy, or coverage of the Debtor; and (c) the Estate's Avoidance Actions.

(b) Reservation of White Parties' Litigation. The releases and injunctions in favor of the Lender contained in this Plan do not extend to or otherwise apply to the claims and causes of action asserted against the Lender in Adversary Case Number 20-1047, currently pending before the Bankruptcy Court ("***White Adversary***"). All parties' rights, claims, liabilities, defenses, affirmative defenses, causes of action and other interests asserted in the White Adversary are expressly reserved and preserved by this Plan.

(c) Reservation of M&M Lien Claimants Litigation. The releases and injunctions in favor of the Lender contained in this Plan do not extend to or otherwise apply to the claims and causes of action asserted against the Lender in Adversary Case Number 20-1048, currently pending before the Bankruptcy Court ("***M&M Lien Claimant Adversary***"). All parties' rights, claims, liabilities, defenses, affirmative defenses, causes of action and other interests asserted in the M&M Lien Claimant Adversary are expressly reserved and preserved by this Plan.

11.9 Compromise of Controversies.

In consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019 and section 1123(b)(3)(A).

ARTICLE XII. RETENTION OF JURISDICTION

(a) The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(i) To hear and determine pending applications for the assumption, assignment or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(ii) To determine any and all adversary proceedings, applications, and contested matters in the Chapter 11 Case and grant or deny any application involving the Debtor or the Estate that may be pending on the Effective Date or that are retained and preserved by the Chapter 11 Trustee herein;

(iii) To ensure that distributions to holders of Allowed Claims and Allowed Equity Interests are effected as provided in the Plan;

(iv) To hear and determine any timely objections to Administrative Expense Claims or to proofs of Claim and Equity Interests, including any objections to the classification of any Claim or Equity Interest, and to allow or disallow any Disputed Claim or Disputed Equity Interest, in whole or in part;

(v) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(vi) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or maintain the integrity of the Plan following consummation;

(vii) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Trust Agreement or maintain the integrity of the Trust Agreement following the Effective Date;

(viii) To consider any amendments to or modifications of the Plan, or to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

(ix) To hear and determine all requests for payment of Fee Claims;

(x) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the documents that are ancillary to and aid in effectuating the Plan or any agreement, instrument, or other document governing or relating to any of the foregoing;

(xi) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of taxes under section 505(b) of the Bankruptcy Code);

(xii) To hear any other matter not inconsistent with the Bankruptcy Code;

(xiii) To hear and determine all disputes involving the existence, scope, and nature of the exculpations and releases granted hereunder;

(xiv) To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any entity with the consummation or implementation of the Plan; and

(xv) To enter a final decree(s) closing the Chapter 11 Case.

ARTICLE XIII. MISCELLANEOUS

13.1 Payment of Statutory Fees.

All fees payable under 28 U.S.C. § 1930 shall be paid on the Effective Date and thereafter, as appropriate.

13.2 Filing of Additional Documents.

The Chapter 11 Trustee or Creditor Trustee may file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

13.3 Schedules, Exhibits and Plan Supplement Incorporated.

All exhibits and schedules to the Plan, and the documents contained in the Plan Supplement, are incorporated into and are a part of the Plan as if fully set forth herein.

13.4 Amendment or Modification of the Plan.

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, alterations, amendments or modifications of the Plan may be proposed in writing by the Chapter 11 Trustee at any time prior to or after the Confirmation Date. Holders of Claims and Equity Interests that have accepted the Plan shall be

deemed to have accepted the Plan, as altered, amended, or modified; *provided, however*, that any holders of Claims and Equity Interests who were deemed to accept the Plan because such Claims and Equity Interests were unimpaired shall continue to be deemed to accept the Plan only if, after giving effect to such amendment or modification, such Claims and Equity Interests continue to be unimpaired.

13.5 Inconsistency.

In the event of any inconsistency among the Plan, the Disclosure Statement, and any exhibit or schedule to the Disclosure Statement, the provisions of the Plan shall govern. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall govern.

13.6 Exemption from Certain Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax. All sale transactions consummated by the Chapter 11 Trustee and the Estate and approved by the Bankruptcy Court on and after the Petition Date through and including the Effective Date, including the transfers effectuated under the Plan, the sale by the Chapter 11 Trustee of owned property pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Estate of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, if any, shall be deemed to have been made under, in furtherance of, or in connection with the Plan, and thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

13.7 Expedited Tax Determination.

The Chapter 11 Trustee or the Creditor Trustee, as successor to the Chapter 11 Trustee, may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtor for any and all taxable periods ending after the Petition Date through, and including, the Effective Date.

13.8 Binding Effect.

Except as otherwise provided in § 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after entry of the Confirmation Order, the provisions of this Plan and Confirmation Order shall be binding upon and inure to the benefit of the Debtor, the Estate, the Released Parties, the Releasing Parties, the Third-Party Releasing Parties, any holder of any Claim or Interest, or any Person named or referred to in this Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, as to the binding effect, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by this Plan and Confirmation Order.

13.9 Severability.

If the Bankruptcy Court determines that any provision of this Plan is unenforceable either on its face or as applied to any Claim or Equity Interest, the Chapter 11 Trustee may modify this Plan in accordance with Section 13.4 hereof so that such provision shall not be applicable to the holder of any Claim or Equity Interest. Any determination of unenforceability shall not (i) limit or affect the enforceability and operative effect of any other provisions of this Plan; or (ii) require the re-solicitation of any acceptance or rejection of this Plan unless otherwise ordered by the Bankruptcy Court.

13.10 No Admissions.

If the Effective Date does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan shall (a) constitute a waiver or release of any claims by or against, or any interests in, the Debtor, (b) prejudice in any manner the rights of the Chapter 11 Trustee, the Estate or the Debtor or any other party in interest, or (c) constitute an admission of any sort by the Chapter 11 Trustee, the Estate or the Debtor or other party in interest.

13.11 No Payment of Attorneys' Fees.

Except for the fees of Professional Persons, no attorneys' fees shall be paid by the Estate with respect to any Claim or Equity Interest unless otherwise specified in this Plan or a Final Order of the Bankruptcy Court.

13.12 Notices.

All notices, requests, and demands to or upon the Estate to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

GREGORY S. MILLIGAN
Chapter 11 Trustee, *3443 Zen Garden, L.P.*
Harney Partners
P.O. Box 90099
Austin, TX 78709-0099
gmilligan@harneypartners.com

with a copy to:

WICK PHILLIPS GOULD & MARTIN, LLP
Attention: Jason M. Rudd
3131 McKinney Ave, Suite 100
Dallas, Texas 75204
Telephone: 214-740-4038
jason.rudd@wickphillips.com

13.13 Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflict of laws that would require application of the laws of another jurisdiction.

3443 ZEN GARDEN, L.P.

By: Greg Milligan

Gregory S. Milligan, Chapter 11 Trustee

WICK PHILLIPS GOULD & MARTIN, LLP

/s/ Jason M. Rudd
Jason M. Rudd
State Bar No. 24028786
Scott D. Lawrence
State Bar No. 24087896
Lauren K. Drawhorn
State Bar No. 24074528
Daniella G. Heringer
State Bar No. 24103460
Emails: jason.rudd@wickphillips.com
scott.lawrence@wickphillips.com
lauren.drawhorn@wickphillips.com
daniella.heringer@wickphillips.com

COUNSEL FOR GREGORY S. MILLIGAN, CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

This is EXHIBIT "D" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario

JOEL SHOLEM MICKELSON
NOTARY PUBLIC
ONTARIO

The relief described hereinbelow is SO ORDERED.

Signed September 23, 2020.

H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	**CASE NO. 1:20-10410-HCM**
3443 ZEN GARDEN, L.P.,	§	
	§	**Chapter 11**
DEBTOR.	§	

STIPULATION AND ORDER TO DEPOSIT FUNDS BETWEEN GREGORY S. MILLIGAN, CHAPTER 11 TRUSTEE AND ROMSPEN MORTGAGE LIMITED PARTNERSHIP RESOLVING CREDIT BID CHALLENGE

Gregory S. Milligan, Chapter 11 Trustee ("***Trustee***") for the bankruptcy estate (the "***Estate***") of 3443 Zen Garden, L.P. (the "***Debtor***") and Romspen Mortgage Limited Partnership ("***Romspen***" or "***Lender***") hereby file this Stipulation Resolving Credit Bid Challenge (the "***Stipulation***") and request that the Bankruptcy Court enter this Stipulation as "***So Ordered***" on the docket in the above styled and numbered Bankruptcy Case.

WHEREAS the Court entered its *Amended Final Order Granting Chapter 11 Trustee's Motion to Obtain Secured Credit on an Interim and Final Basis* (ECF No. 144, the "***Financing Order***"). All capitalized terms not specifically defined in this Stipulation have the meaning provided in the Financing Order.

WHEREAS the Financing Order reserved substantive rights and preserved claims and causes of actions during the defined Challenge Period, which the Financing Order sets to end "no later than July 20, 2020." *See* Financing Order, pp. 21-22, ¶ 18. The Financing Order also set August 30, 2020, as the deadline by which any "Credit Bid Challenge . . .proceedings must be completely concluded and fully resolved on a final basis . . ." (the "***Credit Bid Challenge Period***"). *See* Financing Order, p. 14, ¶ 11(c).

WHEREAS the Lender and the Trustee mutually agreed to extend the Challenge Period for the Trustee and the Estate Parties (as defined in the Fourth Credit Bid Challenge Period Stipulation) until "October 19, 2020 for all purposes" pursuant to the Fourth Notice and Stipulation Extending Challenge Period under Final Financing Order dated September 21, 2020 (ECF No. 235, the "***Fourth Credit Bid Challenge Period Stipulation***").

WHEREAS, on September 15, 2020, the Trustee filed the Emergency Motion to Limit Romspen Mortgage Limited Partnership's Credit Bid (ECF No. 209) (the "***Credit Bid Challenge***"). In the Credit Bid Challenge, the Trustee asserted challenges against Romspen's ability to credit bid, including, without limitation, a request that Romspen be prohibited or limited pursuant to 11 U.S.C. § 363(k) from credit bidding on any sale of assets of the Debtor pursuant to 11 U.S.C. §§ 363(b) or 1129(b)(2)(A)(ii).

WHEREAS Romspen disputes and denies the allegations and entitlement to relief as requested by the Trustee in the Credit Bid Challenge.

WHEREAS the Court approved bidding procedures that includes a virtual auction for the Estate's primary asset on September 29, 2020, at 9:00 a.m. (CT). *See* Bid Procedures Order, p. 16 (ECF No. 194). Additionally, the Bid Procedures Order has a deadline of September 25, 2020, for Romspen to elect to credit bid. *Id.*

WHEREAS as a result, the Credit Bid Challenge and related disputed issues between Trustee and Romspen would need to be resolved or fully adjudicated by the Bankruptcy Court before the commencement of the virtual auction.

WHEREAS such an adjudication is impracticable, if not impossible, in light of the resources and schedule of the Bankruptcy Court, Trustee, and Romspen.

WHEREAS delaying the virtual auction is also impracticable and undermines the predictability of the marketing process undertaken pursuant to the Bid Procedures Order.

WHEREFORE, Trustee and Romspen hereby agree and stipulate as follows, subject to the Bankruptcy Court entering this Stipulation as "So Ordered" on the docket in the Bankruptcy Case:

1. Upon the entry of this Stipulation as "So Ordered" on the docket in the Bankruptcy Case and not later than 7:00 pm (CT) on Friday, September 25, 2020, Romspen shall deposit the sum of US $7,000,000.00, in cash, in the Trustee's escrow account to be held in trust (the "***Deposit***"), payable in the amount of and conditioned upon a judgment or order, if any, entered in favor of the Trustee in connection with any claims and relief requested that may be brought against Romspen by the Trustee;[1]

2. No funds from the Deposit shall be released to any party for any purpose without an order of the Court specifying the exact amount of funds to be released to the specific party or parties within a specific timeframe and by a specific delivery method. For the sake of clarity, nothing in this Stipulation shall be construed, presumed or deemed to be an admission against

[1] The Deposit is provided as adequate protection to resolve the relief requested in the Credit Bid Challenge asserted by the Trustee. For avoidance of doubt, the foregoing "amount payable from the Deposit" limitation is not a cap or limit on Trustee's, Debtor's or Estate's potential allowable claims against Romspen. Further, the foregoing "amount payable from the Deposit" does not prohibit or preclude any award to the Trustee, Debtor or Estate of attorneys' fees, if applicable, in connection with any cause of action that may be asserted by the Trustee, Debtor or Estate against Romspen. However, the Deposit is established only to provide a source of recovery to the Trustee's, Estate's and Debtor's potential claims against the Romspen as may be adjudicated at a later date.

Romspen or a presumption of any kind that Romspen has engaged in any acts of wrongdoing. By entering into this Stipulation, Romspen shall not be presumed or deemed to have any liability or exposure of any kind. Romspen adamantly opposes the allegations contained in the Trustee's Credit Bid Challenge, and all of Romspen's and the Trustee's, Debtor's and Estate's respective rights and remedies in connection therewith, including, without limitation, all claims, causes of action, defenses, evidence, authorities and other allegations are expressly reserved;

3. Upon the entry of this Stipulation as "So Ordered" and completion of the Deposit by Romspen, the Trustee shall dismiss and withdraw its request that the Court prohibit or limit Romspen's ability to credit bid pursuant to 11 U.S.C. § 363(k) on any sale of assets of the Debtor pursuant to 11 U.S.C. §§ 363(b) or 1129(b)(2)(A)(ii), it being the intention of Romspen and the Trustee that the Deposit shall and does provide the Debtor and the Estate with adequate protection in the context of a Romspen credit bid for any claims and causes of action that the Trustee, Debtor and Estate may have against Romspen, all of which remain disputed by Romspen.

4. The rights, benefits, reservations and protections this Stipulation provides to the Trustee shall apply to any duly appointed subsequent or successor chapter 11, chapter 7 or plan trustee, the Debtor, the Estate or similar legal successors.

###

Dated: September 22, 2020

AGREED TO BY:

/s/ Thomas C. Scannell (with permission)
Thomas C. Scannell
Tex. Bar No. 24070559
FOLEY & LARDNER LLP
2021 McKinney Avenue, Suite 1600
Dallas, Texas 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
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COUNSEL FOR ROMSPEN MORTGAGE LIMITED PARTNERSHIP

/s/ Jason M. Rudd
Jason M. Rudd, Tex. Bar No. 24028786
Scott D. Lawrence, Tex. Bar No. 24087896
Daniella G. Heringer, Tex. Bar No. 24103460
WICK PHILLIPS GOULD & MARTIN, LLP
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jason.rudd@wickphillips.com
scott.lawrence@wickphillips.com
daniella.heringer@wickphillips.com

COUNSEL FOR GREGORY MILLIGAN, CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

CERTIFICATE OF SERVICE

I certify that on September 22, 2020, a true and correct copy of the forgoing was filed and served on the following parties via the Court's CM/ECF electronic service system at the indicated email addresses:

Christopher G Burwell on behalf of Creditor Wembley Metal Buildings, LLC
cburwell@baileyandbaileypc.com

Martyn B. Hill on behalf of Creditor Lone Star Materials, Inc.
mbh@pdhlaw.com, eservice@pdhlaw.com;mah@pdhlaw.com;sserry@pdhlaw.com

B. Russell Horton on behalf of Debtor 3443 Zen Garden, LP
rhorton@gbkh.com, kseabolt@gbkh.com

Paul H. Jordan on behalf of Creditor Hill Country Electric Supply, L.P., Creditor Koetter Fire Protection of Austin, LLC and Creditor Texas Air, LLC
pjordon@sneedvine.com, gtwnfilings@sneedvine.com

Tara LeDay on behalf of Creditor The County of Hays, Texas
tleday@ecf.courtdrive.com;kmorriss@mvbalaw.com;vcovington@mvbalaw.com;bankruptcy@mvbalaw.com;alocklin@mvbalaw.com

Kell C. Mercer on behalf of Petitioning Creditor ACM Services LLC, Petitioning Creditor Austin Glass & Mirror, Inc. and Creditor Lyle America, Inc. d/b/a Glass.com of Illinois
kell.mercer@mercer-law-pc.com

Lisa M. Norman on behalf of Creditor American Builders and Contractors Supply Co., Inc. d/b/a ABC Supply Co., Inc.
lnorman@andrewsmyers.com, kdubose@andrewsmyers.com

Danielle Nicole Rushing on behalf of Interested Party Lincoln 1861, Inc. and Daniel White
drushing@dykema.com, lvasquez@dykema.com;docketsat@dykema.com

Thomas C. Scannell on behalf of Creditor and Interested Party Romspen Mortgage Limited Partnership
tscannell@foley.com, acordero@foley.com

Jeffrey M. Tillotson on behalf of Creditor Dan White
jtillotson@tillotsonlaw.com, swade@tillotsonlaw.com;keith@tillotsonlaw.com

United States Trustee - AU12
ustpregion07.au.ecf@usdoj.gov

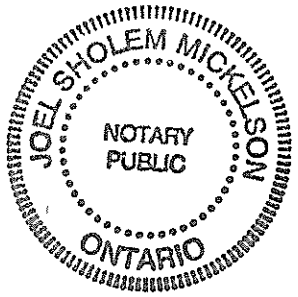
Richard James Wallace, III on behalf of Creditor Equipmentshare.com, Inc.
richard.wallace@solidcounsel.com

Deborah D. Williamson on behalf of Creditor Dan White Family Trust and Dan White
dwilliamson@dykema.com, mlongoria@dykema.com;docketsat@dykema.com

/s/ Jason M. Rudd
Jason M. Rudd

This is EXHIBIT "E" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



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 Agreement[1] 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.

# # #

Submitted by:

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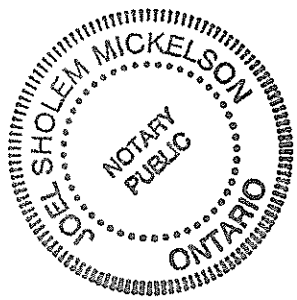
COUNSEL FOR GREGORY MILLIGAN,
CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

This is EXHIBIT "F" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



The relief described hereinbelow is SO ORDERED.

Signed October 07, 2020.

H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	**CASE NO. 1:20-10410-HCM**
3443 ZEN GARDEN, L.P.	§	
	§	**Chapter 11**
DEBTOR.	§	

ORDER AUTHORIZING AND APPROVING THE SALE OF CERTAIN OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND GRANTING RELATED RELIEF

Upon the *Motion for Orders (I) Authorizing and Approving (A) Bid Procedures, and (B) Form and Manner of Notices for the Bid Procedures and Resulting Sale, (II) Scheduling an Auction to Determine the Highest and Best Offer, (III) Scheduling a Hearing to: (a) Approve the Sale of Assets to the Successful Bidder Free and Clear of Liens, Claims and Encumbrances, and (b) Authorize the Debtor to Assume and Assign Executory Contracts and Unexpired Leases in Connection with the Sale, and (IV) Granting Related Relief* (ECF No. 175, the "Motion")[1] filed

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motion.

by Gregory S. Milligan, the Chapter 11 Trustee (the "Trustee") for the bankruptcy estate (the "Estate") of 3443 Zen Garden, L.P. (the "Debtor") appointed in the above-captioned case (the "Chapter 11 Case") requesting entry of: (i) an order (a) approving sale and Bid Procedures (the "Bid Procedures") in connection with sale (the "Sale") of certain assets of the Debtor (the "Assets" as defined herein), (b) authorizing the Trustee to select a Stalking Horse Bidder (as defined in the Bid Procedures Order) and grant Bid Protections, (c) schedule a hearing to consider approval of the sale of Assets (the "Sale Hearing"), (d) approving the form and manner of notice, and (e) granting related relief; and (ii) an order (this "Sale Order") approving the transfer, free and clear of all liens, claims, encumbrances and interests of any kind, to Romspen Mortgage Limited Partnership (together with any affiliated designee, the "Buyer"); and the Court having entered an order approving among other things, the Bid Procedures (ECF No. 194, the "Bid Procedures Order"); and the Trustee having determined that Buyer was the highest and best bidder for the Assets in connection with the Sale in accordance with the Bid Procedures; and based upon the evidence presented at the hearing held on October 7, 2020; and a Qualified Bid having been received from 2289946 Alberta Ltd. ("Competing Bidder"); and after conducting the Auction in accordance with the Bid Procedures Order; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale; and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Sale Hearing having been held to consider the relief requested in the Motion; and upon the record of the Sale Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, the Estate, its creditors and all other parties in interest; and the testimony adduced at the Sale Hearing establish

just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY FOUND AND DETERMINED THAT:[2]

A. Jurisdiction. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. § 1334(b).

B. Venue. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Statutory Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§101, et seq. (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

D. Notice. In accordance with the Bid Procedures Order, and as evidenced by the certificate of service previously filed with this Court (ECF No. 195, the "Certificate of Service"), the Trustee served the Sale Notice (as defined in the Bid Procedures Order) on all parties listed therein.

E. Notice Sufficient. Based upon the Certificate of Service and the evidence presented at the Sale Hearing, the Trustee has provided adequate and sufficient notice of the Motion, the Bid Procedures Order, the Bid Procedures, the Sale Hearing, the Sale, and the transactions contemplated thereby (the "Transaction"), in accordance with the Bid Procedures Order and Bid Procedures, sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9006. A reasonable opportunity to object or be heard regarding the relief granted

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052, 9014.

by this Sale Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

F. Assets. The "Assets" are: (1) the real property, including all right, title, and interest therein, described on **Exhibit A** hereto (the "Real Property"); (2) all rights, privileges, easements, and rights of way appurtenant to said Real Property, including without limitation, all mineral, oil and gas and other subsurface rights, development rights, air rights, and water rights (collectively, the "Appurtenances"); (3) all improvements and fixtures located on the Real Property, including, without limitation: (a) all structures affixed to the Real Property; (b) all apparatus, equipment, and appliances used in connection with the operation or occupancy of the Real Property; and (c) all facilities used to provide any services to the Real Property and/or the structures affixed thereto (collectively, the "Improvements"), excluding those fixtures owned by occupants of the Real Property or vendors of the Improvements, if any; (4) all tangible personal property located on and used in connection with the Real Property or the Improvements (excluding the personal property of occupants of the Real Property, if any), (collectively, the "Personal Property"); and (5) all rights, warranties, guarantees, utility contracts, approvals (governmental or otherwise), permits, certificates of occupancy, surveys, and plans and specifications relating to the Real Property, Appurtenances, or Improvements (collectively, the "Intangible Property"); *provided, however,* notwithstanding anything herein to the contrary, the "Assets" do not include any tenant fixtures or other property belonging to occupants of or vendors to the Real Property, if any, or any items leased from third parties.

G. Property of the Estate. The Assets sought to be transferred by the Trustee and the Debtor to the Buyer pursuant to this Order are property of the Estate and title thereto is vested in the Estate.

H. Excluded Assets Certain assets of the Estate are excluded from the Transaction and are referred to herein as the "Excluded Assets." For the avoidance of doubt, the following are Excluded Assets: (a) all cash and cash equivalents, bank accounts and securities of Seller; (b) intentionally omitted; (c) all accounts or notes receivable of Seller; (d) all trademarks or tradenames, copyrights, or other intellectual property; (e) intentionally omitted, (f) all rights to any refunds, credits, or rebates of or relating to taxes (or other related costs or expenses) that are borne by or the responsibility of Seller or attributable to any tax asset of Seller; (g) all rights to any refunds, credits, or rebates due to Seller by a third party for any overpayment attributable to the Assets with respect to any period of time on or prior to the date the Seller and the Buyer substantially consummate the Sale (the "Closing Date");[3] (h) all insurance policies and rights to proceeds thereof and unearned premiums related thereto (excluding any mortgagee's title insurance coverage or any insurance policies in which Buyer is named loss payee or additional insured); (i) all prepayments, good faith, and other bid deposits submitted by any third party under the terms of the Bid Procedures Order; (j) all Claims (as defined in the Bankruptcy Code) belonging to the Estate other than those specifically enumerated herein as part of the Assets; (k) all of the Debtor's and the Estate's commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of Texas) arising on or before the Closing Date, including without limitation, all causes of action against (i) present and former directors and officers of Seller, (ii) direct and indirect equity holders of Seller, and (iii) any other parties with whom the Debtor did business prior to the Closing Date, and the proceeds of all of the foregoing; (l) all claims, actions, causes of action, demands, lawsuits, arbitrations, notices of violation, proceedings, litigations, citations, or summons, whether civil, criminal, administrative, regulatory,

[3] The Closing Date shall be the date the Court enters this Sale Order on the docket of the Bankruptcy Case.

or otherwise, whether at law or in equity (collectively, "Actions") or Claims against (i) the Debtor's contract counterparties and the proceeds thereof, (ii) A-1 Engineering, LLC, and any of its affiliates, professionals, owners, managers, members, officers, directors, employees, agents, insurers, successors or assigns, (iii) the Debtor's insurance carriers, policies, or coverage (excluding any mortgagee's title insurance coverage or any insurance policies in which Buyer is named loss payee or additional insured), and (m) all Actions arising under sections 502, 510, 541, 542, 543, 544, 545, 547 through and including 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced to prosecute such Actions, and which may be recovered pursuant to section 550 of the Bankruptcy Code.; (n) all rights of the Estate to object to or seek disallowance or subordination of Claims against the Estate, including any associated setoff, recoupment, or other similar rights; (o) all assets and properties that are not specifically enumerated as Assets herein, and (p) all Claims relating to rights of the Seller arising under this Sale Order or any other Transaction Document.

I. Trustee's Authority. Subject to the entry of this Sale Order, the Trustee: (i) has full power and authority to complete the Sale; (ii) has all of the power and authority necessary to consummate the Transaction; and (iii) has taken all action necessary to authorize and approve the Sale, and any actions required to be performed by the Trustee in order to consummate the Transaction contemplated herein. No consents or approvals of the Debtor are required for the Trustee to consummate the Sale. Pursuant to Amended Final Order Granting Chapter 11 Trustee's Motion to Obtain Secured Credit on an Interim and Final Basis (ECF No. 144, the "Financing Order") p. 16, ¶ 15(c) the Transaction's satisfaction of Claims against the Estate constitutes "moneys disbursed or turned over in the case" by the Trustee "to parties in interest" for purposes

of Bankruptcy Code section 326(a), subject in all respects to complete and full compliance with the limits set forth in the Budget (as defined in the Financing Order).

J. Stipulations. This Sale Order and the Transactions in no way alter, amended or prejudice: (i) the Notice and Stipulation Extending Challenge Period under Final Financing Order (ECF No. 157); (ii) the Second Notice and Stipulation Extending Challenge Period under Final Financing Order (ECF No. 178); (iii) the Third Notice and Stipulation Extending Challenge Period under Final Financing Order (ECF No. 197); (iv) the Fourth Notice and Stipulation Extending Challenge Period under Final Financing Order (ECF No. 235); (v) the Stipulation and Order to Deposit Funds in the Registry of the Court Between Austin Glass & Mirror, Inc., ACM Services, LLC, Koetter Fire Protection of Austin, LLC, Capital Industries, LLC, Hill Country Electric Supply, LP, Lyle America, Inc. d/b/a Glass.com of Illinois, Summer Legacy, LLC, Texas Air, LLC, Ferguson Enterprises, LLC, and American Builders and Contractors Supply Co., Inc. d/b/a ABC Supply ("M&M Lien Claimants") and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 221) ("Lien Stipulation"); (vi) the Stipulation and Order to Deposit Funds in the Registry of the Court Between Adam Zarafshani, Panache Development & Construction, Inc., and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 222); and (vii) Stipulation and Order to Deposit Funds Between Gregory S. Milligan, Chapter 11 Trustee and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 238) (collectively, the "Stipulations"). Nothing in this Order is intended to, or does, alter, amend, modify or limit the Stipulations. All rights, claims, defenses, arguments, and positions reserved in the Stipulations constitute Excluded Assets as defined herein and are specifically preserved in this Sale Order. To the extent of any inconsistency in the Stipulations and this Sale Order, the Stipulations control. The liens asserted by the M&M Lien Claimants shall

attach to the funds in the registry of the Court pursuant to the terms of the Lien Stipulation to the extent that the M&M Lien Claimants' respective liens are determined (whether through agreement of the parties, order of the Court, or otherwise) to be valid, subsisting, and superior to the liens of Romspen. Further, in order to preserve the "removables" lien priority theories and rights asserted by the M&M Lien Claimants, July 1, 2020, as the date such removables challenges were asserted, shall be the operative date for determining removability and establishing priority of any of the M&M Lien Claimants' interests on any Assets acquired by Buyer through the Transaction.

K. Sufficiency of Marketing; Broker Fee. The Trustee and his professionals, including but not limited to Cushman & Wakefield U.S., Inc. ("C&W"), marketed the Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion, the Bid Procedures Order, and this Court's Order authorizing the Trustee to retain and employ C&W as real property broker (ECF No. 160). Based upon the record of these proceedings, all creditors and other parties in interest and all prospective buyers have been afforded a reasonable and fair opportunity to bid for the Assets. C&W's work fee in the amount of $40,000.00 and out of pocket expenses in the amount of $4,241.00 is deemed reasonable and necessary and allowed for payment consistent with this Sale Order.

L. Bid Procedures. The Bid Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Assets. The Trustee conducted the sale process without collusion and in accordance with the Bid Procedures.

M. Bid Deadline; Auction. The Bid Deadline passed on September 25, 2020 at 5:00 p.m. (prevailing Central Time) in accordance with the Bid Procedures and Bid Procedures Order. The Trustee received two (2) Qualified Bids. Pursuant to the terms of the Bid Procedures, the

Trustee conducted an auction on September 29, 2020 (the "Auction"), commencing at 9:00 a.m. central time and determined that the Buyer's credit bid of $45,000,000.00 constituted the highest and best bid, which was approved by the Court at the Sale Hearing (the "Successful Bid") for the Assets and, therefore, was designated as the Successful Bid. As established by the record of the Sale Hearing, the bidding and related procedures established by the Bid Procedures Order have been complied with in all material respects by the Trustee, the Buyer, and all their affiliates. The Bid Procedures afforded a full, fair and reasonable opportunity for any entity or person to make a higher or otherwise better offer to purchase the Assets, and the Successful Bid constitutes the best and highest offer for the Assets.

N. Back-Up Bidder. At the Auction, the Competing Bidder offered the next highest or otherwise best Qualified Bid, which was a cash bid in the amount of no less than $13,000,000.00. The Trustee, in his sound exercise of business judgment, and pursuant to the authority provided in the Bid Procedures and Bid Procedures Order, determined that it was in the best interest of the Estate and its creditors that no Back-Up Bidder be selected.

O. Executory Contracts Not Assumed; Cure Objections. On September 8, 2020, the Trustee filed a *Notice of Proposed Cure Costs* (ECF No. 203, the "Cure Notice"). The Cure Notice indicated that the Debtor proposed one executory contract, a construction contract with Panache Development and Construction, Inc. ("Panache"), dated April 20, 2018, as available to potential purchasers for assumption and assignment in connection with the Sale. Panache filed an objection to the cure amounts the Trustee stated in the Cure Notice for the construction contract (ECF No. 224, the "Panache Cure Objection"). Other parties also objected to the Cure Notice to the extent the Estate sought to assume and assign contracts to which they asserted the Debtor was a counterparty (ECF Nos. 225 & 227, collectively with the Panache Cure Objection, the "Cure

Objections"). The Sale to the Buyer does not include the assumption or assumption and assignment of any of the Debtor's executory contracts. The Cure Objections are thus resolved.

P. Arm's-Length and Buyer's Good Faith. The terms of the Sale were negotiated and are undertaken by the Trustee, on behalf of the Debtor, and Buyer at arm's length without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Buyer (i) recognized that the Trustee was free to deal with any other party interested in acquiring the Assets, (ii) complied with the Bid Procedures Order in all respects and (iii) willingly subjected the bid to the competitive Bid Procedures approved in the Bid Procedures Order. All payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Sale have been disclosed; neither the Buyer, the Trustee, or the Debtor have violated section 363(n) of the Bankruptcy Code by any action or inaction. The Buyer is a good faith purchaser in accordance with section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Buyer is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Transaction. The Buyer shall not be deemed to be a successor in interest to the Debtor, the Trustee, the Estate, the reorganized debtor, or any assignee or successor-in-interest to any of such parties, and the Buyer shall not have any successor liability as to any of the Assets.

Q. Sale Highest or Best Offer. The total consideration provided by the Buyer for the Assets as reflected herein is the highest and best offer for the Assets. The Court's determination that the Buyer's offer constitutes the highest and best offer for the Assets and the Trustee's selection of the Buyer's offer as the Successful Bid constitutes a valid and sound exercise of the Trustee's business judgment. The Buyer's offer, upon the terms and conditions set forth herein, including the total consideration to be realized by the Debtor thereunder, (i) is the highest and best offer

received by the Trustee and Court after extensive marketing, including through the Bid Procedures, and (ii) is in the best interest of the Debtor, the Estate, its creditors, and other parties in interest. Taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Assets for greater economic value to the Debtor or the Estate.

R. Transfer of Assets Free and Clear. The Debtor is the sole and lawful owner of the Assets, or otherwise has a valid, enforceable property interest in such, and title thereto is vested in the Estate within the meaning of section 541(a) of the Bankruptcy Code. Subject to section 363(f) of the Bankruptcy Code, and except as otherwise provided in this Sale Order, the transfer of each of the Assets to the Buyer will be, as of the Closing Date, a legal, valid, and effective transfer of the Assets, which transfer vests or will vest the Buyer with all right, title, and interest to the Assets free and clear of, among other things: (i) all Liens, (ii) all debts arising under, relating to, or in connection with any act of the Debtor or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Claims (as defined below) and Liens (y) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, the Debtor's or the Buyer's interests in the Assets, or any similar rights, or (z) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any (collectively, the "Claims"), relating to, accruing or arising any time prior to or on the Closing Date. The Claims, collectively with the

Liens, are the "Interests." The Trustee served the Sale Notice on all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any Interests in any of the Assets.

S. Free and Clear Findings Required by Buyer. The Buyer would not have agreed to enter into and would not consummate the Transaction if the Sale of the Assets to the Buyer were not free and clear of any and all Interests pursuant to section 363(f) of the Bankruptcy Code, or if the Buyer would, or in the future could, be liable for any of such Interests. Effective upon the Closing Date, the Buyer shall not be responsible for any Interests, including in respect of the following: (i) any labor or employment agreements; (ii) all mortgages, deeds of trust and security interests; (iii) any intercompany loans and receivables between the Debtor and any non-Debtor affiliates; (iv) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor, any affiliate of any Debtor, or any member of the Debtor's "control group"; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 et. seq., or (l) any other state or federal benefits or claims relating to any employment with the Debtor or any of its predecessors; (vi) Interests arising under any Environmental, Health and Safety Laws with respect

to any assets owned or operated by the Debtor or any corporate predecessor at any time prior to the Closing Date and any liabilities of the Debtor; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) any and all Interests arising out of violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), enforcement order(s), or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health Administration; and (x) any theories of successor liability or causes of action related thereto. A sale of the Assets other than one free and clear of all Interests would yield substantially less value for the Debtor's estate, with less certainty, than the Sale as contemplated. Therefore, the Sale contemplated herein maximizes the Debtor's recovery on the Assets, and, thus, is in the best interests of the Debtor and the Estate, its creditors, and all other parties in interest.

T. Satisfaction of Section 363(f) Standards. The Trustee is authorized to sell the Assets free and clear of all Interests because, with respect to each creditor or other person or entity asserting an Interest, one or more of the standards set forth in section 363(f)(l)-(5) of the Bankruptcy Code has been satisfied. Each creditor or other person or entity asserting an Interest in the Assets: (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale or is deemed to have consented; (ii) will have a Lien attached to the proceeds of the Sale in the same priority and to the same extent as such Lien attached to the Assets; (iii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such lien, claim, encumbrance, or other interest; or (iv) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. All parties in interest, including, without limitation, any holders of Interests, or who withdrew their objection, to the Sale or the Motion are deemed to have consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests

who did not object (or who ultimately withdrew their objections, if any) to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of any Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code because their Interests will attach to the proceeds of the Sale to the same extent and priority as such Interests attached to the Assets as of the Petition Date.

U. Sale as Exercise of Business Judgment. Consummation of the Sale constitutes the exercise by the Trustee of sound business judgment, and such acts are in the best interest of the Debtor, the Estate, its creditors, and all parties in interest. The Court finds that the Trustee has articulated good and sufficient business reasons justifying the Sale of the Assets to the Buyer.

V. Compelling Reasons for an Immediate Sale. The Trustee has articulated good and sufficient reasons for approval of the Sale. The Trustee has demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization or liquidation (as the case may be), in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to preserve and to maximize the value of the Assets for the Estate. To maximize the value of the Assets, it is essential that the Sale occur promptly.

W. Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order and expressly directs entry of judgment as set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Motion Granted. The relief requested in the Motion is GRANTED as stated herein.

2. Objections Overruled. All objections, if any, with regard to the relief sought in the Motion that have not been withdrawn, waived, settled, or otherwise dealt with as expressly provided herein or on the record at the Sale Hearing are hereby overruled on the merits, with prejudice.

3. Notice. Notice of the Motion, the Bid Procedures, the Bid Procedures Order, the Sale (and the Transaction contemplated in connection therewith), the Sale Hearing, and all deadlines related thereto was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006.

4. Approval. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Sale of the Assets are hereby approved, and the Trustee, on behalf of the Debtor, is authorized and directed to consummate the Sale, including the sale, transfer and assignment of all of the Debtor's right, title, and interest in the Assets to the Buyer in accordance with the terms stated herein. The Trustee and the Buyer are each hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Assets to the Buyer and the closing of the Transaction (the "Closing")[4] and this Sale Order, and (b) perform, consummate, implement and close fully the Sale together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the provisions of this Sale Order.

5. Credit Bid. The Successful Bid is a credit bid pursuant to Bankruptcy Code section 363(k). At the Closing, the Buyer shall document the offset, release and satisfaction of

[4] An asset purchase agreement is not required to effectuate the Closing, and a title company is not being engaged to coordinate the Closing. Accordingly, the only condition precedent to the occurrence of the "Closing" and thus the passing of all legal and equitable title of the Assets to the Buyer is the Court's entry of this Sale Order on the docket of the Bankruptcy Case.

$45,000,000.00 in indebtedness under the Credit Agreement and the Loan Documents, which shall first be applied to the satisfaction and payment in full of the Post-Petition Indebtedness (as defined in the Financing Order), with the remaining amount applied to the reduction of the Pre-Petition Indebtedness (as defined in the Financing Order), pursuant to the Financing Order.

6. Amendments to terms of Sale. The terms of the Sale and any related agreements, documents, or other instruments may be modified, amended, supplemented or restated by the parties thereto in a writing signed by such parties and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, supplement or restatement does not alter the economic substance of the Sale. The terms of the Sale shall not be altered, amended, rejected, discharged or otherwise affected by any chapter 11 plan proposed or confirmed in these bankruptcy cases without the prior written consent of the Buyer.

7. Transfer Free and Clear. One or more of the standards set forth in section 363(f)(l)-(5) of the Bankruptcy Code has been satisfied. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, upon the Closing, neither the Buyer, nor any of its respective successors and assigns shall have any liability for any Interest arising from or otherwise related to the Assets, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether as a successor, vicariously or otherwise, of any kind, nature or character whatsoever. Through this Sale Order, all rights, interests and legal and equitable title in, under and to the Assets are hereby conveyed by the Trustee, on behalf of the Debtor, to the Buyer free and clear of any and all Interests. All liens, claims, encumbrances, and other interests shall attach to the proceeds of the Sale with the same nature, validity, and priority as such liens, claims, encumbrances, or other interests encumbered the Assets prior to the proposed Sale and shall be distributed pursuant to further order of the Court. As of the Closing Date, the Buyer expressly

assumes all liability required to satisfy all ad valorem tax liens, including the year 2020 ad valorem tax liens, pertaining to the subject properties (real and personal) and payment in satisfaction of these claims shall constitute "moneys disbursed or turned over in the case" by the Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a). On the Closing Date, Buyer shall fund the amount of $44,241.00 and the Trustee shall use these funds to pay C&W its fees and expenses, which are hereby allowed on a final basis without further application or order of this Court, in accordance with this Court's Order authorizing the Trustee to retain and employ C&W as real property broker (ECF No. 160).

8. Surrender of Possession. Any and all Assets in the possession or control of any person or entity, including any and all equity security holders, affiliates of the Debtor, vendor, supplier, or employee of the Debtor shall be transferred to the Buyer free and clear of all Interests and shall be immediately delivered to the Buyer and deemed delivered at the time of Closing.

9. Vesting of Assets in the Buyer. Effective upon the Closing, the transfer to the Buyer of the Debtor's right, title, and interest in the Assets shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtor's right, title, and interest in the Assets, and vests with or will vest in the Buyer all right, title, and interest of the Debtor in the Assets, free and clear of all Interests to the extent permitted by section 363 of the Bankruptcy Code. The Trustee and Buyer are authorized, but not required, to execute any additional documents necessary to effectuate the terms of this Sale Order, including, without limitation, a deed evidencing the passing of title to the Assets to Buyer ("Deed"). Buyer is permitted, but not required, to record, file or otherwise submit this Sale Order, the Deed, or any other documents with any applicable governmental authority or agency to notice Buyer's title and ownership of the Assets.

10. Good Faith Buyer. The Buyer is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code, and the Buyer has proceeded in good faith in all respects in connection with the Sale. The Buyer shall not have any successor liability to the Debtor, the Trustee, the Estate, the Debtor's creditors, any of their respective successors or assigns, the Assets or in any way related to or arising from the Transaction evidenced by this Sale Order.

