

COURT FILE NUMBER     643 of 2016

COURT                         QUEEN'S BENCH FOR SASKATCHEWAN  
                                     IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE         SASKATOON

APPLICANTS                101133330 SASKATCHEWAN LTD. and  
                                     101149825 SASKATCHEWAN LTD.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF 101133330 SASKATCHEWAN LTD. and 101149825 SASKATCHEWAN LTD.

**FIFTH SUPPLEMENTARY AFFIDAVIT OF JOHN ORR**

I, JOHN ORR, of the City of Saskatoon, in the Province of Saskatchewan, businessman,  
MAKE OATH AND SAY THAT:

1. I am the sole director, a shareholder, and the president of 101133330 Saskatchewan Ltd. ("33330") and 101149825 Saskatchewan Ltd. ("825") (33330 and 825 are sometimes hereafter referred to collectively as the "**Companies**"), such that I have personal knowledge of the facts and matters hereinafter deposed, except where stated to be on information and belief and, where so stated, I believe the same to be true.

2. Unless otherwise defined, capitalized terms in this affidavit shall have the meanings given to them in my Affidavits sworn May 12, 2016, June 6, 2016, June 9, 2016, August 12, 2016, and December 16, 2016, as well as the Affidavits of David Calyniuk sworn August 12, December 16, 2016, and May 23, 2017 (the "**Third Calyniuk Affidavit**").

**I. OVERVIEW**

3. On May 20, 2016, the Companies sought and this Honourable Court granted:

- (a) an Initial Order under the CCAA ordering, among other things, a stay of proceedings against the Companies until and including June 19, 2016; and
  - (b) a DIP Facility Order authorizing and empowering the Companies to obtain and borrow under a credit facility from Pillar Capital Corp.
- 4. Pursuant to the Order of the Honourable Justice Meschishnick dated June 13, 2016, the stay of proceedings granted by the Initial Order was extended until and including August 31, 2016. The stay of proceedings granted by the Initial Order was extended further by the Order of the Honourable Justice Meschishnick dated August 17, 2016 until and including January 1, 2017.
- 5. On December 22, 2016, the Companies applied, and the Honourable Justice Meschishnick granted, an order for:
  - (a) a third extension of the stay of proceedings until and including June 12, 2017 (the “**Third Extension**”); and
  - (b) authorizing and empowering the Companies to obtain and borrow additional funds under a credit facility from a lender satisfactory to the Companies.
- 6. Since the Third Extension, the Companies’ restructuring efforts have primarily involved 33330 and North Ridge working to:
  - (a) determine the ability of the City of Regina’s existing infrastructure to accommodate further development on the Campus;
  - (b) complete the necessary surveying and drafting work to demonstrate to the City of Regina or a potential purchaser that there a number ways in which the Campus could be subdivided;
  - (c) conceptualize and implement a strategy for increasing the value of the Campus; and
  - (d) retain the appropriate professionals to provide property management, analysis, and remediation work to the Orr Centre in an effort to increase the value of the same.

7. This Affidavit provides an overview of the activities undertaken by the Companies since the Third Extension.

## **II. 825 LAND UPDATE**

8. Since the Third Extension, 825, its counsel, and North Ridge have continued to participate in conference calls with Firm Capital and its legal counsel, who also represents Pa in these proceedings, for the purposes of providing updates in relation to the 825 Land.

9. As explained in the Third Calyniuk Affidavit, the progress made since the Third Extension primarily involved Dream working with the City to complete the Remaining Studies, while also continuing the sanitary study. With the remaining steps under the control of the lead developer, Dream, 825 has essentially been in a holding pattern.

10. The professional advice received from North Ridge in advance of the Third Extension application was that the initial review period for the preliminary Amended Willows Concept Plan would take between six and eight months to complete, following which the final submission would be made to the City. With the sanitary study and Market Demand Study estimated to be complete by late summer, the process is still within that initial schedule.

11. Dream has indicated that it anticipates having the Amended Willows Concept Plan before the City council for final approval in the first or second quarter of 2018. From the perspective of the 825 Land development process, an extension of the present stay period is therefore necessary. For the reasons more particularly described below, the Companies are seeking an extension to December 24, 2017, as reflected in the 31 week cash flow projections appended to the Fifth Report of the Monitor.

### **III. THE ORR CENTRE AND CAMPUS**

#### **A. Overview**

12. A detailed discussion of North Ridge's work since the Third Extension appears in the Third Calyniuk Affidavit. As a result of the progress made to date, 33330 has adopted a two-pronged strategy to improve the overall value of the Campus and Orr Centre itself. Given the magnitude of the debt associated with these assets, however, refinancing is not anticipated to be possible, even with an increase in value, such that the present stakeholders may be better served by a sale and claims process.

13. What follows is intended to supplement the discussion in the Third Calyniuk Affidavit and provide this Honourable Court with an explanation of the additional steps that have been taken by 33330 to reduce the Orr Centre's expenses and improve cash flows, which will make the asset a more attractive investment opportunity for an eventual purchaser.

#### **B. Retention of Third Party Property Management**

14. North Ridge's work as the Orr Centre Owner's Consultant was completed in different stages. It started by analyzing the Campus as a whole, and conceptualized a strategy for improving the bare land value of the same. North Ridge then turned its attention to the Orr Centre itself and recommended that the operating expenses be reduced by changing the nature of the lease agreements from gross leases to net leases.