11. No Bulk Sales. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Motion and this Sale Order.

12. Fair and Equivalent Value. The consideration provided by the Buyer for the Assets under this Sale Order shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

13. Transfer of Marketable Title. Upon the Closing, this Sale Order shall be construed and shall constitute for any and all purposes an assignment, conveyance and transfer of all of the Debtor's right, title, and interest in the Assets, or a bill of sale transferring good, indefeasible, valid and marketable title in such Assets to the Buyer at the Closing, free and clear of all Interests.

14. Approval to Release Interests. If any person or entity that has filed financing statements, mortgages, mechanic's liens or other documents or agreements evidencing Interests in or against the Assets has not delivered to the Trustee before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests that the person or entity has or may assert with respect to the Assets, the Buyer is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets. The Buyer shall

not need the consent of any such parties prior to filing or recording any such releases, discharges or terminations of such Interests in the Assets. The Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests against the Assets.

15. Effect of Recordation of Order. This Sale Order, once filed, registered, or otherwise recorded, (a) shall be effective as a conclusive determination that, upon the Closing, all Interests of any kind or nature whatsoever existing as to the Assets prior to the Closing have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all persons and entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Transaction, including, without limitation, recordation of this Sale Order.

16. Subsequent Orders and Plan Provisions. Unless otherwise agreed to by the Trustee and the Buyer, this Sale Order shall not be modified by any chapter 11 plan confirmed in these Chapter 11 Cases or any subsequent order(s) of this Court.

17. Binding Effect of Sale Order. This Sale Order shall be binding in all respects upon the Trustee, the Debtor, the Estate, all creditors of, and holders of equity security interests in, the Debtor, affiliates of the Debtor, officers and/or employees of the Debtor, any holders of Interests

in, against or on all or any portion of the Assets (whether known or unknown), the Buyer and all successors and assigns of the Buyer, notwithstanding the dismissal of any of the Chapter 11 Case or any subsequent appointment of any trustees, examiners, "responsible persons" or other fiduciaries in the Chapter 11 Case or upon a conversion to chapter 7 under the Bankruptcy Code. Nothing in this Order alters, amends, modifies or limits the Stipulations. All rights reserved in the Stipulations constitute Excluded Assets as defined herein and are preserved notwithstanding anything to the contrary in this Sale Order. Effective as of the Closing Date, all persons or entities holding any Interests of any kind in, to or against any Assets shall be, and are hereby deemed, forever barred from asserting or enforcing any of such Interests against Buyer, its successors and assigns or against the Assets after Closing. No person shall take any action to prevent, interfere with or otherwise enjoin the consummation of the Transaction contemplated by this Sale Order.

18. Preservation of Challenge Rights. Notwithstanding any other provision of this Sale Order, nothing in this Sale Order or any document executed regarding the Transaction shall release, waive, restrict or prejudice in any way any rights, remedies, reservations, Claims or causes of action the Trustee, Estate or Debtor (and such duly appointed successor to the Trustee, the Debtor or Estate) may have against the Buyer or the Lender (as defined in the Financing Order), including, without limitation, prosecution of any action to invalidate, challenge, dispute, avoid, subordinate or otherwise impair the claims or liens of Lender or Buyer, or any liens or priorities created under either the Financing Order, the Loan Documents (as defined in the Financing Order) or the Credit Facility (as defined in the Financing Order), or to recover on any claims against or transfers made to Lender or Buyer. For avoidance of doubt, should the Trustee, Debtor or Estate, or any of their successors or assigns, obtain any order or judgment subordinating, disallowing, reducing, impairing, or avoiding the Buyer's or Lender's claims or liens, including, without limitation, the

amounts that constitute the Successful Bid, then upon such order or judgment, the Buyer (including RIC (Austin) LLC or any other designee or assignee) and Lender hereby agree to fund to the Trustee (and such duly appointed successor to the Trustee, the Debtor or Estate) the Successful Bid amount, and such other additional amounts, in cash sufficient to fully satisfy and implement such judgment, order or award. Nothing in this Sale Order limits or restricts the amount of any damages, the type or nature of any relief or specific performance or other remedy the Trustee, Estate or Debtor, or their successors or assigns may obtain against the Buyer or Lender. Notwithstanding any other provision of this Sale Order, nothing in this Sale Order or any document executed regarding the Transaction shall collaterally estop, release, waive, restrict or prejudice in any way any rights, remedies, reservations, Claims or causes of action the M&M Lien Claimants have timely asserted against the Lender (as defined in the Financing Order) in the Amended Complaint filed on September 28, 2020 in Adversary Case No. 20-1048 pending before the Bankruptcy Court.

19. Preservation of White Parties' Challenges. Lender and DANIEL WHITE, LINCOLN 1861 INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC.,ABSOLUTE ENERGY RESOURCES INC.,LOT 11 GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO INDUSTRIAL BUSINESS PARK INC.., THE WHITE FAMILY TRUST, AND SYMMETRY ASSET MANAGEMENT INC. (collectively, the "White Parties") agree and the Court so orders that nothing herein shall constitute a determination as to the extent or validity of the liens or claims asserted by Lender. Lender and the White Parties agree and the Court so orders nothing herein shall limit or otherwise reduce or affect in any manner the right or the amount of setoff (if any) against the claims of Romspen by the Debtor, the White Parties or any other party. Romspen and the White Parties agree and the Court so orders that entry of this order permitting Romspen to purchase the Assets for a credit bid of $45,000,000 does not limit or otherwise affect the rights of the Debtor, the Trustee, the White

Parties and any other party in interest with standing to challenge the allowance or entry of a judgment on all or any part of any claim asserted by Romspen in this or any other proceeding against the Debtor, any of the White Parties or any entity affiliated with Mr. White. Romspen and the White Parties agree and the Court so orders that if it is ultimately determined by entry of a final judgment ("**Final Judgment**") that the allowed claim of Romspen is less than $45,000,000 (the "**Credit Bid**"), Romspen shall pay to the Trustee (or his successors and assigns) the difference between the Credit Bid and the amount of the Romspen claim as ultimately allowed by such Final Judgment. Romspen and the White Parties agree and the Court so orders that nothing herein shall constitute a finding or other Court determination that the Debtor was in default of its obligations to Romspen or that Romspen had the right to declare a default under the relevant loan documents against the Debtor, any of the White Parties or any entity affiliated with Mr. White.

20. Immediate Effect. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms of this Sale Order shall be immediately effective and enforceable upon its entry and not subject to any stay, notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d) or otherwise and to the extent Bankruptcy Rules 6004(h) and 6006(d) are applicable, the operative provisions of such rules are hereby waived and deemed inapplicable to the Transaction such that the terms of this Sale Order are immediately effective, operative and fully enforceable on a final basis. Furthermore, because the Buyer has acted in good faith, pursuant to Section 363(m) of the Bankruptcy Code, the reversal or modification of this Order on appeal will not affect the validity of the Transaction contemplated by this Sale Order, unless the same is stayed pending appeal prior to Closing. Therefore, the Trustee and Buyer are authorized to immediately proceed in consummating the sale of the Real Property immediately upon the entry of this Order and are

immediately authorized to take any and all actions necessary to effectuate the terms of this Sale Order Time is of the essence in Closing the Transaction.

21. Trustee Compensation. Pursuant to the Financing Order (ECF No. 144) p. 16, ¶ 15(c) the Transaction's satisfaction of Claims against the Estate constitutes "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 to complete and full compliance with the limits set forth in the Budget (as defined in the Financing Order).

22. Retention of Jurisdiction. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order, and each ancillary document executed in connection therewith to which the Trustee, on behalf of the Debtor, is a party, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale; provided, however, that in the event the Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

23. Non-Severability. The provisions of this Sale Order are non-severable and mutually dependent.

24. Headings. Headings are included in this Sale Order for ease of reference only.

25. Broker Fees. Except for C&W, no broker or party has a claim to any commission, broker's fee, finder's fee, or similar fee as a result of having negotiated the Sale for, or on behalf of, the Trustee, the Debtor or the Buyer.

26. The findings of fact and conclusions of law entered in this Sale Order shall constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal

Rules of Bankruptcy Procedure, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any finding of fact shall later be determined to be a conclusion of law, it shall be so deemed, and to the extent that any conclusion of law shall later be determined to be a finding of fact, it shall be so deemed.

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PREPARED AND SUBMITTED BY:

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COUNSEL FOR GREGORY MILLIGAN,
CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

EXHIBIT A

Real Property Description

EXHIBIT A

LEGAL DESCRIPTION

TRACT 1:

Lot 1A-B, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, a subdivision in Travis County, Texas, according to the map or plat recorded in Document No. 200900045, of the Official Public Records of Travis County, Texas.

TRACT 2:

NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Easement Agreement for Emergency Reciprocal Access, dated November 15, 2006, by and between Freescale Semiconductor, Inc. and Hewlett-Packard Company, recorded in Document No. 2006222165, Official Public Records of Travis County, Texas; over and across those portions of Lot 1A and 2A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200600304, Official Public Records of Travis County, Texas, now known as Lot 1A-A and Lot 1A-B, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document no. 200900045, Official Public Records of Travis County, Texas.

TRACT 3:
NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Reciprocal Access Agreement for Landscape and Building Maintenance, dated November 15, 2006, by and between Freescale Semiconductor, Inc. and Hewlett-Packard Company, recorded in Document No. 2006222167, Official Public Records of Travis County, Texas; over and across those portions of Lot 1A and 2A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200600304, Official Public Records of Travis County, Texas, now known as Lot 1A-A and Lot 1A-B, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200900045, Official Public Records of Travis County, Texas.

TRACT 4:

NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Ingress and Egress Access Easement dated August 10, 2012, by and between MFPB Ed Bluestein LLC and Freescale Semiconductor, Inc., recorded in Document No. 2012132396, Official Public Records of Travis County, Texas; over and across those portions of Lot 1A-A, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200900045, Official Public Records of Travis County, Texas.

TRACT 5:

NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Parking Spaces Easement Agreement, dated August 10, 2012, by and between Freescale Semiconductor, Inc. and MFPB Ed Bluestein LLC, recorded in Document No. 2012132397, Official Public Records of Travis County, Texas; all rights therein to the use of the parking spaces located on the third and fourth floors shown as G-1 in Exhibit "B" of Agreement. Said Parking Garage located on Lot 1A-A, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1,

MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200900045, Official Public Records of Travis County, Texas.

TRACT 6:

NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Stairwell Ingress and Egress Access Easement, dated August 10, 2012, by and between Freescale Semiconductor, Inc. and MFPB Ed Bluestein LLC, recorded in Document No. 2012132398, Official Public Records of Travis County, Texas; all rights therein to the use of the stairwell shown in Exhibit "A" of Agreement. Said stairwell located on Lot 1A-A, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according the map or plat thereof, recorded in Document No. 200900045, Official Public Records of Travis County, Texas.

TRACT 7:

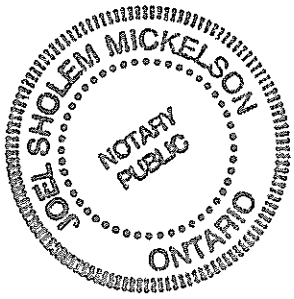
NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Reciprocal Easement Agreement for Access through Doorway to Buildings K and L, dated August 10, 2012, by and between Freescale Semiconductor, Inc. and MFPB Ed Bluestein LLC, recorded in Document No. 2012132400, Official Public Records of Travis County, Texas; all rights therein to the access use of the doorway shown in Exhibit "B" of Agreement. Said doorway located on Lot 1A-A, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200900045, Official Public Records of Travis County, Texas.

TRACT 8:

NON-EXCLUSIVE EASEMENT ESTATE appurtenant to Tract 1 created pursuant to that certain Reciprocal Easement Agreement for Access to Trails and for Lot Line Maintenance, dated August 10, 2012, by and between Freescale Semiconductor, Inc. and MFPB Ed Bluestein LLC, recorded in Document No. 2012132399, Official Public Records of Travis County, Texas; all rights therein to the pedestrian access over and across the trails currently existing as shown in Exhibit "A" of Agreement; all rights therein for landscaping and maintenance. Said trails located on Lot 1A-A, RESUBDIVISION PLAT OF LOT 1A, RESUBDIVISION PLAT OF LOT 1, MOTOROLA INC. ED BLUESTEIN FACILITY, according to the map or plat thereof, recorded in Document No. 200900045, Official Public Records of Travis County, Texas.

This is EXHIBIT "G" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



The relief described hereinbelow is SO ORDERED.

Signed January 27, 2021.

H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING CHAPTER 11 TRUSTEE'S AMENDED LIQUIDATING PLAN, AS MODIFIED

Relates to ECF Nos. 316 and 387

Upon the *Chapter 11 Trustee's Amended Liquidating Plan as Modified*, as it has been and may be modified, amended or supplemented from time to time (ECF No. 387, and attached to this Order as **Exhibit A**, the "Plan"),[1] filed by Gregory S. Milligan, Chapter 11 Trustee (the "Chapter 11 Trustee") for the bankruptcy estate (the "Estate") of 3443 Zen Garden, LP (the "Debtor"), debtor in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"); and the *Chapter 11 Trustee's Modification to Amended Liquidating Plan* (ECF No. 372, the "Plan

[1] Capitalized terms not otherwise defined herein are used as defined in the Plan.

Modification"); and considering the *Order Regarding Chapter 11 Trustee's Modification to Amended Liquidating Plan* (ECF No. 373, the "Plan Mod Order"); and considering the *Disclosure Statement for Chapter 11 Trustee's Amended Liquidating Plan* (ECF No. 317, the "Disclosure Statement"); and considering the *Chapter 11 Trustee's Amended Liquidating Plan* (ECF No. 316); and the Plan, the Plan Modification, and the Disclosure Statement having been distributed or made available to holders of Claims and Equity Interests and other parties in interest as provided in the *Order (1) Approving Amended Disclosure Statement for Liquidating Chapter 11 Plan; (2) Scheduling a Hearing on Confirmation of the Plan; (3) Establishing Voting Deadline and Procedures for Filing Objections to Confirmation; (4) Approving Forms of Ballots and Notice of Confirmation Hearing; (5) Establishing Solicitation and Tabulation Procedures; and (6) Granting Related Relief* (ECF No. 322, the "Solicitation Order") and the Plan Mod Order; and upon the hearing to consider confirmation of the Plan conducted on January 26, 2021 (the "Confirmation Hearing"); and good and sufficient notice of the Plan, the Plan Modification, the Disclosure Statement, and the Confirmation Hearing having been provided to holders of Claims and Equity Interests in accordance with title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Rules (the "Local Rules") of the United States Bankruptcy Court for the Western District of Texas (the "Court" or the "Bankruptcy Court") and the orders of this Bankruptcy Court, as established by the affidavits of service filed with the Court (ECF Nos. 333 and 378, without limitation, the "Notice Affidavits"), and such notice being sufficient under the circumstances and no other or further notice being required; and after full consideration of (i) the declaration of Chapter 11 Trustee Gregory S. Milligan in Support of the Plan (ECF No. 384, the "Milligan Declaration") and further testimony adduced at the Confirmation Hearing; (ii) the declaration filed by the Chapter 11 Trustee's Court-

appointed tabulation agent, Wick Phillips Gould & Martin, LLP (the "Tabulation Agent"), dated January 7, 2021, regarding the methodology applied to the tabulation of the voting results with respect to Plan (ECF No. 363, the "First Lawrence Declaration"); and (iii) the supplemental declaration filed by the Tabulation Agent, dated January 21, 2021, regarding additional balloting related to the Plan Modification (ECF No. 383, the "Second Lawrence Declaration" and collectively with the First Lawrence Declaration, the "Lawrence Declarations"); and upon the informal and formal objections to confirmation of the Plan (collectively, the "Objections"), if any; and upon the entire record of this Chapter 11 Case, the record made at the Confirmation Hearing and the arguments of counsel and all of the evidence adduced thereat; and the Court having determined, based upon all of the foregoing, that the Plan should be confirmed; and after due deliberation and good cause appearing therefor, the Court hereby

FINDS, DETERMINES, AND CONCLUDES AS FOLLOWS:

A. Findings and Conclusions. The findings and conclusions set forth herein and on the record at the Confirmation Hearing constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the Court's findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the Court's conclusions of law constitute findings of fact, they are adopted as such.

JURISDICTION AND VENUE

B. Jurisdiction, Venue, Core Proceeding. This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L) and (O), and this Court has jurisdiction to enter a final

order with respect thereto. The Debtor is an eligible debtor under section 109 of the Bankruptcy Code. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

CHAPTER 11 CASE

C. Commencement of the Chapter 11 Case. On March 22, 2020 (the "Petition Date"), Lyle America, Inc. d/b/a Glass.com of Illinois, Austin Glass & Mirror, Inc., and ACM Services, LLC (collectively, the "Petitioning Creditors") initiated this Chapter 11 Case by filing an involuntary chapter 11 petition in the Court.

D. The Bankruptcy Court entered its *Consent Order for Entry of Relief* on April 8, 2020. *See* ECF No. 11. On April 9, 2020, the Petitioning Creditors filed an *Expedited Motion for Order Requiring Appointment of a Chapter 11 Trustee*, see ECF No. 14, which the Court granted on April 15, 2020, see ECF No. 27. The Court approved the appointment of Gregory S. Milligan as Chapter 11 Trustee for the Debtor on April 22, 2020. *See* ECF No. 36.

E. No official committee of unsecured creditors, or any other official committees, have been appointed or designated. The Chapter 11 Trustee continues to manage the Debtor in this Chapter 11 Case, including presenting the Plan.

F. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Case maintained by the Clerk of the Court and pleadings reflected therein including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases.

SOLICITATION AND NOTICE

G. Solicitation and Notice. On December 1, 2020, the Court entered the Solicitation Order, which, among other things, (i) approved the Disclosure Statement as containing adequate

information as required by section 1125 of the Bankruptcy Code; (ii) established procedures for the solicitation of votes on the Plan; and (iii) scheduled a hearing and established notice and objection procedures for confirmation of the Plan. The following materials (collectively, the "Solicitation Materials") were served upon parties in interest in compliance and in accordance with the Bankruptcy Rules and the Solicitation Order, as applicable:

- the Plan;
- the Disclosure Statement;
- the Solicitation Order;
- ballots for accepting or rejecting the Plan and opting out of the third-party releases in the Plan; and
- the Confirmation Hearing Notice (as defined in the Solicitation Order).

H. As described in the First Lawrence Declaration and the Notice Affidavits (a) the service of the Solicitation Materials was adequate and sufficient under the circumstances of the Chapter 11 Case and (b) adequate and sufficient notice to holders of Claims and Equity Interests of the Confirmation Hearing and other requirements, deadlines, hearings, and matters described in the Solicitation Order was timely provided in compliance with the Bankruptcy Rules and the Solicitation Order.

I. As described in the Second Lawrence Declaration and the Notice Affidavits (a) the service of the Plan Modification was adequate and sufficient under the circumstances of the Chapter 11 Case and (b) adequate and sufficient notice to holders of Claims and Equity Interests in the Debtor of their opportunity to change their votes to accept or reject the Plan as a result of the Plan Modification.

J. Voting. Votes on the Plan and Plan Modification were solicited after disclosure to holders of Claims and Equity Interests of "adequate information" as defined in section 1125 of the Bankruptcy Code. As evidenced by the Lawrence Declarations, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

K. Burden of Proof. The Chapter 11 Trustee has met the burden of proving the elements of sections 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard.

L. Bankruptcy Rule 3016(a). The Plan and the Plan Modification are dated and identifies the Chapter 11 Trustee as the Plan proponent, thereby satisfying Bankruptcy Rule 3016(a).

M. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(i) Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). As required by section 1123(a)(1) of the Bankruptcy Code, in addition to Administrative Expense Claims and Priority Tax Claims, which need not be classified, Articles III and IV of the Plan designate ten (10) Classes of Claims against and Equity Interests in the Debtor. As required by section 1122(a) of the Bankruptcy Code, the Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity

Interests created under the Plan, and such Classes do not effect unfair discrimination between holders of Claims and Equity Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(ii) Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Articles III and IV of the Plan specify that Class 1 is unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(iii) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Articles III and IV of the Plan specify that Classes 2, 3, 4, 5, 6, 7, 8, 9 and 10 are impaired and set forth the treatment of such impaired Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(iv) No Discrimination (11 U.S.C. § 1123(a)(4)). Article IV of the Plan provides for the same treatment under the Plan for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment in respect of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(v) Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan provides for adequate and proper means for its implementation including, without limitation, (a) sources of consideration for distributions, (b) the issuance of Creditor Trust Interests, (c) the retention of Equity Interests, (d) the vesting of the Creditor Trust Assets in the Creditor Trust; and (f) the execution, delivery, filing, or recording of all contracts, instruments, releases, and other agreements or documents related to the foregoing, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

(vi) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). Because the Debtor is liquidating, the prohibition on the issuance of nonvoting equity securities, as required by section 1123(a)(6) of the Bankruptcy Code, is not applicable.

(vii) Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). Article VI of the Plan discloses and appoints Gregory S. Milligan as the initial Creditor Trustee, consistent with the interests of holders of Claims and Equity Interests and public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

N. Additional Plan Provisions (11 U.S.C. § 1123(b)). The additional provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code.

(i) Impairment/Unimpairment of Any Class of Claims or Interests (§ 1123(b)(1)). Pursuant to the Plan, Class 1 is unimpaired and Classes 2, 3, 4, 5, 6, 7, 8, 9 and 10 are impaired, as contemplated by section 1123(b)(1) of the Bankruptcy Code.

(ii) Assumption and Rejection of Executory Contracts (11 U.S.C. § 1123(b)(2)). Article IX of the Plan provides for the rejection of the Debtor's remaining executory contracts and unexpired leases (if any), effective as of the Effective Date, except for any executory contract or unexpired lease that (a) was previously assumed, assumed and assigned or rejected pursuant to an Order of the Bankruptcy Court entered on or before the Confirmation Date, (b) previously expired or terminated by its own terms or (c) is the subject of a motion to assume, assume and assign or reject filed on or prior to the Confirmation Date.

(iii) Settlement of Claims and Causes of Action (11 U.S.C. § 1123(b)(3)). Article VI of the Plan provides for settlement of certain Claims and Causes of Action and the

retention and enforcement of other Claims and Causes of Action by the Creditor Trust. As set forth below, the proposed Plan settlements are approved as fair and equitable.

(iv) Modification of the Rights of Holders of Claims (11 U.S.C. § 1123(b)(5)). Article IV of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of each class of Claims and Equity Interests.

(v) Other Appropriate Provisions (11 U.S.C. § 1123(b)(6)). The Plan's other provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code including, without limitation, provisions for (a) distributions to holders of Claims and Equity Interests, (b) retention of, and right to enforce, sue on, settle, or compromise (or refuse to do any of the foregoing with respect to) certain claims and causes of action against third parties, to the extent not waived and released under the Plan, (c) resolution of Disputed Claims and Disputed Equity Interests, (d) allowance of certain Claims and Equity Interests, (e) releases by the Estate and certain parties of certain other parties, and (f) exculpations of certain parties.

O. Cure of Defaults (11 U.S.C. § 1123(d)). The Plan does not contemplate the cure of any defaults. Thus, section 1123(d) of the Bankruptcy Code is not applicable.

P. Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Chapter 11 Trustee has complied with the applicable provisions of the Bankruptcy Code. Specifically:

(i) The Chapter 11 Trustee was duly appointed, accepted his appointment, and posted appropriate bonds pursuant to Section 1104 the Bankruptcy Code and Bankruptcy Rules 2007.1 and 5002;

(ii) The Chapter 11 Trustee has complied with all provisions of the Bankruptcy Code and Bankruptcy Rules, except as otherwise provided or permitted by orders of this Court; and

(iii) The Chapter 11 Trustee has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules in transmitting the Plan, the Plan Modification, the Disclosure Statement, the Ballots and related documents and notices and in soliciting and tabulating the votes on the Plan.

Q. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Chapter 11 Trustee has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Chapter 11 Trustee's good faith is evident from the facts and record of the Chapter 11 Case, the Disclosure Statement, the record made at the Confirmation Hearing and the other proceedings in these Chapter 11 Cases. The Plan and the Plan Modification were proposed with the legitimate and honest purpose of maximizing the value of the Estate and to effectuate a liquidation of the Debtor. The Plan was negotiated at arm's-length among various important stakeholders in the Chapter 11 Case. Further, the Plan's classification, indemnification, exculpation, release, and injunction provisions have been negotiated in good faith and at arm's-length. Such provisions are consistent with sections 105, 1122, 1123(b)(6), 1125, 1129, and 1142 of the Bankruptcy Code, are each necessary for the success of the Plan, and were not included in the Plan for any improper purpose.

R. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment to be made by the Estate, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in connection with the Chapter 11 Case, or in connection with the Plan or Plan Modification and incident to the Chapter 11 Case, is subject to the approval of the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

S. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Chapter 11 Trustee has complied with section 1129(a)(5) of the Bankruptcy Code. The Chapter 11 Trustee has disclosed the identity of the Creditor Trustee, whose appointment is consistent with the interests of holders of Claims and Equity Interests and with public policy.

T. No Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code is not applicable to the Plan or Plan Modification.

U. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. Each holder of an impaired Claim or Equity Interest that has not accepted the Plan will on account of such Claim, as demonstrated by the liquidation analysis included in the Disclosure Statement, receive or retain property under the Plan having a value, as of the Effective Date, that is at least equal to the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

V. Acceptance by/Unimpairment of Certain Classes (11 U.S.C. § 1129(a)(8)). Class 1 is unimpaired by the Plan and holders of Claims in such Class, if any, are thus conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 10 is impaired by the Plan, but conclusively deemed to have accepted the Plan due to the *Stipulation and Order Regarding Amended Liquidating Plan Treatment for Daniel White, Lincoln 1861, Inc. and Related Entities*. *See* ECF No. 369. Classes 2, 3, 4, 5, 6, 7, 8 and 9 are impaired by the Plan, and each such Class has accepted the Plan in accordance with section 1126(d) of the Bankruptcy Code, as established by the Lawrence Declarations. Therefore, Section 1129(a)(8) of the Bankruptcy Code has been satisfied with respect to all Classes. The Plan satisfies the "cram down" requirements of section 1129(b) of the Bankruptcy Code.

W. Treatment of Administrative Expense Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expense Claims and Priority Tax Claims pursuant to Article II of the Plan satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

X. Acceptance By At Least One Impaired Class of Claims (11 U.S.C. § 1129(a)(10)). As described above and in the Lawrence Declarations, Classes 2, 3, 4, 5, 6, 7, 8, 9 and 10 were impaired and voted to accept the Plan. Section 1129(a)(10) is, therefore, satisfied.

Y. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan proposes to liquidate the Debtor and the Estate. As a result, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

Z. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees due and payable pursuant to section 1930 of title 28, United States Code, as determined by the Court, have been or will be paid by the Estate on the Effective Date pursuant to section 2.4 of the Plan, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

AA. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtor is not responsible for the payment of any "retiree benefits," as defined in section 1114 of the Bankruptcy Code. Section 1129(a)(13) of the Bankruptcy Code is thus inapplicable in these Chapter 11 Cases.

BB. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

CC. Debtor Not Individual (11 U.S.C. § 1129(a)(15)). The Debtor is not an individual, and accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable to the Debtor.

DD. No Applicable Nonbankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtor is not a non-profit corporation or trust. Accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in the Chapter 11 Case.

EE. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan subject to confirmation. Section 1129(c) of the Bankruptcy Code is satisfied.

FF. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, thereby satisfying section 1129(d) of the Bankruptcy Code.

GG. Not Small Business Cases (11 U.S.C. § 1129(e)). The Chapter 11 Case is not a small business case and accordingly, section 1129(e) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

COMPLIANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE

FF. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court in the Chapter 11 Case and the Lawrence Declarations, the Exculpated Parties and each of their respective present or former members, managers, officers, directors, employees, equity holders, partners, affiliates, funds, advisors, attorneys, agents, successors and assigns, and all other persons involved in the solicitation process, have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules in connection with all of their respective activities arising out of, relating to or connected with the administration of the Chapter 11 Case, the negotiation and pursuit of approval of the Disclosure Statement, the preparation and solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the funding of the Plan, the consummation of the Plan, the administration of the Plan and the property to be

distributed under the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

COMPLIANCE WITH SECTION 1126 OF THE BANKRUPTCY CODE

GG. Acceptance of Plan (11 U.S.C. § 1126). As set forth in the Lawrence Declarations, each impaired voting Class has voted to accept the Plan, in accordance with the requirements of section 1126 of the Bankruptcy Code.

PLAN IMPLEMENTATION

HH. The terms of the Plan and the Plan Modification are incorporated by reference and are, except as addressed herein or in any future order of the Court contemplated by this Confirmation Order, proper in all respects, and constitute an integral part of this Confirmation Order.

II. The Plan has been negotiated in good faith and at arm's-length and shall, on and after the Effective Date, constitute legal, valid, binding and authorized obligations of the respective parties thereto and will be enforceable in accordance with their terms.

JJ. Pursuant to section 1142(a) of the Bankruptcy Code, except as addressed herein or in any future order of the Bankruptcy Court contemplated by this Confirmation Order, the Plan will apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law. The Debtor, the Lender, the Estate, Daniel White; Lincoln 1861, Inc.; Blue Roots International, Ltd.; 1468527 Alberta Ltd.; Purple Tree International, Ltd.; Eco-Industrial Business Park, Inc.; Absolute Energy Resources, Inc.; Absolute Environmental Waste Management; Eightfold Development, LLC; Mos8 Partners Ltd.; Symmetry Asset Management Inc.; the Dan White Family Trust; Lot 11 Limited Partnership; and, Lot 11 GP Ltd. (beginning with Daniel White, collectively the "White Parties"), the Chapter 11 Trustee, and the Creditor Trustee, and all of their respective members,

managers, officers, directors, agents, advisors, attorneys, employees, equity holders, partners, affiliates, funds, agents and representatives will be acting in good faith if they proceed to (i) consummate the Plan and the Plan Modification and the agreements, settlements, transactions, transfers and documentation contemplated thereby and (ii) take any actions authorized and directed by this Confirmation Order.

KK. Lender Settlement. The Lender Settlement among the Debtor, the Reorganized Debtor, the Chapter 11 Trustee, the Creditor Trustee, the Creditor Trust, the Estate, and the Lender (collectively, the "Lender Settlement Parties") is necessary to and is an integral and essential element of the Plan and its consummation. The terms and conditions of the Lender Settlement are fair and reasonable under the circumstances. The performance by the Lender Settlement Parties of the terms thereof is authorized, and the parties are directed to consummate the same. The Lender Settlement is the product of arm's-length negotiations among the Lender Settlement Parties and has been proposed in good faith, for legitimate business purposes, is supported by reasonably equivalent value and fair consideration and reflects the Chapter 11 Trustee's exercise of reasonable business judgment.

LL. The Lender Settlement satisfies the requirements of Bankruptcy Rule 9019, including proper consideration of

(i) the Chapter 11 Trustee's probability of success on the merits of all claims released as part of the Lender Settlement;

(ii) the complexity, expense, and likely duration of litigation on all claims released as part of the Lender Settlement; and

(iii) other facts and circumstances bearing on the wisdom of the Lender Settlement.

MM. Entry into the Lender Settlement and consummation of the same is in the best interests of the Estate, its creditors and its equity holders. The Chapter 11 Trustee has provided all interested parties with sufficient and adequate notice of and an opportunity to be heard with respect to the Lender Settlement.

NN. White Settlement. The settlement (the "White Settlement") among the Debtor, the Chapter 11 Trustee, the Estate, and the White Parties (collectively, the "White Settlement Parties") as contemplated in the Plan Modification is necessary to and is an integral and essential element of the Plan and its consummation. The terms and conditions of the White Settlement are fair and reasonable under the circumstances. The performance by the White Settlement Parties of the terms thereof is authorized, and the parties are directed to consummate the same. The White Settlement is the product of arm's-length negotiations among the White Settlement Parties and has been proposed in good faith, for legitimate business purposes, is supported by reasonably equivalent value and fair consideration and reflects the Chapter 11 Trustee's exercise of reasonable business judgment.

OO. The White Settlement satisfies the requirements of Bankruptcy Rule 9019, including proper consideration of

(i) the Chapter 11 Trustee's probability of success on the merits of all claims released as part of the White Settlement;

(ii) the complexity, expense, and likely duration of litigation on all claims released as part of the White Settlement; and

(iii) other facts and circumstances bearing on the wisdom of the White Settlement.

PP. Entry into the White Settlement and consummation of the same is in the best interests of the Estate, its creditors and its equity holders. The Chapter 11 Trustee has provided all interested parties with sufficient and adequate notice of and an opportunity to be heard with respect to the White Settlement.

QQ. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

MM. The Chapter 11 Trustee has exercised sound business judgment in determining whether to assume or reject executory contracts and unexpired leases pursuant to Article IX of the Plan. Each assumption or rejection of an executory contract or unexpired lease as provided in section 9.1 of the Plan shall be legal, valid, and binding upon the Debtor and all non-Debtor counterparties to such contracts or leases, and satisfies the requirements of section 365 of the Bankruptcy Code including, without limitation, section 365(d)(4).

EXCULPATIONS, INJUNCTIONS AND RELEASES

NN. The Court has jurisdiction under 28 U.S.C. §§ 1334(a) and (b) to approve the exculpation, injunctions, stays and releases set forth in sections 11.3, 11.4, 11.5, 11.6, and 11.7 of the Plan. Section 105(a) of the Bankruptcy Code permits issuance of the injunctions and approval

of the releases and injunctions set forth in sections 11.3, 11.4, 11.5, 11.6, and 11.7 of the Plan because, as has been established on the record in the Chapter 11 Case and the evidence presented at the Confirmation Hearing, such provisions (i) were integral to the Lender Settlement and the White Settlement and are essential to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy Code, (ii) confer substantial benefits on the Estate, (iii) are fair, equitable and reasonable, and (iv) are in the best interests of the Debtor, the Estate, and parties in interest. Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the releases, exculpation, and injunctions set forth in the Plan and implemented by this Confirmation Order are fair, equitable, reasonable, and in the best interests of the Debtor and the Estate, creditors and equity holders. The releases of non-Debtors under the Plan are fair to holders of Claims and Equity Interests and are necessary to the proposed Plan. Such releases are given in exchange for and are supported by fair, sufficient, and adequate consideration provided by each and all of the parties providing such releases. The record of the Confirmation Hearing and the Chapter 11 Case is sufficient to support the releases, exculpation, and injunctions provided for in sections 11.3, 11.4, 11.5, 11.6, and 11.7 of the Plan. Accordingly, based upon the record in the Chapter 11 Case, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Confirmation Hearing, this Court finds that the injunctions, exculpation, and releases set forth in Article XI of the Plan are consistent with the Bankruptcy Code and applicable law.

OTHER FINDINGS

RR. Conditions Precedent to Confirmation. The conditions precedent to confirmation set forth in section 10.1 of the Plan have been satisfied.

SS. Retention of Jurisdiction. This Court may properly retain, and if appropriate, shall exercise jurisdiction over the matters set forth in Article XII of the Plan and section 1142 of the Bankruptcy Code.

TT. Objections. All parties have had a full and fair opportunity to file objections to confirmation of the Plan and to litigate any such objections.

THE PLAN SATISFIES CONFIRMATION REQUIREMENTS

UU. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and shall be confirmed.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Confirmation. The Plan, as modified by this Confirmation Order, shall be, and hereby is, confirmed pursuant to section 1129 of the Bankruptcy Code.

2. Solicitation and Notice. Notice of the Confirmation Hearing and the solicitation of votes on the Plan complied with the terms of the Solicitation Order, were appropriate and satisfactory based upon the circumstances of the Chapter 11 Case and were in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

3. Objections. All objections to the Plan not otherwise withdrawn at or prior to the Confirmation Hearing are overruled for the reasons articulated by the Court on the record at the Confirmation Hearing.

4. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against or Equity Interest in the Debtor and such holder's respective successors and assigns, whether or not such Claim or Equity

Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

5. Plan Classification Controlling. The classification of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots submitted in connection with voting on the Plan: (a) were solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes; and (c) shall not be binding on the Estate for any purpose other than voting on the Plan.

6. Distribution Under the Plan. All distributions under the Plan shall be made in accordance with Article VII of the Plan.

7. Vesting of Assets (11 U.S.C. § 1141(b), (c)). As set forth in section 11.1 of the Plan, as of the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Creditor Trust Assets shall vest in the Creditor Trust, free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan or this Confirmation Order. The vesting, on the Effective Date, of the Creditor Trust Assets in the Creditor Trust does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law. For the avoidance of doubt, the Creditor Trust Assets include the Causes of Action described on Exhibit C to the Disclosure Statement, other than Causes of Action against the White Parties.

8. Creditor Trustee Appointed. The Chapter 11 Trustee, Gregory S. Milligan, is hereby approved and appointed as the initial Creditor Trustee, pursuant to Section 6.2(f) of the Plan. The ZG Creditor Trust Agreement, attached to the Disclosure Statement as Exhibit E is

hereby approved and the Chapter 11 Trustee is hereby authorized to execute the ZG Creditor Trust Agreement in accordance with the Plan.

9. Notice of Confirmation Date and Effective Date.

a. Notice of Entry of Confirmation Order. Within five (5) Business Days after the Confirmation Date, the Chapter 11 Trustee shall file with the Court and mail to all parties in interest in the Chapter 11 Case notice of (i) the entry of this Confirmation Order and (ii) the last date to file (A) requests for payment of Administrative Expense Claims pursuant to section 2.1 of the Plan and Fee Claims pursuant to section 2.2 of the Plan, and (B) Claims arising from the rejection of any executory contracts and unexpired leases pursuant to section 9.1 of the Plan.

b. Notice of Effective Date. Within five (5) Business Days after the Effective Date, the Creditor Trustee shall file with the Court and mail to all parties in interest in the Chapter 11 Case notice of the occurrence of the Effective Date.

10. Administrative Expense Claims.

a. Filing. Except as otherwise provided in the Plan, all holders of Administrative Expense Claims arising from the Petition Date through the Effective Date, other than Professional Persons holding Fee Claims, shall file with the Court a request for payment of such Claims within thirty (30) days after the Effective Date. Any such request shall, at a minimum, set forth (i) the name of the holder of the Administrative Expense Claim, (ii) the amount of the Administrative Expense Claim, and (iii) the basis for the Administrative Expense Claim. Requests shall be promptly served on counsel to the Chapter 11 Trustee, Jason M. Rudd (jason.rudd@wickphillips.com) and Scott D. Lawrence (scott.lawrence@wickphillips.com). A failure to file any such request in a timely fashion shall result in the discharge of such

Administrative Expense Claim and its holder shall be forever barred from asserting such Administrative Expense Claim against the Estate.

b. Allowance. An Administrative Expense Claim for which a request for payment has been timely filed shall become an Allowed Administrative Expense Claim unless an objection is filed by the date that is thirty (30) days after such Administrative Expense Claim is filed. If an objection is timely filed, the Administrative Expense Claim in question shall become an Allowed Administrative Expense Claim only to the extent so Allowed by Final Order of this Court.

c. Payment. Except to the extent that a holder of an Allowed Administrative Expense Claim requests a different treatment of such Administrative Expense Claim, each holder of an Allowed Administrative Expense Claim shall receive, on account of and in full satisfaction of such Administrative Expense Claim, Cash in an amount equal to the Allowed amount of such Administrative Expense Claim on the later of (i) the Effective Date or (ii) ten (10) days after entry of a Court order allowing such Administrative Expense Claim.

11. Fee Claims. Every Professional Person holding a Fee Claim that has not previously been the subject of a final fee application and accompanying Court order shall file a final application for payment of fees and reimbursement of expenses no later than the date that is thirty (30) days after the Effective Date. Any such final fee application shall conform to and comply with all applicable rules and regulations contained in the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The last date to object to any final fee application shall be the twenty-first (21st) day after such fee application has been filed with the Bankruptcy Court. All final fee applications shall be set for hearing on the same day, as the Court's calendar permits, after consultation with

counsel to the Chapter 11 Trustee. Allowed Fee Claims shall be paid in accordance with and pursuant to section 2.2 of the Plan.

12. Assumption or Rejection of Executory Contracts and Unexpired Leases.

a. General. Pursuant to section 9.1 of the Plan, except as otherwise provided in the Plan or in any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, the Debtor is hereby deemed to have rejected each executory contract and unexpired lease to which it is a party, unless such contract or lease (i) was previously assumed, assumed and assigned, or rejected by the Debtor pursuant to an order of the Court, (ii) previously expired or terminated pursuant to its own terms, (iii) is the subject of a motion to assume, assume and assign, or reject filed on or before the Confirmation Date. This Confirmation Order shall constitute approval, pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code, of the assumption or rejection of executory contracts and unexpired leases as described above upon the occurrence of the Effective Date. Such assumption or rejection shall be legal, valid, and binding upon the Debtor and all non-Debtor counterparties to such contracts or leases, and satisfies the requirements of section 365 of the Bankruptcy Code including, without limitation, section 365(d)(4).

b. Bar Date for Rejection Damage Claims. All Claims arising out of the rejection of executory contracts or unexpired leases pursuant to the Plan must be filed with the Court and served upon counsel to the Chapter 11 Trustee and Creditor Trustee no later than thirty (30) days after the earlier of (i) the date of entry of a Court order (including this Confirmation Order) approving such rejection or (ii) the Effective Date. Any rejection Claims not filed within such time shall be forever barred from assertion against the Debtor, its Estate and the Creditor Trust.

13. General Authorization. Upon the Effective Date, all action contemplated under the Plan shall be deemed authorized and approved in all respects. All matters provided for in the Plan involving the structure of the Debtor, and any action required by or in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by any person or entity.