15. North Ridge's view is that the value of the property would be increased by retaining a reputable third party property manager to oversee all aspects of the day-to-day management of the entire project. The costs could be charged back to the tenants as part of their proportionate share of the Orr Centre's operating costs. Third party property management was something that the largest secured creditor, Affinity, had indicated was important from its perspective as well. Accordingly, even though the key tenants have

not yet been willing to renegotiate net leases, North Ridge nevertheless analyzed the cost implications of retaining third party property management and reducing 33330's payroll accordingly.

16. The results were favourable, and North Ridge was therefore instructed to negotiate a property management agreement with CIR Commercial Realty Inc. ("**Colliers**") to assume control of managing the Orr Centre. A copy of the agreement ultimately signed is attached as **Exhibit "A"** (the "**Property Management Agreement**").

17. As indicated in Schedule "A" of the Property Management Agreement, there are still certain costs and scopes of work that are still being negotiated. By way of explanation, 33330 has a fulltime employee onsite acting as the Orr Centre's day-to-day building operator. Were that arrangement to continue, Colliers would provide additional training and direction to that individual at an hourly rate. Once the employee was trained, he would take direction from Colliers, but remain an employee of 33330. The alternative posed would be a dedicated Colliers building supervisor. Colliers is scheduled to assume control of the Orr Centre on June 1, 2017, and this aspect of the arrangement has yet to be finalized as of the swearing of this Affidavit.

18. In either event, the retention of Colliers to manage the property is a positive step towards improving the day-to-day operation of the Orr Centre. As the Orr Centre Owner's Consultant, North Ridge will continue to provide advice and representation to 33330 in relation to prospective leasing arrangements, necessary remedial work, and recommended demolition or capital improvements to the facilities. 33330 is already paying North Ridge to perform this work and therefore it is not anticipated that such tasks will fall within the ultimate scope of work that is currently being negotiated with Colliers.

19. As a result of 33330's execution of the Property Management Agreement, the scope of my personal employment with 33330 has been significantly reduced. Rather than continue as an employee of the corporation, I have resigned and entered into an independent contractor agreement with 33330, pursuant to which my role is limited to

providing direction to the Companies' legal team and consultants, cash flow preparations, and all general management necessary for 33330 and 825 to successfully navigate the CCAA proceedings.

20. The Property Management Agreement contemplates all of the Orr Centre's grounds keeping being subcontracted, such that the fulltime groundskeeper's employment has been terminated as well.

#### **IV. ADDITIONAL TIME AND DIP REQUIRED**

21. With respect to the Orr Centre and Campus specifically, the Companies require an extension of the stay of proceedings to allow North Ridge (and its consultants) to complete the studies and submit the same along with 33330's application to rezone the Campus. North Ridge estimates that the City of Regina's response could take between six and eight months, which is similar to the timeframe in which Dream expects to have the Amended Willows Concept Plan approved.

22. Ideally, the Companies would be requesting a stay extension of eight months to allow the maximum amount of time for the rezoning and concept plan amendments to be approved. The cash flow situation is not projected to support an extension of that length, however, such that the Companies are suggesting an extension of the stay period until December 24 (on the understanding that the application would need to be scheduled in advance) to coincide with the end of the present 31 week cash flows.

23. As shown in the 31 week cash flows, the Companies are estimating a deficiency of \$483,062.00 by December 24, 2017. Consequently, the Companies are respectfully requesting this Honourable Court grant a \$500,000.00 increase to the present DIP Charge so that the Companies may seek additional funding for their ongoing restructuring efforts.

24. To provide additional context to the present cash flow projections and request to increase the DIP Charge:

- (a) line items 21-27 are the projected 33330 development costs to be incurred in relation to rezoning the Campus and improving the Orr Centre, and include, among others, the following:
  - (i) Wright Construction's estimated costs of demolishing the Connaught Dorm and Lewvan Dorm (i.e., line 22 "Demolition Costs"), which have been recommended by North Ridge;
  - (ii) Welldone Mechanical's estimated costs for having repaired the U of S HVAC unit and conducting its initial assessment, as well as the Companies' rough estimate of the costs to be incurred in relation to the remaining HVAC equipment (i.e., line 23 "HVAC Costs"); and
  - (iii) Wright Construction's estimated costs of completing the repairs to the SALPN and daycare units, as well as a rough estimate of the costs to be incurred for additional repairs going forward (i.e., line 24 "Renovations and Repairs");
- (b) the Companies, their legal team, and North Ridge have had an ongoing dialogue with Affinity (in consultation with the Monitor) with respect to the development and implementation of strategies for increasing the value of the Orr Centre and Campus;
- (c) Affinity has expressed support for the rezoning application, and is aware of the repairs that are presently underway, North Ridge's recommendations that the Connaught Dorm and Lewvan Dorm be demolished, and Wright Construction's estimated costs of completing the same; and
- (d) Affinity has indicated that it supports the requested increase to the DIP Charge.

25. In the Companies' view, it is necessary that the present efforts to improve Orr Centre facilities and cash flows continue pending the anticipated approval of 33330's rezoning application for the Campus and 825's inclusion into the Willows by way of the Amended Willows Concept Plan. This plan has the greatest potential to maximize the proceeds needed to fund an acceptable plan of arrangement and compromise with the Companies' creditors, both secured and unsecured.

26. At the Companies direction, a term sheet was prepared for a secondary DIP



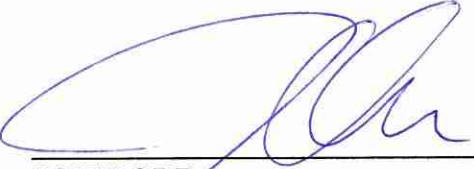
Facility (the “**Secondary DIP Facility Term Sheet**”). A copy of the Secondary DIP Facility Term Sheet is attached as **Exhibit “B.”** The Companies are actively seeking the commitment of a lender at this time, and hope to be in a position to present an executed DIP Facility Term Sheet at the hearing of this matter.

**VI. RELIEF REQUESTED**

27. The Companies are therefore seeking an extension of the current stay of proceedings until December 24, 2017, and a \$500,000.00 increase to the DIP Charge.

28. I swear this affidavit in support of the application that is presently before this Honourable Court.

SWORN (OR AFFIRMED) BEFORE ME )  
at the City of Saskatoon, in the Province of )  
Saskatchewan, this 24<sup>th</sup> day of May, 2017. )  
)  
)  
)  
A COMMISSIONER FOR OATHS for  
Saskatchewan - Being a Solicitor.

  
\_\_\_\_\_  
**JOHN ORR**

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

Name of firm:	McDougall Gauley LLP
Name of lawyer in charge of file:	Ian A. Sutherland
Address of legal firm:	500-616 Main Street Saskatoon, SK S7H 0J6
Telephone / fax number:	(306) 665-5417 / (306) 652-1323
Email address (if any):	<u><a href="mailto:isutherland@mcdougallgauley.com">isutherland@mcdougallgauley.com</a></u>



THIS IS EXHIBIT "A" REFERRED TO IN THE  
FIFTH SUPPLEMENTARY AFFIDAVIT OF  
JOHN ORR SWORN BEFORE ME AT SASKATOON,  
IN THE PROVINCE OF SASKATCHEWAN,  
THIS 24<sup>TH</sup> DAY OF MAY, 2017.

*[Signature]*  
A COMMISSIONER FOR OATHS FOR  
SASKATCHEWAN  
Being a Solicitor



**Orr Centre**  
4400 4th Avenue  
Regina, Saskatchewan

**MANAGEMENT AGREEMENT**  
Between:

**101133330 Saskatchewan Ltd.**

**and**

**CIR Commercial Realty Inc.**

**Colliers**  
INTERNATIONAL



This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Between:

101133330 Saskatchewan Ltd.  
(Hereinafter called the "Landlord")

- and -

CIR Commercial Realty Inc.  
o/a Colliers International  
(Hereinafter called the "Manager")

**WHEREAS:**

The Manager is engaged in the business of real property management and leasing and the Landlord desires to place the management of certain of its property (as hereinafter described) in the care of the Manager in accordance with the provisions hereof;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the fees herein provided for and the mutual covenants contained herein, the parties hereto agree as follows:

**PART I DEFINITIONS**

1.01 In this Agreement the following capitalized terms shall have the following meanings:

- (a) "Gross Rentals" means the aggregate of base minimum rent, percentage rent (if any) parking rents, and all other income of any sort whatsoever, including recoveries of operating expenses, realty taxes, GST (where applicable) and any other amounts payable by the Tenant whether or not as 'rent' under the terms of the Lease;
- (b) "Lease or Leases" means a lease or leases granted by the Landlord for space in the Property which has to have been fully executed by all parties thereto and unconditionally delivered;
- (c) "Management Fee" means the fee provided to be paid by the Landlord to the Manager pursuant to paragraph 6.01(a);
- (d) "Leasing Fee" means the fee provided to be paid by the Landlord to the Manager pursuant to paragraph 6.01(b);
- (e) "Property" means the lands and commercial building(s), situated at:

4400 4th Avenue  
Regina, Saskatchewan  
Plan: 75R32425 Block: A/E  
Plan: 59R20949 Block: 28 Lot: 7

- (f) "Tenant" means a person, firm or corporation having entered into or assumed a lease for premises forming part of the Property;
- (g) "Capital Expenditure" means an expenditure to acquire or add to assets intended for use for a period in excess of one (1) year.
- (h) "Commencement Date" means June 1, 2017.

1.02 In this agreement 'herein, hereto, hereof, hereby, hereunder' and similar expressions refer to this Agreement and every instrument amending the same or supplementary thereto.

**Part II APPOINTMENT OF THE MANAGER**

2.01 The Landlord hereby appoints the Manager and the Manager accepts such appointment to manage and administer the Property on behalf of the Landlord in accordance with the provisions hereof.

**Part III TERM**

The Manager shall commence its duties upon the date stated in this agreement and shall commence for a period of one (1) year. Automatically renewable thereafter on a year to year basis.

**PART IV DUTIES OF THE MANAGER**

**(A) New Leasing and Renewal Listings (If applicable)**

4.01 Intentionally Deleted

4.02 Intentionally Deleted

4.03 Intentionally Deleted

**(B) General**

4.04 The Manager shall to the best of its ability keep the Landlord informed of all matters reasonably within the Manager's knowledge, which materially affect the Property.

4.05 The Manager shall use reasonable efforts to obtain the highest possible yield from the Property compatible with sound administration, maintenance and merchandising practices and with the rental policies of the Landlord as such policies may exist from time to time.

4.06 The Manager shall carry out all necessary administration and management functions with respect to the Property, including without limitation, the collection of rent and

other amounts payable by the Tenants, the paying of all operational expenses relating to the Property and the prompt and efficient enforcement of any regulations which are made part of the lease or leases.