14. Plan Settlements. The Lender Settlement and the White Settlement are hereby approved. The parties to each settlement are authorized and directed to take such actions as may be necessary to effectuate the same and perform all obligations contemplated thereby. For avoidance of all doubt, the White Settlement is strictly limited to the Releasing Parties and the White Parties and does not release or otherwise impair, in any way, the assertion of any direct claims between and among Romspen, on one hand, Panache Development & Construction, Inc. ("Panache") and/or Adam Zarafshani ("Zarafshani"), on one hand, and the White Parties, on the other hand, and all of the White Parties', Romspen's, Panache's and Zarafshani's respective direct rights, remedies and defenses (whatever such direct rights, remedies and defenses may or may not be) are expressly and fully preserved.

a. Prior Orders and Lender Deficiency Claims. This Confirmation Order contains no finding as to the existence of any deficiency claim. This Confirmation Order does not modify the stipulations in the *Order Authorizing and Approving the Sale of Certain of Debtor's Assets Free and Clear of Liens, claims, Interests, and Encumbrances and Granting Related Relief* (ECF No. 278 and will not constitute a finding or other Court determination that the Debtor was in default of its obligations to Romspen or that Romspen had the right to declare a default under the relevant loan documents against the Debtor. Romspen and the White Parties reserve all rights regarding any such determination or finding to be made in due course of prosecuting the Viable

Actions. This Confirmation Order does not modify the stipulations in the *Stipulation and Order Regarding Amended Liquidation Plan Treatment for Daniel White, Lincoln 1861, Inc., and Related Entities* (ECF No. 369).

b. Causes of Action Preserved by White Parties and Romspen. The releases and injunctions in favor of Romspen contained in the Plan do not extend to or otherwise apply to any valid, viable, ripe, live/non-moot causes of action, defenses, and currently existing claims to which the White Parties have standing to assert against Romspen in the White Adversary and in Canada (the "Canadian Proceedings") and, to the extent applicable, actions brought by or on behalf of Romspen against any one or more of the White Parties (the "Romspen Actions") (collectively, "Viable Actions"). All parties' rights, claims, liabilities, defenses, affirmative defenses, causes of action and other interests asserted in the White Adversary, including without limitation, all dispositive motions and other forms of relief requested, are expressly reserved and preserved by the Plan, subject to any motions to dismiss and/or other dispositive motions filed by Romspen to be adjudicated in the White Adversary in due course. Only those Viable Actions that the White Parties have standing to assert against Romspen in the pending White Adversary, the Canadian Proceedings or any Romspen Actions are hereby preserved to be prosecuted only by the White Parties and through the White Adversary, the Canadian Proceedings and in defense of any Romspen Action. To the extent the White Parties have standing to bring any Viable Actions against Romspen in the White Adversary, the Canadian Proceedings and/or Romspen Actions, then only those timely filed Viable Actions will survive the Lender Settlement (as defined in the Plan) and be preserved under the Plan. The White Parties' rights to continue prosecuting Viable Actions in the White Adversary, the Canadian Proceedings or Romspen Actions will survive. Romspen's and the White Parties' respective rights and defenses as to those Viable Actions are expressly preserved

and reserved to be determined in due course of the White Adversary, the Canadian Proceedings and/or Romspen Actions. In the White Adversary, the White Parties have challenged the allowance of Romspen's claims against Zen Garden in the Bankruptcy Case, which challenge remains unresolved as of the date of this Confirmation Order. As such, nothing in this Confirmation Order shall be construed as or deemed to be a final finding or conclusion as to the allowance of Romspen's claims against Zen Garden in the Bankruptcy Case, including the establishment of a deficiency claim, if any, against Zen Garden. Romspen's claims against the White Parties, wherever and however asserted, are unaffected and unmodified by the Plan and this Confirmation Order, and all of Romspen's and the White Parties' respective rights, remedies and defenses in that regard (whatever such rights, remedies and defenses may or may not be) are expressly and fully preserved. Any of the White Parties' Viable Actions (if any) against Romspen (wherever and however asserted) are unaffected by the Plan and this Confirmation Order, and all of the White Parties' and Romspen's respective rights, remedies and defenses in that regard (whatever such rights, remedies and defenses may or may not be) are expressly and fully preserved.

c. Release of White Parties. As of the Effective Date, the White Parties are deemed forever released and discharged by the Releasing Parties from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor would have been legally entitled to assert in its own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest, the business or

contractual arrangements between the Debtor and any one or more of the White Parties, or the restructuring of any Claim or Interest before or during the Chapter 11 Case. For avoidance of all doubt, the White Settlement is strictly limited to the Releasing Parties and the White Parties and does not release or otherwise impair, in any way, the assertion of any direct claims between and among Romspen, on one hand, Panache and/or Zarafshani, on one hand, and the White Parties, on the other hand, and all of the White Parties', Romspen's, Panache's and Zarafshani's respective direct rights, remedies and defenses (whatever such direct rights, remedies and defenses may or may not be) are expressly and fully preserved.

d. White Parties Release of the Debtor. As of the Effective Date, the Debtor is deemed forever released and discharged by the White Parties from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the White Parties, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that any of the White Parties would have been legally entitled to assert in its own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest, the business or contractual arrangements between the Debtor and any one or more of the Releasing Parties, or the restructuring of any Claim or Interest before or during the Chapter 11 Case; provided however, the White Parties shall retain, and do not release, any Equity Interests (as defined in the Plan) they hold in the Debtor which Equity Interests shall receive the treatment provided in Plan Class 10.

15. Payment of Statutory Fees. All fees pursuant payable under 28 U.S.C. § 1930 shall be paid on the Effective Date and thereafter, as appropriate.

16. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, and regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto.

17. Filing and Recording. This Confirmation Order (a) is and shall be effective as a determination that, on the Effective Date, all Claims and Equity Interests existing prior to such date have been unconditionally released, discharged, and terminated, except as otherwise provided in the Plan, and (b) is and shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any document or instrument. Each and every federal, state, and local government agency is hereby directed to accept any and all documents and instruments necessary, useful, or appropriate (including Uniform Commercial Code financing statements) to effectuate, implement, and consummate the transactions contemplated by the Plan and this Confirmation Order without payment of any recording tax, stamp tax, transfer tax, or similar tax imposed by state or local law, including, but not limited to, the transfer of any assets of the Estate to the Creditor Trust.

18. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under or in connection with

the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax. All sale transactions consummated by the Debtor and approved by the Court on and after the Petition Date through and including the Effective Date, including the transfers effectuated under the Plan, if any, the sale by the Estate of property pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Estate of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

19. Exculpation, Releases and Injunctions. The exculpations, releases and injunctions contained in sections 11.3, 11.4, 11.5, 11.6, and 11.7 of the Plan are hereby approved. For avoidance of any doubt, the releases and injunctions in favor of Romspen contained in the Plan do not extend to or otherwise apply to any valid, viable, ripe, live/non-moot direct causes of action, defenses, and currently existing direct claims and/or defenses to which Panache and/or Zarafshani has or have standing to assert, including, without limitation, those pending by Panache against Romspen, subject to any motions to dismiss and/or other dispositive motions filed or to be filed by Romspen and/or Panache to be adjudicated in the Panache Adversary in due course, in Adversary Case No. 20-01048 (the "Panache Adversary"), and such live/non-moot direct causes

of action, defenses, and currently existing direct claims and/or defenses are unaffected and unmodified by the Plan and this Confirmation Order.

20. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Article X of the Plan have been satisfied or waived pursuant to section 10.2 and 10.3 of the Plan.

21. Retention of Jurisdiction. Upon the Effective Date, the Bankruptcy Court may properly retain, and if appropriate, shall exercise jurisdiction over the matters set forth in Article XII of the Plan, section 1142 of the Bankruptcy Code, and 28 U.S.C. § 1334.

22. Appeal of the Confirmation Order. Except as otherwise provided herein, if any provision of this Confirmation Order is hereafter reversed, modified, vacated, or stayed by subsequent order of this Court or any other court, such reversal, stay, modification or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority, or lien incurred or undertaken by the Chapter 11 Trustee or Creditor Trustee prior to the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any reversal, stay, modification, or vacatur of this Confirmation Order, any act or obligation incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan or any amendments or modifications thereto, and shall remain binding.

23. Conflicts Between Confirmation Order and Plan. The failure to specifically include any particular provision of the Plan in this Confirmation Order shall not diminish the effectiveness of such provision, it being the intent of the Court that the Plan is confirmed in its entirety and incorporated herein by this reference. The provisions of the Plan and this Confirmation Order shall

be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that in the event of any inconsistency among the Plan, the Plan Modification, the Disclosure Statement, any exhibit or schedule to the Disclosure Statement, the provisions of the Plan shall govern. In the event of any inconsistency between the Plan and this Confirmation Order, the Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with each other and are nonseverable and mutually dependent unless expressly stated by further order of the Court.

24. Authorization to Consummate Plan/No Stay. Notwithstanding Bankruptcy Rule 3020(e), 6004(g), 6006(d), 7062 or otherwise, but subject to Article X of the Plan, the Chapter 11 Trustee is authorized to consummate the Plan upon entry of this Confirmation Order, and the Confirmation Order shall take effect on the date hereof.

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PREPARED AND SUBMITTED BY:

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COUNSEL FOR GREGORY MILLIGAN,
CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	**CASE NO. 1:20-10410-HCM**
3443 ZEN GARDEN, L.P.	§	
	§	**Chapter 11**
DEBTOR.	§	

CHAPTER 11 TRUSTEE'S AMENDED LIQUIDATING PLAN AS MODIFIED

WICK PHILLIPS GOULD & MARTIN, LLP

/s/ Scott D. Lawrence
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CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

Dated: January 25, 2021

SUMMARY OF PLAN

The Chapter 11 Trustee's Plan provides for the settlement of all the Debtor's, the Reorganized Debtor's, the Chapter 11 Trustee's, the bankruptcy Estate's and any of their respective successors' and assigns' potential claims and causes of action against the Debtor's largest creditor, Romspen Mortgage Limited Partnership, in exchange for:

1. $600,000.00 to provide at least a forty percent (40%) recovery to non-priority general unsecured creditors with allowed claims (the "***Settlement Carve-Out***") through a creditor trust, with the possibility that additional asset recoveries and adjudication of claims objections may increase this distribution;
2. Romspen's subordination of its $56 million unsecured deficiency claim to prevent dilution of and to maximize the recovery to general unsecured creditors;
3. Romspen's successfully obtaining the subordination of the Panache deficiency and other General Unsecured Claims to prevent dilution of and to maximize the recovery to Non-Insider general unsecured creditors; and
4. Romspen's agreement to the Chapter 11 Trustee's continued use of cash collateral on hand to fund the Estate's, the Plan's, and the creditor trust's administrative expenses, provided that any excess funds that remain on hand for unused surplus will be returned to Romspen upon the termination of the creditor trust.

The Plan places the Settlement Carve-Out, Romspen's remaining cash collateral and all the Debtor's remaining assets into a creditor trust which will liquidate the assets and distribute the proceeds to holders of allowed claims in the priority governed by the Bankruptcy Code, subject to the voluntary subordinations set forth in the Plan. The creditor trust will distribute the Settlement Carve-Out to holders of allowed non-priority unsecured claims. For the settlement consideration, the Plan provides Romspen and its affiliates a full release of liability, including a release on behalf of the Debtor's creditors, parties in interest and all third parties that do not opt out and also provides for the return of Romspen's $7 million deposit, net of the Settlement Carveout, that Romspen placed in the registry of the Court pursuant to a stipulation with the Trustee. *See* ECF No. 238.

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Gregory S. Milligan, Chapter 11 Trustee for the Bankruptcy Estate of 3443 Zen Garden, L.P., hereby proposes the following Liquidating Chapter 11 Plan pursuant to section 1121(a) of the Bankruptcy Code.

ARTICLE I. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purpose of this Plan, the following terms shall have the respective meanings set forth below:

Action means any claim, action, cause of action, demand, lawsuit, arbitration, notice of violation, proceeding, litigation, citation, or summons, whether civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity.

Administrative Expense Claim means any right to payment constituting a cost or expense of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b) or 507 of the Bankruptcy Code, including, without limitation, (i) any fees or charges assessed against the Estate under 28 U.S.C. § 1930, (ii) Fee Claims, (iii) any "gap period" claims under Bankruptcy Code section 502(f), and (iv) other Administrative Expense Claims as may be ordered and Allowed by the Bankruptcy Court.

Allowed means, with reference to any Claim or Equity Interest, any Claim or Equity Interest (i) for which a proof of claim or proof of interest has been filed and as to which no objection has been interposed on or before the Objection Deadline or such other applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, (ii) which appears in the Debtor's Schedules and is not listed as contingent, liquidated or disputed, (iii) which is allowed by Final Order of the Bankruptcy Court, or (iv) which is expressly allowed under this Plan.

Avoidance Actions means Actions arising under sections 502, 510, 541, 542, 543, 544, 545, 547 through and including 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced to prosecute such Actions, and which may be recovered pursuant to section 550 of the Bankruptcy Code.

Ballot means the ballot provided to holders of Claims to indicate their votes to accept or reject the Plan.

Bankruptcy Code means title 11 of the United States Code, as amended from time to time.

Bankruptcy Court means the United States Bankruptcy Court for the Western District of Texas, Austin Division, or any other court of the United States having jurisdiction over the Chapter 11 Case.

Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended and in effect from time to time.

Bar Date means the last date to file proofs of claim against the Debtor, which was or will be (i) August 10, 2020 for all creditors except Governmental Units and (ii) October 5, 2020 for Governmental Units.

Business Day means any day other than a Saturday, Sunday, or "legal holiday" as defined in Bankruptcy Rule 9006(a).

Cash means legal tender of the United States of America.

Cash Collateral means Cash in the Estate's possession on the Effective Date on which the Lender has a Lien, including amounts the Lender funded under the Postpetition Financing Order.

Causes of Action is defined in Section 11.8 hereof.

Chapter 11 Case means the above-captioned chapter 11 bankruptcy case.

Chapter 11 Trustee means Gregory S. Milligan, Chapter 11 Trustee of the Estate.

Claim means a claim against the Debtor or the Estate within the meaning of section 101(5) of the Bankruptcy Code.

Class means any group of Claims or Equity Interests classified by this Plan pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

Class A Interests is defined in Section 6.2(g) hereof.

Class B Interests is defined in Section 6.2(g) hereof.

Class C Interests is defined in Section 6.2(g) hereof.

Collateral means any property or interest in property of the Estate subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state or federal law.

Compensation Order means that certain Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (ECF No. 135).

Confirmation Date means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

Confirmation Hearing means the hearing conducted by the Bankruptcy Court pursuant to sections 1128(a) and 1129 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

Confirmation Order means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

Credit Agreement means that certain superpriority secured Loan Agreement and Promissory Note dated as of April 27, 2018 by and among the Debtor and the Lender.

Credit Bid Stipulation means that certain Stipulation and Order to Deposit Funds Between Gregory S. Milligan, Chapter 11 Trustee and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 238).

Credit Bid Escrow means the $7,000,000.00 the Lender placed in escrow with the Chapter 11 Trustee pursuant to the Credit Bid Stipulation.

Creditor Trust means that certain trust named the "ZG Creditor Trust" that will come into existence on the Effective Date of the Plan, which trust shall be formed pursuant to, and governed by, the provisions of the Plan and the Creditor Trust Agreement.

Creditor Trust Agreement means the ZG Creditor Trust Agreement governing the Creditor Trust dated as of the Effective Date, substantially in the form included as an exhibit to the Disclosure Statement.

Creditor Trust Assets means (i) all Causes of Action owned by the Debtor or the Estate, except as the same may be dismissed, settled or released pursuant to the Plan; (ii) all proceeds of any of the Debtor's insurance policies; and (iii) any other property of the Estate not otherwise distributed pursuant to the terms of this Plan. For the sake of clarity, the TxDOT Condemnation Proceeding and PDA Proceeding are transferred to Lender under the Sale Order and are NOT included in the Creditor Trust Assets and as of the Sale Closing Date are exclusively the Lender's property pursuant to the terms of the Sale Order, as confirmed by this Plan.

Creditor Trust Interests means the Class A Interests, Class B Interests, and the Class C Interests, together.

Creditor Trustee means the trustee of the Creditor Trust, Gregory S. Milligan, and any successor Creditor Trustee.

Debtor means 3443 Zen Garden, L.P. in its capacity as chapter 11 debtor.

Disallowed Claim or Equity Interest means any Claim or Equity Interest, or portion thereof that is not an Allowed Claim, an Allowed Equity Interest, or a Disputed Claim or Disputed Equity Interest.

Disclosure Statement means that certain disclosure statement relating to the Plan, including all exhibits and schedules thereto, as the same may be amended, supplemented, or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code.

Disputed Claim means, with respect to a Claim, such Claim (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, or (b) with respect to which the Debtor or any party in interest has interposed a timely objection (as a contested matter, adversary proceeding, or otherwise) or request for estimation prior to the Objection Deadline in accordance with the Plan or the Bankruptcy Rules,

which objection or request for estimation has not been withdrawn or determined by a Final Order as of the Effective Date.

Disputed Equity Interest means, with respect to an Equity Interest, such Equity Interest (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, or (b) for which a proof of interest for payment has been timely filed with the Bankruptcy Court or a written request for payment has been made, to the extent the Chapter 11 Trustee or any party in interest has interposed a timely objection or request for estimation prior to the Objection Deadline in accordance with the Plan, or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order.

Distribution Date means the date, occurring on or as soon as practicable after the Effective Date, on which the Creditor Trustee first makes distributions to holders of Allowed Claims and Allowed Equity Interests as provided in the Plan.

Distribution Record Date means the record date for purposes of receiving distributions under the Plan on account of Allowed Claims and Allowed Equity Interests, which shall be the Confirmation Date.

Effective Date means the first Business Day on which all the conditions precedent to the effectiveness of the Plan specified in Section 10.2 hereof shall have been satisfied or waived as provided in Section 10.3 hereof; *provided*, *however*, that if a stay, injunction or similar prohibition of the Confirmation Order is in effect, the Effective Date shall be the first Business Day after such stay, injunction or similar prohibition is no longer in effect.

Equity Interest means any "equity security" of the Debtor, as that term is defined in section 101(16) of the Bankruptcy Code.

Estate means the estate of the Debtor as created under section 541 of the Bankruptcy Code.

Exculpated Parties means the Chapter 11 Trustee, the Creditor Trustee, HMP Advisory Holdings, LLC d/b/a Harney Partners, and Wick Phillips Gould & Martin, LLP.

Fee Claim means any Claim by a Professional Person under sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and/or reimbursement of expenses in the Chapter 11 Case.

Final Order means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari*, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for a stay, new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of *certiorari*, stay, new trial, reargument or rehearing thereof has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, *certiorari* shall have been denied or a stay, new trial, reargument or rehearing shall have been denied or resulted in no modification of such order and (ii) the time to take any further appeal, petition for *certiorari*, or move for a stay, new trial, reargument or rehearing shall have expired;

provided, *however*, that no order or judgment shall fail to be a "Final Order" solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rule 9024 has been or may be filed with respect to such order or judgment.

General Unsecured Claim means any Claim against the Debtor that is not an Administrative Expense Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Lender Secured Claim, an M&M Plaintiff Secured Claim, a Panache Secured Claim, a Subordinated Claim, an Other Secured Claim, a Lender Deficiency Claim or an Equity Interest. General Unsecured Claim includes any unsecured claim held by the M&M Plaintiffs or an Other Secured Claim as a result of the operation of section 506(a)(1) of the Bankruptcy Code.

Governmental Unit has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

Insider means any Person who is an "insider" as such term is defined in section 101(31) of the Bankruptcy Code, or who may otherwise be determined to be an "insider" under section 101(31) of the Bankruptcy Code by a court of competent jurisdiction.

Lender means Romspen Mortgage Limited Partnership ("***Romspen***"), in its capacities as prepetition and postpetition lender to the Debtor. Romspen and Lender may be used interchangeably throughout this Plan to refer to Romspen Mortgage Limited Partnership.

Lender's Contribution means the Cash Collateral remaining in the Estate on the Effective Date to be used for the payment of Administrative Expense Claims that are Allowed but unpaid on the Effective Date, with the remaining Cash Collateral transferred to the Creditor Trust to be held separate from other Creditor Trust Assets and used for the specific and separate purpose of funding the Creditor Trust's reasonable and necessary costs and expenses and, upon the dissolution of the Creditor Trust and after payment of all the Creditor Trust's reasonable and necessary costs and expenses, to be returned to the Lender.

Lender's Deficiency Claim means the unsecured claim held by the Lender as a result of the operation of section 506(a)(1) of the Bankruptcy Code in the amount of $56,511,950.72, subject to a final calculation by the Lender satisfactory to the Chapter 11 Trustee.

Lender's Secured Claim means the Secured Claim held by the Lender secured by a Lien on the Property in the Allowed amount of $45,000,000.00, satisfied through the Sale Order.

Lender Settlement is defined in Section 6.1 hereof.

Lien has the meaning set forth in section 101(37) of the Bankruptcy Code.

Local Rules means the Bankruptcy Local Rules of the United States Bankruptcy Court for the Western District of Texas, as the same may be amended or modified from time to time.

M&M Plaintiffs means, together, ACM Services, LLC' Koetter Fire Protection of Austin, LLC, Capital Industries, LLC, Hill Country Electric Supply, LP, Lyle America, Inc. d/b/a

Glass.com of Illinois, Summer Legacy, LLC, Texas Air, LLC, Ferguson Enterprises, LLC, and American Builders and Contractors Supply Co., Inc. d/b/a ABC Supply.

M&M Plaintiff Secured Claim means a Secured Claim asserted by an M&M Plaintiff that is Allowed by the Bankruptcy Court pursuant to the M&M Plaintiff Stipulation.

M&M Plaintiff Stipulation means the Stipulation and Order to Deposit Funds in the Registry of the Court Between the M&M Plaintiffs and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 221).

Non-Insider means a Person who is not an Insider.

Objection Deadline means the later of (a) one hundred twenty (120) days after the Effective Date and (b) such later as may be ordered by the Bankruptcy Court prior to the expiration of such one hundred twenty (120) day period, upon motion.

Opt-Out Form means the provision on the ballot or other applicable Bankruptcy Court-approved form providing notice of the Third-Party Releases and ability to opt-out of such Third-Party Releases.

Opt-Out Parties means any holder of a Claim or Interest that timely completes and returns an Opt-Out Form, affirmatively opting out of the Third-Party Releases in Section 11.6 hereof; however, the Debtor and the Estate, cannot be Opt-Out Parties.

Other Secured Claim means a Secured Claim that is not a Lender Secured Claim, an M&M Plaintiff Secured Claim or a Panache Secured Claim.

Panache means Panache Development and Construction, Inc., Adam Zarafshani, and any of their insiders, affiliates, subcontractors, successors or assigns.

Panache Adversary means adversary proceeding 20-01048 pending before the Bankruptcy Court.

Panache Secured Claim means a Secured Claim asserted by, through or related to Panache that is Allowed by the Bankruptcy Court pursuant to the Panache Stipulation.

Panache Stipulation means that certain Stipulation and Order to Deposit Funds in the Registry of the Court Between Adam Zarafshani, Panache Development & Construction, Inc., and Romspen Mortgage Limited Partnership Resolving Credit Bid Challenge (ECF No. 222).

PDA Proceeding means all the Debtor's and Estate's rights and interests in the Debtor's Planned Development Agreement ("***PDA***") pending before the Austin City Council seeking to maximize the Property's permissible use.

Petition Date means March 22, 2020, the date on which Lyle America, Inc. d/b/a Glass.com of Illinois, Austin Glass & Mirror, Inc, and ACM Services, LLC filed an involuntary petition for relief against the Debtor under chapter 11 of the Bankruptcy Code.

Person means an individual, partnership, corporation, limited liability company, cooperative, trust, unincorporated organization, association, joint venture, government or agency or political subdivision thereof or any other form of legal entity.

Plan means this Liquidating Chapter 11 Plan, as the same may be amended, supplemented or otherwise modified from time to time, including any exhibits and schedules hereto.

Plan Interest Rate means simple interest at the rate of 3% per annum.

Postpetition Financing Order means that certain Amended Final Order Granting Chapter 11 Trustee's Motion to Obtain Secured Credit on an Interim and Final Basis (ECF No. 144).

Priority Non-Tax Claim means any Claim that is entitled to priority in payment pursuant to sections 507(a)(4), (5), (6) or (7) of the Bankruptcy Code and that is not an Administrative Expense Claim or a Priority Tax Claim.

Priority Tax Claim means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

Professional Person means any Person retained or to be compensated by the Chapter 11 Trustee pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

Property means the real property located at 3443 Ed Bluestein Boulevard, Austin, TX 78721.

Pro Rata means the proportion that the amount of an Allowed Claim or Allowed Equity Interest in a particular Class bears to the aggregate amount of all Allowed Claims or Allowed Equity Interests in such Class.

Released Parties means, collectively, the Lender and its predecessors, successors, assigns, subsidiaries, affiliates, current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors, agents, advisory board members, financial advisors, attorneys, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such entities' respective heirs, executors, estates, servants, and nominees. For the avoidance of doubt, none of the Debtor's past or current officers, agents, employees, directors, insurers, or insiders shall constitute Released Parties or be deemed to be released by any provision of this Plan, Plan Document, or Confirmation Order.

Releasing Parties means the Debtor, the Reorganized Debtor, the Chapter 11 Trustee, the Creditor Trustee, the Creditor Trust and the Estate on behalf of themselves and their respective successors, assigns, and representatives and any and all other entities that may purport to assert any cause of action derivatively, by or through the foregoing entities, as defined in Section 11.5.

Relief Order Entry Date means April 8, 2020, the date on which the Bankruptcy Court entered its *Consent Order for Entry of Relief* (ECF No. 11).

Reorganized Debtor means the 3443 Zen Garden Limited Partnership entity following the Effective Date of this Plan.

Sale Order means that certain Order Authorizing and Approving the Sale of Certain of Debtor's Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Granting Related Relief entered by the Bankruptcy Court on October 7, 2020 (ECF No. 278).

Sale Closing Date means October 15, 2020, the date the Chapter 11 Trustee closed on the sale of the Property to the Lender pursuant to the Sale Order.

Schedules means, collectively, Schedules A through J and the Statement of Financial Affairs, as filed by the Debtor in the Chapter 11 Case, as the same may have been or may be amended from time to time.

Secured Claim means a Claim, other than the Lender's Secured Claim, secured by a Lien that is valid, perfected and enforceable, and not avoidable, upon property in which a Debtor has an interest, to the extent of the value, as of the Effective Date, of such interest or Lien as determined by a Final Order of the Bankruptcy Court pursuant to section 506 of the Bankruptcy Code, or as otherwise agreed to in writing by the Chapter 11 Trustee and the holder of such Claim.

Settlement Carve-Out means $600,000.00 the Chapter 11 Trustee will pay from the Credit Bid Escrow to the Creditor Trust on the Effective Date.

Subordinated Claim means any Claim that is subject to (a) subordination under section 510 of the Bankruptcy Code or any other statute, (b) contractual subordination, (c) equitable subordination as determined by the Bankruptcy Court in a Final Order, including, without limitation, any Claim (i) for or arising from the rescission of a purchase, sale, issuance, or offer of a Security of the Debtor; (ii) for damages arising from the purchase or sale of such a Security; or (iii) for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim, (d) a Claim that is subordinated by agreement of the holder , or (e) any Claim acquired by a holder of a Claim that is subordinated under this Plan. Subordinated Claim also means any Claim which appears in the Debtor's Schedules as contingent, unliquidated or disputed for with the holder of the Claim failed to timely file a proof of claim.

Third-Party Releases means the releases provided by the Lender Settlement.

Third-Party Releasing Parties means the holders of all Claims and Interests and their successors and assigns, other than the Opt-Out Parties, as defined in Section 11.6 hereof.

Trustee and Professional Fee Escrow means all funds the Lender paid to the Chapter 11 Trustee to fund the payment of the Chapter 11 Trustee's and his Professional Persons' fees and expenses pursuant to the terms of the Postpetition Financing Order.

Trust Claims Reserve is defined in Section 6.2(p)(iii) hereof.

TxDOT Condemnation Proceeding means all the Debtor's and Estate's rights, claims and interests in the Texas Department of Transportation ("***TxDOT***") initiated condemnation proceeding related to the Property and any settlement, disposition or resolution of the same.

Voting Deadline means 5:00 p.m. on December 31, 2020.

White Parties means Daniel White; Lincoln 1861, Inc.; Blue Roots International, Ltd.; 1468527 Alberta Ltd.; Purple Tree International, Ltd.; Eco-Industrial Business Park, Inc.; Absolute Energy Resources, Inc.; Absolute Environmental Waste Management; Eightfold Development, LLC; Mos8 Partners Ltd.; Symmetry Asset Management Inc.; the Dan White Family Trust, Lot 11 Limited Partnership; and Lot 11 GP Ltd.

Zarafshani means Adam Zarafshani, individually.

1.2 Rules of Interpretation and Construction.

(a) Interpretation. Unless otherwise specified herein, all section, article, and exhibit references in the Plan are to the respective section in, article of, and exhibit to, the Plan, as the same may be amended, waived or modified from time to time. All headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

(b) Construction and Application of Bankruptcy Code Definitions. Unless otherwise defined herein, words and terms defined in section 101 of the Bankruptcy Code shall have the same meanings when used in the Plan. Words or terms used but not defined herein shall have the meanings ascribed to such terms or words, if any, in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

(c) Other Terms. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular article, section, subsection, or clause contained in the Plan.

(d) Time. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II. TREATMENT OF UNCLASSIFIED CLAIMS

2.1 Administrative Expense Claims.

All Administrative Expense Claims against the Estate, other than Fee Claims, shall be treated as follows:

(a) Time for Filing. All holders of Administrative Expense Claims, other than Professional Persons holding Fee Claims, shall file with the Bankruptcy Court a request for payment of such Claims within thirty (30) days after the Effective Date. Any such request must be served on the Chapter 11 Trustee and his counsel, and must, at a minimum, set forth (i) the name of the holder of the Administrative Expense Claim; (ii) the amount of the Administrative Expense Claim; and (iii) the basis for the Administrative Expense Claim. A failure to file any such request in a timely fashion will result in the Administrative Expense Claim in question being discharged and its holder forever barred from asserting such Administrative Expense Claim against the Estate or any other Person.

(b) Allowance. An Administrative Expense Claim for which a request for payment has been properly filed shall become an Allowed Administrative Expense Claim unless an objection is filed by the date that is thirty (30) days after a request for payment of such Administrative Expense Claim is filed. If an objection is timely filed, the Administrative Expense Claim in question shall become an Allowed Administrative Expense Claim only to the extent so Allowed by Final Order of the Bankruptcy Court.

(c) Payment. Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment of such Claim, each holder of an Allowed Administrative Expense Claim shall receive, on account of and in full satisfaction of such Claim, Cash in an amount equal to the Allowed amount of such Administrative Expense Claim on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) ten (10) days after entry of an order by the Bankruptcy Court allowing such Administrative Expense Claim. The Chapter 11 Trustee and the Creditor Trustee, as applicable, shall pay Allowed Administrative Expense Claims from the Lender's Contribution or as otherwise agreed by the holder of the Allowed Fee Claim and the Chapter 11 Trustee or the Creditor Trustee, as applicable.

(d) Lender Exception. Lender is excepted from the obligations of this Section 2.1. The terms of this Section 2.1 shall not apply to Lender. Lender is not obligated to file an application for allowance of an Administrative Expense Claim. Lender is deemed to hold an Allowed Administrative Expense Claim pursuant to the terms of the Postpetition Financing Order. Lender's Allowed Administrative Expense Claim shall be satisfied in full by the Lender's credit bid approved by and pursuant to the terms of the Sale Order.

(e) Gap Period Claims. Since the Chapter 11 Case commenced as an involuntary bankruptcy case under Bankruptcy Code section 303, to the extend the Bankruptcy Court Allows any Claim as a "gap period" claim under Bankruptcy Code section 502(f), the Plan treats these Allowed "gap claims" as Allowed Administrative Expenses Claims under Bankruptcy Code section 507(a)(3) and pays them in full with all other Allowed Administrative Expense Claims from the Lender's Contribution.

2.2 Fee Claims.

Every Professional Person holding a Fee Claim that has not previously been the subject of a final fee application and accompanying Bankruptcy Court order approving the same shall file a final application for payment of fees and reimbursement of expenses no later than the date that is thirty (30) days after the Effective Date. Any such final fee application shall conform to and comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. All final fee applications shall be set for hearing on the same day, as the Bankruptcy Court's calendar permits, after consultation with counsel to the Chapter 11 Trustee. Allowed Fee Claims subject to the Trustee and Professional Fee Escrow shall be paid by the Chapter 11 Trustee from the Trustee and Professional Fee Escrow pursuant to the terms of the Postpetition Financing

Order. To the extent an Allowed Fee Claims is not covered by the Trustee and Professional Fee Escrow, then such Allowed Fee Claims shall be paid by the Chapter 11 Trustee or the Creditor Trustee, as applicable, from the Lender's Contribution or as otherwise agreed by the holder of the Allowed Fee Claim and the Chapter 11 Trustee or the Creditor Trustee.

2.3 Chapter 11 Trustee Fees and Expenses.

The Chapter 11 Trustee shall file a final application for payment of fees and reimbursement of expenses under Bankruptcy Code section 330 no later than the date that is thirty (30) days after the Effective Date. Allowed Chapter 11 Trustee fees and expenses shall be paid by the Chapter 11 Trustee from the Trustee and Professional Fee Escrow pursuant to the terms of the Postpetition Financing Order. To the extent any Allowed Chapter 11 Trustee fees and expenses are not covered by the Trustee and Professional Fee Escrow, then such Allowed fees and expenses shall be paid by the Chapter 11 Trustee from the Lender's Contribution. As previously provided by the Postpetition Financing Order and the Sale Order the satisfaction of the Postpetition Indebtedness in the amount of $4,061,444.30[1] shall constitute "moneys disbursed or turned over in the case" by the Chapter 11 Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a) in determining the Allowed amount of the Chapter 11 Trustee's fees. As previously provided by the M&M Plaintiff Stipulation and the Panache Stipulation any funds distributed by the Court or the Lender on account of the M&M Plaintiff Secured Claims or the Panache Secured Claims shall constitute "moneys disbursed or turned over in the case" by the Chapter 11 Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a) in determining the Allowed amount of the Chapter 11 Trustee's fees. Pursuant to the Sale Order, all disbursements made by the Lender or any other party on account of 2020 ad valorem taxes secured by the Property shall constitute "moneys disbursed or turned over in the case" by the Chapter 11 Trustee "to parties in interest" for purposes of Bankruptcy Code section 326(a) in determining the Allowed amount of the Chapter 11 Trustee's fees.

2.4 U.S. Trustee Fees.

All fees payable under section 1930 of title 28 of the United States Code shall be paid on or before the Effective Date. All such fees that arise after the Effective Date but before the closing of the Chapter 11 Case shall be paid by the Creditor Trust from the Lender's Contribution.

2.5 Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim has agreed or agrees to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive on (or as soon as reasonably practicable after) the Effective Date, Cash in an amount equal to the Allowed amount of such Claim. To the extent the holder of an Allowed Priority Tax Claim has a Lien on Estate property, such Lien shall remain in place until such Allowed Priority Tax Claim has been paid in full. Pursuant to the Sale Order, Allowed Priority Tax Claims, including ad valorem taxes for 2020, shall be paid by the Lender, and will retain their Lien on the Property until paid in full.

[1] Subject to a final calculation by Lender.

ARTICLE III. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

All Claims against, and Equity Interests in, the Debtor are classified for all purposes, including voting, confirmation, and distribution, as follows:

Class	Designation	Impairment	Entitled to Vote
Class 1	Priority Non-Tax Claims	No	No (deemed to accept)
Class 2	Lender's Secured Claim	Yes	Yes
Class 3	M&M Plaintiff Secured Claims	Yes	Yes
Class 4	Panache Secured Claims	Yes	Yes
Class 5	Other Secured Claims	Yes	Yes
Class 6	General Unsecured Claims	Yes	Yes
Class 7	Lender's Deficiency and Unsecured Claims	Yes	Yes
Class 8	Panache and M&M Plaintiffs Deficiency and Unsecured Claims	Yes	Yes
Class 9	Subordinated Claims	Yes	Yes
Class 10	Equity Interests	Yes	Yes

Administrative Expense Claims and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan, pursuant to section 1123(a)(1) of the Bankruptcy Code. Instead, all such Claims shall be treated separately as unclassified claims on the terms previously set forth in Article II of this Plan.

ARTICLE IV. TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1 Class 1 – Priority Non-Tax Claims.

Except to the extent that a holder of an Allowed Priority Non-Tax Claim against the Estate agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, payment in full in Cash from the Lender's Contribution by the Chapter 11 Trustee or the Creditor Trustee, as applicable, on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) ten (10) days after such Priority Non-Tax Claim becomes Allowed.

4.2 Class 2 – Lender's Secured Claim.

Pursuant to the Sale Order, in full and final satisfaction of the Lender's Secured Claim, the Chapter 11 Trustee transferred title for the Property to the Lender on the Sale Closing Date.

4.3 Class 3 – M&M Plaintiff Secured Claims.

On November 18, 2020, the Bankruptcy Court enter the Agreed Judgement in the M&M Lien Claimant Adversary [ECF No. 29 in Adversary 20-01048-hcm] (the "***M&M Plaintiff Judgment***"). On the Effective Date (or as soon as reasonably practicable), except to the extent that a holder of an Allowed M&M Plaintiff Secured Claim against the Estate agrees to less favorable treatment, each holder of an Allowed M&M Plaintiff Secured Claim shall receive the recovery and treatment provided for in the M&M Plaintiff Judgment from the funds deposited in the Court's registry pursuant to the M&M Plaintiff Stipulation. Nothing herein shall prevent Lender, any M&M Plaintiff or any other party from settling, resolving or otherwise agreeing to modified treatment on or after the Effective Date. The Bankruptcy Court may enter any appropriate order and/or judgment (whether agreed or otherwise) releasing to Lender, any M&M Plaintiff or any other party any portion of the funds deposited in the Court's registry pursuant to the M&M Plaintiff Stipulation and the M&M Plaintiff Judgment.

4.4 Class 4 – Panache Secured Claims.

On the Effective Date (or as soon as reasonably practicable thereafter), except to the extent that a holder of an Allowed Panache Secured Claim against the Estate agrees to less favorable treatment, the holder of an Allowed Panache Secured Claim shall receive the recovery and treatment provided for in the Panache Stipulation, with all the Liens associated with the Panache Secured Claims, to the extent Allowed, attaching to the funds deposited in the Court's registry pursuant to the Panache Stipulation. Nothing herein shall prevent Lender, Panache or any other party from settling, resolving or otherwise agreeing to modified treatment on or after the Effective Date. The Bankruptcy Court shall enter any appropriate order and/or judgment (whether agreed or otherwise) releasing to Lender, Panache or any other party any portion of the funds deposited in the Bankruptcy Court's registry pursuant to the Panache Stipulation.

4.5 Class 5 – Other Secured Claims.

On the Effective Date (or as soon as reasonably practicable thereafter), except to the extent that a holder of an Allowed Other Secured Claim against the Estate agrees to less favorable treatment, each holder of an Allowed Other Secured Claim shall, at the Chapter 11 Trustee's option, receive one of the following treatments: (i) the Collateral securing such Allowed Secured Claim; or (ii) other treatment that renders such Allowed Other Secured Claim unimpaired in accordance with section 1124 of the Bankruptcy Code.

4.6 Class 6 – General Unsecured Claims.

Except to the extent that a holder of an Allowed General Unsecured Claim against the Estate agrees to a different treatment, each holder of an Allowed General Unsecured Claim shall receive a Class A Interest in the Creditor Trust and thereafter receive Cash distributions from the assets of the Creditor Trust, including the Settlement Carve-Out and the Creditor Trust Assets. Distributions to holders of Allowed General Unsecured Claims who receive a Class A Interest shall be on a Pro Rata basis with all other Class A Interest holders, until the Allowed amount of General Unsecured Claims are paid in full with interest at the Plan Interest Rate.

4.7 Class 7 – Lender's Deficiency and Unsecured Claims

On the Effective Date, the Lender shall receive on account of the Lender's Deficiency Claims and any other Allowed General Unsecured Claim held by the Lender, a Class B Interest in the Creditor Trust. Distributions to holders of Class B Interests shall be on a Pro Rata basis, after payment in full with interest at the Plan Interest Rate of all Class A Interests; however, holders of claims in Class 7 shall not receive any portion of the Settlement Carve-Out.

4.8 Class 8 – Panache and M&M Plaintiffs Deficiency and Unsecured Claims

On the Effective Date, Panache and each M&M Plaintiff shall receive on account of any Allowed General Unsecured Claim it held, holds or acquires, including any Allowed Claim constituting an unsecured deficiency portion of the Panache Secured Claims, the M&M Plaintiff Secured Claims, and any Allowed Claim from the rejection of any executory contract or unexpired lease, a Class B Interest in the Creditor Trust. Distributions to holders of Class B Interests shall be on a Pro Rata basis, after payment in full with interest at the Plan Interest Rate of all Class A Interests; however, holders of claims in Class 8 shall not receive any portion of the Settlement Carve-Out.

4.9 Class 9 – Subordinated Claims

Subordinated Claims may be Allowed by Order of the Bankruptcy Court or stipulation with the Chapter 11 Trustee or the Creditor Trustee. Further, this Plan provides that any Claim which appears in the Debtor's Schedules as contingent, unliquidated or disputed for which the holder of the Claim failed to timely file a proof of claim by the Bar Date is a Subordinated Claim and entitled to treatment as a Class 9 Claim. On the Effective Date, the holder of any Allowed Subordinated Claims shall receive a Class B Interest in the Creditor Trust. Distributions to holders of Class B Interests shall be on a Pro Rata basis, after payment in full with interest at the Plan Interest Rate of all Class A Interests. Class 9 shall also receive distributions from the Settlement Carve-Out, after payment in full with interest at the Plan Interest Rate of all Class A Interests.