(C) Tenant Liaison

- 4.07 The Manager shall be responsible for the serving of all notices and statement required to be sent to Tenants under all Leases and the serving of all other notices necessary to the administration and good management of the Property.
- 4.08 The Manager shall collect on behalf of the Landlord, all rent and other amounts to be paid by Tenants and shall deal with all amounts so received in accordance with the provisions of Subsection (D) following. The Manager shall not be liable to the Landlord for arrears in rent or other payments payable or to be paid by any of the Tenants.
- 4.09 The Manager shall use its reasonable and prudent efforts by demand for payment to collect any amounts which are in arrears from any Tenant with all possible dispatch and shall use such efforts to obtain payment of such amounts which are due without suit or resort to an action or any other legal or equitable remedies available to a landlord and (in accordance with the provisions of paragraph 4.11 hereof) shall institute suit or take advantage of such remedies only where, in the opinion of the manager, other reasonable steps have failed to or will not achieve satisfactory results.
- 4.10 Failing payment after demand or in any case where the Manager is of the reasonable opinion that a Tenant may abscond, the Manager shall with the consent and at the expense of and in the name of the Landlord, commence and prosecute any action or other legal or equitable proceedings or take any legal or equitable remedies available to the Landlord for the recovery of rent or other amounts owing and unpaid and the Manager may, with the Landlord's consent, settle, compromise or discontinue any such proceedings and/or cause entry to be made and/or recover by distress all sums of money owing which arise from non-payment of rent or other monies payable to the Landlord under any lease. The Landlord at all times shall have the right to direct the course of any action, proceedings or remedies taken under this paragraph 4.10 provided that in such event the Manager shall have no responsibility for any prejudicial effect of such directions.
- 4.11 Upon direction in writing from the Landlord and at the Landlord's expense, the Manager shall promptly direct the commencement of whatever legal or equitable action is available to the Landlord under any Lease whether as Plaintiff or Defendant.
- 4.12 The Manager shall do or cause to be done all such things which are necessary to ensure compliance by the Landlord with all the terms and conditions of Leases and if any monies are required to be provided by the Landlord in connection therewith, the Manager shall before taking any action hereunder, obtain the Landlord's consent to such action and its costs.

(D) Accounting, Reporting and Management of Funds

4.13

In connection with the reports of the Manager to the Landlord on the administration and management of the Property hereunder, the Manager shall prepare and submit to the Landlord the following written reports:

- (a) At least ninety (90) days prior to the commencement of each calendar year during the term hereof, prepare and submit to the Landlord for approval an annual plan (the "Annual Plan") for the operation and management of the Property for such calendar year, provided that the Annual Plan for the remaining portion of the calendar year during which the term commences will be prepared and submitted to the Landlord no later than ninety (90) days after the commencement of the term. (Except as otherwise provided herein, no material changes or departures from an approved Annual Plan will be made without the consent of the Landlord);
- (b) Within twenty (20) days following the end of each calendar month during the term hereof:
  - (i) A monthly operating statement and statements of any related cash accounts with comments to variances;
  - (ii) A statement of accounts receivable;
  - (iii) Overview of Building Operations;
  - (iv) Summary of Tenant sales or revenues (if applicable);

4.14

**The Manager Shall:**

- (a) administer the payroll of all employees provided for herein and/or in budgets approved by the Landlord and prepare or have prepared and file or have filed all necessary government returns relating to the aforementioned deductions; and
- (b) in accordance with the provisions of paragraphs 4.17 and 4.18 hereof, handle all banking necessary and/or desirable for the due performance of its accounting and administrative functions hereunder and for the receipt and disbursement of all monies of the Landlord required to be attended to by the Manager under this Agreement.

4.15

The Manager shall be responsible for cash held by the Manager from the Landlord from time to time during the course of each month and from month to month.

4.16

The Manager acknowledges that all monies received by the Manager, on behalf of the Landlord, pursuant to any of the obligations provided for herein or otherwise for or on account of the Landlord shall be received by the Manager and held by the Manager for the Landlord, and shall be remitted to the Landlord less disbursements and less the



Management Fee provided for in this Agreement not later than twenty five (25) days following each month end. Notwithstanding the foregoing, the Landlord agrees to provide the Manager with adequate working capital in the event that there is a deficiency when disbursements, the Management Fee and the Leasing Fee are subtracted from Gross Rentals.

4.17

The Manager agrees that it shall deposit all cash, cheques and other negotiable instruments which come into its hands pursuant to the provisions hereon into the appropriate property management trust accounts for the benefit of the Landlord to be maintained with a Canadian Chartered Bank and shall otherwise deal with such cash and instruments in accordance with sound management practices so that the Landlord is adequately protected.

The Landlord acknowledges that all trust funds will be transferred, when conditions of trust have been met, to an operating account on the landlord's behalf.

**DISCLAIMER:** Once the funds are removed from the property management trust account, in accordance with the conditions of trust, the funds are no longer considered as trust funds under *The Real Estate Act*. Therefore, no claim can be made under the Real Estate Assurance Fund once funds are removed from the property management trust account.

4.18

The Manager at all times shall maintain appropriate books of account and records with respect to all transactions entered into in performance of this Agreement. The Landlord shall have the right at reasonable times and intervals to cause inspections of the books and records maintained by the Manager relating to the management of the Property. Upon the termination of this Agreement, the Manager shall deliver to the Landlord:

- (a) Executed copies of all Leases, Offers to Lease and agreements with Tenants and all continuing contracts entered into and delivered to the manager after the date hereof;
- (b) All books of account and other records maintained by the Manager on the Landlord's behalf for the purposes of this Agreement.