4.10 Class 10 – Equity Interests

Except to the extent that a holder of an Allowed Equity Interest in the Debtor agrees to a different treatment, each holder of an Allowed Equity Interest shall receive a Class C Interest in the Creditor Trust and thereafter receive Cash distributions from the Creditor Trust Assets. Distributions to holders of Allowed Equity Interests who receive a Class C Interest shall be on a Pro Rata basis with all other Class C Interest holders, after payment in full with interest at the Plan Interest Rate of all Class B Interests. On the Effective Date, the holders of Allowed Equity Interest shall be revested with their ownership interests in the Reorganized Debtor, in the same proportion as each held in the Debtor on the day before the Petition Date, without further corporate action or Bankruptcy Court order.

ARTICLE V. IMPAIRMENT; ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES

5.1 Classes Entitled to Vote.

The holders of Claims in Class 1 are unimpaired, conclusively deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. The holders of claims in Classes 2, 3, 4, 5, 6, 7, 8, 9 and 10 are impaired and entitled to vote to accept or reject the Plan.

5.2 Class Acceptance Requirement.

A Class of impaired Claims shall have accepted the Plan if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of Claims in such Class who have voted on the Plan have voted to accept the Plan. A Class of impaired Equity Interests shall have accepted the Plan if at least two-thirds (2/3) in amount of Equity Interests in such Class who have voted on the Plan have voted to accept the Plan.

5.3 Cramdown.

To the extent that any Class is impaired under the Plan and such Class fails to accept the Plan in accordance with section 1126(c) or (d) of the Bankruptcy Code, the Chapter 11 Trustee hereby requests that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

5.4 Elimination of Classes.

Any Class that does not contain any Allowed Claims or any Claims temporarily Allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed not included in this Plan for purposes of (i) voting to accept or reject this Plan and (ii) determining whether such Class has accepted or rejected this Plan under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE VI. MEANS OF IMPLEMENTATION

6.1 The Lender Settlement.

This Plan constitutes a settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code between the Releasing Parties and the Third-Party Releasing Parties on the one hand and the Released Parties on the other hand in complete and final resolution of all claims the Releasing Parties and the Third-Party Releasing Parties may have against the Released Parties (the "***Lender Settlement***"). Alleged claims which are being settled include, without limitation, all claims, objections, avoidance actions and other causes of action with respect to (i) the claims and causes of action alleged in that certain Chapter 11 Trustee's Emergency Motion to Limit Romspen Mortgage Limited Partnership's Credit Bid (ECF No. 209), (ii) the Lender's involvement in the Debtor's management (if any), funding and operations; (iii) the Lender's proposals to provide and provision of prepetition and postpetition financing; (iv) the Lender's involvement with the collateral pledged to secure the Lender's loans to the Debtor; (v) the Debtor, the Chapter 11 Case or any Claim or Interest; (vi) the Lender's Allowed Secured Claim, the Lender's Allowed

Deficiency Claim and Unsecured Claim, and the Lender's Allowed Administrative Expense Claim, and (vii) any and all claims and causes of action in existence as of the Effective Date, whether known or unknown, in existence or not in existence, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, held by the Releasing Parties and the Third-Party Release Parties against the Released Parties. The Lender disputes that any such claims are or would be valid or have any merit and would contest them. The Lender Settlement resolves such claims. The Lender Settlement is not and shall not deemed to be an admission of liability of any kind on such claims, and all of the Lender's rights are expressly reserved and preserved on any of such claims, with the Lender Settlement carrying no preclusive effect of any kind whatsoever in any action or proceeding arising from or related in any way to the scope of the claims resolved and settled by the Lender Settlement. Only holders of Claims entitled to vote that agree, by not opting out, to release the Released Parties shall be bound by the Third-Party Releases under this Plan and the Lender Settlement. The Disclosure Statement shall include notification to all holders of Claims entitled to vote of their option to opt-out of the Lender Settlement by completing an Opt-Out Form and become an Opt-Out Party on no less than twenty-one (21) calendar days' notice. Any holders of Claims entitled to vote that do not opt-out of the Lender Settlement by returning a properly completed Opt-Out Form to the balloting agent designated by the Bankruptcy Court on or before the Voting Deadline shall be bound by the Lender Settlement, including the Third-Party Releases. Any portion of the cash proceeds comprising or included in the Lender's Contribution that remain on-hand and held by the Creditor Trustee on behalf of the Creditor Trust that are excess, surplus funds leftover after satisfaction of the obligations set forth in this Plan will be returned to the Lender upon the termination of the Creditor Trust. The Chapter 11 Trustee shall transfer any portion of the funds comprising the Credit Bid Escrow in excess of the Settlement Carve-Out to Lender on the Effective Date of the Plan. To the extent not already covered by the Sale Order, any and all aspects of the TxDOT Proceeding and the PDA Proceeding are not included in the Causes of Action preserved by the Estate and transferred to the Creditor Trust under this Plan. The Debtor's and Estate's rights and interests in the TxDOT Proceeding and the PDA Proceeding are exclusively owned by the Lender as of the Sale Closing Date pursuant to the terms of the Sale Order and this Plan. Further, the Lender shall be responsible for all direction of the TxDOT Proceeding and the PDA Proceeding as of the Sale Closing Date and for the payment of all fees, costs and expenses related to the TxDOT Proceeding and the PDA Proceeding incurred on or after the Sale Closing Date.

6.2 The Creditor Trust.

(a) Establishment of the Creditor Trust. The Creditor Trust shall be established for the benefit of the holders of Allowed General Unsecured Claims and the Lender's Deficiency Claims. This Section 6.2(a) sets forth the general terms of the Creditor Trust and certain of the rights, duties, and obligations of the Creditor Trustee. In the event of any conflict between the terms of this Section 6.2(a) and the terms of the Creditor Trust Agreement, the terms of the Creditor Trust Agreement shall govern.

(b) Execution of Creditor Trust Agreement. On the Effective Date, the Creditor Trust Agreement shall be executed, and all other necessary steps shall be taken to establish the Creditor Trust and the beneficial interests therein, which shall be for the benefit of the holders of Allowed General Unsecured Claims, the Lender's Unsecured and Deficiency Claims, Panache's Unsecured and Deficiency Claims,

Subordinated Claims, and Equity Interests. The form of the Creditor Trust Agreement and related ancillary documents are subject to Bankruptcy Court approval at the Confirmation Hearing.

(c) Purpose of the Creditor Trust. The Creditor Trust shall be established for the sole purpose of liquidating and distributing its assets to the holders of interests in the Creditor Trust, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or to engage in the conduct of a trade or business. The Creditor Trust, through the Creditor Trustee, shall (i) collect and reduce the assets of the Creditor Trust to Cash, (ii) prosecute, settle and otherwise administer the Causes of Action as more fully set forth in Section 6.9 and Section 11.8 hereof, (iii) make distributions to the beneficiaries of the Creditors Trust in accordance with the Plan and the Creditor Trust Agreement and (iv) take all such actions as are reasonably necessary to accomplish the purpose hereof, as more fully provided in the Creditor Trust Agreement.

(d) Creditor Trust Assets. The Creditor Trust shall receive (1) the Lender's Contribution (to be segregated), (2) the Settlement Carve-Out (to be segregated), and (3) the Creditor Trust Assets. Any Cash or other property received from third parties from the prosecution, settlement, or compromise of any Cause of Action shall constitute Creditor Trust Assets for purposes of distributions under the Creditor Trust. On the Effective Date, the Lender's Contribution, the Settlement Carve-Out and Creditor Trust Assets shall automatically vest in the Creditor Trust, free and clear of all Liens, Claims and encumbrances, except to the extent otherwise provided in the Plan.

(e) Governance of the Creditor Trust. The Creditor Trust shall be governed by the Creditor Trustee in accordance with the Creditor Trust Agreement and consistent with the Plan.

(f) The Creditor Trustee. The Chapter 11 Trustee shall serve as the Creditor Trustee, subject to Bankruptcy Court approval at the Confirmation Hearing. With respect to the Creditor Trust Assets, the Creditor Trustee shall be a representative of the Estate pursuant to section 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code. The Creditor Trustee may prosecute, settle and otherwise administer the Causes of Action on behalf of the Creditor Trust, without the need for Bankruptcy Court approval or any other notice or approval, except as set forth in the Creditor Trust Agreement, and shall also be responsible for objecting to Claims filed against the Estate that purport to qualify as General Unsecured Claims under the terms of the Plan, including, without limitation, pursuant to section 502(d) of the Bankruptcy Code. The Creditor Trustee shall be exempt from giving any bond or other security in any jurisdiction.

(g) Classes of Creditor Trust Interests; Nontransferability. There shall be three (3) classes of beneficial interests in the Creditor Trust: Class A beneficial interests for the Allowed General Unsecured Claims (the "***Class A Interests***"), Class B beneficial interests for all Lender's Unsecured and Deficiency Claims, Panache

Unsecured and Deficiency Claims, and Subordinated Claims (the "C***lass B Interests***"), and Class C beneficial interests for holders of Equity Interests in the Debtor (the "***Class C Interests***"). The beneficial interests in the Creditor Trust shall not be transferable (except as otherwise provided in the Creditor Trust Agreement).

(h) Cash. Pending distribution, the Creditor Trustee may invest Creditor Trust Assets only in Cash and Government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended); *provided, however*, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

(i) Costs and Expenses of the Creditor Trustee. The costs and expenses of the Creditor Trust, including the fees and expenses of the Creditor Trustee and his or her retained professionals, shall be paid first out of the Lender's Contribution, then the Creditor Trust Assets, and finally, only to the extent needed, from the Settlement Carve-Out.

(j) Compensation of the Creditor Trustee. The Creditor Trustee shall be entitled to reasonable compensation at the Creditor Trustee's reasonable and ordinary hourly rate paid from the Lender's Contribution and the Creditor Trust Assets, plus a commission on specific distributions as detailed below and provided for in prior Bankruptcy Court orders. Pursuant to the Panache Stipulation and the M&M Plaintiff Stipulation, respectively, the Creditor Trustee shall additionally be entitled to a fee of three percent (3%) of all disbursements made on account of any Allowed Claims held by Panache and the M&M Plaintiffs from the registry of the Court or by the Lender. Pursuant to the Sale Order, the Creditor Trustee shall additionally be entitled to a fee of three percent (3%) of all disbursements made on account of any 2020 ad valorem taxes secured by the Property. For avoidance of doubt, the Creditor Trustee shall be entitled to a fee of three percent (3%) of any payment made by the Lender, Panache or any other party on account of or to reduce or satisfy any Claim against the Estate. Any portion of funds returned to the Lender (but not then distributed to any other holder of a Claim or on account of a Claim against the Estate) from (1) the Lender Contribution, (2) the Credit Bid Escrow, (3) the funds deposited in the Bankruptcy Court's registry pursuant to the M&M Plaintiff Stipulation or (4) the funds deposited in the Bankruptcy Court's registry pursuant to the Panache Stipulation, shall not qualify the Creditor Trustee to an additional fee of three percent (3%) on such funds refunded to the Lender, provided the Lender does not otherwise satisfy Claims against the Estate on account of such refunds.

(k) Distribution of the Settlement Carve-Out. The Creditor Trustee shall distribute the Settlement Carve-Out to the Class A Interests on a Pro Rata basis in accordance with the Creditor Trust Agreement, beginning as soon as practicable after the Effective Date. The Creditor Trustee shall not make any distributions to holders of Disputed Claims unless and until such Claims are Allowed. The Creditor Trustee shall ensure that sufficient funds are reserved, as determined by the Creditor

Trustee in his or her sole discretion, to pay Disputed Claims upon Allowance. Upon payment in full of the Class A Interests with interest at the Plan Rate, the Creditor Trustee shall distribute the remaining Settlement Carve-Out, if any, to Class B Interests help by holders of Claims Allowed in Class 9 on a Pro Rata basis.

(l) Distribution of Creditor Trust Assets. The Creditor Trustee shall distribute Cash to the Creditor Trust beneficiaries in accordance with the Creditor Trust Agreement, beginning on the Effective Date or as soon thereafter as is practicable, from the liquidated Creditor Trust Assets on hand as follows: First to any unpaid portion of the Class A Interests after distribution of the Settlement Carve-Out, on a Pro Rata basis; second to Class B Interests; and third to Class C Interests. The Creditor Trustee shall not make any distributions to holders of Disputed Claims unless and until such Claims are Allowed. The Creditor Trustee shall ensure that sufficient funds are reserved, as determined by the Creditor Trustee in his or her sole discretion, to pay Disputed Claims upon Allowance. The Creditor Trustee shall be permitted to distribute amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Creditor Trust Assets, (ii) are necessary to pay reasonable expenses (including, but not limited to, any taxes imposed on the Creditor Trust or in respect of the Creditor Trust Assets), and (iii) are required to satisfy other liabilities incurred by the Creditor Trust in accordance with this Plan or the Creditor Trust Agreement.

(m) Creditor Trust Certificates. Beneficial interests in the Creditor Trust shall not be represented by certificates, receipts, or in any other form or manner, except as maintained on the books and records of the Creditor Trust by the Creditor Trustee, as set forth in the Creditor Trust Agreement.

(n) Retention of Professionals by the Creditor Trustee. The Creditor Trustee may retain and reasonably compensate counsel and other professionals out of the Creditor Trust Assets to assist in its duties as Creditor Trustee on such terms as the Creditor Trustee deems appropriate without Bankruptcy Court approval. The Creditor Trustee may retain any professional who represented parties in interest, including the Chapter 11 Trustee, in the Chapter 11 Case.

(o) Federal Income Tax Treatment of the Creditor Trust; Creditor Trust Assets Treated as Owned by General Unsecured Creditors. For all federal income tax purposes, all parties (including, without limitation, the Debtor, Chapter 11 Trustee, the Creditor Trustee, and the holders of beneficial interests in the Creditor Trust) shall treat the transfer of the Creditor Trust Assets to the Creditor Trust for the benefit of the beneficiaries thereof, whether Allowed on or after the Effective Date, as (A) a transfer of the Creditor Trust Assets directly to the holders in satisfaction of General Unsecured Claims and Lender's Deficiency Claims (other than to the extent allocable to Disputed General Unsecured Claims), followed by (B) the transfer by such holders to the Creditor Trust of the Creditor Trust Assets in exchange for, beneficial interests in the Creditor Trust. Accordingly, the holders of such General Unsecured Claims and Lender's Deficiency Claims, as applicable,

shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Creditor Trust Assets.

(p) Tax Reporting.

(i) The Creditor Trustee shall file income tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section l.671-4(a) and in accordance with this Section 6.2(p)(i). The Creditor Trustee shall annually send to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated among the beneficial holders of the interests in the Creditor Trust in accordance with each holder's relative beneficial interests in the Creditor Trust.

(ii) As soon as possible after the Effective Date, but in no event later than ninety (90) days after the Effective Date, the Creditor Trustee shall make a good faith valuation of the Creditor Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties (including, without limitation the, Debtor, the Chapter 11 Trustee, the Creditor Trustee, and the holders of beneficial interests in the Creditor Trust, as applicable) for all federal income tax purposes. The Creditor Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Creditor Trust that are required by any governmental unit.

(iii) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Creditor Trustee of a private letter ruling if the Creditor Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Creditor Trustee), the Creditor Trustee shall (i) treat any Creditor Trust Assets allocable to, or retained on account of, Disputed General Unsecured Claims as held by one or more discrete trusts for federal income tax purposes (the "***Trust Claims Reserve***"), consisting of separate and independent shares to be established in respect of each Disputed General Unsecured Claim, in accordance with the trust provisions of the Tax Code (section 641 *et seq*.), (ii) treat as taxable income or loss of the Trust Claims Reserve, with respect to any given taxable year, the portion of the taxable income or loss of the Creditor Trust that would have been allocated to the Holders of Disputed General Unsecured Claims had such Claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such Claims are unresolved), (iii) treat as a Distribution from the Trust Claims Reserve any increased amounts distributed by the Creditor Trust as a result of any Disputed General Unsecured Claims resolved earlier in the taxable year, to the extent such Distributions relate to taxable income or loss of the Trust Claims Reserve determined in accordance with the provisions hereof, and (iv) to the extent permitted by applicable laws report consistent with the

foregoing for state and local income tax purposes. All Creditor Trust beneficiaries shall report, for tax purposes, consistent with the foregoing.

(iv) The Creditor Trustee shall be responsible for payments, out of the Creditor Trust Assets, of any taxes imposed on the Creditor Trust or the Creditor Trust Assets, including the Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed General Unsecured Claims in the Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed General Unsecured Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed General Unsecured Claims, or (ii) to the extent such Disputed General Unsecured Claims have subsequently been resolved, deducted from any amounts distributable by the Creditor Trustee as a result of the resolutions of such Disputed General Unsecured Claims.

(v) The Creditor Trustee may request an expedited determination of taxes of the Creditor Trust, including the Trust Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Creditor Trust for all taxable periods through the dissolution of the Creditor Trust.

(q) Dissolution. The Creditor Trust and the Creditor Trustee shall be discharged or dissolved, as the case may be, no later than the fifth (5^{th}) anniversary of the Effective Date; *provided, however*, that, on or prior to the date that is ninety (90) days prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Creditor Trust if it is necessary to the liquidation of the Creditor Trust Assets. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained not less than ninety (90) days prior to the expiration of each extended term; *provided, however*, that in no event shall the term of the Creditor Trust extend past the tenth (10th) anniversary of the Effective Date. The Creditor Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a Final Order closing the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code and (ii) the Creditor Trustee has administered all Creditor Trust Assets and performed all other duties required by the Plan, the Confirmation Order, the Creditor Trust Agreement and the Creditor Trust. The Creditor Trustee shall not unduly prolong the duration of the Creditor Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets and to effect the Distribution of the Creditor Trust Assets in accordance with the terms hereof and terminate the Creditor Trust as soon as practicable. Prior to and upon termination of the Creditor Trust, the Creditor Trust Assets will be distributed to the beneficiaries of Creditor Trust, pursuant to the provisions set forth in the Trust Agreement. If at any time the Creditor Trustee determines that the expense of administering the Creditor Trust is likely to exceed the value of the Creditor Trust Assets, the Creditor Trustee shall have the authority to (i) distribute to the beneficiaries of the Creditor Trust any Cash balance remaining in excess of necessary costs to pay outstanding expenses of the Creditor Trust, including any fees

and expenses of the Creditor Trustee and his/her professionals, (ii) donate any Creditor Trust Assets remaining in the Creditor Trust to the Anthony H.N. Schnelling Endowment Fund maintained by the American Bankruptcy Institute, a non-religious charitable organization exempt from federal income tax under section 501(c)(3) of the Tax Code that is unrelated to the Debtor and any insider of the Debtor and (iii) dissolve the Creditor Trust.

(r) Indemnification of Creditor Trustee. The Creditor Trustee or the individuals comprising the Creditor Trustee, as the case may be, and the Creditor Trustee's agents and professionals, shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Creditor Trustee, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Creditor Trustee, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. Any indemnification claim of the Creditor Trustee shall be satisfied exclusively from the Creditor Trust Assets. The Creditor Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

6.3 General Settlement of Claims.

The Plan constitutes and evidences a compromise and settlement pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. In consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.

6.4 Issuance of Creditor Trust Interests.

The issuance and distribution of Creditor Trust Interests pursuant to the terms of the Creditor Trust Agreement is authorized without the need for any further corporate action or without any further action by the holders of any claims. All of the Creditor Trust Interests issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. On the Distribution Date, the Creditor Trustee shall issue the Creditor Trust Interests for distribution pursuant to the provisions hereof and the Creditor Trust Agreement. All Creditor Trust Interests to be issued shall be deemed issued as of the Effective Date regardless of the date on which they are actually distributed.

6.5 Section 1145 Exemption.

Section 1145 of the Bankruptcy Code shall be applicable to the issuance of the Creditor Trust Interests, if any. To the maximum extent permitted by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, if appropriate, the Creditor Trust Interests, issued pursuant to this Plan and their transfer will be exempt from registration under the Securities Act and all rules

and regulations promulgated thereunder, and any and all applicable state and local laws, rules, and regulations.

6.6 Restructuring Transactions.

On or prior to the Effective Date, the Creditor Trust Agreement shall be executed, and on the Effective Date, the Chapter 11 Trustee shall contribute the Creditor Trust Assets to the Creditor Trust free and clear of all Liens, Claims, charges, or other encumbrances. On the Effective Date, the Debtor shall exit chapter 11 as the Reorganized Debtor and the ownership of the Reorganized Debtor shall revest with the holders of Allowed Equity Interests in Class 10.

6.7 Corporate Action.

Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects. All matters provided for in the Plan involving the corporate structure of the Debtor, and any corporate action required by or in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by any Equity Interest holders, directors or officers of the Debtor. The authorizations and approvals contemplated by this Section 6.7 shall be effective notwithstanding any requirements under non-bankruptcy law.

6.8 Vesting of Assets.

Except as otherwise provided in the Plan, on the Effective Date, the Creditor Trust Assets shall be automatically transferred to and vest in the Creditor Trust free and clear of all Liens, Claims, charges, or other encumbrances. On the Effective Date, the ownership and management of the Reorganized Debtor shall revest with the holders of Allowed Equity Interests in Class 10. The Creditor Trustee shall be permitted to abandon any asset to the Reorganized Debtor without further order of the Bankruptcy Court.

6.9 Preservation of Rights of Action; Settlement of Litigation Claims.

Except as otherwise provided herein or in the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Causes of Action shall be transferred to the Creditor Trust as provided by the Plan, and may be initiated, filed, enforced, abandoned, settled, compromised, released, withdrawn or litigated to judgment without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court, except as may otherwise be set forth in the Creditor Trust Agreement. The Creditor Trustee shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. **No Person may rely on the absence of a specific reference in the Plan, or the Disclosure Statement to any Cause of Action against it as any indication that the Chapter 11 Trustee or the Creditor Trustee, as applicable, will not pursue any and all available Causes of Action against it. All rights to prosecute any and all Causes of Action against any Person are expressly preserved, except as otherwise provided in the Plan.** Unless any Causes of Action against a Person are expressly

waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Creditor Trust expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or consummation of the Plan. For the sake of clarity, the TxDOT Proceeding and the PDA Proceeding are not included in the Causes of Action preserved by the Estate and transferred to the Creditor Trust under this Plan. The Debtor's and Estate's rights and interests in the TxDOT Proceeding and the PDA Proceeding are exclusively owned by the Lender as of the Sale Closing Date pursuant to the terms of the Sale Order and this Plan.

6.10 Effectuating Documents; Further Transactions.

On and after the Effective Date, the Chapter 11 Trustee is authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan in the name of and on behalf of the Debtor, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

6.11 Exemption from Certain Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, sales or use tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment: (a) the creation of any mortgage, deed of trust, lien or other security interest under or pursuant to this Plan; (b) the release or assignment of liens; (c) the transfer of any assets of the Estate to the Creditor Trust; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, in connection with or pursuant to this Plan, including any restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any of the foregoing.

6.12 Management and Winddown of the Reorganized Debtor.

As provided by the treatment of Class 10 Allowed Equity Interests, the Debtor's existing equity owners will own, manage and control the Reorganized Debtor as of the Effective Date and may proceed to operate, winddown or dissolve the Reorganized Debtor subject to their business judgment. The Chapter 11 Trustee and the Creditor Trustee shall have no obligation to manage, winddown or dissolve the Reorganized Debtor.

6.13 Cooperation with the Creditor Trustee.

All holders of Claims and Equity Interests, the Reorganized Debtor, the Lender, Panache, the White Parties, and any owner or assignee of the Property shall fully cooperate with the Creditor Trustee in the administration of the Creditor Trust, including the prosecution of the Causes of

Action and objections to any Claims. The Bankruptcy Court retains jurisdiction to order appropriate relief under this Plan provision.

ARTICLE VII. DISTRIBUTIONS

7.1 Date of Distributions.

Unless otherwise provided in this Plan, any distributions or deliveries to be made under this Plan shall be made on the Effective Date or as soon as practicable thereafter in accordance with the Creditor Trust Agreement. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act shall be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

7.2 Sources of Cash for Plan Distributions.

All distributions made by the Creditor Trustee to beneficiaries of the Creditor Trust shall be obtained from the Settlement Carve-Out (only to Allowed Class 6 Claims and then Class 9 Claims) and Creditor Trust Assets. All payments made by the Creditor Trustee to fund the Creditor Trust's fees and expenses shall be obtained first, from the Lender's Contribution, second, from the Creditor Trust Assets, and third, only to the extent needed, from the Settlement Carve-Out. No portion of the Lender's Contribution shall be used to fund the payment of Allowed General Unsecured Claims.

7.3 Creditor Trustee.

All distributions under the Plan shall be made by the Creditor Trustee. The Creditor Trustee shall not be required to post any bond, surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court. The Creditor Trustee shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, (c) employ professionals to represent it with respect to its responsibilities and (d) exercise such other powers as may be vested in the Creditor Trustee by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Creditor Trustee to be necessary and proper to implement the provisions hereof.

7.4 Record Date for Distributions.

At the close of business on the Distribution Record Date, the transfer ledgers or registers for Claims against and Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. Neither the Chapter 11 Trustee nor the Creditor Trustee shall have any obligation to recognize any transfer of any of the foregoing occurring after the Distribution Record Date, and shall be entitled instead to recognize for all purposes hereunder, including to effect distributions hereunder, only those record holders stated on the transfer ledgers or registers maintained by the Chapter 11 Trustee as of the close of business on the Distribution Record Date.

7.5 Recipients of Distributions.

All distributions to holders of Allowed Claims and Allowed Equity Interests under the Plan shall be made to the holder of the Claim or Equity Interest as of the Distribution Record Date. Changes as to the holder of a Claim or Equity Interest after the Distribution Record Date shall only be valid and recognized for distribution if notice of such change is filed with the Bankruptcy Court, in accordance with Bankruptcy Rule 3001 (if applicable) and served upon the Chapter 11 Trustee and his counsel and, if applicable, the Creditor Trustee.

7.6 Delivery of Distributions; Unclaimed Property.

Subject to Bankruptcy Rule 9010, all distributions under the Plan shall be made at the address of each holder of an Allowed Claim or Allowed Equity Interest as set forth in the books and records of the Debtor, Chapter 11 Trustee or the Creditor Trustee, as applicable, unless the applicable trustee has been notified in writing of a change of address. If any distribution to the holder of an Allowed Claim or Allowed Equity Interest is returned as undeliverable, no further distributions to such holder shall be made unless and until the Chapter 11 Trustee or Creditor Trustee, as applicable, is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date of the distribution in question. After such 90th day, and notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary (i) all unclaimed property or interest in property in respect of the distribution in question shall revert to the Creditor Trust, and thereafter be distributed Pro Rata to the holders of Allowed Claims and Allowed Equity Interests in accordance with the terms of this Plan, and (ii) the Claim or Equity Interest of any holder with respect to such unclaimed property or interest in property shall be discharged and forever barred. If, at the time the Creditor Trust terminates there is unclaimed property remaining in the Creditor Trust, such property shall be donated to the Anthony H.N. Schnelling Endowment Fund maintained by the American Bankruptcy Institute, to assist in the provision of resources for research and education.

7.7 Means of Payment.

All distributions made pursuant to the Plan shall be in Cash.

7.8 Setoffs and Recoupment.

The Chapter 11 Trustee or the Creditor Trust, as applicable, may, but shall not be required to, setoff against or recoup from any Claim or Equity Interest any rights to payment that the Estate may have against the holder of such Claim or Equity Interest. Neither the failure of the Chapter 11 Trustee nor the Creditor Trust, as applicable, to setoff or recoup, nor the Allowance of any Claim or Equity Interest shall constitute a waiver or release by the Estate or the Creditor Trust of any right to payment, or right of setoff or recoupment.

7.9 Distributions After Effective Date.

Distributions made pursuant to this Plan after the Effective Date to holders of Disputed Claims and Disputed Equity Interests that are not Allowed as of the Effective Date, shall be deemed

to have been made on the Effective Date. After the initial distribution, the Creditor Trustee shall make additional interim distributions to holders of Allowed Claims and Allowed Equity Interests at such time as the Creditor Trustee may deem appropriate, in accordance with the terms of this Plan.

7.10 Withholding and Reporting Requirements.

In connection with this Plan and all instruments issued under this Plan, any party issuing any instrument or making any such distribution under this Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim or Allowed Equity Interest that is entitled to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any applicable tax obligations, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under this Plan to any holder of any Allowed Claim or Allowed Equity Interest has the right, but not the obligation, to not issue such instrument or make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

7.11 No Postpetition Interest.

Unless otherwise specifically provided for in this Plan or in the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims or Equity Interests, and no holder of a Claim or Equity Interest shall be entitled to interest accruing on or after the Petition Date. Notwithstanding the foregoing, the Lender's Allowed Administrative Expense Claim accruing and arising under and pursuant to the Postpetition Financing Order shall be permitted to accrue postpetition interest pursuant to the terms of the Postpetition Financing Order.

7.12 Time Bar to Payments.

Checks issued by the Creditor Trustee under this Plan shall be null and void if not negotiated within ninety (90) days after the date of issuance. Requests for reissuance of any check shall be made in writing directly to the Creditor Trustee by the person to whom such check was originally issued. Any request for re-issuance of a voided check must be made on or before the end of the 90-day period referenced in this Section 7.12. After such 90-day period, if no request for re-issuance of a voided check was timely made, such amounts shall constitute unclaimed property and be treated in accordance with Section 7.6 of this Plan, and all Claims or Equity Interests in respect of such void checks shall be discharged and forever barred.

7.13 De Minimis Distributions.

Neither the Chapter 11 Trustee nor the Creditor Trustee shall have any obligation to make a distribution that is less than Ten Dollars ($10) in Cash. If an interim distribution to the holder of an Allowed Claim or Equity interest is less than $10, such distribution shall be held for future distributions. If the final distribution to any holder of an Allowed Claim or Equity Interest is less

than $10, such amount shall become and constitute unclaimed property and be treated in accordance with Section 7.6 of the Plan.

ARTICLE VIII. PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

8.1 Objections to Claims.

Except insofar as a Claim or Equity Interest is Allowed under the Plan or pursuant to Final Order of the Bankruptcy Court, the Creditor Trustee, the Chapter 11 Trustee or any other party in interest with standing, shall be entitled to object to Claims and Equity Interests, including objections seeking reclassification or subordination of Claims. Any objections to Claims and Equity Interests shall be served and filed by the Objection Deadline. Any Claim or Equity Interest as to which an objection is timely filed shall be a Disputed Claim or Disputed Equity Interest, respectively. On the Effective Date, the Creditor Trustee shall assume standing to continue to prosecute, settle or resolve any objection to Claims filed by the Chapter 11 Trustee. Notwithstanding the foregoing, included within the Lender Settlement, the Releasing Parties and Third Party Releasing Parties waive and release any and all objections to any Claims held by or in favor of the Lender, including, without limitation, Lender's Allowed Administrative Expense Claim pursuant to the Postpetition Financing Order, Lender's Allowed Secured Claim and Lender's Allowed Deficiency Claim.

8.2 Post-Sale Closing Date Reporting on Payments on Account of Claims.

Beginning on the Effective Date, on or before the tenth (10^{th}) calendar day of each month, the Lender, Panache, and any of their successors or assigns, including any assignee or subsequent owner of the Property, shall provide the Chapter 11 Trustee and the Creditor Trustee and his or her counsel, respectively, by email, a detailed accounting of all payments, settlements or other transfers of value of any kind to any holder of a Claim against the Estate. The receipt of any payment, settlement, or transfer of value on account of any Claim against the Estate shall be the basis for the reduction or disallowance of the Claim against the Estate. The Creditor Trustee may waive this reporting requirement if, in his business judgment, the reports are no longer necessary to administer the Creditor Trust. The Lender, Panache, and any of their successors or assigns, including any assignee or subsequent owner of the Property, are obligated to make reports under this Section 8.2 until the Creditor Trust is dissolved.

8.3 No Distributions Pending Allowance.

If a timely objection is made with respect to any Claim or Equity Interest, no payment or distribution under the Plan shall be made on account of such Claim or Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes Allowed.

8.4 Distributions After Allowance.

To the extent that a Disputed Claim or Disputed Equity Interest ultimately becomes an Allowed Claim or Allowed Equity Interest, distributions (if any) shall be made to the holder of such Allowed Claim or Allowed Equity Interest, in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court

allowing any Disputed Claim or Disputed Equity Interest becomes a Final Order, the Creditor Trustee shall provide to the holder of such Claim or Equity Interest the distribution (if any) to which such holder is entitled under this Plan as of the Effective Date, without any interest.

8.5 Disallowance of Late Filed Claims.

Unless otherwise provided in a Final Order of the Bankruptcy Court, any Claim for which a proof of claim is filed after the applicable Bar Date shall be deemed disallowed. The holder of a Claim that is disallowed pursuant to this Section 8.5 shall not receive any distribution on account of such Claim, and neither the Chapter 11 Trustee nor the Distribution Agent shall need to take any affirmative action for such Claim to be deemed disallowed.

ARTICLE IX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 Rejection of Contracts and Leases.

Except as otherwise provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, as of the Effective Date, Debtor shall be deemed to have rejected each executory contract and unexpired lease to which it is a party, unless such contract or lease (i) was previously assumed, assumed and assigned or rejected by the Chapter 11 Trustee, (ii) previously expired or terminated pursuant to its own terms, or (iii) is the subject of a motion to assume, assume and assign, or reject filed by the Chapter 11 Trustee on or before the Confirmation Date. The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.

9.2 Inclusiveness.

Unless otherwise specified, each executory contract and unexpired lease shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease.

9.3 Claims Based on Rejection of Executory Contracts or Unexpired Leases.

All Claims arising out of the rejection of executory contracts and unexpired leases (if any) must be served upon the Chapter 11 Trustee and his counsel within thirty (30) days after the earlier of (i) the date of entry of an order of the Bankruptcy Court approving such rejection or (ii) the Effective Date. Any Claims not filed within such time shall be forever barred from assertion against the Debtor, the Estate, its property and the Creditor Trust.

9.4 No Effect on Insurance

The rejection of executory contracts shall not apply to, and shall have no effect upon, any insurance policy which the Debtor owns or pursuant to which the Debtor is an insured party, beneficiary, claimant or in which the Debtor has any interest, including any directors and officers' insurance policies (together, the "***Insurance Policies***"). All Insurance Policies to which the Debtor

or the Estate is a party as of the Effective Date shall be deemed to be and treated as executory contracts and shall be assumed by the Debtor, assigned to the Creditor Trust and shall continue in full force and effect thereafter in accordance with their respective terms. All Insurance Policies shall vest in the Creditor Trust as of the Effective Date, including the right to (a) control any Insurance Policy that provides or may provide coverage for the Causes of Action or may become available to provide such coverage; (b) pursue and receive the benefits and proceeds of the Insurance Policies; (c) pursue and receive recovery from or as a result of any Causes of Action, including consequential, contractual, extracontractual and/or statutory damages, or other proceeds, distributions, awards or benefits; and (d) pursue and receive any other recovery related to the Causes of Action, including negotiations relating thereto and settlements thereof. Nothing in this paragraph nor the Plan limits, excuses or in any way affects or impairs any coverage to which the Debtor's or the Estate's current and/or former officers and directors are entitled to with respect to any and all insurance or other applicable Insurance Policies of the Debtor.

ARTICLE X. CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN

10.1 Conditions to Confirmation of Plan.

Confirmation of the Plan shall not occur, and the Confirmation Order shall not be entered, until an order, finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered.

10.2 Conditions to Effective Date of Plan.

The Effective Date of the Plan shall not occur until each of the following conditions precedent have been satisfied or waived:

(a) The clerk of the Bankruptcy Court shall have entered the Confirmation Order in the Chapter 11 Case and there shall not be a stay or injunction (or similar prohibition) in effect with respect thereto;

(b) The Chapter 11 Trustee shall have received the Lender's Contribution and the Settlement Carve-Out;

(c) The Creditor Trust Agreement shall have been fully executed;

(d) The Creditor Trustee shall have been appointed, accepted the appointment, and performed any other appropriate duties prior to accepting the Creditor Trust Assets; and

(e) All other actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan shall have been executed and delivered by the parties thereto, and, in each case, all conditions to their effectiveness shall have been satisfied or waived as provided therein.

Within five (5) Business Days of the Effective Date, the Chapter 11 Trustee shall file a notice of the occurrence of the Effective Date.

10.3 Waiver of Conditions Precedent.

Any of the foregoing conditions (with the exception of the conditions set forth in Sections 0 and 10.2(a) may be waived by the Chapter 11 Trustee without notice to or order of the Bankruptcy Court. The Chapter 11 Trustee may assert a failure to satisfy or waiver of any condition regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Chapter 11 Trustee to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right will be deemed an on-going right that may be asserted at any time.

10.4 Effect of Failure of Conditions.

If the foregoing conditions have not been satisfied or waived in the manner provided in Sections 10.1, 10.2 and 10.3 hereof, then (i) the Confirmation Order shall be of no further force or effect; (ii) no distributions under the Plan shall be made; (iii) the Estate and all holders of Claims against and Equity Interests in the Debtor shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; (iv) all of the Estate's obligations with respect to Claims and Equity Interests shall remain unaffected by the Plan; (v) nothing contained in this Plan shall be deemed to constitute a waiver or release of any Claims by or against the Estate or any other Person or to prejudice in any manner the rights of the Estate or any Person in any further proceedings involving the Debtor or the Estate; and (vi) this Plan shall be deemed withdrawn. Upon such occurrence, the Chapter 11 Trustee shall file a written notification with the Bankruptcy Court and serve it on the parties appearing on the service list maintained in the Chapter 11 Case.

10.5 Reservation of Rights.

The Plan shall have no force or effect unless and until the Effective Date occurs. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Chapter 11 Trustee with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of the Estate or any other party with respect to any Claims or Equity Interests or any other matter.

ARTICLE XI. EFFECT OF CONSUMMATION

11.1 Vesting of Assets.

Upon the Confirmation Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Creditor Trust Assets shall vest in the Creditor Trust, free and clear of all Claims, Liens, encumbrances, charges and other interests, except as otherwise provided in this Plan.

11.2 Discharge of Claims and Interests in the Debtor.

Upon the Effective Date and in consideration of the distributions to be made under this Plan, except as otherwise provided in this Plan or in the Confirmation Order, each holder (as well as any trustee or agent on behalf of such holder) of a Claim or Interest, where such Claim or Interest has been fully paid or otherwise satisfied in accordance with this Plan, and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtor, to the fullest extent permitted under § 1141 of the Bankruptcy Code, of and from any and all Claims, Interests,

rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in this Plan, all such holders of Claims and Interests, and their affiliates shall be forever precluded and enjoined, pursuant to §§ 105, 525, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor.

11.3 Injunction against Interference with Plan.

Upon the entry of the Confirmation Order, all holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees, agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date.

11.4 Exculpation.

Neither the Exculpated Parties nor any of their respective present or former members, managers, officers, directors, employees, equity holders, partners, affiliates, funds, advisors, attorneys or agents, or any of their predecessors, successors or assigns, shall have or incur any liability to any holder of a Claim or an Equity Interest, or any other party-in-interest, or any of their respective agents, employees, equity holders, partners, members, affiliates, funds, advisors, attorneys or agents, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the administration of the Chapter 11 Case, the negotiation and pursuit of approval of the Disclosure Statement, the preparation of the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the funding of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, and shall be deemed to have acted in good faith in connection therewith and entitled to the protections of section 1125(e) of the Bankruptcy Code. Notwithstanding anything to the contrary contained in this Plan, this Section 11.4 shall not exculpate any party from any liability based upon gross negligence or willful misconduct.

11.5 Debtor and Estate Releases

(a) Release of Released Parties. As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce this Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Allowed Claims, and the implementation of this Plan, and except as otherwise provided in this Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the Debtor, the Reorganized Debtor, the Chapter 11 Trustee, the Creditor Trustee, the Creditor Trust and the Estate on behalf of themselves and their respective successors, assigns, and representatives and any and all other entities that may purport to assert any cause of action derivatively, by or through the foregoing entities (together, the ***"Releasing Parties"***), from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the Releasing Parties, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Releasing Parties would have been legally entitled to assert in their own right, or on behalf of the holder of any

Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the Lender Settlement, the subject matter of, or the loans or other transactions or events giving rise to, any Claim or Interest (including without limitation any collateral pledged to the Lender in connection with any such transactions or loans), the business or contractual arrangements between the Debtor and any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the restructuring transactions, the negotiation, formulation, or preparation of the Disclosure Statement and this Plan and related agreements, instruments, and other documents, the solicitation of votes with respect to this Plan, or any other act or omission, transaction, agreement, event, or other occurrence, other than claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, and willful misconduct.

For avoidance of all doubt, the releases and injunctions in favor of Romspen in this Plan do not extend to or otherwise apply to any valid, viable, ripe, live/non-moot direct causes of action, defenses, and currently existing direct claims and/or defenses to which Panache and/or Zarafshani has or have standing to assert, including, without limitation, those pending by Panache against Romspen, subject to any motion to dismiss and/or other dispositive motions filed or to be filed by Romspen and/or Panache to be adjudicated in due course in the Panache Adversary and such live/non-moot direct causes of action, defenses, and currently existing direct claims and/or defenses are unaffected and unmodified by the Plan and this Confirmation Order.

(b) Mutual Release with White Parties. As of the Effective Date, the White Parties are deemed forever released and discharged by the Releasing Parties from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor would have been legally entitled to assert in its own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest, the business or contractual arrangements between the Debtor and any one or more of the White Parties, or the restructuring of any Claim or Interest before or during the Chapter 11 Case.

For avoidance of all doubt, the White Settlement is strictly limited to the Releasing Parties and the White Parties and does not release or otherwise impair, in any way, the assertion of any direct claims between and among Romspen, on one hand, Panache and/or Zarafshani, on one hand, and the White Parties, on the other hand, and of the White Parties', Romspen's, Panache's and Zarafshani's respective rights, remedies, and defenses (whatever such direct rights, remedies and defenses may or may not be) are expressly and fully preserved.

As of the Effective Date, the Debtor is deemed forever released and discharged by the White Parties from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, or liabilities, whatsoever,

including any derivative claims, asserted or assertable on behalf of the White Parties, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that any of the White Parties would have been legally entitled to assert in its own right, or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest, the business or contractual arrangements between the Debtor and any one or more of the Releasing Parties, or the restructuring of any Claim or Interest before or during the Chapter 11 Case; provided, however, the White Parties shall retain, and do not release, any Equity Interests they hold in the Debtor, which Equity Interests shall receive the treatment provided in Section 4.10 hereof.

11.6 Releases by Holders of Claims and Interests

As of the Effective Date, except for the rights and remedies that remain in effect from and after the Effective Date to enforce this Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, the service of the Released Parties to facilitate the administration of the Estate, a substantial recovery for holders of Claims and Interests, and the implementation of this Plan, and except as otherwise provided in this Plan or in the Confirmation Order, the Released Parties are deemed forever released and discharged by the holders of all Claims and Interests and the successors and assigns (other than the Opt-Out Parties, the "*Third-Party Releasing Parties*") from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the holder of the Claim or Interest, or the Debtor or Estate, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such holders or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the purchase, sale, or recission of the purchase or sale of any security of or investment or interest in the Debtor, the Lender Settlement, the subject matter or, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan (including without limitation any collateral pledged to the Lender in connection with any such transactions or loans with the Debtor), the business or contractual arrangements between any holder of a Claim or Interest, and the Debtor or any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Disclosure Statement, this Plan, related agreements, instruments, and other documents, the solicitation of votes with

respect to this Plan, or any other act or omission (the "*Third-Party Releases*"), other than the claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes intentional fraud, gross negligence, or willful misconduct.

With regard to holders of Claims or Interests that are Unimpaired under this Plan and holders of Claims or Interests whose vote to accept or reject this Plan was solicited or who were deemed to reject the Plan but who did not return a ballot or Opt-Out Form (and thus did not opt-out of this release), if such holder of Claims or Interests wishes to pursue a claim or cause of action against any Released Party, such holder must first petition the Bankruptcy Court for a determination of whether this release applies to such holder. If the Bankruptcy Court determines that such holder's claim is not released by this provision, such holder must bring any claim or cause of action in the United States Bankruptcy Court for the Western District of Texas or must obtain leave of this Bankruptcy Court to bring such claim or cause of action before a court of another jurisdiction.

11.7 Injunction and Stay.

(a) Except as otherwise expressly provided in this Plan, all Persons or entities who have held, hold, or may hold Claims or causes of action against the Debtor or any Released Party or Equity Interests in the Debtor are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim, cause of action or Equity Interest against the Estate, the Creditor Trust or other entity released, discharged or exculpated hereunder, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against any Estate or the Creditor Trust with respect to any such Claim or Equity Interest, (iii) creating, perfecting or enforcing any encumbrance of any kind against any Estate, the Creditor Trust, or against the property or interests in property of any Estate or the Creditor Trust, as applicable with respect to any such Claim or Equity Interest, (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any Estate or the Creditor Trust, or against the property or interests in property of any Estate or the Creditor Trust with respect to any such Claim or Equity Interest, or (v) pursuing any Claim or causes of action released under the Plan.

(b) Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

(c) The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, losses, or

liabilities released pursuant to this Plan, including, without limitation, the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities released or exculpated in this Plan.

11.8 Preservation of Claims.

(a) Except as otherwise provided herein, as of the Confirmation Date, pursuant to sections 1123(b)(3)(B) of the Bankruptcy Code, any action, cause of action, claim, liability, obligation, right, suit, debt, sum of money, damage, judgment, Claim, and demand whatsoever, whether known or unknown, at law, in equity, or otherwise, including causes of action under Chapter 5 of the Bankruptcy Code, but not including any causes of action against the Exculpated Parties, and specifically excluding the TxDOT Proceeding and PDA Proceeding exclusively owned by the Lender pursuant to the Sale Order and this Plan (collectively, "***Causes of Action***") owned by or otherwise accruing to the Debtor or the Estate shall constitute assets of, and shall immediately be transferred to and vest in, the Creditor Trust. Thereafter, the Creditor Trustee, as a representative of the Debtor and the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, shall have sole and full authority to commence and prosecute Causes of Action for the benefit of the holders of Allowed General Unsecured Claims. For the avoidance of doubt, the Causes of Action include, but are not limited to, (a) all of the Debtor's commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of Texas) arising on or before the Effective Date, including without limitation, all causes of action against (i) present and former directors and officers of the Debtor, and (ii) direct and indirect equity holders of the Debtor, and the proceeds of all of the foregoing; (b) all Actions or Claims (i) against the Debtor's contract counterparties (other than counterparties to Assigned Contracts) and the proceeds thereof, (ii) against any of the Debtor's agents, employees, or contractors, , and any of their affiliates, professionals, owners, managers, members, officers, directors, employees, agents, insurers, successors or assigns, (iii) against any insurance carrier, policy, or coverage of the Debtor; and (c) the Estate's Avoidance Actions.

(b) Reservation of White Parties' Litigation. Reservation of White Parties' Litigation. The releases and injunctions in favor of Lender contained in this Plan do not extend to or otherwise apply to any valid, viable, ripe, live / non-moot, and currently existing claims and causes of action to which the White Parties have standing to assert against Lender (collectively, the "***Viable Actions***") in (1) Adversary Case Number 20-01047, currently pending before the Bankruptcy Court (the "***White Adversary***"); (2) any proceedings in Canada (the "***Canadian Proceedings***"); or (3) any actions brought by or on behalf of the Lender against any or more of the White Parties (the "***Romspen Actions***"). All parties' rights, claims, liabilities, defenses, affirmative defenses, causes of action and other interests asserted in the White Adversary, including without limitation, all dispositive motions and other forms of relief requested, are expressly reserved and preserved by this Plan, subject to any motions to dismiss and/or other dispositive motions filed by Romspen to be adjudicated in the White Adversary in due course. Only those Viable Actions that the White Parties have standing to assert against Romspen in the pending White Adversary, the Canadian Proceedings or any Romspen Actions are hereby preserved to be prosecuted only by the White Parties and through the White Adversary, the Canadian Proceedings and

in defense of any Romspen Action. To the extent the White Parties have standing to bring any Viable Actions against Romspen in the White Adversary, the Canadian Proceedings and/or Romspen Actions, then only those timely filed Viable Actions will survive the Lender Settlement (as defined in the Plan) and be preserved under the Plan. The White Parties' rights to continue prosecuting Viable Actions in the White Adversary, the Canadian Proceedings or Romspen Actions will survive. Romspen's and the White Parties' respective rights and defenses as to those Viable Actions are expressly preserved and reserved to be determined in due course of the White Adversary, the Canadian Proceedings and/or Romspen Actions. In the White Adversary, the White Parties have challenged the allowance of Romspen's claims against Zen Garden in the Bankruptcy Case, which challenge remains unresolved as of the date of this Confirmation Order. As such, nothing in this Confirmation Order shall be construed as or deemed to be a final finding or conclusion as to the allowance of Romspen's claims against Zen Garden in the Bankruptcy Case, including the establishment of a deficiency claim, if any, against Zen Garden. Nothing in this Plan or in the Confirmation Order modifies the stipulations in the Sale Order. The Confirmation Order will not constitute a finding or other Court determination that the Debtor was in default of its obligations to Romspen or that Romspen had the right to declare a default under the relevant loan documents against the Debtor. Romspen and the White Parties reserve all rights regarding any such determination or finding to be made in due course of prosecuting the Viable Actions. For the avoidance of doubt, Romspen's claims (if any) against the White Parties, wherever and however asserted, are unaffected by the Plan and Confirmation Order, and all of Romspen's and the White Parties' respective rights, remedies and defenses in that regard (whatever such rights, remedies and defenses may or may not be) are expressly and fully preserved. Similarly and conversely, to the extent preserved in this Section 11.8(b), any of the White Parties' Viable Actions (if any) against Romspen (wherever and however asserted) are unaffected by the Plan and Confirmation Order, and all of the White Parties' and Romspen's respective rights, remedies and defenses in that regard (whatever such rights, remedies and defenses may or may not be) are expressly and fully preserved.

(c) Reservation of M&M Lien Claimants Litigation. The releases and injunctions in favor of the Lender contained in this Plan do not extend to or otherwise apply to the claims and causes of action asserted against the Lender in Adversary Case Number 20-1048, currently pending before the Bankruptcy Court ("***M&M Lien Claimant Adversary***"). All parties' rights, claims, liabilities, defenses, affirmative defenses, causes of action and other interests asserted in the M&M Lien Claimant Adversary are expressly reserved and preserved by this Plan. To the extent the M&M Plaintiffs' claims are derivative of the Debtor's rights or the Estate's rights, those claims will be released under the Plan; however, the M&M Plaintiffs' claims that are not derivative of the Debtor's or Estate's rights are expressly preserved and unaffected by the Plan.

11.9 Compromise of Controversies.

In consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the

Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019 and section 1123(b)(3)(A).

ARTICLE XII. RETENTION OF JURISDICTION

(a) The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(i) To hear and determine pending applications for the assumption, assignment or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(ii) To determine any and all adversary proceedings, applications, and contested matters in the Chapter 11 Case and grant or deny any application involving the Debtor or the Estate that may be pending on the Effective Date or that are retained and preserved by the Chapter 11 Trustee herein;

(iii) To ensure that distributions to holders of Allowed Claims and Allowed Equity Interests are effected as provided in the Plan;

(iv) To hear and determine any timely objections to Administrative Expense Claims or to proofs of Claim and Equity Interests, including any objections to the classification of any Claim or Equity Interest, and to allow or disallow any Disputed Claim or Disputed Equity Interest, in whole or in part;

(v) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(vi) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or maintain the integrity of the Plan following consummation;

(vii) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Trust Agreement or maintain the integrity of the Trust Agreement following the Effective Date;

(viii) To consider any amendments to or modifications of the Plan, or to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

(ix) To hear and determine all requests for payment of Fee Claims;

(x) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the documents that are ancillary to and aid in effectuating the Plan or any

agreement, instrument, or other document governing or relating to any of the foregoing;

(xi) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of taxes under section 505(b) of the Bankruptcy Code);

(xii) To hear any other matter not inconsistent with the Bankruptcy Code;

(xiii) To hear and determine all disputes involving the existence, scope, and nature of the exculpations and releases granted hereunder;

(xiv) To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any entity with the consummation or implementation of the Plan; and

(xv) To enter a final decree(s) closing the Chapter 11 Case.

ARTICLE XIII. MISCELLANEOUS

13.1 Payment of Statutory Fees.

All fees payable under 28 U.S.C. § 1930 shall be paid on the Effective Date and thereafter, as appropriate.

13.2 Filing of Additional Documents.

The Chapter 11 Trustee or Creditor Trustee may file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

13.3 Schedules and Exhibits Incorporated.

All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if fully set forth herein.

13.4 Amendment or Modification of the Plan.

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, alterations, amendments or modifications of the Plan may be proposed in writing by the Chapter 11 Trustee at any time prior to or after the Confirmation Date. Holders of Claims and Equity Interests that have accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified; *provided*, *however*, that any holders of Claims and Equity Interests who were deemed to accept the Plan because such Claims and Equity Interests were unimpaired shall continue to be deemed to accept the Plan only if, after giving effect to such amendment or modification, such Claims and Equity Interests continue to be unimpaired.

13.5 Inconsistency.

In the event of any inconsistency among the Plan, the Disclosure Statement, and any exhibit or schedule to the Disclosure Statement, the provisions of the Plan shall govern. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall govern.

13.6 Exemption from Certain Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax. All sale transactions consummated by the Chapter 11 Trustee and the Estate and approved by the Bankruptcy Court on and after the Petition Date through and including the Effective Date, including the transfers effectuated under the Plan, the sale by the Chapter 11 Trustee of owned property pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment, and sale by the Estate of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, if any, shall be deemed to have been made under, in furtherance of, or in connection with the Plan, and thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

13.7 Expedited Tax Determination.

The Chapter 11 Trustee or the Creditor Trustee, as successor to the Chapter 11 Trustee, may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtor for any and all taxable periods ending after the Petition Date through, and including, the Effective Date.

13.8 Binding Effect.

Except as otherwise provided in § 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after entry of the Confirmation Order, the provisions of this Plan and Confirmation Order shall be binding upon and inure to the benefit of the Debtor, the Estate, the Released Parties, the Releasing Parties, the Third-Party Releasing Parties, any holder of any Claim or Interest, or any Person named or referred to in this Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, as to the binding effect, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by this Plan and Confirmation Order.

13.9 Severability.

If the Bankruptcy Court determines that any provision of this Plan is unenforceable either on its face or as applied to any Claim or Equity Interest, the Chapter 11 Trustee may modify this Plan in accordance with Section 13.4 hereof so that such provision shall not be applicable to the

holder of any Claim or Equity Interest. Any determination of unenforceability shall not (i) limit or affect the enforceability and operative effect of any other provisions of this Plan; or (ii) require the re-solicitation of any acceptance or rejection of this Plan unless otherwise ordered by the Bankruptcy Court.

13.10 No Admissions.

If the Effective Date does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan shall (a) constitute a waiver or release of any claims by or against, or any interests in, the Debtor, (b) prejudice in any manner the rights of the Chapter 11 Trustee, the Estate or the Debtor or any other party in interest, or (c) constitute an admission of any sort by the Chapter 11 Trustee, the Estate or the Debtor or other party in interest.

13.11 No Payment of Attorneys' Fees.

Except for the fees of Professional Persons, no attorneys' fees shall be paid by the Estate with respect to any Claim or Equity Interest unless otherwise specified in this Plan or a Final Order of the Bankruptcy Court.

13.12 Notices.

All notices, requests, and demands to or upon the Estate to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

GREGORY S. MILLIGAN
Chapter 11 Trustee, *3443 Zen Garden, L.P.*
Harney Partners
P.O. Box 90099
Austin, TX 78709-0099
gmilligan@harneypartners.com

with a copy to:

WICK PHILLIPS GOULD & MARTIN, LLP
Attention: Jason M. Rudd
3131 McKinney Ave, Suite 100
Dallas, Texas 75204
Telephone: 214-740-4038
jason.rudd@wickphillips.com

13.13 Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas,

without giving effect to the principles of conflict of laws that would require application of the laws of another jurisdiction.

3443 ZEN GARDEN, L.P.

By: */s/ Gregory S. Milligan*

Gregory S. Milligan, Chapter 11 Trustee

WICK PHILLIPS GOULD & MARTIN, LLP

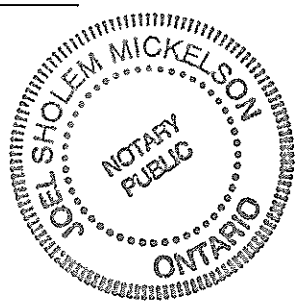
/s/ Scott D. Lawrence

Jason M. Rudd
State Bar No. 24028786
Scott D. Lawrence
State Bar No. 24087896
Lauren K. Drawhorn
State Bar No. 24074528
Daniella G. Heringer
State Bar No. 24103460
Emails: jason.rudd@wickphillips.com
scott.lawrence@wickphillips.com
lauren.drawhorn@wickphillips.com
daniella.heringer@wickphillips.com

COUNSEL FOR GREGORY S. MILLIGAN,
CH. 11 TRUSTEE FOR 3443 ZEN GARDEN, L.P.

This is EXHIBIT "H" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DANIEL WHITE, ET AL, Plaintiffs, vs. ROMSPEN MORTGAGE LIMITED PARTNERSHIP, ET AL, Defendants.	)	CASE NO: 20-01047-HCM ADVERSARY Austin, Texas Thursday, June 17, 2021 10:34 a.m. to 11:09 a.m. 11:21 a.m. to 11:41 a.m.

LEAD CASE: 20-10410-HCM
3443 ZEN GARDEN, LP

EMERGENCY MOTION FOR STAY OF PROCEEDINGS
PENDING DISTRICT COURT RULING
ON PLAINTIFFS' MOTION FOR WITHDRAWAL OF THE REFERENCE
[DKT.NO.47]

BEFORE THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: See page 2

Courtroom Deputy: Ronda Farrar

Court Reporter: Recorded; Digital

Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES FOR:

Plaintiffs:

BRUCE J. DUKE, ESQ.
788 Shrewsbury Avenue
Suite 2220
Tinton Falls, NJ 07724

Defendants:

B. RUSSELL HORTON, ESQ.
George Brothers Kincaid & Horton
114 West 7th St.
Suite 1100
Austin, TX 78701

KELL C. MERCER, ESQ.
1602 E. Cesar Chavez Street
Austin, TX 78702

THOMAS C. SCANNELL, ESQ.
ANDREW A. HOWELL, ESQ.
Foley & Lardner
2021 McKinney Avenue
Suite 1600
Dallas, TX 75201

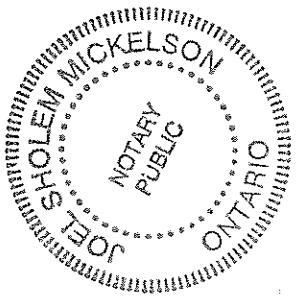
Interested Party:

SCOTT D. LAWRENCE, ESQ.
Wick Phillips Gould & Martin
3131 McKinney Avenue
Suite 500
Dallas, TX 75204

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.

This is EXHIBIT "I" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



This is a Final Judgment and the Clerk may close this adversary proceeding.

The relief described hereinbelow is SO ORDERED.

Signed December 03, 2021.

H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re:	§	CHAPTER 11
3443 ZEN GARDEN, L.P.	§	CASE NO. 1:20-10410-HCM
Debtor.	§	
DANIEL WHITE, individual and as Trustee DAN WHITE FAMILY TRUST, A CANADIAN TRUST; DAN WHITE FAMILY TRUST, A CANADIAN TRUST; ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC, ABSOLUTE ENERGY RESOURCES INC, LOT 11 GP, LTD., LOT 11 LIMITED PARTNERSHIP, ECO INDUSTRIAL BUSINESS PARK INC, SYMMETRY ASSET MANAGEMENT INC, LINCOLN 1861, INC.;	§	Adversary No. 20-01047-HCM
Plaintiffs,	§	
vs.	§	
ROMSPEN MORTGAGE LIMITED PARTNERSHIP; ROMSPEN	§	

INVESTMENTS CORPORATION,	§
	§
Defendants.	§

ORDER

On this day, the Court considered Romspen Mortgage Limited Partnership and Romspen Investments Corporation's (together, "**Romspen**") motion to dismiss Plaintiffs' Second Amended Complaint [Dkt. 36] ("**Second Amended Complaint**") and motion for contempt [Dkt. 39] ("**Motion to Dismiss**"). After considering Motion to Dismiss, the record before the Court, the pleadings of the parties, the applicable authorities and the arguments of counsel, the Court finds that pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and good cause shown, the Motion to Dismiss should be **GRANTED**.

ACCORDINGLY:

1. IT IS HEREBY ORDERED THAT the Motion to Dismiss is GRANTED to the extent set forth herein;

2. IT IS FURTHER ORDERED THAT to the extent any and all claims stated by the Plaintiffs in the Second Amended Complaint are supported by any factual allegations (i) allegedly occurring or taking place prior to the date 3443 Zen Garden Limited Partnership ("**Debtor**") came into legal existence; or (ii) not otherwise involving, relating to and/or arising from the Debtor in any way ("**Non-Zen Allegations**"), such claims are hereby dismissed without prejudice under Federal Rule of Civil Procedure 12(b)(1) for lack of the Bankruptcy Court's subject-matter jurisdiction over such claims supported by such Non-Zen Allegations. The dismissal of all of the Plaintiffs' claims stated in the Second Amended Complaint to the extent supported by any Non-Zen Allegations is without prejudice and shall not be construed to act as collateral estoppel, *res judicata*, or carry any preclusive effect against any claims of the Plaintiffs supported by Non-Zen Allegations, including, but not limited to, those claims supported by Non-Zen Allegations asserted

or assertable in the federal court action styled as *Dan White v. Romspen Mortgage Limited Partnership, et al.*, Civil Action No. 21-00517-RP, currently pending in the United States District Court for the Western District of Texas, Austin Division;

3. IT IS FURTHER ORDERED THAT to the extent any and all claims stated by the Plaintiffs in the Second Amended Complaint are supported by any factual allegations (i) allegedly occurring or taking place after the date 3443 Zen Garden Limited Partnership ("**Debtor**") came into legal existence; or (ii) otherwise involving, relating to and/or arising from the Debtor in any way ("**Zen Allegations**"), such claims are hereby dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6) for lack of standing, as the Debtor's bankruptcy estate possesses the exclusive standing to assert any claims supported by such Zen Allegations. The dismissal of all of the Plaintiffs' claims stated in the Second Amended Complaint to the extent supported by any Zen Allegations is with prejudice and shall be construed to act as collateral estoppel, *res judicata*, and carry full preclusive effect against any claims of the Plaintiffs supported by Zen Allegations, including, but not limited to, those claims supported by Zen Allegations asserted or assertable in the federal court action styled as *Dan White v. Romspen Mortgage Limited Partnership, et al.*, Civil Action No. 21-00517-RP, currently pending in the United States District Court for the Western District of Texas, Austin Division;

IT IS FURTHER ORDERED THAT any and all applicable statutes of limitations on any and all claims and defenses of the Plaintiffs and Romspen asserted in the above-captioned Adversary Proceeding, respectively, shall be deemed tolled as of August 20, 2020, such that any claims and defenses of the Plaintiffs and Romspen, respectively, asserted against each other in the above-captioned Adversary Proceeding that were not otherwise expired under any applicable

statutes of limitation as of August 20, 2020, shall not be deemed expired by virtue of the entry of this Order;

IT IS FURTHER ORDERED THAT any and all claims asserted by Romspen in the above-captioned Adversary Proceeding are hereby dismissed without prejudice under Federal Rule of Civil Procedure 41(a)(2). The dismissal of all of Romspen's claims asserted in the above-captioned Adversary Proceeding is without prejudice and shall not be construed to act as collateral estoppel, *res judicata*, or carry any preclusive effect against any claims of Romspen against any parties, persons, natural persons, entities or individuals, including, but not limited to, any and all claims asserted or assertable in the federal court action styled as *Dan White v. Romspen Mortgage Limited Partnership, et al.*, Civil Action No. 21-00517-RP, currently pending in the United States District Court for the Western District of Texas, Austin Division. For the sake of clarity, notwithstanding anything herein to the contrary, nothing in this order shall be deemed to dismiss with prejudice any claims, causes of action, or defenses on matters purely germane between the White Parties and Romspen Mortgage Limited Partnership, including (without limitation), any contracts or contractual obligations as between the White Parties and Romspen, including (without limitation) that certain Guarantee executed by White to Romspen dated as of April 17, 2018;

IT IS FURTHER ORDERED THAT pursuant to Paragraph 4 of the Receivership Order granted in the Court of Queen's Bench of Alberta Action No. 2003-06728 on November 4, 2021 (the "**Receivership Order**"), pursuant to which Receivership Order MNP Ltd. was appointed Receiver (the "**Receiver**") of all current and future assets, undertakings and properties of every nature and kind whatsoever of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc.,

the Plaintiffs hereto have consented to the Receiver approving and consenting to this form of Order; and

IT IS FURTHER ORDERED THAT this Order completely disposes on a final basis of any and all claims, causes of action and all relief sought by any and all parties to this Adversary Proceeding. This is a final order subject to appeal.

###

Approved in Form and Substance:

FOLEY & LARDNER LLP

/s/ Thomas C. Scannell
Thomas C. Scannell (TX 24070559)
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: 214-999-4289
Facsimile: 214-999-3289
tscannell@foley.com

ATTORNEYS FOR DEFENDANTS ROMSPEN MORTGAGE LIMITED PARTNERSHIP AND ROMSPEN INVESTMENTS CORPORATION

BRUCE J. DUKE, LLC

By: */s/ Bruce J Duke*
Bruce J. Duke, Esq.
New Jersey Bar No. 047801992
788 Shrewsbury Avenue, Suite 2225
Tinton Falls, NJ 07724
(732) 230-7328
brucedukeesq@gmail.com
Admitted Pro Hac Vice

ATTORNEY FOR PLAINTIFFS AND COUNTER-DEFENDANTS DANIEL WHITE, INDIVIDUALLY AND AS TRUSTEE OF THE DAN WHITE FAMILY TRUST, DAN WHITE FAMILY TRUST,

LINCOLN 1861, INC., AND SYMMETRY ASSET MANAGEMENT, INC.

BRUCE J. DUKE, LLC

By: */s/ Bruce J Duke*

Bruce J. Duke, Esq.
New Jersey Bar No. 047801992
788 Shrewsbury Avenue, Suite 2225
Tinton Falls, NJ 07724
(732) 230-7328
brucedukeesq@gmail.com
Admitted Pro Hac Vice

ATTORNEY FOR THE RECEIVER OVER ABSOLUTE ENERGY RESOURCES, INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT, INC., ECO INDUSTRIAL BUSINESS PARK INC., LOT 11 GP LTD, AND LOT 11 LIMITED PARTNERSHIP

This is EXHIBIT "J" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
(AUSTIN DIVISION)

DANIEL WHITE, Plaintiff, v. ROMSPEN MORTGAGE LIMITED PARTNERSHIP; ROMSPEN INVESTMENT CORP.; CHRISTOPHER MILAM; ADAM ZARAFSHANI; PANACHE CONSTRUCTION AND DEVELOPMENT, INC., BLAKE CASSIDY; MARK HILSON; SPIROS MALIAGROS; JOEL MICKELSON; WESLEY ROITMAN; SHELDON ESBIN; ARTHUR RESNICK; RICHARD WELDON; PETER OELBAUM; MARY GIANFRIDDO; ARNIE BOSE; VITOR FONSECA; AND PIERRE LEONARD, Defendants.	§ §	Civil Action No: 1:21-cv-00517 Jury Trial Demanded

AGREED ORDER

On this day, the Court considered Daniel White's ("White") motion for leave to file an amended complaint pursuant to Federal Rule of Civil Procedure 15(c)(2) ("Motion"). After considering the Motion, the record before the Court, and the consent of all parties, the Court finds that pursuant to Federal Rule of Civil Procedure 15(c)(2) and Local Rule CV-15, and good cause shown, the Motion should be GRANTED on the terms set forth herein.

ACCORDINGLY:

1. IT IS HEREBY ORDERED THAT the Motion is GRANTED to the extent set forth herein;

2. IT IS FURTHER ORDERED THAT Plaintiff shall have twenty-one (21) days from the date of entry of this Order to file a Third Amended Complaint;

3. The Romspen Defendants and the Panache Defendants shall have twenty-one (21) days from the date the Amended Complaint is filed to file their respective motions to dismiss;

4. Plaintiff shall have twenty one (21) days therefrom to file a response to the motions to dismiss;

5. The Romspen Defendants and the Panache Defendants shall have ten (10) days from the date therefrom to file any reply;

6. Plaintiff shall be precluded from filing any further amendments to the complaint.

Approved in Form and Substance:

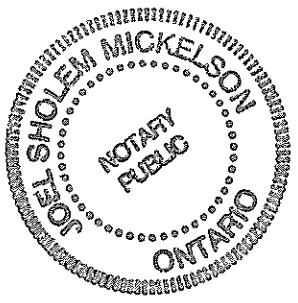
BRUCE J. DUKE, LLC

Signed this 17th day of February, 2022.

ROBERT PITMAN
U.S. DISTRICT JUDGE

This is EXHIBIT "K" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DANIEL WHITE and DAN WHITE FAMILY TRUST, *Plaintiffs*, vs. ROMSPEN INVESTMENT CORPORATION; ROMSPEN MORTGAGE LIMITED PARTNERSHIP; WESLEY ROITMAN; RICHARD WELDON; CHRISTOPHER MILAM; PANACHE CONSTRUCTION AND DEVELOPMENT, INC.; and ADAM ZARAFSHANI, *Defendants.*	§ § § § § § § § § § § § § § §	Civil Action No: 1:21-cv-00517 Jury Trial Demanded

PLAINTIFFS' THIRD AMENDED COMPLAINT

Plaintiffs Daniel White and the Dan White Family Trust (together, the White Parties or Plaintiffs) file this third amended complaint against defendants Romspen Investment Corporation, Romspen Mortgage Limited Partnership, Wesley Roitman, Richard Weldon, Christopher Milam, Panache Construction and Development, Inc., and Adam Zarafshani, and for cause of action would respectfully show as follows:

I. INTRODUCTION

This is a case about greed, involving a lender and a contractor engaging in a conspiracy to steal a valuable land purchase and development project located in Austin, Texas. The co-conspirators consisted of several representatives of the Lenders, Romspen Investment Corporation and Romspen Mortgage Limited Partnership, large, Canadian "loan to own" lenders, and Adam

Zarafshani, a local scrap buyer and charlatan, and his company, Panache Construction and Development, Inc. Plaintiffs, a Canadian citizen, Daniel White and the Dan White Family Trust, a Canadian trust. These plaintiffs relied upon the Defendants' representations, actions and purported good faith to protect their investment and develop the project in the most profitable manner possible.

Instead, the defendants engaged in a far-reaching and complex conspiracy to deprive Plaintiffs of their money, property interests and income, the result of which was bankruptcy and foreclosure. Plaintiffs seek redress from this Court to compensate them for the damages caused by Defendants' actions.

I. PARTIES

1. Plaintiff Daniel White is a Canadian citizen, residing in the Province of Alberta.

2. Plaintiff Dan White Family Trust ("White Family Trust") is a trust located in Edmonton, Alberta, Canada, and organized pursuant to a trust deed dated December 10, 2002. Mr. White is a trustee and director of the White Family Trust.

3. Defendant Romspen Investment Corporation ("Romspen Investment") is a foreign corporation, duly formed and incorporated under the laws of the Province of Ontario, Canada, with a registered head office located at 162 Cumberland Street, Suite 300, Toronto, Ontario, Canada. Romspen Investment has been properly served with process and has generally appeared in this action.

4. Defendant Romspen Mortgage Limited Partnership ("Romspen Mortgage") is a foreign limited partnership, formed pursuant to the laws of the Province of Ontario, Canada, with a registered head office located at 162 Cumberland Street, Suite 300, Toronto, Ontario, Canada. Romspen Mortgage has been properly served with process and has generally appeared in this

action.

5. Defendant Wesley Roitman ("Roitman") is an individual residing in Toronto, Ontario, Canada. At all relevant times, Mr. Roitman was a director, chief executive officer, and managing general partner of Romspen Investment. Mr. Roitman has been properly served with process and has generally appeared in this action.

6. Defendant Richard Weldon ("Weldon") is an individual residing in Canada. At all relevant times, Mr. Weldon was a managing partner of Romspen Investment. Mr. Weldon has been properly served with process and has generally appeared in this action.

7. Defendant Christopher Milam ("Milam") is an individual residing in the State of Texas. Mr. Milam may be served with process at his residence, which is (upon information and belief) 202 Nueces Street, Unit 14007, Austin, Texas 78701; or wherever he may be found.

8. Defendant Panache Construction and Development, Inc. ("Panache") is a Texas corporation with a registered head office located at P.O. Box 26539, Austin, Texas. Panache has been properly served with process and has generally appeared in this action.

9. Defendant Adam Zarafshani ("Zarafshani") is an individual residing in the State of Texas. At all relevant times Mr. Zarafshani was a principal, officer, director, controlling interest or shareholder, decision maker, agent, servant, employee, manager, or other representative of Panache. Mr. Zarafshani has been properly served with process and has generally appeared in this action.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over the parties to this suit because they are residents of the State of Texas or do business in the State of Texas. Further, all defendants who have appeared in this action have waived any objections to this Court's jurisdiction over them by entering general

appearances in this suit.

11. This Court has subject matter jurisdiction over Plaintiffs' federal civil RICO claim pursuant to 28 U.S.C. § 1331.

12. This Court also has supplemental jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. § 1367(a), because those state law claims are so related to Plaintiffs' federal civil RICO claims that they form part of the same case or controversy under Article III of the United States Constitution.

13. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district, and a substantial part of the property that is the subject of this action is situated in this district. The real property central to Plaintiffs' claims, which was the epicenter of Defendants' fraudulent actions, is located at 3501 Ed Bluestein Boulevard, Austin, Texas 78721 ("Austin Property").

III. FACTUAL BACKGROUND

14. Before the current dispute, companies owned by Mr. White and the White Family Trust had done business with Romspen Investment in the past.

A. Plaintiffs obtained a line of credit from Romspen Investment to purchase the Fort McMurray Property.

15. On September 13, 2012, a letter agreement ("2012 Agreement") was executed by and between Romspen Investment and Symmetry Asset Management, Inc. ("Symmetry"), a Canadian company owned and operated by Mr. White. The 2012 Agreement provided for $40 million in first-mortgage financing on a property in Fort McMurray, Alberta, Canada ("Fort McMurray Property"). The 2012 Agreement was executed by Mr. White on behalf of Symmetry, and by Mr. Roitman on behalf of Romspen Investment. A true and correct copy of the 2012 Agreement is attached to this third amended complaint as Exhibit "A".

16. Symmetry did not use the 2012 Agreement to purchase the Fort McMurray Property.

17. On or about June 6, 2013, a new commitment of the 2012 Agreement was executed ("2013 Commitment"). The 2013 Commitment again made $40 million available to Symmetry: $20 million to purchase the Fort McMurray Property, and $20 million to develop the property.

18. Once again, Symmetry did not use the full amount of the $40 million extended in the 2013 Commitment. As a result, Romspen Investment agreed to investigate and source out investment opportunities for Mr. White to use the unadvanced portion of the 2013 Commitment that Romspen Investment had previously extended.

B. After Plaintiffs did not use the full amount of the 2013 Commitment for the Fort McMurray Property, Romspen Investment and its representatives searched for another project for which they could persuade Plaintiffs to use the line of credit.

19. In 2014, Romspen Investment learned that the Austin Property had recently been purchased for $5 million by a group of local investors who planned to develop the property as an office and manufacturing space. When the investors realized the Austin Property could not be immediately leased out, the transaction failed, and the Austin Property went back up for auction.

20. In an email to Mr. Roitman on October 27, 2014, Mr. Weldon said he had received information on the Austin Property, it was "perfect" for Mr. White, and that an auction was imminent at which a minimum $3.5 million bid would be required.

21. The same day, Mr. Roitman forwarded Mr. Weldon's email to Mr. White, and added: "Dan, this is for you. Maybe finally something worth using your loan with us for. Need to hurry though." A true and correct copy of these emails is attached to this third amended complaint as Exhibit "B".

22. Romspen Investment, Mr. Roitman, and Mr. Weldon made other representations to

Mr. White that his investment in the Austin Property would be a "valet investment," meaning that Romspen Investment and Mr. Weldon would manage the development, leasing, and sale of the Austin Property, and Mr. White would earn a significant profit in a short period of time. Romspen Investment, Mr. Roitman, and Mr. Weldon further advised Mr. White that the Austin Property would cost approximately $5–7 million, but that Mr. White would make a profit of approximately $100 million in two years.

23. Based on those representations, Mr. White agreed to allow Romspen Investment to use a portion of his remaining line of credit from the 2013 Commitment to purchase and develop the Austin Property.

C. The Austin Property is purchased with Plaintiffs' line of credit by Romspen Investment's confederate, Christopher Milam—who immediately begins mismanaging the project.

24. On July 30, 2015, Romspen Investment amended and restated the 2013 Commitment, providing for a $40 million line of credit and securing the financing with several different properties owned by Mr. White and/or the White Family Trust, referenced as the "Lamont Properties" and the "Edmonton Property" ("July 2015 Commitment").

25. On August 28, 2015, separate entities were formed in which defendant Christopher Milam was either a manager or the registered agent: MOS8 Holdings, LLC, MOS8 GP, LLC, and MOS8 Partners, Ltd. (MOS8 GP, LLC was the sole general partner of MOS8 Partners, LLC.) True and correct copies of the formation documents for these entities are attached to this amended complaint as Exhibit "C".

26. On August 31, 2015, Romspen Investment and MOS8 Partners, Ltd. entered into a series of documents with International Development Management, LLC[1] ("IDM"), as follows: (1)

[1] Upon Information and belief, IDM was an entity created in whole or in part by Romspen Investment.

Co-Financing and Co-Sales Agreement; (2) Co-Leasing Agreement; (3) Co-Development Agreement; and (4) Co-Management Agreement. True and correct copies of the Co-Financing and Co-Sales Agreement, Co-Leasing Agreement, Co-Development Agreement and Co-Management Agreement are attached hereto, collectively marked as Exhibit "D", incorporated herein by reference, and shall hereinafter be collectively referred to as the "Romspen/MOS8 Agreements".

27. On the very same day, August 31, 2015, Romspen Investment restated and amended the July 30, 2015, commitment approving several tranches totaling approximately $6 million, to make a capital contribution or purchase ownership interests in Partners purchasing the Austin Property, to assist in acquiring the membership interests in GP and to pay fees and transaction costs ("August 2015 Commitment"). A true and correct copy of the August 2015 commitment is attached hereto as Exhibit "E" and incorporated herein by reference.

28. Pursuant to the terms of the August 2015 commitment, Mr. Weldon was required to act as the nominee and agent for Mr. White and the other borrowers. *See*, Exhibit E, at Section 25.1. In other words, Mr. Weldon was to act as a fiduciary for and on behalf of Mr. White and the other borrowers.

29. On September 30, 2015, Partners entered into an agreement to purchase the Austin Property for $13 million, well exceeding the $5–7 million price point represented to Mr. White by Romspen Investment, Mr. Roitman, and Mr. Weldon. A true and correct copy of the September 30, 2015, Purchase Statement is attached hereto as Exhibit "F" and incorporated herein by reference.

30. Defendant Romspen created a conflict of interest between Defendant Romspen, Mr. White, and Mr. White's assets due to Defendant Romspen's status as a trustee and its financial

stake in MOS8, and its undisclosed intent to acquire the Austin Property.

31. Mr. White reasonably relied upon Defendant Romspen's advice agreeing to invest in MOS8 to develop the Austin Property.

32. Mr. White would not have invested in MOS8 absent Romspen's advice and/or representations.

33. The Romspen Defendants, through MOS8, purchased the Austin Property with Mr. White's investment and credit finances.

34. To control MOS8's development over the Austin Property the Romspen Defendants placed defendant Milam, their own representative, in charge of the Austin Property's development.

35. Defendant Milam was granted ownership interest in MOS8 without Mr. White's knowledge, further deepening the conflicts of interest present.

36. Defendant Milam failed to effectively, manage, control, or perform his duties to MOS8 in the development of the Austin Property.

37. Defendant Milam failed to act competently and effectively in the following ways including but not limited to:

- Failing to completely plan the development;
- Failing to competently supervise the construction;
- Failing to disclose relevant knowledge of the financial matters related to the Austin Property;
- Allowing industrial equipment and materials to be removed from the Austin Property without authorization;
- Colluding with Defendants Romspen to unlawfully remove, sell, and convert materials from the Austin Property;
- Attempting to convert the Austin Property into an unauthorized data center;

- Failing to complete a $1,000,000 land sale to Austin Transport Authority;
- Failing to lease buildings, parking spaces or other areas to generate revenue;
- Failing to sub divide non-core areas and parcels to generate substantial revenue;

38. Defendant Milan failed to deal fairly or act honestly in good faith to the best interest of Plaintiffs, while ostensibly acting as Plaintiffs' fiduciary.

39. The Romspen Defendants knew or should have known of defendant Milam's negligent, reckless, and fraudulent acts as manager of MOS8.

40. As a result of defendant Milam's failures and the Romspen Defendants' failure to terminate or properly supervise defendant Milam, the Austin Property was never developed.

D. Mr. Milam's mismanagement of the Austin Property's development drags Plaintiffs further into debt with Romspen Investment.

41. When Mr. White learned of Mr. Milam's conduct, he demanded his investment be returned, but Romspen Investment instead threatened to foreclose on the Austin Property and effectively sink any remaining funds out of Plaintiffs' reach, driving Plaintiffs further into Romspen Investment's "loan to own" scheme.

42. MOS8 purported to default despite the Romspen Defendants claiming they had advanced MOS8 $35,000,000.00.

43. Despite the considerable funds Defendants claimed to have invested in the development of the Austin Property there was no evidence of any material construction progress on the site.

44. These losses do not even contemplate the losses by Mr. White and his assets, who contributed millions to the development project.

45. Defendant Romspen offered a solution by granting Mr. White further loans to invest

purchasing the Austin property from MOS8 and bringing Mr. White's company 3443 Zen Garden, LP[2] ("Zen Garden") deeper into the pit.

46. In July 2016, Defendant Romspen created a $40,000,000 loan to Zen Garden to complete the development of the Austin Property.

47. However, Defendant Romspen had not abandoned their plan to loot and convert the investments into the Austin Property.

48. As part of the loan agreement Mr. White and his assets assumed MOS8's debt, while Defendant's Romspen reaped even more origination and administrative fees for performing the loan where they controlled MOS8.

49. From November 2016, Mr. White and his assets continued to invest in the Austin Property with the vision of creating an environmentally sustainable plan incorporating green technology and renewable energy.