4.19

Upon reasonable notice, not to be less than two (2) complete business days, the Manager shall make available to the auditors of the Landlord, such information and material as may be required by such auditors for purposes of their audit and the Manager shall give such other cooperation as may be necessary for the auditors to carry out their duties to the Landlord in a proper manner. The costs of the audit shall be borne by the Landlord.

(E) Insurance Management

4.20

The Landlord shall determine the types and amounts of insurance coverage to be obtained for the Property and the underwriters with which such insurance is to be placed. Likewise, the Landlord shall be responsible for the payment of insurance premiums. In addition, the Landlord shall be responsible for and arrange insurance

coverage for the Property and will provide the Manager with a Certificate of Insurance. The manager shall be responsible for:

- (a) Reporting to the Landlord in writing any claim or potential claim;
- (b) Settling any claim to a maximum of \$2,500.00 without the Landlord's approval;
- (c) Referring any claim over \$2,500.00 to the Landlord's insurance agent or alternatively to the Landlord where the Property is self-insured;
- (d) Reporting any potential bodily injury claim to the Landlord and to the insurance agent;
- (e) Liaise with insurance carrier representative as necessary;
- (f) Co-ordination of repairs claimed under the Landlord's property Package or Boiler & Machinery coverage;
- (g) Attending all legal proceedings related to any claim when called upon to do so.

4.21 The Manager shall not be liable or responsible in any way for any damage or liability which may be sustained by the Landlord by reason of the inadequacy in the amount, type or duration of insurance coverage by reason of the provisions contained in or omitted from any such insurance contract and shall not be liable for lapse or termination thereof. The Landlord shall add the Manager as an additional insured on the insurance policy for the Property for liability purposes and shall provide Manager evidence of same.

(F) Dealing with Public Authorities

4.22 The Manager shall provide the Landlord with advice and information regarding matters concerning the relationship between the Landlord and the public authorities having jurisdiction including, without limitation, matters concerning property and business taxes, local improvement rates, building and zoning by-laws and any and all governmental, municipal or administration enactments, regulations or orders concerning the Property. The Manager agrees that all public statements must be first approved by the Landlord.

4.23 Subject to the provisions of paragraph 4.25 it shall be the responsibility of the Manager to arrange for any appearance before any tribunal on behalf of the Landlord in connection with matters relating to the management and operation of the Property in cases where an appearance is deemed by the Manager to be necessary or desirable in order to protect or further the interest of the Landlord.



4.24 Approval for an appearance before any tribunal and to retain counsel and consultants for such purposes at the expense of the Landlord shall first be obtained by the Manager from the Landlord.

4.25 The responsibility of the Manager under this part shall be limited to those instances of hearings and appearances of which the Manager shall have received such notice as is adequate in the circumstances to permit appropriate action to be taken.

(G) Housekeeping, Repair, Maintenance and Operation

4.26 Unless otherwise specifically mentioned, the Landlord shall pay for the services and supplies provided for in this Subsection (G).

4.27 The Manager shall arrange for the making of all repairs to the Property that are the Landlord's responsibility and for alterations and redecoration which may become necessary or desirable in keeping with the policies from time to time established by the Landlord and shall comply with any and all regulations of any governmental authority having jurisdiction over the Property. Items so required to be done, the cost of which singly or collectively exceeds Two Thousand (\$2,000.00) Dollars and for which no approved budgetary provision has been made shall be referred to the Landlord for approval before the commencement thereof. In the event that any work or action is urgently required at times when the authorized representatives of the Landlord cannot be reasonably located for the purpose of giving approval or failure to do any work or take any action might expose the Landlord or the Manager in its capacity as manager to penalties or other liability, the Manager is hereby authorized and instructed to proceed with such steps as in its absolute discretion it deems urgently necessary for the protection and preservation of the Property or to protect the Landlord or the Manager from exposure to penalty or other liability. Provided that any action urgently required as aforesaid shall as soon as possible be referred to the Landlord.

4.28 The Manager shall cause the common areas of the Property to be kept clean and shall cause any landscaping to be maintained.

4.29 The Manager shall generally perform, and where desirable, contract for all things necessary for the proper and efficient management, operation and maintenance of the Property.

(H) Security

4.30 At the expense of the Landlord, the Manager shall arrange and supervise adequate security for the physical protection of the Property and shall co-ordinate this activity with any security personnel in the employ of the major Tenants thereof.

(I) Personnel

4.31 The Manager shall provide competent on-site/on-call maintenance staff as determined by the Manager at the Landlord's expense. Fees for such staff as outlined in Clause 1, Schedule A, attached to this document.

4.32 No charge shall be made by the Manager nor shall there be any reimbursement to the Manager of the salaries such as fringe benefits with respect to the provision of management, control and regular routine or standard accounting services in respect to building operations by the head, divisional or regional office personnel of the Manager and the Manager shall provide such services as necessary in accordance with the provisions of this Agreement. The Manager shall be entitled to charge the Landlord for any and all non-standard accounting services performed at the Landlord's request including, but not limited to, long range forecasting, financial planning, proformas and other similar specialized accounting services.

4.33 The Manager shall be responsible for hiring, directing, supervising and discharging the employees who are necessary and desirable for the provision of heating and air-conditioning and the performance of maintenance, housekeeping, cleaning, security and office staff of the Property.

(J) Services, Materials and Supplies

4.34 The Manager, in the name of the Landlord, shall contract for or purchase all services, materials and supplies required by it in performance of its duties and responsibilities hereunder. Such services, materials and supplies shall be paid for by the Landlord in accordance with the budget prepared by the Manager and approved by the Landlord. The Landlord shall reimburse the Manager for office expenses, telephone, travel and entertainment and any other costs relating to the property in accordance with the budget prepared by the Manager and approved by the Landlord.