E. Panache and Mr. Zarafshani

50. During 2017, Mr. White visited the Austin Property and was approached by Mr. Zarafshani, who introduced himself as a "scrap buyer." Mr. Zarafshani claimed to be a local

[2] On March 22, 2020, Zen was petitioned into an involuntary Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Texas, Case No. 20-10410 ("Bankruptcy"). Plaintiffs filed in the Bankruptcy an Adversary Proceeding, Adversary Case No. 20 – 01047 ("Adversary") against the Romspen Defendants, Panache and Zarafshani in which Plaintiffs alleged many of the same issues as those raised in the instant case. On or about December 3, 2021, Plaintiffs and the Romspen Defendants entered into a consensual order dismissing the Adversary ("Order"). *See*, Adversary Docket No. 83. Pursuant to the Order, Plaintiffs were precluded from raising claims against the Romspen Defendants which belonged to the Chapter 11 Trustee, i.e., claims relating to Zen. However, the Order specifically carved out any claims that White or DWFT could independently bring against the Romspen Defendants, Zarafshani or Panache. As such, any reference to Zen or loan agreements or other financing documents between the Romspen Defendants and Zen is for informational and background purposes only and is not intended to be construed as a cause of action against the Romspen Defendants on behalf of Zen.

Furthermore, any damages suffered by Plaintiffs individually track those losses of Zen Garden on a dollar-for-dollar basis. Plaintiff White executed personal guarantees at the behest of Romspen for all obligations of Zen Garden to Romspen. While Plaintiffs do not seek recovery based on harm to Zen Garden, Plaintiffs have every right to seek damages to the harm caused to them by Defendants' actions, as any amounts owed under and pursuant to the guarantees would be equally owed by Plaintiffs as guarantors.

developer who owned Panache, a local construction company, and was familiar with local construction and development.

51. Mr. Zarafshani sought to persuade Mr. White that Panache would be indispensable in the development of the Austin Property. Mr. Zarafshani attempted to induce a contract by falsely and misleadingly representing statements including but not limited to:

- Mr. Zarafshani possessed the requisite skills to be Mr. White's trustee.
- Mr. Zarafshani possessed sufficient skill and resources to serve as an officer or director of one or more of Mr. White's assets.
- Panache possessed the skill and resources necessary to ensure timely development of the Austin Property within proposed budgetary guidelines.
- Panache could use its experience in local construction to secure more favorable loan terms from Romspen Investment.
- Panache could ensure timely construction draws from Romspen Investment.

52. Mr. White came to rely upon Mr. Zarafshani's and Panache's representations as real estate developers and experienced players in the local construction industry and hired Panache as the general contractor for development of the Austin Property.

53. In reliance on the false or misleading representations by Mr. Zarafshani, Mr. White also appointed Mr. Zarafshani to become director of Mr. White's assets and serve as his trustee.

54. Mr. White relied on Mr. Zarafshani and Panache to manage the business affairs and the development of the Austin Property.

55. Meanwhile, Romspen Investment eagerly awaited an opportunity for Zen Garden to default, providing Romspen Investment the ability to directly acquire the Austin Property, fulfilling the "loan to own" scheme.

F. In a final effort to salvage development of the Austin Property, Plaintiffs entered into a large, cross-collateralized new loan with Romspen Mortgage—which later engineered a default of that loan, with assistance from Panache and Mr. Zarafshani.

56. On February 1, 2018, Romspen Mortgage committed to lend Zen Garden an additional $125,000,000.

57. Mr. Zarafshani conducted loan negotiations on behalf of Zen Garden at the insistence of Romspen Mortgage.

58. Mr. Zarafshani and Romspen Mortgage improperly colluded during the loan negotiations in breach of their fiduciary duties to Mr. White and his assets.

59. Mr. Zarafshani went on to act as Romspen Mortgage's puppet within Zen Gardens, intentionally sabotaging the development.

60. Unsurprisingly, the second loan agreement to Zen Garden negotiated by Mr. Zarafshani contained exorbitant loan fees and interest rates benefiting Romspen Mortgage.

61. The loan further required great overcollateralization between the Austin Property and other of Mr. White's assets in Canada (worth in excess of $260 million USD).

62. Following the signing of the loan, Romspen Mortgage intentionally or recklessly delayed and failed to make requisite disbursements to stall and sabotage the development of the Austin Property.

63. Defendants conspired to engineer a fraudulent loan scheme to force Mr. White and Zen Garden to default on payments on the Austin Property, with the intent to purchase the property at a discounted foreclosure rate.

64. In furtherance of the conspiracy, Romspen Mortgage consistently and unreasonably denied Mr. White and Zen Garden's draw requests on the loan.

65. Romspen Mortgage continued to attempt to coerce Mr. White and Zen Garden into signing a Forbearance agreement.

66. Mr. Zarafshani also attempted to coerce and threaten Mr. White into accepting a

settlement with Romspen Mortgage, by physically threatening Mr. White and assaulting him with a metal bar when Mr. White rejected the settlement offer.

67. Romspen Mortgage refused to honor the loan agreement with Zen Garden, resulting in Zen Garden declaring bankruptcy and the loss of the Austin Property.

68. When the Austin Property was put up for auction, Mr. Zarafshani and Romspen Mortgage (individually or through representative agents) issued false statements on the property's value and conditions to drive away potential bidders.

69. Romspen Mortgage and Mr. Zarafshani both issued stories in Texas newspapers disparaging the Austin Development and Mr. White to further drive down the auction price.

70. As a result of Defendant's false statements, a reasonable bid offer was never received for the project.

71. Mr. White and his assets suffered irreparable damage to their image as well as significant financial losses due to the collapse of the Austin Property's development.

IV. CAUSES OF ACTION

72. Plaintiffs incorporate by reference the preceding paragraphs and the allegations they contain into all the following causes of action, as if completely set forth therein.

A. Violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) (against Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani)

73. The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–68, creates a civil cause of action under Section 1964(c) against those injured by violations of section 1962(a)-(d).[3]

74. A claim for civil RICO claims has three common elements: (i) a person who

[3] *See, e.g., Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241, 242 n.1 (5th Cir. 1988).

engages in (ii) a pattern of racketeering activity (iii) connected to the acquisition, establishment, conduct, or control of an enterprise.[4] To demonstrate a civil RICO conspiracy, a claimant must show that: "(1) two or more persons agreed to commit a substantive RICO offense, and (2) the defendant knew of and agreed to the overall objective of the RICO offense."[5]

75. "'Racketeering activity' is defined by reference to various state and federal offenses, each of which subsumes additional constituent elements which the plaintiff must plead."[6] A pattern of racketeering activity "consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity."[7]

76. An enterprise is a group of persons or entities associating together for the common purpose of engaging in a course of conduct.[8]

77. Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani are a group of persons or entities who associated together for the common purposes of engaging in a course of conduct of defrauding Plaintiffs to profit from the Austin Property.

78. Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani further associated together for the common purpose of engaging in a course of dealing to cause Plaintiffs to guarantee loan obligations related to the Austin Property; to cause Plaintiffs to submit other property they own as collateral to secure those guarantees; and to improperly engineer defaults under the loan obligations in order to attempt to foreclose on and acquire Plaintiffs' separate property.

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[4] *See, e.g., Holliday v. Bank of Am.*, N.A., No. SA-11-CV-1133-XR, 2013 WL 1704905, at *3 (W.D. Tex. Apr. 19, 2013).

[5] *Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 551 (5th Cir. 2012).

[6] *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989).

[7] *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007).

[8] *See Whelan v. Winchester Prod. Co.*, 319 F.3d 225, 229 (5th Cir. 2003).

79. Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani engaged in a conspiracy and agreed to defraud Plaintiffs to profit from the Austin property.

80. Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani collectively engaged in a pattern of racketeering activity, including, but not limited to the following:

- Mail and wire fraud claims require: (1) a scheme to defraud; (2) the use of mails or, if by wire, the interstate use of the wires to execute the scheme; (3) the use of mails or wires being incident to the essential execution of the scheme; and (4) actual injury to the plaintiff.[9]

- Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani conspired to use the mail and wires, the internet, predominantly email, to defraud Plaintiffs.

- Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani communicated with Plaintiffs via email and mail, which were sent across state and international lines, to Mr. White's residence in Canada.

- Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani's pattern of racketeering was done for the sole purposes of defrauding Plaintiffs. These fraudulent communications and omissions include:

- Falsely representing the condition of the Austin Property while the property was for auction, to drive away interested buyers or lessors.

- Concealing Romspen Investment's and Romspen Mortgage's interests in the Austin Property while acting as trustee for Mr. White.

- Concealing Romspen Investment's and Romspen Mortgage's financial ties and interest to MOS8 while acting as trustee for Mr. White.

- Intentionally misrepresenting the price of the Austin Property in inducing Plaintiffs to invest.

- Permitting and concealing Mr. Milam's looting of construction supplies from the Austin Property.

[9] *See, e.g., Landry v. Air Line Pilots Ass'n,* 901 F.2d 404, 428 (5th Cir. 1990); *United States v. Humphrey*, 104 F.3d 65, 70 n.3 (5th Cir. 1997).

- Engaging in collusive negotiations with Mr. Zarafshani, which resulted in increased loan rates to 3443 Zen Garden, L.P. and awarding an interest in 3443 Zen Garden, L.P. to Mr. Zarafshani.
- Permitting and concealing Mr. Zarafshani's looting of the Austin Property.
- Misrepresenting the financial situation of MOS8 Partners, Ltd.

81. Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani have not been held criminally or civilly liable for their violations of federal or state law and pose a continued threat of illegal conduct and criminal activity.

B. Fraud

1. Against Romspen Investment

82. Romspen Investment represented to Plaintiffs that the Austin Property would be a "valet" investment that would quickly yield substantial profits for Plaintiffs.

83. Romspen Investment's representations to Plaintiffs were material because Plaintiffs would not have invested any funds in the Austin Property otherwise.

84. Romspen Investment's representations to Plaintiffs were false statements of fact/false statements of opinion/false promise of future performance/false representation of conduct. Specifically, Romspen Investment knew that it had no intention of this being a "valet" investment and that there was no quick profit as promised to Plaintiffs. This is evident by the agreements entered into by Romspen Investments with MOS8 to control every facet of this project.

85. Romspen Investment made those false representations to Plaintiffs with the knowledge that the representations were false. Specifically, Romspen Investment knew that it had no intention of this being a "valet" investment and that there was no quick profit as promised to Plaintiffs. This is evident by the agreements entered into by Romspen Investments with MOS8 to control every facet of this project. *See*, Ex. D.

86. Romspen Investment intended for Plaintiffs to rely on the false representations or had reason to expect Plaintiffs to do so. Specifically, Romspen Investment had a long-standing relationship with Mr. White and knew that he owned significant properties in Canada that Romspen Investment could not only use as security but could foreclose upon such property as part of its scheme.

87. Plaintiffs justifiably relied on Romspen Investment's false representations to their detriment. Specifically, Plaintiffs would not have invested any money in the Austin Property and because of the false representations of Romspen Investment, Plaintiffs lost those funds.

88. Romspen Investment's false representations to Plaintiffs directly and proximately caused injury to Plaintiffs, which resulted in the following damages: loss of Plaintiffs' entire investment in the Austin Property, loss of the Austin Property itself, loss of all future income to be derived from the Austin Property, and such other and further damages to be established at trial.

89. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court, in the form of: (1) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained during fiduciary relationships; and (3) disgorgement of any profits obtained because of fraud.

90. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained because of fraud; and (2) a full accounting of all funds entrusted to Romspen Investment.

91. Exemplary damages: The injuries to Plaintiffs resulted from Romspen Investment's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

2. Against Romspen Mortgage

92. Romspen Mortgage represented to Plaintiffs that the Austin Property would be a "valet" investment that would quickly yield substantial profits for Plaintiffs.

93. Romspen Mortgage's representations to Plaintiffs were material because Plaintiffs would not have invested any funds in the Austin Property otherwise.

94. Romspen Mortgage's representations to Plaintiffs were false statements of fact/false statements of opinion/false promise of future performance/false representation of conduct. Specifically, Romspen Investment knew that it had no intention of this being a "valet" investment and that there was no quick profit as promised to Plaintiffs. This is evident by the agreements entered into by Romspen Mortgage with MOS8 to control every facet of this project.

95. Romspen Mortgage made those false representations to Plaintiffs with the knowledge that the representations were false. Specifically, Romspen Mortgage knew that it had no intention of this being a "valet" investment and that there was no quick profit as promised to Plaintiffs. This is evident by the agreements entered into by Romspen Mortgage with MOS8 to control every facet of this project. *See*, Ex. D.

96. Romspen Mortgage intended for Plaintiffs to rely on the false representations or had reason to expect Plaintiffs to do so. Specifically, Romspen Mortgage had a long-standing relationship with Mr. White and knew that he owned significant properties in Canada that Romspen Mortgage could not only use as security but could foreclose upon such property as part of its scheme.

97. Plaintiffs justifiably relied on Romspen Mortgage's false representations to their detriment. Specifically, Plaintiffs would not have invested any money in the Austin Property and because of the false representations of Romspen Mortgage, Plaintiffs lost those funds.

98. Romspen Mortgage's false representations to Plaintiffs directly and proximately

caused injury to Plaintiffs, which resulted in the following damages: loss of Plaintiffs' entire investment in the Austin Property, loss of the Austin Property itself, loss of all future income to be derived from the Austin Property, and such other and further damages to be established at trial.

99. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court, in the form of: (1) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained during fiduciary relationships; and (3) disgorgement of any profits obtained because of fraud.

100. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained because of fraud; and (2) a full accounting of all funds entrusted to Romspen Investment.

101. Exemplary damages: The injuries to Plaintiffs resulted from Romspen Mortgage's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

3. Against Mr. Weldon

102. Mr. Weldon represented to Plaintiffs that the Austin Property would be a "valet" investment that would quickly yield substantial profits for Plaintiffs.

103. Mr. Weldon's representations to Plaintiffs were material because Plaintiffs would not have invested any funds in the Austin Property otherwise.

104. Mr. Weldon's representations to Plaintiffs were false statements of fact/false statements of opinion/false promise of future performance/false representation of conduct. Specifically, Mr. Weldon knew that it had no intention of this being a "valet" investment and that there was no quick profit as promised to Plaintiffs. This is evident by the agreements entered into at the direction of Mr. Weldon by Romspen Mortgage with MOS8 to control every facet of this

project.

105. Mr. Weldon made those false representations to Plaintiffs with the knowledge that the representations were false. Specifically, Mr. Weldon knew that it had no intention of this being a "valet" investment and that there was no quick profit as promised to Plaintiffs. This is evident by the agreements entered into at the direction of Mr. Weldon by Romspen Mortgage with MOS8 to control every facet of this project. See, Ex. D.

106. Mr. Weldon intended for Plaintiffs to rely on the false representations or had reason to expect Plaintiffs to do so. Specifically, Mr. Weldon had a long-standing relationship with Mr. White and knew that he owned significant properties in Canada that Romspen Mortgage could not only use as security but could foreclose upon such property as part of its scheme.

107. Plaintiffs justifiably relied on Mr. Weldon's false representations to their detriment. Specifically, Plaintiffs would not have invested any money in the Austin Property and because of the false representations of Mr. Weldon, Plaintiffs lost those funds.

108. Mr. Weldon's false representations to Plaintiffs directly and proximately caused injury to Plaintiffs, which resulted in the following damages: loss of Plaintiffs' entire investment in the Austin Property, loss of the Austin Property itself, loss of all future income to be derived from the Austin Property, and such other and further damages to be established at trial.

109. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court, in the form of: (1) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained during fiduciary relationships; and (3) disgorgement of any profits obtained because of fraud.

110. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained because of fraud; and (2) a full accounting of all

funds entrusted to Romspen Investment.

111. Exemplary damages: The injuries to Plaintiffs resulted from Mr. Weldon's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

4. Against Mr. Milam

112. Mr. Milam represented to Plaintiffs that he was qualified to manage a project the size of the Austin Property and would act in good faith at all times.

113. Mr. Milam's representations to Plaintiffs were material because Mr. Milam was put in charge of managing the operations of the Austin Property through MOS8 and the success or failure of the Austin Property would depend on his actions.

114. Mr. Milam's representations to Plaintiffs were false statements of fact/false statements of opinion/false promise of future performance/false representation of conduct. Specifically, Mr. Milam knew that he had no ability to properly manage and grow a project the size of the Austin Property.

115. Mr. Milam made those false representations to Plaintiffs with the knowledge that the representations were false. Specifically, Mr. Milam took no steps to actually benefit the Austin Property or Plaintiffs, but rather, used his position to loot the Austin Property and steal from Plaintiffs.

116. Mr. Milam intended for Plaintiffs to rely on the false representations or had reason to expect Plaintiffs to do so. Specifically, Milam understood that Plaintiffs were relying on Mr. Milam to develop the Austin Property for MOS8.

117. Plaintiffs justifiably relied on Mr. Milam's false representations to their detriment. Specifically, Plaintiffs invested their funds into MOS8 on the representation that Milam was

capable and would be able to develop the Austin Property.

118. Mr. Milam's false representations to Plaintiffs directly and proximately caused injury to Plaintiffs, which resulted in the following damages: loss of Plaintiffs' entire investment in the Austin Property, loss of the Austin Property itself, substantial damages due to the theft of property belonging to Plaintiff, and such other and further damages to be established at trial.

119. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court, in the form of: (1) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained during fiduciary relationships; and (3) disgorgement of any profits obtained because of fraud.

120. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained as a result of fraud; and (2) a full accounting of all funds entrusted to Mr. Milam.

121. Exemplary damages: The injuries to Plaintiffs resulted from Mr. Milam's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

5. Against Panache

122. Panache represented to Plaintiffs that Panache was an experienced developer and could develop and build out the Austin Property quickly, efficiently, and profitably.

123. Panache's representations to Plaintiffs were material because Panache was in charge of the Austin Property and Plaintiffs depended on Panache's representations because Plaintiffs could not manage or oversee Plaintiffs' interests because they operated out of Edmonton, Alberta, Canada.

124. Panache's representations to Plaintiffs were false statements of fact/false

statements of opinion/false promise of future performance/false representation of conduct. Specifically, Panache never intended to develop the Austin Property for Plaintiffs. Instead, Panache's sole purpose was to assist and conspire with Romspen Investment, Romspen Mortgage, Mr. Weldon, Mr. Roitman, Mr. Milam, and Panache to steal the Austin Property from Plaintiffs.

125. Panache made those false representations to Plaintiffs with the knowledge that the representations were false. Specifically, Panache knew that Plaintiffs were relying on Panache to operate the Austin Property daily and that Plaintiffs could not supervise the operation closely because of their location in Canada.

126. Panache intended for Plaintiffs to rely on the false representations or had reason to expect Plaintiffs to do so. Specifically, Panache knew that Plaintiffs were not closely supervising the daily operations at the Austin Property and that Panache could covertly conspire with the other defendants to destroy the value of the Austin Property with the ultimate goal of stealing it from Plaintiffs.

127. Plaintiffs justifiably relied on Panache's false representations to their detriment. Specifically, Plaintiffs allowed Panache to manage the Austin Property and entrusted their investment to Panache.

128. Panache's false representations to Plaintiffs directly and proximately caused injury to Plaintiffs, which resulted in the following damages: monetary damages exceeding $100 million, and such other and further damages that may be established at trial.

129. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court, in the form of: (1) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained in the course of fiduciary relationships; and (3) disgorgement of any profits obtained as a result of fraud.

130. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained as a result of fraud; and (2) a full accounting of all funds entrusted to Panache.

131. Exemplary damages: The injuries to Plaintiffs resulted from Panache's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

6. Against Mr. Zarafshani

132. Mr. Zarafshani represented to Plaintiffs that he was an experienced real estate and construction professional who could develop the Austin Property and make it a desirable and profitable endeavor.

133. Mr. Zarafshani's representations to Plaintiffs were material because Mr. Zarafshani was to in charge of the entire Austin Property and was tasked with developing it for Plaintiffs.

134. Mr. Zarafshani's representations to Plaintiffs were false statements of fact/false statements of opinion/false promise of future performance/false representation of conduct. Specifically, Zarafshani intentionally ingratiated himself with Plaintiffs in order to be in a position to loot and steal Plaintiffs' assets in conspiracy with Romspen.

135. Mr. Zarafshani made those false representations to Plaintiffs with the knowledge that the representations were false. Specifically, Zarafshani knew that he had no intention of acting in the best interests of Plaintiffs but rather was only interested in conspiring with Romspen to steal Plaintiffs' assets and companies.

136. Mr. Zarafshani intended for Plaintiffs to rely on the false representations, or had reason to expect Plaintiffs to do so. Specifically, Zarafshani falsely advised Plaintiffs that the project was operating on budget and on schedule, when in fact almost nothing had been done to

complete construction on any of the buildings.

137. Plaintiffs justifiably relied on Mr. Zarafshani's false representations to their detriment. Specifically, Plaintiffs trusted that Zarafshani would act in the best interests of Plaintiffs and protect their assets and investments, when in reality Zarafshani conspired with Romspen and others to steal Plaintiffs' assets

138. Mr. Zarafshani's false representations to Plaintiffs directly and proximately caused injury to Plaintiffs, which resulted in the following damages: monetary damages exceeding $100 million, and such other and further damages that may be established at trial.

139. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court, in the form of: (1) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained in the course of fiduciary relationships; and (3) disgorgement of any profits obtained as a result of fraud.

140. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained as a result of fraud; and (2) a full accounting of all funds entrusted to Mr. Zarafshani.

141. Exemplary damages: The injuries to Plaintiffs resulted from Mr. Zarafshani's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

C. Breach of fiduciary duty

1. Against Romspen Investment

142. Romspen Investment had a fiduciary duty with Plaintiffs, based on Romspen Investment's agreement to act as a nominee and agent on their behalf.

143. Romspen Investment breached its fiduciary duties to Plaintiffs by acting only in its

self-interest and breaching its fiduciary duty to Plaintiffs by engaging in self-serving transactions designed to benefit Romspen Investment at the expense of Plaintiffs.

144. Because this claim concerns allegations of unfairness arising from a transaction in which Romspen Investment was involved, a presumption of unfairness applies. This presumption shifts the burdens of production ***and*** persuasion to Romspen Investment.

145. Romspen Investment's breaches of fiduciary duties injured Plaintiffs, which resulted in the following damages: monetary damages exceeding $100 million, and such other and further damages that may be established at trial.

146. Further, Romspen Investment's breaches of fiduciary duties have benefited it in the following ways: Romspen Investment was allowed to credit bid in the bankruptcy court to take sole possession of the Austin Property free and clear of any liens and/or encumbrances.

147. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court, in the form of (i) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained in the course of fiduciary relationships; and (3) disgorgement of any profits obtained as a result of fraud.

148. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained as a result of fraud; and (2) a full accounting of all funds entrusted to Romspen Investment.

149. Exemplary damages: The injuries to Plaintiffs resulted from Romspen Investment's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

2. Against Romspen Mortgage

150. Romspen Mortgage had a fiduciary duty with Plaintiffs, based on Romspen

Mortgage's agreement to act as a nominee and agent on their behalf.

151. Romspen Mortgage breached its fiduciary duties to Plaintiffs by acting only in its self-interest and breaching its fiduciary duty to Plaintiffs by engaging in self-serving transactions designed to benefit Romspen Mortgage at the expense of Plaintiffs.

152. Because this claim concerns allegations of unfairness arising from a transaction in which Romspen Mortgage was involved, a presumption of unfairness applies. This presumption shifts the burdens of production ***and*** persuasion to Romspen Mortgage.

153. Romspen Mortgage's breaches of fiduciary duties injured Plaintiffs, which resulted in the following damages: monetary damages exceeding $100 million, and such other and further damages that may be established at trial.

154. Further, Romspen Mortgage's breaches of fiduciary duties have benefited it in the following ways: Romspen Mortgage was allowed to credit bid in the bankruptcy court to take sole possession of the Austin Property free and clear of any liens and/or encumbrances.

155. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court, in the form of (i) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained in the course of fiduciary relationships; and (3) disgorgement of any profits obtained as a result of fraud.

156. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained as a result of fraud; and (2) a full accounting of all funds entrusted to Romspen Mortgage.

157. Exemplary damages: The injuries to Plaintiffs resulted from Romspen Mortgage's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

3. Against Mr. Zarafshani

158. Mr. Zarafshani had a fiduciary duty with Plaintiffs, based on his role as a director of the White Family Trust.

159. Mr. Zarafshani breached his fiduciary duties to Plaintiffs by failing to act in the best interests of the White Family Trust and to line his own pockets at the expense of the White Family Trust.

160. Because this claim concerns allegations of unfairness arising from a transaction in which Mr. Zarafshani was involved, a presumption of unfairness applies. This presumption shifts the burdens of production ***and*** persuasion to Mr. Zarafshani.

161. Mr. Zarafshani's breaches of fiduciary duties injured Plaintiffs, which resulted in the following damages: over $100 million in compensatory damages, and such other and further damages as may be established at trial.

162. Further, Mr. Zarafshani's breaches of fiduciary duties have benefited it in the following ways: Zarafshani participated in the conspiracy with the Romspen Defendants and as a result earned millions of dollars in salary, benefits, illicit contracts and other perks, all at the expense of the White Family Trust.

163. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court, in the form of (i) economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits; (2) forfeiture of any fees obtained in the course of fiduciary relationships; and (3) disgorgement of any profits obtained as a result of fraud.

164. Plaintiffs further seek equitable relief, in the form of: (1) constructive trusts placed on any proceeds, funds, or property obtained as a result of fraud; and (2) a full accounting of all funds entrusted to Mr. Zarafshani.

165. Exemplary damages: The injuries to Plaintiffs resulted from Mr. Zarafshani's intentional acts, which entitled Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

D. Breach of contract

1. Against Romspen Investment

166. Beginning on or about September 13, 2012Plaintiffs and Romspen Investment executed a series of valid and enforceable contracts.

167. That contract provided, among other things, that Romspen would provide financing to Plaintiffs and that Romspen would act in the best interest of Plaintiffs.

168. Plaintiffs fully performed/tendered performance of/were excused from performing their contractual obligations. Specifically, Plaintiffs were prevented from participating in any profits from the money financed by Romspen Investment because of Romspen Investment's failure to properly finance the projects

169. Romspen Investment, however, breached the parties' contract. Specifically, Romspen Investment acted to the detriment of Plaintiffs and at every turn took steps to invalidate Plaintiff's interests in the Austin Property.

170. Romspen Investment's breaches caused—and will continue to cause—injury to Plaintiffs, which resulted in the following damages: over $100 million in compensatory damages, and such other and further damages as may be established at trial.

171. Plaintiffs seek unliquidated damages for these breaches in an amount within the jurisdictional limits of this Court.

172. Attorney's fees: Plaintiffs are entitled to recover reasonable attorney's fees under Section 38.001(8) of the Texas Civil Practice & Remedies Code because this suit is for breach of

a written contract. Plaintiffs have retained counsel, which presented Plaintiffs' claims to Romspen Investment. Romspen Investment did not tender the amount owed within 30 days of when the claim was presented.

2. Against Romspen Mortgage

173. Beginning on or about September 13, 2012, Plaintiffs and Romspen Mortgage executed a series of valid and enforceable contracts.

174. That contract provided, among other things, that Romspen Mortgage would provide financing to Plaintiffs and that Romspen Mortgage would act in the best interest of Plaintiffs.

175. Plaintiffs fully performed/tendered performance of/were excused from performing their contractual obligations. Specifically, Plaintiffs were prevented from participating in any profits from the money financed by Romspen Mortgage because of Romspen Mortgage's failure to properly finance the projects

176. Romspen Mortgage, however, breached the parties' contract. Specifically, Romspen Mortgage acted to the detriment of Plaintiffs and at every turn took steps to invalidate Plaintiff's interests in the Austin Property.

177. Romspen Mortgage's breaches caused—and will continue to cause—injury to Plaintiffs, which resulted in the following damages: over $100 million in compensatory damages, and such other and further damages as may be established at trial.

178. Plaintiffs seek unliquidated damages for these breaches in an amount within the jurisdictional limits of this Court.

179. Attorney's fees: Plaintiffs are entitled to recover reasonable attorney's fees under Section 38.001(8) of the Texas Civil Practice & Remedies Code because this suit is for breach of a written contract. Plaintiffs have retained counsel, which presented Plaintiffs' claims to Romspen

Mortgage. Romspen Mortgage did not tender the amount owed within 30 days of when the claim was presented.

E. Negligent misrepresentation

1. Against Romspen Investment

180. Romspen Investment represented to Plaintiffs that it would at all times act in the best interests of Plaintiffs.

181. Romspen Investment made that representation to Plaintiffs in the course of Romspen Investment's business. Specifically, during and after execution of the relevant loan documents, Romspen Investments agreed to act as nominee, agent, and trustee for Plaintiffs. Romspen Investment further made that representation to Plaintiffs in a transaction in which Romspen Investment had an interest. Specifically, Romspen Investments prioritized its own financial interests at the expense of Plaintiffs.

182. Romspen Investment made that representation to Plaintiffs for the guidance of others. Specifically, Weldon, Roitman and Zarafshani.

183. Romspen Investment's representation to Plaintiffs was a misstatement of fact/opinion. Specifically, Romspen Investment never intended to act as an agent, nominee, or trustee for Plaintiffs. Instead, at all time, Romspen Investment solely acted for its own interests and not those of Plaintiffs.

184. Romspen Investment did not use reasonable care in obtaining/communicating the information. Specifically, Romspen actively tried to prevent Plaintiffs from learning of the financial condition of the Austin Property.

185. Plaintiffs justifiably relied on Romspen Investment's representations. Specifically, Plaintiffs had no choice but to rely on Romspen Investment's representations because Romspen

Investment took over actual control of the project.

186. Romspen Investment's misrepresentation proximately caused injury to Plaintiffs, which resulted in the following damages: monetary damages exceeding $100 million and such other and further damages that can be established at trial.

187. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court.

188. Exemplary damages: Plaintiffs' injuries resulted from Romspen Investment's gross negligence, which entitles Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

2. Against Romspen Mortgage

189. Romspen Mortgage represented to Plaintiffs that it would act in the best interests of Plaintiffs.

190. Romspen Mortgage made that representation to Plaintiffs in Romspen Mortgage's business. Specifically, during and after execution of the relevant loan documents, Romspen Mortgage agreed to act as nominee, agent, and trustee for Plaintiffs. Romspen Mortgage further made that representation to Plaintiffs in a transaction in which Romspen Mortgage had an interest. Specifically, Romspen Mortgage prioritized its own financial interests at the expense of Plaintiffs.

191. Romspen Mortgage made that representation to Plaintiffs for the guidance of others. Specifically, Weldon, Roitman and Zarafshani.

192. Romspen Mortgage's representation to Plaintiffs was a misstatement of fact/opinion. Specifically, Romspen Mortgage never intended to act as an agent, nominee, or trustee for Plaintiffs. Instead, Romspen Mortgage solely acted for its own interests and not those of Plaintiffs.

193. Romspen Mortgage did not use reasonable care in obtaining/communicating the information. Specifically, Romspen Mortgage actively tried to prevent Plaintiffs from learning of the financial condition of the Austin Property.

194. Plaintiffs justifiably relied on Romspen Mortgage's representations. Specifically, Plaintiffs had no choice but to rely on Romspen Mortgage's representations because Romspen Mortgage took over actual control of the project.

195. Romspen Mortgage's misrepresentation proximately caused injury to Plaintiffs, which resulted in the following damages: monetary damages exceeding $100 million and such other and further damages that can be established at trial.

196. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court.

197. Exemplary damages: Plaintiffs' injuries resulted from Romspen Investment's gross negligence, which entitles Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

3. Against Panache

198. Panache represented to Plaintiffs that it had the requisite skill and ability to build and develop a project the size of the Austin Property.

199. Panache made that representation to Plaintiffs in the course of Panache's business. Specifically, Panache was touted as an experienced builder/developer in all interactions with Plaintiffs. Panache further made that representation to Plaintiffs in the course of a transaction in which Panache had an interest. Specifically, Panache stated that it would develop the Austin Property in a consistent and profitable basis, on budget and on time.

200. Panache made that representation to Plaintiffs for the guidance of others.

Specifically, Romspen, Zarafshani, Weldon and Roitman.

201. Panache's representation to Plaintiffs was a misstatement of fact/opinion. Specifically, Panache never made any effort to bring the costs of the project under control, delayed construction, failed to lease and/or rent the Austin Property, and generally failed to take any steps for which it was hired.

202. Panache did not use reasonable care in obtaining/communicating the information. Specifically, Panache on numerous occasions failed to inform/advise Plaintiffs of the status of the ongoing construction, and frequently actively attempted to hide their misdeeds and activities.

203. Plaintiffs justifiably relied on Panache's representations. Specifically, Panache was hired to develop and lease out the Austin Property on an expedited and profitable basis.

204. Panache's misrepresentation proximately caused injury to Plaintiffs, which resulted in the following damages: monetary damages in an amount exceeding $100 million, and for such other and further damages established at trial.

205. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court.

206. Exemplary damages: Plaintiffs' injuries resulted from Panache's gross negligence, which entitles Plaintiffs to exemplary damages under Section 41.003(a) of the Texas Civil Practice and Remedies Code.

4. Against Mr. Zarafshani

207. Zarafshani represented to Plaintiffs that it had the requisite skill and ability to build and develop a project the size of the Austin Property.

208. Zarafshani made that representation to Plaintiffs in the course of Zarafshani's business. Specifically, Zarafshani was touted as an experienced builder/developer in all

interactions with Plaintiffs. Zarafshani further made that representation to Plaintiffs in the course of a transaction in which Panache had an interest. Specifically, Zarafshani stated that it would develop the Austin Property in a consistent and profitable basis, on budget and on time.

209. Zarafshani made that representation to Plaintiffs for the guidance of others. Specifically, Romspen, Panache, Weldon and Roitman.

210. Zarafshani's representation to Plaintiffs was a misstatement of fact/opinion. Specifically, Zarafshani never made any effort to bring the costs of the project under control, delayed construction, failed to lease and/or rent the Austin Property, and generally failed to take any steps for which it was hired.

211. Zarafshani did not use reasonable care in obtaining/communicating the information. Specifically, Zarafshani on numerous occasions failed to inform/advise Plaintiffs of the status of the ongoing construction, and frequently actively attempted to hide their misdeeds and activities.

212. Plaintiffs justifiably relied on Zarafshani's representations. Specifically, Zarafshani was hired to develop and lease out the Austin Property on an expedited and profitable basis.

213. Zarafshani's misrepresentation proximately caused injury to Plaintiffs, which resulted in the following damages: monetary damages in an amount exceeding $100 million, and for such other and further damages established at trial.

214. Plaintiffs seek unliquidated damages in an amount within the jurisdictional limits of this Court.

215. Exemplary damages: Plaintiffs' injuries resulted from Zarafshani's gross negligence, which entitles Plaintiffs to exemplary damages under Section 41.003(a) of the Texas

Civil Practice and Remedies Code.

F. **Vicarious liability**

Assisting or encouraging

216. Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani knew that each other's conduct constituted torts or wrongful acts against Plaintiffs. Specifically, they were aware that Plaintiffs had invested significant funds in the Austin Property, that Plaintiffs intended the Austin Property to be a "valet" investment with a quick, profitable turnaround. They also took full advantage of the remoteness of Plaintiffs, in that they were in Canada and were not privy to and familiar with the day-to-day operations of the Austin Property.

217. With the intent to assist each other in those wrongful acts, Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani substantially assisted and/or encouraged each other by conspiring to deprive Plaintiffs of their property by driving its value down so that they could take the Austin Property for themselves at a tremendous discount. The actions of Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani proximately caused injuries to Plaintiffs.

218. Romspen Investment's, Romspen Mortgage's, Mr. Roitman's, Mr. Weldon's, Mr. Milam's, Panache's, and Mr. Zarafshani's assistance and/or encouragement to each other were a substantial factor in causing the tort.

- **Assisting and participating**

219. Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani substantially assisted each other by conspiring and acting in concert to defraud Plaintiffs and to cause them financial damage and harm. Romspen Investment's,

Romspen Mortgage's, Mr. Roitman's, Mr. Weldon's, Mr. Milam's, Panache's, and Mr. Zarafshani's actions proximately caused injury to Plaintiffs. Specifically, by their acting in concert, they destroyed Plaintiffs' interest in and to the Austin Property, left Plaintiff White liable on his personal guaranty, and in every respect caused extensive financial damage to Plaintiffs.

220. Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani breached duties to Plaintiffs. Specifically, the duty to act as fiduciaries to Plaintiffs and to act in good faith and for the benefit of Plaintiffs. Instead, in every respect, they acted against Plaintiffs' interests.

221. Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani assistance and participation with each other was a substantial factor in causing the harm suffered by Plaintiffs. Specifically, monetary damages exceeding $100 million, and such other damages as Plaintiffs can prove at trial.

- **Conspiracy**

222. Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani, in combination with each other, agreed to defraud and breach fiduciary duties owed to Plaintiffs. Specifically, they acted in concert to defraud Plaintiffs and to cause them damages exceeding $100 million.

223. Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani, in combination with each other, acted with the intent to harm Plaintiffs.

224. To accomplish the object of their agreement, Romspen Investment, Romspen Mortgage, Mr. Roitman, Mr. Weldon, Mr. Milam, Panache, and Mr. Zarafshani, in combination with each other, among many other things: actively coordinated their actions as to cause maximum

damage to Plaintiffs, worked closely to deprive Plaintiffs of their financial interests in the Austin Property and to cause Plaintiffs extensive financial damages.

225. The agreement described above proximately caused injuries to Plaintiffs. Specifically, monetary damages exceeding $100 million, and such other damages as Plaintiffs can prove at trial.

V. CONDITIONS PRECEDENT

226. All conditions precedent to Plaintiffs filing this lawsuit have been performed, have occurred, or have been waived.

VI. TOLLING OF LIMITATIONS

227. Plaintiffs specifically plead and invoke the discovery rule and fraudulent concealment in response to any claim by any party that Plaintiffs' claims or causes of action are allegedly barred by any statute of limitations.

VII. JURY DEMAND

228. Plaintiffs properly and timely demanded a trial by jury of its claims and causes of action asserted in this matter, and properly and timely tendered the appropriate fee to the clerk.

VIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, plaintiffs Dan White and the Dan White Family Trust respectfully requests that this Court issue citation for defendant Christopher H. Milam to appear and answer, and that, after a trial on the merits, Plaintiffs be awarded judgment against all defendants for the following relief:

i. Actual damages, including out-of-pocket damages, benefit-of-the-bargain damages, and lost profits;

ii. Statutory damages, including additional damages;

iii. Exemplary damages;

iv. Equitable relief, in the form of fee forfeitures, disgorgement of profits, and constructive trusts;

v. Prejudgment interest and post-judgment interest at the maximum rates allowed by law;

vi. Attorney's fees;

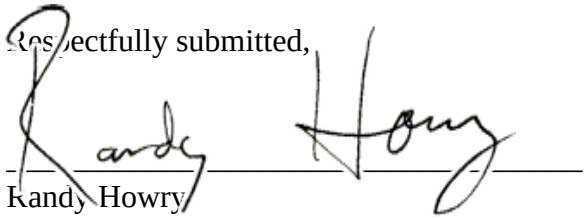
vii. Costs of court;

and

viii. any other and further relief, at law or in equity, to which Plaintiffs may be justly entitled.

Dated: March 14, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was delivered on March 14, 2022, in accordance with Rule 5(b)(2) of the Federal Rules of Civil Procedure, to the parties listed and in the manner indicated below:

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- □ Facsimile
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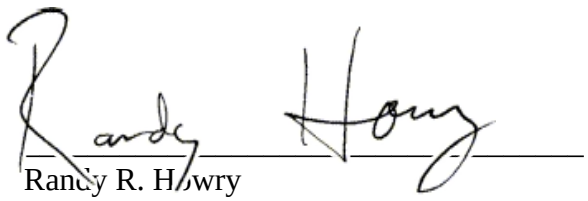
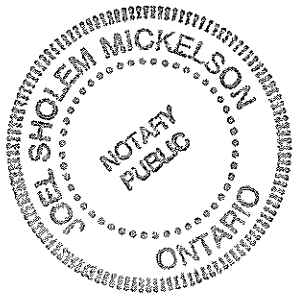
Attorneys for defendants Romspen Investment Corporation, Romspen Mortgage Limited Partnership, Wesley Roitman, and Richard Weldon



Randy R. Howry

This is EXHIBIT "L" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DANIEL WHITE and DAN WHITE FAMILY TRUST,

Plaintiff,

vs.

ROMSPEN INVESTMENT CORPORATION; ROMSPEN MORTGAGE LIMITED PARTNERSHIP; WESLEY ROITMAN; RICHARD WELDON; CHRISTOPHER MILAM; PANACHE CONSTRUCTION AND DEVELOPMENT, INC.; and ADAM ZARAFSHANI,

Defendants.

Civil Action No.: 1:21-cv-00517-RP

DEFENDANTS ROMSPEN MORTGAGE LIMITED PARTNERSHIP'S, ROMSPEN INVESTMENT CORPORATION'S, WESLEY ROITMAN'S, AND RICHARD WELDON'S MOTION TO DISMISS PLAINTIFFS DANIEL WHITE AND DAN WHITE FAMILY TRUST'S THIRD AMENDED COMPLAINT

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Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 9(b), Defendants Romspen Mortgage Limited Partnership ("Romspen LP"), Romspen Investment Corporation ("Romcorp" and collectively with Romspen LP, the "Romspen Entities"), Wesley Roitman, and Richard Weldon (collectively with the Romspen Entities, the "Romspen Defendants") move to dismiss all the claims and requests for relief that Plaintiffs Daniel White ("White") and Dan White Family Trust[1] (the "White Trust" and collectively with White, the "Plaintiffs") allege against them in the Third Amended Complaint ("Complaint") [Dkt. #70].

I. SUMMARY OF THE ARGUMENT

Plaintiffs tell a convoluted story surrounding the purchase and development of a tract of land in Austin, Texas ("Austin Property").[2] The crux of Plaintiffs' Complaint is that the Romspen Defendants orchestrated a "complex conspiracy" to rob Plaintiffs of their interests and profits in the Austin Property. The legal proceedings involving this dispute have had their own complex history. Starting with an adversary action[3] in a Chapter 11 bankruptcy proceeding nearly two years ago, this is now the seventh time[4] Plaintiffs' story has been pleaded before a federal court, including the fourth time in this case. Several consistent deficiencies have plagued each of these pleadings, including Plaintiffs' inability to allege facts that satisfy the pleading standards under Federal Rules of Civil

[1] While the White Trust appears to bring its suit in its capacity as a trust, a trust must generally be brought by the trustee since a trust is merely a right in property held in a fiduciary relationship. Fed. R. C. P. 17; *Tristani v. OptionSellers.com, Inc.*, No. 6:19-CV-585-JDK, 2021 WL 2099313, at *8 (E.D. Tex. Apr. 5, 2021) (applying Texas law). The Complaint alleges, however, that White is a trustee of the White Trust and is a party to this lawsuit. [Dkt. #70 at ¶ 2]. Defendants therefore request that any dismissal of claims be applied to claims brought on behalf of White as trustee of the White Trust rather than against the White Trust, which lacks capacity to bring a claim.

[2] The Austin Property is located at 3501 Ed Bluestein Blvd., Austin, Texas, often called the former "Motorola campus."

[3] "Adversary" means Adversary Case No. 20-01047, *White et al. v. Romspen Mortgage Limited Partnership et al.*

[4] Plaintiffs have filed four versions of their complaint in this case [Dkt. #s 1, 4, 57, 70] and three versions of their complaint in the Adversary [Adversary Dkt. #s 1, 3, 36].

Procedure 8 and 9(b). But even before reaching pleading sufficiency, all of Plaintiffs claims are barred because the claims have either been released or because Plaintiffs lack standing to bring them.

First, the factual allegations here can be split into two categories: (1) everything that happened before the Zen Loan Agreement (defined below) and (2) everything after. To the extent that Plaintiffs support their claims on allegations that pre-date the Zen Loan Agreement, Plaintiffs contractually released these claims under the Zen Loan Agreement and cannot now assert them against the Romspen Defendants.

Second, as to claims supported by factual allegations that post-date the Zen Loan Agreement, Plaintiffs lack standing to bring these claims as they are rightfully owned by 3443 Zen Garden Limited Partnership ("Debtor" or "Zen Garden"), the debtor in possession that formerly owned the Austin Property. Plaintiffs did not request (and did not receive) derivative standing and the court-appointed Chapter 11 trustee over the Debtor's bankruptcy estate (the "Trustee") has not consented to the claims asserted by Plaintiffs, nor could he—the Trustee has released any claims that the Debtor may have had against Romspen Defendants in the confirmed plan of reorganization entered by the Bankruptcy Court.

Third, yet another more recent reason for dismissing Plaintiffs' claims, the Complaint violates the agreed order of dismissal ("Dismissal Order")[5] entered by the Bankruptcy Court in the Adversary, which dismissed *with prejudice* all claims asserted by Plaintiffs supported by factual allegations taking place after the Debtor came into legal existence or supported by factual allegations relating to or arising from the Debtor in any way. Plaintiffs never had standing to assert these claims since they never sought derivative standing. And after the Dismissal Order, Plaintiffs are now also barred from bringing these claims by res judicata.

[5] The Dismissal Order is attached hereto as Exhibit 4; *see also* Exhibit 6, Declaration of Wesley Roitman at ¶ 9.

Fourth, Plaintiffs fail to assert factual allegations sufficient to state claims under the respective Rule 8 and 9(b) standards. Romspen Defendants will address each claim asserted by Plaintiffs below to identify the specific pleading deficiencies.

And finally, Plaintiffs provide no basis for holding either of Mr. Roitman or Mr. Weldon liable for the claims alleged against them. Mr. Roitman and Mr. Weldon are directors and officers of Romcorp. To state a claim against them, Plaintiffs must "pierce the corporate veil" and disregard Romcorp's corporate form. Plaintiffs provide no reason to do so.

When this Court entered the agreed order granting Plaintiffs leave to file this Third Amended Complaint, the Court ordered that Plaintiffs "shall be precluded from filing any further amendments to the complaint." [Dkt. #67]. Thus, if this motion to dismiss is granted, Plaintiffs' claims should be dismissed with prejudice and without leave to amend.

For ease of reference, the following chart details the various independent bases on which this Court may dismiss each claim alleged in the Complaint:

Count	Causes of Action	Pleaded Against	Basis of Challenge
Count A	Violation of the Racketeer Influenced and Corrupt Organization Act ("RICO") 18 U.S.C. § 1961	• Romspen Entities	• Res Judicata • Rule 12(b)(1) for lack of standing • Released by Debtor under the Plan • Released and waived by Releases • Rule 12(b)(6) applying Rule 9(b) and/or Rule 8
Count B	Fraud	• Romspen Entities • Weldon	• Res Judicata • Rule 12(b)(1) for lack of standing • Released by Debtor under the Plan • Released and waived by Releases • Rule 12(b)(6) applying Rule 9(b) and/or Rule 8
Count C	Breach of Fiduciary Duty	• Romspen Entities	• Res Judicata • Rule 12(b)(1) for lack of standing • Released by Debtor under the Plan • Released and waived by Releases • Rule 12(b)(6) applying Rule 9(b) and/or Rule 8
Count D	Breach of Contract	• Romspen Entities	• Res Judicata • Rule 12(b)(1) for lack of standing • Released by Debtor under the Plan • Released and waived by Releases • Rule 12(b)(6) applying Rule 8

Count E	Negligent Misrepresentation	• Romspen Entities	• Res Judicata • Rule 12(b)(1) for lack of standing • Released by Debtor under the Plan • Released and waived by Releases • Rule 12(b)(6) applying Rule 9(b) and/or Rule 8
Count F	Vicarious Liability/Conspiracy	• Romspen Defendants	• Res Judicata • Rule 12(b)(1) for lack of standing • Released by Debtor under the Plan • Released and waived by Releases • Rule 12(b)(6) applying Rule 8

II. SUMMARY OF FACTUAL ALLEGATIONS[6]

Loan Commitments

In June 2013, Romcorp extended an offer of mortgage financing to entities to be formed by White ("Original Commitment"). The Original Commitment was in the maximum amount of $40 million CAD in connection with the potential purchase and development of an industrial site in Fort McMurray, Alberta. But the transaction did not close, and no loan funds were advanced.

Two years later, Romcorp as lender and Lot 11 LP, Eco Energy Limited Partnership, Eco Energy GP Ltd., and Absolute Energy Resources, Inc. as borrowers ("Borrowers") entered into the Amended and Restated Commitment Letter dated July 30, 2015 ("Acquisition Loan"). The Acquisition Loan amended and restated in its entirety the Original Commitment, and identified new properties as potential acquisition targets in Edmonton, Canada, and Lamont, Canada—both unrelated to the Austin Property.

A supplemental agreement effective August 31, 2015 ("Supplement No. 1") amended the Acquisition Loan to re-arrange the loan to facilitate the purchase and development of the Austin Property. The Acquisition Loan was later supplemented six more times ("Supplements"), but the target property never changed from the Austin Property.

[6] For purposes of this Motion and for the sake of brevity, the Romspen Entities limit this factual summary to the underlying contractual dispute between Plaintiffs and the Romspen Defendants, which is included for the sake of context and background and to clarify Plaintiffs' factual allegations.

Further, under the Acquisition Loan and its supplements, MOS8 LP and MOS8 GP are identified as the entities intended to purchase and develop the Austin Property. And as evidenced in these documents, the Romspen Entities did not provide loans to, or have an ownership interest in, MOS8 LP or MOS8 GP that could have precipitated a default as Plaintiffs allege. Under Supplement No. 4, MOS8 LP and MOS8 GP were replaced with Zen Garden and 3443 Zen Garden LLC as the entities identified to purchase and develop the Austin Property. Zen Garden and 3443 Zen Garden LLC ultimately purchased the Austin Property. Plaintiffs are never identified as borrowers in any of these documents.

The Zen Garden Loan Agreement

On or about April 27, 2018, the Acquisition Loan for the Austin Property was restructured, paid off in full, and refinanced. Zen Garden, as the borrower, entered into a loan agreement ("Zen Loan Agreement") with Romspen LP, as the lender.[7] Romspen LP committed to lending a defined "Maximum Loan Principal Amount"—the proceeds of which were dedicated to the re-development of portions of the Austin Property ("Refinancing Loan"). The Zen Loan Agreement established terms for how Zen Garden could use the proceeds and conditions Zen Garden had to meet to acquire loan advances.[8] Zen Garden agreed to abide by these terms. In addition, White along with several other entities guaranteed the Zen Loan Agreement. The proceeds of the Refinancing Loan were used to pay off and extinguish the entire balance of the Acquisition Loan. All proceedings going forward to the development of the Austin Property were sourced by Romspen LP from the Refinancing Loan and governed under the Zen Loan Agreement.

[7] The Zen Loan Agreement is attached as Exhibit 1. Because the Zen Loan Agreement is central to Plaintiffs' allegations and incorporated by reference in the Complaint [e.g., Dkt. #70 at ¶¶ 46, 48, 49, 55–64], the Zen Loan Agreement should not be considered "outside of the pleadings" and can be considered by the Court. *See Scanlan v. Texas A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003). *See* Ex. 6 at ¶ 9.

[8] *See* Ex. 1, Zen Loan Agreement § 2.2.1–2.3.

Simultaneous with the execution of the Zen Loan Agreement, Zen Garden, as borrower, executed a Promissory Note (the "Promissory Note") in favor of Romspen LP, as lender, in the principal sum of $125,000,000.00, secured by, among other things, a first priority mortgage in the Austin Property under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreements, and Fixture Filings (the "Austin Security Instrument").

In conjunction with the Zen Loan Agreement, White executed a guaranty in favor of Romspen LP by which White guaranteed to Romspen LP the due, full, and prompt payment and performance of all liabilities arising out of the Refinancing Loan under the Zen Loan Agreement, including all proceeds funded by Romspen LP through the Promissory Note.

Additionally, under Section 2.1(c) of the Zen Loan Agreement, White released the Romspen Defendants from all liabilities, obligations, actions, claims, causes of action whatsoever arising out of the Acquisition Loan or related documents that may be asserted by the "Borrower Parties."[9] White executed the Zen Loan Agreement in his individual capacity as a Guarantor, which is a "Borrower Party" under the Zen Loan Agreement; therefore White agreed to the release and expressly released and waived claims relating to the Acquisition Loan. The releases by the "Borrower Parties" in the Zen Loan Agreement are hereinafter collectively referred to as the "Releases."

To be clear, White released the Romspen Defendants of all liability for any acts occurring on or before April 27, 2018 (the date of the Zen Loan Agreement)—specifically the allegations raised by Plaintiffs concerning the Acquisition Loan and the MOS8 transactions. All of Plaintiffs' claims supported by allegations occurring on or before April 27, 2018 should be dismissed with prejudice, as they are waived and released.

[9] *See* Ex. 1, Zen Loan Agreement § 2.1(c).

Default on the Loan and the Bankruptcy Case

Zen Garden defaulted on the Zen Loan Agreement by failing to make payments when due and owing. On October 11, 2019, Romspen LP issued a notice of default to Zen Garden, White, and the other guarantors, which requested that each repay all amounts due and owing under the Zen Loan Agreement, Promissory Note, and associated guarantees.[10] On March 22, 2020, certain creditors filed an involuntary Chapter 11 bankruptcy petition against Zen Garden, Case Number 1:20-10410-HCM (the "Bankruptcy Case"). The Bankruptcy Court ordered the appointment of the Trustee over Zen Garden, who continues to control Zen Garden in the bankruptcy proceeding. The Bankruptcy Court has confirmed the *Chapter 11 Trustee's Amended Liquidating Plan, as Modified* [Dkt. #393 in the Chapter 11 Bankruptcy Case] (the "Confirmed Plan").[11]

The Adversary Case and the Dismissal Order

White and several associated entities (the "White Parties") filed the Adversary proceeding within the Bankruptcy Case against the Romspen Entities, Adam Zarafshani, and Panache Construction and Development, Inc. The Romspen Entities moved to dismiss all the claims pleaded against them. While the Romspen Entities' motion to dismiss was pending, the Bankruptcy Court entered the Confirmed Plan and a related stipulation (the "Stipulation").[12] Under the Confirmed Plan and Stipulation, the Debtor released all of its claims against the Romspen Entities.

As a result of the Confirmed Plan, the Bankruptcy Court granted the White Parties leave to amend their adversary complaint (a second time) and ordered that "White Parties should not include claims against the Romspen Defendants that were released in the Plan and Stipulation, should only include claims over which this Court has subject matter jurisdiction to adjudicate, should identify the

[10] *See* Adversary, Dkt. #3-13.
[11] Attached hereto as Exhibit 2 is the Bankruptcy Court's order confirming the Confirmed Plan, which provides the Confirmed Plan in full as exhibit A to the order. *See* Ex. 6 at ¶ 9.
[12] The Stipulation is attached hereto as Exhibit 3. *See* Ex. 6 at ¶ 9.

factual allegations upon which each claim is based, and should attempt to address pleading deficiencies in the Amended Complaint raised by the Motion to Dismiss."[13]

Soon after, the White Parties filed a Second Amended Complaint, which failed to abide by the Bankruptcy Court's order.[14] The Romspen Entities filed another motion to dismiss and for sanctions.[15] Rather than respond to this second motion to dismiss, the White Parties agreed to the form of the Romspen Entities' proposed order granting their motion to dismiss the Adversary, which the Bankruptcy Court entered ("Dismissal Order").[16]

In the Dismissal Order, the Bankruptcy Court dismissed—with prejudice—all of the White Parties' claims "supported by any factual allegations (i) allegedly occurring or taking place after the date [Debtor] came into legal existence; or (ii) otherwise involving, relating to and/or arising from the Debtor in any way ('Zen Allegations')."[17] The Bankruptcy Court then ordered that the dismissal "shall be construed to act as collateral estoppel, res judicata, and carry full preclusive effect against any claims of the Plaintiffs supported by Zen Allegations, including, but not limited to, those claims supported by Zen Allegations asserted or assertable in the federal court action styled as *Dan White v. Romspen Mortgage Limited Partnership, et al.*, Civil Action No. 21-00517-RP, currently pending in the United States District Court for the Western District of Texas, Austin Division."[18] The only claims dismissed *without* prejudice were claims supported by factual allegations that occurred before the date the Debtor came into legal existence; or claims that did not otherwise involve, relate to, or arise from the Debtor in any way.[19]

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[13] Adversary, Dkt. #34.
[14] Adversary, Dkt. #36.
[15] Adversary, Dkt. #39.
[16] Ex. 4, Dismissal Order.
[17] *Id.*, at p. 3.
[18] *Id.*
[19] *Id.*

As a result, in dismissing the Adversary, the Dismissal Order makes clear that:

- Plaintiffs lack standing to bring claims supported by any factual allegations allegedly occurring after the date the Debtor's business came into existence or are otherwise related to the Debtor; and

- The only claims that Plaintiffs are not precluded from alleging against the Romspen Entities are those that are supported by factual allegations that occurred prior to the date Debtor came into legal existence; or claims that do not otherwise involve, relate to, and/or arise from the Debtor in any way.

Despite the Dismissal Order, Plaintiffs continue to allege the same or substantially the same claims based on the same hyperbolic allegations that mischaracterize the Romspen Entities' business model as an operation specializing in "loan to own" lending schemes. The Bankruptcy Court dismissed these claims with prejudice, which precludes Plaintiffs from re-asserting them in this case. Plaintiffs fail to allege any specific claims that are individualized as to White and the White Trust.

III. ARGUMENT

This lawsuit should be dismissed for a litany of fatal flaws. Specifically, the Romspen Defendants move this Court to dismiss Plaintiffs' causes of action for five reasons:

1. Plaintiffs released all claims supported by factual allegations pre-dating the Zen Loan Agreement under Section 2.1(c) of the Zen Loan Agreement;

2. Plaintiffs lack standing to bring claims supported by factual allegations post-dating and arising out of the Zen Loan Agreement because those claims belong exclusively to the bankruptcy estate in the Bankruptcy Case and such claims have been released under the Confirmed Plan (all counts);

3. Plaintiffs are barred by the doctrine of res judicata from asserting any claims supported by factual allegations taking place after the Debtor came into legal existence or relating to or arising from the Debtor in any way;

4. Plaintiffs fail to meet the heightened pleading standard either under Rule 9(b) or the pleading standard under Rule 8 for all the claims alleged against the Romspen Defendants (all counts); and

5. Plaintiffs have provided no basis for piercing the corporate veil to hold Mr. Roitman or Mr. Weldon personally liable for any of the claims asserted.

A. Claims Based on Events Occurring Before April 27, 2018 Have Been Released.

White executed the Zen Loan Agreement in his individual capacity as a guarantor. White is specifically defined as a "Guarantor" in the agreement, and in turn, "Guarantor" is explicitly included as one of the "Borrower Parties." Under Section 2.1(c) of the Zen Loan Agreement, all Borrower Parties expressly released and waived all claims against Romspen Entities arising "from or relating to any alleged act, occurrence, omission or transaction of whatsoever nature occurring or happening with respect to or arising out of the Acquisition Loan and the Acquisition Loan Documents."[20] The "Acquisition Loan" constituted the Amended and Restated Commitment Letter dated July 30, 2015, and the "Acquisition Loan Documents" included all seven supplements to the same. Because the Acquisition Loan and the Acquisition Loan Documents constituted the only transactions between White and the Romspen Entities, White released all claims based on allegations that pre-date the Zen Loan Agreement (executed on April 27, 2018).

Despite these Releases, Plaintiffs continue to rely on facts occurring before the Zen Loan Agreement that have been released. For example, Plaintiffs base their fraud claims on the allegation that the Romspen Entities made false statements that induced Plaintiffs into agreeing "to allow [Romcorp] to use a portion of [White's] remaining line of credit from the [Original Commitment] to purchase and develop the Austin Property."[21] Thus, Plaintiffs' fraud claim relates to inducing Plaintiffs to provide funds from the Original Commitment, which was subsumed into the Zen Loan Agreement. Plaintiffs released any such claims when they entered into the Zen Loan Agreement. Likewise, Plaintiffs vaguely allege that the Romspen Entities breached "a series of valid and enforceable contracts" that date back to September 13, 2012. Again, Plaintiffs released any such contract claims.[22]

[20] Ex. 1, Zen Loan Agreement at § 2.1(c).
[21] Complaint, ¶ 23.
[22] Complaint, ¶ 166.

These are merely two examples of a common theme: Plaintiffs' disregard for their contractual release and continued reliance on allegations pre-dating the Zen Loan Agreement to support their claims. Any such claims should be dismissed with prejudice. On this basis alone, Plaintiffs' claims should be dismissed with prejudice to the extent that they rely on factual allegations occurring before April 27, 2018.

B. Plaintiffs Lack Standing to Bring Claims Arising Out of the Zen Loan Agreement as those Claims Belong to the Bankruptcy Estate and Such Claims have been Released under the Confirmed Plan.

Plaintiffs lack standing to bring claims arising out of the Zen Loan Agreement against the Romspen Defendants because the Plaintiffs are not real parties in interest, as only Debtor is a party to the applicable loan agreements. White—let alone the White Trust, which has no relationship to the Romspen Defendants at all—never had standing to bring any claims belonging exclusively to Debtor. Conclusory and baseless allegations that the Plaintiffs were somehow injured individually cannot change this fact.

A plaintiff must have the requisite standing to bring suit. *See, e.g.*, *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475–76 (1982). White is in no way connected individually to the claims he alleges—these are solely claims held by the Debtor's bankruptcy estate (which is subject to the exclusive control of the Trustee). And the White Trust is unrelated to and has no relationship with the Romspen Defendants, leaving it with no privity to support standing or any capacity to sue the Romspen Defendants.

The long-standing three-part test for standing requires the following elements: (1) the plaintiff must have suffered an "injury in fact" which is an invasion of a legally protected interest which is (a) "concrete and particularized" and (b) "actual or imminent" and not conjectural or hypothetical; (2) a causal connection must exist between the injury and the conduct in the complaint—that is, the injury must be fairly traceable to the challenged action and not the result of some action by a third party; and

(3) it must be likely and not merely speculative that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

White himself has suffered no harm. White's harm, if any, is exclusively derivative of the Debtor's harm. Any such harm is precisely the type of injury the Fifth Circuit exclusively reserves for the bankruptcy estate so that any recovery can be shared among the estate's creditors—rather than only one party in interest. Plaintiffs' general allegations that they might have suffered some kind of loss in interest in "money, property interests and income"[23] related to the Austin Property are not sufficient and fail to allege an "injury in fact" that is "concrete and particularized." *See id.* Indeed, if the alleged injury was redressed by a favorable decision by this Court, only the Debtor would be entitled to any relief sought. Likewise, the White Trust—having no privity or any connection to the Romspen Defendants—has no "injury in fact" that is "concrete and particularized" *See id.*

The critical distinction in standing to assert claims by the bankruptcy estate, as opposed to an individual affiliated with the bankruptcy debtor, is that the harm sustained by such an individual must be ***exclusively*** germane to that individual, not shared with the bankruptcy estate. If the individual's alleged harm is derivative of (shared with) the bankruptcy debtor's harm, then such damages must flow to the bankruptcy estate and must be shared among the creditors. Thus, White lacks standing to bring the claims in the Complaint in his individual capacity or via the White Trust, as the Debtor is the proper plaintiff—and the Debtor has already settled all its claims against the Romspen Defendants under the Confirmed Plan.[24]

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[23] Complaint, ¶ 2.

[24] For settlement consideration, the Plan provides the Romspen Entities a full release of liability, including a release on behalf of the Debtor's creditors, parties in interest, and all third parties that do not opt-out. *See* Ex. 2, Confirmed Plan at Art. VI, Section 6.1 of the Plan; Art. XI. For additional context, attached hereto as Exhibit 5 is the Disclosure Statement for the Chapter 11 Trustee's Amended Liquidating Plan [Bankruptcy Case Dkt. #317]. The disclosure statement provides significant detail and context into the Trustee's settlement with the Romspen Entities. *See* Ex. 5 at pp. 16–26.

Plaintiffs still fail to allege the requisite standing even if the Complaint were brought on behalf of the Debtor because they did not seek and obtain derivative standing from the bankruptcy court to prosecute certain claims on behalf of the bankruptcy estate. *See Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d 233, 247 (5th Cir. 1988) (requiring that the party seek and obtain derivative standing from the bankruptcy court to prosecute certain claims on behalf of the bankruptcy estate); *see also In re Yes! Entm't Corp.*, 316 B.R. 141, 145 (D. Del. 2004). The burden is on the party seeking standing to establish that it has satisfied all the prerequisites to derivative standing. *See In re Yes! Entm't Corp.*, 316 B.R. at 145.

The analysis of whether a party lacks standing in this context and thus needs to seek derivative standing turns on whether the claims the party seeks to assert ultimately belong to the debtor's estate. *See, e.g.*, *In re MortgageAmerica*, 714 F.2d 1266, 1275 (5th Cir. 1983); *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1152 (5th Cir. 1987). Applying Texas law, the Fifth Circuit has said that when a plaintiff alleges that a party should be held liable for an insolvent corporation's debts because the party stripped the corporation of its assets for the party's own benefit, the bankruptcy trustee, or debtor-in-possession is the proper party to bring the action. *See In re MortgageAmerica*, 714 F.2d at 1275, 1277–78 (recognizing that where allegations of asset-stripping leading to bankruptcy are made, "it makes the most sense to consider the debtor as continuing to have a 'legal or equitable interest[ ]' in the property . . . .").

Similarly, in *In re Schimmelpenninck*, the court, following *In re S.I. Acquisition*, applied a two-part test, which asked whether the cause of action either (1) belonged to the debtor, or (2) seeks recovery or control of the property of the debtor. *See In re Schimmelpenninck*, 183 F.3d 347, 350 (5th Cir. 1999) (concluding that the claims asserted advanced a "general grievance" of all the debtor's creditors, not

just a personal grievance of the individual party asserting the claim, and therefore belonged to the estate).

First, as a threshold matter, White lacks standing to bring these claims individually because he has not shown that there is a distinct and palpable injury to himself—these claims involve the Debtor, not White in his individual capacity or in his capacity via the White Trust. *See Lujan*, 504 U.S. at 560–561. The gravamen of Plaintiffs' allegations is that the Romspen Entities serviced the loan in such a way that it deprived the Debtor of its anticipated profits from and interest in the development of the Austin Property. In turn, White alleges injury vis-à-vis his (former) equity stake in the Debtor.[25] Plaintiffs cannot articulate any direct harm caused by the Romspen Defendants' actions, as exclusively germane to White, let alone the White Trust.

Next, although the Romspen Defendants dispute that any of the allegations are true, the Debtor's bankruptcy estate (*i.e.*, the Trustee) retains exclusive standing to assert such claims as they involve property of Zen Garden's bankruptcy estate, and Plaintiffs seek to collect property of the estate because the action (if true) "is essentially one for property that properly belongs to the debtor." *In re MortgageAmerica*, 714 at F.2d at 1275; *see also St. Paul Fire and Marine Ins. v. PepsiCo, Inc.*, 884 F.2d 688 (2d Cir. 1989) (holding that guarantor lacked standing to assert alter ego claims because it was property of the estate, and the guarantor's alleged injury was generalized). The Debtor's estate has a "legal or equitable interest[]" in the property and funds that Plaintiffs seek to recover in the Complaint. *See id.*; 11 U.S.C. § 541(a)(1) (Property of the estate includes all legal and equitable interests of the debtor in property as of the start of the case, and a cause of action fall under "legal or equitable"

[25] It is unclear how the White Trust could claim (or if the White Trust does claim) any equity or other interest in the Austin Property whether on the face of the Complaint or based on the transactions between the parties, as the White Trust was never a party to any transaction with any of the Romspen Defendants.

interests.). Thus, to assert claims that belong to the Debtor's bankruptcy estate, Plaintiffs have the burden to seek derivative standing. They did not do so in this case; nor did they do so in the Adversary.

Importantly, the Romspen Defendants and the Trustee reached a settlement under Federal Rules of Bankruptcy Procedure 9019, which is identified in the Confirmed Plan.[26] In the Confirmed Plan, the Romspen Entities funded $600,000.00 to the Debtor's bankruptcy estate in exchange for settling *the same claims* that Plaintiffs now bring against the Romspen Defendants and all the defendants.[27] Indeed, the Romspen Entities have already paid hundreds of thousands of dollars to settle and release these claims via the Confirmed Plan through the formal bankruptcy proceeding. It was the Romspen Entities' $600,000.00 settlement funds that provided the return to the unsecured creditors under the Confirmed Plan. If not for this money, the creditors would not have received any dividend. The Romspen Entities have already paid for these claims; they should not be forced to defends these claims and potentially pay for the same liability twice.

Accordingly, as to any and all claims supported by allegations occurring on or after April 27, 2018 (the date of the Zen Loan Agreement), the Court should dismiss all such claims in the Complaint with prejudice because those claims belonged exclusively to the Debtor's bankruptcy estate and have been released in exchange for valuable consideration paid by the Romspen Entities.

C. Plaintiffs are Barred by the Doctrine of Res Judicata From Asserting Any Claims Supported by Factual Allegations Taking Place After the Debtor Came Into Legal Existence or Relating To and/or Arising From The Debtor In Any Way.

Plaintiffs cannot re-allege claims that have already been dismissed with prejudice in another court proceeding—such claims are barred by res judicata. "Claim preclusion, or *res judicata*, bars the litigation of claims that either have been litigated or should have been raised in an earlier suit." *Petro-*

[26] *See* Ex. 2, Confirmed Plan at Art. VI., Section 6.1 of the Plan; Art. XI; For additional context, *see* Ex. 5 at pp. 16–26.
[27] *See* Ex. 2, Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Trustee's Amended Liquidating Plan, as Modified at pp. 14–16, 32–37.

Hunt, L.L.C. v. United States, 365 F.3d 385, 395 (5th Cir. 2004) (quoting *In re Southmark Corp.*, 163 F.3d 925, 934 (5th Cir. 1999)). A claim is precluded when: "(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions." *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 569 (5th Cir. 2005). The Fifth Circuit uses the "transactional test" to determine whether two actions involve the same claim or cause of action. *Id.* (citation omitted). "Under the transactional test, a prior judgment's preclusive effect extends to all rights of the plaintiff 'with respect to all or part of the transaction, or series of connected transactions, out of which the [original] action arose.'" *Davis v. Dall. Area Rapid Transit*, 383 F.3d 309, 313 (5th Cir. 2004) (quoting *Petro-Hunt, L.L.C.*, 365 F.3d at 395–96).

The Bankruptcy Court's Dismissal Order (which the White Parties agreed to as to form) dismissed—with prejudice—all of the White Parties' claims "supported by any factual allegations (i) allegedly occurring or taking place after the date [Debtor] came into legal existence; or (ii) otherwise involving, relating to and/or arising from the Debtor in any way ('Zen Allegations')."[28] The Bankruptcy Court then ordered that the dismissal "shall be construed to act as collateral estoppel, res judicata, and carry full preclusive effect against any claims" brought by the White Parties in other legal proceedings, including this case.[29] Plaintiffs were both parties to the Adversary as part of the White Parties and therefore no question exists as to whether the Dismissal Order applies to them.

As explained above, all of the allegations occurring after April 28, 2018, that allegedly support Plaintiffs' claims relate to the Debtor. For example, Plaintiffs' allege that the Romspen Defendants conspired to over collateralize the loan to the Debtor, intentionally or recklessly delayed to make

[28] Ex. 4, Dismissal Order at p. 3.
[29] Ex. 4, Dismissal Order at p. 3.

distributions to the Debtor, and engineered a scheme to force the Debtor into bankruptcy.[30] To the extent that these allegations can support claims against the Romspen Defendants, they belong to the Debtor and have been settled and released under the Confirmed Plan. As a result, Plaintiffs' claims supported by such allegations are barred by res judicata.

D. Plaintiffs' Causes of Action Based on Fraud Do Not Meet the Heightened Pleading Standard (Counts A, B).

The claims based on fraud should be dismissed under Rule 12(b)(6) for failure to meet the requisite pleading standards under Rules 8 and 9(b). Plaintiffs' claims premised on fraud must plead the who, what, when, where, and how of the events at issue.

1. Plaintiffs Cannot Meet the Basic or Heightened Pleading Standard for Their Violating the Racketeer Influenced and Corrupt Organizations Act ("RICO") Claim (Count A).

Under RICO, a plaintiff may bring a claim for violating sections 1962(a)–(d), which each describe a different claim. Here, Plaintiffs allege a RICO claim against the Romspen Entities generally—without any specific reference to sections (a)-(d). Because Plaintiffs base the RICO allegations on fraud, the Complaint must satisfy the heightened pleading standard under Rule 9(b). *See Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir. 1992).

Three elements are required for claims brought under RICO's subsections: "(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." *Abraham v. Singh,* 480 F.3d 351, 355 (5th Cir. 2007). "Racketeering activity" consists of "two or more predicate criminal acts within a ten-year period that are (1) related and (2) amount to or pose a threat of continued criminal activity." *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). Plaintiffs fail to (1) identify which RICO provision the Romspen Entities violated; (2) allege that a person engaged in racketeering

[30] *See* Complaint, ¶¶ 58–64.

activity on behalf of the Romspen Entities; and (3), other than conclusory statements reciting the general elements of a RICO claim, allege facts to support any racketeering activity, a racketeering exercise, or if, how, when, or through whom the Romspen Entities engaged in any racketeering conduct.

To state a claim under section 1962(a), Plaintiffs must plead: "(1) the existence of an enterprise, (2) the defendant's derivation of income from a pattern of racketeering activity, and (3) the use of any part of that income in acquiring an interest in or operating the enterprise." *N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 202 (5th Cir. 2015). Plaintiffs do not state that the Romspen Entities received any income derived from a pattern of racketeering or through the collection of an unlawful debt. Nor do Plaintiffs describe the Romspen Entities' use of any such income. Plaintiffs have not sufficiently plead a claim under section 1962(a), under Rule 8 or 9(b).

To state a claim under section 1962(b), Plaintiffs must show that their injuries "'were proximately caused by a RICO person gaining an interest in, or control of, the enterprise through a pattern of racketeering activity'—a nexus requirement." *Cigna Healthcare*, 781 F.3d at 202. Plaintiffs fail to describe the Romspen Entities' acquisition or maintenance of any interest in or control of an alleged enterprise and fail to establish a nexus between any wrongdoing of the Romspen Entities' and Plaintiffs' alleged injuries. Plaintiffs have not sufficiently plead a claim under section 1962(b), under Rule 8 or 9(b).

Under section 1962(c), Plaintiffs must show "(1) the existence of an enterprise that affects interstate or foreign commerce, (2) that the defendant was employed by or associated with the enterprise, (3) that the defendant participated in the conduct of the enterprise's affairs, and (4) that the participation was through a pattern of racketeering activity." *United States v. Delgado*, 401 F.3d 290, 297 (5th Cir. 2005). Again, the Complaint lacks allegations that the Romspen Entities associated with an enterprise, participated in an enterprise's affairs, or participated in the enterprise through a pattern

of racketeering activity. Plaintiffs have not sufficiently plead a claim under section 1962(c), under Rule 8 or 9(b).

Finally, to state a claim for a RICO conspiracy under section 1962(d), Plaintiffs must show "(1) that two or more people agreed to commit a substantive RICO offense and (2) that [the Romspen Entities] knew of and agreed to the overall objective of the RICO offense." *Chaney v. Dreyfus Serv. Corp.,* 595 F.3d 219, 239 (5th Cir. 2010) (quoting *United States v. Sharpe,* 193 F.3d 852, 869 (5th Cir. 1999)). For the same reasons section 1962(a)–(c) failed, Plaintiffs' claim for RICO conspiracy also fails because the Complaint does not allege with specificity that two or more people agreed to commit a RICO offense on behalf of the Romspen Entities and that the Romspen Entities knew of this. Plaintiffs have not sufficiently plead a claim under section 1962(d), under Rule 8 or 9(b).

2. Plaintiffs Cannot Meet the Basic or Heightened Pleading Standard for Their Fraud Claim (Count B).

To prevail on a fraud claim, a plaintiff must show: (1) the defendant made a material representation that was false; (2) the defendant knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) the defendant intended to induce the plaintiff to act upon the representation; and (4) the plaintiff actually and justifiably relied upon the representation and suffered injury as a result. *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018), *reh'g denied* (June 15, 2018).

Here, Plaintiffs' allegations lack the requisite specificity to support their fraud claim. Plaintiffs allege fraud against the Romspen Entities and Mr. Weldon in his individual capacity. The allegations against the Romspen Entities do not specify the who, what, when, or where—there are no specific allegations about the time, place, or contents of the alleged false representations, or as to the identity of the speaker who made the alleged misrepresentations. Likewise, other than stating generally that Mr. Weldon made a representation that the Austin Property would yield substantial profits for

Plaintiffs,[31] Plaintiffs fail to specify the what, when, where, or the time, place, or fraudulent contents of the alleged false representations by Mr. Weldon.

The allegations against the Romspen Entities and Mr. Weldon also omit the essential elements of a fraud claim, let alone meet the heightened pleading standard of Rule 9(b). The allegations do not even specify whether the alleged misrepresentations were made orally or under one of several contracts, or which contract. Rather, these allegations are unspecific and vague. The Court should dismiss Plaintiffs' fraud claim against the Romspen Entitles and Mr. Weldon.

3. Plaintiffs Cannot Meet the Heightened Pleading Standard for Their Breach of Fiduciary Duty Claim (Count C).

To recover on a breach of fiduciary duty claim, a plaintiff must prove (1) a fiduciary relationship exists, (2) a breach of that fiduciary duty occurred, and (3) an injury or benefit to a fiduciary as a result of the breach. *Priddy v. Rawson*, 282 S.W.3d 588, 599 (Tex. App.—Houston [14th Dist.] 2009, pet. denied).

Plaintiffs assert that a presumption of unfairness exists because the claim "concerns allegations of unfairness arising from a transaction in which [the Romspen Entities] were involved"[32] and therefore there is a "presumption of unfairness."[33] This allegation does not meet the basic Rule 8 pleading standard. Plaintiffs' claim for breach of fiduciary duty can be dismissed on this basis alone.

To the extent that Plaintiffs' fiduciary duty claim is based on alleged fraudulent conduct, the Rule 9(b) heightened pleading standard would apply. *Brown v. Bilek*, 401 F. App'x 889, 893 (5th Cir. 2010). Like the fraud claims, Plaintiffs have not specified the who, what, when, where, why, and how of their breach of fiduciary duty claim.

[31] Complaint, ¶ 102.
[32] *Id.*, ¶¶ 144, 152
[33] *Id.*

Further, the breach of fiduciary duty claim fails because the allegations in the Complaint, even if accepted as true, do not (and cannot) establish a fiduciary relationship between either of the Plaintiffs and any of the Romspen Defendants. Plaintiffs generally allege that a special relationship existed between Plaintiffs and the Romspen Entities based on an "agreement to act as a nominee and agent on their behalf."[34] But no fiduciary relationship exists in a lender-borrower or creditor-guarantor relationship. *See Clay v. F.D.I.C.*, 934 F.2d 69, 72 (5th Cir. 1991); *Jones v. Thompson*, 338 S.W.3d 573, 583 (Tex. App.—El Paso 2010, pet. denied). The Complaint fails to allege any specifics as to how there is a special relationship, and even if the alleged special relationship is based on a lender-borrower or creditor-guarantor relationship, such a claim is not supported by Texas law.

No informal fiduciary duty exists either. An informal fiduciary duty arises from a moral, social, domestic, or purely personal relationship of trust and confidence. *See Schlumberger Tech. v. Swanson*, 959 S.W.2d 171, 176 (Tex. 1997). Here, none of the allegations support an informal fiduciary relationship. Rather, the extent of the Romspen Entities' and White's relationship was that of a lender-borrower and creditor-guarantor. White and the Romspen Entities entered into arm's-length transactions in which all parties were looking out for their own interests and were represented by experienced legal counsel. *See Williams v. Countrywide Home Loans, Inc.*, 504 F. Supp. 2d 176, 192 (S.D. Tex. 2007), aff'd, 269 Fed. Appx. 523 (5th Cir. 2008). The Romspen Entities have no relationship with the White Trust. Thus, no fiduciary relationship exists here. Plaintiffs have not sufficiently plead a breach of fiduciary duty claim, under Rule 8 or 9(b). The Court should dismiss Plaintiffs' breach of fiduciary duty claim.

4. <u>Plaintiffs Cannot Meet Basic or Heightened Pleading Standard for Their Negligent Misrepresentation Claim (Count E).</u>

The elements of negligent misrepresentation are: (1) the representation is made by a defendant in the course of his business, or in a transaction in which the defendant has a pecuniary interest; (2)

[34] Complaint, ¶¶ 142, 150.

the defendant supplies "false information" for the guidance of others in their business; (3) the defendant does not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffers a pecuniary loss by justifiably relying on the representation. *See Biggers v. BAC Home Loans Servicing, LP*, 767 F. Supp. 2d 725, 734 (N.D. Tex. 2011). The Fifth Circuit has recognized that the Rule 9(b) pleading standard can apply to a claim for negligent misrepresentation when the fraud and negligent misrepresentation claims are sufficiently intertwined. *See Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC,* 594 F.3d 383, 387 n. 3 (5th Cir. 2010). If the complaint bears no distinct focus on allegations of negligent misrepresentation separate from allegations of fraud, then both claims are subject to the heightened pleading requirements of Rule 9(b). *Id.* Here, the negligent misrepresentation claim against the Romspen Entities is indistinguishable from those alleged for fraud—thus, the Rule 9(b) standard applies.

Like all the causes of action brought against the Romspen Entities, Plaintiffs' general allegations fail to plead allegations against the Romspen Entities specifically—*i.e.*, the who, what, when, where, how—to fulfill the pleading requirements for Negligent Misrepresentation under Rule 8 or 9(b). The Court should dismiss Plaintiffs' negligent misrepresentation claim.

E. Plaintiffs' Other Causes Fail to Meet the Basic Rule 8 Pleading Standard.

Plaintiffs must plead their claims for breach of contract (Count D) and claims supporting their theory of vicarious liability, including conspiracy (Count F), in accordance with Rule 8.

1. Plaintiffs Fail to State a Claim for Breach of Contract (Count D).

Plaintiffs assert generic, rote allegations in support of their breach of contract claim against the Romspen Entities. Specifically, they fail to specify which contract is at issue or was breached; how Plaintiffs were able to fully perform on such unidentified contracts; the manner in which either of the Romspen Entities breached any alleged contract, which contract was breached; any connection between the $100 million in damages alleged and any contract with the Romspen Entities; and how

Plaintiffs (via White in his individual capacity or via the White Trust) are entitled to such damages. As currently pleaded, the Complaint fails to state the basic requirements of a breach of contract claim. The Court should dismiss Plaintiffs' breach of contract claim.

2. Plaintiffs Fail to Support Their Vicarious Liability Theory of Liability (Count F)

Within their "Claim" for vicarious Liability in Count F, Plaintiffs allege that the Romspen Defendants generally assisted or encouraged and/or assisted and participated in some general tort or bad acts. Plaintiffs do not specify what tort or bad act with which the Romspen Defendants assisted, encouraged, and/or participated—either as a group or individually.