4.35 The Manager shall arrange for the prompt payment of supplies, materials, services, labour and wages related to the administration and operation of the Property.

4.36 Any contract or contracts for services, materials or supplies involving the expenditure of a sum singly or collectively in excess of Two Thousand Dollars (\$2,000.00) in any year not approved in the budget shall be referred to the Landlord for approval, except in cases of emergency, consent shall not be required but such emergencies shall be made known to the Landlord as soon as is practicable.

4.37 It is agreed that where the Manager enters into any contract on behalf of the Landlord, pursuant to the terms of this Agreement, the Landlord shall when so requested by the Manager, provide the Manager with written confirmation of the Manager's authorization to act on the Landlord's behalf.

(K) Capital Expenditures

4.38 Any Capital Improvements involving the expenditure of a sum singly or collectively in excess of Two Thousand Dollars (\$2,000.00), in any year not approved in the budget, shall be referred to the Landlord for approval, except in cases of emergency, consent shall not be required but such emergencies shall be made known to the Landlord as soon as it is practicable.

**PART V LIAISON BETWEEN THE MANAGER AND LANDLORD**

5.01 The Manager and the Landlord shall each appoint one authorized representative whose duties will consist of instituting and maintaining liaison as to the requirement of this agreement between the Landlord and the Manager.

5.02 Each of the Landlord and the Manager shall furnish to the other from time to time as required, a list showing the names, addresses and telephone numbers of those officers, directors or other representatives of the Landlord or the Manager (as the case may be) who are authorized to act for and on behalf of the Landlord or the Manager (as the case may be) whenever, under the terms of this Agreement, consultation between the Landlord and the Manager for the purpose of obtaining approval or consent of the Landlord is required.

**PART VI COMPENSATION OF MANAGER**

6.01 (a) Management Fees: For the services performed by the Manager under this Agreement, the Landlord shall pay to the Manager a Management Fee as outlined in Clause 2 of Schedule A, attached to this document. The Management fee shall be payable to the Manager monthly and shall be adjusted in accordance with the provisions of this Agreement within thirty (30) days of the calendar year end or upon termination of the Agreement.

(b) Leasing Fees (if applicable): Intentionally Deleted

(c) Supervision of Capital Works Major Repairs: Landlord agrees to pay the Manager a fee for all capital expenditures, major repairs or tenant improvements which meet the following criteria.

- (i) has been authorized by the Landlord;
- (ii) is not a normal operating expense;
- (iii) is performed by other than in-house personnel supervised by the Manager;
- (iv) requires the Manager to act as a general contractor.

A fee for any renovation, modernization, construction, remodelling or alteration of the existing and the additional construction, once completed, will be charged at the rate as outlined in Clause 3, Schedule A, attached to this document. Supervision only, by Manager as outlined in Clause 3.1, Schedule A, attached to this document.

(d) Documentation Fees: For documentation preparation services performed by the Manager under this Agreement, the Landlord shall pay to the Manager a Documentation Fee as follows:

- (i) For renewal, amendment, extension, surrender, addendum, and assignment documents, as outlined in Clause 4, Schedule A, attached to this document;
- (e) **Reimbursement of Management Expenses:** In addition to the compensation referred to above, the Manager shall be entitled to reimbursement by the Landlord, upon production of appropriate proof of such expenditures, of all actual Project related expenses incurred by it in performing its responsibilities under this Agreement, including legal fees (for legal expenses strictly related to the Project) photocopies, courier and fax charges, long distance telephone, travel, all costs of accounting and accounting personnel employed by the Manager and used to maintain the books and records of the Project. The Manager specifically agrees that the following items of cost incurred by the Manager shall be borne by the Manager, with no right to receive reimbursement therefore, and the manager agrees to hold the Landlord free and harmless therefrom:
  - (i) all general management overhead expenses of Manager not directly related to the management of the Project;
  - (ii) business licenses and fees of the Manager;
  - (iii) all costs related to the liability insurance required by the Landlord to be carried by the Manager;
- (f) **Special Services:** At the request of the Landlord, the Manager shall perform the following special services for the Landlord:
  - (i) remittance of Owner's GST to Canada Revenue Agency;
  - (ii) provide special accounting which includes property acquisition and property disposition;
  - (iii) provide due diligence support, documentation and assistance;
  - (iv) act as property consultant;
  - (v) after hours call back;
  - (vi) Insurance claims and legal claims

If such special services are provided, the additional fees, as outlined in Clause 5, 6 and 7, Schedule A, attached to this document, shall be payable and Manager is hereby authorized to deduct and retain the said compensation each month during the currency of this Agreement from monies held by Manager in trust for the Landlord and the Landlord shall pay any deficiency on demand. Hourly fees and flat dollar fee amounts shall be adjusted effective each January 1 in accordance with the increase in the cost of

living index for the City, but shall not be less than those amounts stated in Clause 6 on Schedule A.

## **PART VII      TERMINATION**

### **(A)    Termination by Landlord**

7.01      This Agreement may be terminated, for any reason whatsoever, by either party to this Agreement by giving thirty (30) days written notice to the other party.

### **(B)    Termination Upon Sale**

7.02      Notwithstanding any provision contained in this Agreement to the contrary, should the Landlord sell or otherwise dispose of its entire legal beneficial interest in the Property, the Landlord shall have the right to terminate the Agreement at any time by giving the Manager thirty (30) days written notice prior to the termination date.

### **(C)    Termination by Manager**

7.03      This Agreement may be terminated at the Manager's option upon sixty (60) days written notice.

### **(D)    Effect of Termination on Accrued Rights**

7.04      Termination of this Agreement shall in no way affect or impair any right which has accrued to any party hereto prior to the date when such termination shall become effective.

## **PART VIII      MISCELLANEOUS**

### **8.01      Notices:**

Any notices, approval or consent required to be given by either party to the other shall be sufficiently given if delivered, or if mailed, then by prepaid registered mail addressed, in either case, as follows:

(a)    To the Landlord:      101133330 Saskatchewan Ltd.  
Regina, Sask.

(b)    To the Manager:      CIR Commercial Realty Inc.  
o/a Colliers International  
#200 - 2505 11<sup>th</sup> Avenue  
Regina, Saskatchewan  
S4P 0K6  
Phone: (306) 789-8300  
Fax: (306) 757-4714



Any such notice, approval or consent shall be conclusively deemed to have been given on the date on which such notice, approval or consent is delivered or if mailed, then on the fifth business day following the date of mailing, as the case may be. Either party may at any time give notice in writing of any change of address or officer to whom such notice is to be addressed of the party giving such notice, the address or addressee of such party for the purposes of this paragraph 8.01.

8.02

**Not a Partnership**

Nothing in this Agreement shall be construed so as to create a partnership between the parties hereto.

8.03

**Fiduciary Relationship of the Manager**

The Manager shall not, either while this Agreement is in force or at any time thereafter, disclose to any person, firm or corporation any information concerning the private internal affairs of the Landlord and the Manager shall not either while this Agreement is in force or thereafter use any such information for its own benefit or to the detriment or intended or probable detriment of the Landlord. Provided that nothing in this paragraph 8.03 shall preclude disclosure of such information by the Manager in pleadings or in evidence in the course of any legal proceedings between the Manager and the Landlord, or any other legal proceeding under circumstances whereby the Manager is obliged to disclose such information.

8.04

**Arbitration**

In the event of failure to reach agreement in any matter hereunder where agreement is called for, or if the Manager disputes any notice given by the Landlord pursuant to paragraph 7.01 above, such dispute shall be submitted to arbitration under and in accordance with the Arbitration Act of the Province of Saskatchewan. The provisions of this paragraph 8.04 shall be deemed to be a submission to arbitration within the provisions of the said Arbitration Act and any statutory modification or re-enactment thereof, provided that any limitation on the remuneration of arbitrators imposed by such legislation shall not have application to any arbitration proceeding commenced pursuant to this Agreement.

8.05

**Indemnity**

The Landlord shall, during and after the termination of this Agreement, indemnify and save the Manager completely free and harmless from any and all damages or injuries to persons or property, or claims, actions, obligations, liabilities, costs, expenses and fees incurred by the Manager in accordance with or as a result of the Manager carrying out the provisions of this Agreement or the directions of the Landlord, subject to court directions, provided that the Manager or its employees have not been negligent. The Manager shall during and after the termination of this Agreement, indemnify and save the Landlord completely free and harmless from any and all damages or injuries to persons or property, or claims, actions, obligations, liabilities, costs and expenses by reason of any cause whatsoever where the Manager has not carried out the written

directions of the Landlord, subject to court directions, or where the Manager or any of its employees has been negligent.

8.06 Governing Law

For the purposes of this Agreement, the governing law shall be the law of the Province of Saskatchewan.

8.07 Binding Effect

This Agreement shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators and successors and, subject to the provisions hereof, successors and assigns.

IN WITNESS WHEREOF the parties have hereunto set their hands as of the date first above written.

101133330 SASKATCHEWAN LTD.

Per: \_\_\_\_\_

\_\_\_\_\_  
Seal/Witness

CIR COMMERCIAL REALTY INC.

Per: \_\_\_\_\_

\_\_\_\_\_  
Seal/Witness



## SCHEDULE A

### Personnel

Clause 1 – To be determined once scope of duties are finalized. Supervision of the building operator would be \$2,500.00 per month. Building operator will remain on the payroll for 1011333300 Saskatchewan Ltd.. Hourly charge out rate is \$65.00 per hour or such amount as the Landlord and the Manager shall mutually agree.

### Compensation of Manager

Clause 2 – 5% of gross rentals or such amount as the Landlord and Manager shall mutually agree if the management fee shall not in any case be less than \$4,000.00 per month.

### Supervision of Capital Works & Major Repairs

#### Clause 3 – Project Management Fee

10% on the first \$100K of total project cost  
7% on the next \$400K of total project cost  
5% on the costs exceeding \$500K

### Documentation Fees

Clause 4 – \$500.00 per Renewal document.

### Special Services

Clause 5 – \$75.00 per hour or such amount mutually agreed upon between Landlord and Manager.

### After Hours Call Back

Clause 6 – \$90.00 per hour or such amount as the Owner and Manager shall mutually agree.

### Insurance Claims & Legal Claims

Clause 7 - Insurance Claims – 10% of the total cost of the Insurance Claim.  
Legal Claims – 10% of the total Legal Bill.

## COMMUNICATION AUTHORIZATION

CIR Commercial Realty Inc. o/a Colliers International communicates with Landlords on various matters via broadcast email. It is important that you complete the following consent to ensure that our communication path continues to be available through electronic mail.