Vicarious liability is a theory of liability; not an independent cause of action. There are various theories and claims under which a principal can be vicariously liable for the acts of an agent. The Texas Supreme Court has not adopted a theory of vicarious liability for assisting or encouraging, as Plaintiff alleges. *See Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996). Indeed, Plaintiffs have not alleged a viable theory for imposing vicarious liability, such as theories of actual authority, apparent authority, respondeat superior, or piercing the corporate veil, among others. Because Plaintiffs fail to allege a mechanism to pierce the corporate veil and reach Mr. Weldon or Mr. Roitman in their individual capacities, they have failed to state a viable theory of vicarious liability.

Plaintiffs also make conclusory allegations related to a "conspiracy" without specificity or alleging an underlying claim to support a claim for conspiracy. In short, Count F is unintelligible as alleged, and fails as a threshold matter to inform the Romspen Defendants as to the claims alleged against them as required under Due Process.[35] The Court should dismiss Plaintiffs' vicarious liability "claim."

[35] Moreover, it is disingenuous and defies logic to on the one hand allege that Mr. Roitman or Mr. Weldon is liable for certain claims in their individual capacity, while on the other hand apparently assert that they were acting within the scope of their employment with the Romspen Entities such that the Romspen Entities are liable for their conduct.

3. Plaintiffs Cannot Meet the Standard or Applicable Heightened Pleading Standard for Civil Conspiracy to the Extent that Count F is a Conspiracy Claim.[36]

Plaintiffs appear to allege a claim for conspiracy against the Romspen Defendants—specifically, that they acted in concert to defraud Plaintiffs.[37] The essential elements for civil conspiracy are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result. *Leigh v. Danek Medical, Inc.*, 28 F. Supp. 2d 401, 405 (N.D. Tex. 1998). A claim of conspiracy to defraud is subject to the Rule 9(b) heightened pleading standard. *Castillo v. First City Bancorporation of Texas*, 43 F.3d 953, 961 (5th Cir. 1994).

The Complaint lacks allegations about the Romspen Defendants to meet these elements, whether under Rule 8 or 9(b). Plaintiffs allege that the Romspen Defendants conspired with each other to defraud Plaintiffs, but do not explain how the Romspen Defendants participated in any underlying fraud, identify a specific overt act, or otherwise state the "who, what, when, where, and how" of the alleged acts and purportedly intended conspiracy. Plaintiffs have not sufficiently plead a conspiracy claim under Rule 8 or 9(b). The Court should dismiss Plaintiffs' Counts D and F.

F. Plaintiffs Fail to Provide a Basis for Holding Mr. Roitman or Mr. Weldon Liable for Any Causes of Action.

Plaintiffs allege claims against Mr. Roitman and Mr. Weldon (together, the "Individual Romspen Defendants") directly despite alleging they are directors and officers of Romcorp. To state a claim against the Individual Romspen Defendants, however, Plaintiffs must "pierce the corporate veil" and disregard Romcorp's corporate form. Under Texas choice-of-law rules, the law of the state in which the corporation was incorporated determines shareholder liability for corporate debts under

[36] Although unclear in the Complaint, Plaintiffs appear to allege an independent claim for conspiracy as it somehow and unclearly related to the alleged "claim" of vicarious liability.
[37] Complaint, ¶ 222.

a veil-piercing or alter ego theory. *See Weaver v. Kellogg,* 216 B.R. 563, 585 (S.D. Tex. 1997). Romcorp was formed under the laws of Ontario, Canada. Canadian law applies.

Like Texas law, absent findings of fraud, deceit, dishonesty, or want of authority, a corporate officer will rarely be liable personally for actions of a corporation under Canadian law. *Banyan Licensing, L.C. v. OrthoSupport Int'l, Inc.*, 296 F. Supp. 2d 885, 890 (N.D. Ohio 2003) (citing *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.,* 26 O.R.3d 481 at ¶ 25 (C.A. 1995)); *see also Giarla v. Coca-Cola Co.*, No. 17-CV-359S, 2021 WL 1110397, at *5 (W.D.N.Y. Mar. 23, 2021) (citing *Mitchell v. Lewis*, 2016 ONCA 903, at *7 (Ont. Ct. App. 2016)). Plaintiffs do not explain how their allegations against the Individual Romspen Defendants pierce the corporate veil, and Plaintiffs have not requested that this Court treat Romcorp as an alter ego of the Individual Romspen Defendants. All Plaintiffs' claims against the Individual Defendants should be dismissed because there is no basis to pierce the corporate veil.

IV. CONCLUSION

The Romspen Defendants respectfully request that this Court dismiss Plaintiffs' claims against them in their entirety, with prejudice and without leave to amend, and grant the Romspen Defendants all other legal and equitable relief to which they may be justly entitled.

Date: April 4, 2022

Respectfully Submitted,

By: */s/ Thomas C. Scannell*

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ATTORNEYS FOR DEFENDANTS ROMSPEN MORTGAGE LIMITED PARTNERSHIP, ROMSPEN INVESTMENT CORPORATION, WESLEY ROITMAN, AND RICHARD WELDON

CERTIFICATE OF SERVICE

I hereby certify that, on April 4, 2022 I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing upon all attorneys of record, specifically including, without limitation, counsel of record for Plaintiff and counsel for Adam Zarafshani, Christopher Milam, and Panache Construction and Development, Inc., as identified herein below.

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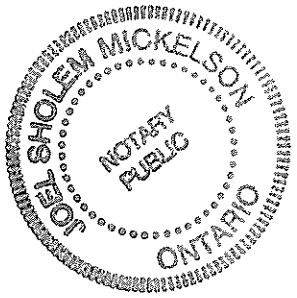
/s/ Thomas C. Scannell
Thomas C. Scannell

This is EXHIBIT "M" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



Absolute Environmental Waste Management et al.

Third Report of Interim Monitor – October 12, 2021

PREPARED BY: **MNP LTD**
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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. Rompsen 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 ACTIVITES

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.

Best Employers in Canada
By Aon Hewitt

Praxity
MEMBER
GLOBAL ALLIANCE OF INDEPENDENT FIRMS

SCHEDULE 1

Karen Aylward

From: Karen Aylward
Sent: March 4, 2021 2:38 PM
To: Barr, Kevin
Cc: Victor Kroeger; Randal Van de Mosselaer -
Subject: Absolute Environmental Waste Management et al - Financial Update from Monitor
Attachments: Ledger Symm - AEWM 2020.pdf; Asset Info provided Jan 5, 2021.pdf; Fwd: Absolute Assets; Challenger OWNERSHIP MAP-11x17 (2014).pdf; Summary of Symmetry Fees - as at Jan 31, 2021.pdf

Hi Kevin,

We recently received further financial information from David Gamage ("Gamage") in respect of the monitoring of the 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 as the "Companies"). We are providing a brief update on the financial status of the Companies based on the information we received. This update considers the financial information received following our previous review which included financial data to August 31, 2020.

We have received a majority of the outstanding financial information, however I do note that the following has not yet been provided and has been requested from Gamage:

- Bank Statements (acct 4112) for AEWN for period January and February 2021;
- General Ledger – December 16 through December 31;
- Scotiabank and TD Bank Statements for all periods; and,
- CRA Statements and account balances for all applicable entities.

The update provided below relates to a review of the financial information (bank statements, general ledger ("GL"), accounts receivable ("AR") reports, accounts payable ("AP") reports and income statements ("IS")) for the period of September 1, 2020 through February 15, 2021 (the "Review Period").

Bank Statements and General Ledger ("GL") for AEWM

1. Based on the Bank Statements for AEWM, a total sum of $493,132 in AR was collected over the Review Period;
2. Based on the Bank Statements, a total sum of $334,600 was transferred to Symmetry over the Review Period;
3. Based on the Bank statements, a total sum of $8,050 was transferred from Symmetry to AEWN over the Review Period; and,
4. The ending bank balance on February 26, 2021 (most recent transaction on the bank statement provided for the AEWM CIBC Account) was $44,215.

Bank Statements and General Ledger ("GL") for Eco

1. Minimal transactions run through this bank account. The deposits consist of rent revenues from third parties. Based on the statements, rent appears to be collected on a regular basis from one company, Aevitas Inc. We've sought clarity from Gamage on which tenants remain but have not yet received that information;
2. A CEBA loan totalling $20,000 was received in December 2020 and transferred to the AEWM account;
3. The bank balance as at February 16, 2021 (most recent transaction on the bank statement for the Eco CIBC account) totalled $7,630.84; and,
4. The bookkeeping transactions recorded within general ledgers do not appear to be up to date.

Accounts Receivable ("AR") for AEWM

1. Based on a summary AR report, the AR has decreased by approximately $104,890 from $200,825 to $95,935 from August 31, 2020 to end the Review Period. This AR balance excludes three accounts which are excessively aged totalling $211,541. These accounts have been outstanding for a significant period of time and should likely be written off. We have inquired with Gamage as to the plan to deal with this aged AR. This appears to coincide with the decline in revenues over the Review Period as shown in the attached document detailing the Summary of Symmetry fees (discussed further below).

Accounts Payable ("AP") for AEWM

1. Based on a detailed AP report, the total outstanding AP is $93,537 (excluding Encanex AP of $263,777 which is in dispute and $168,000 in relation to AP owed to Rio Ventures (Gary Vandepol)) at the end of the Review Period. This is an increase of approximately $40,000 in AP from August 31, 2020 to the end of the Review Period;
2. The majority (96%) of AP is aged beyond 90 days and is a mix of supplier and professional services (e.g. legal) invoices;
3. Based on the GL reports (where available) and Bank Statements, a sum of approximately $27,000 was paid to suppliers over the Review Period; and,
4. Given that there is sufficient AR collections being made to pay the suppliers on an ongoing basis, we have sought clarification from the Gamage as to why the suppliers are not being paid on a regular basis.

Employees and/or Contractors and Related Deductions

1. Based on the available GL Reports a sum of $62,273.89 was paid to employees and/or contractors over the Review Period;
2. The GL for January 2021 references a source deduction payment remitted to CRA of $5,451.14, however, we have not seen a CRA statement to confirm it; and,
3. In addition the transaction noted above, included in the AP payments is a sum of $6,376.51 paid to CRA. We are uncertain as to what this represents (i.e. GST, tax, payroll source deductions). We have sought but have not yet received detailed reports on the status of the CRA accounts including the status of employee remittances.

Payments to Symmetry

Based on the agreement previously provided, Symmetry fees are to be calculated as follows:

a. A 6% property management calculated based on annual gross revenues of AEWM as reported in its annual financial statements;
b. 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.

Based on the attached ledger (titled Ledger Symm), it appears that Symmetry is incorrectly calculating its 30.5% consulting fee monthly based on total monthly gross revenue rather than annual gross profit. For example, the total consulting fee for November 2020 was billed as $19,944.10 (see attached ledger) which appears to be based on 30.5% of the gross revenue for November (which is recorded as $65,390.50).

Using the information contained within the Income Statements provided for AEWM (where available) we have calculated the amounts owed to Symmetry over the Review Period in accordance with the fee structure outlined above (see Summary of Symmetry Fees as at January 31, 2021). In reference to this document we note the following:

1. The company appears to be calculating the 30.5% expertise fee based on gross revenue which appears incorrect;

2. We've re-calculated the 30.5% expertise fee based on net income;

3. It does not appear that the Income Statements are complete; very little expense information has been entered which may further affect (decrease) the fees owed to Symmetry;

4. We do not have the Company's Symmetry fee calculations for December or January but have assumed these based on the method of calculation the Company consistently uses;

5. As a result of the re-calculations, there is a discrepancy as between the amounts calculated by the monitor and the amounts calculated by the company whereby the company's calculations resulted in an increase of $49,435 ($108,816 - $158,252) of fees owed;

6. **Over the Review Period, a sum of $334,600 was transferred to Symmetry which is $225,784 more than determined to be owed under the Symmetry Agreement during the Review Period**; and,

7. We have sought clarity from Gamage with respect to these calculations.

Based on the "Ledger Symm" schedule, there is a recorded balance owed by AEWM to Symmetry as of November 30, 2020 in the sum of $399,563. Other than the ledger itself, no additional support has been provided for amounts owed (e.g. copies if invoices to support expenses paid by Symmetry on behalf of AEWM). We previously requested the support several times but have not received it.

It appears that all available cash flow is consistently transferred from AEWM to Symmetry as it becomes available. On this point we note that the amounts calculated as owed to Symmetry are in question and, further, the amounts being paid to Symmetry relate to intercompany debts that appear to be subordinate to Romspen's security.

Asset Information

I am attaching emails from Gamage dated January 5, 2021 and January 27, 2021 which provides additional detail on the assets of AEWM/Eco that we have been seeking. Since we have not received any other previous asset lists, we are unable to comment as to whether this constitutes the entire list of assets owned. One email from Gamage advises that Absolute does not own any assets, however, the January 27th email provides contradictory information. We have sought clarity around this.

Please let me know if you have any questions with respect to the information outlined above (including whether you would like copies of any of the source documents). We will continue to monitor the financial information as it becomes available and provide updates with respect to same.

Regards,

Karen Aylward, CIRP, LIT
VICE PRESIDENT

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Please be advised that our **MNP office is open to the public** under safety protocols. Due to the City of Edmonton bylaw, effective August 1, 2020, **masks are required** on our floor that is open to the public, and during in-person meetings at the MNP office. We have taken social distancing measures to ensure the health and safety of our team members and our clients. Many on our team are continuing to work remotely. We continue to accept electronic delivery of files and documents via the Client Upload or Client Portal links on our website. Please contact your MNP advisor for assistance if

required.

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.

SCHEDULE 2

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 bed 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 AEWM. 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

SCHEDULE “A”

Date	Comment	Source #	JE#	Debits	Credits	Balance
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Jan 10, 2020	Telus	743-01.10.2020	J34	68.25	-	250,485.04
Jan 18, 2020	Rogers	01.18.2020	J38	60.31	-	250,545.35
31-Jan-20	Management Fee	6%		2,205.92	-	252,751.27
31-Jan-20	Sales Fee	5%		-	-	252,751.27
31-Jan-20	Expertise Fee	30.50%		11,213.44	-	263,964.71
Feb 18, 2020	Rogers	02.18.2020	J39	60.31	-	264,025.02
Feb 19, 2020	Fund Transfer from Absolute USD ac...	Bk Stmt	J45	-	49.19	263,975.83
Jan 31, 2020	Fund Transfer to Absolute	Fund Tranfer	J78	10,000.00	-	273,975.83
Feb 04, 2020	Fund Transfer to Absolute	Fund Transfer	J109	2,500.00	-	276,475.83
Feb 27, 2020	Fund Transfer to Absolute	Fund Transfer	J110	2,500.00	-	278,975.83
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29-Feb-20	Management Fee	6%		2,859.85	-	295,835.68
29-Feb-20	Sales Fee	5%		-	-	295,835.68
29-Feb-20	Expertise Fee	30.50%		14,537.58	-	310,373.26
Mar 06, 2020	Fund Trnsfer from Absolute	Fund Transfer	J112	-	1,200.00	309,173.26
Feb 03, 2020	SAM paid Blue Cross	Blue Cross	J119	3,067.67	-	312,240.93
Feb 28, 2020	SAm paid Telus	Paid by SAM	J135	195.83	-	312,436.76
Mar 02, 2020	SAM paid Blue Cross	Blue Cross	J138	3,476.22	-	315,912.98
Feb 09, 2020	Absolute Visa charges paid by SAM/...	CIBC Visa	J161	1,225.09	-	317,138.07
Mar 12, 2020	Fund Transfer to Absolute	Fund Transfer	J163	9,000.00	-	326,138.07
Mar 19, 2020	Fund Transfer from SAM to Absolute	Fund Transfer	J185	3,541.05	-	329,679.12
Mar 18, 2020	Rogers	03.18.2020	J188	60.31	-	329,739.43
31-Mar-20	Management Fee	6%		5,803.94	-	335,543.37
31-Mar-20	Sales Fee	5%		-	-	335,543.37
31-Mar-20	Expertise Fee	30.50%		29,503.35	-	365,046.72
Apr 18, 2020	Rogers	04.18.2020	J204	60.31	-	365,107.03
Mar 31, 2020	Symmetry paid Absolute office internet	Telus	J206	152.25	-	365,259.28
Mar 31, 2020	Fund Transfer from Absolute to Sym...	Fund Transfer	J222	-	250.00	365,009.28
May 04, 20...	Transfer with Bearvfoot and Absolute...	Transfer	J238	-	35,000.00	330,009.28
May 01, 20...	Symm paid Blue Cross	Blue Cross	J245	1,405.35	-	331,414.63
May 01, 20...	Fund Transfer from Sym to Abs	Fund Transfer	J246	15,000.00	-	346,414.63
Apr 28, 2020	Symmetry paid Telus for Absolute	Telus	J252	126.00	-	346,540.63
Apr 13, 2020	Fund Transfer from Abs to Sym	Fund Transfer	J265	-	500.00	346,040.63
Apr 01, 2020	Symmetry paid for Absolute Blue Cro...	Blue Cross	J269	1,497.60	-	347,538.23
30-Apr-20	Management Fee	6%		4,915.17	-	352,453.40
30-Apr-20	Sales Fee	5%		-	-	352,453.40
30-Apr-20	Expertise Fee	30.50%		24,985.47	-	377,438.87
May 06, 20...	Fund transfer from Abs to Symm	Fund Transfer	J301	-	5,000.00	372,438.87
Feb 21, 2020	Symmetry damage deposit in Abs ac...	Rent Deposit	J303	-	12,355.00	360,083.87
Feb 24, 2020	Symmetry damage deposit in Abs ac...	Damage deposit R...	J304	12,355.00	-	372,438.87
Jan 31, 2020	Management Rio January Absolute	Rio Fee	J310	9,446.00	-	381,884.87
Feb 29, 2020	Management Rio February Absolute	Rio Fee	J311	9,446.00	-	391,330.87
Mar 31, 2020	Management Rio March Absolute	Rio Fee	J312	9,446.00	-	400,776.87
Apr 30, 2020	Management Rio April Absolute	Rio Fee	J313	9,446.00	-	410,222.87
May 22, 20...	Transfer owed by Rio in Absolute to ...	Rio to Symmetry	J316	-	25,223.80	384,999.07
May 18, 20...	Rogers	05.18.2020	J334	84.52	-	385,083.59
May 31, 20...	Management Rio May Absolute	Rio Fee	J338	9,100.00	-	394,183.59
May 31, 20…	Management Fee	6%		4,245.84	-	398,429.43
May 31, 20…	Sales Fee	5%		-	-	398,429.43
May 31, 20…	Expertise Fee	30.50%		21,583.00	-	420,012.43
Jun 12, 2020	Rio in Abs transfer to Symmetry	To Rio	J342	-	14,000.00	406,012.43
Jun 18, 2020	Rio in Abs to Symmetry	To Rio	J343	-	19,000.00	387,012.43
Jun 18, 2020	Rogers	06.18.2020	J346	76.06	-	387,088.49
May 27, 20...	Fund transfer from Absolute	Fund Transfer	J352	-	1,650.00	385,438.49
May 28, 20...	Symmetry paid for Absolute telus	Telus	J354	126.00	-	385,564.49
Jun 15, 2020	Cheque for total amount from Absolu...	Cheque Deposit	J364	-	20,328.45	365,236.04
Jun 29, 2020	Symmetry paid for Absolute internet	Telus	J371	126.00	-	365,362.04
Jun 15, 2020	Fund transfer from Symmetry to Abs...	Fund Transfer	J375	20,328.45	-	385,690.49
Jun 01, 2020	Symmetry paid for Blue Cross	Blue Cross	J379	1,053.12	-	386,743.61
30-Jun-20	Management Fee	6%		6,205.62	-	392,949.23
30-Jun-20	Sales Fee	5%		-	-	392,949.23

30-Jun-20	Expertise Fee	30.50%		31,545.24	-	424,494.47
Jul 02, 2020	Symmetry paid Absolute blue cross	Blue Cross	J381	2,240.22	-	426,734.69
Jul 18, 2020	Rogers	07.18.2020	J392	80.52	-	426,815.21
Jul 29, 2020	Fund transfer from Absolute	Fund Transfer	J420	-	2,246.00	424,569.21
Jul 28, 2020	Symmetry paid Absolute telus	Absolute Telus	J421	126.00	-	424,695.21
Jul 28, 2020	Fund transfer from Absolute	Fund Transfer	J422	-	23,800.00	400,895.21
Jul 17, 2020	Fund transfer to Absolute	Fund Transfer	J424	13,800.00	-	414,695.21
Jul 16, 2020	Fund transfer to Absolute	Fund Transfer	J425	10,000.00	-	424,695.21
Jul 02, 2020	Absolute paid Leticia's expense	Leticia Matinez	J440	-	214.20	424,481.01
Jun 22, 2020	Absolute paid for removal of Symmet...	City Neon	J441	-	1,023.75	423,457.26
May 17, 20...	Absolute paid portion of visa, panam...	Panama Wifi	J442	-	65.03	423,392.23
Apr 22, 2020	Absolute paid for Symmetry connect ...	Connect Energy	J443	-	1,057.46	422,334.77
31-Jul-20	Management Fee	6%		6,850.30	-	429,185.07
31-Jul-20	Sales Fee	5%		-	-	429,185.07
31-Jul-20	Expertise Fee	30.50%		34,822.37	-	464,007.44
Aug 01, 2020	Rio in abs to Symmetry	To Rio	J445	-	12,772.77	451,234.67
Aug 31, 2020	Absolute Environmental Waste Mana...	1093	J446	3,033.77	-	454,268.44
Aug 19, 2020	transfer from symmetry	fund transfer	J479	-	31,000.00	423,268.44
31-Aug-20	Management Fee	6%		6,682.58	-	429,951.02
31-Aug-20	Sales Fee	5%		-	-	429,951.02
31-Aug-20	Expertise Fee	30.50%		33,969.77	-	463,920.79
Sep 03, 2020	transfer from Abs to symmetry	banking tranfer	J509	-	4,600.00	459,320.79
Sep 25, 2020	Transfer from absolute/ Eco to Sym...	banking	J517	-	6,000.00	453,320.79
Sep 30, 2020	transfer from Absolute to SAM	banking #	J528	4,400.00	-	457,720.79
Sep 30, 2020	Management Fee	6%		4,978.80	-	462,699.59
Sep 30, 2020	Sales Fee	5%		-	-	462,699.59
Sep 30, 2020	Expertise Fee	30.50%		25,308.92	-	488,008.51
Oct 08, 2020	transfer from absolute to symmetry	banking#	J557	-	85,000.00	403,008.51
Oct 06, 2020	transfer from absolute to symmetry	banking#	J559	-	5,000.00	398,008.51
Oct 06, 2020	paid by symmetry for Absolute	inter co. exp	J619	940.95	-	398,949.46
Oct 08, 2020	paid to Fibernatics for Absolute	inter co expenese	J637	580.92	-	399,530.38
31-Oct-20	Management Fee	6%		5,817.91	-	405,348.29
31-Oct-20	Sales Fee	5%		-	-	405,348.29
31-Oct-20	Expertise Fee	30.50%		29,574.39	-	434,922.68
Nov 06, 2020	transfer from Absolute to Symmetry	inter co transfer	J697	-	30,000.00	404,922.68
Nov 03, 2020	transfer from absolute to symmetry	inter co transfer	J699	-	5,000.00	399,922.68
Nov 23, 2020	Transfer from Absolute to symmetry	Inter co transfer	J712	-	10,000.00	389,922.68
Nov 25, 2020	transfer from Absolute to Symmetry	inter co transfer	J719	-	15,000.00	374,922.68
Nov 10, 2020	paid for whiterock for absolute	inter co expenses	J735	772.91	-	375,695.59
30-Nov-20	Management Fee	6%		3,923.43	-	379,619.02
30-Nov-20	Sales Fee	5%		-	-	379,619.02
30-Nov-20	Expertise Fee	30.50%		19,944.10	-	399,563.12

SCHEDULE 3

Writer's Direct Line: (780) 969-1400
Writer's Email: karen.aylward@mnp.ca

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

SCHEDULE "A"

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.
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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**
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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;
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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:

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- 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;
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- 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 AEWM. 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

SCHEDULE “A”

Date	Comment	Source #	JE#	Debits	Credits	Balance
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29-Feb-20	Sales Fee	5%		-	-	295,835.68
29-Feb-20	Expertise Fee	30.50%		14,537.58	-	310,373.26
Mar 06, 2020	Fund Trnsfer from Absolute	Fund Transfer	J112	-	1,200.00	309,173.26
Feb 03, 2020	SAM paid Blue Cross	Blue Cross	J119	3,067.67	-	312,240.93
Feb 28, 2020	SAm paid Telus	Paid by SAM	J135	195.83	-	312,436.76
Mar 02, 2020	SAM paid Blue Cross	Blue Cross	J138	3,476.22	-	315,912.98
Feb 09, 2020	Absolute Visa charges paid by SAM/...	CIBC Visa	J161	1,225.09	-	317,138.07
Mar 12, 2020	Fund Transfer to Absolute	Fund Transfer	J163	9,000.00	-	326,138.07
Mar 19, 2020	Fund Transfer from SAM to Absolute	Fund Transfer	J185	3,541.05	-	329,679.12
Mar 18, 2020	Rogers	03.18.2020	J188	60.31	-	329,739.43
31-Mar-20	Management Fee	6%		5,803.94	-	335,543.37
31-Mar-20	Sales Fee	5%		-	-	335,543.37
31-Mar-20	Expertise Fee	30.50%		29,503.35	-	365,046.72
Apr 18, 2020	Rogers	04.18.2020	J204	60.31	-	365,107.03
Mar 31, 2020	Symmetry paid Absolute office internet	Telus	J206	152.25	-	365,259.28
Mar 31, 2020	Fund Transfer from Absolute to Sym...	Fund Transfer	J222	-	250.00	365,009.28
May 04, 20...	Transfer with Bearvfoot and Absolute...	Transfer	J238	-	35,000.00	330,009.28
May 01, 20...	Symm paid Blue Cross	Blue Cross	J245	1,405.35	-	331,414.63
May 01, 20...	Fund Transfer from Sym to Abs	Fund Transfer	J246	15,000.00	-	346,414.63
Apr 28, 2020	Symmetry paid Telus for Absolute	Telus	J252	126.00	-	346,540.63
Apr 13, 2020	Fund Transfer from Abs to Sym	Fund Transfer	J265	-	500.00	346,040.63
Apr 01, 2020	Symmetry paid for Absolute Blue Cro...	Blue Cross	J269	1,497.60	-	347,538.23
30-Apr-20	Management Fee	6%		4,915.17	-	352,453.40
30-Apr-20	Sales Fee	5%		-	-	352,453.40
30-Apr-20	Expertise Fee	30.50%		24,985.47	-	377,438.87
May 06, 20...	Fund transfer from Abs to Symm	Fund Transfer	J301	-	5,000.00	372,438.87
Feb 21, 2020	Symmetry damage deposit in Abs ac...	Rent Deposit	J303	-	12,355.00	360,083.87
Feb 24, 2020	Symmetry damage deposit in Abs ac...	Damage deposit R...	J304	12,355.00	-	372,438.87
Jan 31, 2020	Management Rio January Absolute	Rio Fee	J310	9,446.00	-	381,884.87
Feb 29, 2020	Management Rio February Absolute	Rio Fee	J311	9,446.00	-	391,330.87
Mar 31, 2020	Management Rio March Absolute	Rio Fee	J312	9,446.00	-	400,776.87
Apr 30, 2020	Management Rio April Absolute	Rio Fee	J313	9,446.00	-	410,222.87
May 22, 20...	Transfer owed by Rio in Absolute to ...	Rio to Symmetry	J316	-	25,223.80	384,999.07
May 18, 20...	Rogers	05.18.2020	J334	84.52	-	385,083.59
May 31, 20...	Management Rio May Absolute	Rio Fee	J338	9,100.00	-	394,183.59
May 31, 20...	Management Fee	6%		4,245.84	-	398,429.43
May 31, 20...	Sales Fee	5%		-	-	398,429.43
May 31, 20...	Expertise Fee	30.50%		21,583.00	-	420,012.43
Jun 12, 2020	Rio in Abs transfer to Symmetry	To Rio	J342	-	14,000.00	406,012.43
Jun 18, 2020	Rio in Abs to Symmetry	To Rio	J343	-	19,000.00	387,012.43
Jun 18, 2020	Rogers	06.18.2020	J346	76.06	-	387,088.49
May 27, 20...	Fund transfer from Absolute	Fund Transfer	J352	-	1,650.00	385,438.49
May 28, 20...	Symmetry paid for Absolute telus	Telus	J354	126.00	-	385,564.49
Jun 15, 2020	Cheque for total amount from Absolu...	Cheque Deposit	J364	-	20,328.45	365,236.04
Jun 29, 2020	Symmetry paid for Absolute internet	Telus	J371	126.00	-	365,362.04
Jun 15, 2020	Fund transfer from Symmetry to Abs...	Fund Transfer	J375	20,328.45	-	385,690.49
Jun 01, 2020	Symmetry paid for Blue Cross	Blue Cross	J379	1,053.12	-	386,743.61
30-Jun-20	Management Fee	6%		6,205.62	-	392,949.23
30-Jun-20	Sales Fee	5%		-	-	392,949.23

30-Jun-20	Expertise Fee	30.50%		31,545.24	-	424,494.47
Jul 02, 2020	Symmetry paid Absolute blue cross	Blue Cross	J381	2,240.22	-	426,734.69
Jul 18, 2020	Rogers	07.18.2020	J392	80.52	-	426,815.21
Jul 29, 2020	Fund transfer from Absolute	Fund Transfer	J420	-	2,246.00	424,569.21
Jul 28, 2020	Symmetry paid Absolute telus	Absolute Telus	J421	126.00	-	424,695.21
Jul 28, 2020	Fund transfer from Absolute	Fund Transfer	J422	-	23,800.00	400,895.21
Jul 17, 2020	Fund transfer to Absolute	Fund Transfer	J424	13,800.00	-	414,695.21
Jul 16, 2020	Fund transfer to Absolute	Fund Transfer	J425	10,000.00	-	424,695.21
Jul 02, 2020	Absolute paid Leticia's expense	Leticia Matinez	J440	-	214.20	424,481.01
Jun 22, 2020	Absolute paid for removal of Symmet...	City Neon	J441	-	1,023.75	423,457.26
May 17, 20...	Absolute paid portion of visa, panam...	Panama Wifi	J442	-	65.03	423,392.23
Apr 22, 2020	Absolute paid for Symmetry connect ...	Connect Energy	J443	-	1,057.46	422,334.77
31-Jul-20	Management Fee	6%		6,850.30	-	429,185.07
31-Jul-20	Sales Fee	5%		-	-	429,185.07
31-Jul-20	Expertise Fee	30.50%		34,822.37	-	464,007.44
Aug 01, 2020	Rio in abs to Symmetry	To Rio	J445	-	12,772.77	451,234.67
Aug 31, 2020	Absolute Environmental Waste Mana...	1093	J446	3,033.77	-	454,268.44
Aug 19, 2020	transfer from symmetry	fund transfer	J479	-	31,000.00	423,268.44
31-Aug-20	Management Fee	6%		6,682.58	-	429,951.02
31-Aug-20	Sales Fee	5%		-	-	429,951.02
31-Aug-20	Expertise Fee	30.50%		33,969.77	-	463,920.79
Sep 03, 2020	transfer from Abs to symmetry	banking tranfer	J509	-	4,600.00	459,320.79
Sep 25, 2020	Transfer from absolute/ Eco to Sym...	banking	J517	-	6,000.00	453,320.79
Sep 30, 2020	transfer from Absolute to SAM	banking #	J528	4,400.00	-	457,720.79
Sep 30, 2020	Management Fee	6%		4,978.80	-	462,699.59
Sep 30, 2020	Sales Fee	5%		-	-	462,699.59
Sep 30, 2020	Expertise Fee	30.50%		25,308.92	-	488,008.51
Oct 08, 2020	transfer from absolute to symmetry	banking#	J557	-	85,000.00	403,008.51
Oct 06, 2020	transfer from absolute to symmetry	banking#	J559	-	5,000.00	398,008.51
Oct 06, 2020	paid by symmetry for Absolute	inter co. exp	J619	940.95	-	398,949.46
Oct 08, 2020	paid to Fibernatics for Absolute	inter co expenese	J637	580.92	-	399,530.38
31-Oct-20	Management Fee	6%		5,817.91	-	405,348.29
31-Oct-20	Sales Fee	5%		-	-	405,348.29
31-Oct-20	Expertise Fee	30.50%		29,574.39	-	434,922.68
Nov 06, 2020	transfer from Absolute to Symmetry	inter co transfer	J697	-	30,000.00	404,922.68
Nov 03, 2020	transfer from absolute to symmetry	inter co transfer	J699	-	5,000.00	399,922.68
Nov 23, 2020	Transfer from Absolute to symmetry	Inter co transfer	J712	-	10,000.00	389,922.68
Nov 25, 2020	transfer from Absolute to Symmetry	inter co transfer	J719	-	15,000.00	374,922.68
Nov 10, 2020	paid for whiterock for absolute	inter co expenses	J735	772.91	-	375,695.59
30-Nov-20	Management Fee	6%		3,923.43	-	379,619.02
30-Nov-20	Sales Fee	5%		-	-	379,619.02
30-Nov-20	Expertise Fee	30.50%		19,944.10	-	399,563.12

SCHEDULE "B"

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

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 sighed 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 ownes 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 ands 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 many 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 suppled 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

SCHEDULE "C"

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

DIRECT 780.969.1400
PH. 780.455.1155
FAX 780.409.5415
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10235 101St N.W.
Suite 1300
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T5J 3G1
mnpdebt.ca

MNP LTD
Member of Praxity, AISBL
Global Alliance of Independent Firms

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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mnpdebt.ca

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From: Karen Aylward
Sent: June 10, 2021 11:10 AM
To: David Gamage <dgamage@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

DIRECT 780.969.1400
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FAX 780.409.5415
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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: June 1, 2021 2:33 PM
To: David Gamage <dgamage@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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SCHEDULE "D"

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
VICE PRESIDENT

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Member of Praxity, AISBL
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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
VICE PRESIDENT

DIRECT 780.969.1400
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mnpdebt.ca

MNP LTD
Member of Praxity, AISBL
Global Alliance of Independent Firms

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

SCHEDULE 4

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

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>
VICE PRESIDENT

DIRECT 780.969.1400
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FAX 780.409.5415
TOLL FREE 1.866.465.1155
10235 101St N.W.
Suite 1300
Edmonton, AB
T5J 3G1
mnpdebt.ca

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<image010.jpg>

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From: Karen Aylward
Sent: September 29, 2021 9:13 AM
To: David Gamage <dgamage@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, LIT <image006.jpg>

VICE PRESIDENT

DIRECT 780.969.1400
PH. 780.455.1155
FAX 780.409.5415
TOLL FREE 1.866.465.1155
10235 101St N.W.
Suite 1300
Edmonton, AB
T5J 3G1
mnpdebt.ca

<image007.png> <image008.png> <image009.png>

<image010.jpg>

Please be advised that our **MNP office is open to the public** under safety protocols. Due to the City of Edmonton bylaw, effective August 1, 2020, **masks are required** on our floor that is open to the public, and during in-person meetings at the MNP office. We have taken social distancing measures to ensure the health and safety of our team members and our clients. Many on our team are continuing to work remotely. We continue to accept electronic delivery of files and documents via the Client Upload or Client Portal links on our website. Please contact your MNP advisor for assistance if required.

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.

SCHEDULE 5


BARION


GAS REDUCING STATION
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GAS REGULATING STATION
UN-1977


Hi


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&
ADMINISTRATION
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WARNING

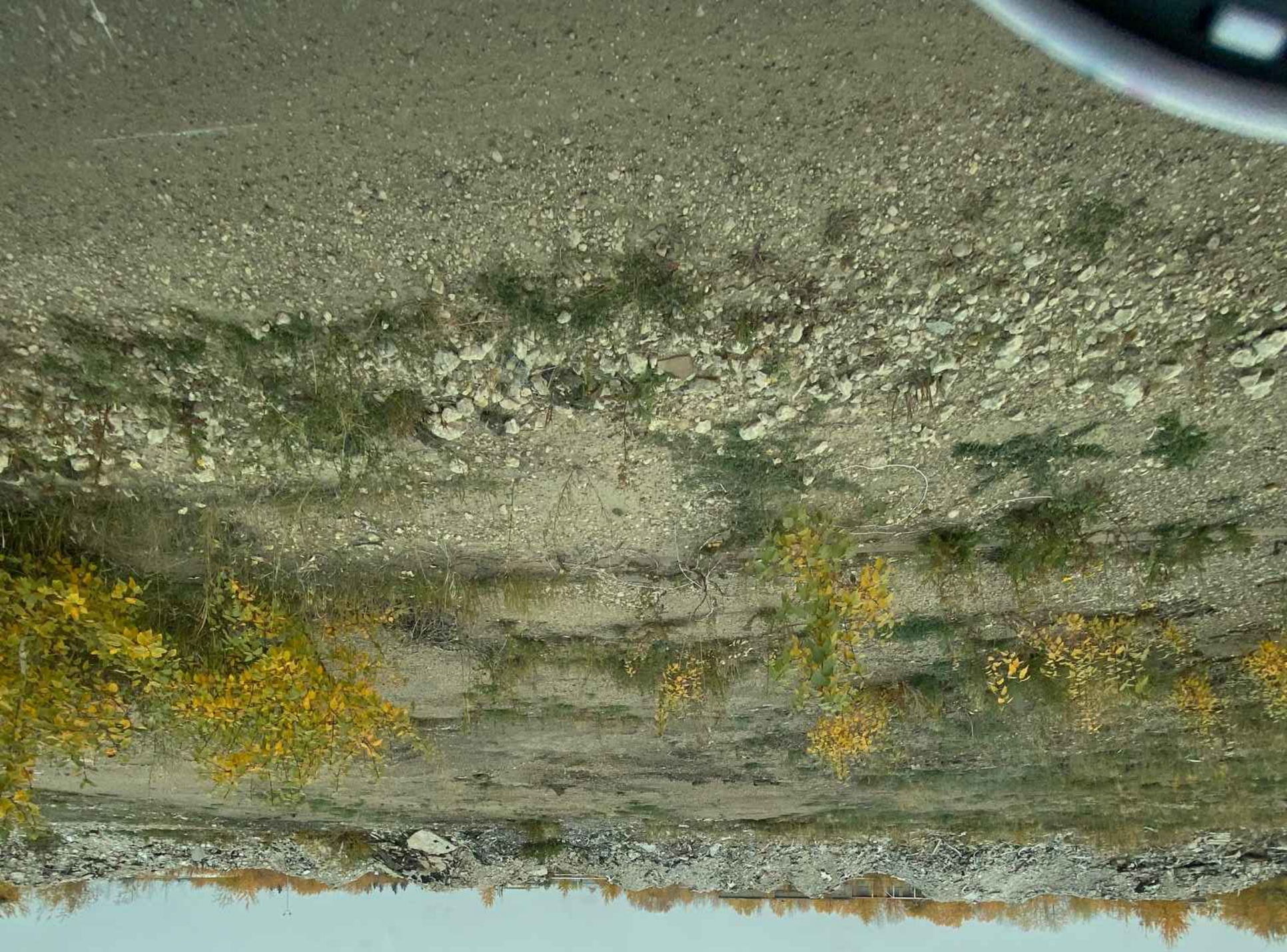
WARNING
NO DRIVERS
ALLOWED
INSIDE WAREHOUSE


EXIT


EXIT


METHANOL
SYNTHESIS
UNIT


METHANOL
MAINTENANCE
BUILDING



ATCO
ABSOLUTE
ENVIRONMENTAL
NO SMOKING
EYE WASH

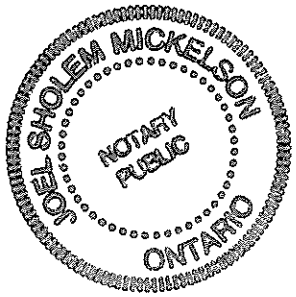

ATCO
ABSOLUTE
ENVIRONMENTAL
WASTE MANAGEMENT
NO
SMOKING
EYE WASH


2


2

This is EXHIBIT "N" referred to
in the Affidavit of Wesley Roitman
Sworn before me this 29th day of July, 2022

A Notary Public in and for
the Province of Ontario



STATEMENT OF INDEBTEDNESS

ROMSPEN

ACCOUNT NO.	**8662**
STATEMENT DATE	**7/21/2022**

BORROWER

3443 Zen Garden Limited Partnership
4210 Spicewood Springs Road, Suite 205
Austin, TX 78759

STATEMENT SUMMARY

Total Indebtedness	**$91,415,581.97**
Effective Date	**7/21/2022**

After 7/21/2022 interest accrues at $37,133.11 per day until 7/31/2022. Loan compounds, therefore per diem changes each month.

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Description	Charges	Credits	Balance
Loan Status Pre-Acquisition			$122,707,420.52
Acquisition: Credit Bid 10/16/2020		($45,000,000.00)	$77,707,420.52
Post-Acquisition @ 7/21/2022	$20,973,616.86	($7,265,455.41)	$91,415,581.97

THIS STATEMENT HAS BEEN PREPARED FOR KEVIN BARR AND ANY OTHER AUTHORIZED INDIVIDUAL OF BORDEN LADNER GERVAIS AND MAY NOT BE USED BY ANY OTHER INDIVIDUAL OR FOR ANY OTHER PURPOSE WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LENDER.

ALL FUNDS ARE EXPRESSED IN US DOLLARS.

E. & O. E.
HST Registration No. 135897494