- ☒ I consent to CIR Commercial Realty Inc. o/a Colliers International sending electronic messages to the following email address(es) (Please include as many email addresses as you wish):

\_\_\_\_\_  
\_\_\_\_\_

- ☒ I understand that individuals may unsubscribe at any time

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Note: CIR Commercial Realty Inc. o/a Colliers International cares about your privacy. We will use your information only for the purposes outlined above and we will not sell, trade or otherwise transfer your information to outside parties unless required by law. Refer to our Privacy Policy at [www.colliersmn.com/privacy](http://www.colliersmn.com/privacy).

  
A COMMISSIONER FOR OATHS FOR  
SASKATCHEWAN  
Being a Solicitor

May 24, 2017

McDougall Gauley LLP  
500-616 Main Street  
Saskatoon SK  
S7H 0J6

Attention: Ian A. Sutherland and Craig Frith, McDougall Gauley LLP, Counsel for the Borrower

**Re: Term Sheet – Debtor in Possession Facility  
101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd.**

You have advised us that 101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd. (collectively, the "**Borrowers**") applied to the Court of Queen's Bench for Saskatchewan, Judicial Centre of Saskatoon in QB No. 643 of 2016 and were granted an order from Mr. Justice N.G. Gabrielson under the *Companies' Creditors Arrangement Act* (the "CCAA").

You have further advised us that it is the Borrowers' intention to remain in possession and control of their assets and business during the course of the CCAA proceedings. \_\_\_\_\_ (the "**Lender**") is pleased to offer its commitment to provide to the Borrower with the financing described herein during the CCAA proceeding, subject to the terms and conditions of this Term Sheet.

<b>BORROWERS:</b>	101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd.
<b>PURPOSE OF FINANCING:</b>	To support working capital requirements and restructuring efforts.
<b>PROPOSED FINANCING:</b>	A secondary DIP Facility in an amount of up to CDN \$500,000.00 (the " <b>Secondary DIP Facility</b> ").
<b>INTEREST:</b>	1.05% per month (12.60% per annum) calculated on the daily balance outstanding under the DIP Facility.
<b>TERM:</b>	The entire DIP Facility plus interest is due in full on January 31, 2018, subject to renewal on mutually-satisfactory terms.
<b>PAYMENT:</b>	Interest only payments payable on the 1 <sup>st</sup> of each month with the principal due at maturity. The Borrowers may repay any or all of their obligations under the DIP Facility (including principal, interest, costs and any other amounts) at any time.

**DOCUMENTATION AND SECURITY:**

The Borrowers shall provide or cause to be provided, the security and agreements listed below, in form and substance satisfactory to the Lender, including, but not limited to:

1. DIP Financing Agreement, evidencing a second priority court ordered charge (the "**Secondary Charge**") on all of the existing and after-acquired real and personal property, assets, and undertakings of the Borrowers that is subject

only to:

- (a) the Administration Charge granted by the Court up to maximum amount of \$150,000;
- (b) the first DIP Lender's Charge in the amount of \$2,000,000; and
- (c) in respect of all current and future assets, undertakings and property of any nature and kind whatsoever, and wherever situate, including all proceeds thereof, of 101149825 Saskatchewan Ltd. (collectively, the "**Saskatoon Property**"), the Charge shall rank behind the Administration Charge, the mortgage in favour of Firm Capital Mortgage Fund Inc. registered as Interest Register No. 121088167, the mortgage in favour of Frank Pa registered as Interest Register No. 121113155, and the First DIP Lender's Charge;

- 2 Promissory Note;
- 3 Borrowers to provide monthly reporting to the Lender;
- 4 Assignment of insurance; and
- 5 Such further security and other documentation that the Lender and its solicitor may reasonably require.

**ASSIGNMENTS:**

The Lender may assign or transfer or grant participations in its rights or obligations in whole or in part at any time without notice to or consent of the Borrowers.

**ONGOING COVENANTS:**

The Borrowers shall pay when due all statutory liens, trust and other Crown claims including employee source deductions, GST, PST, EHT, WEPPA and WSIB premiums.

**CONDITIONS:**

Availability of the DIP Facility is conditional upon, but not limited to:

- 1. Acceptance by the Borrowers of this Term Sheet;
- 2. The Borrowers obtaining an Order in form and content satisfactory to the Lender and Lender's Counsel, authorizing the borrowing under the Secondary DIP Facility;
- 3. An Order granting the Secondary Charge in favour of the Lender as security for repayment of the Secondary DIP Facility, and all interest, fees, expenses and other amounts payable by the Borrowers;
- 4. Delivery and registration of the security in a form acceptable to the Lender;
- 5. The Borrowers having paid statutory liens, trust and other Crown Claims including confirmation of paid property taxes on the subject property.

**FACILITY FEE:**

\$15,000 upon draw down of the DIP Facility, and not in advance.

**ACCEPTANCE:**

This Term Sheet must be accepted by the Borrowers.

**Costs:**

The costs of all appraisals and environmental reports, the legal costs of the Lender, cost consultant and insurance consultant and all other out-of-pocket costs and expenses incurred in the approval and making of the Secondary DIP Facility and the preparation, execution, delivery, registration and discharge of the security or in the collection of any amount owing under the terms of the Secondary DIP Facility shall be for the account of the Borrowers and may be debited to advances to be made under the terms of the Secondary DIP Facility. Until paid, all such costs and expenses shall bear interest at the rate described under the Interest Rate section of this Agreement.

Yours truly,

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Per:

On behalf of 101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd., I agree with the terms and conditions as stated above:

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Per: John Orr  
Date: